IN THE SUPREME COURT OF THE STATE OF FLORIDA

IN RE AMENDMENTS TO FLORIDA RULES OF CIVIL PROCEDURE	)))	CASE NO. SC05-179

COMMENTS OF HENRY P. TRAWICK, JR.

Henry P. Trawick, Jr. says that he is a member in good standing with The Florida Bar and files these comments on the report of the Civil Procedure Rules Committee filed in this proceeding:

1. The undersigned objects to the proposed change in Rule 1.380 for the following reasons:

(a) The requirement for certification that counsel confer is unnecessary; it unfairly favors the delinquent party; and it increases the time for obtaining discovery in many instances. For example, if a party does not answer or object to interrogatories within the 30 day time, this rule would require counsel for the interrogating party to communicate with the delinquent party and ask that the answers be filed. Nothing else would suffice. Whether the delinquent attorney would respond affirmatively to such a request is doubtful. This simply delays discovery for an additional time period. The problem with the proposal is that it does not distinguish between two discovery objections and procedural discovery objections. In the case of the former, attempts to compromise the matter might be helpful.

(b) The undersigned does not know what "...successful experience with the federal rule as well as similar local rules of state trial courts" has been experienced by anyone. The Committee does not say. A similar local rule in the Twelfth

Circuit has done nothing to effectuate better or more prompt discovery.

(c) Certainly, the “I have been a good boy” certification is not going to be effective. Elimination of attorney fees and expenses against the delinquent party when the party seeking discovery fails to include the certificate is ridiculous. It gives the delinquent party on discovery a way out on a technicality similar to some technicalities much criticized in common law procedure. It penalizes the party who has done nothing wrong, except to omit the certificate.

(d) The undersigned believes this has not been given careful consideration and needs further study.

2. The undersigned objects to the proposed changes in Rule 1.420(e) because:

(a) It would eliminate the rule as an effective device in disposing of cases. It is another attempt to compel one party to assist the opponent and eliminate the adversary system on which trial procedure is based.

(b) The contentions made by “...some parties and judges...” that the rule is a pitfall and causes cases to be dismissed unfairly is not a valid reason for changing the rule. It is so easy to comply with the rule. Those lawyers who fail to do so do not deserve consideration. The undersigned has never heard a judge say that the rule should be changed. Most of them welcome it. It is the only broom trial courts have to eliminate cases that do not deserve further attention.

(c) The fact that the statute of limitations may preclude a subsequent action and a decision on the merits is not a reason for changing the rule. Lawyers are supposed to take the responsibility for their action or inaction. They are not supposed to operate under procedural rules that guarantee their delinquencies will be excused.

> Lawyers who want to be governed in this manner do not aspire to high professional status.

3. The undersigned objects to the proposal to amend Rule 1.510(c) because it goes too far. It may be appropriate to identify the answers to interrogatories, admissions, parts of depositions and other materials that the court will be asked to consider. Copies of these documents should not be furnished to the opponent. The opponent should have them already under our procedure. Referring to summary judgment evidence is stupid. The court considers the record at a summary judgment hearing. The undersigned attaches a copy of a proposal that is more satisfactory in this respect.

The undersigned certifies that a copy of the foregoing has been furnished to John F. Harkness, Jr. as Executive Director of The Florida Bar and Robert N. Clarke, Jr. as Chairman of the Civil Procedure Rules Committee by mail on March 11, 2005.

By_____

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