FLORIDA

SMALL CLAIMS RULES ANNOTATED

◊ 2020-2021 Edition ◊

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(*This annotated reference includes all trial and appellate court decisions reported through January 2020 in the Southern Reporter, the Florida Law Weekly, the Florida Law Weekly Supplement, and the Florida Supplement.*)

RULE 7.010. TITLE AND SCOPE

(a) Title. These rules shall be cited as Florida Small Claims Rules and may be abbreviated "Fla. Sm. Cl. R." These rules shall be construed to implement the simple, speedy, and inexpensive trial of actions at law in county courts.

(b) Scope. These rules are applicable to all actions of a civil nature in the county courts which contain a demand for money or property, the value of which does not exceed $8,000 exclusive of costs, interest, and attorneys' fees. If there is a difference between the time period prescribed by these rules and by section 51.011, Florida Statutes, the statutory provision shall govern.

Annotations:

Subsection (b) of the rule extends the Small Claims Rules to all claims for money or property, even when expressed or coupled with a claim for equitable relief. *In re Amendments to Florida Small Claims Rules*, 123 So.3d 41 (Fla. 2013).

Small claims cases are processed under a set of rules with a stated goal to reach a "simple, speedy, and inexpensive" resolution of these cases. Because of the stated goals and tight timeframes of the rules, an active motion practice is discouraged. *In re Amendments to Florida Small Claims Rule 7.090*, 64 So.3d 1196 (Fla. 2011) (Pariente, J., concurring).

The small claims rules do not create a separate "small claims court." Rather, they are a set of rules to be used in particular cases falling under the jurisdiction of the County Court. *Conner v. Moran*, 44 Fla. L. Weekly D2052 (Fla. 1st DCA 2019).

Jurisdiction for small claims cases lies in County Court. There is no separate "Small Claims Court" recognized in Florida. However, the Small Claims Rules do not apply to actions to foreclose a mortgage, regardless of the balance due. *Lasalla v. Pools by George of Pinellas County*, 125 So.3d 106 (Fla. 2d DCA 2013).

When damages in a case do not exceed $5,000, the Small Claims Rules apply. *Arafat v. U-Haul Center Margate*, 82 So.3d 903 (Fla. 4th DCA 2011).

Provision in arbitration agreement which allows parties with disputes under $5000 to instead elect the small claims rules is even-handed and unobjectionable. *Hialeah Automotive LLC v. Basulto*, 22 So.3d 586 (Fla. 3d DCA 2009).

Small claims court was established to provide an open forum for the speedy resolution of disputes over minor claims. *Metro Ford, Inc. v. Green*, 724 So.2d 706 (Fla. 3d DCA 1999).

Actions for specific performance cannot be filed in small claims because they are actions in equity. Actions for unjust enrichment and quasi contract, however, are actions at law and may be filed in small claims. *Tax Certificate Redemption's, Inc. v. Meitz*, 705 So.2d 64 (Fla. 4th DCA 1997).

Because a class action contemplates a single judgment, the individual claims of parties in the class action are aggregated to determine the jurisdictional amount at issue. *Galen of Florida, Inc. v. Arscott*, 629 So.2d 856 (Fla. 5th DCA 1993).

When counterclaim was filed which exceeded jurisdictional limit of small claims, case was to proceed under the rules of civil procedure rather than the small claims rules. *Hilton v. Florio*, 317 So.2d 83 (Fla. 3d DCA 1975).

The small claims rules do not create a separate "small claims court." Rather, they are a set of rules to be used in particular cases falling under the jurisdiction of the County Court. *Conforti v. Carr*, 27 Fla. L. Weekly Supp. 571 (5th Cir. App. 2019).

Trial court acted properly in declining to dismiss case based on plaintiff's failure to attach copy of lease at issue when defendant waited to raise the issue until trial. Small claims actions are processed under a set of rules with a stated goal to reach a simple, speedy and inexpensive resolution of cases. The trial court's actions as a result met the goal of the rules, even though the Small Claims Rules would require attachment of the lease. *Barton v. Cooper*, 19 Fla. L. Weekly Supp. 66 (11th Cir. Ct. 2011) (appellate capacity).

Procedures under Small Claims Rules do not apply to actions in equity, such as actions to foreclose construction liens because a foreclosure action is not an action "at law." Therefore, when small claims division entered a foreclosure judgment relying on small claims procedures, resulting judgment was void. *LaSalla v. Pools by George*, 18 Fla. L. Weekly Supp. 750 (6th Cir. Ct. 2011) (appellate capacity), disapproved in 125 So.3d 1016 (Fla. 2d DCA 2013) ("although the initial judgment in county court may have been entered with the use of the wrong set of procedural rules, the judgment was not void and the county court had subject matter jurisdiction over the case").

Small Claims Rules have no minimum threshold dollar amount. The purpose of the rules is to create a framework to handle small and trivial claims. As a result, the doctrine of *de minimis* cannot be used to create a minimum amount in controversy. *Radiology Regional Center, P.A. v. State Farm Mutual Automobile Ins. Co.*, 23 Fla. L. Weekly Supp. 112 (20th Cir. App. 2015).

Small Claims Rules are less formal than the rules of civil procedure, which promotes the interest of quickly moving the cases through the court system. *Bristol West Ins. Co. v. Care Therapy & Diagnostics, Inc.*, 18 Fla. L. Weekly Supp. 35 (13th Cir. Ct. 2008) (appellate capacity).

When clerk did not object to case against it being brought it small claims, court had jurisdiction under small claims rules to entertain plaintiff's claims that it

should be refunded a $50 reopen fee paid in another case. *Burke v. Esposito*, 15 Fla. L. Weekly Supp. 205 (6th Cir. Ct. 2007) (appellate capacity).

Claim for balance due on credit card debt less than $5000 would proceed under the small claims rules. *CACV of Colorado, LLC v. DeWolf*, 15 Fla. L. Weekly Supp. 27 (15th Cir. Ct. 2007) (appellate capacity).

Claim for balance due on credit card debt less than $5000 would proceed under the small claims rules. *LVNV Funding LLC v. Moehrlin*, 15 Fla. L. Weekly Supp. 97 (7th Cir. Ct. 2007). (appellate capacity).

Claim for quantum meruit recovery is an equitable action not cognizable under the small claims rules. *All-in-One Enterprises, Inc. v. McKahand*, 12 Fla. L. Weekly Supp. 726 (17th Cir. Ct. 2005) (appellate capacity). [Editor's Note: This decision is contrary to the seminal holding of the Florida Supreme Court in *Livingston v. Twyman*, 43 So.2d 354, 356 (Fla. 1950) (in which the Supreme Court noted that a claim for quantum meruit recovery "should be decided in an action at law.")]

When counterclaim exceeded $5000, court could not use 6-month rule in small claims to dismiss action for lack of prosecution, but rather must use the procedure set forth in the rules of civil procedure. *Peter Cohen, P.A. v. P & S Transport, Inc.*, 11 Fla. L. Weekly Supp. 303 (11th Cir. Ct. 2004) (appellate capacity).

Because small claims matters may proceed in a more informal manner than cases proceeding under the rules of civil procedure, and defendant does not need to file any defense in order to contest the claim against him, defendant is not required to assert a meritorious defense in order to have default set aside. *Hertrich v. Lamee*, 6 Fla. L. Weekly Supp. 549 (19th Cir. Ct. 1999) (appellate capacity).

Although small claims rules are to be "construed to implement the simple, speedy, and inexpensive trial of actions at law in county courts,"' party must still plead entitlement to attorney's fees claim before an award of fees can be given. *Ringhaver Equipment Co. v. White Rose Nursery, Ltd., Inc.*, 4 Fla. L. Weekly Supp. 374 (13th Cir. Ct. 1996) (appellate capacity).

When matter proceeding under Fla. Stat. §51.011 (summary procedure) exceeded the jurisdictional amount of small claims, case could not proceed under small claims rules. *Laundromat Services Consultants, Inc. v. Investors' Real Estate Management of Tallahassee, Inc.*, 42 Fla. Supp. 2d 11 (2d Cir. Ct. 1990) (appellate capacity).

Attorney's fees awarded in a small claims action are not subject to jurisdictional limitation of small claims. *Garrett v. Contract Commissioning, Inc.*, 1 Fla. Supp. 2d 7 (11th Cir. Ct. 1981) (appellate capacity).

The lack of a specified minimum dollar amount in the small claims rules indicates that the doctrine of *de minimis non curat lex* should not apply to small claims cases. *Radiology Regional Center, P.A. v. State Farm Mutual Auto. Ins. Co.*, 22 Fla. L. Weekly Supp. 908; 22 Fla. L. Weekly 910 (20th Cir. Ct. 2015) (appellate capacity) (two cases, same parties).

Actions for injunctive or declaratory relief are not cognizable under the Florida Small Claims Rules. *Thomas v. Israel*, 26 Fla. L. Weekly Supp. 242 (Broward Cty. Ct. 2018) (Lee, J).

Because the small claims rules are to be construed to implement the simply, speedy, and inexpensive trial" of small claims actions, trial court concluded that upon any rules of civil procedure being invoked in a small claims case, they apply prospectively only to the case. Therefore, when the defendant failed to timely object to venue as required by the small claims rules, the defendant had waived any objection to venue. The defendant was not provided a new deadline to object to venue when the rules of civil procedure were subsequently invoked. *Sunset Radiology, Inc. v. United Automobile Ins. Co.*, 23 Fla. L. Weekly Supp. 374 (Broward Cty. Ct. 2015) (Beller, J).

A plaintiff filing a case under the small claims rules is limited to recovery of no more than $5,000.00 in damages, even though the plaintiff may prove greater damages at trial. *Marshall v. Bullard*, 19 Fla. L. Weekly Supp. 663 (Broward Cty. Ct. 2012) (Lee, J).

When plaintiff filed a cause of action using "pretentious language and tortured syntax" purportedly invoking equitable relief, but ultimately sought nothing but monetary damages less than $5000, case travels under small claims rules despite plaintiff's intent to avoid small claims rules. Case would be dismissed without prejudice to plaintiff's "right to refile in the proper procedural framework." *Midland Funding, LLC v.Layton*, 18 Fla. L. Weekly Supp. 245 (Collier Cty. Ct. 2009) (Murphy, J).

When plaintiff filed complaint stating that damages did not exceed $15,000, but demand attached as an exhibit to complaint was for less than $5,000, the small claims rules apply. *Gordon v. Progressive American Ins.*, 15 Fla. L. Weekly Supp. 51 (Duval Cty. Ct. 2007) (Blazs, J).

PIP case under $5000 is not governed by the rules of civil procedure, but by the small claims rules, which specifically promote the simple, speedy, and inexpensive trial of actions at law in County Courts. *Robinson v. Progressive Casualty Ins. Co.*, 11 Fla. L. Weekly Supp. 738 (Brevard Cty. Ct. 2004) (Friedland, J).

Court could consider policy reasons under small claims rules to promote the simple, speedy and inexpensive resolution of matters in determining whether an arbitration clause in a contract is unconscionable. *McKahand v. All-in-One Enterprises, Inc.*, 11 Fla. L. Weekly Supp. 57 (Broward Cty. Ct. 2003) (Lee, J).

Rule 1.442 providing for an offer of judgment is applicable to small claims actions only at the discretion of the court. *First Choice Medical Center v. Progressive Express Ins. Co.*, 10 Fla. L. Weekly Supp. 1055 (Seminole Cty. Ct. 2003) (Bravo, J).

When court has not ordered rule 1.442 to apply to small claims case, and parties have not otherwise entered into stipulation as contemplated by the small claims rules, offer of judgment would be stricken. *Chessher v. State Farm Mutual Automobile Ins. Co.*, 8 Fla. L. Weekly Supp. 245 (Escambia Cty. Ct. 2001) (Kinsey, J).

When plaintiff filed several individual claims in one case which in the aggregate exceeded the jurisdictional limit of the court, case as filed could not proceed under small claims rules. *State Dep't of Education v. Carter*, 28 Fla. Supp. 2d 105 (Volusia Cty. Ct. 1988) (Carnell, J).

Small claims rules do not apply to actions for eviction. *Johnstown Properties Corp. v. Gabriel*, 50 Fla. Supp. 138 (Polk Cty. Ct. 1980).

***SECONDARY AUTHORITY*:**

Trawick's Fla. Prac. & Proc. §7:5 (2020).

12A Fla. Jur. 2d *Courts & Judges* §239 (Nov. 2019).

Laura M. Beard, *Small Claims, Big Recovery: Proposals for Settlement in Florida's Small Claims Courts Post-Nichols*, 65 Fla. L. Rev. 1417, 1421, 1423 (2013) (discussing purpose of smalls claims rules).

RULE 7.020. APPLICABILITY OF RULES OF CIVIL PROCEDURE

(a) Generally. Florida Rules of Civil Procedure 1.090(a), (b), and (c); 1.190(e); 1.210(b); 1.260; 1.410; and 1.560 are applicable in all actions covered by these rules.

(b) Discovery. Any party represented by an attorney is subject to discovery pursuant to Florida Rules of Civil Procedure 1.280 – 1.380 directed at said party, without order of court. If a party not represented by an attorney directs discovery to a party represented by an attorney, the represented party may also use discovery pursuant to the above-mentioned rules without leave of court. When a party is not represented by an attorney and has not initiated discovery pursuant to Florida Rules of Civil Procedure 1.280 – 1.380, the opposing party shall not be entitled to initiate such discovery without leave of court. However, the time for such discovery procedures may be prescribed by the court.

(c) Additional Rules. In any particular action, the court may order that action to proceed under 1 or more additional Florida Rules of Civil Procedure on application of any party or the stipulation of all parties or on the court's own motion.

Annotations:

Rule 1.440 (dealing with setting an action for trial) does not apply to small claims cases, unless the trial judge specifically orders it to be applicable. *Conner v. Moran*, 44 Fla. L. Weekly D2052 (Fla. 1st DCA 2019).

Generally speaking, the Florida Rules of Civil Procedure do not apply to cases subject to the Florida Small Claims Rules. *Tedder v. Estate of Tedder*, 200 So.3d 123 (Fla. 5th DCA 2016).

Except for rules of civil procedure specifically incorporated by the small claims rules, other rules of civil procedure are incorporated only by court order. *Arafat v. U-Haul Center Margate*, 82 So.3d 903 (Fla. 4th DCA 2011).

Some rules of civil procedure have no counterparts in the small claims rules. *Progressive Express Ins. Co. v. McGrath Community Chiropractic*, 913 So.2d 1281 (Fla. 2d DCA 2005).

Once rules of civil procedure have been invoked in a small claims case, the court cannot avail itself of the small claims rules to handle matters in the case. However, a trial may properly decide to reinstate the small claims rules. *State*

***Farm Mutual Automobile Ins. Co. v. Precision Diagnostic, Inc.*, 25 Fla. L. Weekly Supp. 425, 2017 WL 1287775 (19th Cir. App. 2017).**

Court would invoke the Rules of Civil Procedure in their entirety in a small claims PIP case to avoid potential conflict with offer of judgment statute. *Orlando Spine & Wellness Center v. Progressive American Ins. Co.*, 27 Fla. L. Weekly Supp. 727 (Flagler Cty. Ct. 2019) (Hamrick, J).

When the Court found no specific reason to invoke any rules of civil procedure into this small claims case, and further that it would not expedite the judicial process nor otherwise assist the Court or parties in reaching a just conclusion, the defendant's motion to invoke the rules of civil procedure would be denied. *Orthopedic & Neurosurgery Partners, LLC v. State Farm Mutual Automobile Ins. Co.*, 26 Fla. L. Weekly Supp. 118 (St. Johns Cty. Ct. 2018) (Christine, J).

When any rules of civil procedure are invoked in a small claims case, they apply prospectively only to the case. Therefore, when the defendant failed to timely object to venue as required by the small claims rules, the defendant had waived any objection to venue. The defendant was not provided a new deadline to object to venue when the rules of civil procedure were subsequently invoked. *Sunset Radiology, Inc. v. United Automobile Ins. Co.*, 23 Fla. L. Weekly Supp. 374 (Broward Cty. Ct. 2015) (Beller, J).

A plaintiff in a small claims case cannot initiate discovery with service of process of the statement of claim. *Lake Shore HMA, LLC v. State Farm Mutual Automobile Ins. Co.*, 23 Fla. L. Weekly Supp. 340 (Columbia Cty. Ct. 2015) (Coleman, J).

If a rule of civil procedure is not listed in this small claims rule as automatically incorporated, it may be incorporated into the small claims case by court order. *St. Mary's Hospital, Inc. v. Johnson*, 19 Fla. L. Weekly Supp. 762 (15th Cir. Ct. 2012) (appellate capacity).

In a small claims action, a court order must be entered to proceed under additional rules of civil procedure. However, when party is represented by an attorney, such party is subject to discovery without order of the court. *Barton v. Cooper*, 19 Fla. L. Weekly Supp. 66 (11th Cir. Ct. 2011) (appellate capacity).

Although parties filed motion to invoke the rules of civil procedure, trial court granted the motion as to rule 1.442 (proposals for settlement) only. *State Farm Fire & Casualty Co. v. Best Therapy Center*, 17 Fla. L. Weekly Supp. 1172 (11th Cir. Ct. 2010) (appellate capacity).

Because small claims rules incorporate rule 1.090(a), Fla. R. Civ. P., court must accept timely filings under this rule, including the exclusion of Saturday, Sunday, and holiday deadlines. However, five-day extension for sending by US mail does not apply if filing is emailed. *Kranitz v. Zion*, 17 Fla. L. Weekly Supp. 90 (15th Cir. Ct. 2009) (appellate capacity).

The small claims rules require the rules of civil procedure to be specifically invoked, either by the parties or by the court. *Bristol West Ins. Co. v. Care Therapy & Diagnostics, Inc.*, 18 Fla. L. Weekly Supp. 35 (13th Cir. Ct. 2008) (appellate capacity).

When trial court determines to impose sanctions for failure to comply with rules of discovery, court must make a specific finding of willful non-compliance with factual findings supporting that conclusion. *Doctors Plus Medical Center, Inc. v. Regional Medical Imaging, Inc.*, 15 Fla. L. Weekly Supp. 1165 (17th Cir. Ct. 2008) (appellate capacity).

Although rule 1.442 was not properly invoked in small claims case, offer of judgment statute provides independent legal authority for allowing offer of judgment procedure in small claims case. *Bristol West Ins. Co. v. Care Therapy & Diagnostics, Inc.*, 15 Fla. L. Weekly Supp. 883 (13th Cir. Ct. 2008) (appellate capacity).

When defendant fails to appear at pretrial conference and is defaulted, trial court cannot deny entry of final judgment in plaintiff's favor when plaintiff has attached an unsigned copy of credit agreement to statement of claim. Although court on its own invoked rule of civil procedure requiring attachment of contract to statement of claim, plaintiff did attach a credit agreement which defendant admitted by failing to appear at pretrial. *LVNV Funding LLC v. Moehrlin*, 15 Fla. L. Weekly Supp. 9 (7th Cir. Ct. 2007) (appellate capacity).

Trial court erred in allowing attorney's fees under rule 1.442 when the rule was not properly invoked pursuant to the small claims rules. *Oliveria v. Britto*, 14 Fla. L. Weekly Supp. 810 (6th Cir. Ct. 2007) (appellate capacity).

Rule 1.530, dealing with altering or amending judgments, does not apply in small claims unless specifically invoked by the court. *Perez-Roura v. O.Benitez & Associates, Inc.*, 13 Fla. L. Weekly Supp. 855 (11th Cir. Ct. 2006) (appellate capacity).

When defendant failed to object in small claims proceeding to court's hearing plaintiff's motion for judgment on the pleadings under rule 1.140, defendant waived objection that court had not properly invoked the rule into the case. *Central Imaging Services, Inc. v. Progressive Express Ins. Co.*, 12 Fla. L. Weekly Supp. 520 (6th Cir. Ct. 2004) (appellate capacity).

Because the small claims rules do not recognize a proposal for settlement, Rule 1.442 would necessarily have to be invoked to apply in a small claims case. *Townsend v. Asset Acceptance Corp.*, 12 Fla. L. Weekly Supp. 189 (6th Cir. Ct. 2004) (appellate capacity).

Rule does not allow court to invoke rule which would expand jurisdiction of small claims court beyond $5000. *Peter Cohen, P.A. v. P & S Transport, Inc.*, 11 Fla. L. Weekly Supp. 303 (11th Cir. Ct. 2004) (appellate capacity).

Due process rights of party were violated when trial court invoked rules of civil procedure to allow judgment on pleadings in small claims action without notice. Even if properly invoked, the motion for judgment on the pleadings should have been denied because, although an answer is not required in small claims court, it was nonetheless procedurally necessary before the trial court could entertain a motion for judgment on the pleadings under the invoked rule. *Sypien v. NCO Financial Systems, Inc.*, 10 Fla. L. Weekly Supp. 1055 (6th Cir. Ct. 2003) (appellate capacity).

Because small claims rules automatically incorporate rule 1.190(e), plaintiff should be given leave to attempt to amend statement of claim. *Hernandez v. Collection Information Bureau, Inc.*, 8 Fla. L. Weekly Supp. 17 (15th Cir. Ct. 2000) (appellate capacity).

Even though defendant is not required to file an answer in small claims action, the discovery provisions of this rule provide plaintiff a means to seek information pertaining to the merits of any defense or denial of the defendant. *Ghaltchi v. Kilbride Int'l Leasing & Investment Co., Ltd.*, 39 Fla. Supp. 2d 4 (17th Cir. Ct. 1990) (appellate capacity).

When rules of civil procedure have not been invoked, defendant is not required to comply with the provision of those rules requiring a written response to the complaint. *Clear Vision Windshield Repair v. Government Employees Ins. Co.*, 22 Fla. L. Weekly Supp. 965 (Broward Cty. Ct. 2015) (Lee, J).

When parties did not demonstrate any "case-specific reason" to invoke rules of civil procedure, trial court would exercise its discretion to deny motion to invoke the rules. *Mark Pierce Chiropractic Clinic, P.A. v. State Farm Mutual Auto. Ins. Co.*, 22 Fla. L. Weekly Supp. 927 (Duval Cty. Ct. 2015) (Kalil, J).

When parties did not demonstrate any "case-specific reason" to invoke rules of civil procedure, trial court would exercise its discretion to deny motion to invoke the rules. *Neurology Partners, P.A. v. USAA Casualty Ins. Co.*, 22 Fla. L. Weekly Supp. 927 (Duval Cty. Ct. 2015) (Mitchell, J).

Parties cannot invoke rules of civil procedure without court approval, even if the parties are in agreement. *Quantum Imaging Holding, LLC v. Allstate Fire & Cas. Ins. Co.*, 19 Fla. L. Weekly Supp. 843 (Broward Cty. Ct. 2012) (Lee, J).

When court approved agreement of the parties to invoke the rules of civil procedure, rules would be invoked although claim was for less than $5,000. *Joyner v. Lexington Ins. Co.*, 18 Fla. L. Weekly Supp. 1052 (Broward Cty. Ct. 2011) (Lee, J).

Decision whether to invoke rules of civil procedure is discretionary with the court, even if the parties both agree that the rules be invoked. *Hollywood Diagnostics Center, Inc. v. United Automobile Ins. Co.*, 18 Fla. L. Weekly Supp. 102 (Broward Cty. Ct. 2010) (Lee, J).

In light of the conflicting deadlines set forth in the small claims rules and rule 1.442(b), court declines to invoke rule 1.442 into case. However, court notes that Fla. Stat. §768.79 operates independently in a small claims case, although rule 1.442 may not have been invoked. *Henry v. Honickman*, 17 Fla. L. Weekly Supp. 301 (Broward Cty. Ct. 2010) (Lee, J).

Rule 1.442 permitting an offer of judgment is not applicable as a matter of right to a small claims case. A party seeking to use rule must obtain leave of court. Rule, however, is not workable in small claims court. *Pamal Broadcasting, Ltd. v. Kruger*, 16 Fla. L. Weekly Supp. 750 (Santa Rosa Cty. Ct. 2009) (Bilbrey, J).

Under this rule, court could set hearing under rule 1.530, dealing with motions for rehearing. *Occupational & Rehabilitation Center*, 12 Fla. L. Weekly Supp. 75 (Duval Cty. Ct. 2004) (Flower, J).

Under rule, court could invoke rule 1.070 dealing with time limit for serving summons. *Perrier v. Bonagura*, 11 Fla. L. Weekly Supp. 749 (Broward Cty. Ct. 2004) (Lee, J).

Until such time as the court has exercised its discretion to invoke a rule and entered an order to that effect, any rule of procedure not specifically included in the small claims rules does not apply in small claims jurisdiction. As a result, the insurer's proposal for settlement would be stricken as rule 1.442 was not invoked in the case. *Robinson v. Progressive Casualty Ins. Co.*, 11 Fla. L. Weekly Supp. 738 (Brevard Cty. Ct. 2004) (Friedland, J).

Court is bound by appellate court ruling that proposal for settlement statute applies in small claims cases, even if rule 1.442 has not been properly invoked. *Back into Health Chiropractic, Inc. v. Progressive Auto Pro Ins. Co.*, 11 Fla. L. Weekly Supp. 444 (Duval Cty. Ct. 2004) (Higbee, J).

When party objects to invocation of rule 1.442, court still has discretion to deny invocation of rule because related appellate decision did not address whether rules have been invoked. *Cox v. Nationwide Mutual Fire Ins. Co.*, 11 Fla. L. Weekly Supp. 441 (Duval Cty. Ct. 2004) (Cooper, J).

Court declines to allow rule 1.442 to be invoked in small claims case. *Mark Pierce Chiropractic Clinic, P.A. v. Progressive Express Ins. Co.*, 11 Fla. L. Weekly Supp. 338 (Duval Cty. Ct. 2004) (Boyer, J).

Under rule, court invoked all rules of civil procedure except for rule 1.442. *Quarterman v. State Farm Automobile Ins. Co.*, 11 Fla. L. Weekly Supp. 127 (Duval Cty. Ct. 2002) (Healey, J).

Under rule, court invoked all rules of civil procedure except for rule 1.442. *Global Medical Diagnostics, LLC v. State Farm Mutual Automobile Ins. Co.*, 11 Fla. L. Weekly Supp. 126 (Duval Cty. Ct. 2003) (Shore, J).

Court declines to allow rule 1.442 to be invoked in small claims case. *Orthopedic Rehab Specialty Clinic, Inc. v. State Farm Mutual Automobile Ins. Co.*, 11 Fla. L. Weekly Supp. 126 (Duval Cty. Ct. 2003) (Flower, J).

Under rule, court invoked all rules of civil procedure except for rule 1.442. *Mark Pierce Chiropractic Clinic v. State Farm Mutual Automobile Ins. Co.*, 11 Fla. L. Weekly Supp. 125 (Duval Cty. Ct. 2002) (Higbee, J).

Under rule, court invoked rule 1.442. *Gibson Chiropractic Office, P.A. v. Progressive Express Ins. Co.*, 11 Fla. L. Weekly Supp. 125 (Duval Cty. Ct. 2003) (Cofer, J).

Court declines to allow rule 1.442 to be invoked in small claims case. *Non-Operative Spine, Pain and Neuromuscular Center v. Progressive Express Ins. Co.*, 10 Fla. L. Weekly Supp. 1060 (Collier Cty. Ct. 2003) (Murphy, J).

Until such time as the court has exercised its discretion to invoke a rule and entered an order to that effect, any rule of procedure not specifically included in the small claims rules does not apply in small claims jurisdiction. As a result, the insurer's proposal for settlement would be stricken as rule 1.442 was not invoked in the case. *Non-Operative Spine, Pain and Neuromuscular Center v. Progressive Express Ins. Co.*, 10 Fla. L. Weekly Supp. 1060 (Collier Cty. Ct. 2003) (Murphy, J).

The small claims rules require the rules of civil procedure to be specifically invoked, either by the parties or by the court. Because rule 1.442 was not properly invoked, it does not apply to case. *First Choice Medical Center v. Progressive Express Ins. Co.*, 10 Fla. L. Weekly Supp. 1055 (Seminole Cty. Ct. 2003) (Bravo, J).

Until such time as the court has exercised its discretion to invoke a rule and entered an order to that effect, any rule of procedure not specifically included in the small claims rules does not apply in small claims jurisdiction. As a result, the insurer's proposal for settlement would be stricken as rule 1.442 was not invoked in the case. *Presgar Medical Imaging v. State Farm Mutual Automobile Ins. Co.*, 10 Fla. L. Weekly Supp. 726 (Miami-Dade Cty. Ct. 2003) (Dakis, J).

Under rule, court invoked rule 1.442. *Graham v. Progressive Express Ins. Co.*, 10 Fla. L. Weekly Supp. 720 (Duval Cty. Ct. 2003) (Moran, J).

Court declines to allow rule 1.442 to be invoked in small claims case. *Neuroscience and Spine Associates, P.L. v. Allstate Ins. Co.*, 10 Fla. L. Weekly Supp. 465 (Collier Cty. Ct. 2003) (Murphy, J).

Small claims rules do not require all rules of civil procedure to be invoked. Court declines to allow rule 1.442 to be invoked in small claims case. *Roffler Chiropractic Clinic v. State Farm Mutual Automobile Ins. Co.*, 10 Fla. L. Weekly Supp. 366 (Collier Cty. Ct. 2003) (Murphy, J).

Until such time as the court has exercised its discretion to invoke a rule, any rule of procedure not specifically included in the small claims rules does not apply in small claims jurisdiction. As a result, the insurer's proposal for settlement would be stricken as rule 1.442 was not invoked in the case. *Vincon, P.A. v. State Farm Mutual Automobile Ins. Co.*, 9 Fla. L. Weekly Supp. 53 (Orange Cty. Ct. 2001) (Miller, J).

Until such time as the court has exercised its discretion to invoke a rule, any rule of procedure not specifically included in the small claims rules does not apply in small claims jurisdiction. *Chessher v. State Farm Mutual Automobile Ins. Co.*, 8 Fla. L. Weekly Supp. 245 (Escambia Cty. Ct. 2001) (Kinsey, J).

Although rule 1.442 was not properly invoked in small claims case, offer of judgment statute provides independent legal authority for allowing offer of judgment procedure in small claims case. *Med Plus Medical Clinics, Inc. v. State Farm Mutual Automobile Ins. Co.*, 7 Fla. L. Weekly Supp. 804 (Manatee Cty. Ct. 2000).

***SECONDARY AUTHORITY*:**

Trawick's Fla. Prac. & Proc. §§14:10, 16:2, 16:15 (2020).

19A Fla. Jur. 2d *Discovery & Depositions* §§4, 5 (2019).

Laura M. Beard, *Small Claims, Big Recovery: Proposals for Settlement in Florida's Small Claims Courts Post-Nichols*, 65 Fla. L. Rev. 1417, 1419, 1421-22 (2013) (discussing procedure to invoke rules).

RULE 7.040. CLERICAL AND ADMINISTRATIVE DUTIES OF CLERK

(a) Trial Calendar. The clerk of the circuit court or the clerk of the county court in those counties where such a clerk is provided (hereinafter referred to as the clerk) shall maintain a trial calendar. The placing of any action thereon with the date and time of trial is notice to all concerned of the order in which they may expect such action to be called.

(b) Records. The Clerk shall maintain records in which accurate entries of all actions brought before the court and notations of the proceedings shall comply with Florida Rule of Judicial Administration 2.425 and shall be made:

(1) including the date of filing;
(2) the date of issuance, service, and return of process;
(3) the appearance of such parties as may appear;
(4) the fact of trial, whether by court or jury;
(5) the issuance of execution and to whom issued and the date thereof and return thereon and, when satisfied, a marginal entry of the date thereof;
(6) the issuance of a certified copy;
(7) a memorandum of the items of costs including witness fees; and
(8) the record of the verdict of the jury or finding of the judge, and the judgment, including damages and costs, which judgments may be kept in a separate judgment book; and is searchable by the parties' names with reference to action and case number.

Annotations:

[NONE]

***SECONDARY AUTHORITY*:**

12A Fla. Jur. 2d *Courts and Judges* §§271, 273 (2019).
32A Fla. Jur. 2d *Judgments & Decrees* §§39, 41, 44, 46 (2019).

RULE 7.050. COMMENCEMENT OF ACTION; STATEMENT OF CLAIM

(a) Commencement.

(1) Statement of Claim. Actions are commenced by the filing of a statement of claim in concise form, which shall inform the defendant of the basis and the amount of the claim. If the claim is based on a written document, a copy or the material part thereof shall be attached to the statement of claim. All documents served upon the defendant with initial process shall be filed with the court.

(2) Party Not Represented by Attorney to Sign. A party, individual, or 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 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 business entity to provide counsel in the prosecution of the cause. 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 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. A non-attorney may not represent a business entity in appellate proceedings.

(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 email address, in compliance with the Florida Rules of Judicial Administration 2.515 and 2.516. A statement of claim shall not be subject to dismissal for failure to include a telephone number.

(c) Clerk's Duties. The clerk shall assist in the preparation of the statement of claim and other papers to be filed in the action at the request of any litigant. The clerk shall not be required to prepare papers on constructive service, substituted service, proceedings supplementary to execution, or discovery procedures.

(d) Summons/Notice to Appear for Pretrial Conference. The court shall furnish all parties with a notice of the day and hour set for the pretrial conference.

(e) Replevin. In those replevin cases to which these rules are applicable, the clerk of the county court shall set the hearing required by section 78.065(2)(a), Florida Statutes (prejudgment replevin order to show cause hearings) and rule 7.090(b) (pretrial conferences) at the same time.

Annotations:

Practical considerations induced the Supreme Court to adopt rule which permits a corporation to act without an attorney where the demand or value of property involves small claims jurisdiction. *Florida Real Estate Commission v. McGregor*, 336 So.2d 1156 (Fla. 1976).

If plaintiff is relying on written assignment to establish standing, plaintiff should attach a copy of the assignment to the statement of claim to ensure compliance with rule. *Progressive Express Ins. Co. v. McGrath Community Chiropractic*, 913 So.2d 1281 (Fla. 2d DCA 2005) (Davis, J., concurring).

In small claims, trial court should resolve underlying dispute in case, rather than merely address the relief sought by plaintiff. When plaintiff filed statement of claim sounding solely in conversion of automobile, trial court should have addressed which party was responsible to pay for the repairs to the vehicle. *Metro Ford, Inc. v. Green*, 724 So.2d 706 (Fla. 3d DCA 1999).

Actions brought in small claims court are an exception to the rule that a corporation must be represented by counsel in court proceedings. *Golden Cleaver Packing, Inc. v. G & M Hughes Corp.*, 490 So.2d 1381 (Fla. 5th DCA 1986).

Corporations can appear without an attorney in small claims precisely because such proceedings involve virtually no rules of evidence and far fewer rules of procedure than in higher trial courts, and hence, no attorney is necessary in such proceedings. *Szteinbaum v. Kaes Inversiones y Valores, C.A.*, 476 So.2d 247 (Fla. 3d DCA 1985).

Actions brought in small claims court are an exception to the rule that a corporation must be represented by counsel in court proceedings. *Summit Pool Supplies, Inc. v. Price*, 461 So.2d 272 (Fla. 5th DCA 1985).

Trial court acted properly in declining to dismiss case based on plaintiff's failure to attach copy of lease at issue when defendant waited to raise the issue until trial. Small claims actions are processed under a set of rules with a stated goal to reach a simple, speedy and inexpensive resolution of cases. The trial court's actions as a result met the goal of the rules, even though the Small Claims Rules would require attachment of the lease. *Barton v. Cooper*, 19 Fla. L. Weekly Supp. 66 (11th Cir. Ct. 2011) (appellate capacity).

In small claims court, a party commences its lawsuit by filing a statement of claim which informs the defendant of the basis and the amount of the claim. *Suzanne Fernandez & Associates, Inc. v. Stephen E. Tunstall Law Office*, 16 Fla. L. Weekly Supp. 917 (11th Cir. Ct. 2009) (appellate capacity).

Rule does not require that copy of assignment be attached because claim in not based on assignment. *CACV of Colorado, LLC v. DeWolf*, 15 Fla. L. Weekly Supp. 27 (15th Cir. Ct. 2007) (appellate capacity).

When creditor alleged defendant owed two separate loans, the total of which was $1735.00, creditor filed single claim under small claims rules. *Shuster v. Gaston*, 14 Fla. L. Weekly Supp. 749 (9th Cir. Ct. 2007) (appellate capacity).

Plaintiff is required to file a statement of claim that informs the defendant of the basis of the claim, not merely its amount. *Green v. Benoit*, 13 Fla. L. Weekly Supp. 962 (15th Cir. Ct. 2006) (appellate capacity) (Maass, J., dissenting).

In small claims action, trial court erred in entering default based on nonappearance by corporate defendant without making finding that non-lawyer was not employee authorized in writing to represent defendant's interest or officer of corporation. *A-Plus Homes, Inc. v. Ferrera*, 12 Fla. L. Weekly Supp. 1116 (5th Cir. Ct. 2005) (appellate capacity).

When defendant was an "LLC," defendant was allowed to appear pro se without counsel present. *Revere Apartments, LLC v. All Bay Contractors Plumbing Co., Inc.*, 12 Fla. L. Weekly Supp. 211 (13th Cir. Ct. 2004) (appellate capacity).

Statement of claim is only required to inform the defendant of the basis and the amount of the claim. An individual operating under a fictitious name is permitted to bring a small claims action under the individual's name. *Sanders v. Regent Bank*, 12 Fla. L. Weekly Supp. 124 (15th Cir. Ct. 2004) (appellate capacity).

Although corporation need not be represented by counsel in small claims action, if case is appealed, corporation must have representation in appellate proceeding. *Diraimondo v. 1st Choice Realty*, 8 Fla. L. Weekly Supp. 13 (11th Cir. Ct. 2000) (appellate capacity).

Small claims rules do not provide for family members to stand in for each other. A power of attorney does not allow a non-lawyer family member to represent another family member. *Sunrise Club, Inc. v. Brown*, 1 Fla. L. Weekly Supp. 335 (11th Cir. Ct. 1992) (appellate capacity).

The trial court does not have the discretion to require an individual to be represented by an attorney, even if that individual is engaged in the business of

collecting claims. *Tonkonogy v. Midgett*, 1 Fla. L. Weekly Supp. 123 (11th Cir. Ct. 1992) (appellate capacity).

Statement of claim must advise defendant of the amount of claim. *Laundromat Services Consultants, Inc. v. Investors' Real Estate Management of Tallahassee, Inc.*, 42 Fla. Supp. 2d 11 (2d Cir. Ct. 1990) (appellate capacity).

A post-judgment proceeding is not a "trial court proceeding" under the rule. As a result, when corporation was self-represented through judgment, but then desired to engage in post-judgment garnishment collection efforts, the corporation would have to do so through a licensed attorney. *Auto Credit of Tampa, LLC v. Guerra*, 21 Fla. L. Weekly Supp. 86 (Hillsborough Cty. Ct. 2013) (Berkowitz, J).

When landlord sued former tenant in small claims for unpaid rent, trial court had authority under small claims rules to determine who was entitled to security deposit although neither party specifically filed a claim for it. *Olen Residential Realty Corp. v. Gonzalez*, 20 Fla. L. Weekly Supp. 1094 (Broward Cty. Ct. 2013) (Lee, J).

Defendant's claim that Plaintiff's statement of claim should be dismissed was without merit. The Small Claims Rules do not trigger the same pleading requirements as the rules of civil procedure. All that is required of a statement of claim is a statement "which shall inform the defendant of the basis and the amount of the claim." *Shanen v. Indelicato*, 19 Fla. L. Weekly Supp. 571 (Broward Cty. Ct. 2012) (Lee, J).

When a corporation is a party to a small claims action, the corporate president can represent the corporation at trial, even though he is not an attorney. *John Rich Properties, Inc. v. Hamilton*, 18 Fla. L. Weekly Supp. 101 (Broward Cty. Ct. 2010) (Lee, J).

When plaintiff filed a statement of claim merely alleging "dental malpractice," court was able to resolve all issues in case, including those arising under a theory of breach of contract. *Berman v. Dr. Alan Slootsky*, 17 Fla. L. Weekly Supp. 297 (Broward Cty. Ct. 2010) (Lee, J).

When plaintiff filed a cause of action using "pretentious language and tortured syntax" purportedly invoking equitable relief, but ultimately sought nothing but monetary damages less than $5000, case travels under small claims rules despite plaintiff's intent to avoid small claims rules. Case would be dismissed without prejudice to plaintiff's "right to refile in the proper procedural framework." *Midland Funding, LLC v.Layton*, 18 Fla. L. Weekly Supp. 245 (Collier Cty. Ct. 2009) (Murphy, J).

When plaintiff sues for breach of contract, plaintiff must attach contract to statement of claim. *National Credit Acceptance, Inc. v. Hayes*, 16 Fla. L. Weekly Supp. 328 (Duval Cty. Ct. 2009) (Derke, J).

When plaintiff failed to attach to statement of claim a copy of credit card contract, assignment, and account statement as required by rule, case would be dismissed with leave to amend. *North Star Capital Acquisitions, LLC v. Stone*, 15 Fla. L. Weekly Supp. 720 (Putnam Cty. Ct. 2008) (Morris, J).

When plaintiff attached copy of purported credit contract, but attachment did not specify all essential elements of claim, then agreement is an oral rather than written contract. *Florida Credit Research, Inc. v. Felicien*, 15 Fla. L. Weekly Supp. 608 (Duval Cty. Ct. 2008) (Moran, J).

When plaintiff attached to statement of claim a copy of a generic unsigned customer agreement, plaintiff failed to comply with rule, and case would be dismissed without prejudice. *Capital One Bank v. Mullis*, 15 Fla. L. Weekly Supp. 370 (Duval Cty. Ct. 2008) (Ferguson, J).

When plaintiff attached copy of purported credit contract, but attachment did not specify all essential elements of claim, then agreement is an oral rather than written contract. *Florida Credit Research, Inc. v. Felicien*, 15 Fla. L. Weekly Supp. 367 (Duval Cty. Ct. 2008) (Moran, J).

Stipulation for entry of final judgment served on defendant with statement of claim for collection of outstanding balance on account is not proper pleading authorized by rule, and it should not have been served with initial process, because doing so simulates legal process and gives document air of authority and importance despite fact that it is not true legal pleading. *Capital One Bank v. Mullis*, 15 Fla. L. Weekly Supp. 262 (Duval Cty. Ct. 2007) (Ferguson, J).

Breach of contract count would be dismissed with leave to amend when only attachment to statement of claim is illegible document not containing defendant's name or other indicia that it relates to allegations of complaint, and plaintiff does not allege dates of credit card contract, last payment or default. Count for account stated would also be dismissed when plaintiff failed to attach any statement or other proof of account. *North Star Capital Acquisitions, LLC v. Lewis*, 15 Fla. L. Weekly Supp. 72 (Duval Cty. Ct. 2007) (Drayton, J).

When only document attached to statement of claim is ledger card that does not reference account number, plaintiff or original account holder and is not dated or signed, and plaintiff has failed to attach copies of account, statement of claim would be dismissed. *LVNV Funding, LLC v. Matthews*, 15 Fla. L. Weekly Supp. 65 (Duval Cty. Ct. 2007) (Cox, J).

When Plaintiff failed to attach requisite documents to statement of claim to support breach of contract claim, and documents attached contained inconsistencies and ambiguities, claim for breach of contract would be dismissed. Count for account stated would also be dismissed although plaintiff has alleged an agreement between parties as to account balance, but attachments do not support allegation. *Capital One Bank v. Gelsey*, 15 Fla. L. Weekly Supp. 64 (Duval Cty. Ct. 2007) (Flower, J).

When creditor failed to attach documentation relating to specific terms of contract applicable to relevant contract time periods or documentation concerning the date charges were incurred, counts for breach of contract and account stated would be dismissed without prejudice. *Capital One Bank v. Sanford*, 14 Fla. L. Weekly Supp. 1134 (Duval Cty. Ct. 2007) (Cofer, J).

Stipulation for entry of final judgment served on defendant with statement of claim for collection of outstanding balance on account is not proper pleading and should not have been served with initial process. *Capital One Bank v. Miller*, 14 Fla. L. Weekly Supp. 585 (Duval Cty. Ct. 2006) (Cox, J).

When statement of claim is complex and confusing and difficult for a lawyer or a judge to understand, much less a lay person, it is clearly not a concise statement of claim intending to inform the defendant of the basis and amount of claim and as such violates the spirit and intent of the rule. When the content of the statement of claim far exceeds the model form complaint for an open account or account stated as set forth in the analogous Florida Rules of Civil Procedure, and the purpose of the complaint appears to be more to intimidate than inform, claim would be dismissed without prejudice. *Capital One Bank v. Hayward*, 14 Fla. L. Weekly Supp. 481 (Clay Cty. Ct. 2007) (Townsend, J).

Stipulation for entry of final judgment served on defendant with summons/notice to appear and statement of claim for damages is not proper pleading and should not have been served with initial process, because doing so simulates legal process and gives document air of authority and importance despite fact that it is not true legal pleading. Stipulation would be stricken and complaint dismissed without prejudice. *North Star Capital Acquisitions, LLC v. Krig*, 14 Fla. L. Weekly Supp. 166 (Duval Cty. Ct. 2006) (Shore, J).

Stipulation for entry of final judgment served on defendant with summons/notice to appear and statement of claim for damages is not proper pleading and should not have been served with initial process, because doing so simulates legal process and gives document air of authority and importance despite fact that it is not true legal pleading. Stipulation would be stricken and complaint dismissed without prejudice. *Capital One Bank v. Livingston*, 13 Fla. L. Weekly Supp. 1203 (Duval Cty. Ct. 2006) (Healey, J).

Statement of claim would be dismissed without prejudice when plaintiff pled failure to pay credit card debt and account stated, but creditor did not attach copy of credit contract and account. *Monogram Credit Card Bank of Georgia v. Foster*, 12 Fla. L. Weekly Supp. 563 (Duval Cty. Ct. 2004) (Cofer, J).

While small claims rules provide liberal pleading requirements, trial court should try the case on the theory asserted by plaintiff. *Barzen v. Fountainhead Memorial Park, Inc.*, 7 Fla. L. Weekly Supp. 560 (Brevard Cty. Ct. 2000) (Silverman, J).

A corporation may appear pro se when the cause of action proceeds under the small claims rules. *Johnstown Properties Corp. v. Gabriel*, 50 Fla. Supp. 138 (Polk Cty. Ct. 1980).

***SECONDARY AUTHORITY*:**

Trawick's Fla. Prac. & Proc. §§6:30, 7:1, 7:3 (2020).

1 Fla. Jur. 2d *Actions* §52 (2019).

4 Fla. Jur. 2d *Attorneys at Law* §96 (2020).

12A Fla. Jur. 2d *Courts and Judges* §273 (2019).

40 Fla. Jur. 2d *Pleadings* §13 (2019).

RULE 7.060. PROCESS AND VENUE

(a) Summons/Notice to Appear Required. A summons/notice to appear stating the time and place of hearing shall be served on the defendant. The summons or notice to appear shall inform the defendant, in a separate paragraph containing bold type, of the defendant's right to venue. This paragraph on venue shall read:

> **Right to Venue.** The law gives the person or company who has sued you the right to file suit 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, 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 a defendant, believe the plaintiff has not sued in one of these correct places, you must appear on your court date and orally request a transfer[,][1] or you must file a written request

[1] EDITOR'S NOTE: There is a conflict between The Florida Bar and Thomson/West versions of this rule, involving a simple comma, but which arguably may change the rule's meaning. In the last paragraph of section (a), The Florida Bar version provides "you must appear on your court date and orally request a transfer[,] or you must file a written request for transfer in affidavit." The Thomson/West version deletes the comma after "request a transfer." Some judges have interpreted the Thomson/West version as meaning you may challenge venue either orally or in writing, *but only if* you appear at the pretrial conference. In the Editor's view, The Florida Bar version is the correct version. The comma was added in 1992 in *In re Amendments to Florida Small Claims Rules*, 601 So.2d 1201, 1205 (Fla. 1992). However, when the rule was amended *for another purpose* in 2000, the comma was deleted in the opinion, but the deletion appears to have been inadvertent as no change is indicated in the body of the amendment. *In re Amendments to the Florida Small Claims Rules*, 785 So.2d 401, 406 (Fla. 2000). The 2000 Cycle Report for the Florida Bar Small Claims Rules Committee, submitted to the Florida Supreme Court, further reveals no independent intention to delete the comma; the Committee actually recommended deleting the entire paragraph, a position that the Supreme Court rejected.

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 or plaintiff's attorney, if any.

(b) **Copy of Claim to Be Served.** A copy of the statement of claim shall be served with the summons/notice to appear.

Annotations:

When defendant fails to submit written objection to venue and fails to object to venue at pretrial conference, any objection to venue is waived. *Sargent v. Williams*, 15 Fla. L. Weekly Supp. 346 (20th Cir. Ct. 2007) (appellate capacity).

When any rules of civil procedure are invoked in a small claims case, they apply prospectively only to the case. Therefore, when the defendant failed to timely object to venue as required by the small claims rules, the defendant had waived any objection to venue. The defendant was not provided a new deadline to object to venue when the rules of civil procedure were subsequently invoked. *Sunset Radiology, Inc. v. United Automobile Ins. Co.*, 23 Fla. L. Weekly Supp. 374 (Broward Cty. Ct. 2015) (Beller, J).

When medical bill (HCFA) demonstrated that payment was due in Volusia County, venue was property in Volusia County although the underlying case may have had ties to Hillsborough County. *Emergency Medical Associates of Tampa Bay, LLC v. USAA General Indemnity Co.*, 22 Fla. L. Weekly Supp. 1073 (Volusia Cty. Ct. 2015) (Dempsey, J).

When payment in the underlying dispute was to be made in Volusia County, venue in Volusia County was proper under the small claims rules. *Emergency Medical Associates of Tampa Bay, LLC v. USAA Casualty Ins. Co.*, 22 Fla. L. Weekly Supp. 936 (Volusia Cty. Ct. 2015) (Dempsey, J).

Stipulation for entry of final judgment served on defendant with complaint for collection of outstanding balance on account is not proper pleading and should not have been served with initial process, because doing so simulates legal process and gives document air of authority and importance despite fact that it is not true legal pleading. *Capital One Bank v. Mullis*, 15 Fla. L. Weekly Supp.. 262 (Duval Cty. Ct. 2007) (Ferguson, J).

Stipulation for entry of final judgment served on defendant with complaint for collection of outstanding balance on account is not proper pleading and should not have been served with initial process, because doing so simulates legal process and gives document air of authority and importance despite fact that it is not true legal pleading. *Capital One Bank v. Millers*, 14 Fla. L. Weekly Supp.. 585 (Duval Cty. Ct. 2006) (Cox, J).

Stipulation for entry of final judgment served on defendant with complaint for collection of outstanding balance on account is not proper pleading and should not have been served with initial process, because doing so simulates legal process and gives document air of authority and importance despite fact that it is

not true legal pleading. *North Star Capital Acquisitions, LLC v. Krig*, 14 Fla. L. Weekly Supp.. 166 (Duval Cty. Ct. 2006) (Shore, J).

Stipulation for entry of final judgment served on defendant with complaint for collection of outstanding balance on account is not proper pleading and should not have been served with initial process, because doing so simulates legal process and gives document air of authority and importance despite fact that it is not true legal pleading. *Capital One Bank v. Livingston*, 13 Fla. L. Weekly Supp.. 1203 (Duval Cty. Ct. 2006) (Healey, J).

Rule requires "[a] summons entitled Notice to Appear stating the time and place of hearing shall be served on Defendant," and further provides that "[a] copy of the Statement of Claim shall be served with a summons/Notice to Appear." *Tallahassee Orthopedic Clinic, III v. Progressive Express Ins. Co.*, 11 Fla. L. Weekly Supp. 911 (Duval Cty. Ct. 2004) (Higbee, J).

When defendant failed to timely object to venue under small claims rules, but rules of civil procedure were subsequently invoked, defendant did not waive challenge to venue under the rules of civil procedure. *Nu-Best Whiplash Injury Center, Inc. v. Progressive Auto Pro Ins. Co.*, 11 Fla. L. Weekly Supp. 857 (Seminole Cty. Ct. 2004) (Bravo, J).

Rule requires "[a] summons entitled Notice to Appear stating the time and place of hearing shall be served on Defendant," and further provides that "[a] copy of the Statement of Claim shall be served with a summons/Notice to Appear." *Tallahassee Orthopedic Clinic, III v. Progressive Express Ins. Co.*, 11 Fla. L. Weekly Supp. 825 (Duval Cty. Ct. 2004) (Arias, J).

***SECONDARY AUTHORITY*:**

Trawick's Fla. Prac. & Proc. §8:1 (2020) (noting that "original process" in a small claims case is the notice to appear).

41 Fla. Jur. 2d *Pre-Trial Pleadings* §18 (2019)

RULE 7.070. METHOD OF SERVICE OF PROCESS

Service of process shall be effectuated as provided by law or as provided by Florida Rule of Civil Procedure 1.070(a) – (h). Constructive service or substituted service of process may be effected as provided by law. Service of process on Florida residents only may also be effected by certified mail, return receipt requested signed by the defendant, or someone authorized to receive mail at the residence or principal place of business of the defendant. Either the clerk or an attorney of record may mail the certified mail, the cost of which is in addition to the filing fee.

Annotations:

Trial court could not dismiss case for failure to timely serve process without first providing notice pursuant to rule 7.100(e) and an opportunity to show good cause why the case should not be dismissed. *Gateway Bank of Central Florida v. Butler*, 20 Fla. Weekly Supp. 941 (5th Cir. Ct. 2013) (appellate capacity).

The provision for service by certified mail applies to corporations domiciled in the State of Florida. The plaintiff has the burden to demonstrate that the address is the defendant's principal place of business. Proof of return receipt of certified mail, standing alone, is insufficient to demonstrate prima facie that the address is the defendant's principal place of business. *Sunburst Sanitation Corp. v. Jeff Deluca, Inc.*, 5 Fla. L. Weekly Supp. 187 (Palm Beach Cty. Ct. 1997) (Evans, J).

When service of process is attempted by personal delivery in a small claims case, the same requirements must be met as with service under the Rules of Civil Procedure. *Ed & Gerri Corp. v. Rice*, 3 Fla. L. Weekly Supp. 757 (Broward Cty. Ct. 1996) (Murphy, J).

***SECONDARY AUTHORITY*:**

Trawick's Fla. Prac. & Proc. §§8:4, 8:5, 8:22 (2020).

RULE 7.080. SERVICE OF PLEADINGS AND PAPERS OTHER THAN STATEMENT OF CLAIM

(a) When Required. Copies of all pleadings and papers subsequent to the summons/notice to appear, except applications for witness subpoenas, and orders and judgments entered in open court, shall be served on each party. One against whom a default has been entered is entitled to be served only with pleadings asserting new or additional claims.

(b) How Made. When a party is represented by an attorney, service of papers other than the statement of claim and summons/notice to appear shall be made on the attorney unless the court orders service to be made on the party. Service on an attorney or a party not represented by an attorney must be made in compliance with Florida Rule of Judicial Administration 2.516.

(c) Filing. All pleadings and papers shall be filed with the court either before service or immediately thereafter.

(d) Filing with the Court Defined. The filing of documents with the court as required by these rules is made by filing them with the clerk, except that the judge may permit the documents to be filed with the judge, in which event the judge shall note thereon the filing date and transmit them to the clerk, and the clerk shall file them as of the same day they were filed with the judge. Parties represented by an attorney must file documents in compliance with the electronic filing (e-filing) requirements set forth in Florida Rule of Judicial Administration 2.525. Parties not represented by an attorney may file documents in compliance with the e-filing requirement if permitted by the Florida Rules of Judicial Administration.

(e) Certificate of Service.

(1) When any party or attorney in substance certifies:

"I certify that a copy hereof has been furnished to (here insert name or names and address or addresses) by (delivery) (mail) (e-mail) on ___(date)___

_____

Party or party's attorney"

the certificate is prima facie proof of such service in compliance with all rules of court and law.

(2) When any paper is served by the clerk, a docket entry shall be made showing the mode and date of service. Such entry is sufficient proof of service without a separate certificate of service.

(f) **When a Party Who is Not Represented by an Attorney Fails to Show Service.** If a party who is not represented by an attorney files a paper that does not show service of a copy on all other parties, the clerk shall serve a copy of it on all other parties.

Annotations:

For purposes of this rule, papers shall be deemed filed only if they are ultimately filed with the Clerk. When a motion was sent by emailed to the judge, but the party did not insure that the email was filed with the Clerk, no motion has been "filed" for purposes of the rule. *Kranitz v. Zion*, 17 Fla. L. Weekly Supp. 90 (15th Cir. Ct. 2009) (appellate capacity).

When a party is represented by an attorney at the pretrial conference, the attorney should be notified of any subsequent conference. *Green v. Benoit*, 13 Fla. L. Weekly Supp. 962 (15th Cir. Ct. 2006) (appellate capacity) (Maass, J., dissenting).

SECONDARY AUTHORITY:

Trawick's Fla. Prac. & Proc. §§8:28 (2020).
32A Fla. Jur. 2d *Judgments & Decrees* §230 (2019).
40 Fla. Jur. 2d *Pleadings* §7 (2019).

RULE 7.090. APPEARANCE; DEFENSIVE PLEADINGS; TRIAL DATE

(a) Appearance. On the date and time appointed in the summons/ notice to appear, the plaintiff and defendant shall appear personally or by counsel, subject to subdivision (b)

(b) Summons/Notice to Appear; Pretrial Conference. The summons/notice to appear shall specify that the initial appearance shall be for a pretrial conference. The initial pretrial conference shall be set by the clerk not more than 50 days from the date of the filing of the action. 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. The plaintiff may request a new summons/notice to appear and include a new initial appearance date for the pretrial conference. The pretrial conference may be managed by nonjudicial personnel employed by or under contract with the court. Nonjudicial personnel must be subject to direct oversight by the court. A judge must be available to hear any motions or resolve any legal issues. At the pretrial conference, all of the following matters shall be considered:

(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.
(6) Such other matters as the court in its discretion deems necessary.

Form 7.322 shall and form 7.323 may be used in conjunction with this rule.

(c) Defensive pleadings. Unless required by order of court, written pretrial motions and defensive pleadings are not necessary. If filed, copies of such pleadings shall be served on all other parties to the action at or prior to the pretrial conference or within such time as the court may designate. The filing of a motion or a defensive pleading shall not excuse the personal appearance of a party or attorney on the initial appearance date (pretrial conference).

(d) Trial Date. The court shall set the cause for trial not more than 60 days from the date of the pretrial conference. Notice of at least 10 days of the time of trial shall be given. The parties may stipulate to a shorter or longer time for setting trial with the approval of the court. This rule does not apply to actions to which chapter 51, Florida Statutes, applies.

(e) Waiver of Appearance at Pretrial Conference. Where all parties are represented by an attorney, counsel may agree to waive personal appearance at the initial pretrial conference, if a written agreement of waiver signed by all attorneys is presented to the court prior to or at the pretrial conference. The agreement shall contain a short statement of disputed issues of fact and law, the number of witnesses expected to testify, an estimate of the time needed to try the case, and any stipulations of fact. The court shall forthwith set the case for trial within the time prescribed by these rules.

(f) Appearance at Mediation; Sanctions. In small claims actions, an attorney may appear on behalf of a party at mediation if the attorney has full authority to settle without further consultation. Unless otherwise ordered by the court, a nonlawyer representative may appear on behalf of a party to a small claims mediation if the representative has the party's signed written authority to appear and has full authority to settle without further consultation. In either event, the party need not appear in person. Mediation may take place at the pretrial conference. Whoever appears for a party must have full authority to settle. Failure to comply with this subdivision may result in the imposition of costs and attorney fees incurred by the opposing party.

(g) Agreement. Any agreements reached as a result of small claims mediation shall be written in the form of a stipulation. The stipulation may be entered as an order of the court.

Annotations:

Provisions in rule 7.090(a) are designed to create uniformity among the counties by which a plaintiff does not have to appear at a pretrial conference if the return of non-service is filed at least five days prior to the pretrial conference. This provision is designed to protect the due process rights of parties who have not been properly served. If a return of non-service is filed at least 5 days prior to the pretrial conference, the court is required to cancel the pretrial conference as to

the non-served party. *In re: Amendments to the Florida Small Claims Rules*, 200 So.3d 746 (Fla. 2016).

Under rule prescribing the six matters which must be considered at a pretrial conference, the "availability of the judge must be meaningful and contemporaneous with the time of the pretrial conference." The pretrial conference is one of the only two appearances mandated by the rules. Because of the stated goals and tight timeframes of the small claims rules, additional appearances are discouraged. Mediation may take place at the pretrial conference. *In re Amendments to Florida Small Claims Rule 7.090*, 64 So.3d 1196 (Fla. 2011) (Pariente, J., concurring).

In small claims action, defendant may raise issues at a preliminary hearing, without the necessity of written pretrial motions or defensive pleadings. *Linden v. Auto Trend, Inc.*, 923 So.2d 1281 (Fla. 4th DCA 2006).

In small claims action, it is permissible for non-lawyers to represent corporations in litigation in the county court. *Moreno Construction, Inc. v. Clancy & Theys Construction Co.*, 722 So.2d 976 (Fla. 5th DCA 1999).

If defendant files written defensive motions in small claims, court is not required to rule on them prior to setting matter for trial. Defensive motions are unnecessary, and the trial court's refusal to dispose of the motion means the matter will proceed to trial. *Garcia v. Baxter*, 502 So.2d 1286 (Fla. 3d DCA 1987) (Baskin, J., concurring).

In a small claims action, no responsive pleading was required. Therefore, defendant could file a notice of confession of judgment without filing an answer. Moreover, the confession of judgment is consistent with a responsive pleading in admitting the allegations in the complaint. Therefore, trial court properly entered judgment in favor of plaintiff on the confession. *Bretz Chiropractic Clinic v. GEICO General Ins. Co.*, 26 Fla. L. Weekly Supp. 620 (12th Cir. App. 2018).

At the pretrial conference, the trial court must consider the matters set forth in the rule. Although presentation of evidence is not required for summary disposition, the parties "clearly must orally discuss" the evidence at the pretrial conference, which could support summarily disposing of the case. *Williams v. City Towing, LLC*, 24 Fla. L. Weekly Supp. 666 (15th Cir. App. 2016).

Small claims rules do not require the filing of an answer or affirmative defenses. Therefore, even if defendant filed written defenses, he was not limited to these defenses. *State Farm Mutual Automobile Ins. Co. v. Bruce Chiropractic & Comprehensive Care LLC*, 24 Fla. L. Weekly Supp. 472 (5th Cir. App. 2016).

A defendant in a small claims case is not required to file a written answer or affirmative defenses. Therefore, the failure to file an answer does not eliminate its right to assert defenses to a claim. *State Farm Mutual Automobile Ins. Co. v. Bruce Chiropractic & Comprehensive Care, PLLC*, 23 Fla. L. Weekly Supp. 890 (5th Cir. App. 2016).

Purpose of the small claims pretrial conference is set forth in rule 7.090, and it does not include trying the case. As a result, the trial court exceeded the scope of

the pretrial conference by taking testimony and entering a judgment. *Morales v. Yazkov*, 20 Fla. L. Weekly Supp. 860 (11th Cir. App. 2013).

In a small claims case, the trial date is to be set at the pretrial conference. Answers and "defensive pleadings" are not required unless ordered by the court. As a result, it is not error for the court to deny a request to allow an amendment to an answer. When court allowed party to file an answer in a small claims case, it was not an abuse of discretion to deny request to amend its defense of the first day of trial. *State Farm Fire & Casualty Co. v. Best Therapy Center*, 17 Fla. L. Weekly Supp. 1172 (11th Cir. Ct. 2010) (appellate capacity).

Daughter of party cannot represent parent in small claims proceeding when daughter is not an attorney, even if daughter has a power-of-attorney. Additionally, the filing of a written paper prior to the pretrial conference does not excuse the defendant's appearance at the pretrial conference. *Palm Beach Atlantic University v. Campbell*, 16 Fla. L. Weekly Supp. 1022 (15th Cir. Ct. 2009) (appellate capacity).

Setting the trial date and determining the issues for trial are to occur at the small claims pretrial conference. *Metcalf v. Ortiz*, 16 Fla. L. Weekly Supp. 718 (9th Cir. Ct. 2009) (appellate capacity).

The court does not have the discretion to require a corporate representative to appear at mediation if its attorney appears in compliance with the rule. *C W Leasing, Inc. v. Garcia*, 16 Fla. L. Weekly Supp. 41 (19th Cir. Ct. 2008) (appellate capacity).

In a small claims action, a written answer is not required in order to defend. *Spivey v. Siam Motors, Inc.,* 14 Fla. L. Weekly Supp. 1096 (13th Cir. Ct. 2007) (appellate capacity).

Defensive pleadings are not required in small claims court. *Barbara Clark & Co. v. Wilson*, 13 Fla. L. Weekly Supp. 1042 (6th Cir. Ct. 2006) (appellate capacity).

A defendant may orally move to dismiss a claim at pretrial conference. *Portfolio Recovery Associates LLC v. Fernandes*, 13 Fla. L. Weekly Supp. 560 (15th Cir. Ct. 2006) (appellate capacity).

A court may summarily dispose of a case at pretrial conference, and no written motion is required to do so. *Tourtelot v. Koshick*, 12 Fla. L. Weekly Supp. 1008 (6th Cir. Ct. 2005) (appellate capacity).

Pretrial conferences are designed in part to simplify issues for trial, to determine the number of witnesses, to explore the possibility of settlement, and to set the trial date. *National Moving Network, Inc. v. Lux*, 8 Fla. L. Weekly Supp. 342 (11th Cir. Ct. 2001) (appellate capacity).

Defendant does not need to file any written defense to contest a small claims action. *Hertrich v. Lamee*, 6 Fla. L. Weekly Supp. 549 (19th Cir. Ct. 1999) (appellate capacity).

The small claims rules require a personal appearance by the plaintiff or its counsel on the date and time indicated on the notice to appear. Appearance at the pretrial conference may be waived only when all parties are represented by an attorney and counsel agree to such a waiver in writing. *Larson v. McDougall*, 6 Fla. L. Weekly Supp. 263 (20th Cir. Ct. 1998) (appellate capacity).

Only defensive matters need not be in writing. If a party is seeking something "offensively," such as attorney's fees, that party must file a pleading setting forth entitlement to fees. *Ringhaver Equipment Co. v. White Rose Nursery, Ltd.*, 4 Fla. L. Weekly Supp. 374 (13th Cir. Ct. 1996) (appellate capacity).

When plaintiff filed an action advising court that he is an inmate and requesting transportation, it was error for the trial court to dismiss the action due to failure of the plaintiff to appear at the pretrial conference. Court could have considered telephonic appearance. *Williamson v. Knowles*, 3 Fla. L. Weekly Supp. 577 (19th Cir. Ct. 1995) (appellate capacity).

Trial court erred when at pretrial conference it advised the parties that it was conducting the trial later that same day. *Hallett Pontiac, Inc. v. Harper*, 8 Fla. Supp. 2d 24 (11th Cir. Ct. 1984) (appellate capacity).

In small claims action, court cannot require defendant to file a written answer. *Ghaltchi v. Kilbride Int'l Leasing & Investment Co., Ltd.*, 39 Fla. Supp. 2d 4 (17th Cir. Ct. 1990) (appellate capacity).

Although small claims rules do not require responsive pleadings, the trial court has the discretion to require that defenses be submitted in writing. Therefore, when defendant filed a motion invoke appraisal, rather than filing any written defenses within 10 days as required by court order, trial court concluded that defendant had waived any defenses in the case. *Broward Ins. Recovery Center, LLC v. Progressive Select Ins. Co.*, 24 Fla. L. Weekly Supp. 761 (Broward Cty. Ct. 2016) (Lee, J).

When parties failed to submit a fully compliant waiver of appearance, and further failed to obtain a court order excusing the parties' appearance at the small claims pretrial conference, defendant's failure to appear at the pretrial conference could not constitute excusable neglect to set aside the default because ignorance of the rules is not excusable. *Center for Bone & Joint Surgery of the Palm Beaches v. The First Liberty Ins. Co.*, 24 Fla. L. Weekly Supp. 748 (Broward Cty. Ct. 2016) (Lee, J).

When rules of civil procedure have not been invoked, defendant is not required to comply with the provision of those rules requiring a written response to the complaint. *Clear Vision Windshield Repair v. Government Employees Ins. Co.*, 22 Fla. L. Weekly Supp. 965 (Broward Cty. Ct. 2015) (Lee, J).

In the absence of a fully compliant Waiver of Appearance, parties cannot waive appearance at pretrial conference with court approval. *Quantum Imaging Holding, LLC v. Allstate Fire & Cas. Ins. Co.*, 19 Fla. L. Weekly Supp. 843 (Broward Cty. Ct. 2012) (Lee, J).

Plaintiff's claim that defendant failed to file a "written response of any kind" is without merit as a defendant is not required to file a written response in a small claims case. *Shanen v. Indelicato*, 19 Fla. L. Weekly Supp. 571 (Broward Cty. Ct. 2012) (Lee, J).

A party may not unilaterally cancel a small claims pretrial conference. When plaintiff failed to appear at a pretrial conference, and case was dismissed as a result, court declined to set aside dismissal. *Florida Credit Union v. Mack*, 19 Fla. L. Weekly Supp. 51 (Marion Cty. Ct. 2011) (Rogers, J).

Defensive pleadings are not required in small claims court. *Amlong & Amlong, P.A. v. Bartle*, 18 Fla. L. Weekly Supp. 1197 (Broward Cty. Ct. 2011) (Lee, J).

At pretrial conference, parties were advised that court cannot consider estimates as proof of damage unless opposing party does not object. Therefore, when opposing party objected, court had to disregard estimates presented at trial. *Winter v. SunTrust Bank*, 18 Fla. L. Weekly Supp. 482 (Broward Cty. Ct. 2011) (Lee, J).

When defendant requested a continuance of pretrial conference date, it would be granted when trial could still be held within 50 days after filing action. *Custom Construction v. McNamara*, 17 Fla. L. Weekly Supp. 715 (Broward Cty. Ct. 2010) (Lee, J).

Under the small claims rules, unless the parties stipulate otherwise, the longest a trial can be set after the date of filing is 110 days. *Pamal Broadcasting, Ltd. v. Kruger*, 16 Fla. L. Weekly Supp. 750 (Santa Rosa Cty. Ct. 2009) (Bilbrey, J).

If a party desires to recover attorney's fees in a small claims case, the party, whether plaintiff or defendant, must plead it in writing. *Polland v. Jander Group, Inc.*, 16 Fla. L. Weekly Supp. 333 (Orange Cty. Ct. 2009) (Plogstedt, J).

The small claims rules presuppose a summons will be served in less than 45 days from filing of the action, but the court has the discretion to extend that deadline for good cause. *Tallahassee Orthopedic Clinic, III v. Progressive Express Ins. Co.*, 11 Fla. L. Weekly Supp. 911 (Duval Cty. Ct. 2004) (Higbee, J).

The small claims rules presuppose a summons will be served in less than 45 days from filing of the action, but the court has the discretion to extend that deadline for good cause. *Tallahassee Orthopedic Clinic, III v. Progressive Express Ins. Co.*, 11 Fla. L. Weekly Supp. 825 (Duval Cty. Ct. 2004) (Arias, J).

The small claims rules provide for an expedited method of calendaring actions. *Global Medical Diagnostics, LLC v. State Farm Mutual Automobile Ins. Co.*, 11 Fla. L. Weekly Supp. 126 (Duval Cty. Ct. 2003) (Shore, J).

The small claims rules provide for an expedited method of calendaring actions. *P T First Rehabilitation Services v. Progressive Express Ins. Co.*, 11 Fla. L. Weekly Supp. 125 (Duval Cty. Ct. 2001) (Arias, J).

In the absence of seeking discovery under the small claims rules, a defendant does not lose the right to compel arbitration simply because the party participated in

the pretrial conference. Additionally, no written defensive pleadings are required. *Florida Home Cair, Inc. v. Clark*, 9 Fla. L. Weekly Supp. 343 (Brevard Cty. Ct. 2002) (Silverman, J).

Even though the small claims rules do not require written motions or defensive pleadings, a party cannot for the first time seek entitlement to prevailing party attorney's fees after the trial. *Galloway v. Travel Services Int'l, Inc*, 7 Fla. L. Weekly Supp. 134 (Manatee Cty. Ct. 1999) (Henderson, J).

***SECONDARY AUTHORITY*:**

Trawick's Fla. Prac. & Proc. §§6:30, 11:9, 12:11, 19:7, 22:2, 22:23 (2020).
Trawick's Fla. Prac. & Proc. §10:14 (2020) (noting that motion practice may be "appropriate" under certain circumstances).
Trawick's Fla. Prac. & Proc. §19:7 (2020) (asserting that involvement of nonjudicial personnel is probably limited to "the conduct of mediation and scheduling").
1 Fla. Jur. 2d *Actions* §123 (2019).
41 Fla. Jur. 2d *Pre-Trial Proceedings* §§1, 6, 13, 18 (2019).
Don Peters, *Oiling Rusty Wheels: A Small Claims Mediation Narrative*, 50 Fla. L. Rev. 761 (1998).

RULE 7.100. COUNTERCLAIMS; SETOFFS; THIRD-PARTY COMPLAINTS; TRANSFER WHEN JURISDICTION EXCEEDED

(a) Compulsory Counterclaim. If a defendant has a claim or setoff against a plaintiff that arises out of the same transaction or occurrence which is the subject matter of the plaintiff's claim, the counterclaim of setoff shall be filed not less than 5 days before the initial appearance date (pretrial conference) or within such time as the court designates, or it is abandoned.

(b) Permissive Counterclaim. If a defendant has a claim or setoff against a plaintiff that does not arise out of the same transaction or occurrence which is the subject matter of the plaintiff's claim, then the counterclaim or setoff may be filed not less than 5 days before the initial appearance date (pretrial conference) or within such time as the court designates, and tried, providing that such permissive claim is within the jurisdiction of the court.

(c) How Filed. Counterclaims and setoffs shall be filed in writing with the clerk of court and served on the plaintiff or to the attorney of the plaintiff if the plaintiff is represented by an attorney. If additional time is needed to prepare a defense, the court may continue the action.

(d) Transfer When beyond Jurisdiction. When a counterclaim or setoff is filed and exceeds the jurisdiction of the small claims court, the action shall be transferred to the court having jurisdiction. The counterclaimant shall deposit with the clerk of court a sum sufficient to pay the filing fee in the court to which the case is to be transferred. Failure to make the deposit at the time of filing, or with such further time as the court may allow, waives the right to transfer.

(e) Third-Party Complaints. A defendant may cause a statement of claim to be served on a person not a party to the action who is or may be liable to the defendant for all or part of the plaintiff's claim against the defendant. A defendant must obtain leave of court on motion made at the initial appearance date (pretrial conference) and must file the third-party complaint within such time as the court may allow. The clerk shall schedule a supplemental pretrial conference, and on the date and time appointed in the notice to appear the third-

party plaintiff and the third-party defendant shall appear personally or by counsel. If additional time is needed for the third-party defendant to prepare a defense, the court may continue the action. Any party may move to strike the third-party claim for its severance or separate trial. When a counterclaim is asserted against the plaintiff, the plaintiff may bring in a third-party defendant under circumstances that would entitle a defendant to do so under the rule.

Annotations:

When filing of counterclaim resulted in transfer to circuit court, and defendant subsequently dismissed counterclaim, original claim is to remain in circuit court to be resolved. *A-One Coin Laundry Equipment Co. v. Waterside Towers Condominium Ass'n, Inc.*, 561 So.2d 590 (Fla. 3d DCA 1990).

The failure to file a compulsory counterclaim under this rule eliminates the right to any recovery for the subject matter which could have been brought as a counterclaim. *Russell's Custom Home Repair, Inc. v. O'Donnell's Auto Service*, 411 So.2d 256 (Fla. 2d DCA 1982).

Rule requires requests for setoff in a small claims case to be set forth in writing. As a result, trial court erred in allowing setoff when defendant did not file a written request for setoff. *Kutchulis v. JCJB Enterprises, Inc.*, 20 Fla. L. Weekly Supp. 767 (15th Cir. Ct. 2013) (appellate capacity).

Trial court decision finding that counterclaim in small claims case was untimely would be affirmed. *Kluver v. Capital One Bank*, 12 Fla. L. Weekly Supp. 840 (17th Cir. Ct. 2005) (appellate capacity).

When party dismisses case prior to pretrial conference, defendant is entitled to file its own action seeking damages although it would have been a compulsory counterclaim in initial action had it not been dismissed. *Townsend v. Asset Acceptance Corp.*, 12 Fla. L. Weekly Supp. 189 (6th Cir. Ct. 2004) (appellate capacity).

If the amount of the counterclaim exceeds the jurisdictional limit of the court, the case must be transferred to the court having jurisdiction. *Peter Cohen, P.A. v. P & S Transport, Inc.*, 11 Fla. L. Weekly Supp. 303 (11th Cir. Ct. 2004) (appellate capacity).

If party files counterclaim exceeding jurisdictional limitation of court, entire case is transferred to appropriate court out of small claims. *Gaviria v. Bustamante*, 6 Fla. L. Weekly Supp. 248 (11th Cir. Ct. 1999) (appellate capacity).

Counterclaims must comply with the time limitations of the rule. Court has discretion to entertain an ore tenus motion to file a counterclaim. *U.S.A. Security, Inc. v. Delta Business Systems*, 3 Fla. L. Weekly Supp. 18 (11th Cir. Ct. 1995) (appellate capacity).

When defendant filed counterclaim after the pretrial conference, trial court properly struck counterclaim for being filed untimely. *Fagan v. Interamerican Rental Agency, Inc.*, 39 Fla. Supp. 2d 89 (11th Cir. Ct. 1990) (appellate capacity).

When 60 days after filing an answer to the statement of claim, defendant filed a motion for amend its answer to assert a counterclaim, such motion was untimely under rule for being filed later than 5 days prior to the pretrial conference. *Physicians Group, L.L.C. v. Century-Nat'l Ins. Co.*, 27 Fla. L. Weekly Supp. 193 (Sarasota Cty. Ct. 2019) (Boehm, J).

Because counterclaim must generally be filed not less than 5 days before the pretrial conference, small claims rules presuppose that service of process will be effectuated not more than 45 days of filing the lawsuit. *Tallahassee Orthopedic Clinic, III v. Progressive Express Ins. Co.*, 11 Fla. L. Weekly Supp. 911 (Duval Cty. Ct. 2004) (Higbee, J).

Because counterclaim must generally be filed not less than 5 days before the pretrial conference, small claims rules presuppose that service of process will be effectuated not more than 45 days of filing the lawsuit. *Tallahassee Orthopedic Clinic, III v. Progressive Express Ins. Co.*, 11 Fla. L. Weekly Supp. 825 (Duval Cty. Ct. 2004) (Arias, J).

When compulsory counterclaim was filed one day before hearing, and which exceeded small claims jurisdictional limit, trial court was required to transfer case to circuit court. Counterclaims which exceed the jurisdictional limit of the court do not have to be filed before the pretrial conference, but can be filed even at the pretrial conference. *Fort Pierce Memorial Hospital, Inc. v. Cohen*, 30 Fla. Supp. 87 (St. Lucie Cty. Ct. 1968) (Tye, J).

***SECONDARY AUTHORITY*:**

Trawick's Fla. Prac. & Proc. §§6:30, 12:1, 12:2, 13:1, 13:4, 13:5 (2020).

Trawick's Fla. Prac. & Proc. §12:11 (2020) (noting that rule 7.100(a) does not require notice to the defendant of the requirement that a counterclaim must be filed or be deemed waived, and suggesting that such a result might violate due process).

Trawick's Fla. Prac. & Proc. §13:11 (2020) (asserting that while third-party practice is authorized by the summary judgment rules, fourth-party practice is not).

12A Fla. Jur. 2d *Courts and Judges* §163 (2020).

RULE 7.110. DISMISSAL OF ACTIONS

(a) Voluntary Dismissal; Effect Thereof.

(1) By Parties. Except in actions where property has been seized or is in the custody of the court, an action may be dismissed by the plaintiff without order or court (A) by the plaintiff informing the defendant and clerk of the dismissal before the trial date fixed in the notice to appear, or before retirement of the jury in a case tried before a jury or before submission of a nonjury case to the court for decision, or (B) by filing a stipulation of dismissal signed by all parties who have appeared in the action. Unless otherwise stated, the dismissal is without prejudice, except that a dismissal operates as an adjudication on the merits when a plaintiff has once dismissed in any court an action based on or including the same claim.

(2) By Order of the Court; If Counterclaim. Except as provided in subdivision (a)(1) of this rule, an action shall not be dismissed at a party's instance except upon order of the court and on such terms and conditions as the court deems proper. If a counterclaim has been made by the defendant before the plaintiff dismisses voluntarily, the action shall not be dismissed against the defendant's objections unless the counterclaim can remain pending for independent adjudication. Unless otherwise specified in the order, a dismissal under this subdivision is without prejudice.

(b) Involuntary Dismissal. Any party may move for dismissal of an action or of any claim against that party for failure of an adverse party to comply with these rules or any order of the court. After a party seeking affirmative relief in an action has completed the presentation of evidence, any other party may move for a dismissal on the ground that upon the facts and the law the party seeking affirmative relief has shown no right to relief without waiving the right to offer evidence in the event the motion is not granted. The court may then determine them and render judgment against the party seeking affirmative relief or may decline to render any judgment until the close of all the evidence. Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction or for improper venue or for lack of an indispensable party, operates as an adjudication on the merits.

(c) Dismissal of Counterclaim. The provisions of this rule apply to the dismissal of any counterclaim.

(d) Costs. Costs in any action dismissed under this rule shall be assessed and judgment for costs entered in that action. If a party who has once dismissed a claim in any court of this state commences an action based on or including the same claim against the same adverse party, the court shall make such order for the payment of costs of the claim previously dismissed as it may deem proper and shall stay the proceedings in the action until the party seeking affirmative relief has complied with the order.

(e) Failure to Prosecute. All actions in which it affirmatively appears that no action has been taken by filing of pleadings, order of court, or otherwise for a period of 6 months shall be dismissed by the court on its own motion or on motion of any interested person, whether a party to the action or not, after 30 days' notice to the parties, unless a stipulation staying the action has been filed with the court, or a stay order has been filed, or a party shows good cause in writing at least 5 days before the hearing on the motion why the action should remain pending.

Annotations:

The time period for determining whether "a period of 6 months of inactivity" has occurred is not calculated until a motion to dismiss is filed under this rule. Therefore, when there has been 7 months of inactivity, but the plaintiff files a motion during the 7th month, the case is not subject to dismissal when the opposing party did not file its motion to dismiss under this rule until after the plaintiff filed its motion. In essence, the 6-month inactivity period starts anew each time there is record activity unless a party or the court has filed a motion to dismiss, and any prior 6-month periods of inactivity become irrelevant. *Capital One Bank (U.S.A.) N.A. v. Winker*, 26 Fla. L. Weekly Supp. 873 (11th Cir. App. 2018).

When a case is dismissed for failure of a plaintiff to appear at a small claims pretrial conference, this rule is not implicated, but rather Rule 7.160(a). *Orosz v. Freestyle Pools and Spa, Inc.*, 26 Fla. L. Weekly Supp. 169 (13th Cir. App. 2018).

Trial court could not dismiss case for failure to prosecute without first providing notice and an opportunity to show good cause why the case should not be dismissed, even when the failure to prosecute is the result of failing to timely serve process. *Gateway Bank of Central Florida v. Butler*, 20 Fla. L. Weekly Supp. 941 (5th Cir. Ct. 2013) (appellate capacity).

An involuntary dismissal cannot be entered under the rule until the small claims litigation seeking affirmative relief has completed the presentation of evidence. Unless otherwise stated by the trial court, involuntary dismissals under the rule

are with prejudice. *Suzanne Fernandez & Associates, Inc. v. Stephen E. Tunstall Law Office*, 16 Fla. L. Weekly Supp. 917 (11th Cir. Ct. 2009) (appellate capacity).

When plaintiff timely filed his five-day response as required by rule 7.110(e), trial court abused its discretion in dismissing case for lack of prosecution when it failed to rule on plaintiff's response for more than 5 months, and when trial court had been actively working with plaintiff to set trial date. *Graydon v. Trizis*, 16 Fla. L. Weekly Supp. 278 (6th Cir. Ct. 2008) (appellate capacity).

Under small claims rules, a case can be dismissed if no action occurs in the case within a period of 6 months and the plaintiff is provided an opportunity to avoid dismissal upon a showing of good cause. *Gunn v. MCR Receivables Corp.*, 15 Fla. L. Weekly Supp. 107 (1st Cir. Ct. 2007) (appellate capacity).

This rule is not the exclusive means of dismissal under the small claims rules. Claims may also be dismissed if a party does not appear at any pretrial conference or trial under rule 7.160. *Borders v. Stedman*, 14 Fla. L. Weekly Supp. 253 (9th Cir. Ct. 2006) (appellate capacity).

Assessment of costs after voluntary dismissal is mandatory. *Sawyer v. Largo Medical Center, Inc.*, 12 Fla. L. Weekly Supp. 1009 (6th Cir. Ct. 2005) (appellate capacity).

When record demonstrated that defendant was in part responsible for the delay in moving the case forward, the trial court's finding of good cause to avoid dismissal was not an abuse of discretion. *United Automobile Ins. Co. v. Salzedo*, 11 Fla. L. Weekly Supp. 403 (11th Cir. Ct. 2004) (appellate capacity).

If trial court denies motion to amend complaint to add other claims, plaintiff may take a voluntary dismissal and refile the case as desired. *Kossow v. Davids*, 11 Fla. L. Weekly Supp. 183 (9th Cir. Ct. 2003) (appellate capacity).

To determine if the 6-month period of inactivity has occurred, trial court cannot consider filings after the 6-month deadline. *State Farm Automobile Ins. Co. v. Fillyaw*, 10 Fla. L. Weekly Supp. 468 (5th Cir. Ct. 2003) (appellate capacity).

Submission of motions for default during the 6-month period constitutes sufficient record activity to preclude dismissal under rule. *Southern Group Indemnity, Inc. v. Advantage Ins. Agency, Inc.*, 9 Fla. L. Weekly Supp. 520 (11th Cir. Ct. 2002) (appellate capacity).

When plaintiff timely filed its response setting forth good cause, trial court abused its discretion in dismissing case. Plaintiff established that matters were occurring outside of the record which were moving the case forward. *Crider v. USAA Casualty Ins. Co.*, 6 Fla. L. Weekly Supp. 678 (13th Cir. Ct. 1999) (appellate capacity).

When small claims case is voluntarily dismissed by an insurer, the defendant is entitled to its costs, even if a settlement with the insurer has been reached. *Marino v. Travelers Indemnity Co.*, 2 Fla. L. Weekly Supp. 10 (11th Cir. Ct. 1993) (appellate capacity).

The Plaintiff has an "indisputably high" burden to show sufficient good cause to avoid dismissal for lack of prosecution. Non-record activity is generally

insufficient to constitute good cause, unless accompanied by some type of excusable conduct. So, when case had been pending for 4 years, there had been multiple instances of no record activity for 6 months, and plaintiff had purportedly been trying to schedule a hearing "for months" without explaining the difficulty in getting hearing time, the plaintiff had failed to demonstrate good cause, and the case would be dismissed. *Discover Bank, N.A. v. Lukacs*, 27 Fla. L. Weekly Supp. 741 (Hillsborough Cty. Ct. 2019) (Ober, J).

Although party had taken appeal of a related issue, underlying small claims action was still subject to 6-month inactivity rule. Therefore, when parties failed to have record activity for 6 months, and failed to show good cause for no record activity, small claims action would be dismissed. *Midland Funding LLC v. White*, 27 Fla. L. Weekly Supp. 194 (Hillsborough Cty. Ct. 2019) (Ober, J).

When plaintiff filed its Notice of Good Cause two days before the hearing on the Motion to Dismiss for Failure to Prosecute under this Rule, the plaintiff's notice was would be considered a nullity as untimely, and dismissal was mandatory under the Rule. *Portfolio Recovery Associates, LLC v. Merrow*, 24 Fla. L. Weekly Supp. 878 (Hillsborough Cty. Ct. 2016) (Williams, J).

When plaintiff filed its Notice of Good Cause asserting that defendant's Motion to Dismiss for Failure to Prosecute should be denied because defendant had failed to provide responses to discovery for a period of 7 months, and further had a motion to compel arbitration pending for 18 months, and defendant in turn argued that plaintiff could have brought these two issues before the court as defendant did not bear the burden of moving the case forward, case would be dismissed as the trial court found these reasons not to be well-taken to establish good cause. *Portfolio Recovery Associates, LLC v. Wood*, 24 Fla. L. Weekly Supp. 875 (Hillsborough Cty. Ct. 2016) (Fernandez, J).

When plaintiff filed its Notice of Good Cause the day before the hearing on the Motion to Dismiss for Failure to Prosecute under this Rule, the plaintiff's notice was untimely and dismissal was mandatory under the Rule. *Well Fargo Financial Nat'l Bank v. McCarthy*, 24 Fla. L. Weekly Supp. 827 (Pinellas Cty. Ct. 2016) (McNary, J).

When a plaintiff voluntarily dismissed small claims case, the defendant is entitled to an award of costs. *Superior Debt Recovery LLC v. Crumpler*, 20 Fla. L. Weekly Supp. 2013 (Volusia Cty. Ct. 2013) (Sanders, J).

When plaintiff failed to show good cause why action should remain pending for lack of record activity for a period of 6 months, and having been provided due notice, case would be dismissed. *CACH LLC v. Rossi*, 19 Fla. L. Weekly Supp. 1088 (Polk Cty. Ct. 2012) (Coon, J).

When plaintiff failed to show good cause why action should remain pending for lack of record activity for a period of 6 months, and having been provided due notice, case would be dismissed, even though plaintiff filed a motion before the show cause hearing. *Advantage Assets II, Inc. v. Bleck*, 19 Fla. L. Weekly Supp. 955 (Orange Cty. Ct. 2012) (Martinez, J).

To dismiss for failure to prosecute under this rule, there is no need to give a 30-day notice to cure as required under the Rules of Civil Procedure. The rules are

not uniform. ***1st Health, Inc. v. State Farm Mutual Automobile Ins. Co.*****, 15 Fla. L. Weekly Supp. 181 (Sarasota Cty. Ct. 2007) (LoGalbo, J).**

Provision in rule permitting involuntary dismissal after presentation of evidence is not sole means of disposing of case without full trial. Rule 7.135 permits summary disposition at any time. ***Featherstone v. Allen*****, 13 Fla. L. Weekly Supp. 885 (Escambia Cty. Ct. 2006) (Roark, J).**

Rule allows court to dismiss case for failure to state a cause of action. ***Monogram Credit Card Bank of Georgia v. Foster*****, 12 Fla. L. Weekly Supp. 563 (Duval Cty. Ct. 2004) (Cofer, J).**

When defendant files 6-month motion to dismiss under the rule, "good cause" is not shown by merely filing a motion to amend complaint to reflect proper defendant. ***Cripe v. Progressive Express Ins. Co.*****, 11 Fla. L. Weekly 1070 (Alachua Cty. Ct. 2004) (McDonald, J).**

When plaintiff timely responded with a detailed explanation of the difficulty it had had in locating defendant, trial court found that plaintiff had established good cause to avoid dismissal. ***Perrier v. Bonagura*****, 11 Fla. L. Weekly Supp. 749 (Broward Cty. Ct. 2004) (Lee, J).**

When plaintiff completed presentation of its case, defendant's motion for involuntary dismissal would be granted when plaintiff's own evidence demonstrated that the statutorily required notice was improper. ***Thrift Pak Food Service (Fla), Inc. v. O'Steen*****, 12 Fla. Supp. 2d 32 (Palm Beach Cty. Ct. 1985) (Gross, J).**

***SECONDARY AUTHORITY*:**

Trawick's Fla. Prac. & Proc. §§21:2, 21:3. 21:5,21:7 (2020).

1 Fla. Jur. 2d *Actions* §§138, 147, 164, 168 (2019).

12 Fla. Jur. 2d *Costs* §32 (2019).

RULE 7.130. CONTINUANCES AND SETTLEMENT

(a) Continuances. A continuance may be granted only upon good cause shown. The motion for continuance may be oral, but the court may require that it be written. The action shall be set again for trial as soon as practicable and the parties shall be given timely notice.

(b) Settlements. Settlements in full or by installment payments made by the parties out of the presence of the court are encouraged. The plaintiff shall notify the clerk of settlement, and the case may be dismissed or continued pending payments. Upon failure of a party to perform the terms of any stipulation or agreement for settlement of the claim before judgment, the court may enter appropriate judgment without notice upon the creditor's filing of an affidavit of the amount due.

Annotations:

When counsel filed a motion for continuance the day before the small claims pretrial conference, the trial court should have first ruled on the motion for continuance before defaulting the defendant for failure to appear. Moreover, when counsel had just been hired the day before the pretrial conference, set forth in his motion his legal conflict for being unable to appear, and repeatedly tried to get the motion before the proper judge, the trial court erred in not finding good cause to vacate the judgment and grant the continuance. *Les Maisons de Nathalie USA, Inc. v. Kuan*, 27 Fla. L. Weekly Supp. 596 (11th Cir. App. 2019).

The Florida Small Claims Rules encourage parties to enter into settlements. When parties entered into a written settlement agreement in a small claims proceeding, and the defendant thereafter failed to make a payment due under the settlement agreement, trial court did not err in entering judgment for creditor without hearing upon the plaintiff's filing an affidavit because such a proceeding is specifically approved in the small claims rules. *Monteiro v. Primer*, 24 Fla. L. Weekly Supp. 480 (6th Cir. App. 2016).

Inadvertently setting a trial for lesser time that needed to complete the trial constitutes "good cause" for continuing the trial. *Metcalf v. Ortiz*, 16 Fla. L. Weekly Supp. 718 (9th Cir. App. 2009).

A judgment cannot be entered for breach of a stipulation of settlement unless the stipulation of settlement has been filed with the Clerk as required by the rule. As a result, judgment entered on an affidavit of breach must be set aside. *Casanova v. South Dade Healthcare, Ltd.*, 12 Fla. L. Weekly Supp. 208 (11th Cir. App. 2004).

Letter containing the conditions of settlement should not be "stricken" as its inclusion in the record is in accord with the rule. *Midland Funding LLC v. Ballas*, 14 Fla. L. Weekly Supp. 382 (St. Johns Cty. Ct. 2007) (Tinlin, J).

***SECONDARY AUTHORITY*:**

Trawick's Fla. Prac. & Proc. §§19:2, 22:3, 25:17 (2020).

10 Fla. Jur. 2d *Compromise, Accord & Release* §13 (2019).

11 Fla. Jur. 2d *Continuances* §§3, 39 (2019).

RULE 7.135. SUMMARY DISPOSITION

At pretrial conference or at any subsequent hearing, if there is no triable issue, the court shall summarily enter an appropriate order or judgment.

Annotations:

At the pretrial conference, if the court determines that "no triable issue" exists in the case, the court shall enter summary disposition rather than proceeding to trial. *In re Amendments to Florida Small Claims Rule 7.090*, 64 So.3d 1196 (Fla. 2011) (Pariente, J., concurring).

Appellate court questions, but does not reach, whether rule permits trial court judge to "weigh evidence" submitted by the parties. Nevertheless, summary disposition in favor of plaintiff would not be disturbed when ruling of trial court could have been based on the court's "outright rejection" of the affidavit submitted by defendant. *United Automobile Ins. Co. v. Hallandale Open MRI, LLC*, 145 So.3d 997 (Fla. 4th DCA 2014).

Rule allows parties to raise issues without the necessity of written pretrial motions or defensive pleadings. Trial court is permitted to enter judgment if it appears at the pretrial conference that there is no triable issue. *Linden v. Auto Trend, Inc.*, 923 So.2d 1281 (Fla. 4th DCA 2006).

In a small claims action, no responsive pleading was required. Therefore, defendant could file a notice of confession of judgment without filing an answer. Moreover, the confession of judgment is consistent with a responsive pleading in admitting the allegations in the complaint. Therefore, trial court properly entered judgment on summary disposition in favor of plaintiff on the confession. *Bretz Chiropractic Clinic v. GEICO General Ins. Co.*, 26 Fla. L. Weekly Supp. 620 (12th Cir. App. 2018).

Once rules of civil procedure have been invoked in a small claims case, the court cannot avail itself of the small claims rules to handle matters in the case. Therefore, the trial court erred when it entered summary disposition pursuant to the rule, when the rules of civil procedure had been invoked. *State Farm Mutual Automobile Ins. Co. v. Precision Diagnostic, Inc.*, 25 Fla. L. Weekly Supp. 425 (19th Cir. App. 2017).

Unlike its counterpart in the rules of civil procedure, the rule permitting summary disposition does not require a written motion or attached evidence. At the small claims pretrial conference, the trial court may determine on its own whether any triable issue exists. Although presentation of evidence is not required for summary disposition, the parties "clearly must orally discuss" the evidence at the pretrial conference, which could support summarily disposing of the case. *Williams v. City Towing, LLC*, 24 Fla. L. Weekly Supp. 666 (15th Cir. App. 2016).

When parties proceeded without objection on a motion for summary judgment under rule 1.510, rather than a motion for summary disposition under the small claims rules, losing party could not be heard to complain on appeal that trial court proceeded under rule 1.510 in error. *Greene v. USAA Cas. Ins. Co.*, 23 Fla. L. Weekly Supp. 389 (5th Cir. App. 2015).

Trial court could not enter judgment under this rule at small claims pretrial conference when a triable issue remained as to the purpose of monies paid to a landlord. *Morales v. Yazkov*, 20 Fla. L. Weekly Supp. 860 (11th Cir. Ct. 2013) (appellate capacity).

Trial court acted properly in entertaining written motion for summary judgment in small claims case without a separate order invoking that portion of the rules of civil procedure, as Small Claims Rules permit trial court to summarily dispose of case. *Barton v. Cooper*, 19 Fla. L. Weekly Supp. 66 (11th Cir. Ct. 2011) (appellate capacity).

At pretrial conference or any subsequent hearing in a small claims case, court may summarily dispose of the action if the court finds no triable issue. As a result, when plaintiff sued individual employees of a management company for retaliatory eviction, trial court properly entered summary disposition in favor of the employees. *Eady v. Affordable Realty & Property Management*, 18 Fla. L. Weekly Supp. 7 (6th Cir. Ct. 2010) (appellate capacity).

Party entitled to fees under lease agreement when it prevailed on summary disposition motion. *S P V Realty, LLC v. Rojas*, 15 Fla. L. Weekly Supp. 965 (11th Cir. Ct. 2008) (appellate capacity).

Requests for summary disposition may be heard on same date as scheduled trial. *Capital One Bank v. Melton*, 15 Fla. L. Weekly Supp. 665 (15th Cir. Ct. 2008) (appellate capacity).

Trial court properly entered summary disposition on credit card case when statute of limitations had clearly not expired and that was only defense to debt. *Gunn v. MCR Receivables Corp.*, 15 Fla. L. Weekly Supp. 107 (1st Cir. Ct. 2007) (appellate capacity).

Trial court properly entered summary disposition in favor of defendant on credit card case when statute of limitations had clearly expired. *Portfolio Recovery Associates, LLC v. Fernandes*, 13 Fla. L. Weekly Supp. 560 (15th Cir. Ct. 2006) (appellate capacity).

Trial court properly entered summary disposition in favor of defendant on credit card case when statute of limitations had clearly expired. *Portfolio Recovery Associates, LLC v. Fernandes*, 13 Fla. L. Weekly Supp. 560 (15th Cir. Ct. 2006) (appellate capacity).

Trial court properly entered summary disposition in favor of defendant when contract in dispute involving "consensual cannibalism" clearly violated public policy of State. *Tourtelot v. Koshick*, 12 Fla. L. Weekly Supp. 1008 (6th Cir. Ct. 2005) (appellate capacity).

When party presents case of entitlement to summary disposition, opposing party has burden to demonstrate summary disposition is not warranted. *United Automobile Ins. Co. v. A-1 Mobile MRI, Inc.*, 12 Fla. L. Weekly Supp. 444 (17th Cir. Ct. 2005) (appellate capacity).

Summary disposition rule provides procedural mechanism for considering motion for summary judgment. However, no written motion or specific notice is required to consider summary disposition request. Summary disposition should not be granted when factual disputes exist which need to be resolved. *Jackson v. Wells Fargo Home Mortgage, Inc.*, 12 Fla. L. Weekly Supp. 188 (6th Cir. Ct. 2004) (appellate capacity).

When dispute existed as to amount of money owed, summary disposition should not have been granted. *South Miami Health Systems, Inc. v. Perry*, 7 Fla. L. Weekly Supp. 26 (11th Cir. Ct. 1999) (appellate capacity).

When record reflected no triable issue on tenants' claim for return of security deposit, summary disposition would be affirmed. *Whitmore v. Reid*, 5 Fla. L. Weekly Supp. 211 (19th Cir. Ct. 1997) (appellate capacity).

Unconscionability of a contract should not be determined by summary disposition. Consideration of evidence is needed to determine issue of unconscionability. *B.R.H. Maintenance, Inc. v. Santopietro*, 3 Fla. L. Weekly Supp. 576 (19th Cir. Ct. 1995) (appellate capacity).

If trial court determines at pretrial conference that there is no triable issue, then the court may enter summary judgment at that time. *Ghaltchi v. Kilbride Int'l Leasing & Investment Co., Ltd.*, 39 Fla. Supp. 2d 4 (17th Cir. Ct. 1990) (appellate capacity).

When plaintiff was provided an opportunity to articulate what his case is about and what type of evidence would support his claim, and the plaintiff was not able to proffer any evidence that would suggest the defendant would be liable, summary disposition under this rule would be granted in favor of the defendant as there is no triable issue in the case. *Thomas v. Israel*, 26 Fla. L. Weekly Supp. 242 (Broward Cty. Ct. 2018) (Lee, J).

When defendant failed to file any written defenses as required by court order, trial court concluded that defendant had waived any defenses in the case. In turn, when the plaintiff proved a prima facie case, the plaintiff would be entitled to summary disposition. *Broward Ins. Recovery Center, LLC v. Progressive Select Ins. Co.*, 24 Fla. L. Weekly Supp. 761 (Broward Cty. Ct. 2016) (Lee, J).

When a case is traveling under the small claims rules, and a party files a motion for "summary judgment" rather than a motion for "summary disposition," the trial court may properly consider the motion as one for summary disposition. *Hollywood Diagnostics Center, Inc. v. 21st Century Centennial Ins. Co.*, 24 Fla. L. Weekly Supp. 731 (Broward Cty. Ct. 2016) (Lee, J).

When undisputed facts developed through discovery revealed that plaintiff advised defendant it would only accept a partial payment of amount claimed due under protest, court found that plaintiff was entitled to summary disposition under this rule on defendant's claim of accord and satisfaction. *Health*

***Diagnostics of Miami, LLC v. United Automobile Ins. Co.*, 19 Fla. L. Weekly Supp. 879 (Broward Cty. Ct. 2012) (Deluca, J).**

When defendant filed meritorious summary disposition motion to seek fees under 57.105, and plaintiff did not dismiss action until after 21-day safe harbor period had expired, defendant was entitled to fees and costs. *Virtual Imaging Services, Inc. v. United Automobile Ins. Co.*, 16 Fla. L. Weekly Supp. 188 (Miami-Dade Cty. Ct. 2008) (Lehr, J).

Defendant entitled to summary disposition in its favor when clear evidence demonstrated that plaintiff had accepted tender of funds in full settlement of claim. *Prime Medical & Rehab Service v. United Automobile Ins. Co.*, 16 Fla. L. Weekly Supp. 97 (Miami-Dade Cty. Ct. 2008) (King, J).

Summary disposition can be granted as to some claims in a case, while leaving other claims for trial. *Capital One Bank v. Tarpinian*, 15 Fla. L. Weekly Supp. 856 (Palm Beach Cty. Ct. 2008) (Evans, J).

When statute of limitations has clearly expired, summary disposition is proper. *Capital One Bank v. Sawyer*, 15 Fla. L. Weekly Supp. 170 (Duval Cty. Ct. 2007) (Cox, J).

When defendant denies amount claimed due in credit card case, and because amount claimed due is unliquidated, summary disposition is not appropriate. *Capital One Bank v. Ascanio*, 15 Fla. L. Weekly Supp. 166 (Palm Beach Cty. Ct. 2007) (Booras, J).

When evidence was clear that presuit requirements had not been met, summary disposition in favor of defendant was proper. *Gordon v. Progressive American Ins. Co.*, 15 Fla. L. Weekly Supp. 61 (Duval Cty. Ct. 2007) (Blazs, J).

When defendant orally disputes debt at pretrial conference, summary disposition is not appropriate. *RAB Performance Recoveries, LLC v. Rodriguez*, 14 Fla. L. Weekly Supp. 492 (Palm Beach Cty. Ct. 2007) (Booras, J).

When evidence showed that medical provider had clearly failed to comply with conditions precedent to payment, summary disposition would be entered in favor of insurer. *Clark v. Progressive Express Ins. Co.*, 14 Fla. L. Weekly Supp. 479 (Duval Cty. Ct. 2006) (Flower, J).

When evidence is clear that defendant is immune from suit, summary disposition is proper. *Featherstone v. Allen*, 13 Fla. L. Weekly Supp. 885 (Escambia Cty. Ct. 2005) (Roark, J).

When plaintiff presents facts which are unrefuted demonstrating entitlement to relief, and only question is one of law, summary disposition is proper. *A-1 Mobile MRI, Inc. v. United Automobile Ins. Co.*, 11 Fla. L. Weekly Supp. 1024 (Broward Cty. Ct. 2004) (Pratt, J).

When plaintiff presents facts which are unrefuted demonstrating entitlement to relief, and only question is one of law, summary disposition is proper. *A-1 Mobile MRI, Inc. v. United Automobile Ins. Co.*, 11 Fla. L. Weekly Supp. 936 (Broward Cty. Ct. 2004) (Pratt, J).

When defendant insurer conceded that it failed to comply with the requirements of Florida law before it could avail itself of preferred provider rates, summary disposition in favor of provider would be granted as the only resulting issue was one of law. *Tuller Chiropractic Center v. Progressive Express Ins. Co.*, 11 Fla. L. Weekly Supp. 449 (Alachua Cty. Ct. 2003) (Kotey, J).

Request for summary disposition can be made ore tenus, and as to only one issue in the case. When insurer did not dispute that it failed to pay transportation expenses, court would grant summary disposition in patient's favor as to this issue. *Thompson v. Nationwide Assurance Co.*, 11 Fla. L. Weekly Supp. 442 (Duval Cty. Ct. 2004) (Tanner, J).

Summary disposition request does not require any particular written motion or notice. Additionally, judge may consider summary disposition sua sponte. The fact that a plaintiff may have incorrectly titled the request as a motion for "summary judgment" rather than "summary disposition" does not mean that the court cannot consider the motion as one for summary disposition under the rule. *Bloodworth v. International Auto City, Inc.*, 10 Fla. L. Weekly Supp. 1046 (Broward Cty. Ct. 2003) (Lee, J).

When evidence was clear that defendant insurer could not avail itself of preferred provider rates, summary disposition in favor of provider would be granted on that issue. However, case would proceed on remaining disputed issue relating to another affirmative defense. *Ortho Associates, P.A. v. Nationwide Property & Casualty Ins.*, 9 Fla. L. Weekly Supp. 63 (Broward Cty. Ct. 2001) (Pollock, J).

When evidence was clear that defendant insurer could not avail itself of preferred provider rates, summary disposition in favor of provider would be granted. *S. D. Larusso, D.C., P.A. v. Nationwide Property & Casualty Ins.*, 9 Fla. L. Weekly Supp. 63 (Palm Beach Cty. Ct. 2001) (Evans, J).

***SECONDARY AUTHORITY*:**

Trawick's Fla. Prac. & Proc. §25:5 (2019) (noting that summary disposition is much quicker than summary judgment because the parties in a small claims case appear and can be questioned).

41 Fla. Jur. 2d *Pre-Trial Proceedings* §§25, 26 (2019).

RULE 7.140. TRIAL

(a) Time. The trial date shall be set by the court at the pretrial conference.

(b) Determination. Issues shall be settled and motions determined summarily.

(c) Pretrial. The pretrial conference should narrow contested factual issues. The case may proceed to trial with the consent of both parties.

(d) Settlement. At any time before judgment, the judge shall make an effort to assist the parties in settling the controversy by conciliation or compromise.

(e) Unrepresented Parties. In an effort to further the proceedings and in the interest of securing substantial justice, the court shall assist any party not represented by an attorney on:
(1) courtroom decorum; and
(2) order of presentation of material evidence; and
(3) handling private information.

The court may not instruct any party not represented by an attorney on accepted rules of law. The court shall not act as an advocate for a party.

(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.

Annotations:

The presiding judge is not allowed to act in a way that could be construed as more favorable to one party. *Barrett v. City of Margate*, 743 So.2d 1160 (Fla. 4th DCA 1999).

In small claims actions, rules of evidence apply but are to be liberally construed. *Amir v. Habibe*, 16 Fla. L. Weekly Supp. 32 (17th Cir. Ct. 2008) (appellate capacity).

Trial court improperly interjected homestead defense on behalf of pro se defendants when defendants did not raise the defense themselves. *Weston Hills Homeowners Ass'n, Inc. v. Ferguson*, 15 Fla. L. Weekly Supp. 301 (5th Cir. Ct. 2007) (appellate capacity).

Trial court cannot advise pro se party on how to prove case. When plaintiff failed to bring expert to testify as to estimated costs of repair, trial court properly rejected plaintiff's hearsay statements of estimates received. *Allen v. Pep Boys*, 12 Fla. L. Weekly Supp. 23 (9th Cir. Ct. 2004) (appellate capacity).

Judgment would be reversed and remanded for new trial when trial court disallowed plaintiff's witness telephonic testimony pursuant to a set policy of not allowing telephonic testimony at any trial. Such a policy evinces no exercise of discretion. *Glynn v. Miller*, 3 Fla. L. Weekly Supp. 586 (19th Cir. Ct. 1995) (appellate capacity).

Court cannot dismiss case because it believes plaintiff is taking an unreasonable position on settlement. *Blue v. Woods*, 3 Fla. L. Weekly Supp. 217 (20th Cir. Ct. 1995) (appellate capacity).

Once trial court allows parties to invoke rules of civil procedure, court cannot use the provisions of this rule to narrow issues. *Strickler v. C S of Texas, Inc.*, 1 Fla. L. Weekly Supp. 159 (9th Cir. Ct. 1992) (appellate capacity).

Consent of opposing party is not necessary to permit telephonic testimony at small claims trial. *Capital One Bank v. Facelo*, 16 Fla. L. Weekly Supp. 95 (Miami-Dade Cty. Ct. 2008) (King, J).

Because court is to construe rules of evidence liberally, Kelly Blue Book would be admissible on issue of value of automobile. *Khaial v. Charles*, 13 Fla. L. Weekly Supp. 734 (Broward Cty. Ct. 2006) (Lee, J).

In small claims case, trial court has broader latitude and may assist an unrepresented party in the presentation of material evidence. *General Employment Services v. Thomas*, 4 Fla. Supp. 2d 80 (Orange Cty. Ct. 1983) (Hauser, J).

In small claims case, judge's role includes assisting unrepresented parties on presentation of material evidence. *General Employment v. Briere*, 5 Fla. Supp. 2d 55 (Orange Cty. Ct. 1983) (Hauser, J).

***SECONDARY AUTHORITY*:**

Trawick's Fla. Prac. & Proc. §§22:2, 22:23 (2020).

RULE 7.150. JURY TRIALS

Jury trials may be had upon written demand of the plaintiff at the time of the commencement of the suit, or by the defendant within 10 days after service of the summons/notice to appear or at the pretrial conference, if any. Otherwise jury trial shall be deemed waived.

Annotations:

Rule 1.440 (dealing with setting an action for trial) does not apply to small claims cases, unless the trial judge specifically orders it to be applicable. *Conner v. Moran*, 44 Fla. L. Weekly D2052 (Fla. 1st DCA 2019).

When waiver of pretrial conference specifically provided that rule 7.150 remains in effect and prevails over rule 1.430, defendant waived jury trial by failing to demand jury trial "within 5 days of service of notice of suit or at the pretrial conference, if any," notwithstanding defendant's subsequently filed written answer, affirmative defenses, and demand for jury trial. *Health Diagnostics of Fort Lauderdale, LLC v. State Farm Mutual Automobile Ins. Co.*, 23 Fla. L. Weekly Supp. 648 (Broward Cty. Ct. 2015) (Skolnik, J).

When neither plaintiff nor defendant sought a jury trial by the pretrial conference, defendant's attempt to demand a jury trial in its written answer filed twenty-four days after the pretrial conference would be stricken. *Ron Wechsel, D.C. v. Progressive Express Ins. Co.*, 10 Fla. L. Weekly Supp. 367 (Broward Cty. Ct. 2003) (DeLuca, J).

***SECONDARY AUTHORITY*:**

Trawick's Fla. Prac. & Proc. §22:23 (pointing out that a jury trial in a small claims case is the "exception"); §23:3 (2020) (jury trial may be waived in small claims cases)

RULE 7.160. FAILURE OF PLAINTIFF OR BOTH PARTIES TO APPEAR

(a) Plaintiff. If plaintiff fails to appear on the initial appearance date (pretrial conference), or fails to appear at trial, the action may be dismissed for want of prosecution, defendant may proceed to trial on the merits, or the action may be continued as the judge may direct, subject to rule 7.090(b).

(b) Both Parties. If both parties fail to appear on the initial appearance date (pretrial conference), the judge may continue the action or dismiss it for want of prosecution at that time or later as justice requires, subject to rule 7.090(b).

Annotations:

At a pretrial conference, a small claims case can take one of three courses: if the plaintiff does not appear, the court can dismiss the case; if the defendant does not appear, the court can enter a default against the defendant; or if both parties appear, the case can be referred to mediation, and then if not settled, the court shall set the matter for trial. *In re Amendments to Florida Small Claims Rule 7.090*, 64 So.3d 1196 (Fla. 2011) (Pariente, J., concurring).

When a case is dismissed for failure of a plaintiff to appear at a small claims pretrial conference, the dismissal is not an adjudication on the merits and does trigger the doctrine of *res judicata*. *Orosz v. Freestyle Pools and Spa, Inc.*, 26 Fla. L. Weekly Supp. 169 (13th Cir. App. 2018).

Trial court properly entered judgment in favor of plaintiff when defendant failed to appear at the small claims trial. *Debt Settlement Law Group, P.A. v. Malki*, 22 Fla. L. Weekly Supp. 304 (6th Cir. Ct. 2014) (appellate capacity) [Editor's Note: Issued prior to amendment of rule limiting this rule to pretrial conferences only.]

When plaintiff, an inmate at a State prison, failed to appear at the pretrial conference, the trial court dismissed the action for "want of prosecution." The appellate court affirmed, holding that it was the plaintiff's responsibility to seek telephonic appearance, and failing to do so, the burden of plaintiff's appearance did not fall on the Court or Clerk. *Borders v. Stedman*, 14 Fla. L. Weekly Supp. 253 (9th Cir. Ct. 2006) (appellate capacity).

When inmate fails to appear at pretrial conference, trial court must provide a written order explaining why dismissal under the rule is permissible. In this case, the inmate filed a motion to appear telephonically, which was denied by the trial court. The decision was reversed and remanded, requiring the trial court to explain its reasoning. *Larson v. McDougall*, 6 Fla. L. Weekly Supp. 263 (20th Cir. Ct. 1998) (appellate capacity).

When plaintiff failed to appear at small claims pretrial conference, case would be dismissed under the rule. *A Alexander Event LLC v. Rind*, 20 Fla. L. Weekly Supp. 823 (Broward Cty. Ct. 2013) (Lee, J).

When two of three defendants appeared at small claims pretrial conference and desired to proceed to trial, court had discretion to proceed to trial as to all three defendants, even third defendant who failed to appear. Court was not required to default third defendant. *Shanen v. Indelicato*, 19 Fla. L. Weekly Supp. 571 (Broward Cty. Ct. 2012) (Lee, J).

A party may not unilaterally cancel a small claims pretrial conference. When plaintiff failed to appear at a pretrial conference, and case was dismissed as a result, court declined to set aside dismissal. *Florida Credit Union v. Mack*, 19 Fla. L. Weekly Supp. 51 (Marion Cty. Ct. 2011) (Roger, J).

When plaintiff failed to appear at pretrial conference, trial court could dismiss for want of prosecution, or summarily dispose of the case on the merits under Rule 7.135. *Featherstone v. Allen*, 13 Fla. L. Weekly Supp. 885 (Escambia Cty. Ct. 2005) (Roark, J).

RULE 7.170. DEFAULT; JUDGMENT

(a) Default. If a defendant does not appear at the scheduled time, the plaintiff is entitled to a default to be entered either by the judge or the clerk.

(b) Final Judgment. After default is entered, the judge shall receive evidence establishing the damages and enter judgment in accordance with the evidence and the law. The judge may inquire into and prevent abuses of venue prior to entering judgment.

Annotations:

Trial court did not err in transferring case to another venue even though defendant was defaulted. Trial court in small claims actions may sua sponte inquire to prevent venue abuse. *Tax Certificate Judgments, Inc. v. Wright*, 826 So.2d 1051 (Fla. 4th DCA 2002).

When a defendant moves to set aside a default judgment for failure to appear at trial, defendant must attach to the motion an affidavit or sworn statement explaining the reason for non-appearance. An unsworn motion is insufficient. *Mieles v. Lugo*, 26 Fla. L. Weekly Supp. 865 (5th Cir. App. 2019).

Small Claims Rules do not require notice of an application for default. Appearance at the pretrial conference is necessary to avoid a default judgment. *Law Office of James M. Thomas, Esquire v. Robert L. Jones, Inc.*, 18 Fla. L. Weekly Supp. 963 (6th Cir. Ct. 2011) (appellate capacity).

After a default, the court's only inquiry involves damages. The trial court erred when it conducted an evidentiary hearing to determine the issue of standing after a default had already been entered. *Athena Funding Group IX, LLP v. Ramirez*, 17 Fla. L. Weekly Supp. 1192 (15th Cir. Ct. 2010) (appellate capacity).

When defendant filed written paper with court prior to pretrial conference but did not appear at pretrial conference, plaintiff was entitled to a default. *Palm Beach Atlantic University v. Campbell*, 16 Fla. L. Weekly Supp. 1022 (15th Cir. Ct. 2009).

When defendant appeared at pretrial conference, but left before trial date could be assigned, default was improperly entered against him. *Sargent v. Williams*, 15 Fla. L. Weekly Supp. 346 (20th Cir. Ct. 2007) (appellate capacity).

Unlike the Rules of Civil Procedure, a default under the Small Claims Rules requires evidence of damages, even if the claim in liquidated. However, evidence may be submitted by affidavit. *CACV of Colorado, LLC v. DeWolf*, 15 Fla. L. Weekly Supp. 27 (15th Cir. Ct. 2007) (appellate capacity).

By attaching a copy of credit card agreement to statement of claim, defaulted defendant admitted to the terms of the agreement. When plaintiff submitted

competent affidavits of indebtedness, trial court erred in denying entry of default final judgment. *LVNV Funding. LLC v. Moehrlin*, 15 Fla. L. Weekly Supp. 9 (7th Cir. Ct. 2007) (appellate capacity).

Court could not enter a default for failing to file an answer when defendant appeared in person at pretrial conference. *Ghaltchi v. Kilbride Int'l Leasing & Investment Co., Ltd.*, 39 Fla. Supp. 2d 4 (17th Cir. Ct. 1990) (appellate capacity).

Trial court cannot enter a default against a party who is immune from suit, even if the defendant fails to appear at the small claims pretrial conference. Therefore, when the Embassy of Kuwait was immune from suit under federal law, the case would be dismissed even though the defendant was served. *Tayar v. Health Office of the Embassy of Kuwait*, 26 Fla. L. Weekly Supp. 856 (Broward Cty. Ct. 2018) (Lee, J).

Unlike the rules of civil procedure where failure to appear does not constitute a default, the small claims rules provide that a default occurs upon the failure of a defendant to appear at the small claims pretrial conference. Therefore, when the defendant failed to appear, the trial court entered a default against the defendant although the defendant believed had an agreement with the plaintiff to excuse its appearance. *Center for Bone & Joint Surgery of the Palm Beaches v. The First Liberty Ins. Corp.*, 24 Fla. L. Weekly Supp. 748 (Broward Cty. Ct. 2016) (Lee, J).

When defendant failed to appear at small claims pretrial conference, court entered default against defendant. *Quantum Imaging Holding, LLC v. Allstate Fire & Cas. Ins. Co.*, 19 Fla. L. Weekly Supp. 843 (Broward Cty. Ct. 2012) (Lee, J).

Defaulted defendant entitled to notice and opportunity to be heard concerning unliquidated damages, even in a small claims case. *First Union Nat'l Bank of Florida v. Phillips*, 4 Fla. L. Weekly Supp. 615 (Palm Beach Cty. Ct. 1997) (Evans, J).

***SECONDARY AUTHORITY*:**

Trawick's Fla. Prac. & Proc. §25:4 (2020) (pointing out that unlike Rule 1.500(c), Fla. R. Civ. P. which requires notice of a default under certain circumstances, there is no requirement in the Small Claims Rules for the Clerk to notify a defendant of the entry of a default).

32A Fla. Jur. 2d *Judgments & Decrees* §230 (2019).

RULE 7.175. COSTS AND ATTORNEYS' FEES

Any party seeking a judgment taxing costs or attorneys' fees, or both, shall serve a motion no later than 30 days after filing of the judgment, including a judgment of dismissal, or the service of a notice of voluntary dismissal. In the event of a default judgment, no further motions are needed if costs or attorneys' fees, or both, were sought in the statement of claim.

Annotations:

A party in a small claims case may file a motion for attorney's fees, even if represented by counsel, notwithstanding the general rule that a motion filed a party represented by counsel is considered a nullity. The small claims rule refers specifically to a "party" filing the motion, so either the attorney or party can file the motion. Additionally, when more than one attorney has represented a party, the small claims rules do not require that each attorney file a separate motion for attorney's fees; a single motion on behalf of the party is sufficient. *Portfolio Recovery Associates, LLC v. Coakley*, 26 Fla. L. Weekly Supp. 78, (6th Cir. App. 2018), *affirming* 22 Fla. L. Weekly Supp. 268 (Pinellas Cty. Ct. 2014) (McNary, J).

Motion for attorney's fees under the rule is timely, even if filed before judgment is entered, so long as it is filed no later than 30 days after filing of the judgment. A party is not required to wait until a judgment is entered to file the motion. *Selfmount Toe 1604, LLC v. Designer Creations, LLC*, 21 Fla. L. Weekly Supp. 44 (20th Cir. Ct. 2013) (appellate capacity).

When plaintiff failed to plead entitlement to fees in her statement of claim, she was not entitled to fees although she prevailed and timely filed a motion for fees. In the absence of a clear directive in the rule to the contrary, Florida Supreme Court precedent requires that a demand for fees be pled. *Patten v. Mann*, 21 Fla. L. Weekly Supp. 97 (Broward Cty. Ct. 2013) (Lee, J).

***SECONDARY AUTHORITY*:**

Trawick's Fla. Prac. & Proc. §25:13 (2020).

RULE 7.180. MOTIONS FOR NEW TRIAL; TIME FOR; CONTENTS

(a) Time. A motion for new trial shall be filed not later than 15 days after return of verdict in a jury action or the date of filing of the judgment in a nonjury action. A timely motion may be amended to state new grounds at any time before it is disposed of in the discretion of the court.

(b) Determination. The motion shall set forth the basis with particularity. Upon examination of the motion, the court may find it without merit and deny it summarily, or may grant a hearing on it with notice.

(c) **Grounds**. All orders granting a new trial shall specify the specific grounds therefor. If such an order is appealed and does not state the specific grounds, the appellate court shall relinquish jurisdiction to the trial court for entry of an order specifying the grounds for granting the new trial.

Annotations:

Small claims rules do not specifically provide for a motion for rehearing; rather they refer only to a motion for new trial. However, when body of motion seeks a new trial, it should be deemed a motion for new trial, even though the party may have titled it a motion for rehearing. Motion for new trial must be filed (not served) within ten days. *Arafat v. U-Haul Center Margate*, 82 So.3d 903 (Fla. 4th DCA 2011).

Because small claims rules do not provide for motions for rehearing, trial court acted properly in denying motion for rehearing, but should have considered matter as a motion for relief from judgment. *Debt Settlement Law Group, P.A. v. Malki*, 22 Fla. L. Weekly Supp. 304 (6th Cir. Ct. 2014) (appellate capacity).

When trial court failed to set forth grounds for granting new trial, case would be remanded to trial court to set forth reasons as required by rule. *Prince v. Jefferson Nat'l Bank of Miami Beach*, 222 So.2d 806 (Fla. 3d DCA 1969).

The small claims rules do not authorize a motion for rehearing. However, if the motion for rehearing actually seeks a new trial, it may be treated as a motion for new trial so long as it is filed within 10 days after filing of the judgment. Under the small claims rules, an untimely motion for rehearing does not toll the filing of an appeal. *St. Mary's Hospital, Inc. v. Johnson*, 19 Fla. L. Weekly Supp. 762 (15th Cir. Ct. 2012) (appellate capacity).

Even though Small Claims Rules do not specifically provide for motions seeking relief from judgment, they should be treated as a motion for new trial. Motions for new trial are addressed to the sound judicial discretion of the trial court. *Law Offices of*

***James M. Thomas, Esquire v. Robert L. Jones, Inc.*, 18 Fla. L. Weekly Supp. 963 (6th Cir. Ct. 2011) (appellate capacity).**

A motion for reconsideration filed timely constitutes a motion for new trial under this rule, even though the rule does not specifically refer to motions for reconsideration. *Kranitz v. Zion*, 17 Fla. L. Weekly Supp. 90 (15th Cir. Ct. 2009) (appellate capacity).

Request to "rehear" matter should be liberally construed as constituting a motion for new trial under this rule, regardless of title of request. *Perez-Roura v. O. Benitez & Associates, Inc.*, 13 Fla. L. Weekly Supp. 855 (11th Cir. Ct. 2006) (appellate capacity).

Trial court loses jurisdiction to rehear case ten days after a judgment is filed, including default judgments. *Messa v. 5 Star Auto Sales*, 12 Fla. L. Weekly Supp. 925 (11th Cir. Ct. 2005) (appellate capacity).

Trial court loses jurisdiction to rehear case ten days after a judgment is filed, including default judgments and even though harsh result is reached. S*mith v. Bass*, 2 Fla. L. Weekly Supp. 414 (17th Cir. Ct. 1994) (appellate capacity).

When motion for new trial was not timely filed, trial court had no authority to consider the motion. *Continental Construction v. Cox & Palmer Construction*, 4 Fla. Supp. 2d 127 (11th Cir. Ct. 1984) (appellate capacity).

When defendant failed to request new trial within 10 days of judgment being filed, trial court could not grant relief requested, even though grounds may have been meritorious had they been timely asserted. *Bloodworth v. International Auto City, Inc.*, 10 Fla. L. Weekly Supp. 1046 (Broward Cty. Ct. 2003) (Lee, J).

***SECONDARY AUTHORITY*:**

38 Fla. Jur. 2d *New Trial* §§100, 102, 104, 105, 115 (2019).

Trawick's Fla. Prac. & Proc. §26:1 (2020).

RULE 7.190. RELIEF FROM JUDGMENT OR ORDER; CLERICAL MISTAKES

(a) Clerical Mistakes. Clerical mistakes in judgments, orders, or other parts of the record and errors arising from oversight or omission may be corrected by the court at any time on its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the record on appeal is docketed in the appellate court, and thereafter while the appeal is pending may be so corrected with leave of the appellate court.

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; etc. On motion and on such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial or hearing;

(3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;

(4) the judgment is void; or

(5) the judgment has been satisfied, released, or discharged or a prior judgment on which it is based has been reversed or otherwise vacated and it is no longer equitable that the judgment should have prospective application.

The motion shall be made within a reasonable time, and for the reasons underlying subdivisions (b)(1), (b)(2), and (b)(3) not more than 1 year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision does not affect the finality of a judgment or suspend its operation.

Annotations:

When trial court vacated judgment without defendant's having filed a proper motion under this rule, circuit court departed from essential requirements of law

in affirming the order of vacatur on appeal. *Travel is Fun, Inc. v. Hartnett*, 356 So.2d 1291 (Fla. 3d DCA 1978).

Trial court erred when it set aside, without hearing, a default final judgment seven months after the judgment was entered. There was no indication that the trial court had considered whether the defendant had demonstrated excusable neglect, whether the defendant had a meritorious defense, or whether the defendant had exercised due diligence in seeking to set aside the default. *Fast Response Marine Towing & Salvage v. Eliyahu*, 26 Fla. L. Weekly Supp. 625 (11th Cir. App. 2018).

A trial court cannot *sua sponte* set aside a small claims judgment except for correcting a clerical error. Therefore, the trial court erred in setting aside a judgment on its own initiative when the court reconsidered its awarding of discovery sanctions. However, the trial court properly *sua sponte* corrected a mathematical calculation involving a separate sanction award in the same judgment. *Conforti v. Carr*, 27 Fla. L. Weekly Supp. 571 (5th Cir. App. 2019).

When a judgment was entered against defendant for failing to appear at a small claims pretrial conference, and seven days later she filed a request to vacate the judgment asserting that she was at an urgent care center at the time of the pretrial, and further that the debt had been paid in full, the trial court erred when it denied the motion without providing a hearing. *Smith v. Craig W. Krueger A/C Hearing, LLC*, 24 Fla. L. Weekly Supp. 472 (5th Cir. App. 2016).

If a judgment is void, the defendant is entitled to relief from that judgment. Therefore, when a defendant was served on an employee not authorized to accept service of process, and the defendant was subsequently defaulted and a judgment entered, the trial court should have granted the motion for relief from judgment and quashed service. *Body Details v. Harrington*, 22 Fla. L. Weekly Supp. 330 (15th Cir. App. 2014).

Although trial court properly entered a judgment in favor of plaintiff for failure of the defendant to appear at the small claims trial, court should have set aside judgment when defendant established that it had missed trial due to failure to properly calendar the trial date. *Debt Settlement Law Group, P.A. v. Malki*, 22 Fla. L. Weekly Supp. 304 (6th Cir. App. 2014).

To set aside a default judgment entered under the Small Claims Rules, moving party must establish a meritorious defense by means of either a defensive pleading showing the defense or a sworn motion or affidavit stating the facts supporting the meritorious defense. *Law Office of James M. Thomas, Esquire, P.A. v. Robert L. Jones, Inc.*, 18 Fla. L. Weekly Supp. 963 (6th Cir. Ct. 2011) (appellate capacity).

When trial court vacated a judgment against a party based on clerical mistake or inadvertence, but then later reinstated the judgment after hearing, the party requesting the judgment to be set aside could not complain that the judge granted the relief she originally requested. *Metcalf v. Ortiz*, 16 Fla. L. Weekly Supp. 718 (9th Cir. Ct. 2009) (appellate capacity).

When defendant appealed judgment and claimed that it was entered based on improper service and other reasons, appellate court would remand the case to the

trial court for consideration of these arguments under rule. *Ojomo v. Global Acceptance Credit Corp.*, 13 Fla. L. Weekly Supp. 1061 (11th Cir. Ct. 2006) (appellate capacity).

Provision of rule allowing correction of judgment for clerical mistakes was not intended to cover matters which would substantially change impact and effect of judgment. *Waste Management of Dade County v. Novo Roofing and Supply*, 12 Fla. L. Weekly Supp. 329 (11th Cir. Ct. 2005) (appellate capacity).

Trial court should have set aside default judgment under this rule when default was erroneously entered and defendant was not notified of request for judgment. *Olympia Homes, Inc. v. Keller*, 8 Fla. L. Weekly Supp. 278 (9th Cir. Ct. 2001) (appellate capacity).

Relief under rule should have been granted when attorney failed to appear at pretrial conference due to a calendaring error and attorney demonstrated due diligence, a meritorious defense, and excusable neglect. *Allstate Ins. Co. v. Rodriguez*, 6 Fla. L. Weekly Supp. 378 (11th Cir. Ct. 1999) (appellate capacity).

Unless a motion is filed under the rule, trial court on its own can only amend a judgment to correct a clerical mistake. The record should be clear as to the mistake the court is correcting. *Dr. Sparkplug Trust v. Deebold*, 6 Fla. L. Weekly Supp. 77 (20th Cir. Ct. 1998) (appellate capacity).

When it was unrefuted that the plaintiffs had no notice of the dismissal of their case, relief under the rule is appropriate. *Miller v. Colon*, 2 Fla. L. Weekly Supp. 243 (11th Cir. Ct. 1994) (appellate capacity).

Merely stating in a motion in that a pretrial conference was "mis-calendared" is insufficient to establish excusable neglect sufficient to warrant setting aside a dismissal for failure of a plaintiff to appear at its own pretrial conference. *Gehart v. Dinh*, 27 Fla. L. Weekly Supp. 321 (Broward Cty. Ct. 2019) (Lee, J).

When judgment was entered pursuant to a motion for judgment on the pleadings, but the court had not invoked that rule in the small claims action, judgment would be vacated as being erroneously entered because case was traveling under small claims rules. *Path Medical LLC v. United Services Automobile Ass'n*, 26 Fla. L. Weekly Supp. 521 (Broward Cty. Ct. 2018) (Barner, J).

When a plaintiff moves due to vacate a dismissal as a result of missing a small claims pretrial conference, the plaintiff must file a motion under this rule and cannot merely file a motion to reopen case. When case was dismissed on February 19, and plaintiff filed a motion to reopen case on February 25, subsequent motion to vacate filed under this rule would be denied for lack of diligence when plaintiff waited for another month after court's ruling denying motion to reset to file motion to vacate. *A Alexander Event LLC v. Rind*, 20 Fla. L. Weekly Supp. 823 (Broward Cty. Ct. 2013) (Lee, J).

When defendant signed Stipulation for Entry of Judgment which was served on defendant with original Statement of Claim, trial court set aside the stipulation as being entered based on mistake or inadvertence because the service of the stipulation improperly gave the document an "air of legal authority." *Capital One Bank v. Mullis*, 15 Fla. L. Weekly Supp. 262 (Duval Cty. Ct. 2007) (Ferguson, J).

When defendant failed to set forth any grounds to set aside judgment under this rule, relief would be denied even though judgment did on its face demonstrate some troublesome issues. *Bloodworth v. International Auto City, Inc.*, 10 Fla. L. Weekly Supp. 1046 (Broward Cty. Ct. 2003) (Lee, J).

SECONDARY AUTHORITY:

32A Fla. Jur. 2d *Judgments & Decrees* §§47, 50, 51, 61, 62 (2019).

Trawick's Fla. Prac. & Proc. §§25:3, 26:7, 16:8 (2020).

RULE 7.200. EXECUTIONS

Executions on judgments shall issue during the life of the judgment on the oral request of the party entitled to it or that party's attorney without a formal written demand. No execution or other final process shall issue until the judgment on which it is based has been rendered or within the time for serving a motion for new trial and, if a motion for new trial is timely served, until it is determined; provided the court may order issuance of execution or other final process at any time after judgment.

Annotations:

[NONE]

SECONDARY AUTHORITY:

32A Fla. Jur. 2d *Judgments & Decrees* §4 (2019).

Trawick's Fla. Prac. & Proc. §27:1 (2020).

RULE 7.210. STAY OF JUDGMENT AND EXECUTION

(a) Judgment or Execution or Levy Stayed. When judgment is to be entered against a party, the judge may inquire and permit inquiry about the earnings and financial status of the party and has discretionary power to stay an entry of judgment or, if entered, to stay execution or levy on such terms as are just and in consideration of a stipulation on the part of the judgment debtor to make such payments as will ensure a periodic reduction of the judgment until it is satisfied.

(b) Stipulation. The judge shall note the terms of such stipulation in the file; the stipulation may be set out in the judgment or made a part of the judgment by reference to "the stipulation made open court."

(c) Execution. When judgment is entered and execution stayed pending payments, if the judgment debtor fails to pay the installment payments, the judgment creditor may have execution without further notice for the unpaid amount of the judgment upon filing an affidavit of the amount due.

(d) Oral Stipulations. Oral stipulations may be made in the presence of the court that upon failure of the judgment debtor to comply with any agreement, judgment may be entered or execution issued, or both, without further notice.

Annotations:

The Florida Small Claims Rules encourage parties to enter into settlements. When parties entered into a written settlement agreement in a small claims proceeding, and the defendant thereafter failed to make a payment due under the settlement agreement, trial court did not err in entering judgment for creditor without hearing upon the plaintiff's filing an affidavit because such a proceeding is specifically approved in the small claims rules. *Monteiro v. Primer*, 24 Fla. L. Weekly Supp. 480 (6th Cir. App. 2016).

Under small claims rules, trial court may stay entry of judgment or execution on judgment under terms that are just and in consideration of a stipulation. When stipulation, however, included terms that were at odds and did not demonstrate the parties had reached a mutual understanding of the settlement, the terms of the stipulation could not be enforced without further hearing. *Carricaburu v. Capital One Bank (USA), N.A.*, 18 Fla. L. Weekly Supp. 1071 (11th Cir. App. 2011).

When court stays execution of judgment in consideration of a stipulation to make payments, and the judgment debtor fails to make payments as required by the stipulation, the court must issue execution upon submission of filing the appropriate affidavit as required by the rule. In doing so, a new "judgment" should not be issued, but only an order authorizing execution for the amounts remaining due under the original

judgment. *Unifund CCR Partners v. Babcock*, 17 Fla. L. Weekly Supp. 617 (15th Cir. Ct. 2010) (appellate capacity).

If court exercises its discretion to stay execution, the court must include something of record to demonstrate that the judge's decision was reasonable. *CACH, LLC v. Ayulo*, 16 Fla. L. Weekly Supp. 508 (11th Cir. Ct. 2009) (appellate capacity).

If court exercises its discretion to stay execution, the court must include something of record to demonstrate that the judge's decision was reasonable. *CACH, LLC v. Gonzalez*, 16 Fla. L. Weekly Supp. 508 (11th Cir. Ct. 2009) (appellate capacity).

When establishing a periodic payment plan under this rule, court cannot mandate a plan that provides for payment of interest only, with no reduction in principal. *Public Health Trust of Dade County v. Asmar*, 6 Fla. L. Weekly Supp. 19 (11th Cir. Ct. 1998) (appellate capacity).

Court's decision to stay execution must be based on reasonableness. When only evidence in record demonstrated that defendant was a retiree who frequented pari-mutuel establishments, the court, without more, erred in exercising its discretion to withhold execution. *State Farm Mutual Automobile Ins. Co. v. Gonzalez*, 5 Fla. L. Weekly Supp. 729 (11th Cir. Ct. 1998) (appellate capacity).

When court deferred entry of judgment and execution pending payment of installment payments on payment plan which required the installment payment to be delivered to plaintiff's attorney's office no later than a date certain, and defendant sent the installment payment via Federal Express delivery which was returned due to lack of someone present to sign for the delivery, thereby missing the payment deadline, court would enter judgment in favor of plaintiff due to defendant's failure to comply with the conditions of the installment payment plan regardless of the fact that no one was present to sign for the delivered payment. *Jallali v. Rayo*, 24 Fla. L. Weekly Supp. 81 (Broward Cty. Ct. 2016) (Lee, J.).

***SECONDARY AUTHORITY*:**

Trawick's Fla. Prac. & Proc. §§25:11, 27:1 (2020).

RULE 7.220. SUPPLEMENTARY PROCEEDINGS

Proceedings supplementary to execution may be had in accordance with proceedings provided by law or by the Florida Rules of Civil Procedure.

Annotations:

This proceeding is applicable to business entities as well as parties represented by counsel, none of whom have access to the proceeding of a hearing in aid of execution. *World Premium Finance Co., Inc. v. American Ins. Group Agency, Inc.*, 4 Fla. L. Weekly Supp. 825 (11th Cir. Ct. 1997) (appellate capacity).

RULE 7.221. HEARING IN AID OF EXECUTION

(a) **Use of Form 7.343**. In any final judgment, the judge shall include the Enforcement Paragraph of form 7.340 if requested by the prevailing party or attorney. In addition to the forms of discovery available to the judgment creditor under Florida Rule of Civil Procedure 1.560, the judge, at the request of the judgment creditor or the judgment creditor's attorney, shall order a judgment debtor to complete form 7.343 within 45 days of the order or other such reasonable time determined by the court. If the judgment debtor fails to obey the order, Florida Rule of Civil Procedure Form 1.982 may be used in conjunction with this subdivision of this rule.

(b) **Purpose of Hearing**. The judge, at the request of the judgment creditor, shall order a judgment debtor to appear at a hearing in aid of execution at a time certain 45 or more days from the date of entry of a judgment for the purpose of inquiring of the judgment debtor under oath as to earnings, financial status, and any assets available in excess of exemptions to be applied towards satisfaction of judgment. The provisions of this subdivision of this rule shall only apply to a judgment creditor who is a natural person and was not represented by an attorney prior to judgment. Forms 7.342, 7.343, and 7.344 shall be used in connection with this subdivision of this rule.

Annotations:

Although hearing in aid of execution procedure is unavailable to a corporation, a corporate judgment creditor is entitled to use proceedings supplementary. *World Premium Finance Co., Inc. v. American Ins. Group Agency, Inc.*, 4 Fla. L. Weekly Supp. 825 (11th Cir. Ct. 1997) (appellate capacity).

Court is not required to give more than one hearing in aid of execution in a single case. *Cooper v. Johnson*, 18 Fla. L. Weekly Supp. 1185 (Broward Cty. Ct. 2011) (Lee, J).

When judgment creditor was represented by counsel in underlying counsel, creditor seeking to collect its judgment cannot use the procedure of a hearing in aid of execution. *Rubin v. Eternity Beverages, LLC*, 18 Fla. L. Weekly Supp. 615 (Broward Cty. Ct. 2011) (Lee, J).

SECONDARY AUTHORITY:

Trawick's Fla. Prac. & Proc. §27:8 (2020).

RULE 7.230. APPELLATE REVIEW

(a) **Review.** Review of orders and judgments of the courts governed by these rules shall be prosecuted in accordance with the Florida Rules of Appellate Procedure.

(b) **Party Not Represented by an Attorney.** A non-attorney may not represent a business entity in appellate proceedings.

Annotations:

Timely filed motion for new trial tolls the appeal deadline until the motion is ruled on. *Arafat v. U-Haul Center Margate*, 82 So.3d 903 (Fla. 4th DCA 2011).

As with any other appeal, there is no requirement that a party file a reply brief in an appeal of a small claims judgment. The Appellate Rules permit, but do not require, a reply brief. *Chmura v. Maxson*, 46 So.3d 158 (Fla. 2d DCA 2010).

Jurisdiction lies in the circuit appellate courts to review county court dismissal orders. *Suzanne Fernandez & Associates, Inc. v. Stephen E. Tunstall Law Office*, 16 Fla. L. Weekly Supp. 917 (11th Cir. Ct. 2009) (appellate capacity).

Time deadlines set forth in Appellate Rules apply to appeals from decisions under the Small Claims Rules. *Perez-Roura v. O. Benitez & Associates, Inc.*, 13 Fla. L. Weekly Supp. 855 (11th Cir. Ct. 2006) (appellate capacity).

Procedure under Appellate Rules to allow record to be supplemented applies to appeals from decisions made under the Small Claims Rules. *E.S.R. Diagnostics, Inc. v. Marchena*, 6 Fla. L. Weekly Supp. 607 (11th Cir. Ct. 1999) (appellate capacity).

SECONDARY AUTHORITY:

32A Fla. Jur. 2d *Judgments & Decrees* §51 (2019).

RULE 7.300 FORMS [*only titles are included in this volume*]:

The following forms are sufficient in all actions.

The following forms of statements of claim and other papers are sufficient for the types of actions which they respectively cover. They are intended for illustration only. They and like forms may be used with such modifications as may be necessary to meet the facts of each particular action so long as the substance thereof is expressed without prolixity. The common counts are not sufficient. The complaint forms appended to the Florida Rules of Civil Procedure may be utilized if appropriate.

The following forms are approved.

FORM 7.310	**CAPTION**
FORM 7.316	**CHANGE OF ADDRESS**
FORM 7.322	**SUMMONS/NOTICE TO APPEAR FOR PRE-TRIAL CONFERENCE**
FORM 7.323	**PRETRIAL CONFERENCE ORDER AND NOTICE OF TRIAL**
FORM 7.330	**STATEMENT OF CLAIM (AUTO NEGLIGENCE)**
FORM 7.331	**STATEMENT OF CLAIM (FOR GOODS SOLD)**
FORM 7.332	**STATEMENT OF CLAIM (FOR WORK DONE AND MATERIALS FURNISHED)**
FORM 7.333	**STATEMENT OF CLAIM (FOR MONEY LENT)**
FORM 7.334	**STATEMENT OF CLAIM (PROMISSORY NOTE)**
FORM 7.335	**STATEMENT OF CLAIM (FOR RETURN OF STOLEN PROPERTY FROM PAWNBROKER)**
FORM 7.336	**STATEMENT OF CLAIM FOR REPLEVIN (FOR RETURN OF PERSONAL PROPERTY/WEAPON FROM GOVERNMENT ENTITY)**
FORM 7.337	**STATEMENT OF CLAIM (ACCOUNT STATED)**
FORM 7.340	**FINAL JUDGMENT**
FORM 7.341	**EXECUTION**
FORM 7.342	**EX PARTE MOTION AND ORDER FOR HEARING IN AID OF EXECUTION**