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## **PROPOSAL FOR SETTLEMENT TO MULTIPLE PARTIES**

Fla. R. Civ. P. 1.442 was designed to encourage and facilitate settlement. It provides that either side can make an offer of settlement under the rule and if it is not accepted and the ultimate verdict differs by a sufficient percentage, attorney's fees are taxed against the rejecting party. The rule has a provision for making a joint offer among multiple parties and provides that such an offer state the amount and terms attributable to each party and state with particularity any relevant conditions.

In Clements v. Rose, 33 Fla. L. Weekly D1088 (Fla. 1<sup>st</sup> DCA, April 21, 2008) the plaintiff made a proposal for settlement of \$75,000.00 to be distributed between the two defendants, who were husband and wife, with each defendant to pay \$37,500.00. The defendants rejected the settlement offer and a jury returned a verdict against both defendants, jointly and severally for \$120,000.00. Since this amount was 25% greater than the proposed settlement amount, the plaintiff moved to tax attorney's fees pursuant to Fla. Stat. 768.79. The trial court rejected that request finding that the offer was ambiguous as to whether each defendant could have settled separately or whether the settlement offer required both of the defendants to be in agreement to pay the total amount.

The appellate court reversed, finding that there was no ambiguity in the offer. The Court explained that the key to making a valid offer of settlement under the rule is to make it clear to each defendant what their respective responsibility is, should the offer be accepted. At 1089, the Court held:

When a party offers to settle with multiple parties at the same time, the joint proposal shall state the amount and terms attributable to each party. Fla. R. Civ. P. 1.442(c)(3). “Each defendant should be able to settle the suit knowing the extent of his or her financial responsibility.” *Lamb v. Matetzschk*, 906 So. 2d 1037, 1040 (Fla. 2005). “If ambiguity within the proposal could reasonably affect the offeree’s decision, the proposal will not satisfy the particularity requirement.” *State Farm Mut. Auto. Ins. Co. v. Nicholas*, 932 So. 2d 1067, 1079 (Fla. 2006). Rule 1.442 requires that a settlement offer be “sufficiently clear and definite to allow the offeree to make an informed decision without needing clarification.” *Id.*

Here the offer clearly stated that the total amount to be paid was \$75,000.00 and the amount each defendant was responsible for was delineated as \$37,500.00, clearly apportioning the amount each defendant had to pay as required by the rule. The Court stated:

The settlement proposal is conditional upon both Appellees – who are, after all, husband and wife – accepting it and paying their respective portions. The offer is not ambiguous. Although it is conditional, the offer is as definite as it is within Appellant’s power to make, because the condition depends not on Appellant’s election, but on each Appellee’s election. Rule 1.442 is designed to facilitate settlements, not to render settlement of a case impossible where there are multiple defendants.

Rule 1.442 has been the subject of innumerable appellate decisions. Most of these hold that the rule, since it is in derogation that the common law, must be strictly construed and every provision must accordingly be followed with

particularity. The purpose behind this rule, encouragement of settlement, sometimes gets lost in the requirements imposed by appellate courts. This opinion recedes from that trend and clarifies how and when an offer to multiple parties can be accomplished.

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