

OA 6-1-88
71,687

SIDNEY M. GOETZ
13125 Wilcox Road, 15-B4
Largo, Florida 33544
Telephone: (813) 595-8899

June 16, 1988
FILED
JUN 20 1988

MEMORANDUM

TO: Sid White, Esq.
Clerk, Supreme Court of Florida
Hon. Paul Elliott
Chairman, Florida Bar Small Claims Rules Committee

FROM: Sidney M. Goetz, J.D.
Pinellas County Small Claims Pre-Trial Hearing Officer

SUBJECT: PROPOSED AMENDMENTS TO SMALL CLAIMS RULES,
INSOFAR AS A NEW SENTENCE IS PROPOSED TO BE
ADDED TO SUBSECTION (b) OF RULE 7.090
REQUIRING A COUNTY JUDGE TO CONDUCT THE
PRE-TRIAL CONFERENCE.

I respectfully urge the Supreme Court to reject the proposed amendment that would require County Court Judges to preside over and conduct pre-trial conferences of small claims.

Simply put, an overwhelming portion of the time consumed at such conferences does not require judicial action, but rather the performance of housekeeping, administrative and ministerial duties that do not involve the determination of disputed issues of law or fact. For this reason, the physical presence of a judicial officer in the courtroom during the calling of the pre-trial conference calendar is entirely unnecessary.

I respectfully submit to the Court that the Administrative Order (No. 86-4, dated February 12, 1986) under which I perform my duties as Small Claims Pre-Trial Hearing Officer preserves the constitutional and due process rights of the litigants in all respects. A careful reading of the Order will show the Court that Chief Judge Patterson went to great pains to carefully protect the rights of the litigants to judicial supervision over the proceedings in the courtroom as well as to immediate judicial decision of any disputed issues of law or fact. Said order, together with an explanatory article in the March, 1986 issue of the "Paraclete", monthly newsletter of the St. Petersburg Bar Association, are annexed hereto as Exhibit I.

The system established by Administrative Order No. 86-4 is still in effect. I am presently conducting Pre-Trial Conferences for five of the seven County Judges who are assigned to the civil side of the Court. I perform this function at the specific request of each of these judges. On the assigned dates, as required by the Order, these judges have been available in their chambers for referral of any matter which requires their attention by way of a judicial ruling. Should the Judge assigned to a Small Claims

Pre-Trial Conference not be personally available in chambers on the day such conference is being conducted - an occasional occurrence - he has obtained, and I am furnished the name of, a "back-up" judge to whom I may immediately refer a matter requiring judicial attention.

Shortly after this system went into effect, County Judge Charles Carrere sent a memorandum to Chief Judge Patterson and Administrative County Judge Horace A. Andrews testifying to the good results being achieved. (A copy of Judge Carrere's memorandum is annexed as Exhibit 2.) I have good reason to believe that my continuing tenure as Small Claims Pre-Trial Hearing Officer is meeting with the approval of all who are concerned with the efficient operation of the Court system: Judges, lawyers and litigants. (In this connection, please note the enclosed article from the July/August 1987 issue of the Tampa Bay Magazine, attached hereto as Exhibit 3.)

Since I have a background in mediation - I taught a course in Alternative Dispute Resolution as an Adjunct Professor at Stetson University College of Law, for two years, and have been mediating disputes since 1984 with the Pinellas County Citizens' Dispute Settlement Program - I use whatever skills I have to obtain settlements during the pre-trial conference sessions. As a result, I have a much higher rate of resolution of small claims by way of settlement than had previously been achieved by the County Judges who, because of their many other duties, have a natural tendency to speed up the calendar call. As a result the County Judges frequently miss opportunities to achieve a disposition at the pre-trial conference, and set a substantially larger number of cases for trial.

Unfortunately, the procedure I have outlined above is not the only type of pre-trial conference now being conducted in Pinellas County. Two different types of procedures are also currently being used, to relieve the pressure on the County Judges. Via the "legal grapevine", I've been informed that some lawyers have found either or both such procedures to be objectionable.

A little historical background will help place this three-tiered system in proper perspective.

It should be understood at the outset that all of the techniques adopted for the handling of pre-trial conferences have been occasioned by the vast litigation explosion in our courts, resulting in a tremendous workload being foisted upon our judiciary. I have personally observed a most dedicated, hardworking group of County Judges struggling to keep abreast of a mountainous load of traffic court cases, criminal misdemeanor cases, and civil causes, all the while straining to meet the time constraints imposed by Supreme Court Rules. Even now, our Pinellas County Judges are used constantly on temporary assignment to the Circuit Court to ease similar burdens on our Circuit Court Judges.

In an effort to counter the ever increasing workload of cases, two of our County Judges (Judges Karl B. Grube and Robert Shingler), in the summer of 1985, adopted a system whereby their respective "legal assistants" conducted pre-trial conferences in the courtroom, while the judges were occupying their adjoining chambers. An explanation of this particular modus operandi and its objectives is contained in a memorandum from County Judge Grube to Chief Circuit Judge Patterson, dated September 6, 1985. A copy of said memorandum is annexed hereto as Exhibit 4.

I profess my ignorance of all of the assigned or required duties to be performed by a county judge's legal assistant. However, I am certain it can be stated with assurance that her official duty statement is not likely to include presiding at pre-trial conferences in Small Claims Court. While Judge Grube's and Shingler's secretaries may welcome this change from their other duties, I have found that most legal assistants shudder at the prospect of presiding over a public courtroom full of litigants and attorneys.

In any event, Chief Judge Patterson and Administrative County Judge Andrews reacted to Judge Grube's memorandum with some concern. They conferred with the Director of the long-established Pinellas County Citizens' Dispute Settlement Program and came to the conclusion that the judicial system would better be served and the litigants' rights better protected if a skilled mediator were specifically appointed to replace the Judge in the actual conduct of the pre-trial conference, with powers and duties explicitly limited by Administrative Order, and judicial supervision provided. I was recommended for the post because of my experience set forth above.

I conferred with Judges Patterson and Andrews, and, at their request, prepared a draft of an Administrative Order which, in slightly modified form, was issued by Chief Judge Patterson on February 12, 1988 (Exhibit I.) Meanwhile, after spending several months observing the conduct of pre-trial conferences by Judge Andrews, Judge William Blackwood, Judge Charles Carrere and Judge Catherine Harlan (before she ascended to the Circuit Court Bench), I commenced presiding at pre-trial conferences for these judges. In this connection, I respectfully refer you to the memorandum dated November 21, 1985, by Judge Horace A Andrews, annexed hereto as Exhibit 5.

To date, I know of no Administrative Order or other document authorized by law or rule permitting the appointment of a County Judge's legal assistant to replace him in the conduct of Small Claims pre-trial conferences, or delineating such persons duty and authority while so acting. Notwithstanding these facts, I understand that Judges Grube and Shingler continue to pursue this practice to date. Since Judge Shingler has let it be known that he will not seek reelection to the bench when his term expires at the end of the year 1988, he will not personally be affected by any change in the Rule, as proposed, after that time.

We come now to a third layer of pre-trial conference procedure permitted in Pinellas County. This is a relatively more recent procedure than the two previously discussed. It is authorized by Administrative Order No. 86-18, dated December 12, 1986. The machinery for implementing this Administrative Order, which requires the close cooperation of the Pinellas County Citizens' Dispute Settlement Program, did not go into effect until some time in the Spring of 1987. (Exhibit 6.)

With the salutary dual purposes of providing a "Night Court" for citizens during non-working hours, as well as to afford them an opportunity to reach a mediated settlement before facing the formality of a court appearance before a Judge, the administrative order enlists the expert mediation services of the Citizens' Dispute Settlement Program.

Evening calendars of pre-trial conferences are called between 5:30 and 7:30 p.m. A high level employee of the Citizens' Dispute Settlement Program presides at these sessions, calls the calendar and (having received prior training from a Court Clerk), marks the calendar to indicate dispositions.

Upon the call of the calendar, each case is assigned to a mediator who escorts the parties into a separate room and attempts to have them reach a disposition by agreement. If successful, the mediator drafts the agreement, which is signed by the parties and the mediator, to be submitted later to the County Judge for his approval and signature. If agreement is not reached, the parties return to the courtroom where the presiding official fills out the official form of "Pre-Trial Conference Order and Notice of Trial". As to the fixing of a trial date, the practice differs. In St. Petersburg, the file is sent back to the Judge to fix the trial date, and the parties are thereafter notified of it. In Clearwater, the presiding officer has before him/her a list of available dates and times, furnished by the Judge, from which the parties select their time slot.

I must state, quite candidly, that certain aspects of this "Night Court" process trouble me deeply. My difficulty, however, does not arise from the fact that the person conducting the pre-trial conference is not a County Judge. I believe any properly authorized and duly designated administrative office may conduct the pre-trial conference, provided only that his/her limited authority is clearly delineated.

But I find the "Night Court" procedure set forth in Administrative Order No. 86-18 to be fatally flawed on constitutional grounds for failure to afford the parties due process of law and for violating the constitutional requirement for the equal protection of the law.

In effect, this Administrative Order creates an impermissible system of "two-tier" justice - one for plaintiff/litigants who are represented by attorneys and another for those plaintiffs who cannot afford, or do not wish, legal representation. The former are placed on a regular daytime court calendar for their pre-trial conferences.

MEMORANDUM in re proposed amendments to Small Claims Rules - 6/18/88

The latter are not even given the option to choose to be placed on the daytime calendar. They are compelled to appear on the nighttime calendar. While that may be convenient to some; it is clearly not so for all. Many, I'm sure, would prefer to be with their families during customary dinner hours. Also corporations which cannot or will not pay an attorney are also forced on to the night calendars, in which event they may be disadvantaged in having to pay overtime compensation to the officer or employee whom they designate to represent them. Thus, access to the courts, as guaranteed by the Florida Constitution, is being obstructed.

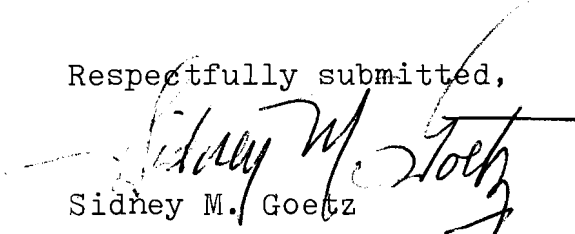
There is even further inequality built into this system. No County Judge is sitting in the chambers adjacent to the courtroom to decide disputed questions of law or fact. Motions to dismiss for joinder of improper parties or for failure to state a cause of action; motions for change of venue - invariably referred to the backup judge for immediate disposition at the daytime pre-trial conferences - cannot be decided on the spot in "Night Court". There is no judge available. The parties are compelled to make a formal motion and request a hearing before a judge on another day. Unless and until a judge is assigned to each night session (although he need not actually preside), these parties are receiving second-rate treatment by our court system. Of course, if a judge is assigned, the new rules permitting motions to be heard by conference telephone call may be the key to solving this problem, without requiring the physical presence of the judge at a night session.

I believe that the Pinellas County system which relieves a County Judge from personally conducting a Small Claims Pre-Trial Conference can be so structured as to preserve all legal and constitutional rights to the litigants and at the same time conserve the time of the Judges to deal with their judicial responsibilities. In these times of overburdened civil litigation calendars, the imposition of a Rule which obstructs the speedy and efficient operation of our courts and reverts to ancient, outgrown and unnecessary formality represents a step backward.

Proper designation of an administrative official to handle pre-trial conference calendar calls, with explicit limitations on his/her powers, will promote the efficient disposition of ever growing caseloads. I believe that Chief Judge Patterson's Administrative Order 86-4 (Exhibit I) can well serve as a model. Encouraging mediation at "Night Court" sessions can also be so structured as to preserve the constitutional rights of those who are not forced to - but choose to - attend such night sessions.

Should the Court see any merit to these suggestions, I would be glad, and hereby offer to, assist in the formulation of an appropriate Rule.

Respectfully submitted,


Sidney M. Goetz