

IN THE SUPREME COURT OF FLORIDA

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

CASE NO.: SC16-

**SMALL CLAIMS RULES COMMITTEE
THREE-YEAR CYCLE REPORT**

Andrew J. Daire, Chair of the Small Claims Rules Committee (“Committee”), and John F. Harkness, Jr., Executive Director of The Florida Bar, file this three-year cycle report under Florida Rule of Judicial Administration 2.140(b). All rule amendments have been approved by the full Committee and, as required by Rule 2.140(b), reviewed by The Florida Bar Board of Governors. The voting records of the Committee and the Board of Governors are attached as Appendix A.

The amendments to Florida Small Claims Rules 7.080 (Service and Filing of Pleadings and Documents Other Than Statement of Claim); 7.090 (Appearance; Defensive Pleadings; Trial Date); and 7.160 (Failure of Plaintiff or Both Parties to Appear) were published in the July 1, 2015, edition of *The Florida Bar News*. The amendments to Florida Small Claims Rule 7.050 (Commencement of Action; Statement of Claim) were published in the July 15, 2015, edition of *The Florida Bar News*. All amendments were posted on The Florida Bar’s website. (*See* Appendix D.) No comments were received.

**RULE 7.050. COMMENCEMENT OF ACTION; STATEMENT
OF CLAIM**

The Committee proposes amending Florida Small Claims Rule 7.050 to correct a mistaken cross-reference. Committee Member, Jesse R. Butler, identified the mistaken reference. Currently subdivision (e) includes a reference to Rule 7.050(d) (Commencement of Action; Statement of Claim). The correct reference should be to Rule 7.090(b) (Appearance; Defensive Pleadings; Trial Date) which addresses pretrial conferences. Specifically, in the last line of subdivision (e), “7.050(d)” is deleted and “7.090(b)” is added.

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RULE 7.080. SERVICE AND FILING OF PLEADINGS AND DOCUMENTS OTHER THAN STATEMENT OF CLAIM

The Committee proposes amending Florida Small Claims Rule 7.080 to address e-mail service for parties not represented by an attorney. The Committee suggests dividing subdivision (b) into two new subdivisions (b)(1) and (b)(2). As proposed, new subdivision (b)(1) would be titled “Party Represented by an Attorney” and would contain the first sentence of existing subdivision (b). Suggested new subdivision (b)(2) would be titled “Party Not Represented by an Attorney” and would contain the remainder of existing subdivision (b).

In new subdivision (b)(2), the Committee recommends deleting “[w]hen an attorney is serving another attorney” and adding “[f]or a party who has designated an e-mail address” in its place. This will allow unrepresented parties to file and serve through the Florida Courts E-filing Portal, if they choose to do so.

Existing subdivision (b) includes a general reference to the Florida Rules of Judicial Administration. The Committee proposes specifying that Rule 2.516(b) (Service of Pleadings and Documents) applies in situations in which a party is represented by an attorney. Specifically, the Committee proposes adding “rule 2.516(b)” to the first sentence in proposed new subdivision (b)(2).

Existing subdivision (d) also includes a general reference to the Florida Rules of Judicial Administration. The Committee proposes specifying that Rule 2.525 (Electronic Filing) applies in situations in which a party is represented by an attorney by adding “rule 2.525” to the second to last sentence of the subdivision.

The Committee suggests amending the certification provision in subdivision (e) to delete “if an attorney” after “e-mail” to allow unrepresented parties to serve documents electronically.

RULE 7.090. APPEARANCE; DEFENSIVE PLEADINGS; TRIAL DATE

The Committee proposes amending Florida Small Claims Rule 7.090 to address concerns regarding “non-served” parties. It was discovered by the Committee that the practice varies across the state. Several counties require the plaintiff to attend the pretrial conference even when a return of service is e-filed with the court showing non-service of the defendant. The court then dismisses the case when the plaintiff does not show up or otherwise appear at the pretrial

conference. In one example, the return of service showing non-service was filed two weeks in advance. The amendment to the rule would only apply to situations in which a non-service affidavit is e-filed with the court at least 5 days prior to the pretrial conference. If the return of service showing non-service is not e-filed at least 5 days prior to the pretrial conference, then the pretrial conference would proceed as scheduled and the plaintiff would still need to attend to avoid dismissal.

There was extensive discussion regarding this rule change. Some concerns discussed involved the following: (1) that this amendment may be burdensome on courts because in some circuits a judge would not know 5 days prior to pretrial conference whether or not a defendant was non-served; (2) that a practitioner should simply be able to file a motion of continuance, which would be sufficient to solve the problem of non-service; and (3) that this problem is not a statewide issue. The Clerk Liaison to the Committee pointed out that judges generally deal with non-service issues in court; thus, it does not seem logistically feasible to have this determination mandated 5 days prior to pretrial conference.

However, the Committee approved the rule to avoid due process concerns for parties who were proved not to have received notice of the pretrial conference.

The Committee proposes amending subdivision (a) to indicate that appearance is subject to the notice provisions in subdivision (b). Specifically, “subject to subdivision (b)” would be added to the end of the sentence in subdivision (a).

The Committee suggests more substantive amendments to subdivision (b). The Committee proposes that “[] in the event the summons/notice to appear is non-served and the return of service is filed 5 days before the pretrial conference, the pretrial conference shall be canceled by the court as to any non-served party” and then “[t]he plaintiff may request a new summons/notice to appear [be served on the previously non-served party] and include a new initial appearance date for the pretrial conference.” The Committee proposes adding these two new sentences after the existing first sentence of subdivision (b).

The Committee suggests rephrasing the second sentence of subdivision (d) for grammatical purposes. The Committee also proposes grammatical amendments to subdivision (f).

**RULE 7.160. FAILURE OF PLAINTIFF OR BOTH PARTIES TO
 APPEAR**

The Committee proposes amending Florida Small Claims Rule 7.160 to include references to 7.090(b) (Appearance; Defensive Pleadings; Trial Date). Specifically, “subject to rule 7.090(b)” would be added to the end of subdivisions (a) and (b). These amendments would make it clear that a non-served party is entitled to have a pretrial conference rescheduled if the return of service is filed 5 days before the pretrial conference.

WHEREFORE, the Small Claims Rules Committee respectfully requests that the Court amend the Florida Small Claims Rules as outlined in this report.

Respectfully submitted on January 28, 2016.

/s/Andrew J. Daire

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was furnished by e-mail, via the Portal, on January 28, 2016, to:

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I certify that these rules were read against *West’s Florida Rules of Court—State* (2015 Revised Edition).

I certify that this report was prepared in compliance with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

/s/ Heather Savage Telfer

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