

IN THE SUPREME COURT OF FLORIDA

**IN RE: AMENDMENTS
TO THE FLORIDA SMALL
CLAIMS RULES**

CASE NO. SC10-1227

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**COMMENTS OF THE COMMISSION ON TRIAL COURT
PERFORMANCE AND ACCOUNTABILITY**

Chief Judge Terry David Terrell, Chair of the Commission on Trial Court Performance and Accountability, files these comments on behalf of the Commission as directed by this Court's order of July 1, 2010, respecting proposed amendments to Small Claims Rule 7.090. The Commission met by conference telephone call on September 22, 2010, for consideration of the amendments and by majority vote of those present authorized the following comments as reflective of the position of the Commission.

Summary of Comment

The Commission concluded, by a vote of 7¹ to 3 (with one abstention)², that Rule 7.090, Small Claims Rules, should not be amended as proposed. The Commission determined that the present rule provides needed flexibility to the circuits and counties to meet the demands of caseload, case assignment and workload.

It was noted that the rule, in its present form, is not consistent with Form 7.322, Summons/Notice to Appear for Pre-trial Conference, which provides notice to a party of the requirement to appear for pre-trial conference before a judge. The

¹ A draft of this report was distributed to commission members and a member who was unable to participate in the conference call concurred with the content of the report making the actual total 8 yeas.

² It is the practice of Chief Judge Terry David Terrell to abstain from voting while acting as chair, unless there is a tie.

Commission recommended that the form be conformed to comply with Small Claims Rule 7.090.

Lastly, the Commission recommended that if this Court determines that Rule 7.090 should be amended, that the Court consider amendments similar to those proposed by the Sixth Judicial Circuit which provide for some measure of local flexibility in the management of pre-trial conferences in Small Claims cases.

Discussion

The Small Claims Rules Committee of the Florida Bar proposed amendments to Small Claims Rule 7.090, in order to add statewide uniformity to the small claims pre-trial procedure and to clarify the role of the judiciary at that stage. It was proposed that both subsection (a) and (b) of that rule be amended to mandate that pre-trial conferences be presided over by a judge. The Commission noted that comments filed in opposition to the proposed amendments indicate that current practices in some counties allow for magistrates, hearing officers, deputy clerks, or mediators to handle pre-trial conferences. The Commission discussed concerns over the availability of a judge for adjudication of legal issues in those cases and the need for judicial supervision of the person conducting the pre-trial proceeding. It was noted that the use of non-court personnel for pre-trial conferences was not appropriate. Further favorable discussion was had on the appropriate use of magistrates and hearing officers to conduct small claims pre-trial conferences. Also discussed were concerns respecting the right of a litigant to appear before a judge unless a waiver of that right has been obtained prior to the appearance of the parties at the pre-trial conference.

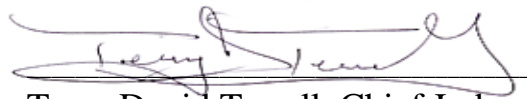
Staff members mentioned and Commission members discussed the previous work of the Commission on Trial Court Performance and Accountability in *Masters and Hearing Officers, Reports and Recommendation, May 31, 2002*, and *Recommendations for Alternative Dispute Resolution Services in Florida's Trial Courts, August 2008*. In the 2002 report, the Commission established best practices for the use of masters and hearing officers and specifically approved the use of masters and hearing officers in small claims cases. The report on alternative dispute resolution in 2008 contained a finding that mediations in conjunction with

pre-trial conferences in small claims cases presented an efficient model in many counties.

Further discussion addressed whether a policy of conforming a rule to comply with a form instead of conforming the form to the rule was appropriate and a policy of whether statewide pre-trial conference consistency in small claims cases is preferable to local flexibility to meet unique needs and resource allocation. Ultimately, the Commission decided to maintain the current language in order to allow the flexibility which exists now, and to amend the form to be consistent with the rule.

Since the Commission noted the legitimate concerns found in the comments about the type of personnel conducting pre-trial conferences and the concerns about the availability of a judge during those events, the Commission recommended that if an amendment is appropriate, it should be consistent with the amendments recommended by the Sixth Circuit.

Respectfully submitted this 11th day of October, 2010.



Terry David Terrell, Chief Judge
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CERTIFICATE OF COMPLIANCE

I hereby certify that these comments have been submitted in Times New Roman 14 in compliance with the typeface and font requirements of Fla. R. App. P. 9.210(a)(2).

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that this document has been electronically filed, the original and nine copies have been hand delivered to the Supreme Court and copies of the foregoing have been furnished this 11th day of October , 2010, by United States Mail to the following:

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