

**IN THE SUPREME COURT OF FLORIDA**

**IN RE: AMENDMENTS TO THE                    )        CASE NO. 10-144**  
**SMALL CLAIMS RULES                         )**

**RESPONSE TO COMMENTS OF INTERESTED PERSONS**

Judge Robert W. Lee, Chair of the Small Claims Rules Committee (Committee) of The Florida Bar, and John F. Harkness, Jr., Executive Director of The Florida Bar, file this response to comments received from interested persons to the regular-cycle report of proposed changes to the Florida Small Claims Rules, pursuant to *Fla. R. Jud. Admin.* 2.140(b).

The Committee initially notes that the comments received pertain only to the proposal to amend *Fla. Sm. Cl. R.* 7.090. The Committee received no comments relating to the remaining proposals. The Committee acknowledges that the following comments were filed with this Court and served on the Committee Chair as required by *Fla. R. Jud. Admin.* 2.140(b)(6) after the filing of the cycle report:

1. The Honorable Pauline Drake on behalf of the County Court Judges of the Fourth Judicial Circuit [in support of the proposed amendment];
2. The Honorable J. Thomas Grady, Chief Judge of the Sixth Judicial Circuit [in opposition to the proposed amendment]; and
3. The Honorable Walt Fullerton, Judge of the Pinellas County Court [in opposition to the proposed amendment].

As background to the Committee’s response, the Committee notes that the process of the Committee’s study of this rule amendment took place over several years (from 2005 though 2009), involving at least two separately comprised committees, with several meetings and subcommittee work. As noted in the cycle report, the Committee proposed changes to *Rule 7.090* to provide statewide uniformity to the small claims pretrial conference procedure by clarifying the judiciary’s role in the small claims process and to make the rule clearly consistent with existing *Form 7.322*. Specifically, the Committee requests the addition of the phrases “before a judge” and “by a judge” to the rule to make clear that a judge should preside over pretrial conferences. Judge Pauline Drake, in her response on behalf of the county court judges of the Fourth Judicial Circuit, sets forth reasons

supporting the proposed amendment. The Committee concurs in the reasoning set forth in Judge Drake's response.

The remaining two comments oppose the proposal. The comments express a preference that local courts be given the flexibility to use the practice they find most efficient. The opposing comments urge that financial considerations militate against the use of judges to perform what they term "ministerial functions." As noted in the cycle report, there was a dissenting opinion on the Committee, opposing the change to require the presence of a judge at pretrial conference. However, in the several years the Committee has studied this issue, the Committee fully considered all the advantages and disadvantages of the proposed change, and for the reasons set forth below and in the Committee's cycle report, continues to be strongly of the view that the rule should be amended.

The comments from Pinellas County note that the Sixth Circuit has an Administrative Order authorizing hearing officers to handle pretrial conferences. Currently, *Form 7.322* requires that the parties be advised that they will appear "before a judge" at a pretrial conference. This is a *mandatory* form. See *Rule 7.090(b)*. It further provides that the parties "should be prepared to confer *with the court*." The Committee believes that fundamental fairness dictates that if parties are *required to be advised* that they will appear before a judge, then they should in fact appear before a judge. Additionally, an administrative order clearly cannot trump an existing rule adopted by this Court.

The opposing comments further note that the Committee is seeking a solution for a "problem that does not exist." The Committee respectfully disagrees. The Committee notes that it is comprised of members handling small claims cases throughout the entire state. The Committee is not simply a group handling just a few cases here and there; it was able to bring its own collective experience to the table. The proposal was also brought before the Conference of County Court Judges. With very few exceptions, all parties agreed that this amendment was needed. The problems set forth in the Committee's report are not merely anecdotal. Additionally, as previously noted, one of the purposes of the proposed amendment is to provide for statewide uniformity. The Committee believes that parties in small claims actions should be able to have their cases addressed under a uniform set of rules.

The Committee did not consider the process as it exists only in Pinellas County, but rather throughout the entire State of Florida. Moreover, the comments received earlier from Collier and Charlotte Counties, previously filed as part of the

Appendix to the cycle report, indicate that some County Courts have a different view from Pinellas County of the extent to which non-judicial personnel can be and are involved in small claims pretrial conferences. For instance, in Collier County, cases not resolved at mediation are set for trial by a clerk. According to Judge Murphy's filed comment, the parties do not see a judge at all. In Charlotte County, Judge Alessandroni noted in his comment that for cases not resolved at mediation, litigants may appear before a clerk who "acts as a case manager" in setting the case for trial; the parties again may not see a judge at all before trial. Additionally, the Committee also discovered that in Orange and Osceola Counties, the parties may never see a judge before appearing for trial.<sup>1</sup>

The Committee believes that the Small Claims Rules provide for a pretrial conference process over which a judge should clearly preside, not a hearing officer or a clerk. The existing rules provide several areas in which judicial discretion is required at a pretrial conference: *Rule 7.090(b)* sets forth six matters that "*shall be considered*" at a small claims pretrial conference: (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; and (6) such other matters as the court in its discretion deems necessary. Additionally, under *Rule 7.135*, the court is *required* to summarily enter a disposition at the pretrial conference "if there is no triable issue." The Committee believes these are clear requirements that should be handled by a judge, not a hearing officer or a clerk.

Nothing in the current proposal eliminates the use of mediators, hearing officers, or clerks *as part of* the pretrial conference, as long as the parties appear before a judge at the pretrial conference so that the matters required to be addressed at a pretrial conference are in fact addressed if the case does not settle.

Importantly, notwithstanding the financial and convenience considerations that may support use of hearing officers or clerks in lieu of judges, the Committee continues to urge, as noted in the cycle report, that neither the rules nor state law provide legal authority for the use of hearing officers and clerks to preside over pretrial conferences. To the contrary, the law appears to be that non-judicial

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<sup>1</sup> The Committee has received verbal confirmation that Orange County is now in the process of revising its procedures pertaining to use of clerks at small claims pretrial conferences, and as a result, chose not to file a formal comment in this matter.

parties performing judicial duties must have a specific mechanism to affirmatively authorize them to do so. Such a provision is absent from the Florida Statutes or the Small Claims Rules. See *Lackner v. Central Florida Investments, Inc.*, 14 So. 3d 1050, 1052-54 (Fla. 5<sup>th</sup> DCA 2009).

Additionally, the Committee notes that the great majority of Florida counties use judges at pretrial conferences, while at the same time maintaining effective case management systems and the wise use of judicial resources.

Finally, to obtain a wider view from among the state's county court judiciary, the proposed amendment was also presented to the Small Claims Rules Committee of the Conference of County Judges, and this committee similarly approved the proposed change overwhelmingly.<sup>2</sup>

For these reasons as well as those set forth in the cycle report, the Committee continues to respectfully request that this Court adopt the proposed amendments to the Florida Small Claims Rules.

Respectfully submitted April 20, 2010

/s/ Robert W. Lee  
HON. ROBERT W. LEE  
Chair, Small Claims Rules Committee  
201 S.E. 6th St., Ste. 331  
Fort Lauderdale, FL 33301-3302  
(954) 831-5509  
FLORIDA BAR #500984

/s/ John F. Harkness, Jr.  
JOHN F. HARKNESS, JR.  
Executive Director  
The Florida Bar  
651 E. Jefferson St.  
Tallahassee, FL 32399-2300  
(850) 561-5600  
FLORIDA BAR #123390

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<sup>2</sup> In the Committee's cycle report, the Committee advised this Court that the County Judges Conference Rules Committee approved the proposed amendment "unanimously." Subsequent to the filing of the cycle report, Judge Myra McNary of the Pinellas County Court advised the Bar Committee that she "expressed specific objections to the proposed change during the committee meeting and certainly did not vote in favor of it," an objection that was not noted.

## **CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a copy of the foregoing was furnished by United States mail to the Honorable Eugene Turner, Collier County Courthouse, 3301 E. Tamiami Trail, Naples, FL 34112-4961; the Honorable Paul Alessandroni, Charlotte County Courthouse, 350 E. Marion Ave., Punta Gorda, FL 33950-3727; the Honorable Vincent Murphy, Collier County Courthouse, 3301 Tamiami Trail E., Naples, FL 34112-4961; the Honorable Janeice Martin, Collier County Courthouse, 3301 Tamiami Trail E., Naples, FL 34112-4961; the Honorable Pauline Drake, Duval County Courthouse, 330 E. Bay Street, Jacksonville, FL 32202; the Honorable J. Thomas McGrady, Chief Judge, B. Elaine New, Court Counsel, and Christina Everton, Staff Attorney, Sixth Judicial Circuit, 501 1<sup>st</sup> Avenue North, Suite 1000, St. Petersburg, FL 33701; and the Honorable Walter A. Fullerton, Pinellas County Judge, 545 1<sup>st</sup> Avenue North, Room 211, St. Petersburg, FL 33701-4523; , this 20th day of April, 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).

/s/ Krys Godwin  
KRYG GODWIN  
Bar Staff Liaison, Small Claims Rules Committee  
The Florida Bar  
651 E. Jefferson St.  
Tallahassee, FL 32399-2300  
(850) 561-5702  
FLORIDA BAR #2305