A LITTLE COMPLIANCE? A LOT OF COMPLIANCE?
HOW TO TELL OPPOSING COUNSEL YOU'LL BE SEEKING FEE

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In Florida (and in the U.S.) the default is you pay your own attorney's fees.[1] Unless there is a statute or a contract that provides for attorney's fees, the default applies.[2] The Florida Constitution at the same time, delegated to the Supreme Court of Florida authority to implement rules of court.[3] Some of these rules also allow for fee shifting.[4] Civil litigators in Florida are not shy to seek fees from the other side. Usually rushed by client's desire not to pay their own lawyer, they are quick to seek fees at any opening they see. But how do we let the other party know that we will be seeking fees from them? We send them an email? A letter? Give them a call? Believe it or not, that is the subject of massive disagreement that has reached the Florida Supreme Court where currently three cases are pending on this issue: *Boatright v. Philip Morris USA Inc.*, 218 So. 3d 962, 965 (Fla. 2d DCA 2017); *Wheaton v. Wheaton*, 217 So. 3d 125, 127 (Fla. 3d DCA 2017) and *McCoy v. R.J. Reynolds Tobacco Co.*, 229 So. 3d 827, 828 (Fla. 4th DCA 2017).

FEE SHIFTING OPTIONS

Three popular rules or statutes are used to shift fees, make the other party think twice about its case, and thereby try to reduce litigation costs.[5] Proposals for Settlement (PPS) under Fla. R. Civ. P. 1.442; Offer of Judgment and Demand for Judgment (OJ) under Fla. Stat. § 768.79; and the sanctions rule of Fla. Stat. § 57.105. Each rule has its particularities, but notably, they all require that the document be "served" on the other party. Fla. R. Civ. P. 1.442 says that a "proposal to a defendant shall be *served*." Fla. Stat. § 768.79 says that "[t]he offer shall be *served* upon the party to whom it is made." Fla. Stat. § 57.105 similarly says that "[a] motion by a party seeking sanctions under this section must be *served*." All three rules specifically say that the offer, letter, motion (depending on the rule) should not be filed except when necessary.[6]

WHAT IS SERVICE?

What does "serve" mean? Florida Rule of Judicial Administration 2.516 gives us the answer. The rule first tells us who to serve: "When service is required or permitted to be made upon a party represented by an attorney, service must be made upon the attorney unless service upon the party is ordered by the court."[7] The rule then tells us how: "[a]ll documents required or permitted to be served on another party must be served by e-mail, unless the parties otherwise stipulate or this rule otherwise provides." Fla. R. Jud. Admin. 2.516(b)(1) (underline added).[8]

[1] "An award of an attorney fee to any litigant is in derogation of the common law, and it is allowed only when provided for by contract or statute." *Rivera v. Deauville Hotel, Emp'rs Serv. Corp.*, 277 So. 2d 265, 266 (Fla. 1973).

[2] *State Farm Fire & Cas. Co. v. Palma*, 629 So. 2d 830, 832 (Fla. 1993) (Florida follows the "'American Rule' that attorney's fees may be awarded by a court only when authorized by statute or by agreement of the parties.")

[3] *See* Fla. Const. Art. V, § 2.

[4] Fla. R. Civ. P. 1.442 which implements the fee shifting rule of Fla. Stat. § 768.79 is one of these rules.

[5] *See Diecidue v. Lewis*, 223 So. 3d 1015 (Fla. 2d DCA 2017) (holding that the purpose of these fee shifting rules is to reduced litigation cost, not to create more).

[6] All three rules are the same in substance in the sense that they all seek to shift fees to the other side, but each rule has its own particularity. Though we may touch on some substantive requirement of some of the rules, procedure, and not substance, is the subject of this article. It is important to highlight that unlike the other two rules, under Fla. Stat. § 57.105, the attorney also, not only the client, faces exposure to fees.

[7] Fla. R. Jud. Admin. 2.516(b)

[8] The rule was adopted by the Florida Supreme Court on December 2012 with its latest revision dating to Apr. 16, 2016. Thus, most cases litigating issues related to this rule are relatively recent just like the rule.

Section 2.516(b) deals with service on represented parties which is virtually 100% of all scenarios where fee-shifting arises.[9] Rarely does a *pro se* seek fees, or does an attorney seek fees against a *pro se*. In the most common scenario, where there are attorneys involved, service must be made on the other attorney—not her client. When you serve the other attorney, the rule makes the default service by email, unless otherwise stipulated.[10] Now, if the document you are serving was required to be filed (and filing in Florida is via electronic filing) the e-filing portal e-service counts as service.[11] In other words, if Florida e-filing portal is involved (which is generally not the case under the fee-shifting rules) you really have nothing else to worry about, and you will have complied with service. When Florida e-filing is not involved (thus, it involves a document you need not file) you will have to serve the other attorney's designated email address and if he failed to designate one, you serve it to the one he has listed in the Florida bar website.[12]

Fla. R. Jud. Admin. 2.516(b) then tells us the specific format you have to follow when serving by email. The rule is so specific that it almost seems to be targeting 6-year old's and not attorneys. And in a sense, it was. The majority of Florida litigation attorneys involved in the type of cases where fees are at issue in Florida were not raised in the internet/computer era. With the bulk of practitioners used to their physical certificate of service delivered via certified mail with the little USPS green card coming back as proof, service by email must have been a novelty, and the Judicial Administration Rules seemed to have anticipated confusion when it made the service format specific to the T. The rule goes as follows:

> (E) *Format of E-mail for Service*. --Service of a document by e-mail is made by an e-mail sent to all addresses designated by the attorney or party with either (a) a copy of the document in PDF format attached or (b) a link to the document on a website maintained by a clerk. (i) All documents served by e-mail must be sent by an e-mail message containing a subject line beginning with the words "SERVICE OF COURT DOCUMENT" in all capital letters, followed by the case number and case style of the proceeding in which the documents are being served. (ii) The body of the e-mail must identify the court in which the proceeding is pending, the case number, the name of the initial party on each side, the title of each document served with that e-mail, and the name and telephone number of the person required to serve the document. (iii) Any document served by e-mail may be signed by any of the "/s/", "/s", or "s/" formats. (iv) Any e-mail which, together with its attached documents, exceeds the appropriate size limitations specified in the Florida Supreme Court Standards for Electronic Access to the Court, must be divided and sent as separate e-mails, no one of which may exceed the appropriate size limitations specified in the Florida Supreme Court Standards for Electronic Access to the Court and each of which must be sequentially numbered in the subject line.[13]

[8] The rule was adopted by the Florida Supreme Court on December 2012 with its latest revision dating to Apr. 16, 2016. Thus, most cases litigating issues related to this rule are relatively recent just like the rule.

[9] This article does not intend cover the unusual situation of fee shifting when there is a pro se litigant.

[10] Fla. R. Jud. Admin 2.516(b)(1).

[11] Id.

[12] Fla. R. Jud. Admin 2.516(b)(1)(A).

[13] Fla. R. Jud. Admin. 2.516(b)(1)(E).

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When we break it down, we can identify at least 12 requirements in your serving email—depending on how you count them. Three about the subject line, five about the body of the email, and four regarding the document served.[14]

In addition to these requirements, Fla. R. Jud. Admin. 2.516(f) mentions a "Certificate of Service." It doesn't specifically say that one is "required," it simply describes the format of certificates of services. The mere mention may seem to indicate though, that one is required as the First District held in *Floyd v. Smith*, 160 So. 3d 567 (Fla. 1st DCA 2015).

WHAT HAPPENS WHEN SERVICE IS IMPERFECT? – IT DEPENDS...

The answer to the situation when you omit one of the items in Rule 2.516(b)(1)(E) is the subject of a lot of litigation some of which, as mentioned earlier, is pending in the Florida Supreme Court. It really depends, for now, on the type of fee-shifting option and on the district where your case sits.

In June 2014, less than two years since it was enacted, the Fourth District was faced with a situation involving rule 2.516 in *Matte v. Caplan*, 140 So. 3d 686 (Fla. 4th DCA 2014). *Matte* was a case involving Fla. Stat. § 57.105 sanctions statute. Believing that Caplan suit against him was improper, Matte sought fees pursuant to § 57.105. Matte served a motion to dismiss on Caplan and a motion for attorney's fees 21-days before filing them. Caplan did not dismiss the complaint until after the 21-days and Matte then moved for fees. Caplan objected to the § 57.105 sanction because he said Matte had failed to serve the motion in compliance with Rule 2.516. The trial court agreed with Caplan. Matte appealed, and the Fourth District agreed with Matte that the service of the § 57.105 motion was defective, and that strict compliance was required under the § 57.105 statute.[15]

The Fourth District's rationale was a strong public policy argument. "Litigants should not be left guessing at what a court will deem is 'substantial compliance' with the rules and statutes for the imposition of attorney's fees as a sanction."[16] Moreover, the Fourth seems to say that its "strict compliance" ruling applies also to Rule 1.442 when it said that "just as is the case with Rule 1.442 regarding proposals for settlement, a bright line rule requiring service in conformity with the mandatory provisions of the rule provides certainty to both parties as to whether attorney's fees may be assessed if the court finds that the action or defense is frivolous."[17]

Now, facts matter. Not every case is created equal and complying with 11 out 12 requirements may not be the same as complying with 1 out of 12 even if there is actual notice that the other party will be moving for fees. In *Matte*, the

[14] For convenience we list and number them here:
1. Subject line: SERVICE OF COURT DOCUMENT in capital letters.
2. Subject line: The case number.
3. Subject line: The case style.
4. Body of email: Court in which the case is pending.
5. Body of email: Name of initial party on each side.
6. Body of email: Title of each document served in email.
7. Body of email: Name of person required to serve document.
8. Body of email: Telephone of person required to serve document.
9. The document: In PDF or a link.
10. The document: May be signed digitally.
11. The document: Same size limitations as e-filing (or 25 Megabytes or less).
12. The document: Sequentially numbered in the subject line.

[15] *Matte v. Caplan*, 140 So. 3d 686, 690 (Fla. 4th DCA 2014).

[16] *Id.*

[17] *Id.*

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subject line of the e-mail stated: "6277 Caplan, Stacey vs. Quepasa Corporation, Inc.: Defendants' Motion for 57.105 Sanctions.doc." The body of the e-mail stated: "See attached motion."[18] Then attached was a Word document entitled "Defendants' Motion for 57.105 Sanctions.doc."[19] We can't tell from the decision whether or not Matte complied with the document requirements, but let's assume he did. Matte still failed to comply with 8 out of the other 9 requirements of Rule 2.516. In fact, it seems that he might have just complied with one (the case style) if any.[20] In other words, Matte may have been as far from strict compliance as possible and that could have played a factor in the Fourth District's ruling.

In November 15, 2016 the First District in *Conger v. Kelley*, 203 So. 3d 158 (Fla. 1st DCA 2016), affirmed, without a written opinion, a trial court decision denying a motion for attorney's fees. The trial court opinion had cited the Fourth's *Matte v. Caplan* as the reference for its decision.[21] We don't know what the defects were in *Conger*. The appellate court does not make a determination as to what was defective in the documents served. What we do know, by looking at the trial docket, is that *Conger* was a case involving PPS under Rule 1.442 and an OJ under § 768.79. So, it is safe to assume that the First District in *Conger* believed that the § 57.105 *Matte* decision applied to these other two fee-shifting methods also.

On March 28, 2017 came the Third District's *Wheaton v. Wheaton* 217 So. 3d 125, 127 (Fla. 3d DCA 2017), now pending in the Supreme Court.[22] In *Wheaton*, Sandra Wheaton sought review of the trial court order denying her motion for fees pursuant to a PPS because it did not strictly comply with Rule 2.516(b)(1)(E). Appellant Sandra Wheaton made a very logical argument. The "how" of Section (b)(1)(E) is subject to the "when required" in the preceding Section (a) of the rule. And since section (a) says that only pleadings or documents "filed" with the court are subject to the rule, proposal for settlements, which are not required to be file (and are not pleadings) are not subject to the specific requirements of 2.516(b)(1)(E).[23] The Third District didn't buy it. The Court said that Appellant focused on the incorrect portion of the rule. That Section (b) of 2.516 which provides that "[a]ll documents required or permitted to be served on other must be served by e-mail, unless the parties otherwise or this rule otherwise provides" is the relevant portion to focus on. And since proposals for settlement are "permitted" to be filed, they are subject to the requirements of 2.516(b)(1)(E)[24].

Wheaton followed the First District's 2015 decision in *Floyd v. Smith*, 160 So. 3d 567 (Fla. 1st DCA 2015). Floyd in turn, citing *Campbell v. Goldman*, 959 So. 2d 223 (Fla. 2007) and *Design Home Remodeling Corp. v. Santana*, 146 So. 3d 129 (Fla. 3d DCA 2014), said that "both § 768.79 and Rule 1.442 must be strictly construed because they are in derogation of the common law regarding attorney's fees."[25] Floyd involved both a PPS and an OJ. In *Floyd*, the

[18] *Id.* at 688.

[19] *Id*

[20] Arguably, he may not have complied with "The case style" in the subject line requirement either because he mixed the case style with the title of the document in the subject line. The rule does not say or forbid that.

[21] *Conger v. Kelley*, 16-2-12-CA-004080 (Duval County, 4th Cir. Oct 2015); D.E. 225.

[22] Supreme court case no.: *Wheaton v. Wheaton*, No. SC17-716, 2017 Fla. LEXIS 2574 (Oct. 24, 2017)

[23] In a way, *Wheaton* exposes a little bit of a contradiction between section (a) and (b) of 2.516. The "when required" of section (a) is made confusing when the "how made" of section (b) talks about "any document required or permitted to be served on another party." By adding the "permitted" word, it opens the door to the confusion now reining in the districts that since PPS's are "permitted" to be "served" they are then required to comply strictly with the email requirements of Rule 2.516. The bulk of the fight between the "strict compliance" courts and the "substantial compliance" courts comes down to an interplay between these two sections.

[24] *Wheaton v. Wheaton*, 217 So. 3d 125, 127 (Fla. 3d DCA 2017).

[25] *Floyd v. Smith*, 160 So. 3d 567, 568 (Fla. 1st DCA 2015).

challenger of the PPS and OJ (Floyd) argued that the offers (1) lacked a certificate of service, and (2) that the PPS was ambiguous because it mentioned "his claims" as opposed to "her claims" (appellant Floyd was a female). The First District didn't buy it and held that the offers strictly complied with 2.516(b)(1)(E) which do not require a certificate of service[26]. The court also said that the typo (his/her) did not create an ambiguity and therefore the PPS and OJ strictly complied with the rule[27]. It seems safe to take away from *Floyd's* ruling that though 2.516(f) mentions a "certificate of service" the "certificate of service" is not part of the service requirements under 2.516 as a whole, at least when it comes to PPS and OJ's.

In April 2017 the Second District decided *Boatright v. Philip Morris USA Inc.*, 218 So. 3d 962 (Fla. 2d DCA 2017) perhaps the most substantive ruling on the topic. Appellants (former plaintiffs) the Boatrights had served via U.S. certified mail four different proposals for settlement (using 1.442 and § 768.79) on each defendant in the case. Each PPS had an otherwise compliant paper certificate of service[28]. The trial court held that the Boatrights were not entitled to attorneys' fees and costs because they did not serve their proposals for settlement on the attorneys by e-mail, and therefore did not strictly comply with § 768.79 and Rule 1.442.[29]

The Second District viewed things differently. The Court said that Section (c)(2)(G) of 1.442 requires that the proposal have a certificate of service in the form required by Fla. R. Civ. P 1.080, which says nothing about the "form" of certificates of service and only mandates it when the document has to be "filed." When a document has to be "filed" then it must comply with 2.516 (b). Since PPS's under Rule 1.442 and OJ under § 768.79 are not required to be filed, the Second District held that the Boatrights strictly complied with the statute and rule.[30]

The key logic for the Second District's decision is its analysis of the interplay between Section (a) and (b)(1) in Rule 2.516. The defendant/appellee (Phillip Morris) wanted the Court to interpret the "[a]ll documents required or permitted to be served on another party must be served by e-mail" of (b)(1) in isolation and thus to include OJ and PPS's which are only required to be "served."[31] The Court, applying statutory interpretation principles, disagreed because it thought (b)(1) has to be read in the context of Section (a) which limits the rule to "pleadings and every other document filed."[32] The Court said that when "[r]eading rule 2.516(a) and (b)(1) together, the word "documents" in subsection (b)(1) is confined in meaning to "document[s] filed in any court proceeding," . . . of subsection (a)." [33]

The Second expressed its disagreement with the Fourth's *Matte v. Caplan* saying (1) that that case was limited to § 57.105 sanctions motions, and (2) that the *Matte* court did not really do an analysis of the interplay of Rule 2.516(a)

[26] *Id.* at 569.

[27] *Id.*

[28] *Boatright v. Philip Morris USA Inc.*, 218 So. 3d 962, 964 (Fla. 2d DCA 2017)

[29] *Id.*

[30] *Id.* at 965.

[31] *Id* at 968.

[32] Fla. R. Jud. Admin. 2.516(a)

[33] *Id* at 968.

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and (b)(1) and thus, it was inapplicable.[34] The Second also noted its disagreement with the Third's *Wheaton v. Wheaton* for the same reasons. The court recognized the practicalities of the bright-line *Wheaton* Court ruling but said that a plain reading of Rule 2.516, 1.442 and § 768.79, did not yield that result.[35] The Court then certified conflict with the Third in *Wheaton*.[36]

A couple of months later on June 2017, the Second District expanded its own ruling in *Boatright* to § 57.105 motions in *Isla Blue Dev., LLC v. Moore*, 223 So. 3d 1097 (Fla. 2d DCA 2017). In *Isla Blue* the Second agreed with the trial court in its denial of appellant Isla Blue's § 57.105 motion on substantive grounds but disagreed in its denial of the § 57.105 on procedural grounds. The Second cited its own *Boatright* analysis on the interplay between 2.516(a) and (b)(1) to conclude again that email service was not required. The Court then certify conflict this time with *Matte v. Caplan*, which as mentioned earlier, applied Rule 2.516 to § 57.105 motions and said that strict compliance was required.

On June 7, 2017, three different judges in the Fourth District reaffirmed the ruling of *Matte v. Caplan* in *Estimable v. Prophete*, 219, So. 3d. 1001 (Fla. 4d DCA 2017), a § 57.105 case with a defective service of the § 57.105 motion. The Fourth, to justify its decision, mentioned again the *Matte v. Caplan* rationale that "[l]itigants should not be left to guessing at what a court will deem "substantial compliance" with rules and statutes for the imposition of fees as sanctions."[37]

Just three months later, on October 2017, the Fourth in *McCoy v. R.J. Reynolds Tobacco Co.*, 229 So. 3d 827, 828 (Fla. 4th DCA 2017) made a complete one eighty and expressed its disdain for strict compliance. "[T]o deny recovery because the initial offer was not e-mailed [said the Court] is to allow the procedural tail of the law to wag the substantive dog."[38] The court expressed its sympathy for the Second's logic in *Boatright*, and as if it was some stranger District (not the Fourth), did not even mention its very own *Matte v. Caplan* and *Estimable v. Prophete* decisions which, though § 57.105 cases, are undoubtedly relevant to the conversation. The *McCoy* Fourth also took the time to express its disagreement with the Third's *Wheaton v. Wheaton* saying that the Third added words from 2.516 (b)(1) to the plain language of 2.516(a) that it does not otherwise has.[39]

On December 2017 the First District reversed itself and said in *Oldcastle S. Grp., Inc. v. Railworks Track Sys.*, 235 So. 3d 993 (Fla. 1st DCA 2017) that PPS and OJ do not have to be served in accordance with rule 2.516.[40] It was undisputed in *Oldcastle* that the PPS's service was defective. The First agreed with *McCoy* and *Boatright* that "since the proposal for settlement is not to be filed when it is served, the proposal is not included in the clause 'every other document filed in any court proceeding.'"[41] The First, like the Fourth in *McCoy*, completely ignored its own 2016 *Conger v. Kelley* and, in footnote-importance said that its 2015 *Floyd v. Smith* was limited to the issue of Certificates of Services.[42]

[34] Id at 970.

[35] Id at 971.

[36] Id.

[37] Estimable v. Prophete, 219 So. 3d 1001, 1003 (Fla. 4th DCA 2017).

[38] McCoy v. R.J. Reynolds Tobacco Co., 229 So. 3d 827, 828 (Fla. 4th DCA 2017).

[39] Id. at 829.

[40] Oldcastle S. Grp., Inc. v. Railworks Track Sys., 235 So. 3d 993, 994 (Fla. 1st DCA 2017).

[41] Id. at 995.

[42] Id. at fn, 3.

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More recently on July 20, 2018 the Fifth District had to address the issue for the first time in the context of a procedurally defective § 57.105 motion in *Goersch v. City of Satellite Beach*, No. 5D17-386, 2018 Fla. App. LEXIS 10140 (5th DCA July 20, 2018). The Fifth analyzed in detail Rule 2.516 and read it radically different than the Second. The Fifth thought that since § 57.105 motions have to be "filed" eventually, the "'timing of the "filing" is of no consequence to the requirement of service under the rule."[43] "The rule says "filed," not "immediately filed or contemporaneously filed" said the Court.[44] Since the § 57.105 motion at issue was ultimately filed (like all § 57.105 motions have to if they are going to be enforced) the Second thought it should be subject to the strict requirements of Rule 2.516. The Second backed its logic by pointing to 2.516(d) which requires that all documents "must be filed with the court either before service or immediately thereafter, unless otherwise provided for by general law or other rules."[45] "Accordingly, rule 2.516 contemplates two temporal categories of filed documents—those that are filed immediately and those that are filed at some other time."[46]

The main rationale of the Fifth in *Goersch* was—just like the First, and Fourth—predictability. Citing *Matte* the Court said:

> As our sister court in *Matte* reasoned, this rule uses mandatory language. The technical dictates for e-mail service in the rule further evince an intent to mandate strict compliance with all of the identified stringent standards for e-mail service to lessen the potential for an inconspicuous e-mail to get buried in the voluminous inbox of a busy practitioner in the modern, fast-paced practice of law. Besides the practical dilemma for trial courts in applying a somewhat nebulous substantial compliance test, with the inherent result of inconsistency and the potential for proliferation of evidentiary hearings, a relaxed rule of service might undermine e-mail service altogether.[47]

THE SUPREME COURT CASES

In the end, these all ended in the Florida Supreme Court. The first party to appeal was Sandra Wheaton of the Third's *Wheaton v. Wheaton*, 217 So. 3d 125 (Fla. 3d DCA 2017).[48] Briefing on that case is now completed. The Supreme Court stayed the petitions of Philip Morris in *Boatright v. Philip Morris USA Inc.*, 18 So. 3d 962, (Fla. 2d DCA 2017)[49]; and the Tobacco defendants/appellants in *McCoy v. R.J. Reynolds Tobacco Co.*, 229 So. 3d 827 (Fla. 4th DCA 2017)[50] pending decision on *Wheaton*.

Sandra Wheaton's attorneys argued first that "nothing in § 768.79 or Rule 1.442 requires a proposal for settlement to be served by e-mail. If there is no requirement to serve by e-mail, then the e-mail service provisions of Rule 2.516 cannot affect the enforceability of a proposal for settlement."[51] Second, Wheaton focused on section (a) of rule 2.516

[43] Goersch v. City of Satellite Beach, No. 5D17-386, 2018 Fla. App. LEXIS 10140, at *4-5 (5th DCA July 20, 2018)

[44] *Id.*

[45] *Id.; Rule 2.516(d)*

[46] *Goersch v. City of Satellite Beach, No. 5D17-386, 2018 Fla. App. LEXIS 10140, at *7-8 (5th DCA July 20, 2018).*

[47] *Id*

[48] *Supreme Court Case: Wheaton v. Wheaton, No. SC17-716, 2017 Fla. LEXIS 2574 (Oct. 24, 2017).*

[49] *Supreme Court Case: Philip Morris USA Inc. v. Boatright, SC17- 897 (Fla. Sup. Ct. order dated Oct. 24, 2017)*

[50] *Supreme Court Case: R.J. Reynolds Tobacco Co. v. McCoy, SC17-2051 (Fla. Sup. Ct. order dated Dec. 28, 2017)*

[51] *Wheaton v. Wheaton, No. SC17-716, 2017 Fla. LEXIS 2574 (Oct. 24, 2017)(Petitioner's Initial Brief on the Merits). p. 12.*

that targets documents "filed" and, since proposals are not required to be filed, section (a) does not come into play—the argument made in *Boatright*, that the "permitted to be filed" of (b)(1) is subservient of section (a) "when made" section. Third, Wheaton made a very interesting argument relying on *Campbell v. Goldman*, 959 So. 2d 223 (Fla. 2007), that even if "strict compliance" was required, the strict compliance is with the substantive requirements of the proposal rules themselves and not to rules foreign to 1.442 and § 789.79 like the serving rule of 2.516.[52]

The Attorney's for the Respondent Mardella Wheaton argued that a "more appropriate reading of Rule 2.516 is that subsection (b) details the method by which documents are to be served, while subsection (a) specifies those documents for which service is required."[53] Further Respondent argued that Sandra's lawyer ignored the fact that in the context of recovering attorney's fees pursuant to § 768.79, Rule 2.516 is simply another extension of 1.442 – specifying the procedural requirements for service of the proposal for settlement[54] and that "[t]o construe the subsequent sections of 2.516 as limited by section (a) is to frustrate the plain meaning of the remaining sections and destroy procedural order for service."[55]

We don't know what's going to happen. Stay tuned. For now, make sure you *strictly comply* with Rule 2.516 for anything you do; whether you have to serve it or file it. Thus far, nobody has argued that strict compliance is a bad thing.[56]

[52] *Id.* at 32.

[53] Supreme Court Case: No. SC17-716, 2017 Fla. LEXIS 2574 (Oct. 24, 2017)(Respondent's Answer Brief), p.8..

[54] *Id.* at 9

[55] *Id.* at 10.

[56] A chart summarizing the status of fee-shifting serving litigation is here:

DCA	Motion 57.105	PPS 1.442	OJ 768.79
First		Strict compliance; *Floyd v. Smith* (2015) *Conger v. Kelley* (2016) Substantial Compliance; *Oldcastle v. Railworks* (2017).	Strict compliance; *Floyd v. Smith* (2015). *Conger v. Kelley* (2016) Substantial Compliance; *Oldcastle v. Railworks* (2017).
Second	Substantial Compliance; *Isla Blue Dev., LLC v. Moore.* (2017)	Substantial Compliance; *Boatright v. Philip Morris.* (2017)	Substantial Compliance; *Boatright v. Philip Morris* (2017)
Third		Strict compliance; *Wheaton v. Wheaton* (2017)	
Fourth	Strict compliance; *Matte v. Caplan;* (June 2014); *Estimable v. Prophete.* (2017)	Substantial Compliance; *McCoy v. R.J. Reynolds* (Oct, 2017).	Substantial Compliance; *McCoy v. R.J. Reynolds* (Oct, 2017).
Fifth	Strict compliance; *Goersch v. City* (2018).		