

IN THE SUPREME COURT OF FLORIDA

IN RE: AMENDMENTS TO) CASE NO. SC10-1227
FLORIDA SMALL CLAIMS)
RULE 7.090)

RESPONSE OF THE
CONFERENCE OF COUNTY COURT JUDGES OF FLORIDA

Judge Wayne Miller, President of the Conference of County Court Judges of Florida, files this response to proposed amendments to the Florida Small Claims Rules which would more clearly specify that a judge must preside at pretrial conferences. The Conference’s response should be considered in the context of the Small Claims Rules:

Small Claims is different.

Small Claims cases are processed through Florida’s county courts under a set of rules with a stated goal to reach a “simple, speedy, and inexpensive” resolution of these cases. *Rule 7.010(a), Fla. Sm. Cl. R.*

The current procedural structure provides for only two appearances: a pretrial conference, at which mediation may take place, and a trial. The stated goals and tight timeframes in the rules militate that additional appearances, as well as an active motion practice, are discouraged.

The rules require a statewide, uniform summons be used to advise parties of the pretrial conference. This conference is to be held within 50 days of filing the suit. *Rule 7.090(b)*. At the pretrial conference, several things can happen:

1. If the plaintiff does not appear, the case may be dismissed.
2. If the defendant does not appear, a default may be entered.
3. If both parties appear, the case may be referred to mediation.
4. However, if the case does not settle, the court “shall” do several things before setting the case for trial. *Rule 7.090(b)*. These include:
 - (a) determine whether issues can be simplified;
 - (b) determine whether amendments to the pleadings are necessary or desirable;

- (c) determine whether it is possible to obtain admissions of fact and of documents that avoid unnecessary proof;
- (d) determine whether the number of witnesses should be limited;
- (e) explore possibilities of settlement; and
- (f) consider such other matters as the court in its discretion deems necessary.

Additionally, at any time, including at the pretrial conference, if the court determines the case presents no “triable issue,” the court is required to enter a “summary disposition” without setting the case for trial. *Rule 7.135*.

If the case is unusually complex for a small claims matter, the court has the discretion to invoke the rules of civil procedure in whole or in part. *Rule 7.020(c)*.

Thereafter, if the case is not otherwise dismissed, settled, or summarily disposed, or if the rules of civil procedure are not invoked, a trial must then be held within 60 days of the date of the pretrial conference, unless the parties agree to a later date. *Rule 7.090(d)*.

The Conference acknowledges that the Small Claims Rules Committee of The Florida Bar has proposed amendments to the Rules which would clarify and more clearly require that a judge preside at a pretrial conference. The Conference is aware that the great majority of Florida county courts provide for judges to preside over pretrial conferences. In perhaps a dozen counties, however, pretrial conference procedures differ, with varying degrees of judicial involvement. A quick perusal of the mandatory matters to be addressed at a pretrial conference, however, demonstrates the necessity of judicial decision-making, not merely performance of clerical functions. Moreover, a review of additional matters which may be addressed at a pretrial conference – such as summary disposition -- demonstrates the need for exercise of judicial discretion. The Conference strongly feels that a judge must do these matters, not a clerk, hearing officer, or mediator.

While non-judicial personnel may assist the judge in handling pretrial conferences – such as by calling the docket, referring cases to a mediator, noting non-appearances for the court, collecting settlement documents to forward to the judge, etc. – the Conference believes at some point in the pretrial conference, a judge must actually be involved.

At more than one meeting of the Small Claims Rules Committee of the Conference, the Committee, after due deliberation, voted overwhelmingly to

approve these amendments. As a result, the Conference respectfully requests that this Court adopt these proposed amendments to the Florida Small Claims Rule 7.090(a).

Respectfully submitted _____, 2010

HON. WAYNE MILLER, President,
Conference of County Court
Judges of Florida
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FLORIDA BAR #

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by United States mail to the Michele Cavallaro, Esq., 6600 N. Andrews Avenue, Suite 300, Fort Lauderdale, FL 33309; Honorable Pauline Drake, Duval County Courthouse, Jacksonville, FL 32202; the Honorable J. Thomas McGrady, Chief Judge, B. Elaine New, Court Counsel, and Christina Everton, Staff Attorney, Sixth Judicial Circuit, 501 1st Avenue North, Suite 1000, St. Petersburg, FL 33701; and the Honorable Walter A. Fullerton, Pinellas County Judge, 545 1st Avenue North, Room 211, St. Petersburg, FL 33701-4523; this ____ day of _____, 2010.

CERTIFICATE OF COMPLIANCE

I certify that this report was prepared in accordance with the font requirements of Fla. R. App. P. 9.210(a)(2).

HON. ROBERT W. LEE
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