

Supreme Court of Florida

No. SC13-72

IN RE: AMENDMENTS TO THE FLORIDA SMALL CLAIMS RULES

[September 26, 2013]

PER CURIAM.

We have for consideration the regular-cycle report of proposed rule amendments filed by The Florida Bar's Small Claims Rules Committee (Committee). See Fla. R. Jud. Admin. 2.140(b)(4). We have jurisdiction. See art. V, § 2(a), Fla. Const. We adopt the majority of the amendments as proposed, make an additional minor amendment, and decline to adopt a new rule.

BACKGROUND

The Committee proposes amendments to Florida Small Claim Rules 7.010 (Title and Scope), 7.050 (Commencement of Action; Statement of Claim), and 7.140 (Trial). It also proposes amendments to form 7.350 (Corporate Authorization to Allow Employee to Represent Corporation at Any Stage of Lawsuit). Additionally, the Committee proposes a new rule, rule 7.235 (Information for Holders of a Final Judgment), and a new form, form 7.336

(Statement of Claim for Replevin (For Return of Personal Property/Weapon from Government Entity)). Consistent with Florida Rule of Judicial Administration 2.140(b)(2), the Committee published the proposals for comment before filing them with the Court. The Committee received no comments. The Board of Governors of The Florida Bar unanimously approved the proposals. After the proposals were filed, the Court published them for comment in The Florida Bar News. The Court received no comments.

AMENDMENTS

The majority of the Committee's proposals are straightforward and no comments were filed opposing them. We adopt those proposals without further discussion. We discuss only the amendments to rule 7.050 (Commencement of Action; Statement of Claim) and form 7.350 (Corporate Authorization to Allow Employee to Represent Corporation at Any Stage of Lawsuit), as well as an additional amendment we make to form 7.322 (Summons/Notice to Appear for Pretrial Conference). Further, we discuss proposed new rule, rule 7.235 (Information for Holders of a Final Judgment), which we decline to adopt.

The Committee unanimously proposed to amend rule 7.050(a)(2) (Commencement; Party Not Represented by Attorney to Sign) to replace "corporation" with "business entity recognized under Florida law." The Committee also sought to replace the sentence which provides that "[a] corporation

may be represented at any stage of the trial court proceedings by an officer of the corporation or any employee authorized in writing by an officer of the corporation,” with ones which state that “[a]ny business entity recognized under Florida law may be represented at any stage of the trial court proceedings by any principal of the business entity who has legal authority to bind the business entity or any employee authorized in writing by a principal of the business entity. A principal is defined as being an officer, member, managing member, or partner of the business entity.” These amendments are adopted as proposed.

However, according to the Committee’s minutes submitted as an attachment to the Committee’s report, the Committee voted unanimously to also change the heading of form 7.350 from “AUTHORIZATION OF CORPORATE OFFICER” to “AUTHORIZATION OF PRINCIPAL.” It appears this change was inadvertently omitted from the Committee’s report. Accordingly, we amend the heading of form 7.350 as approved in the Committee’s minutes.

Additionally, form 7.322 (Summons/Notice to Appear for Pretrial Conference) contains the same sentence that the Committee proposed to amend in rule 7.050 and that the Court is adopting. In order to maintain consistency throughout the Florida Small Claims Rules, the Court, on its own motion, amends form 7.322 to replace the same text as was done in rule 7.050.

The Committee proposed a new rule that created a brochure which provided information regarding the actions a prevailing party in small claims court should take. We, however, decline to adopt the new rule because the Florida Small Claims Rules are procedural rules of court and are not meant to provide guidance on the actions a prevailing party may take after receiving a judgment. A brochure providing this information may be more appropriate for inclusion in the individual county clerk of courts' websites, as is currently done by Miami-Dade County and Leon County. See How to File a Small Claims Action, Miami-Dade County Clerk of Courts (October 2011), http://miami-dadeclerk.com/library/small_claims/881-Web.pdf; A Guide to Small Claims, Leon County Clerk of Courts (July 1, 2013), http://cvweb.clerk.leon.fl.us/clerk_services/online_forms/brochures_and_newsletters/small_claims_b.pdf.

CONCLUSION

Accordingly, we amend the Florida Small Claims Rules as reflected in the appendix to this opinion. New language is indicated by underscoring; deletions are indicated by struck-through type. The committee notes are offered for explanation only and are not adopted as an official part of the rules. The amendments shall become effective January 1, 2014, at 12:01 a.m.

It is so ordered.

POLSTON, C.J., and PARIENTE, LEWIS, QUINCE, CANADY, LABARGA, and PERRY, JJ., concur.

THE FILING OF A MOTION FOR REHEARING SHALL NOT ALTER THE EFFECTIVE DATE OF THESE AMENDMENTS.

Original Proceedings – The Florida Small Claims Rules Committee

Thomas Robert Thompson, Chair, Florida Small Claims Rules Committee,
Tallahassee, Florida; John F. Harkness, Jr., Executive Director, and Heather Telfer,
Staff Liaison, The Florida Bar, Tallahassee, Florida,

for Petitioner

APPENDIX

RULE 7.010. TITLE AND SCOPE

(a) [No Change]

(b) **Scope.** These rules are applicable to all actions ~~at law~~ of a civil nature in the county courts ~~in which the~~ contain a demand for money or value of property involved, the value of which does not exceed \$5,000 exclusive of costs, interest, and attorneys' fees. If there is a difference between the time period prescribed by these rules and section 51.011, Florida Statutes, the statutory provision shall govern.

Committee Notes

1978 Amendment. [No Change]

2013 Amendment. Subdivision (b) is amended to clarify that the Florida Small Claims Rules apply to a claim for money or property even when expressed as, or coupled with, a claim for equitable relief. *State Farm Mutual Automobile Insurance Company v. Green*, 579 So. 2d 402 (Fla. 5th DCA 1991).

RULE 7.050. COMMENCEMENT OF ACTION; STATEMENT OF CLAIM

(a) **Commencement.**

(1) [No Change]

(2) **Party Not Represented by Attorney to Sign.** A party, individual, or ~~corporation~~ business entity recognized under Florida law who or which has no attorney handling such cause shall sign that party's statement of claim or other paper and state that party's address and telephone number, including area code, and may include an e-mail address. However, if the trial court in its discretion determines that the plaintiff is engaged in the business of collecting claims and holds such claim being sued upon by purchase, assignment, or management arrangement in the operation of such business, the court may require that ~~corporation~~ business entity to provide counsel in the prosecution of the cause.

~~A corporation may be represented at any stage of the trial court proceedings by an officer of the corporation or any employee authorized in writing by an officer of the corporation.~~ Any business entity recognized under Florida law may be represented at any stage of the trial court proceedings by any principal of the business entity who has legal authority to bind the business entity or any employee authorized in writing by a principal of the business entity. A principal is defined as being an officer, member, managing member, or partner of the business entity.

(b) Parties. The names, addresses, and, if known, telephone numbers, including area code, of all parties or their attorneys, if any, must be stated on the statement of claim. A party not represented by an attorney may include an e-mail address. Additionally, attorneys must include their Florida Bar number on all papers filed with the court, as well as an e-mail address, in compliance with the Florida Rules of Judicial Administration. A statement of claim shall not be subject to dismissal for the failure to include a telephone number.

(c) - (e) [No Change]

Committee Notes

1988-2010 Amendments. [No Change]

2013 Amendment. Subdivision (b) is amended to clarify that a party is required to list an opposing party's telephone number only if that telephone number is known. Additionally, the rule is amended to clarify that the requirement of including a telephone number is not grounds for dismissal.

Court Commentary

[No Change]

RULE 7.140. TRIAL

(a) - (e) [No Change]

(f) How Conducted. The trial may be conducted informally but with decorum befitting a court of justice. The rules of evidence applicable to trial of civil actions apply but are to be liberally construed. At the discretion of the court, testimony of any party or witness may be presented over the telephone.

Additionally, at the discretion of the court an attorney may represent a party or witness over the telephone without being physically present before the court. Any witness utilizing the privilege of testimony by telephone as permitted in this rule shall be treated for all purposes as a live witness, and shall not receive any relaxation of evidentiary rules or other special allowance. A witness may not testify over the telephone in order to avoid either the application of Florida's perjury laws or the rules of evidence.

Committee Notes

1984-2011 Amendments. [No Change]

FORM 7.322. SUMMONS/NOTICE TO APPEAR FOR PRETRIAL CONFERENCE

(CAPTION)

STATE OF FLORIDA--NOTICE TO PLAINTIFF(S) AND DEFENDANT(S)

.....

.....

.....

.....

.....

YOU ARE HEREBY NOTIFIED that you are required to appear in person or by attorney at the in Courtroom #, located at, on(date)....., at m., for a PRETRIAL CONFERENCE before a judge of this court.

IMPORTANT--READ CAREFULLY THE CASE WILL NOT BE TRIED AT THAT TIME. DO NOT BRING WITNESSES--APPEAR IN PERSON OR BY ATTORNEY

The defendant(s) must appear in court on the date specified in order to avoid a default judgment. The plaintiff(s) must appear to avoid having the case dismissed for lack of prosecution. A written MOTION or ANSWER to the court by the plaintiff(s) or the defendant(s) shall not excuse the personal appearance of a party or its attorney in the PRETRIAL CONFERENCE. The date and time of the pretrial conference CANNOT be rescheduled without good cause and prior court approval.

~~A corporation may be represented at any stage of the trial court proceedings by an officer of the corporation or any employee authorized in writing by an officer of the corporation.~~ Any business entity recognized under Florida law may be represented at any stage of the trial court proceedings by any principal of the

business entity who has legal authority to bind the business entity or any employee authorized in writing by a principal of the business entity. A principal is defined as being an officer, member, managing member, or partner of the business entity.

Written authorization must be brought to the Pretrial Conference.

The purpose of the pretrial conference is to record your appearance, to determine if you admit all or part of the claim, to enable the court to determine the nature of the case, and to set the case for trial if the case cannot be resolved at the pretrial conference. You or your attorney should be prepared to confer with the court and to explain briefly the nature of your dispute, state what efforts have been made to settle the dispute, exhibit any documents necessary to prove the case, state the names and addresses of your witnesses, stipulate to the facts that will require no proof and will expedite the trial, and estimate how long it will take to try the case.

Mediation may take place at the pretrial conference. Whoever appears for a party must have full authority to settle. Failure to have full authority to settle at this pretrial conference may result in the imposition of costs and attorney fees incurred by the opposing party.

If you admit the claim, but desire additional time to pay, you must come and state the circumstances to the court. The court may or may not approve a payment plan and withhold judgment or execution or levy.

RIGHT TO VENUE. The law gives the person or company who has sued you the right to file in any one of several places as listed below. However, if you have been sued in any place other than one of these places, you, as the defendant(s), have the right to request that the case be moved to a proper location or venue. A proper location or venue may be one of the following: (1) where the contract was entered into; (2) if the suit is on an unsecured promissory note, where the note is signed or where the maker resides; (3) if the suit is to recover property or to foreclose a lien, where the property is located; (4) where the event giving rise to the suit occurred; (5) where any one or more of the defendants sued reside; (6) any location agreed to in a contract; (7) in an action for money due, if there is no agreement as to where suit may be filed, where payment is to be made.

If you, as the defendant(s), believe the plaintiff(s) has/have not sued in one of these correct places, you must appear on your court date and orally request a transfer, or you must file a WRITTEN request for transfer in affidavit form (sworn to under oath) with the court 7 days prior to your first court date and send a copy to the plaintiff(s) or plaintiff's(s') attorney, if any.

A copy of the statement of claim shall be served with this summons.

DATED at, Florida, on(date).....

As Clerk of the County Court

FORM 7.336. STATEMENT OF CLAIM FOR REPLEVIN (FOR RETURN OF PERSONAL PROPERTY/WEAPON FROM GOVERNMENT ENTITY)

(CAPTION)

STATEMENT OF CLAIMS FOR REPLEVIN

Plaintiff(s) sues Defendant(s) and alleges:

1. This is an action to recover possession of personal property.

2. The description of the property is:.....

.....
.....

3. To Plaintiff's best knowledge, information, and belief the value of the property is \$..... and its location is

.....

4. Plaintiff is the owner of the claimed property or is entitled to possession of it by virtue of the following source of title, or right of possession:

.....
.....
.....

(If interest is based on a written instrument a copy is attached.)

5. The property cannot be released by the defendant without a court order, or the property is wrongfully detained by the defendant who obtained possession by:

.....
.....

6. To Plaintiff's best knowledge, information, and belief, defendant detains property because:

.....
.....

7. The property has not been taken for any tax, assessment, or fine pursuant to law, nor has it been taken under an execution or attachment against plaintiff's property, or if so taken, it is by law exempt from such taking by the following reference to the exemption law relied upon:

8. Written demand for return of the property was provided to Defendant and [if Defendant is not a municipality] also to the Department of Financial Services at least 90 days prior to the filing of this Complaint. Section 768.28(6)(a), Florida Statutes. A copy of the demand is attached hereto.

9. The property is not contraband, was not the fruit of criminal activity, and is not being held for some evidentiary purposes.

10. The property came into possession of Defendant on or about(date).....

11. Plaintiff has the legal right to possess the property and is not subject to any legal prohibition against such possession.

Pursuant to section 92.525, Florida Statutes, under penalties of perjury, I declare that I have read the foregoing Statement of Claim and the facts stated in it are true.

Plaintiff

NOTE: This form is to be used by those seeking return of personal property (including weapons) taken by a government entity for purposes other than for a criminal investigation, as an incident to arrest, pursuant to a search warrant, or any other seizure for which the Florida Statutes provide a specific procedure for return. Rather, this form is for use by those who seek return of personal property taken for other purposes, such as "safekeeping," and for which the Florida Statutes provide no procedures.

**FORM 7.350. ~~CORPORATE~~AUTHORIZATION TO ALLOW
EMPLOYEE TO REPRESENT
~~CORPORATION~~BUSINESS ENTITY AT ANY STAGE
OF LAWSUIT**

~~(Caption)~~(CAPTION)

~~AUTHORIZATION OF CORPORATE OFFICER~~PRINCIPAL

.....(name)..... is an employee of(name of ~~corporation~~business entity
under Florida law that is a party to this action)..... This individual has authority to
represent the ~~corporation~~business entity at any stage of the trial court proceedings,
including mediation.

The undersigned giving the authority is ~~an officer of the corporation~~a
principal of the business entity.

Pursuant to section 92.525, Florida Statutes, under penalties of perjury, I
declare that I have read the foregoing ~~Corporate~~ Authorization and that the facts
stated in it are true.

Dated:

SIGNING AUTHORITY: _____

Print name and title:

~~(president; vice-president; secretary; treasurer)~~

Address:

.....

Phone number:

I certify that a copy of this form has been furnished to [list all parties to this
action] by(hand delivery/mail/fax)..... on(date).....

Name and title: