

# Proposed amendments to Florida Rule of Civil Procedure 1.442 (Proposals for Settlement)

The Florida Supreme Court is considering, on its own motion, amendments to Florida Rule of Civil Procedure 1.442, Proposals for Settlement. The amendments under consideration would set forth procedures for employing joint proposals for settlement. *Cf. 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"); *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))).

Additionally, the amendments under consideration would eliminate the strict construction of the procedural requirements of rule 1.442 and exclude nonmonetary terms (with the exception of a voluntary dismissal with prejudice) from proposals for settlement. *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."); *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."); *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.")).

Finally, the amendments under consideration would reflect the formula this Court set forth in *White v. Steak & Ale of Fla., Inc.*, 816 So. 2d 546 (Fla. 2002). *See CCM Condo. Ass'n v. Petri Positive Pest Control, Inc.*, SC19-861 (Fla. Sept. 9, 2021) ("When considering the

text of section 768.79 as a whole and in context, we cannot conclude that this Court’s precedent setting forth the *White* formula is ‘clearly erroneous.’ ”).

The Court invites the Civil Procedure Rules Committee and all interested persons to comment on the amendments under consideration, which are reproduced in full below. All comments must be filed with the Court on or before November 1, 2021, as well as a separate request for oral argument if the person filing the comment wishes to participate in oral argument, which may be scheduled in this case. If filed by an attorney in good standing with The Florida Bar, the comment must be electronically filed via the Florida Courts E-Filing Portal (Portal) in accordance with *In re Electronic Filing in the Supreme Court of Florida via the Florida Courts E-Filing Portal*, Fla. Admin. Order No. AOSC13-7 (Feb. 18, 2013). If filed by a nonlawyer or a lawyer not licensed to practice in Florida, the comment may be, but is not required to be, filed via the Portal. Any person unable to submit a comment electronically must mail or hand-deliver the originally signed comment to the Florida Supreme Court, Office of the Clerk, 500 South Duval Street, Tallahassee, Florida 32399-1927; no additional copies are required or will be accepted.

## **IN THE SUPREME COURT OF FLORIDA**

### **IN RE: AMENDMENTS TO FLORIDA RULE OF CIVIL PROCEDURE 1.442, CASE NO. SC21-277**

#### **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. 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.

**(b) [No Change]**

**(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, attorneys' fees, taxable costs, and prejudgment interest that would otherwise be awarded in a final judgment 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;~~

(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;~~

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

(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 General Practice and 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.

(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.

**(d)-(j) [No Change]**