

**IN THE SUPREME COURT OF THE STATE OF FLORIDA**

**IN RE: AMENDMENTS TO ) CASE NO.: SC07-1724**  
**FLORIDA SMALL CLAIMS RULES )**  
**(TWO-YEAR CYCLE) )**

**RESPONSE OF THE SMALL CLAIMS RULES COMMITTEE**  
**TO REVISED OPINION ON THREE-YEAR CYCLE REPORT,**  
**REGARDING RULE 7.090**

On December 15, 2005, the Supreme Court issued a revised opinion in the above-referenced case. In its opinion, the Florida Supreme Court declined to adopt Rule 7.090, Appearance; Defensive Pleadings; Trial. The Supreme Court’s greatest concern was the proposed amendment to subdivision (f) (and accompanying form 7.321), proposed by the Supreme Court Committee on Alternative Dispute Resolution Rules and Policy, which 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 Court also stated that, “recognizing the importance of this effort at encouraging mediated settlement, we refer this proposed amendment back to the [Small Claims Rules] Committee for further consideration.” This response is the result of the Committee’s further consideration of the issue.

The Small Claims Committee respectfully notes that our own proposed language simply stated, “must have full authority to settle.”

The Court correctly noted that 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 reflect the proposed changes to subdivision (a) and (f).

This Court voiced great concern that a mandate was given that counsel must settle at pretrial conference or face sanctions for failing to do so. Those sanctions would or could include costs, attorneys’ fees, entry of judgment, or dismissal. This Court was concerned about the impact of a party who must send counsel to such conferences on short notice without an adequate opportunity to fully prepare for

settlement negotiations.

The Small Claims Rule Committee has taken the concerns of the Supreme Court seriously and therefore submits this brief.

Small Claims Court is more commonly referred to as the “People’s Court.” The current jurisdiction of Small Claims Court does not exceed Five Thousand Dollars (\$5,000.00):

**Rule 7.010. Title and Scope**

(a) **Title.** These rules shall be cited as Florida Small Claims Rules and may be abbreviated “Fla. Sm. Cl. R.” These rules shall be construed to implement the simple, speedy, and inexpensive trial of actions at law in county courts.

(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 \$5,000 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.

A litigant is allowed to appear pro se at the proceedings and, more importantly, the defendant is not required to file a written answer to the complaint as filed.

In Duval County from January 1, 2006 through May 31, 2006, 4,833 Small Claims cases were filed. The vast majority of these cases were debt collection cases. Simply stated, an individual is sued by an attorney representing a company (typically Chase, Capital One, etc.) to collect money from an individual who has defaulted in payments on a credit card. The issues are usually not complex and simply boil down to how much is owed and how payments are made on the outstanding debt. Attorneys who represent the company or assignees often welcome the opportunity to contact the debtor. Conversely, the debtors usually want to put the debt “behind them” and move on with settlement. Unfortunately, out-of-area counsel may send someone in just to be present in order to avoid a default. There are exceptions of course, but it is difficult to dispose of a case when an attorney is not prepared to enter into a stipulation for payments.

The Committee feels that Rule 7.020 recognizes the parties' right to participate fully in the discovery process if needed:

**Rule 7.020. Applicability of Rules of Civil Procedure**

**(a) Generally.** Florida Rules of Civil Procedure 1.090(a), (b), and (c); 1.190(e); 1.210(b); 1.260; 1.410; and 1.560 are applicable in all actions covered by these rules.

**(b) Discovery.** Any party represented by an attorney is subject to discovery pursuant to Florida Rules of Civil Procedure 1.280–1.380 directed at said party, without order of court. If a party proceeding without an attorney directs discovery to a party represented by an attorney, the represented party may also use discovery pursuant to the above-mentioned rules without leave of court. When a party is unrepresented and has not initiated discovery pursuant to Florida Rules of Civil Procedure 1.280–1.380, the opposing party shall not be entitled to initiate such discovery without leave of court. However, the time for such discovery procedures may be prescribed by the court.

**(c) Additional Rules.** In any particular action, the court may order that action to proceed under 1 or more additional Florida Rules of Civil Procedure on application of any party or the stipulation of all parties or on the court's own motion.

The second category of litigants are those pro se individuals who elect to sue for issues ranging from small personal debts, personal property, car repairs and failure to perform work and other similar cases.

Mediation is offered at no cost and all litigants are given an opportunity to settle without proceeding to trial. Parties however, are not "forced" to mediate. Litigants are encouraged to attend and if an impasse is reached, the case is set for trial.

Sanctions are not routinely given and frequently attorneys will ask to appear by phone or simply send in a written answer. Therefore, this court need not be concerned that private attorneys are being required to settle the case at pretrial.

Under Rule 7.090(e), a waiver is expressly provided for if both parties are represented by an attorney. If a plaintiff has filed a case, it is not expecting too

much, in the Committee's view, to have them come prepared to settle a case at pretrial.

Therefore, the Small Claims Committee respectfully requests that this Honorable Court reconsider the changes to Rule 7.090 and Form 7.321 (see Appendix A), as recommended in this Committee's cycle report that was submitted January 26, 2005.

Respectfully submitted \_\_\_\_\_, 2007.

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### CERTIFICATE OF SERVICE

**I HEREBY CERTIFY** that a copy of the foregoing was furnished by United States mail to: Hon. Shawn Briese, 125 E. Orange Ave., Suite 106, Daytona Beach, FL 32114-4420, this \_\_\_\_ day of \_\_\_\_\_, 2007.

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# APPENDIX A

Proposed Changes in Legislative Format

**RULE 7.090. APPEARANCE; DEFENSIVE PLEADINGS; 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) **Notice to Appear; Pretrial Conference.** The summons/notice to appear shall specify that the initial appearance shall be for a pretrial conference. The initial pretrial conference shall be set by the clerk not more than 50 days from the date of the filing of the action. At the pretrial conference, all of 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 on the number of witnesses.
- (5) The possibilities of settlement.
- (6) Such other matters as the court in its discretion deems necessary.

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 personal appearance of a party or attorney on the initial appearance date (pretrial conference).

(d) **Trial Date.** The court shall set the case for trial not more than 60 days from the date of the pretrial conference. At least 10 days' notice of the time of trial shall be given. The parties may stipulate to a shorter or longer time for setting trial with the approval of the court. This rule does not apply to actions to which chapter 51, Florida Statutes, applies.

(e) **Waiver of Appearance at Pretrial Conference.** Where all parties are represented by an attorney, counsel may agree to waive personal appearance at the initial pretrial conference, if a written agreement of waiver signed by all attorneys is presented to the court prior to or at the pretrial conference. The agreement shall contain a short statement of the disputed issues of fact and 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 shall forthwith set the case for trial within the time prescribed by these rules.

(f) **Appearance at Mediation; Sanctions.** In small claims actions, an attorney may appear on behalf of a party at mediation if the attorney has full authority to settle without further consultation. Unless otherwise ordered by the court, a nonlawyer representative may appear on behalf of a party to a small claims mediation if the representative has the party's signed written authority to appear and has full authority to settle without further consultation. In either event, the party need not appear in person. Mediation may take place at the pretrial conference. Whoever appears for a party must have full authority to settle. Failure to comply with this subdivision may result in the imposition of sanctions, including costs, attorneys' fees, entry of judgment, or dismissal.

(g) **Agreement.** Any agreements reached as a result of small claims mediation shall be written in the form of a stipulation. The stipulation may be entered as an order of the court.

### Committee Notes

**1972 Amendment.** Rule 7.120 is incorporated in subdivision (c). It is slightly expanded to provide for a computation period from service by mail and to give the parties the right to stipulate to a shorter time for the trial.

**1984 Amendment.** 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.

**1988 Amendment.** (b) 1st sentence — Chair's clarification.

2nd sentence — Require the clerk to set the initial pretrial 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.

3rd sentence — State within the small claims rules what matters shall be considered at the pretrial conference rather than by reference to Florida Rule of Civil Procedure 1.220(a), which has been amended several times and is generally not applicable to small claims cases.

4th sentence — Direct that new form 7.322 shall and that new form 7.323 may be used statewide.

(c) Clarifies that a personal appearance is required at the pretrial conference when a defense motion is filed.

(e) Adds a provision for waiving counsel's appearance at the pretrial conference where all parties are represented by counsel.



**FORM 7.322. SUMMONS/NOTICE TO APPEAR FOR PRETRIAL CONFERENCE**

(CAPTION)

STATE OF FLORIDA — NOTICE TO PLAINTIFF(S) AND DEFENDANT(S) .....

.....  
.....  
YOU ARE HEREBY NOTIFIED that you are required to appear in person or by attorney at the  
..... in Courtroom #....., located at ....., on .....(date)....., at .....m., for a PRETRIAL  
CONFERENCE before a judge of this court.

**IMPORTANT — READ CAREFULLY  
THE CASE WILL NOT BE TRIED AT THAT TIME.  
DO NOT BRING WITNESSES — APPEAR IN PERSON OR BY ATTORNEY**

The defendant(s) must appear in court on the date specified in order to avoid a default judgment. The plaintiff(s) must appear to avoid having the case dismissed for lack of prosecution. A written MOTION or ANSWER to the court by the plaintiff(s) or the defendant(s) shall not excuse the personal appearance of a party or its attorney in the PRETRIAL CONFERENCE. The date and time of the pretrial conference CANNOT be rescheduled without good cause and prior court approval.

A corporation may be represented at any stage of the trial court proceedings by an officer of the corporation or any employee authorized in writing by an officer of the corporation. Written authorization must be brought to the Pretrial Conference.

The purpose of the pretrial conference is to record your appearance, to determine if you admit all or part of the claim, to enable the court to determine the nature of the case, and to set the case for trial if the case cannot be resolved at the pretrial conference. You or your attorney should be prepared to confer with the court and to explain briefly the nature of your dispute, state what efforts have been made to settle the dispute, exhibit any documents necessary to prove the case, state the names and addresses of your witnesses, stipulate to the facts that will require no proof and will expedite the trial, and estimate how long it will take to try the case.

Mediation may take place at the pretrial conference. Whoever appears for a party must have full authority to settle.

If you admit the claim, but desire additional time to pay, you must come and state the circumstances to the court. The court may or may not approve a payment plan and withhold judgment or execution or levy.

**RIGHT TO VENUE. The law gives the person or company who has sued you the right to file in any one of several places as listed below. However, if you have been sued in any place other than one of these places, you, as the defendant(s), 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 the suit is on an unsecured**

**promissory note, where the note is signed or where the 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 the suit occurred; (5) where any one or more of 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, where payment is to be made.**

If you, as the defendant(s), believe the plaintiff(s) has/have not sued in one of these correct places, you must appear on your court date and orally request a transfer, or you must file a WRITTEN request for transfer in affidavit form (sworn to under oath) with the court 7 days prior to your first court date and send a copy to the plaintiff(s) or plaintiff's(s') attorney, if any.

A copy of the statement of claim shall be served with this summons.

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

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As Clerk of the County Court

## APPENDIX B

Certification that Proposed Rules Have Been Read Against  
West's FLORIDA RULES OF COURT

I certify that these rules and forms were read against West's FLORIDA RULES OF COURT – STATE (2007).

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Madelon Horwich, Legal Editor  
Legal Publications  
The Florida Bar