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Changes to Florida's Rules on Proposals for Settlement – R. 1.442

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On May 26, 2022, the Florida Supreme Court amended Florida Rule of Civil Procedure 1.442(c), which governs the procedural requirements for making proposals for settlement. The change goes into effect July 1, 2022, after which a proposal for settlement cannot include nonmonetary terms. The only exceptions are for voluntary dismissal of all claims with prejudice and other nonmonetary terms which are expressly permitted by statute (see, e.g., Florida Statute § 70.001(4)(c)). The purpose of the change is to align the rule with Florida's settlement proposal statutes. The court's opinion specifically cited Section 768.79, Florida Statute, which does not provide for the inclusion of nonmonetary terms in an authorized proposal for settlement.

As a result of the amendment, a proposal for settlement can no longer include a release as a condition of settlement. A party's ability to secure a confidentiality agreement, a written release of all claims, or the other party's cooperation – important negotiation tools for litigants – will be severely limited by the court's amendment to Rule 1.442. The purpose of Rule 1.442, to encourage settlement, will be frustrated if a defendant cannot secure certain releases in conjunction with a proposal for settlement, keep the terms of its settlement confidential, or rely on future cooperation of the plaintiff. The amendment also leaves some questions unanswered, like whether the proposal for settlement can include any form of a settlement agreement with payment terms or other accepted "boilerplate" terms that would practically accompany any settlement agreement.

In response to the amendment, Florida courts may experience an increase in litigation as opposed to settlement as parties become more cautious in extending a proposal for settlement. Nevertheless, parties should continue to liberally utilize proposals for settlement, which are an attractive tool because of its fee-shifting framework. If a party wishes to secure a release, or keep the terms of settlement confidential, it can do so, but not in conjunction with an authorized proposal for settlement. In practice, there may be two or more settlement offers to be made: one that strictly follows the Rule and Statute for a *lesser* amount, and an informal offer that includes releases and confidentiality for an increased amount. A party will now need to carefully consider how much it values and desires certain non-monetary settlement terms such as a release of claims, confidentiality, or agreement to cooperate. If you have any questions regarding this material change and how it may impact your litigation strategies, please contact [David B. Levin](#).