IN THE SUPREME COURT OF FLORIDA

65086

IN RE: AMENDMENTS TO)
)
RULES OF SUMMARY PROCEDURE)

BRIEF OF THE SUMMARY PROCEDURE RULES COMMITTEE

NATH C. DOUGHTIE
Chairman

Issue: Should Florida Rule of Summary Procedure 7.090 be amended to provide for a uniform pretrial procedure for all proceedings under the Summary Rules?

INTRODUCTION

The Summary Procedure Rules Committee proposed several changes to the Rules which, with one exception, were approved by the Board of Governors. The Board's unanimous position was that the use of a pretrial procedure in Summary Proceedings should be optional, and the Summary Rules Committee, despite the position of the Board and substantial sentiment to the contrary, feels a pretrial procedure is so superior that it should be standardized.

EXISTING PROCEDURE

Under the Rules as they now exist, each defendant is served a Statement of Claim and is provided a Notice to Appear. This appearance date may be designated as a trial date or as a pretrial date depending on the custom of the county. The existing Rules do permit an initial trial date to be converted into a pretrial if the issues so dictate. The proposed Rule change would mandate an initial pretrial, but allow the parties to proceed directly to trial if both agreed.

ARGUMENT

The best argument against the proposed change is that the local courts now have an optional pretrial and are in the best position to determine what is best for their locality. A number of county judges polled by Board members were of this opinion. Also, it is argued that there is no real need for statewide uniformity since the Summary Rules are designed for use by nonattorneys who just appear in one court.

The Committee supports the adoption of a uniform pretrial procedure for the following reasons:

1. Litigant Economy. Under Summary Rules, there is no requirement for an answer, so there is no way to determine if a claim is contested prior to trial or pretrial. If no pretrial is used, a party, such as a heating/air conditioning repair service, suing on several claims would have to be prepared to proceed to trial with each individual serviceman present when none of the claims were contested. Under a pretrial procedure, multi-issue matters may be partially resolved, thus eliminating the need for a witness as to damages when the only contested issue is liability. Even though two trips to court are needed for the small percentage of cases actually going to trial, the total time lost for litigants is much less since the cases to be tried can be scheduled for a time certain, and the parties are not forced to wait on an unscheduled basis.

2. Judicial Economy. Judges preferring to schedule trials directly may enjoy the days when no cases go to trial, but this is certainly not an economical way to allocate judicial time. The judge that overcompensates by scheduling numerous cases simply works a hardship on the litigants. The pretrial procedure also allows the judge a set time to dispose of the many motions which are filed (many of which are not even permitted under Summary Rules). Most of these motions can be quickly disposed of but, unless a pretrial is used, the lay litigant usually has no idea how to obtain judicial time to hear a motion for change in venue or improper motions such as a motion to dismiss for failure to state a cause of action.

3. General Administration of Justice. A pretrial procedure helps prevent surprise, and allows the court to give advance advice to nonattorneys on matters of law and evidence. The pretrial conference is the proper place to allow the application of limited pretrial discovery where, for example, an attorney represents an out-of-state plaintiff and the defendant denies the claim. The proposed rule would still allow for the situation in a small, uncrowded county where both parties were ready for trial and the judge had time to proceed directly to trial.

CONCLUSION

The Committee feels the advantages of a pretrial procedure so far outweigh the optional system that the pretrial system be given mandatory statewide application.

Respectfully submitted,

NATH C. DOUGHTIE
Chairman
The Florida Bar, Summary
Procedure Rules Committee
Alachua County Courthouse
Room 206
Gainesville, Florida 32601
904/374-3644

NCD/dwm