

**IN THE SUPREME COURT OF FLORIDA**

**IN RE: AMENDMENTS TO FLORIDA  
SMALL CLAIMS RULE 7.090**

**CASE NO. SC10-1227**

**RESPONSE OF THE SIXTH JUDICIAL CIRCUIT  
TO THIS COURT'S ORDER OF JULY 1, 2010**

On July 1, 2010, this Court issued an order severing proposed amendments to Small Claims Rule 7.090 on small claims pretrial conferences from other proposed amendments to the Small Claims Rules. The Court also invited additional comments on pretrial conference procedures. J. Thomas McGrady, Chief Judge of the Sixth Judicial Circuit, files these additional comments on behalf of the Sixth Circuit in accordance with the Court's Order.

**Summary of Comment**

The Court's 1988 decision rejecting a proposal to require the use of a judge at a small claims pretrial conference has allowed efficient pretrial practices to develop in some circuits. Those practices should be allowed to continue and no action by the Court is necessary to allow it. If the Court determines that it should specifically authorize such efficient practices in small claims pretrial conferences, the Court should adopt the amendment to Small Claims Rule 7.090 proposed in this Response. In the alternative, the Court may direct the Commission on Trial Court Performance and Accountability to conduct a thorough review of small claims pretrial practices and recommend efficient pretrial practices.

## **I. INTRODUCTION**

The Sixth Circuit appreciates this opportunity to provide additional comments and is gratified that the Supreme Court recognizes the importance of efficient pretrial practices in small claims cases. The trial courts struggle every day with limited resources and allowing the trial courts to use resources in a manner that best addresses the needs of a circuit is important to the day to day management of the trial courts. Using non-judicial personnel to handle administrative matters in small claims pretrial conferences is a good use of our limited resources.

The Sixth Circuit uses non-judicial personnel to manage the small claims pretrial conference and refers to such personnel as hearing officers. The hearing officer performs a case management function and addresses administrative issues. The hearing officer greets the parties, explains procedures to the parties, asks questions of the parties to discern pertinent issues, and explains options to parties regarding final judgments, stipulations, and trials. The hearing officer determines whether a mediator may be helpful to the parties and if so, immediately assigns an on-site mediator to conduct the mediation. The hearing officer also recommends defaults and dismissals to the judge for parties failing to appear. The judge is available throughout the pretrial calendars to hear arguments and resolve all legal issues. The judge also reviews and signs all mediation stipulations. The different roles of the hearing officer and judge allow for an orderly and more efficient

procedure to manage large pretrial calendars. The hearing officer keeps the cases moving through mediation while the judge presides over legal issues, which are more time consuming.

The Sixth Circuit has operated its hearing officer program for the last 22 years in reliance upon this Court's opinion in *In re: The Florida Bar Small Claims Rules*, 537 So.2d 81 (Fla. 1988). In that case, the Court rejected The Florida Bar's proposal to require a judge to preside over small claims hearings. This Court should continue to allow circuits to use hearing officers and other non-judicial personnel to manage pretrial conferences. Such practice is consistent with the Court's emphasis on the use of alternative resources that are cost-efficient and that decrease case processing times, especially in the small claims division, a division of the court where alternative resources are especially appropriate. As this Court recently noted:

[w]e cannot overstate the causal relationship between the loss of supplemental resources and the increases in case processing times. When judges must absorb the workload of case managers, staff attorneys, or hearing officers, case processing times inevitably worsen. The net result is court delay. Moreover, having judges perform the work of subordinate staff is not a prudent use of higher level judicial resources. Judicial time is best spent adjudicating cases, and the loss of supplemental resources has consequences for litigants across all case types.

*In re: Certification of Need for Additional Judges*, 29 So. 3d 1110, 1112 (Fla. 2010).

If the Court takes no action on this matter, its decision in *In re: The Florida Bar Small Claims Rules*, 537 So.2d 81 (Fla. 1988) will remain, thus implicitly allowing others to manage the pretrial calendar. The Court should either take no action or should once again specifically reject the Bar's proposal to require a judge to preside at pretrial conferences and allow current practice to continue.

## **II. THE COURT MAY WISH TO AMEND RULE 7.090 TO SPECIFICALLY AUTHORIZE THE USE OF NON-JUDICIAL PERSONNEL IN PRETRIAL CONFERENCES.**

In its Order of July 1, 2010, the Court indicated its desire to recognize efficient pretrial practices. The Court could amend Rule 7.090<sup>1</sup> to include the following:

The pretrial conference may be managed by non-judicial personnel employed by or under contract with the court. Non-judicial personnel must be subject to direct oversight by the court. A judge must be available to hear any motions or resolve any legal issues.

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<sup>1</sup> In August 2009, the Sixth Circuit offered a similar proposal to The Florida Bar Small Claims Rules Committee in response to a request for comments, but the proposal was rejected at the Committee's meeting on September 11, 2009. One of the reasons provided was that in some counties, a judge was unavailable to resolve parties' legal issues during pretrials. However, this reasoning is without merit since the proposed rule would resolve the concern that judges would be unavailable by requiring a judge to be present during pretrials to resolve legal issues.

The Rule proposed here would specifically authorize the practice in the Sixth Circuit and similar practices in other circuits as long as non-judicial personnel are subject to oversight of the court and as long as a judge is available to resolve legal issues.

Rule of Civil Procedure 1.490 and Family Law Rules of Procedure 12.490 and 12.491 authorize the use of magistrates and hearing officers. These rules authorize magistrates and hearing officers to take testimony and evidence and perform other quasi-judicial functions. These functions affect significant rights of litigants. This use of magistrates and hearing officers has been sanctioned by the Court for years. The proposed rule would authorize the use of non-judicial personnel to handle administrative matters in small claims pretrials, cases that by definition involve amounts in controversy of less than \$5,000. Since magistrates and hearing officers are authorized in the civil and family law divisions to conduct hearings, certainly non-judicial personnel should be authorized to handle administrative matters in the small claims division.

**III. IF THE COURT DETERMINES THAT THIS MATTER SHOULD BE STUDIED FURTHER, THE COURT SHOULD ASSIGN IT TO THE COMMISSION ON TRIAL COURT PERFORMANCE AND ACCOUNTABILITY.**

In its Order of July 1, 2010, the Court directed several committees to respond, including the Commission on Trial Court Performance and Accountability. If the Court determines that the use of non-judicial personnel in small claims cases should be studied further, the Court should assign primary responsibility for this matter to the Commission on Trial Court Performance and Accountability. The Commission should be given sufficient time to conduct a thorough study and present recommendations to this Court on how to best use non-judicial personnel in small claims pretrial conferences.

The Commission on Trial Court Performance and Accountability was established in 2002 for the purpose of proposing policies and procedures on matters related to the efficient and effective functioning of Florida's trial courts, through the development of comprehensive performance measurement, resource management, and accountability programs. *See* SC AO 2008-32. The Commission is the best entity to address this issue because this is primarily an issue of management of court resources and the duties of the Commission are closely aligned with the task requested by the Court. The Commission consists primarily of judges and trial court administrators. With the assistance of the Office

of the State Courts Administrator, the Commission can prepare a comprehensive report on small claims pretrial conference procedures as requested by the Court and present recommendations for best practices.

The Florida Bar Small Claims Rules Committee, while well suited for most issues, does not have the expertise to be the primary committee assigned to address this issue on the use of judicial branch resources. The members of the Rules Committee are primarily attorneys who practice in small claims and often represent credit card companies seeking to collect debt. There are only three judges on the committee.<sup>2</sup> The members may be experts in the practice of law in small claims matters but except for the few judges, do not have any known expertise in court management.

The Commission, on the other hand, was created in response to the requirements in Article III, section 19, Florida Constitution and section 216.013, Florida Statutes. One of its purposes is to recommend efficient practices in the judicial branch.

If this Court assigns this matter to the Commission, the Commission should be directed to consult with the Florida Bar Small Claims Rules Committee, the Conference of County Judges, others participating in this case, Chief Judges, and any others interested in small claims procedures.

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<sup>2</sup> One of those judges is Pinellas County Judge Kathleen Hessinger.

If the Court decides to send this matter to a committee for further review, the Sixth Circuit is prepared to work with any committee to present recommendations to the Court on how to best use non-judicial personnel in small claims pretrials.

## **CONCLUSION**

The Sixth Circuit asserts that its existing practice using non-judicial personnel is an efficient use of limited resources and that no action by the Court is necessary to allow its practices to continue. If the Court determines that a rule should be adopted to directly authorize this practice, the Court is urged to adopt the amendment proposed to Rule 7.090 in this Response. If the Court determines that further study is necessary, the Commission on Trial Court Performance and Accountability should be assigned this task and given sufficient time to present recommendations to this Court.

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on \_\_\_\_\_, 2010, a true and correct copy of the foregoing Response of the Sixth Judicial Circuit to This Court's Order of July 1, 2010 has been furnished by U.S. Mail to the individuals on the attached service list.

\_\_\_\_\_  
B. Elaine New

**CERTIFICATE OF COMPLIANCE**

Pursuant to Rule of Appellate Procedure 9.100(l), I certify that this computer-generated response is prepared in Times New Roman 14-point font and complies with the Rule's font requirements.

\_\_\_\_\_  
B. Elaine New

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