IN THE SUPREME COURT OF FLORIDA

Case No. SC03-161

In Re: AMENDMENTS TO THE FLORIDA RULES OF CIVIL PROCEDURE

COMMENTS OF BAR MEMBER AS TO PROPOSED AMENDMENT TO RULE 1.370 FLORIDA RULES OF CIVIL PROCEDURE

MAY IT PLEASE THE COURT:

Please forgive the form of these comments, however my position in this important matter is worthy of your consideration, and I respectfully pray you will carefully consider my comments in opposition to the proposed amendment to Rule 1.370.

I call your attention to the comments of the committee itself, stating in pertinent part, "Some members expressed considerable concern over the perceived practice of some to use Rule 1.370 as a discovery tool and/or as an improper method to prove up the elements of one's case or defense."

Forgive me, however I find it nothing short of amazing that a committee of my peers would consider it an abusive practice to use admissions for discovery!

Yet, that's what the committee's comment states … word-for-word!

Moreover, the fact that the committee says what it says in support of its plea for the Court to limit this powerful tool in the hands of those of us who seek nothing more abusive that proving the elements of our case *should be carefully weighed in your deliberations, because it reveals an improper motive for the amendment.*

There can be nothing abusing of using admissions as a discovery tool or to prove up the elements of one's case!

That's what they are for!

It boggles the mind that the committee perceives proving one's case by using this powerful discovery tool is "improper"!

If our goal is to drain our client's pockets by prolonging litigation by obfuscation and further burdening the judicial system to the point of preventing justice altogether so a few

lawyers can make more money keeping their cases alive by hiding truth, I withdraw my comments, seeing I have misperceived the purpose of our profession.

If our goal is to *get to the truth of matters as expeditiously as possible*, then surely proper use of admissions is a powerful tool for getting at truth, a tool that certainly should not be limited on the flimsy suggestion it might enable a party to discover facts and prove up the case before trial!

I've studied this tool in detail. I have first-hand experience with obfuscators who see their duty as lawyers defined as hiding the truth by any means available. I once had a young lawyer refuse to admit a contract contemplated a certain contingency by saying the contract was "an inanimate object and therefore cannot contemplate".

This is not the kind of lawyering this Supreme Court should encourage!

I've successfully overcome objections of those who refuse to answer admissions on the ground they seek to establish ultimate issues in the case. I fully understand where the line is drawn between requesting a party to admit, for example, "You took possession of the property of plaintiff without the plaintiff's permission when you took the plaintiff's computer home with you on 13 February 2003."

To request such an admission is to ask for nothing more than the truth, and the responding party should be required to admit the truth!

It is not asking the other party to admit ultimate issues, and it is not contrary to the prevailing case law to request a party to admit, as the rule states, the truth of any matter within the scope of Rule 1.280 relating to statements or opinions of fact or the application of law to fact. That's what the rule is for. To limit issues for trial. To further justice!

The reality in practice, please understand, is that admissions are *so very powerful at getting to the truth* that opposing parties often do anything in their power to avoid the necessity of complying with the rule … and now I see that the committee itself wishes to avoid the power of this rule to <u>get at the truth in an efficient, economical way</u>.

Why should a party be prevented from asking another party to admit facts *before* trial,

if he or she is certainly permitted to ask for those same admissions *at* trial? Are we trying to get at the truth or prolong the hours an attorney can spend on a case hiding the truth from the other side and from the Court?

Why hamstring parties in pre-trial discovery by limiting requests for admissions?

It should be noted that answering 30 interrogatories is typically a laborious and time-consuming process that requires a great deal of careful consideration by the lawyer and usually results in hearings to argue sufficiency of responses. Limiting interrogatories has some merit.

Responses to requests for admissions, on the other hand, usually require nothing more than "Yes" or "No" … "Admitted" or "Denied".

This is no great burden for any *honest* lawyer!

Please do not limit the number of admissions.

What I pray earnestly you will do, instead, is give us clarification as to proper use of admissions, attenuating thereby the obstreperous practices of disreputable lawyers who cry wolf whenever their clients are requested to admit facts that will tend to prove the requesting party's case … facts within the ambit of Rule 1.280.

Forgive my impertinence, please, however the committee's comment, quoted at the opening of my epistle, should be seen to reveal a motive that is wholly and entirely improper and contrary to the duty all we attorneys pledged: TO GET AT THE TRUTH!

Limiting my ability to require another party to admit facts *prior to trial* will <u>not</u> advance the cause of justice.

RESPECTFULLY SUBMITTED this 12th day of March 2003.

Respectfully yours,

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Frederick Graves, Esq.
Florida Bar #558583
516 Camden Avenue
Stuart, Florida 34994
772-288-9880

CERTIFICATE OF SERVICE

I CERTIFY that an original and nine copies of the foregoing were mailed to the Clerk of The Supreme Court of Florida and that a further copy was provided by mail to Dominic C. MacKenzie, 50 North Laura Street #3900, Jacksonville 32202-3622 this 12th day of March 2003.

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Frederick Graves, Esq.
Florida Bar #558583
516 Camden Avenue
Stuart, Florida 34994
772-288-9880