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SID J. WHITE
MAY 15 1996
CLERK, SUPREME COURT
By _____
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

IN RE: AMENDMENTS TO THE RULES OF CIVIL PROCEDURE ) CASE 87,689

RESPONSE OF HENRY P. TRAWICK, JR.

Respondent, HENRY P. TRAWICK, JR., shows:

1. He is a member in good standing of The Florida Bar.

2. Respondent has comments on the proposed amendments to the Rules of Civil Procedure as follows:

(a) The title of Rule 1.061 "Forum Conveniens" should be rendered in English, not Latin. Respondent suggests a better title would be "Choice of Forum."

(b) Rule 1.070(i) will make service by mail permissible. A defendant who refuses to accept service by mail will be penalized by having costs assessed against him. Respondent opposes the change unless it is made purely permissive. A lawsuit is a formal proceeding. The technicalities of beginning it and notice to the defendant should be formal and the cost of service of process should be borne as a court may ultimately decide.

(c) Rule 1.310(c) is amended to eliminate the objection to irrelevant evidence and the ability to instruct a witness not to answer for irrelevancy when it passes far beyond the bounds of propriety. There are many instances in which examining attorneys go far beyond the bounds of propriety and sometimes beyond the bounds of decency in asking questions that are not relevant. One example must suffice in this response. A practicing lawyer was called as a witness to testify about certain things on which he had personal knowledge in connection with a lawsuit. The examining attorney asked him, among other things, whether any grievance procedures had ever been taken against the lawyer. That information is not covered by privilege for past events, but

it certainly was irrelevant to the cause of action. It is not the type of question on which any party would want to terminate the deposition. The proposed amendment would obviate the ability to stop this kind of misconduct. Respondent has been informed of numerous cases in which counsel at depositions have allegedly told a witness not to answer a question without a proper legal justification. If this is occurring, it should be cured by sanctions, not by the proposed method. If relevancy is to be eliminated, Rule 1.280(b)(1) must also be considered because that is where the relevancy objection appears. Again, it seems that the Committee is trying to do something sub rosa just as the Appellate Rules Committee is trying to eliminate Rule 1.630 in such a manner. The question of the objection of relevancy deserves to be heard on its merits. If the Committee is certain that existing law covers the situation, why tamper with it?

(d) The attempt to readopt Rule 1.442 is commendable, but certain matters in connection with the proposal should be modified or deleted. In subdivision (b) the limitation for service for not later than 45 days before the date set for trial is a trap for the unwary. Many times counsel will not know when the trial is set because the court only has to give 30 days notice. This means that the party must guess accurately for at least 15 days before the date of the trial setting. A limitation should be set that can be made certain. If the proposal is served within 10 days after the trial is set, it should provide ample time for acceptance or rejection. Subdivision (h) is substantive and should be left in the statutes. The statutes need to be amended so that they have the same sanctions, but this Court has already decided that it has no authority as a procedural matter to impose sanctions.

(e) The change to Form 1.908 may be commendable, but it is not in accord with the titles to Forms 1.905, 1.906, 1.907 and 1.909. The addition in connection with replevin simply makes it inconsistent with the others and is unnecessary.

The undersigned certifies that a copy of the foregoing has been furnished to William C. Gentry as chairman of the Civil

Procedure Rules Committee and John F. Harkness, Jr. as executive director of The Florida Bar by mail on May 14, 1996.

By _____
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