

73,623
73,263

LAW OFFICES OF
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A PROFESSIONAL ASSOCIATION

December 1, 1988

REPLY TO:
Lakeland

FILED
SID A. WHITE

DEC 5 1988

CLERK, SUPREME COURT
Deputy Clerk *gl*

Clerk, Supreme Court
Supreme Court Building
Tallahassee, Florida 32399-1927

RE: CASE NO.: ~~73,623~~

73,263

Dear Sirs:

I am writing in response to the notice in the Florida Bar News regarding the proposed amendment of Rule 1.442, Offer of Judgment. I am opposed to the proposed change. My practice is primarily civil litigation and I have utilized offers of judgment pursuant to Rule 1.442 frequently in my practice. I have found it to be a useful tool in facilitating the resolution of close cases. Most often, such offers are made within a time period 30 days before trial. By that time, both parties have a rather clear idea of what the posture of the case is. Often, there is not a significant difference between the demand being made by the Plaintiff and the offer being made by the Defendant. The offer is very helpful at that point because it constrains the Plaintiff to take a close look at the case to determine whether the uncertainty of a trial is worth the risk considering the fact that even if the Plaintiff prevails, it may have to pay the costs that the Defendant will incur at trial, in addition to the Plaintiff's own costs. Often, in this age of experts, the costs incurred at trial can be significant.

The proposed rule would provide that no offers could be made any later than sixty (60) days prior to trial. I realize that one of the purposes of the rule may be to encourage the parties to be more totally prepared two months before trial. It simply is not realistic. The parties will always be most knowledgeable about a case during the time frame just before trial.

ABA 15356
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sent

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I am not in favor of changing the rule as it is presently worded which provides that once an offer is made it is deemed withdrawn if not accepted within ten (10) days. I think this rule is helpful. Plaintiff's counsel knows how long an offer is effective once it is made and he can advise his client accordingly.

Respectfully submitted,

David W. Young
David W. Young

DWY/it