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Clerk of the Supreme Court  
Tallahassee, Fl., 32399-1927

**FILED**

SID J. WHITE

DEC 12 1988

In re: Proposed Rule of Court 1.442  
Case No: 73,263

CLERK, SUPREME COURT

By \_\_\_\_\_  
Deputy Clerk

Dear Clerk of the Supreme Court:

I disagree with the revision proposed in the above case number. The proposed revision would provide no incentive to settle small cases. If the final verdict is \$2500, all a litigant risks is \$375. That will produce less settlements than the present rule, where a person can risk assessment of \$1,000's of dollars in court costs.

I think the best solution is for the Supreme Court to as a Rule of Court, Florida Statute 45.061,(1987). This would take care of the problem as to whether the Legislature impinged on the courts' rule making authority, as to this Statute. Also, it would basically solve the ongoing problem: Litigants unreasonably trying law suits. Since, under that Statute, the court has the discretion as to whether to impose the sanction, he or she can decide on the reasonableness of the proposed Sanctionees decision as to whether to go forward with the case. Although not perfect, it is the best think to go by.

What remains is the question as to whether to adopt as a Rule of Court, Florida Statute 768.79,(1987). I would not, even though the Court would be faced with the problem of whether it is unconstitutional. The problem with Florida Statute 768.79 is that it requires a Judge to use a subterfuge. He is forced to consider the equities in a case as a factor in determining the reasonableness of the dollar amount of the attorney fee. The dollar amount should be determined by the factors that have been traditionally used are are set forth in Rule Regulating the Florida Bar 4-1.5(B). What this specific Statute is trying to do is require the attorney to continually reevaluate whether he should go forward with a case, which is not practical. Any equity of the case can be better decided under the language and more forthrightfully under the language of Florida Statute 45.061, instead of requiring judges to use a legal fiction.

Sincerely,



Bertram Shapero

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