

IN THE SUPREME COURT OF FLORIDA

**IN RE: AMENDMENTS TO THE
FLORIDA RULES OF CIVIL
PROCEDURE**

CASE NO.: SC10-148

**RESPONSE TO COMMENTS OF STEVEN G. SCHWARTZ
TO PROPOSED AMENDMENT TO RULE 1.442**

Mark Romance, Chair, Civil Procedure Rules Committee, and John F. Harkness, Jr., Executive Director, The Florida Bar, file this Response to the Comments of Stephen G. Schwartz.

On January 26, 2010, the Civil Procedure Rules Committee filed its three-year cycle report with the Court. Thereafter, the Court directed that the Committee's proposals be published for comment. The proposals were published in the March 3, 2010, Florida Bar *News*. One comment was received, from Stephen G. Schwartz. The comment was reviewed by the Committee and this response was approved by a vote of 47-0.

Mr. Schwartz suggests that the proposed amendment to *Fla. R. Civ. P.* 1.442 be expanded to proposals for settlements in all cases involving joint liability, not just cases involving vicarious liability. The Committee respectfully requests that the Court not accept his proposed change for the following reasons.

First, the Committee's proposed amendment is limited to situations in which multiple parties are liable exclusively based upon a theory of vicarious liability.

The Committee proposed this amendment in response to a request from this Court that the issue be analyzed in light of the Court's decision in *Lamb v. Matetszchk*, 906 So. 2d 1037, 1044–1045 (Fla. 2005).

Vicarious liability is narrower than joint liability. Joint liability applies in situations in which more than one party is *directly* responsible for the alleged acts, as compared to vicarious liability in which the liability is solely *indirect*. Moreover, in cases involving joint liability, the degree of liability is often differently apportioned among the responsible parties – that is not so in cases involving vicarious liability. Accordingly, the Committee's proposed amendment recognizes that significant difference and limits the circumstances in which the offeror may make a joint proposal without apportionment or contribution as to each party.

Second, the Committee's proposed amendment is not intended to reverse this Court's decision in *Lamb*. The purpose of the amendment is in fact to further strengthen *Rule 1.442* so as to promote settlements, while maintaining each party's ability to understand the extent of their liability as apportioned by the proposal for settlement. When that liability is solely indirect, as in a vicarious liability situation, that ability is frustrated and almost impossible to determine.

Accordingly, the Committee respectfully submits that Mr. Schwartz' proposal not be accepted.

Respectfully submitted _____.

MARK ROMANCE

Chair

Civil Procedure Rules Committee

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was furnished by United States mail to: Rohan Kelly, 3365 Galt Ocean Dr., Fort Lauderdale, FL 33308-7002; George Savage, 777 Brickell Ave., Suite 114, Miami, FL 33131-2867; Bill Wagner, 601 Bayshore Blvd., Suite 910, Tampa, FL 33606-2786; Hon. Ralph Artigliere, 573 Ridge Rd., Blue Ridge, GA 30513-8042; Stanford Solomon, 1881 W. Kennedy Blvd., Tampa, FL 33606-1606; Peter Kellogg, 1301 Riverplace Blvd., Suite 620, Jacksonville, FL 32207-9023; David McNabb, Hillsborough County Attorney's Office, 601 E. Kennedy Blvd., Fl. 27, Tampa, FL 33602-4932; Robert Brazel, Hillsborough County Attorney's Office, 601 E. Kennedy Blvd., Fl. 27, Tampa, FL 33602-4932; Kurt Lee, 118 E. Garden St., Pensacola, FL 32502; Edward O'Sheehan, 200 E. Broward Blvd., Suite 2100, Fort Lauderdale, FL 33301; Arthur Berger, DOT, Office of the General Counsel, 605 Suwannee Street, MS-58, Tallahassee, FL 32399-0458; Henry Trawick, 2033 Wood St., Suite 318, Sarasota, FL 34237; and Steven Schwartz, 6751 North Federal Highway, Ste. 400, Boca Raton, FL 33487 this ____ day of _____, 2010.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this response was prepared in accordance with the font requirements of Fla. R. App.P. 9.210(a)(2).

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