

IN THE SUPREME COURT OF FLORIDA

71,687

IN RE:

AMENDMENTS TO  
THE SMALL CLAIMS RULES

:  
:  
:  
:  
:  
:  
:

**FILED**

SID B. WHITE

JAN 7 1993

CLERK, SUPREME COURT

PETITION OF THE FLORIDA BAR  
SMALL CLAIMS RULES COMMITTEE  
SUBMITTING PROPOSED CHANGES TO  
THE SMALL CLAIMS RULES

By [Signature]  
Deputy Clerk

The Small Claims Rules Committee of The Florida Bar, pursuant to the procedures established by Rule of Judicial Administration 2.130(c), submits as a separate volume its quadrennial report of proposed changes to The Small Claims Rules.

During the four years after the last quadrennial report of The Small Claims Rules Committee, the Committee has, following its own rules of procedure, considered all proposals for rule changes which have been suggested to it by interested members of the Bar, judges, lay persons or organizations. This report is the result of considered action by the Committee on each proposal but includes only those proposals which the Committee determined to be meritorious. The vote of the Committee as to each change is shown in the "Reasons" column of the report.

In accordance with Rule 2.130, the Committee's report was submitted to THE FLORIDA BAR BOARD OF GOVERNORS; the action of The Board of Governors on each proposed rule change, with the Board vote on each, is shown in the "Reasons" column of the report.

The reasons given for the proposed rule change are not necessarily the Committee Notes which will be published with any rule change approved by the Court. The Committee Notes are not being submitted to the Court for its approval; but the Committee suggests that should the Court deem it helpful to publish its comments on the rule change, it do so by "Court Notes" or "Court Comments". In most instances, however, the Committee Notes to a rule change will consist substantially of the language set forth as "Reasons".


REGUEST FOR ORAL ARGUMENT


This Committee requests oral argument on the proposed rule changes at a time convenient to the Court.

142  
attached: 1-20

NOTICE TO THE BAR

The proposed rule changes or a summary will be published in The Florida Bar News before oral argument. The notice will request that any comments be in writing and submitted to the Court.

  
\_\_\_\_\_  
JOHN F. HARKNESS, JR.  
Executive Director  
The Florida Bar  
The Florida Bar Center  
Tallahassee, Fl. 32301-8226  
(904)222-5286

  
\_\_\_\_\_  
Judge PAUL SIDNEY ELLIOTT  
Chairman  
The Florida Bar Small  
Claims Rule Committee  
P. O. Box 678  
Tampa, Fl. 33601  
(813)225-1314

OLD RULE

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 \$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.

NEW RULE

Rule 7.010 Title and Scope

(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 ~~\$2,500.00~~ \$5,000.00 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.

REASON FOR CHANGE

A statewide study by the committee of the composition of the civil cases filed in the county court found that over the years a very small percentage of the cases filed claimed an amount between \$2500 and \$5000. For example of all the County Civil cases filed in 1986 25.0% were landlord/tenant eviction cases, 61.5% were small claims cases and 11.9% were civil claims for an amount between \$2500 and \$5000, and 1.6% were replevin and other cases. It was therefore the committee's near unanimous decision that the scope of the Small Claims Rules be expanded to include this relatively small percentage of cases. A further advantage considered was a statewide uniform procedure for handling all civil claims in county court (landlord/tenant eviction cases are handled pursuant to F.S. 51.011 Summary Procedures).

COMMITTEE VOTE: FOR: 11  
AGAINST: 1

BOARD OF GOVERNORS RECOMMENDATION:  
APPROVED FOR: 27  
AGAINST: 2

OLD RULE

Rule 7.050 COMMENCEMENT ACTION,  
STATEMENT OF CLAIM

(a) Commencement

(1) No Change

(2) Party Not Represented by attorney to sign. A party, individual, or corporation, handling such cause, shall sign his or its statement of claim or other paper and state his or its address and telephone number, including area code. Provided, however, if the trial court in its discretion shall determine that the plaintiff is engaged in the business of collecting claims, and holds such claim being sued upon, by purchase, assignment, or management arrangement in the operation of such business, the court may require such corporation to provide counsel in the prosecution of the cause.

NEW RULE

Rule 7.050 COMMENCEMENT ACTION,  
STATEMENT OF CLAIM

(2) Party Not Represented by attorney to sign. A party, individual, or corporation, handling such cause, shall sign his or its statement of claim or other paper and state his or its address and telephone number, including area code. Provided, however, if the trial court in its discretion shall determine that the plaintiff is engaged in the business of collecting claims, and holds such claim being sued upon, by purchase, assignment, or management arrangement in the operation of such business, the court may require such corporation to provide counsel in the prosecution of the cause. A corporation may be represented at any stage of the trial court proceedings by an officer of the corporation or any employee authorized by an officer of the corporation.

REASON FOR CHANGE

To clarify who may appear and represent a corporation in a small claims case.

COMMITTEE VOTE: FOR: 10  
AGAINST: 0

BOARD OF GOVERNORS RECOMMENDATION:  
APPROVED FOR: 29  
AGAINST 0

OLD RULE

Rule 7.050

(a) No Change

(b) **Parties.** The names, and addresses of all parties or their attorneys, if any must be stated therein.

(c) No Change

(d) No Change

(e) None

NEW RULE

Rule 7.050

(b) **Parties.** The names, and addresses and telephone numbers, including area code of all parties or their attorneys, if any, must be stated therein. Additionally, attorneys shall include their Florida Bar number on all papers filed with the Court.

(e) Replevin. In those Replevin cases to which these rules are applicable, the Clerk of the County Court shall set the hearing required by Section 78.065(2)(a), Florida Statutes (Pre-Judgment Replevin Order to Show Cause Hearings) and Rule 7.050(d), Small Claims Rules (Pre-Trial Conferences) at the same time.

REASON FOR CHANGE

To conform Small Claims Rules with Rule 2.060(d) and 2.060(e)

(1st sent.) COMMITTEE VOTE: FOR: 12  
AGAINST: 0

BOARD OF GOVERNORS RECOMMENDATION:  
APPROVED FOR: 30  
AGAINST: 0

To conform to proposed Amendment to Rules of Judicial Administration

(2nd sent.) COMMITTEE VOTE: FOR: 9  
AGAINST: 0

BOARD OF GOVERNORS RECOMMENDATION:  
APPROVED FOR: 30  
AGAINST: 0

Require that the Order to Show Cause hearing required in Small Claims Replevin Cases and the Pre-Trial Conference required by The Small Claims Rules be held at the same time to save time and avoid confusion.

COMMITTEE VOTE: FOR: 12  
AGAINST: 0

BOARD OF GOVERNORS RECOMMENDATION:  
APPROVED FOR: 30  
AGAINST: 0

OLD RULE

RULE 7.060.PROCESS

A summons entitled Notice to Appear stating the time and place of hearing shall be served on the defendant. The Summons or Notice to Appear shall inform the defendant in a separate paragraph containing bold type, of his right to venue. This paragraph shall read:

RIGHT TO VENUE. The law gives the person or company who has sued you the right to file suit in any one of several places listed below. However, if you have been sued in any place other than one of these places, you, as the defendant, have the right to request that the case be moved to a proper location or venue. A proper location or venue may be one of the following:

1. Where the contract was entered into;
2. If suit is on an unsecured promissory note, where note is signed or where maker resides;
3. If the suit is to recover property or to foreclose a lien, where the property is located;
4. Where the event giving rise to suit occurred.

NEW RULE

RULE 7.060. PROCESS AND VENUE

A summons entitled Notice to Appear stating the time and place of hearing shall be served on the defendant. The Summons or Notice to Appear shall inform the defendant in a separate paragraph containing bold type, of his right to venue. This paragraph shall read:

RIGHT TO VENUE. The law gives the person or company who has sued you the right to file suit in any one of several places listed below. However, if you have been sued in any place other than one of these places, you, as the defendant, have the right to request that the case be moved to a proper location or venue. A proper location or venue may be one of the following:

1. Where the contract was entered into;
2. If suit is on an unsecured promissory note, where note is signed or where maker resides;
3. If the suit is to recover property or to foreclose a lien, where the property is located;
4. Where the event giving rise to suit occurred.
5. Where any one or more of

REASON FOR CHANGE

5. Where any one or more of the defendants sued reside;

6. Any location agreed to in a contract.

If you, as a defendant, believe the plaintiff has not sued in one of these correct places, you may appear on your court date and orally request a transfer or you may file a written request for transfer, in affidavit form (sworn to under oath) with the court seven days prior to your first court date and send a copy to the plaintiff or plaintiff's attorney, if any.

A copy of the statement of claim shall be served with said notice.

the defendants sued reside;

6. Any location agreed to in a contract.

7. In an action for money due, if there is no agreement as to where suit may be filed, proper venue lies in the county where payment is to be made.

If you, as a defendant, believe the plaintiff has not sued in one of these correct places, you may appear on your court date and orally request a transfer or you may file a written request for transfer, in affidavit form (sworn to under oath) with the court seven days prior to your first court date and send a copy to the plaintiff or plaintiff's attorney, if any.

A copy of the statement of claim shall be served with ~~said~~ notice the summons/notice to appear.

Require in the "Right to Venue Notice" on the Summons/Notice to Appear that a proper venue also lies in the county where payment is to be made. This conforms with Florida law.

Clarify the fact that the notice is now known as the Summons/Notice to Appear.

COMMITTEE VOTE: FOR: 12  
AGAINST: 0

BOARD OR GOVERNORS RECOMMENDATION:  
APPROVED FOR: 30  
AGAINST: 0

OLD RULE

Rule 7.090 Appearance; Defensive Pleadings; Trial Date

(a) No Change

(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.

(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 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.

(d) No Change

(e) None

NEW RULE

Rule 7.090 Appearance; Defensive Pleadings; Trial Date

(b) The summons/notice to appear shall specify that the initial appearance shall be for a pretrial conference. The initial Pre-Trial Conference shall be set by the clerk not more than 35 days from the date of the filing of the action.

The judge shall personally conduct the Pre-Trial Conference. At the Pre-Trial Conference, all matters specified in Rule 1.200(a) Florida Rules of Civil Procedure the following matters shall be considered:

- (1) the simplification of issues;
- (2) the necessity or desirability of amendments to the pleadings;
- (3) the possibility of obtaining admissions of fact and of documents that avoid unnecessary proof;
- (4) the limitations of the number of witnesses;
- (5) the possibilities of settlement; and
- (6) such other matters as the Court in its discretion deems necessary.

REASON FOR CHANGE

(b) 1st Sentence - Chairman's Clarification

2nd Sentence - Require the Clerk to set the initial Pre-Trial Conference within a reasonable time after filing of the action taking into consideration the fact that the time standards guideline for small claims cases is 95 days.

(2nd sent.) COMMITTEE VOTE: FOR: 8  
AGAINST: 0

BOARD OF GOVERNORS RECOMMENDATION:  
APPROVED FOR: 30  
AGAINST: 0

3rd Sentence - Since the Pre-Trial Conference is a judicial proceeding the Committee decided the Rules should direct that the Pre-Trial Conference be presided over by a Judge so that the purposes of the Pre-Trial Conference can best be accomplished.



Form 7.322 shall and Form 7.323 may be used in conjunction with this rule.

**(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 the pretrial conference or within such time as the court may designate. The filing of a motion or a defensive pleading shall not excuse the appearance of a party or his attorney on the initial appearance date (Pre-Trial conference)

**(e) WAIVER OF APPEARANCE AT PRE-TRIAL CONFERENCE.** Where all parties are represented by an attorney counsel may agree to waive personal appearance at the initial Pre-Trial Conference, if a written agreement of waiver signed by all attorneys is presented to the Court prior to or at the Pre-Trial Conference. Said agreement shall contain a short statement of the disputed issues of fact and/or law, the number of witnesses expected to testify, an estimate of the time needed to try the case and any stipulations of fact. The Court

(3rd sent.) COMMITTEE VOTE: FOR: 10  
AGAINST: 0

BOARD OF GOVERNORS RECOMMENDATION:  
APPROVED FOR: 24  
AGAINST: 4

4th Sentence - State within the Small Claims Rules what matters shall be considered at the Pre-Trial Conference rather than by reference to Rule 1.220(a) Florida Rules of Civil Procedure which has been amended several times and is generally not applicable to small claims cases.

(4th sent.) COMMITTEE VOTE: FOR: 15  
AGAINST: 0

BOARD OF GOVERNORS RECOMMENDATION:  
APPROVED FOR: 30  
AGAINST: 0

5th Sentence - Direct that New Form 7.322 shall and that New Form 7.323 may be used statewide.

(5th sent.) COMMITTEE VOTE: FOR: 10  
AGAINST: 0

BOARD OF GOVERNORS RECOMMENDATION:  
APPROVED FOR: 30  
AGAINST: 0

shall forthwith set the case  
for trial within the time  
prescribed by these rules.

(c) Clarifies that a personal appearance is required at the Pre-Trial Conference when a defense motion is filed.

(c) COMMITTEE VOTE: FOR: 12  
AGAINST: 0

BOARD OF GOVERNORS RECOMMENDATION:  
APPROVED FOR: 30  
AGAINST: 0

(e) Adds a provision for waiving counsels appearance at the Pre-Trial Conference where all parties are represented by counsel.

(e) COMMITTEE VOTE: FOR: 11  
AGAINST: 1

BOARD OF GOVERNORS RECOMMENDATION:  
APPROVED FOR: 26  
AGAINST: 0

OLD RULE

Rule 7.100 Counterclaims,  
Setoffs, Transfer When Excessive  
and Deposit Therefor.

- (a) No Change
- (b) No Change
- (c) No Change
- (d) No Change
- (e) New

NEW RULE

Rule 7.100 Counterclaims,  
Setoffs, Third-Party Complaints,  
Transfer When Jurisdiction  
Exceeded.

(e) A defendant may cause a  
statement of claim to be served  
upon a person not a party to the  
action who is or may be liable  
to him for all or part of the  
plaintiffs claim against him. A  
defendant must obtain leave of  
court on motion made at the  
initial pre-trial conference and  
must file the third-party  
complaint within such time as  
the court may allow. The clerk  
shall schedule a supplemental  
pre-trial conference and on the  
date and time appointed in the  
notice to appear the third-party  
plaintiff and the third-party  
defendant shall appear  
personally or by counsel. If  
additional time is needed for  
the third-party defendant to  
prepare a defense, the court may  
continue the action. Any party  
may move to strike the third-  
party claim or for its severence  
or sperate trial. When a counter  
claim is asserted against the  
plaintiff the plaintiff may  
bring in a third-party under  
circumstances which would  
entitle a defendant to do so  
under this rule.

REASON FOR CHANGE

Provides for and authorizes  
third party claims so that all  
issues may be addressed and  
resolved. Also provides for a  
title change.

COMMITTEE VOTE: FOR: 10  
AGAINST: 0

BOARD OF GOVERNORS RECOMMENDATION:  
APPROVED FOR: 30  
AGAINST: 0

L

OLD RULE

Rule 7.140. Trial

- (a) No Change
- (b) No Change
- (c) No Change
- (d) No Change
- (e) No Change

(f) How Conducted.

The trial may be conducted informally but with the decorum befitting a Court of Justice. 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 non party witness may be presented over the telephone.

NEW RULE

(f) HOW CONDUCTED.

The trial may be conducted informally but with the decorum befitting a Court of Justice. 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 non party any party or witness may be presented over the telephone. Additionally, at the discretion of the Court an attorney may represent a party or witness over the telephone without being physically present before the Court.

REASON FOR CHANGE

Extends the taking of testimony over the telephone to include parties, deletes the agreement of the parties provision and adds authorization for an attorney to represent a party or witness over the telephone without being physically present before the court.

COMMITTEE VOTE: FOR: 10 (3rd Sent.)  
AGAINST 3

BOARD OF GOVERNORS RECOMMENDATION:  
APPROVED FOR: 22  
AGAINST: 2

COMMITTEE VOTE: FOR: 7 (4th Sent.)  
AGAINST: 0

BOARD OF GOVERNORS RECOMMENDATION:  
APPROVED FOR: 30  
AGAINST: 0

OLD RULE

Rule 7.210 Stay of Judgment  
and Execution

(a) Judgment or execution Stayed. When judgment is to be entered against a party, the judge may inquire and permit inquiry about the earnings and financial status of the party and has discretionary power to stay an entry of judgment, or if entered to stay execution upon such terms as are just and in consideration of a stipulation on the part of the judgment debtor to make such payments as will insure a periodic reduction of the judgment until it is satisfied.

NEW RULE

Rule 7.210 Stay of Judgment and  
Execution

(a) Judgment or Execution or Levy Stayed. When judgment is to be entered against a party, the judge may inquire and permit inquiry about the earnings and financial status of the party and has discretionary power to stay an entry of judgment, or if entered to stay execution or levy upon such terms as are just and in consideration of a stipulation on the part of the judgment debtor to make such payments as will insure a periodic reduction of the judgment until it is satisfied.

REASON FOR CHANGE

Adds the staying of levy as an alternative for the Court when arranging payment. Provides lien rights priority protection for judgment creditors.

COMMITTEE VOTE: FOR: 12  
AGAINST: 0

BOARD OF GOVERNORS RECOMMENDATION:  
APPROVED FOR: 30  
AGAINST: 0

OLD RULE

Rule 7.221 None

NEW RULE

Rule 7.221 HEARING IN AID OF EXECUTION

The Judge, at the request of the judgment creditor, shall order a judgment debtor to appear at a Hearing In Aid of Execution at a time certain 30 or more days from the date of entry of a judgment for the purpose of inquiring of the judgment debtor under oath as to earnings, financial status, and any assets available in excess of exemptions to be applied towards satisfaction of judgment. The provisions of this rule shall only apply to a judgment creditor who is a natural person and was not represented by an attorney prior to judgment. Forms 7.342, 7.343 and 7.344 shall be used in connection with this rule.

REASON FOR CHANGE

Provides a procedure for post judgment, Court assisted discovery for a natural person judgment creditors, unrepresented by counsel prior to judgment.

COMMITTEE VOTE: FOR: 10  
AGAINST: 4

BOARD OF GOVERNORS RECOMMENDATION:  
APPROVED FOR: 29  
AGAINST: 0