

Supreme Court of Florida

No. SC05-146

IN RE: AMENDMENTS TO THE FLORIDA SMALL CLAIMS RULES (TWO YEAR CYCLE).

[December 15, 2005]
REVISED OPINION

PER CURIAM.

We have for consideration the biennial report of proposed rule changes filed by the Small Claims Rules Committee (Committee), in accordance with Florida Rule of Judicial Administration 2.130(c)(4). We have jurisdiction. See art. V, § 2(a), Fla. Const.

BACKGROUND

The Committee's regular-cycle report proposes amendments to rules 7.080 (Service of Pleadings and Papers Other Than Statement of Claim), and 7.090 (Appearance; Defensive Pleadings; Trial Date), as well as the addition of new rule 7.175 (Motions for Costs and Attorneys' Fees). The Committee also proposes amendments to forms 7.322 (Summons/Notice to Appear for Pretrial Conference), 7.340 (Final Judgment), and 7.343 (Fact Information Sheet), and the addition of

new forms 7.321(Notice to Appear for Pretrial Conference/Mediation), 7.335 (Statement of Claim (For Return of Stolen Property)), and 7.350 (Corporate Authorization to Allow Employee to Represent Corporation at Any Stage of Lawsuit). As required by rule 2.130(c)(2), prior to submission to the Court, the proposed rule amendments were published in The Florida Bar News and on the internet website of The Florida Bar, and interested parties were invited to comment. Several comments were received by the Committee, but no changes were made to the proposals. After submission to the Court, the proposals were again published for comment, and several comments were received. After considering the comments and holding oral argument, we adopt a majority of the Committee's proposals, with a limited number of exceptions and modifications as set out below.

AMENDMENTS

First, we decline to adopt the proposed amendment to rule 7.080(b), Service of Pleadings and Papers Other Than Statement of Claim. This proposed amendment would allow service of papers (except the initial claim and notice to appear) to be made by delivery to the clerk of court if the party's address is not known. However, it fails to specify the consequence of such delivery. Neither the comments nor oral argument adequately resolved this uncertainty. Therefore, we decline to adopt this proposed rule change.

We also decline to adopt the proposed amendments to rule 7.090, Appearance; Defensive Pleadings; Trial Date. The proposed amendments to subdivisions (a) and (b) of rule 7.090 were proposed by the Supreme Court Committee on Alternative Dispute Resolution Rules and Policy (ADR Committee) in its comment filed with the Court. The Committee did not object to the suggested changes. The proposed amendment to subdivision (a) would have required, “Whoever appears for a party [at the pretrial conference] must have full authority to settle for all amounts from zero to the amount of the claim without further consultation.” The proposed amendment to subdivision (b) would have required that the summons/notice to appear specify that mediation may take place during the time scheduled for the pretrial conference. This proposal, if accepted, would conform the notice to appear to the proposed changes to subdivisions (a) and (f).

The proposed amendment to subdivision (f) would not only provide that “mediation may take place at pretrial conference,” it would also mandate that each party or their counsel have full authority to settle. And, of greatest concern, it would allow sanctions for failure to comply. These sanctions include costs, attorneys’ fees, entry of judgment, or dismissal. Among our concerns about this proposal is the impact it would have upon a party who must send counsel to such conferences on short notice without an adequate opportunity to fully prepare for

settlement negotiations. Nonetheless, recognizing the importance of this effort at encouraging mediated settlement, we refer this proposed amendment back to the Committee for further consideration.

Next, we decline to adopt the Committee's proposed amendments to form 7.322, Summons/Notice to Appear for Pretrial Conference. Having declined to adopt the proposed changes to rule 7.090, we also decline to adopt new form 7.321, Notice to Appear for Pretrial Conference/Mediation, as proposed by the ADR Committee, and agreed to by the Committee.

We adopt, as modified, new rule 7.175, Motions for Costs and Attorneys' Fees, permitting motions for costs and attorneys' fees if timely filed. In response to comments filed, we modify the language originally proposed by the Committee to reflect that a motion seeking costs or attorneys' fees or both shall be served "no later than" thirty days after the judgment is filed. This change is consistent with changes to the Florida Rules of Civil Procedure which this Court has adopted in a separate opinion. In re Amendments to the Florida Rules of Civil Procedure, No. SC05-179 (Fla. Dec. 15, 2005).

We also adopt new form 7.335, Statement of Claim (For Return of Stolen Property). According to the report,

[t]he form is meant to allow for uniformity in the return of property that was stolen and then pawned, to be returned to the rightful owner even before the criminal case is disposed of. The committee believed that the

rightful owner of the property should not be required to redeem his or her property by making any form of payment.

Form 7.340, Final Judgment, is amended, as proposed, to delete the reference to future interest rates. The amendment to the form is meant to put all parties on notice of the interest rate that should accrue on judgments.

New subdivision (b) is added to form 7.343, Fact Information Sheet. The new subdivision recognizes the distinction between a judgment entered against an individual and a judgment entered against a corporation.

Finally, we adopt new form 7.350, Corporate Authorization to Allow Employee to Represent Corporation at Any Stage of Lawsuit. This new form provides a mechanism for a corporation to authorize an individual to represent it in all trial proceedings. The form will provide written notice to all parties that the individual appearing at the pretrial and all subsequent proceedings has authority to act on behalf of the corporation.

We hereby adopt the amendments to the Florida Small Claims Rules as set forth in the appendix to this opinion.¹ New language is indicated by underscoring; deletions are indicated by struck-through type. The amendments will become effective on January 1, 2006, at 12:01 a.m.

It is so ordered.

1. In addition to the amendments discussed above, there are also several editorial and housekeeping amendments as reflected in the appendix.

PARIENTE, C.J., and WELLS, ANSTEAD, LEWIS, QUINCE, CANTERO, and BELL, JJ., concur.

THE FILING OF A MOTION FOR REHEARING SHALL NOT ALTER THE EFFECTIVE DATE OF THESE AMENDMENTS.

Original Proceeding – The Florida Small Claims Rules (Two Year Cycle)

Honorable Louis Howard Schiff, Chair, Deerfield Beach, Florida, Honorable Pauline Drayton, Past-Chair, Jacksonville, Florida, Small Claims Rules Committee, John F. Harkness, Jr., Executive Director, Madelon Horwich, Bar Staff Liaison, The Florida Bar, Tallahassee, Florida,

for Petitioner

Honorable Shawn Lee Briese, Chair, Supreme Court Commission on Alternative Dispute Resolution Rules and Policy, Daytona Beach, Florida, and Robert N. Clarke, Jr. of Ausley and McMullen, P.A., Past-Chair, Civil Procedure Rules Committee, Tallahassee, Florida

for Opponent

Bruce J. Berman of McDermott, Will and Emery, LLP, Miami, Florida and Henry P. Trawick, Jr., Sarasota, Florida,

filing Comments

APPENDIX

RULE 7.175. MOTIONS FOR COSTS AND ATTORNEYS' FEES

Any party seeking a judgment taxing costs or attorneys' fees, or both, shall serve a motion no later than 30 days after filing of the judgment, including a judgment of dismissal, or the service of a notice of voluntary dismissal. In the event of a default judgment, no further motions are needed if costs or attorneys' fees, or both, were sought in the statement of claim.

FORM 7.335. STATEMENT OF CLAIM (FOR RETURN OF STOLEN PROPERTY)

IN THE COUNTY COURT, IN AND FOR _____, COUNTY, FLORIDA

Plaintiff,

CASE NO.: _____

vs.

Defendant/Pawnbroker.

STATEMENT OF CLAIM FOR RETURN OF PROPERTY

Plaintiff, _____ sues defendant, _____
and says:

1. This is an action for the return of stolen or misappropriated property pursuant to section 539.001, Florida Statutes.

2. Plaintiff is the owner of the following described property:

_____.

3. The above-described property was stolen or otherwise misappropriated from plaintiff on or about the _____ day of _____, 20____. A copy of the law enforcement report outlining the theft/misappropriation is attached hereto and incorporated into this statement of claim.

4. The above-described property is currently in the possession of defendant and is located at a pawnshop as defined in section 539.001, Florida Statutes, the address of which is _____.

5. Plaintiff has complied with the procedural requirements of section 539.001, Florida Statutes. Specifically, plaintiff notified the pawnbroker of plaintiff's claim to the property:

by certified mail, return receipt requested, OR
 in person evidenced by a signed receipt.

The notice contains a complete and accurate description of the purchased or pledged goods and was accompanied by a legible copy of the aforementioned police report regarding the theft or misappropriation of the property. No resolution between plaintiff and defendant pawnbroker could be reached within 10 days after the delivery of the notice.

WHEREFORE, the plaintiff demands judgment for the return of the property. Plaintiff further asks this court to award plaintiff the costs of this action, including reasonable attorneys' fees.

Plaintiff (signature)

Name

Address

City, State, Zip code

Day telephone number

State of Florida

County of _____

The foregoing instrument was acknowledged before me on(date)....., by who is personally known to me or has produced as identification and whodid/did not..... take an oath.

WITNESS my hand and official seal, on(date).....

Notary Public, State of Florida

Note to Clerk of Court and to Sheriff: Pursuant to Section 539.001(15), filing fees and service fees shall be waived. Waiver does not require the filing of an affidavit of insolvency.

FORM 7.340.

FINAL JUDGMENT

(CAPTION)

**FINAL JUDGMENT
AGAINST (DEFENDANT(S)'S NAME)**

It is adjudged that the plaintiff(s),, recover from the defendant(s),, the sum of \$..... on principal, \$..... as prejudgment interest, \$..... for attorneys' fees, with costs of \$....., all of which shall bear interest at the rate of% ~~for the current year and thereafter at the prevailing rate~~ per year as provided for by Florida Statute, for all of which let execution issue.

ORDERED at, Florida, on(date).....

County Court Judge

Copies furnished to:

PLAINTIFF(S)

DEFENDANT(S)

Plaintiff(s)'s address:

.....

.....

Defendant(s)'s last known address and

Social Security Number (if known):

.....

.....

.....

**(OPTIONAL ENFORCEMENT PARAGRAPH —
TO BE INCLUDED UPON REQUEST PURSUANT TO RULE 7.221)**

It is further ordered and adjudged that the defendant(s) shall complete Florida Small Claims Rules Form 7.343 (Fact Information Sheet) and return it to the plaintiff's attorney, or to the plaintiff if the plaintiff is not represented by an attorney, within 45 days from the date of this final judgment, unless the final judgment is satisfied or a motion for new trial or notice of appeal is filed.

Jurisdiction of this case is retained to enter further orders that are proper to compel the defendant(s) to complete form 7.343 and return it to the plaintiff's attorney, or the plaintiff if the plaintiff is not represented by an attorney.

Committee Notes

1992 Amendment. The optional enforcement paragraph was added to facilitate discovery.

FORM 7.343.

FACT INFORMATION SHEET

(a) For Individuals

(CAPTION)

FACT INFORMATION SHEET — INDIVIDUAL

Full Legal Name: _____

Nicknames or Aliases: _____

Residence Address: _____

Mailing Address (if different): _____

Telephone Numbers: (Home) _____ (Business) _____

Name of Employer: _____

Address of Employer: _____

Position or Job Description: _____

Rate of Pay: \$ _____ per _____. Average Paycheck: \$ _____ per _____

Average Commissions or Bonuses: \$ _____ per _____. Commissions or bonuses are based on _____

Other Personal Income: \$ _____ from _____

(Explain details on the back of this sheet or an additional sheet if necessary.)

Social Security Number: _____ Birthdate: _____

Driver's License Number: _____

Marital Status: _____ Spouse's Name: _____

Spouse's Address (if different): _____

Spouse's Social Security Number: _____ Birthdate: _____

Spouse's Employer: _____

Spouse's Average Paycheck or Income: \$ _____ per _____

Other Family Income: \$ _____ per _____ (Explain details on back of this sheet or an additional sheet if necessary.)

Names and Ages of All Your Children (and addresses if not living with you): _____

Child Support or Alimony Paid: \$ _____ per _____

Names of Others You Live With: _____

Who is Head of Your Household? _____ You _____ Spouse _____ Other Person

Checking Account at: _____ Account # _____

Savings Account at: _____ Account # _____

(Describe all other accounts or investments you may have, including stocks, mutual funds, savings bonds, or annuities, on the back of this sheet or an additional sheet if necessary.)

For Real Estate (land) You Own or Are Buying:

Address: _____

All Names on Title: _____

Mortgage Owed to: _____

Balance Owed: _____

Monthly Payment: \$ _____

(Attach a copy of the deed or mortgage, or list the legal description of the property on the back of this sheet or an additional sheet if necessary. Also provide the same information on any other property you own or are buying.)

For All Motor Vehicles You Own or Are Buying:

Year/Make/Model: _____ Color: _____

Vehicle ID #: _____ Tag No: _____ Mileage: _____

Names on Title: _____ Present Value: \$ _____

Loan Owed to: _____

Balance on Loan: \$ _____

Monthly Payment: \$ _____ (List all other automobiles, as well as other vehicles, such as boats, motorcycles, bicycles, or aircraft, on the back of this sheet or an additional sheet if necessary.) _____

Have you given, sold, loaned, or transferred any real or personal property worth more than \$100 to any person in the last year? If your answer is "yes," describe the property and sale price, and give the name and address of the person who received the property.

Does anyone owe you money? Amount Owed: \$ _____

Name and Address of Person Owing Money: _____

Reason money is owed: _____

Please attach copies of the following:

- a. Your last pay stub.
- b. Your last 3 statements for each bank, savings, credit union, or other financial account.
- c. Your motor vehicle registrations and titles.

d. Any deeds or titles to any real or personal property you own or are buying, or leases to property you are renting.

UNDER PENALTY OF PERJURY, I SWEAR OR AFFIRM THAT THE FOREGOING ANSWERS ARE TRUE AND COMPLETE.

Judgment Debtor

STATE OF FLORIDA
COUNTY OF

The foregoing instrument was acknowledged before me on(date)....., by, who is personally known to me or has produced as identification and whodid/did not..... take an oath.

WITNESS my hand and official seal, on(date).....

Notary Public
State of Florida

My Commission expires:

MAIL OR DELIVER THIS FORM TO THE CLERK OF THE COURT, AND MAIL OR DELIVER A COPY OF THE COMPLETED FORM TO THE JUDGMENT CREDITOR OR THE CREDITOR'S ATTORNEY.

(b) For Corporate Entities

(CAPTION)

FACT INFORMATION SHEET— BUSINESS ENTITY

Name/Title of person filling out this form: _____

Address: _____

Telephone Number: Home: _____ Business: _____

Address of Business Entity: _____

Type of Entity: (Check One) Corporation Partnership Limited Partnership

Sole Proprietorship Limited Liability Corporation (LLC)

Professional Association (PA) Other: (Please Explain)

Does Business Entity own/have interest in any other business entity? If so please explain.

Gross/Taxable income reported for Federal Income Tax purposes last three years:

\$ _____ \$ _____ \$ _____

Taxpayer Identification Number:

List Partners (General or Limited and Designate Percentage of Ownership):

Average No. of Employees/Month:

Names of Officers and Directors:

Checking Account at: _____ Account No: _____

Savings Account At: _____ Account No: _____

Does the Business Entity own any vehicles:

Years/Makes/Models: _____

Vehicle I.D. Nos.: _____

Tag Nos.: _____

Loans Outstanding: _____

Does the Business Entity own any real property: YES _____ NO _____

If Yes: Address: _____

Please check if the business entity owns the following:

_____ <u>Boat</u>	_____ <u>Camper</u>
_____ <u>Stocks/Bonds</u>	_____ <u>Other Real Property</u>
_____ <u>Other Personal Property</u>	_____ <u>Intangible Property</u>

UNDER PENALTY OF PERJURY, I SWEAR OR AFFIRM THAT THE FOREGOING ANSWERS ARE TRUE AND COMPLETE.

Defendant's Designated Representative
Title: _____

STATE OF FLORIDA
COUNTY OF

The foregoing instrument was acknowledged before me on(date)....., by, who is personally known to me or has produced as identification and whodid/did not..... take an oath.

WITNESS my hand and official seal, on(date).....

Notary Public
State of Florida

My Commission expires:

MAIL OR DELIVER THIS FORM TO THE CLERK OF THE COURT, AND
MAIL OR DELIVER A COPY OF THE COMPLETED FORM TO THE
JUDGMENT CREDITOR OR THE CREDITOR'S ATTORNEY.

7.350. CORPORATE AUTHORIZATION TO ALLOW EMPLOYEE TO REPRESENT CORPORATION AT ANY STAGE OF LAWSUIT

(Caption)

AUTHORIZATION OF CORPORATE OFFICER

.....(name)..... is an employee of(name of corporation that is a party to this action).....

This individual has authority to represent the corporation at any stage of the trial court proceedings, including mediation.

The undersigned giving the authority is an officer of the corporation.

Pursuant to section 92.525, Florida Statutes, under penalties of perjury, I declare that I have read the foregoing Corporate Authorization and that the facts stated in it are true.

Dated:

SIGNING AUTHORITY: _____

Print name and title:

(president; vice-president; secretary; treasurer)

Address:

Phone number:

I certify that a copy of this form has been furnished to [list all parties to this action] by(hand delivery/mail/fax)..... on(date).....

Name and title: