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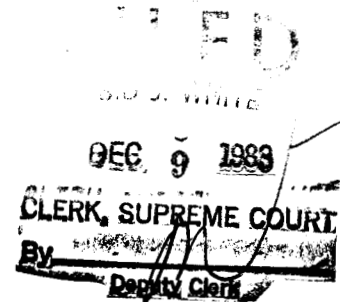
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December 7, 1988

Supreme Court
Tallahassee, Florida 32399-1927



RE: Proposed Amendment to Rule of Florida Procedure 1.442
Case Number 73-~~236~~
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Gentlemen:

It has been said that less than full justice is not justice. The Florida Statutes which the Court is considering modifying and adopting into the new Rule 1.442 is ill conceived. When a party litigant can receive his measure of damages plus attorney's fees plus their expenses, justice has been done.

I represent more defendants than plaintiffs in the past few months. The same is true for them. A defense that costs a litigant thousand in attorneys fees, even if won, is lost.

The two statutes (sections 45.061 and 768.79) encourage high offers and low demands and carry the penalty of fees, costs and expenses. These two statutes, in my opinion, have done more for settlement of cases in the past months they have been in effect than any others.

The softening of the Penalty for failure to settle or demand within reasonable limits as contained in the new rule is nice, but, it doesn't accomplish the goal and impose the harsh penalties that the statutes do.

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I agree that the statutes invade the rulemaking powers of the Court. I would urge adoption of the statutes with equal penalty provisions into a new rule 1.442. If our goal is to make people whole let's take a step in that direction.

Very truly yours,

Kelner and Kelner

BY: 
JOHN D. KELNER, ESQUIRE

JDK/amc

DEC 8 1988
CLERK, SUPREME COURT
By 
Deputy Clerk

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