

Supreme Court of Florida

No. 65,086

THE FLORIDA BAR: IN RE RULES OF SUMMARY PROCEDURE

[September 13, 1984]

PER CURIAM.

Appended to this order are the amended and new rules of the Florida Rules of Summary Procedure which will govern all proceedings within their scope after 12:01 a.m. January 1, 1985. Deletions are indicated by use of struck-through type. New language is indicated by underscoring.

We have in almost every respect adopted the recommendations of the Bar committee and provide the following index as a brief overview of the changes represented by the new or amended rules.

Rule 7.010. Title and Scope - Raises scope to \$2,500.

Rule 7.070. Method of Service of Process - Clarifies service on out-of-state defendants and allows substitute service.

Rule 7.090. Appearance; Defensive Pleadings; Trial Date - Requires plaintiff to appear; requires use of pretrials; requires personal attendance at the initial appearance; governs the time between pretrial and trial.

Rule 7.110. Dismissal of Actions - Defines reasonable time as 30 days.

Rule 7.130. Continuances and Settlements - Allows judgment on defaults after settlement upon affidavit without notice.

Rule 7.140. Trial - Allows telephone testimony of nonparty witnesses.

Rule 7.150. Jury Trials - Deletes jury trial cost deposit.

Rule 7.170. Default; Judgment - Establishes minimum time between service and default.

Rule 7.180. Motions for New Trial; Time For; Contents - Clarifies the time in which a motion for new trial may be made.

We would note that we have modified the committee's suggested Rule 7.180 to make it consistent with the Florida Rule of Civil Procedure 1.530 as modified in the 1985 revision.

All rules and statutes in conflict with the following rules are hereby superseded as of the effective date of this revision. Any statute not in conflict shall remain in effect as a rule promulgated by the Supreme Court. The committee notes are not adopted by the Court.

It is so ordered.

BOYD, C.J., ADKINS, OVERTON, ALDERMAN, McDONALD, EHRLICH and SHAW, JJ., Concur

RULE 7.010. TITLE AND SCOPE

(a) (NO CHANGE)

(b) Scope. These rules are applicable to all actions at law of a civil nature in the county courts in which the demand or value of property involved does not exceed ~~\$1,500.00~~ \$2,500.00 exclusive of costs, interest and attorneys' fees; if there is a difference between the time period prescribed by these rules and by Section 51.011, Florida Statutes, the statutory provision shall govern.

RULE 7.070. METHOD OF SERVICE OF PROCESS

Service of process shall be effected as provided by law, or as provided by Florida Rules of Civil Procedure 1.070. Constructive service or substituted service of process may be effected as provided by law. Service of process on Florida residents only may also be effected by registered mail, return receipt signed by the defendant, or someone authorized to receive mail at the residence or principal place of business of the defendant, the cost of which is in addition to the filing fee.

Note

1984 Revision. Mail service is allowed on persons authorized to receive mail for the defendant similar to substituted service by the sheriff on a resident of the defendant's abode. The proposal clarifies the rule that service by mail is not available for out-of-state defendants.

RULE 7.090. APPEARANCE; DEFENSIVE PLEADING; TRIAL DATE

(a) Appearance. On the date and time appointed in the notice to appear the plaintiff and defendant shall appear personally or by counsel.

(b) The notice to appear shall specify that the initial appearance shall be for a pretrial conference. At the pretrial conference, all matters specified in Rule 1.200(a) Florida Rules of Civil Procedure shall be considered.

~~(b)~~ (c) Defensive Pleadings. Unless required by order of court, written pretrial motions and defensive pleadings are not necessary. If filed, copies of such pleadings shall be served on all other parties to the action at or prior to trial; the pretrial conference or within such time as the court may designate. The filing of a defensive pleading shall not excuse the personal appearance of a party or his attorney on the initial appearance date.

~~(e)~~ (d) Trial Date. The court shall provide set the case for trial of an action on the appearance date or not more than 60 days from the date of personal service of process or the date the return receipt was signed under service by mail or the last publication in constructive service; the pretrial conference. At least 15 10 days notice of the time of trial shall be given. whether the time of trial is scheduled on the

appearance date or thereafter. Twenty days notice shall be given if any of the defendants reside outside the county in which the court sits.

The parties may stipulate to a shorter time with the approval of the court. This rule does not apply to actions to which Chapter 51, Florida Statutes, applies.

Note

1984 Revision. This change requires the use of a pretrial procedure and requires both parties to attend the pretrial conference which can be used to resolve pretrial motions. The use of a pretrial previously varied from county to county.

RULE 7.110. DISMISSAL OF ACTIONS

(a) (NO CHANGE)

(b) (NO CHANGE)

(c) (NO CHANGE)

(d) (NO CHANGE)

(e) Failure to Prosecute. All actions in which it affirmatively appears that no action has been taken by filing of pleadings, order of court or otherwise for a period of six months shall be dismissed by the court on its own motion or on motion of any interested person, whether a party to the action or not, after ~~reasonable~~ 30 days notice to the parties, unless a party before the hearing on the motion shows good cause in writing why the action should remain pending.

Note

1984 Revision. Subsection (e) is changed to allow more time for an attorney to inquire about the status of a claim. Many actions are disposed of by a stipulation to pay, and it may take longer than ten days to determine the amount due, if any.

RULE 7.130. CONTINUANCES AND SETTLEMENTS

(a) (NO CHANGE)

(b) Settlements. Settlements in full or by installment payments made by the parties out of the presence of the court are encouraged. The plaintiff shall notify the clerk of settlement and the case may be dismissed or continued pending payments. Upon failure of a party to perform the terms of any stipulation or agreement for settlement of the claim before judgment, the court may enter appropriate judgment without notice upon filing an affidavit by the creditor of the amount due upon request and after proper notice.

Note

1984 Revision. Subsection (b) is altered to conform with Rule 7.210(c), which provides for an affidavit but no notice.

RULE 7.140. TRIAL

(a) Time. The trial shall be had at the time fixed in the notice to appear or such time thereafter as the judge shall designate.

The trial date shall be set by the court at pretrial.

(b) (NO CHANGE)

(c) Pretrial. If, at the time set for trial, it appears to the court that for good cause the trial should not proceed, the time may be utilized for a pretrial conference to determine the issues so that at the next appointed trial date the trial can be held. This should narrow contested factual issues. The case may proceed to trial with the consent of both parties.

(d) (NO CHANGE)

(e) (NO CHANGE)

(f) How Conducted. The trial may be conducted informally but with decorum befitting a court of justice. The rules of evidence applicable to trial of civil actions apply but are to be liberally construed. At the discretion of the court and upon agreement of the parties, testimony of a nonparty witness may be presented over the telephone.

Note

1984 Revision. (a) Changed to conform this rule with the requirement for pretrials.

(c) Allows the cases to proceed to trial with consent of the parties.

(f) This is similar to the proposed amendment to the Civil Rules to allow depositions by telephone. Since the court has discretion to allow this testimony, all procedural safeguards could be maintained by the court. Since the court is also the trier of fact, the testimony could be rejected if unreliable.

RULE 7.150. JURY TRIALS

Jury trials may be had upon written demand of the plaintiff at the time of the commencement of his suit, or by the defendant within five days after service of notice of suit or at pretrial conference, if any, by depositing with the clerk such sum as the judge may fix as reasonable to secure the payment of cost incurred by reason of a jury trial, or otherwise jury trial shall be deemed waived. The cost of summoning and paying the jurors may be taxed as costs in the case.

Note

1984 Revision. The purpose of the cost deposit formerly required was to discourage frivolous demands for jury trials. The committee feels that there should be no distinction between the taxation of costs in a \$300.00 claim or a \$3,000.00 claim.

RULE 7.170. DEFAULT; JUDGMENT

(a) Default. If defendant does not appear at the scheduled time, the plaintiff is entitled to a default to be entered by either the judge or

clerk. No default shall be entered prior to the expiration of 7 days from the date of service of process.

(b) (NO CHANGE).

Note

1984 Revision. This change establishes a uniform minimum time between service of process and the initial appearance (pretrial) date. This is currently not standard throughout the state.

RULE 7.180. MOTIONS FOR NEW TRIAL; TIME FOR;
CONTENTS

(a) Time. A motion for new trial shall be filed not later than 10 days after return rendition of the judgment; of verdict in a jury action or the date of filing of the judgment in a nonjury action. A timely motion may be amended to stat new grounds at any time before it is disposed of in the discretion of the court.

(b) (NO CHANGE)

(c) (NO CHANGE)

Note

1984 Revision. This change will be in conformity with the proposed amendment to Rule 1.530, Florida Rules of Civil Procedure.

Original Proceeding - Florida Rules of Summary Procedure

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for Petitioner

Paul Sidney Elliott, County Court Judge, Thirteenth Judicial
Circuit, Tampa, Florida, on behalf of the Conference of County
Court Judges of Florida; and Leo O. Myers, Jacksonville, Florida,

in support of proposed Amendments