

PROPOSED RULE AMENDMENTS FROM THE CIVIL PROCEDURE  
RULES COMMITTEE

The Civil Rules Committee invites comments on the proposed rule amendment anticipated to be included in a report to the Court regarding Rule 1.442 (Proposals for Settlement). The full text of the proposal can be found on The Florida Bar's website at [www.floridabar.org/rules/ctproc/](http://www.floridabar.org/rules/ctproc/).

Interested persons have until November 30, 2021, to submit any comments, electronically, to Jason Stearns, Chair of the Civil Rules Committee, at [jstearns@freeborn.com](mailto:jstearns@freeborn.com), and to the Rules Attorney, Mikalla Davis at [midavis@floridabar.org](mailto:midavis@floridabar.org).

Rule 1.442 (Proposals for Settlement)	28-0-0	In subdivision (b), the first sentence is rewritten to clarify service of a proposal for settlement by a plaintiff to a defendant, when that defendant was joined in the case after other defendants have appeared.  Also in subdivision (b), "No" is replaced with "A" and "not" is added for greater clarity for the reader.
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## **RULE 1.442. PROPOSALS FOR SETTLEMENT**

**(a) Applicability.** This rule applies to all proposals for settlement authorized by Florida law, regardless of the terms used to refer to such offers, demands, or proposals, and supersedes all other provisions of the rules and statutes that may be inconsistent with this rule.

**(b) Service of Proposal.** A proposal ~~to a defendant shall~~ may be served on a party no earlier than 90 days after service of process on that defendant; a proposal to a plaintiff shall be served no earlier than 90 days after the action has been commenced that party files a document in the case or is served with process, whichever is earlier. ~~No~~ A proposal shall not be served later than 45 days before the date set for trial or the first day of the docket on which the case is set for trial, whichever is earlier.

### **(c) Form and Content of Proposal for Settlement.**

(1) A proposal shall be in writing and shall identify the applicable Florida law under which it is being made.

(2) A proposal shall:

(A) name the party or parties making the proposal and the party or parties to whom the proposal is being made;

(B) state that the proposal resolves all damages that would otherwise be awarded in a final judgment in the action in which the proposal is served, subject to subdivision (F);

(C) state with particularity any relevant conditions;

(D) state the total amount of the proposal and state with particularity all nonmonetary terms of the proposal;

(E) state with particularity the amount proposed to settle a claim for punitive damages, if any;

(F) state whether the proposal includes attorneys' fees and whether attorneys' fee are part of the legal claim; and

(G) include a certificate of service in the form required by Florida Rule of Judicial Administration 2.516.

(3) A proposal may be made by or to any party or parties and by or to any combination of parties properly identified in the proposal. A joint proposal shall state the amount and terms attributable to each party.

(4) Notwithstanding subdivision (c)(3), when a party is alleged to be solely vicariously, constructively, derivatively, or technically liable, whether by operation of law or by contract, a joint proposal made by or served on such a party need not state the apportionment or contribution as to that party. Acceptance by any party shall be without prejudice to rights of contribution or indemnity.

**(d) Service and Filing.** A proposal shall be served on the party or parties to whom it is made but shall not be filed unless necessary to enforce the provisions of this rule.

**(e) Withdrawal.** A proposal may be withdrawn in writing provided the written withdrawal is delivered before a written acceptance is delivered. Once withdrawn, a proposal is void.

**(f) Acceptance and Rejection.**

(1) A proposal shall be deemed rejected unless accepted by delivery of a written notice of acceptance within 30 days after service of the proposal. The provisions of Florida Rule of Judicial Administration 2.514(b) do not apply to this subdivision. No oral communications shall constitute an acceptance, rejection, or counteroffer under the provisions of this rule.

(2) In any case in which the existence of a class is alleged, the time for acceptance of a proposal for settlement is extended to 30 days after the date the order granting or denying certification is filed.

**(g) Sanctions.** Any party seeking sanctions pursuant to applicable Florida law, based on the failure of the proposal's recipient to accept a proposal, shall do so by serving a motion in accordance with rule 1.525.

**(h) Costs and Fees.**

(1) If a party is entitled to costs and fees pursuant to applicable Florida law, the court may, in its discretion, determine that a proposal was not made in good faith. In such case, the court may disallow an award of costs and attorneys' fees.

(2) When determining the reasonableness of the amount of an award of attorneys' fees pursuant to this section, the court shall consider, along with all other relevant criteria, the following factors:

(A) The then-apparent merit or lack of merit in the claim.

(B) The number and nature of proposals made by the parties.

(C) The closeness of questions of fact and law at issue.

(D) Whether the party making the proposal had unreasonably refused to furnish information necessary to evaluate the reasonableness of the proposal.

(E) Whether the suit was in the nature of a test case presenting questions of far-reaching importance affecting nonparties.

(F) The amount of the additional delay cost and expense that the party making the proposal reasonably would be expected to incur if the litigation were to be prolonged.

**(i) Evidence of Proposal.** Evidence of a proposal or acceptance thereof is admissible only in proceedings to enforce an accepted proposal or to determine the imposition of sanctions.

**(j) Effect of Mediation.** Mediation shall have no effect on the dates during which parties are permitted to make or accept a proposal for settlement under the terms of the rule.

### **Committee Notes**

**1996 Amendment.** This rule was amended to reconcile, where possible, sections 44.102(6) (formerly 44.102(5)(b)), 45.061, 73.032, and 768.79, Florida Statutes, and the decisions of the Florida Supreme Court in *Knealing v. Puleo*, 675 So. 2d 593 (Fla. 1996), *TGI Friday's, Inc. v. Dvorak*, 663 So. 2d 606 (Fla. 1995), and *Timmons v. Combs*, 608 So. 2d 1 (Fla. 1992). This rule replaces former rule 1.442, which was repealed by the *Timmons* decision, and supersedes those sections of the Florida Statutes and the prior decisions of the court, where reconciliation is impossible, in order to provide a workable structure for proposing settlements in civil actions. The provision which requires that a joint proposal state the amount and terms attributable to each party is in order to conform with *Fabre v. Marin*, 623 So. 2d 1182 (Fla. 1993).

**2000 Amendment.** Subdivision (f)(2) was added to establish the time for acceptance of proposals for settlement in class actions. "Filing" is defined in rule 1.080(e). Subdivision (g) is amended to conform with new rule 1.525.

**2012 Amendment.** Subdivision (c)(2)(G) is amended to reflect the relocation of the service rule from rule 1.080 to Fla. R. Jud. Admin. 2.516.

**2013 Amendment.** Subdivision (f)(1) was amended to reflect the relocation of the rule regarding additional time after service by mail or e-mail from rule 1.090(e) to Fla. R. Jud. Admin. 2.514(b).

**2013 Amendment.** Subdivision (c)(2)(B) is amended to clarify that a proposal for settlement must resolve all claims between the proponent and the party to whom the proposal is made except

claims for attorneys' fees, which may or may not be resolved in the proposal.