

INJURY TO PERSONS AND PROPERTY SECTION



The District of Columbia Bar

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January 9, 1997

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Mr. David Luria
Attorney Advisor
Advisory Committee on Superior Court Rules of Civil
Procedure
Superior court of the District of Columbia
Room 5400
500 Indiana Avenue, N.W.
Washington, D.C. 20001

Dear Mr. Luria:

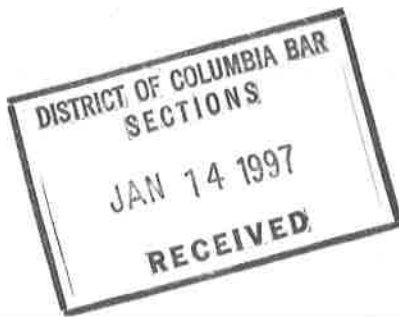
Enclosed please find a statement by our section on the
proposed amendment of Rule 68.

Sincerely yours,

Patrick A. Malone

PAM/dmc
enc.

cc: Meredith Ballard, D.C. Bar
Kenneth Trombly, Esq.
Keith M. Bonner, Esq.
D'Ana Johnson, Attorney-at-Law
Paul J. Maloney, Esq.
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Comments of the Section on Injury to Persons and Property of The District of Columbia Bar

To the
D.C. Superior Court

Regarding
Proposed Amendment of Rule 68

Patrick Malone, Co-Chair*
Kenneth M. Trombly, Co-Chair
L. Palmer Foret
D'Ana Johnson

* represents principal author

Standard Disclaimer

The views expressed herein represent only those of the Section on Injury to Persons and Property of the District of Columbia Bar and not those of the D.C. Bar or its Board of Governors.

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Public Statement of the Steering Committee of the D.C. Bar Injury to Persons and Property Section

The Steering Committee of the D.C. Bar Injury to Persons and Property Section **opposes** the proposed amendment to Rule 68 of the Superior Court Rules of Civil Procedure, the “offer of judgment” rule.

The proposal has a laudable goal: to make the current rule reciprocal so that it could be used as a settlement tool by plaintiffs in addition to defendants. The rule is intended to encourage settlements, another worthwhile goal. However, the rule would create a “loser pays” system with unfair economic pressure placed on those of modest means, on either side of the case, to accept unjust settlements. Well-heeled litigants on either side would likely be unaffected by the marginal pressure added by the potential liability for costs from the time of offer to the time of judgment. The current balance of equities wherein each side bears the vast majority of its own costs is the best rule absent a comprehensive revision of the entire system of fees and expenses for civil litigation, which this proposed rule cannot and should not attempt. In the final analysis, the merits of the case, and not the costs of litigation, should be the primary driving force of settlement decisions.

Other problems with the proposed rule: (1) The rule would create substantial post-judgment litigation over the reasonableness of costs. (2) It would be meaningless to some parties in the absence of a requirement that a bond be

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posted at the time of rejecting an offer of judgment or settlement, but the requirement of a bond would itself be unfair to many litigants. (3) The rule leaves open the possibility of assessing attorney's fees against losers as part of post-offer costs; that should be done only as part of an assessment of sanctions which current rules adequately address. ###