

DA 6-1-88

IN THE SUPREME COURT OF FLORIDA

FILED

MAY 28 1988

CLERK, SUPREME COURT  
By *[Signature]*  
Deputy Clerk

IN RE:  
OPPOSITION TO PROPOSED AMENDMENT TO  
SMALL CLAIMS RULE 7.010(b)

71,687

Comments from the Florida Conference of County  
Court Judges to The Florida Bar Small Claims Rules  
Committee proposal to change Small Claims Rule  
7.010(b) to increase the jurisdiction of the  
Small Claims Rules from \$2,500 to \$5,000

Respectfully submitted,

Judge Harvey L. Goldstein  
Conference of County Court Judges  
73 W. Flagler Street, #606  
Miami, Florida 33130

REFERENCES

- Bridenback, Michael L., Elizabeth Purdum and Laura Brock  
1982 A Report on Small Claims Courts in Florida.  
Office of the State Courts Administrator,  
Supreme Court of Florida
- Weller, Steven and John C. Ruhnka  
1978 Small Claims Courts Operations and Prospects  
Research Essay Series Number E006  
National Center for State Courts: Williamsburg, VA.

## SUMMARY

The Florida Conference of County Court Judges opposes The Florida Bar's proposal to increase the jurisdiction of the Small Claims Rules from \$2,500 to \$5,000 because:

- (1) Damages between \$2,500 and \$5,000 are not small claims.
- (2) The increased jurisdiction may adversely impact on the operation of the court and clerk's office. County Court Judges may have less time to speak to and work with unrepresented litigants during small claims pre-trial hearings. The clerk's office may be required to expend more time and more personnel to assist unrepresented litigants.
- (3) The people's court role of the Court would be diminished in relation to the collection court role.
- (4) The Bar's proposal would abolish the Florida Rules of Civil Procedure in County Court except for landlord and tenant cases. Florida's County Court Judges want and need the experience working with the Civil Rules of Procedure.

## I

A large majority of the Florida Conference of County Judges meeting in convention voted to oppose The Florida Bar's proposal to change Small Claims Rule 7.010(b). The Conference believes that damages between \$2,500 and \$5,000 are significant amounts of money to the majority of citizens. Litigants with these claims are entitled to the same justice and due process as litigants with claims over \$5,000.

Jurisdiction of the Small Claims Rules was last increased from \$1,500 to \$2,500 in 1984. There hasn't been any significant economic, social or legal changes that would warrant a jurisdictional change at this time. The tremendous inflation of the late 1970s and early 1980s has ended.

The present jurisdictional cap of \$2,500 for small claims is one of the largest jurisdictions of any small claims court in the United States. With an increase in the jurisdiction to \$5,000 Florida may have the largest jurisdiction for small claims in the United States.

## II

SCR 7.140(d) instructs County Court Judges to assist parties in settling controversies by conciliation or compromise. Further, the Judge is required to assist unrepresented parties on: (1) procedure to be followed, (2) presentation of material

evidence, and (3) questions of law. Also, it is the Judge's responsibility to create an atmosphere of informality so that lay people will feel comfortable with court procedures.

An increase of 12% as suggested by The Florida Bar in the number of small claims cases may adversely impact on a Judge's available time to work with unrepresented litigants. The quality of the small claims pre-trial hearings from the layperson's perspective may suffer as the Court processes an increased number of collection cases for business creditors.

The proposed change will also have the following impact on the operation of the Court:

- (1) An increased number of cases will have to be set for trial within 60 days from the pre-trial hearing pursuant to SCR 7.090(d). This may create scheduling problems and less flexibility for court calendaring.
- (2) Cases between \$2,500 and \$5,000 now subject to dismissal for lack of prosecution after one year will instead be subject to dismissal after six months pursuant to SCR 7.150(e).
- (3) The Clerk of the Court will be required to assist more parties pursuant to SCR 7.050(d). This may increase the operational cost of the Clerk's office.
- (4) The number of cases not closed will increase pursuant to SCR 7.210 which permits Stays of Judgment and Execution. For example, a stay of judgment or execution with a \$100 per month payment plan for a \$4,000 debt would keep the court file open for three years. A \$50 per month payment plan would double that time to six years. At the Court's discretion, plaintiffs may lose the right to execute on judgments between \$2,500 and \$5,000.

In addition, it should be noted that the Civil Rules of Procedure provide for 20 days to respond to a complaint before a default can issue. However, the Small Claims Rules do not

require any minimum notice of the pretrial hearing date before a default can be entered pursuant to SCR 7.170.

Further, pursuant to The Florida Bar's proposal to amend SCR 7.050, corporations will be able to fully participate in all court proceedings without legal counsel.

Finally, as County Court Judges normally prepare and mail orders and judgments for unrepresented litigants, the cost of operating a County Court Judge's office will increase in time and money.

### III

Small claims courts are generally perceived as courts where ordinary people settle their claims without expense, delay and technicality in a simple and informal proceeding. They are summary procedure courts in that written pleadings are not required; motion practice, motion hearings and third party practice are not permitted as a matter of right; discovery can be limited; and trials are informal with liberal construction of the rules of evidence.

Summary Procedure can be an effective and relatively inexpensive process to prosecute collection cases. As a result, in a study published in 1982, it was found that 82.3% of the Plaintiffs in small claims cases were businesses and 76.8% of the defendants were individuals. Further, over 80% of the individual defendants were debtors to business creditors because of consumer purchases, loans and/or medical services rendered. Bridenback, A

Report on Small Claims in Florida, 1982, Office of State Courts Administrator, Supreme Court of Florida. The Bar's proposal will increase the number of collection cases. Many County Court Judges believe the public perception of the Small Claims Court as a people's court will be diminished with the rule change.

It is ironic to note that the only material difference in the title sections of the Civil and Small Claims Rules, FRCP 1.010 and SCR 7.010, is the word "just." It is left out of SCR 7.010.

FRCP 1.010: These rules shall be construed to secure the just, speedy and inexpensive determination of any action.

SCR 7.010: These rules shall be construed to implement the simple, speedy and inexpensive trial of actions at law in county courts.

#### IV

Working with the Florida Rules of Civil Procedure can be analogous to piano and tennis practice. One can only become proficient with the Civil Rules by using them on a somewhat regular basis.

The Florida Bar's proposal abolishes the Civil Rules in County Court except for landlord and tenant cases and exceptional small claims cases. Thus, County Court Judges would be denied the opportunity to develop an important part of the craft of judging.

Further, many Judges believe that a defendant is more likely to retain an attorney to respond to a 20 day summons than a notice to appear for a small claims pre-trial hearing. The

appearance of attorneys is appreciated by many County Court Judges. Besides the fact that many attorneys help to narrow issues and resolve cases, they, like court reporters, provide a certain amount of accountability to the County Court. The public is better served when Judges occasionally experience adversarial contests governed by the Rules of Civil Procedure.



## CONCLUSION

The question of setting the jurisdiction of the Small Claims Rules is a policy question usually decided by the legislature in other states. In amending existing statutory law it is presumed the moving party should show need and public interest in the change.

In this case, the moving party has failed to show a substantial need to change the present jurisdictional limits. Further, there is no showing how the change would serve the public interest.

On the other hand, the Florida Conference of County Court Judges believes that the limited number of cases in County Court now governed by the Rules of Civil Procedure serve a good purpose. Further, the Conference believes the proposed change may have a negative impact on the Small Claims Court, particularly in the court's public image.