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November 28, 1988

Clerk of the Supreme Court
Tallahassee, FL 32399-1927

RE: Proposed Change to Rule 1.442 Offer of Judgment,
Rules of Civil Procedure
Supreme Court Case No. 73,263

DEC 2 1988
CLERK, SUPREME COURT

By _____
Deputy Clerk

Dear Clerk:

I have reviewed the proposed rule change concerning Offers of Judgment which was printed in the November 15, 1988 Edition of the Florida Bar News. It is my practice to frequently use the Statutes and Rule on Offers of Judgment to encourage settlement of my cases. In reviewing the proposed rule, the primary distinction is that it does not provide for an award of attorney's fees after the date the Offer of Judgment is made. Instead, a fifteen percent (15%) penalty is assessed based on the amount of the offer.

This proposed rule would not encourage settlement in smaller cases. For cases less than \$40,000.00, the Offer of Judgment penalty of fifteen (15%) percent would not begin to cover the attorney's fees involved in trying a case. Additionally, the rule would not encourage Offers of Judgment of smaller amounts because the penalty assessed would not amount to enough of an incentive to settle to accomplish the purpose of an Offer of Judgment.

There is no doubt that the methods of making an Offer of Judgment need to be consolidated and simplified. The existence of one rule and two statutes often complicates the situation. However, the alternatives provided by the statutes and rules provide enough flexibility to make an Offer of Judgment useful and available in many different situations. This flexibility needs to be maintained, and the remedy of attorney's fees needs to be preserved.

Very truly yours,

Randee J. Golder

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Florida Bar No. 402206

RJG:ae

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12-28-88