IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

CASE NO. 1D20-2303

MARILYN ROSEANNE HUNT,

Appellant,

v. L.T. No. 16-2012-CA-001281

JAMES LIGHTFOOT and
STATE FARM AUTOMOBILE
INSURANCE COMPANY,

Appellees.

_____/

APPELLEE JAMES LIGHTFOOT'S NOTICE TO INVOKE

NOTICE IS GIVEN that, pursuant to Article V, section 3(b)(3) of the Florida Constitution and Florida Rule of Appellate Procedure 9.030(a)(2)(A)(iv), Appellee James Lightfoot invokes the discretionary jurisdiction of the Florida Supreme Court to review the decision of this Court rendered Friday, September 16, 2022. The decision expressly and directly conflicts with decisions of other district courts on the same question of law.[1] A copy of this Court's opinion is

[1] *See, e.g.*, *Peoples Gas Sys. v. Acme Gas Corp.*, 689 So. 2d 292 (Fla. 3d DCA 1997); *United Auto. Ins. v. Partners in Health Chiropractic Ctr.*, 233 So. 3d 1201 (Fla. 3d DCA 2017); *Schmidt v. Fortner*, 629 So. 2d 1036 (Fla. 4th DCA 1993); *Levine v. Harris*, 791 So. 2d 1175 (Fla. 4th DCA 2001); *Wagner v. Brandeberry*, 761 So. 2d 443, 446 (Fla. 2d DCA 2000); *Dep't of Highway Safety & Motor Vehicles v. Weinstein*,

attached as Exhibit A, and copies of this Court's orders denying Mr. Lightfoot's post-decision motions are attached as Exhibit B.

CREED & GOWDY, P.A.

/s/ *Dimitrios A. Peteves*
Rebecca Bowen Creed
Florida Bar No. 975109
rcreed@appellate-firm.com
Dimitrios A. Peteves
Florida Bar No. 123903
dpeteves@appellate-firm.com
filings@appellate-firm.com
865 May Street
Jacksonville, Florida 32204
Telephone: (904) 350-0075
Facsimile: (904) 503-0441
Counsel for James Lightfoot

747 So. 2d 1019, 1021 (Fla. 3d DCA 1999); *Matrisciani v. Garrison Prop. & Cas. Ins.*, 298 So. 3d 53, 61 (Fla. 4th DCA 2020); *Land & Sea Petrol., Inc. v. Bus. Specialists, Inc.*, 53 So. 3d 348 (Fla. 4th DCA 2011); *Disney v. Vaughen*, 804 So. 2d 581 (Fla. 5th DCA 2002); *Donohoe v. Starmed Staffing, Inc.*, 743 So. 2d 623 (Fla. 2d DCA 1999).

CERTIFICATE OF SERVICE

I CERTIFY that a true and correct copy of the foregoing was filed with the Clerk of Court on October 13, 2022, via the Florida Courts E-Filing Portal which will serve a notice of electronic filing to the following counsel of record:

Dennis P. Dore
Michael B. Wedner
Brian T. Bellavia
QUINTAIROS, PRIETO, WOOD & BOYER, P.A.
4190 Belfort Road, Suite 450
Jacksonville, Florida 32216
dennis.dore@qpwblaw.com
ddore.pleadings@qpwblaw.com
michael.wedner@qpwblaw.com
dana.welcker@qpwblaw.com
breanna.walls@qpwblaw.com
lisamcnaughton@qpwblaw.com
debra.malone@qpwblaw.com
bbellavia@qpwblaw.com
Counsel for Marilyn Hunt

Anthony J. Russo
John W. Weihmuller
James Michael Shaw, Jr.
BUTLER WEIHMULLER KATZ CRAIG, LLP
400 N. Ashley Drive, Suite 2300
Tampa, Florida 33602
arusso@butler.legal
rburnison@butler.legal
jweihmuller@butler.legal
jshaw@butler.legal
zhasbini@butler.legal
Counsel for State Farm Mutual Automobile Insurance Company

Warren B. Kwavnick
COONEY TRYBUS KWAVNICK PEETS, PLC
1600 W. Commercial Blvd.
Suite 200
Fort Lauderdale, Florida 33309
wkwavnick@ctkplaw.com
reception@ctkplaw.com
jstump@ctkplaw.com
Counsel for Marilyn Hunt

Joseph V. Camerlengo
THE TRUCK ACCIDENT LAW FIRM
1200 Riverplace Boulevard
Suite 902
Jacksonville, Florida 32207
jvc@truckcrashlaw.com
gja@truckcrashlaw.com
team@truckcrashlaw.com
Trial Counsel for Appellee James Lightfoot

Brent G. Steinberg
SWOPE RODANTE, P.A.
1234 E. 5th Avenue
Tampa, Florida 33605
brents@swopelaw.com
Team3eservice@swopelaw.com
eservice@swopelaw.com
Counsel for Marilyn Hunt

Howard C. Coker
Daniel A. Iracki
Chelsea Russell Harris
COKER LAW
136 E Bay Street
Jacksonville, Florida 32202
hcc@cokerlaw.com
elj@cokerlaw.com
dai@cokerlaw.com
crh@cokerlaw.com
Trial Counsel for Appellee James Lightfoot

/s/ Dimitrios A. Peteves
Attorney

Exhibit A

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D20-2285

STATE FARM AUTOMOBILE INSURANCE COMPANY,

Appellant,

v.

JAMES LIGHTFOOT and MARILYN ROSEANNE HUNT,

Appellees.

No. 1D20-2303

MARILYN ROSEANNE HUNT,

Appellant,

v.

JAMES LIGHTFOOT and STATE FARM AUTOMOBILE INSURANCE COMPANY,

Appellees.

On appeal from the Circuit Court for Duval County.
Katie L. Dearing, Judge.

May 25, 2022

ROBERTS, J.

Marilyn Hunt, defendant in an automobile negligence action, seeks to reverse a final judgment awarding over $1 million in attorney's fees and taxable costs to plaintiff, James Lightfoot, under section 768.79, Florida Statutes. Ms. Hunt asserts the rejected proposal for settlement (PFS), the basis for the award, was not made in good faith because it required her to pay $1.3 million in cash within thirty days to accept it. We agree and reverse the fee award.

I.

In 2011, Ms. Hunt rear-ended Mr. Lightfoot. Mr. Lightfoot walked away from the accident with minor knee and neck pain, believing he was "going to be okay." In 2012, he sued Ms. Hunt for injuries he claimed to have sustained in the accident. Ms. Hunt held a $50,000 bodily injury liability insurance policy with appellee State Farm Automobile Insurance Company, which undertook her defense.

In 2015, Mr. Lightfoot served a PFS to Ms. Hunt that offered to dismiss his claims against her if she paid him $1.3 million in cash. Ms. Hunt did not accept the PFS within thirty days, rendering it rejected. *See* § 768.79(1), Fla. Stat.; Fla. R. Civ. P. 1.442(f)(1). After multiple continuances, the case proceeded to trial in 2019, wherein the jury found Ms. Hunt solely negligent and awarded Mr. Lightfoot over $11 million in damages – $10 million of which represented non-economic damages. Ms. Hunt unsuccessfully appealed the final judgment, which was affirmed by this Court in *Hunt v. Lightfoot*, 313 So. 3d 142 (Fla. 1st DCA 2020).

Mr. Lightfoot then sought attorney's fees and costs pursuant to section 768.79 and Florida Rule of Civil Procedure 1.442. Ms. Hunt initially conceded entitlement, but later moved for reconsideration, arguing the PFS was invalid and unenforceable because it was impossible to accept and illusory because it was not

made in good faith. The trial court held a hearing in which Mr. Lightfoot's counsel argued Ms. Hunt's inability to pay $1.3 million was irrelevant and unknowable, conjecturing Ms. Hunt could have won the Powerball recently. In reality, no one at the hearing doubted Ms. Hunt's inability to produce $1.3 million cash within thirty days to accept the PFS. Nonetheless, the trial court upheld the PFS, concluding Ms. Hunt's inability to pay was not determinative of the offer's validity.[1] The court entered a final judgment assessing $1,415,254.55 in attorney's fees and taxable costs against Ms. Hunt.[2] Ms. Hunt does not challenge the award of costs, which we affirm. The appeal of the fee award follows.

II.

The legislature enacted section 768.79 to "deter parties from rejecting presumably reasonable settlement offers by imposing sanctions through costs and attorney's fees." *Se. Floating Docks, Inc. v. Auto-Owners Ins. Co.*, 82 So. 3d 73, 79 (Fla. 2012). Section 768.79 and the implementing rule 1.442 must be strictly construed because they are in derogation of the common law rule that each party pays its own fees. *Attorneys' Title Ins. Fund, Inc. v. Gorka*, 36 So. 3d 646, 649 (Fla. 2010). The penal nature of this type of fee award also means strict construction is applied in favor of the party against whom the penalty is imposed. *Tierra Holdings, Ltd. v. Mercantile Bank,* 78 So. 3d 558, 563 (Fla. 1st DCA 2011).

Section 768.79(1) provides in relevant part:

---

[1] The court implicitly found the offer was made in good faith. *See Stofman v. World Marine Underwriters, Inc.*, 729 So. 2d 959, 960 (Fla. 4th DCA 1999) (recognizing an express finding is only required when a court finds an offer was not made in good faith).

[2] The court joined State Farm in the final judgment on attorney's fees and costs. In case number 1D20-2285, State Farm argued it was improperly joined, its policy did not provide indemnity for Ms. Hunt's attorney fee liability, and the PFS was unenforceable.

> If a plaintiff files a demand for judgment which is not accepted by the defendant within 30 days and the plaintiff recovers a judgment in an amount at least 25 percent greater than the offer, she or he shall be entitled to recover reasonable costs and attorney's fees incurred from the date of the filing of the demand.

The statute automatically creates an entitlement or "mandatory right" to attorney's fees when a PFS satisfies the statutory and procedural requirements. *See Anderson v. Hilton Hotels Corp., Inc.*, 202 So. 3d 846, 856 (Fla. 2016). The entitlement translates to a fee award so long as the plaintiff recovers a judgment that is 25% greater than the offer amount. Mr. Lightfoot satisfied all these conditions.

III.

Ms. Hunt argues the fee award should be reversed because the PFS was not made in good faith. Section 768.79(7)(a) and rule 1.442(h)(1) allow a trial court to reject fees if it determines that a proposal was not made in good faith. We review the trial court's decision on good faith for an abuse of discretion. *Hayes Robertson Grp., Inc. v. Cherry*, 260 So. 3d 1126, 1133 (Fla. 3d DCA 2018).

The offeree has the burden of showing a PFS was not made in good faith. *Gawtrey v. Hayward*, 50 So. 3d 739, 743 (Fla. 2d DCA 2010) (citing *TGI Friday's, Inc. v. Dvorak*, 663 So. 2d 606, 613 (Fla. 1995)). The reasonableness of an offeree's decision to reject a proposal is irrelevant to the issue of good faith. *TGI Friday's*, 743 So. 2d at 611. Good faith turns on whether the offeror "had a reasonable foundation to make [his] offer and made it with intent to settle the claim made against [him by the offeree] if the offer had been accepted." *Id.*

The trial court abused its discretion because it is clear to us that this PFS was not made with an intent to settle the case. By conditioning acceptance upon payment of $1.3 million in cash, the offer was illusory as there was no real possibility Ms. Hunt could accept. Mr. Lightfoot did not have to require actual payment and could have allowed for acceptance followed by a judgment entered against Ms. Hunt. *See Alexandre v. Meyer*, 732 So. 2d 44, 45 (Fla.

4th DCA 1999). By requiring Ms. Hunt to tender $1.3 million in cash within thirty days to accept, Mr. Lightfoot chose to include an impossible condition that was designed to fail.

We understand the trial court's hesitance to consider Ms. Hunt's particular finances and ability to pay. *See id.* ("Section 768.79 does not require either ability to pay or payment in order to accept a demand for judgment."). But this case does not require an evaluation specific to Ms. Hunt. We are confident very few Americans could come up with $1.3 million cash within thirty days. Even very wealthy individuals diversify their assets, and very few would have that amount of expeditiously accessible liquidity.

To be clear, we are not holding an offeror must consider an offeree's finances and ability to pay before tendering a PFS. Nor do we take issue with the amount alone or the condition of actual payment alone. Rather, it is the specific combination of $1.3 million "cash on the barrelhead" that renders this PFS illusory. If, for instance, the PFS could have been accepted by signing a promissory note for $1.3 million or by agreeing to have a judgment entered for $1.3 million, it would be perfectly valid.

It is contrary to the purpose of section 768.79 to sanction Ms. Hunt with over $1 million in attorney's fees for an offer she could not have possibly accepted. *Cf. Gorka*, 36 So. 3d at 651 ("A party wishing to accept an offer should not be prohibited from doing so and then subjected to costly litigation and possible sanctions under rule 1.442 merely because a condition cannot occur[.]"). The PFS was an illusory offer made without intent to fully settle the case. The trial court abused its discretion in awarding fees where the PFS was not made in good faith.

IV.

We REVERSE the judgment for attorney's fees and costs in case number 1D20-2303 and REMAND for proceedings not inconsistent with this opinion.

As a result of our disposition in case number 1D20-2303, State Farm's appeal in 1D20-2285 is DISMISSED as moot.

B.L. THOMAS and M.K. THOMAS, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Michael B. Wedner and Brian Bellavia of Quintairos, Prieto, Wood & Boyer, P.A., Jacksonville; Dennis P. Dore and Samantha D. Dunlap-Smart of Dutton Law Group, Jacksonville; Warren B. Kwavnick of Cooney Trybus Kwavnick Peets PLC, Fort Lauderdale; Brent G. Steinberg and Daniel L. Greene of Swope, Rodante P.A., Tampa, for Marilyn Roseanne Hunt.

Howard C. Coker of Coker Law, Jacksonville; Rebecca B. Creed and Dimitrios A. Peteves of Creed & Gowdy, P.A., Jacksonville; Joseph V. Camerlengo of The Truck Accident Law Firm, Jacksonville, for James Lightfoot.

Anthony J. Russo, John Walter Weihmuller, and James Michael Shaw of Butler Weihmuller Katz Craig LLP, Tampa, for State Farm Automobile Insurance Company.

Exhibit B

DISTRICT COURT OF APPEAL, FIRST DISTRICT
2000 Drayton Drive
Tallahassee, Florida 32399-0950
Telephone No. (850)488-6151

September 16, 2022

CASE NO.: **1D20-2303**
L.T. No.: 16-2012-CA-001281

Marilyn Rosanne Hunt	v.	James Lightfoot and State Farm Automobile Insurance Company
Appellant / Petitioner(s),		Appellee / Respondent(s)

BY ORDER OF THE COURT:

Appellee's motion docketed July 11, 2022, for rehearing, certification, and clarification is denied.

I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.

Served:

Anthony J. Russo	Brent G. Steinberg
Brian Bellavia	Chelsea Russell Harris
Daniel L. Greene	Daniel A. Iracki
Dennis P. Dore	Dimitrios A. Peteves
Howard C. Coker	James Michael Shaw II
John Walter Weihmuller	Joseph V. Camerlengo
Michael B. Wedner	Rebecca B. Creed
Samantha D. Dunlap-Smart	Warren B. Kwavnick

th

KRISTINA SAMUELS, CLERK

DISTRICT COURT OF APPEAL
SAT CITO SI RECTE
FIRST DISTRICT
STATE OF FLORIDA

DISTRICT COURT OF APPEAL, FIRST DISTRICT
2000 Drayton Drive
Tallahassee, Florida 32399-0950
Telephone No. (850)488-6151

September 16, 2022

CASE NO.: **1D20-2303**
L.T. No.: 16-2012-CA-001281

Marilyn Rosanne Hunt	v.	James Lightfoot and State Farm Automobile Insurance Company
Appellant / Petitioner(s),		Appellee / Respondent(s)

BY ORDER OF THE COURT:

The motion for rehearing en banc filed by the appellee on July 11, 2022, is denied.

I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.

Served:

Anthony J. Russo
Brian Bellavia
Daniel L. Greene
Dennis P. Dore
Howard C. Coker
John Walter Weihmuller
Michael B. Wedner
Samantha D. Dunlap-Smart
Brent G. Steinberg
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Rebecca B. Creed
Warren B. Kwavnick

th

KRISTINA SAMUELS, CLERK

DISTRICT COURT OF APPEAL · SAT CITO SI RECTE · FIRST DISTRICT · STATE OF FLORIDA

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D20-2285

STATE FARM AUTOMOBILE INSURANCE COMPANY,

Appellant,

v.

JAMES LIGHTFOOT and MARILYN ROSEANNE HUNT,

Appellees.

No. 1D20-2303

MARILYN ROSEANNE HUNT,

Appellant,

v.

JAMES LIGHTFOOT and STATE FARM AUTOMOBILE INSURANCE COMPANY,

Appellees.

On appeal from the Circuit Court for Duval County.
Katie L. Dearing, Judge.

May 25, 2022

ROBERTS, J.

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In 2015, Mr. Lightfoot served a PFS to Ms. Hunt that offered to dismiss his claims against her if she paid him $1.3 million in cash. Ms. Hunt did not accept the PFS within thirty days, rendering it rejected. *See* § 768.79(1), Fla. Stat.; Fla. R. Civ. P. 1.442(f)(1). After multiple continuances, the case proceeded to trial in 2019, wherein the jury found Ms. Hunt solely negligent and awarded Mr. Lightfoot over $11 million in damages – $10 million of which represented non-economic damages. Ms. Hunt unsuccessfully appealed the final judgment, which was affirmed by this Court in *Hunt v. Lightfoot*, 313 So. 3d 142 (Fla. 1st DCA 2020).

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made in good faith. The trial court held a hearing in which Mr. Lightfoot's counsel argued Ms. Hunt's inability to pay $1.3 million was irrelevant and unknowable, conjecturing Ms. Hunt could have won the Powerball recently. In reality, no one at the hearing doubted Ms. Hunt's inability to produce $1.3 million cash within thirty days to accept the PFS. Nonetheless, the trial court upheld the PFS, concluding Ms. Hunt's inability to pay was not determinative of the offer's validity.[1] The court entered a final judgment assessing $1,415,254.55 in attorney's fees and taxable costs against Ms. Hunt.[2] Ms. Hunt does not challenge the award of costs, which we affirm. The appeal of the fee award follows.

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The offeree has the burden of showing a PFS was not made in good faith. *Gawtrey v. Hayward*, 50 So. 3d 739, 743 (Fla. 2d DCA 2010) (citing *TGI Friday's, Inc. v. Dvorak*, 663 So. 2d 606, 613 (Fla. 1995)). The reasonableness of an offeree's decision to reject a proposal is irrelevant to the issue of good faith. *TGI Friday's*, 743 So. 2d at 611. Good faith turns on whether the offeror "had a reasonable foundation to make [his] offer and made it with intent to settle the claim made against [him by the offeree] if the offer had been accepted." *Id.*

The trial court abused its discretion because it is clear to us that this PFS was not made with an intent to settle the case. By conditioning acceptance upon payment of $1.3 million in cash, the offer was illusory as there was no real possibility Ms. Hunt could accept. Mr. Lightfoot did not have to require actual payment and could have allowed for acceptance followed by a judgment entered against Ms. Hunt. *See Alexandre v. Meyer*, 732 So. 2d 44, 45 (Fla.

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IV.

We REVERSE the judgment for attorney's fees and costs in case number 1D20-2303 and REMAND for proceedings not inconsistent with this opinion.

As a result of our disposition in case number 1D20-2303, State Farm's appeal in 1D20-2285 is DISMISSED as moot.

B.L. THOMAS and M.K. THOMAS, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Michael B. Wedner and Brian Bellavia of Quintairos, Prieto, Wood & Boyer, P.A., Jacksonville; Dennis P. Dore and Samantha D. Dunlap-Smart of Dutton Law Group, Jacksonville; Warren B. Kwavnick of Cooney Trybus Kwavnick Peets PLC, Fort Lauderdale; Brent G. Steinberg and Daniel L. Greene of Swope, Rodante P.A., Tampa, for Marilyn Roseanne Hunt.

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Anthony J. Russo, John Walter Weihmuller, and James Michael Shaw of Butler Weihmuller Katz Craig LLP, Tampa, for State Farm Automobile Insurance Company.

DISTRICT COURT OF APPEAL, FIRST DISTRICT
2000 Drayton Drive
Tallahassee, Florida 32399-0950
Telephone No. (850)488-6151

September 16, 2022

CASE NO.: **1D20-2303**
L.T. No.: 16-2012-CA-001281

Marilyn Rosanne Hunt	v.	James Lightfoot and State Farm Automobile Insurance Company
Appellant / Petitioner(s),		Appellee / Respondent(s)

BY ORDER OF THE COURT:

Appellee's motion docketed July 11, 2022, for rehearing, certification, and clarification is denied.

I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.

Served:

Anthony J. Russo	Brent G. Steinberg
Brian Bellavia	Chelsea Russell Harris
Daniel L. Greene	Daniel A. Iracki
Dennis P. Dore	Dimitrios A. Peteves
Howard C. Coker	James Michael Shaw II
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Michael B. Wedner	Rebecca B. Creed
Samantha D. Dunlap-Smart	Warren B. Kwavnick

th

KRISTINA SAMUELS, CLERK

DISTRICT COURT OF APPEAL
SAT CITO SI RECTE
FIRST DISTRICT
STATE OF FLORIDA

M A N D A T E

from

FIRST DISTRICT COURT OF APPEAL

STATE OF FLORIDA

This case having been brought to the Court, and after due consideration the Court having issued its opinion;

YOU ARE HEREBY COMMANDED that further proceedings, if required, be had in accordance with the opinion of this Court, and with the rules of procedure, and laws of the State of Florida.

WITNESS the Honorable Lori S. Rowe, Chief Judge, of the District Court of Appeal of Florida, First District, and the seal of said Court at Tallahassee, Florida, on this day.

October 06, 2022

Marilyn Rosanne Hunt v.
James Lightfoot and State Farm Automobile Insurance Company

DCA Case No.: 1D20-2303
Lower Tribunal Case No.: 16-2012-CA-001281

KRISTINA SAMUELS, CLERK
District Court of Appeal of Florida, First District

th
Mandate and opinion to: Hon. Jody Phillips, Clerk
cc: (without attached opinion)

Anthony J. Russo
Brian Bellavia
Daniel L. Greene
Dennis P. Dore
Howard C. Coker
John Walter Weihmuller
Michael B. Wedner
Samantha D. Dunlap-Smart
Brent G. Steinberg
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DISTRICT COURT OF APPEAL
FIRST DISTRICT
STATE OF FLORIDA
2000 DRAYTON DRIVE
TALLAHASSEE, FLORIDA 32399-0950
(850) 488-6151

KRISTINA SAMUELS
CLERK OF THE COURT

DANA SHARMAN
CHIEF DEPUTY CLERK

October 13, 2022

Re: Marilyn Rosanne Hunt vs James Lightfoot and State Farm Automobile Insurance Company

Appeal No: 1D20-2303
Trial Court No.: 16-2012-CA-001281
Trial Court Judge: Hon. KATIE L. DEARING
If Crim, LT NOA date: 08/04/2020

Dear Mr. Tomasino:

Attached is a certified copy of the Notice Invoking the Discretionary Jurisdiction of the Supreme Court, pursuant to Rule 9.120, Florida Rules of Appellate Procedure. Attached also is this Court's opinion or decision relevant to this case.

_✓_ The filing fee prescribed by Section 25.241(2), Florida Statutes, was received by this court.

___ The filing fee prescribed by Section 25.241(2), Florida Statutes, was not received by this court.

___ Petitioner/Appellant has previously been determined insolvent by the circuit court or our court in the underlying case.

___ Petitioner/Appellant has already filed, and this court has granted, petitioner/appellant's motion to proceed without payment of costs in this case.

No filing fee was required in the underlying case in this court because it was:

___ A summary Appeal, pursuant to Rule 9.141
___ From the Unemployment Appeals Commission
___ A Habeas Corpus proceeding
___ A Juvenile case
___ Other _____

If there are any questions regarding this matter, please do not hesitate to contact this Office. **A motion postponing rendition pursuant to Florida Rule of Appellate Procedure 9.020(i) ____ is or _✓_ is NOT pending in the lower tribunal at the time of filing this notice.**

Sincerely yours,

Kristina Samuels
Clerk of the Court

By: _____

Deputy Clerk