



COUNTY COURT
PINELLAS COUNTY

STATE OF FLORIDA

FILED
SID J. WHITE

JAN 11 1988

CLERK, SUPREME COURT

By _____
Deputy Clerk

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COUNTY BUILDING
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HORACE A. ANDREWS
COUNTY JUDGE

November 25, 1987

The Honorable Parker Lee McDonald
Chief Justice of the Supreme Court of Florida
The Supreme Court Building
Tallahassee, Florida 32399-1925

Re: Proposed Amendment to Rule 7.090
Small Claims Rules

Dear Mr. Chief Justice:

Please consider this letter when reviewing the recommendations of the Small Claims Rule Committee in amending Rule 7.090 of the Small Claims Rules to require a judge's presence at the Small Claims Pretrial Conference.

The County Judges of Pinellas County have long recognized and supported the concept of alternative dispute resolution as a means of disposition of small claims cases. As a result of that long-standing commitment the Courts of Pinellas County have instituted a number of programs whereby a nonjudicial officer conducts the mandatory pretrial conference in small claims proceedings. These procedures include the use of a hearings officer, the use of attorney-mediators, and the use of other mediation personnel.

The County Judges of Pinellas County have found that through the use of alternative personnel to conduct pretrial conferences, a great portion of cases may be disposed amicably through the mediative process and thereby result in a more cost effective means of judicial resolution of disputes. Mediation personnel are given no judicial power and perform none other than the ministerial functions of the Court.

For cases filed in Pinellas County by pro se plaintiffs against defendants located in Pinellas County, the Court has instituted a system whereby pretrial conferences are calendared at night, and the pretrial conference is presided over by an attorney-mediator. The parties are fully informed of the fact that the presiding officer is not a judge, and that his function as the presiding officer is merely to perform such ministerial functions as are necessary to present a settlement reached between the parties to the Court for adoption, or, in the alternative, to prepare the necessary documents for the judge to use in setting the cause for trial.

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cc: Judge Elliott

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The mediators, if settlement cannot be reached, prepare the pretrial order with the parties assistance in such a manner that the issues for trial are clearly delineated, witness and evidence lists are prepared, and any stipulations between the parties as to the facts of the case or amendments of pleadings which are required are incorporated therein. All documentation generated from these pretrial conferences is forwarded to the assigned judge for his review and adoption as an Order of the Court where appropriate. Where any settlement agreement or other paper does not meet the approval of the Court, the judge calendars an appropriate hearing or trial. Naturally, the mediator may not entertain a dispositional motion such as a Motion for Summary Judgment. When potentially dispositive motions arise such as motions to dismiss or motions for summary judgment, this process provides for the hearing of that motion immediately prior to trial or, in some cases, on a Judge's motion calendar prior to the trial date. Such motions are the exception rather than the rule. Venue problems are eliminated because the defendant is a resident of the county.

A similar procedure is utilized through the use of hearings officers or other mediation personnel during pretrial conference sessions calendared during working hours. In these cases the judge is nearby conducting hearings and trials and is available to the parties to handle motions in any matter which is not ministerial in nature.

Merely as an illustration, over the six month period from April 1 through October 31, 1987, only twenty-four (24%) percent of small claims cases scheduled before attorney-mediators were set for trial. The remaining seventy-six (76%) percent of the cases were disposed of either by amicable settlement between the parties, default or dismissal. These cases were thus able to progress to a resolution of their dispute without the necessity of using scarce judicial personnel. In those cases in which a settlement cannot be reached, the trial is promptly scheduled and presided over by the assigned judge. In the nine months of this program, we have found that the bench, bar and litigants are well served, and the disputes filed in the Small Claims Division of County Court reached a prompt and inexpensive resolution.

The Florida Legislature has, by enacting Chapter 87-173, Laws of Florida, stated its support for the utilization of alternative dispute resolution procedures as an aid to the Court in managing its increasing case load. Utilizing mediation at the pretrial conference stage of small claims cases is a natural outflow of that legislation. The proposed rules of procedure flowing from that legislation specifically envision that mediation be held during pretrial conferences. To require a judge to preside over the pretrial conference would in fact detract from the use of mediation within

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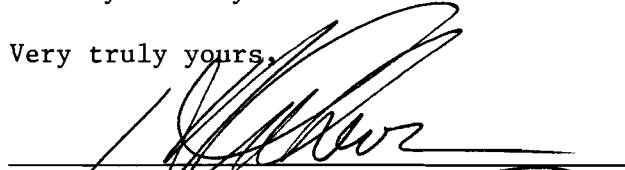
the County Courts of Florida. The mediation of disputes requires more time than does judicial resolution of disputes, and the number of mediators which would be required in order to effectively meet the mediation demands of Small Claims Court would be cost prohibitive in many if not most of the counties of Florida. If we added the costs of maintaining a judge on the bench to the costs of mediation, the use of trained mediators in resolving the disputes of small claims litigants would be greatly increased by this requirement of judicial presence.

As a result of the Alternative Dispute Resolution Procedures implemented in Pinellas County, time allotted by a County Court Judge to preside over pretrial conferences can now be devoted to trials of those same causes which were unable to settle, thereby further expediting the resolution of these disputes. It is therefore the feeling of the undersigned Judges of the County Court of Pinellas County that the benefit of using nonjudicial officers to conduct pretrial conferences and perform the ministerial functions which comprise the majority of those occurrences at a pretrial conference far outweigh the benefits of having a judicial officer performing those ministerial functions in addition to the infrequent judicial function. The Court's time can better be used in the resolution of these disputes through the conduct of trial during time allotted for pretrial conferences presided over by a judge.

We urge the Supreme Court not to follow the recommendation of the Small Claims Rules Committee in regard to requiring, through the amendment of Rule 7.090, Small Claims Rules, a judge to preside over pretrial conferences. The present rule is sufficient, and at least gives each county the flexibility to determine who will conduct the pretrial conferences. The present rule allows those counties which wish to have a judge preside to continue to do so, while those counties which wish to do something like Pinellas County is doing would be allowed to choose that course.

Thank you for your consideration of this letter.

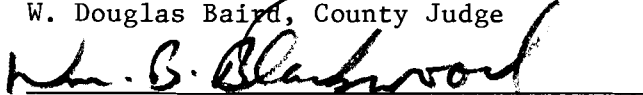
Very truly yours,



Horace A. Andrews, County Judge




W. Douglas Baird, County Judge



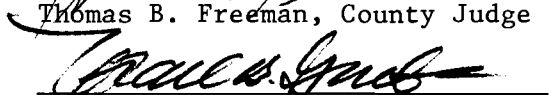
William B. Blackwood, Jr., County Judge



Brandt C. Downey, County Judge



Thomas B. Freeman, County Judge



Karl B. Grube, County Judge

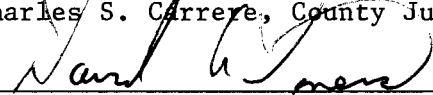
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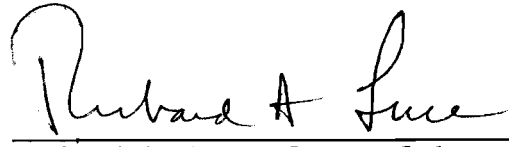
Patrick K. Caddell, County Judge



Charles S. Carrere, County Judge



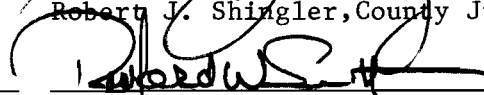
David A. Demers, County Judge



Richard A. Luce, County Judge



Robert J. Shingler, County Judge



Radford W. Smith, County Judge

cc: Chief Judge Philip A. Federico
J. William Lockhart, Court Administrator
David U. Strawn, Esquire
Ray Ferrero, Jr., President of the Florida Bar
The Honorable Paul S. Elliott, County Judge
Thirteenth Judicial Circuit