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November 29, 1988

73,263

**FILED**  
SID J. WHITE

DEC 9 1988

CLERK, SUPREME COURT  
By:   
Deputy Clerk

Florida Bar News  
ATTENTION: LETTERS EDITOR  
Tallahassee, Florida

Dear Editor:

This letter is in reference to the official notice of the proposed change to Rule 1.442 - Offer of Judgment, particularly paragraph (g)(2). In addition to the typesetter's apparent error, I believe there is a substantive misjudgment in the text of this paragraph.

Surely the policy to be promoted is to induce the highest offer by the defense and the lowest demand by the plaintiff. As proposed, the plaintiff's bonus is calculated on the amount of his demand. The optimum strategy would be to demand as much as possible without exceeding 80% of the expected judgment. It certainly does not induce the lowest possible demand.

To promote the policy, the sanction should be calculated on the difference between the plaintiff's lowest demand and the judgment. Also, to be consistent, the sanction in the defendant's favor should be calculated on the difference highest between its highest offer and the judgment.

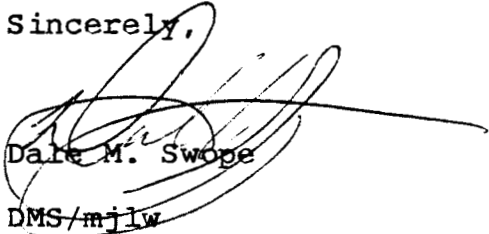
Also, section (c) provides that an offer should be stated as one total amount "construed as including all damages of every sort which might be awarded." However, the sanctions order is to separately calculate and itemize sanctions related to offers of punitive damages.

To illustrate the ambiguity this causes, consider a defendant's gross offer of \$100 for "all damages of every sort," and a plaintiff's counter-offer for \$140, which is explained as \$40 in compensatory and \$100 in punitive damages. The verdict is returned for \$60 compensatory and \$10 punitive.

Should the plaintiff get sanctions only on the compensatory award? Should the plaintiff (and the state) get a separately itemized and calculated sanction based on the punitive damages award? Should the defendant get sanctions based on the judgment being less than 75% of its gross offer?

It could be even more confusing that the current hodgepodge.

Sincerely,



Dale M. Swope

DMS/mjlw

cc: Clerk of the Supreme Court re: Case No. 73,263