

PROPOSALS FOR SETTLEMENT IN LITIGATION

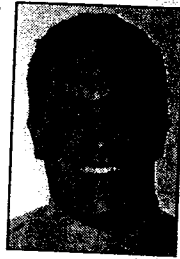
Proposals for settlement, otherwise referred to as an "offer of judgment" are valuable litigation tools used to put pressure on parties to settle lawsuits.

This strategy concerns Florida Statute 768.79 and Florida Rule of Civil Procedure 1.442, and

involves assessing attorneys' fees and costs for a prevailing party or party that offered to settle a case prior to trial for a reasonable amount.

Florida Statute 768.79 is the "offer of judgment" statute. The rule states that if the defendant in a litigation files a "proposal

for settlement" under Florida Rule of Civil Procedure 1.442, the plaintiff must obtain a verdict of higher than 75 percent of the amount proposed by the defendant.



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If there is a defense verdict or the verdict is less than 75 percent of the verdict, then the Plaintiff is responsible for the defendant's reasonable attorney's fees and costs. A Plaintiff has 30 days from the date of receipt to accept or reject the defendant's offer.

They are usually sent by certified mail. If the plaintiff does not accept the offer within 30 days of receipt, it is deemed rejected by law.

The plaintiff has the option of taking advantage of this rule as well. If the plaintiff files a proposal for settlement under the above rules, and a jury verdict exceeds the offer by 25 percent or more, then the defendant is responsible for all of the plaintiff's attorneys' fees and costs.

Any proposal for settlement must be in writing and contain the following information: the name of the party to whom the proposal is relevant to along with the party making the proposal; identifying the claims that the proposal concerns; relevant conditions must be clearly stated for the settlement; the total amount of the settlement along with any non-monetary terms; amount for punitive damages, if any; whether attorneys' fees are

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included; and a certificate of service that the proposal was sent to the concerned party.

But these rules do not rest solely on the technicalities of the law. Under Florida Rule of Civil Procedure 1.442, a judge can disallow attorney's fees and costs if the offer is not made in good faith. Additionally, attorneys' fees can be challenged for reasonableness under this rule.

Florida Rule of Civil Procedure 1.442 and Florida Statute 768.79 may seem harsh, but sometimes these rules can push a party just enough to settle a case without costing both parties unnecessary litigation expenses based on what the parties speculate a jury might do with the facts of a particular cause of action.

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