

**Supreme Court of Florida**  
**Commission on Trial Court Performance and Accountability**  
**Teleconference**  
**September 22, 2010**  
**4:00 pm to 5:00 pm**

**Minutes**

**Members in attendance:**

Judge Terry Terrell, Judge Paul Alessandrone, Judge Dawn Caloca-Johnson, Judge Leandra Johnson, Judge Kathleen Kroll, Judge Peter Marshall, Judge Ellen Sly Masters, Judge Elizabeth Metzger, Judge Diana Moreland, Mike Bridenback, Gay Inskeep, Judge Lisa Davidson (Liaison)

**Members absent:**

Judge Brian Davis, Carol Ortman, Justice Jorge Labarga (Liaison)

**Staff in attendance:**

Sharon Buckingham, Greg Youchock, Maggie Geraci, Patty Harris, Greg Smith, Kimberly Kosch

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Judge Terrell called the meeting to order at 4:04 pm.

Maggie Geraci took attendance and noted a quorum had been achieved. Judge Terrell welcomed and introduced the new members of the Commission and also welcomed back returning members. Judge Terrell explained that the Commission meets approximately four times per year either in person or by conference call.

**I. Approval of December 2, 2009 Minutes**

Judge Terrell asked if the members had an opportunity to review the draft minutes and if any changes needed to be made. No changes were made. Mike Bridenback moved approval of the minutes. Judge Masters seconded the motion. The minutes were approved without opposition.

**II. Comments on SC10-1227, Proposed Amendments to Rule 7.090, Florida Small Claims Rules**

Judge Terrell stated that this agenda item is a good example of the importance of the Commission's work and asked staff to provide the background on the issue. Ms. Geraci reviewed the information on the proposed amendments to rule 7.090, Florida Small Claims Rules, under Agenda Item II. in the meeting materials:

- The Florida Bar Small Claims Rules Committee submitted proposed amendments to the Supreme Court in January 2010. The Supreme Court approved and adopted most of the proposed amendments; however, they severed out the proposed amendments to rule 7.090 for further consideration. In doing so, they asked the TCP&A to provide comments on the proposed amendments.

- Rule 7.090 speaks to appearance at pretrial conference. The proposed amendment would add “before a judge” at the end of subsection (a) and “by a judge” to the end of the first paragraph of subsection (b). These amendments would require that the parties appear before a judge at small claims pretrial conference.
- In their petition, the Small Claims Rules Committee noted that the intent of the proposed amendments was to add statewide uniformity to the small claims pretrial conference procedure by clarifying the judiciary’s role in the small claims process and to bring the rule into alignment with existing form 7.322, Notice to Appear For Pretrial Conference, which states that the appearance will be before a judge. The committee suggested that the six matters to be considered at a small claims pretrial conference under rule 7.090(b) require active judicial involvement, although they note that the rule is silent on the precise extent of judicial involvement. In addition, they noted that a review of additional matters that may be addressed at a pretrial conference – such as summary disposition – demonstrates the need for the exercise of judicial discretion, and that the neither the rules nor state law provide legal authority for the use of non-judicial personnel to preside over pretrial conferences. They further noted that pretrial conference procedures differ from county to county, and although the majority of counties do have judges presiding over pretrial conferences, a minority of counties use hearing officers, deputy clerks, and other non-judicial personnel, which has been confirmed by two surveys completed by the Rules Committee and the Sixth Circuit.
- Along with the petition, the Small Claims Rules Committee submitted comments received after publication of the proposed rule changes. In addition, comments were filed at the invitation of the Court and after the severing out of rule 7.090. Comments in opposition of the proposed amendments noted that the current practice of using non-judicial personnel is efficient and cost-effective, allowing for judges to be used elsewhere where judicial handling is required. For instance, the Sixth Circuit specifically pointed out that magistrates and hearing officers are allowed to be used in certain family cases in accordance with the rules. Comments in support of the amendments suggested that it is the right of the parties to come before a judge. A summary of the issues presented by the comments is provided in the meeting materials starting at page 6.
- The Sixth Circuit proposed to amend Rule 7.090 to include the use of non-judicial personnel in managing pretrial conference, and allowing for direct oversight by the court. In addition, the proposed language would require that the judge be available to hear any motions or resolve any legal issues. Specifically, the language proposed by the Sixth Circuit states: The pretrial conference may be managed by non-judicial personnel employed by or under contract with the court. A judge must be available to hear any motions or resolve any legal issues.
- The TCP&A has been directed by the Supreme Court to provide comment by October 15, 2010. The TCP&A has not previously addressed this specific issue. However, in a 2002 report by the Commission, it was determined that Masters and Hearing Officers could be used in matters of high volume; where need and efficiency match; where duties are largely ministerial, computational, or managerial; where the use of services is better served; where fundamental and due process rights are protected; and where the fundamental judicial function is served and supported. Specifically, the Commission determined that it is

appropriate to use masters for discovery, pre-trial matters, and in some matters requiring evidentiary hearings in county civil cases.

Ms. Geraci presented four possible options to the Commission, as follows:

- Option 1 – recommend that rule 7.090 not be amended.
- Option 2 – recommend that rule 7.090 be amended as proposed by the Small Claims Rules Committee.
- Option 3 – recommend that rule 7.090 be amended as proposed by the Sixth Circuit.
- Option 4 – recommend that rule 7.090 and form 7.322 be amended to allow magistrates and hearing officers (not clerks, mediators, or case managers) to preside over pretrial conference, if the parties consent, in accordance with rule 1.490, Florida Rules of Civil Procedure, and for parties to have access to a judge if needed.

Judge Masters suggested that rule 7.090 does not need to be amended since as it is currently written, it allows for circuit flexibility. Judge Alessandrone noted that he felt it was an unnecessary proposed change, but if it has to be changed, he would vote for the third option, the proposed amendment submitted by the Sixth Circuit, which would allow non-judicial personnel to manage the pretrial conference, subject to direct oversight by the court. He stated that the Twentieth Circuit is in agreement with the Sixth Circuit. He noted that the Twentieth Circuit uses mediation prior to pretrial conference and most cases are resolved prior to pretrial conference.

Judge Marshall stated that in his circuit, judges always preside over pretrial conference, as they feel it is part of their judicial duties. The time lost on the front end of the case is gained at the back end. Judge Moreland noted that she did a consensus in her circuit. In Sarasota County judges preside over pretrial conference, but Manatee County utilizes non-judicial personnel for pretrial conference. In Sarasota County, non-judicial personnel may be used on occasion and that the preference is for flexibility. She suggested that an amendment was not needed. Judge Marshall stated that the rules do not authorize non-judicial personnel to preside over small claims pretrial conference.

Judge Terrell stated that there is a hybrid in the First Circuit. Three counties have judges presiding over pretrial conference, while one county uses a magistrate. He explained that previously, one of the counties used a clerk at pretrial conference, but an incoming county judge took over because he felt it was a waste of time as the clerk would set all matters for trial. Judge Terrell noted that the rules of civil procedure require consent of the parties to use quasi-judicial personnel and suggested amending option 3 to require consent of the parties.

Gay Inskeep stated that she was in support of option 3, or some amended version of option 3, as it provides for circuit flexibility. She noted that the rules do not require parties to consent to child support hearing officers. Judge Moreland asked if there was a requirement in IV-D cases. Ms. Inskeep responded that rule 12.492 provides for referral of IV-D cases to hearing officers.

Judge Caloca-Johnson noted that the only way to utilize non-judicial officers would be through the civil rules. Judge Terrell stated that the rules allow magistrates to preside over Baker Act hearings without the consent of the parties. Ms. Inskeep stated that there was precedent to use the rules as a vehicle to allow non-judicial personnel to preside over pretrial conference. She

suggested that option 3 could be amended from non-judicial personnel to quasi-judicial personnel.

Judge Masters suggested that the Commission vote on the options. She stated that the rule, as written, does lay the responsibility on the court, so an amendment is not necessary. She stated that the preference should be for judges to preside over pretrial conference, but in situations where discretion is needed, the circuits should be allowed to do so.

Judge Masters moved that the Commission recommend option 1, for rule 7.090 to remain unchanged. Mr. Bridenback seconded the motion. Judge Terrell asked for discussion on the motion.

Judge Marshall stated that if option 1 is recommended, nothing has been done to comport the form to the rule. Judge Masters asked where the form conflicts with the rule. Judge Moreland read the language of form 7.322, and noted that the conflict has existed since 1988. Ms. Inskeep suggested changing the form to match the rule, not changing the rule to match the form.

Judge Marshall asked how summary disposition may be determined if non-judicial personnel are presiding over small claims pretrial conference. Judge Alessandroni responded that in some counties, the matter never gets to those issues and if a judge was required, it would be a waste of judicial resources. He stated that he was unsure of the motivation behind the proposed rule amendment, since there have not been any problems with current practices.

Judge Masters offered to modify her previous motion to add that the Commission recommend option 1 with a modification to form 7.322 to conform to the rule. Judge Moreland asked if there would be any problems with removing the wording from the form. Greg Smith stated that he did not believe it was necessary language. Mr. Bridenback seconded the motion. Judge Terrell asked for discussion on the modified motion.

Judge Marshall stated that the motion does not address the authority to allow non-judicial personnel to preside over small claims pretrial conference. Judge Masters suggested that in the recommendation to the Court, the Commission can state that the recommendation should not be construed to allow clerks to handle pretrial conference, but she did not feel that concept needed approval by the Commission. She noted that the preferred practice is to have judges preside over pretrial conference, but in the event that is not possible, it is acceptable to use hearing officers or magistrates, or conduct mediation prior to pretrial conference.

Ms. Inskeep suggested that in the comments to the Court, the Commission could recommend option 1 with amendments to the form, but note that if the Court had concerns regarding keeping the rule the same, option 3 could be offered as an alternative. Judge Marshall stated that a major concern of the Small Claims Rules Committee was promoting statewide uniformity and that rule 7.090 does not allow for uniformity. Mr. Bridenback responded that using a magistrate is discretionary so it is not uniform around the state. He suggested that the comment to the Court state the reason why the rule should not be changed, in that it allows the circuits flexibility. Judge Davidson stated that the rule should be clarified even if there does not appear to be a statewide problem.

Judge Terrell called the question. The motion carried with seven ayes, three nays, and one abstention.

Gay Inskeep moved that the Commission recommend option 3 as the next level of consideration. Judge Caloca-Johnson seconded the motion. There was no discussion. The motion carried with one vote in opposition.

Judge Terrell noted that the comment to the Court would be drafted and sent to the members for review prior to filing.

### **III. Next Meeting – November 18, 2010**

Judge Terrell stated that the next meeting would be an in-person meeting in Tampa, on November 18, 2010. He noted that staff would send out the travel information soon.

Judge Terrell adjourned the meeting at 4:58 pm.