IN THE SUPREME COURT OF FLORIDA

IN RE: AMENDMENTS TO FLORIDA RULE OF CIVIL PROCDURE 1.442 **SC21-277**

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COMMENT OF THE CIVIL PROCEDURE RULES COMMITTEE

Jason Stearns, Chair of the Civil Procedure Rules Committee ("CPRC"), and Joshua E. Doyle, Executive Director of The Florida Bar, file this comment on the Florida Supreme Court's proposed amendments to Florida Rule of Civil Procedure 1.442, as addressed in this case (the "Proposed Amendments") (the "Comment").

This Comment was approved by vote of 34-2-1. This Comment contains three sections. The first section addresses the CPRC's role, generally, and the internal procedure used to review this Court's proposed amendments. The second section addresses this Court's proposed amendments in separately numbered subsections. The third section briefly addresses a proposed rule amendment that was approved by the CPRC and that is presently published for comment through The Florida Bar's website.

I. THE CPRC, ITS ROLE, AND ITS REVIEW OF THIS COURT'S PROPOSED AMENDMENTS.

The CPRC is the rules committee of The Florida Bar whose sole purpose is to review on a continuing basis, consider amendments to, and present to the Florida Supreme Court proposed revisions to the Florida Rules of Civil Procedure. The CPRC is comprised of a broad selection of attorneys and judges from all geographic areas of Florida and from all substantive areas of practice.

With specific regard to rule 1.442, the CPRC is comprised of several members who have had substantial involvement in past CPRC amendments to rule 1.442, as well as members who have been involved as practitioners in the Court's cited decisions that are discussed in the Proposed Amendments and as judges who consider

enforceability of such proposals for settlement under the rule. Although the CPRC builds on this experience, the members of the CPRC have tried to focus this Comment on the system of civil justice in Florida, and not on each member's personal practice.

On receipt of this Court's invitation to comment on the Proposed Amendments, the CPRC created a subcommittee that met virtually and exchanged multiple e-mail correspondence addressing the Proposed Amendments. Additionally, the full committee met via Zoom on October 14, 2021, and thoroughly addressed the Proposed Amendments. Once input was received from the individual members, the subcommittee prepared a draft comment, circulated it for review to the full committee, and obtained final approval of this Comment for submission to the Florida Supreme Court.

The CPRC's Comment includes its observations, opinions, and recommendations with respect to the Proposed Amendments, as well as a more focused analysis on drafting, where appropriate. For ease of discussion, each subsection begins with a quote of the relevant proposed amendment.

II. THE PROPOSED AMENDMENTS.

a. Rule 1.442(a): Elimination Of Strict Construction.

> **(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. The procedural requirements of this rule shall be applied according to their plain meaning; but if the procedural requirements of this rule are ambiguous, they shall be construed pursuant to the standard set forth in Florida Rule of Civil Procedure 1.010, not strictly.

Florida Rule of Civil Procedure 1.442 is intended to procedurally implement section 768.79, Florida Statutes—not extend it. *Accord Timmons v. Combs*, 608 So. 2d 1, 3 (Fla. 1992) (repealing rule 1.442 in favor of adopting "the procedural portion of

section 768.79 as a rule of this Court . . . ."); *In re: Amends. to Fla. R. Civ. P.*, 682 So. 2d 105, 106 & 124-26 (Fla. 1996) (adopting a version of rule 1.442 that replaced former rule 1.442, and which was intended "to provide a workable structure for proposing settlements in civil actions," within the statutory construct of section 768.79, Florida Statutes); *see also Cent. Fla. Med. & Chiropractic Ctr. v. Progressive Am. Ins. Co.*, 5D21-29, 2021 WL 4806533, 2021 Fla. App. LEXIS 13980, at *3-4 (Fla. 5th DCA Oct. 15, 2021) ("'[S]ection 768.79 generally creates a right to recover reasonable costs and attorney fees when a party has satisfied the terms of the statute and [Rule 1.442].' . . . . While the substantive right to recover fees and costs was legislatively created, the method and means of implementing this right were established in Rule 1.442, which outlines the form and content of a valid proposal for settlement. . . . To be enforceable, the proposal must comply with the substantive requirements of the statute as well as the procedural requirements of the rule."), *quoting Att'ys Title Ins. Fund, Inc. v. Gorka*, 36 So. 3d 646, 649 (Fla. 2010) (quoting *MGR Equip. Corp. v. Wilson Ice Enters., Inc.*, 731 So. 2d 1262 (Fla. 1999)), and *citing TGI Friday's Inc. v. Dvorak*, 663 So. 2d 606 (Fla. 1995), *and Audiffred v. Arnold*, 161 So. 3d 1274 (Fla. 2015).

Relatedly, by its own language, Florida Rule of Civil Procedure 1.010 applies to the construction of ***all***[1] rules of civil procedure. *See* Fla. R. Civ. P. 1.010 ("These rules shall be construed to secure the just, speedy, and inexpensive determination of every action."). The CPRC thus understands that interpretation of any ambiguity in the language of rule 1.442—a rule of procedure—is inherently subject to interpretation as outlined in rule 1.010. *Cf. Campbell v. Goldman*, 959 So. 2d 223, 228 (Fla. 2007) (Bell, J., concurring in result only) ("No confusion exists regarding the plain meaning of the rule's language. Moreover, if this court rule was ambiguous, the standard of construction stated in rule 1.010 would apply, not the derogation canon.").

Despite the CPRC's understanding of the purpose of rule 1.010 and its directives, the CPRC agrees with this Court's

[1] All ***bold italicized*** emphasis added.

concerns regarding inconsistent construction of the rule by parties, practitioners, and the judiciary. *See* Proposed Amendments (citing *Kuhajda v. Borden Dairy Co. of Ala.*, 202 So.3 d 391, 396 (Fla. 2016) ("A procedural rule should not be strictly construed to defeat a statute it is designed to implement."); *Campbell v. Goldman*, 959 So. 2d 223, 228 (Fla. 2007) (Bell, J., concurring in result only) ("No confusion exists regarding the plain meaning of the rule's language. Moreover, if this court rule was ambiguous, the standard of construction stated in rule 1.010 would apply, not the derogation canon.")). The CPRC, however, is concerned about the precedential effect of placing the language proposed by this Court directly into the text of rule 1.442.

Similar language does not exist in other rules of civil procedure; likely because rule 1.010 is understood to have global application. The CPRC believes that inclusion of this language in rule 1.442 may unintentionally create more litigation in cases involving interpretation of the rules of civil procedure—especially with respect to rules of civil procedure where this language is not specifically incorporated into the rule.

Accordingly, it is the CPRC's opinion that reference to construction of rule 1.442 would be best placed in this Court's opinion addressing the adopted amendments to rule 1.442 or in the Court Commentary following the text of the rule, with citation to the Florida Supreme Court's *Kuhajda* and *Campbell* opinions. Such discussion would effectively provide necessary guidance with respect to the procedural nature of the rule and would refrain from creating any question as to the global applicability of rule 1.010 to rules of procedure.

The CPRC proposes the following language for this Court's consideration, in the event it wishes to include Court Commentary:

Court Commentary

2021 Amendment. The procedural requirements of this rule shall be applied according to their plain meaning; but if the procedural requirements of this rule are ambiguous, they shall be

construed under the standard set forth in Florida Rule of Civil Procedure 1.010, not strictly. *See Kuhajda v. Borden Dairy Co. of Ala.*, 202 So.3d 391, 396 (Fla. 2016) ("A procedural rule should not be strictly construed to defeat a statute it is designed to implement.").

b. Rule 1.442(c)(2)(B): Reflection Of The *White*[2] Formula And Removal Of Subdivision (F).

> (B) state that the proposal resolves all damages, attorneys' fees, taxable costs, and prejudgment interest that would otherwise be awarded in ~~a~~ final judgments in the action in which the proposal is served, ~~subject to subdivision (F)~~if the final judgments were entered on the date of the proposal;
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> * * *
>
> (F) ~~state whether the proposal includes attorneys' fees and whether attorneys' fees are part of the legal claim~~;

1. Subdivision (c)(2)(B).

The current language of rule 1.442(c)(2)(B) is consistent with the language contained in section 768.79(2), Florida Statutes. *Compare* Fla. R. Civ. P. 1.442(c)(2)(B) (providing that a proposal "state that the proposal resolves all damages that would otherwise be awarded in a final judgment . . . ."), *with* § 768.79(2), Fla. Stat. (requiring an "offer shall be construed as including all damages which may be awarded in a final judgment"). *Accord In re: Amends. to the Fla. R. of Civ. P.*, 131 So. 3d 643, 645 (Fla. 2013) (quoting the Committee Notes, 2013 Amendment, which explains that rule 1.442(c)(2)(B) "clarify[ies] 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"). On the contrary, the Florida Supreme Court's *White* and *Petri*[3] opinions are directed to the

[2] *White v. Steak & Ale of Fla., Inc.*, 816 So. 2d 546 (Fla. 2002) (hereinafter referred to as "*White*").

statutory definition of "judgment obtained" under subsection 768.79(6), Florida Statutes—not subsection 768.79(2), Florida Statutes, or the "Form and Content of a Proposal" as set forth in rule 1.442(c)(2)(B). *See White*, 816 So. 2d at 548-50 (addressing subsection 768.79(6), Florida Statutes (1993), defining "judgment obtained" and the necessary components to be included in the judgment obtained); *see also Petri*, 2021 Fla. LEXIS 1458, at *12-13 (declining to recede from *White* and holding that "post-offer prejudgment interest is excluded from the 'judgment obtained' that is compared to a rejected settlement offer when determining entitlement to attorneys' fees under section 768.79.").

It is, thus, the CPRC's understanding that this Court's proposed amendment to rule 1.442(c)(2)(B) is intended to conform the requirements for the form of a proposal for settlement with the statutory requirements to determine whether a party meets the statutory threshold for entitlement to attorneys' fees. *See White*, 816 So. 2d 546 (approving *Perez v. Circuit City Stores*, 721 So. 2d 409 (Fla. 3d DCA 1998), which applied an "[a]pples . . . to apples" approach). It is the CPRC's opinion that this Court accomplishes this objective by adopting parallel language in rule 1.442(c)(2)(B) to that contained in the Florida Supreme Court's *White* and *Petri* opinions.

2. Subdivision (c)(2)(F).

It is the CPRC's opinion that subdivision (c)(2)(F) should be retained in its present form. Attorneys' fees are, generally, collateral to a party's claimed damages and are addressed through a post-judgment motion resulting in a separate fee judgment. *See, e.g.*, *Larson & Larson, P.A. v. TSE Indus.*, 22 So. 3d 36, 47 (Fla. 2009); *Cheek v. McGowan Elec. Supply Co.*, 511 So. 2d 911, 983 (Fla. 1987) (Ehrlich, J., concurring in part, dissenting in part).

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[3] *CCM Condo. Ass'n v. Petri Positive Pest Control, Inc.*, SC19-861, 46 Fla. L. Weekly S259, 2021 WL 4096926, 2021 Fla. LEXIS 1458 (Fla. Sept. 9, 2021), *pending rehearing* (hereinafter referred to as "*Petri*").

Even where attorneys' fees are part of a party's claims—such as when attorneys' fees are based on statute or contract—it is typical for claimed fees to be resolved via separate proceedings, post-judgment. *See, e.g.*, Fla. R. Civ. P. 1.525 (providing the procedural mechanism to claim fees); *Mihalyi v. LaSalle Bank, N.A.*, 162 So. 3d 113, 114-15 (Fla. 4th DCA 2014) ("A claim for attorney's fees, whether based on statute or contract, must be pled. *Stockman v. Downs*, 573 So. 2d 835, 837 (Fla. 1991). A party pleading entitlement to attorney's fees must also move the trial court for the same and present proof of fees within a reasonable time after the judgment is entered. *McAskill Publ'ns, Inc. v. Keno Bros. Jewelers, Inc.*, 647 So. 2d 1012, 1012 (Fla. 4th DCA 1994)).

Under the rule in its present form, parties to litigation regularly serve proposals for settlement "exclusive" of attorneys' fees. *See* Fla. R. Civ. P. 1.442(c)(2)(F) ("[S]tate whether the proposal includes attorneys' fees and whether attorneys' fees are part of the legal claim"). For example, this happens frequently in the context of personal injury protection cases, medical payment coverage cases, and first party property cases, where the parties want to expeditiously resolve the plaintiff's claims for damages but have unwaivable differences of opinions relating to what constitutes reasonable attorneys' fees.

Under such circumstances, the ability to serve a proposal for settlement "exclusive" of attorneys' fees is what drives efficient resolution of the plaintiff's claims for damages; thereby preserving the stated purpose of proposals for settlement—"to end litigation." *Diecidue v. Lewis*, 223 So. 3d 1015, 1020 (Fla. 2d DCA 2017) (Casanueva, J., concurring) (recognizing the purpose of a proposal for settlement under "rule 1.442 and section 768.79 is to end litigation and not to create more"). The CPRC is concerned that by eliminating the parties' ability to serve proposals for settlement "exclusive" of attorneys' fees, proposals for settlement will become impractical in many of the cases where they presently have meaningful utility. Based on the foregoing, the CPRC recommends retaining language permitting the parties to serve proposals for settlement inclusive or exclusive of attorneys' fees.

3. The CPRC's proposed language.

It is the CPRC's opinion that retention of the language contained in subdivision (c)(2)(F) does not conflict with section 768.79, Florida Statutes, or the Florida Supreme Court's interpretation of "judgment obtained" in the *White* and *Petri* opinions and can be reconciled with this Court's proposed amendments in subdivision (c)(2)(B). Section 768.79(2), Florida Statutes, only requires a proposal for settlement to resolve "all damages" that may be awarded in a final judgment. Thus, flexibility exists to permissibly exclude attorneys' fees from a proposal for settlement and, therefore, from the "judgment obtained," notwithstanding this Court's precedent in *White* and *Petri*. To be sure, a proposal for settlement served "exclusive" of any claim for attorneys' fees would clearly remove attorneys' fees from a party's evaluation of the proposal and any subsequent consideration of the net "judgment obtained."

The CPRC proposes the following amendments to rule 1.442(c)(2)(B) and (c)(2)(F) for this Court's consideration:

> (B) state that the proposal resolves all damages, attorneys' fees, taxable costs, and prejudgment interest that would otherwise be awarded in ~~a~~ final judgments in the action in which the proposal is served, subject to subdivision (F), if the final judgments were entered on the date of the proposal;
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> * * *
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> (F) notwithstanding subdivision (c)(2)(B), a party may state that the proposal is exclusive of attorneys' fees~~state whether the proposal includes attorneys' fees and whether attorneys' fees are part of the legal claim~~;

Court Commentary

2021 Amendment. The amendments to rule 1.442(c)(2)(B) and (c)(2)(F) clarify that a party's existing claims for attorneys' fees at the time of service of the proposal for settlement must be

included in and resolved by a proposal for settlement. The only exception to this rule is where a proposal for settlement states that it is exclusive of attorneys' fees, under rule 1.442(c)(2)(F). When a proposal for settlement is exclusive of attorneys' fees, under rule 1.442(c)(2)(F), no such attorneys' fees will be included in the calculation of "judgment obtained" under section 768.79(6), Florida Statutes. In the event a proposal for settlement is accepted, a party's right to reasonable attorneys' fees will remain and will be subject to the procedure set forth in rule 1.525.

c. Rule 1.442(c)(2)(C): Exclusion Of Nonmonetary Terms.

(C) ~~state with particularity any relevant conditions~~exclude nonmonetary terms, with the exception of a voluntary dismissal of all claims with prejudice;

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

The CPRC understands this Court's concern with ensuring the "straightforward" nature of a proposal for settlement. Proposed Amendments, *citing Diecidue v. Lewis*, 223 So. 3d 1015, 1022 (Fla. 2d DCA 2017 (Casanueva, J., concurring) ("Where the legislature sought a straightforward proposal based upon the acceptance or rejection of a monetary amount, the allowance of nonmonetary conditions . . . alters the dynamics envisioned by the legislature."). The CPRC, however, has serious concerns with the effect of removing a party's ability to include nonmonetary terms as part of the offer. *Cf. State Farm Mutual Automobile Insurance Company v. Nichols*, 932 So. 2d 1067, 1079 (Fla. 2006) (hereinafter referred to as "*Nichols*") ("The rule aims to prevent ambiguity, not breadth.").

The CPRC is of the opinion that nonmonetary terms should remain a permissible component of an offer. Parties will be significantly constrained in their use of a proposal for settlement due to their inability to include nonmonetary terms.

Among the concerns articulated by the CPRC members is the inability of an offeror to require a release as a term of settlement. Certain protections inherent in a release cannot be provided by a voluntary dismissal. For example, in many cases, releases operate to ensure the parties' lien obligations are accounted-for and provide contractual protection from outstanding liens. Other concerns include the parties' ability to request confidentiality and non-disparagement language, or the ability for plaintiffs to include a timeframe for payment.

These are important nonmonetary terms that are commonly associated with settlements, whether via proposal for settlement or otherwise. None of these concerns disrupts the ultimate calculation of the judgment obtained, under section 768.79(6), Florida Statutes.

By permitting nonmonetary terms, such as a release, this Court is preserving the parties' rights to direct the ultimate terms of settlement in the event the proposal for settlement is accepted. *Cf. Robbie v. City of Miami*, 469 So. 2d 1384 (Fla. 1985) ("[S]ettlements are highly favored and will be enforced whenever possible."). This, likewise, preserves the purpose of a proposal for settlement to encourage amicable resolution of legal disputes, whereas exclusion of nonmonetary terms as part of a proposal for settlement will operate to deter settlement, defeating the overall purpose of section 768.79, Florida Statutes. *Cf. Nichols*, 932 So. 2d at 1078 (acknowledging the purpose of proposals for settlement "to end judicial labor, not create more").

Florida law effectively addresses construction of proposals for settlement that contain a release—extending to the accompanying release the general principles of contract that already apply to a proposal for settlement. *See Suarez Trucking FL Corp. v. Sounders*, 311 So. 3d 263, 267-69 (Fla. 2d DCA 2020) (collecting cases providing that "[g]eneral contract principles apply to proposals for settlement and offers of judgment . . . ."). Indeed, regardless of whether nonmonetary terms are included in a proposal for settlement, an offer must be free of ambiguity, meaning:

> The rule intends for a proposal for judgment to be as specific as possible, leaving no ambiguities so that the recipient can fully evaluate its terms and conditions. Furthermore, if accepted, the proposal should be capable of execution without the need for judicial interpretation. Proposals for settlement are intended to end judicial labor, not create more.

Id. at 1079, *quoting Lucas v. Calhoun*, 813 So. 2d 971, 973 (Fla. 2d DCA 2002) (citation omitted).

The Florida Supreme Court's opinion in *Nichols* is the seminal case addressing construction of nonmonetary conditions contained in a proposal for settlement. As part of its analysis, the Florida Supreme Court held that when a proposal for settlement requires a general release, "the release becomes a stipulation or prerequisite of the contract." *Nichols*, 932 So. 2d at 1078-79. Thus, since *Nichols*, nonmonetary terms, including general releases, have been construed as an integral part of the proposal for settlement.

Although the CPRC understands this Court's concerns with the inclusion of nonmonetary conditions as part of a proposal for settlement and resulting litigation over ambiguity, the committee is of the opinion that such nonmonetary conditions are an essential part of settlements and are a necessary component of a proposal for settlement, if the intention of the procedural and statutory scheme is to end litigation. The CPRC, therefore, recommends retaining the language contained in rule 1.442(c)(2)(C)–(c)(2)(D), subject to the Florida Supreme Court's analysis as set forth in *Nichols* and its progeny.

The CPRC proposes the following suggested amendment to the language provided in rule 1.442(c)(2)(C)–(c)(2)(D) for this Court's consideration:

> (C) state with particularity <u>whether the proposal includes any nonmonetary terms and, if so, include the specific language identifying the nonmonetary terms with particularity</u> ~~any relevant conditions~~;

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

Court Commentary

2021 Amendment. The amendments to rule 1.442(c)(2)(C)–(c)(2)(D) clarify that a party may include nonmonetary terms as part of the proposal for settlement; however, the proposal must include the specific language of the nonmonetary terms. Any such nonmonetary terms are part of the proposal for settlement and are binding on the parties in the event the proposal is accepted. *See State Farm Mut. Auto. Ins. Co. v. Nichols*, 932 So. 2d 1067, 1078-79 (Fla. 2006).

d. Rule 1.442(c)(5): Procedures For Employing Joint Proposals For Settlement.

(5) A party may make to two or more other parties a joint proposal that requires acceptance by all the parties to whom the proposal is made. Each party to whom such a joint proposal is made may accept the proposal. If any party rejects such a joint proposal, the action must proceed as to all parties to whom such a joint proposal was made, whether or not the other parties accepted or rejected it; and the sanctions pursuant to applicable Florida law, based on the failure to accept a proposal, apply to each party who rejected such a joint proposal but do not apply to any party who accepted it.

The CPRC acknowledges the need for additional language in rule 1.442 relating to joint proposals for settlement and agrees, in concept, with the Florida Supreme Court's amendment that sets forth procedures for employing joint proposals for settlement. The CPRC, however, is of the opinion that the language in the Proposed Amendments does not offer the clarity necessary to allay this Court's concerns and otherwise repress ongoing litigation pertaining to enforceability of joint proposals. *See, e.g.*, Proposed Amendments, *citing Attorneys' Title Ins. Fund, Inc. v. Gorka*, 36 So.

3d 646, 654 (Fla. 2010) (Polston, J., dissenting) (explaining that the majority's ruling "effectively eliminates the ability to make joint offers") (hereinafter referred to as "*Gorka*"); *Atl. Civil, Inc. v. Swift*, 271 So. 3d 21, 26 (Fla. 3d DCA 2018) (explaining that, "although expressly permitted under rule 1.442(c)(3), 'joint proposals have become a trap for the wary and unwary alike' under the principle set forth in *Gorka*" (quoting *Pacheco v. Gonzalez*, 254 So. 3d 527, 535 (Fla. 3d DCA 2018)).

As drafted, the CPRC is concerned that the proposed language may unintentionally abrogate the Florida Supreme Court's *Gorka* opinion and its progeny by constraining an offeree's ability to "independently evaluate and settle his or her respective claim by accepting the proposal ***irrespective of the other parties' decisions.***" *Gorka*, 36 So. 3d at 650.

For example, proposed subdivision (5), as drafted, requires even an accepting party to remain in litigation "[i]f any party rejects such a proposal . . . ." Proposed Amendments, Fla. R. Civ. P. 1.442(c)(5). Thus, based on a plain reading of this proposed language, in the event two unaligned parties (plaintiffs or defendants) receive a joint offer, if one does not accept and the other does, they both must remain in the litigation. The CPRC envisions circumstances where both offerors and offerees may engage in legal gamesmanship because of this language. It is, therefore, the CPRC's recommendation that further consideration be given to this proposed language prior to adoption.

On review of this Court's proposed language and based on the CPRC's analysis of governing Florida law, it appears that such language may be better addressed exclusively to joint proposals governed by current subdivision (c)(4), where a party is alleged to be "solely vicariously, constructively, derivatively, or technically liable . . . ." If applied in this manner, joint proposals made by or directed to parties with separate claims or liability would not be affected. On the other hand, parties would now be permitted to serve joint proposals for settlement on multiple offerees, with the requirement of joint acceptance, where the parties' claims arise out of undifferentiated claims for damages (*i.e.*, multiple plaintiffs in a

first-party property case or multiple plaintiffs who are signatories to a contract) or where the parties have only joint liability (*i.e.*, vicarious, constructive, derivative, or technical liability).

If employed in this manner, *Gorka*'s tenets would be preserved. To this end, the CPRC provides the following suggested language for this Court's consideration:

(c) Form and Content of Proposal for Settlement.

* * *

(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, as follows:~~. A joint proposal shall state the amount and terms attributable to each party.~~

(a) a joint proposal shall state the amount and terms attributable to each offeree;

(b) a joint proposal shall require acceptance by all the parties to whom the proposal is made;

(c) a joint proposal may not be made on two or more offerees with separate claims or separate liability, as set forth in the operative pleadings;

(d) a joint proposal may be made on two or more offerees when the offerees' claims arise out of indivisible damages, or are alleged to be solely vicariously, constructively, derivatively, or technically liable, whether by operation of law or by contract. If any offeree rejects such a joint proposal, the action must proceed as to all parties to whom such a joint proposal was made, whether or not the other offerees accepted or rejected it; and

the sanctions under applicable Florida law, based on the failure to accept a proposal, apply to each party who rejected such a joint proposal but do not apply to any party that accepted it;

(e) Notwithstanding subdivisions (3)(a)–(3)(d), a joint proposal may be made by two or more offerors to one offeree.

(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.~~

The Committee also recommends that the Court's proposed new subdivision (5) shall be renumbered as subdivision (4).

III. PROPOSED RULE AMENDMENTS FROM THE CIVIL PROCEDURE RULES COMMITTEE: RULE 1.442(b).

In June 2020, the CPRC voted on a proposed amendment to rule 1.442(b), relating to service of a proposal for settlement. The proposed amendment passed by a vote of 28-0-0, and is currently published for comment, with November 30, 2021 as the deadline to submit comments. A copy of the proposed amendment, as published for comment, is attached as **Exhibit A**, and the text of the amendment follows:

RULE 1.442. PROPOSALS FOR SETTLEMENT

(a) Applicability. [No Change]

(b) Service of Proposal. A proposal ~~to a defendant shall be~~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.

The CPRC respectfully requests this Court to consider this proposed amendment as part of its consideration of the Court's Proposed Amendments.

Respectfully submitted on November 1, 2021.

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CERTIFICATE OF COMPLIANCE

I certify that this comment was prepared in compliance with the font requirements of Florida Rule of Appellate Procedure 9.045.

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