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**A SUGGESTED FORM FOR OFFERS OF JUDGMENT**

by Ted Babbitt

The offer of judgment rule, Fla. R. Civ. P. 1.442, and its companion statute, Fla. Stat. 768.79, has probably been the subject of more appellate opinions than any other area of the law. To say that the rule and statute are strictly construed is a gross understatement. There are legions of cases requiring absolute strict compliance with the terms of this rule and statute in order to effectively make an offer of judgment that results in an award of attorney's fees.

The latest such case is the Supreme Court opinion of Campbell v. Goldman, 32 Fla. L. Weekly S320 (Fla. June 14, 2007). In that case, the Supreme Court held that an offer of judgment that otherwise met the requirements of both the rule and statute was ineffective because the offer did not specifically cite the applicable statute. While both the rule and the statute clearly require that the offer of judgment name the statute, the requirement approaches a hyper technicality since there is only one statute that an offer of judgment could possibly be made under and that is Fla. Stat. 768.79. Nevertheless, despite the apparent clear requirements of both the rule and the statute and the appellate opinions requiring strict compliance with the wording of both the rule and the statute, parties still cannot seem to draft an offer of judgment that meets these requirements. In my opinion, the Rules of Civil Procedure Committee of the Florida Bar and the Supreme Court should adopt a

form offer of judgment that meets all of the requirements of both the rule and the statute. Until that happens, I offer the following form as one, which I believe satisfactorily meets those requirements.

**PLAINTIFF'S PROPOSAL FOR SETTLEMENT TO DEFENDANT**

Plaintiff, \_\_\_\_\_, by and through undersigned counsel, state that at least 90 days have passed since the commencement of this action, and there are at least 45 days remaining before the date set for trial or the first day of the docket on which this case is set for trial, whichever is earlier.

THEREFORE, Plaintiff(s) hereby serves this proposal for settlement pursuant to Florida Rule of Civil Procedure 1.442 and F.S. 768.79. This proposal for settlement must be accepted in writing, within thirty (30) days or it shall be deemed rejected. The Proposal for Settlement is as follows:

1. **PARTY MAKING PROPOSAL:** (Plaintiff) .

2. **PARTY TO WHOM THE PROPOSAL IS BEING MADE:**

(Defendant, Party)

3. **CLAIMS THE PROPOSAL ATTEMPTS TO RESOLVE:** All issues and claims for damages asserted against the (Defendant, Party).

4. **TOTAL AMOUNT OF PROPOSAL:** Plaintiff proposes to resolve all claims for damages against Defendant, Party, in exchange for payment by or on behalf of Defendant(s) the sum of \_\_\_\_\_

(\$\_\_\_\_\_).

A. **NONMONETARY TERMS OF PROPOSAL, IF ANY:** None

**B. AMOUNT PROPOSED TO SETTLE CLAIM FOR PUNITIVE**

**DAMAGES, IF ANY:** None

**C. ARE ATTORNEY FEES PART OF THE PLAINTIFF'S LEGAL**

**CLAIM?** (check one) Yes \_\_\_\_\_ No \_\_\_\_\_

**D. AMOUNT PROPOSED TO SETTLE CLAIM FOR ATTORNEY**

**FEES, IF ANY:** \_\_\_\_\_. Amount is inclusive of fees and costs.

5. **SERVICE AND FILING:** This proposal shall be served on the party to whom it is made through counsel, but shall not be filed unless necessary to enforce the provisions of Rule 1.442.

6. **WITHDRAWAL:** This proposal may be withdrawn in writing provided the written withdrawal is delivered before a written acceptance is delivered. Once withdrawn, this Proposal is void.

7. **ACCEPTANCE AND REJECTION:** This Proposal shall be deemed by the Plaintiff(s) to be rejected unless accepted by delivery of a written notice of acceptance within thirty (30) days after service of the Proposal. The provisions of Florida Rule of Civil Procedure 1.090(e) do not apply to this Proposal. No oral communications shall constitute an acceptance, rejection or counteroffer of this Proposal.

8. **CONSEQUENCES OF REJECTION:** In the event this proposal is rejected, the Defendant(s) is/are subject to sanctions, including, but not limited to, those as outlined in Rules 1.442(g) and (h) of the Florida Rules of Civil

Procedure, Fla. Stat. 768.79 and any other relief Plaintiff(s) is/are entitled to as a matter of law and which the Court deems just and proper.

9. **GOOD-FAITH:** This Proposal is being submitted with the knowledge, understanding, and consent of the Plaintiff, , making this Proposal.

**I HEREBY CERTIFY** that a true and correct copy of the foregoing Proposal for Settlement was served to Defendant's attorney, \_\_\_\_\_, by certified mail, return receipt requested this \_\_\_\_\_ day of \_\_\_\_\_ 200\_\_.

By \_\_\_\_\_

NOTE: BECAUSE A NUMBER OF PEOPLE HAVE REQUESTED COPIES OF PAST ARTICLES, A COMPILATION OF THESE ARTICLES IS NOW AVAILABLE TO MEMBERS OF THE PALM BEACH COUNTY BAR ASSOCIATION, FREE OF CHARGE, BY CALLING (561) 684-2500.