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REPLY TO:

ORLANDO

DATE:

May 23, 1988

71687

Sid White
Clerk, Supreme Court of Florida
Supreme Court Building
Tallahassee, Florida 32301

FILED
SID J. WHITE
MAY 27 1988

Dear Mr. White:

CLERK, SUPREME COURT
By [Signature]
Deputy Clerk

I had an opportunity to read only the summary comments of the proposed Small Claims rule changes found in the Florida Bar News of May 15, 1988. I wish to provide the following comments. Though I will not actually be able to attend oral argument, I would like to have made known the following observations. Bear in mind that I have not actually read the full context of the rule change proposals, but only the summary:

Rule 7.010 - Presently, the Clerks of the Court are aiding and assisting lay persons in claims up to \$2,500. Opening the small claims rules up to \$5,000 is going to increase and impact on the Clerks office and cause increased staffing and personnel. Additionally, many of our County Court Judges after some time are elevated to Circuit Court for many reasons. If you take away their opportunity to utilize the Civil Rules of Procedure which presently provide for cases between \$2,500 and \$5,000, they lose that valuable working knowledge of the rules.

Rule 7.140 - Trials. The rule change provides parties and witnesses may appear by phone. By allowing this, you remove from the Court the ability for the Court to weigh credibility. One of the traditional items of a Trial Court, was for it to observe the demeanor of the witness. Now, if we are involved in a "swearing contest", the Court will not be able to look at the demeanor in weighing who to believe. Additionally, there is going to be confusion in trying to discuss with the witness documents, which cannot be reviewed by telephone. There are many instances where some witnesses are so minute, that parties agree that telephone can be used, and frankly I think the rule

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ought to remain the way it is.

Rule 7.210 - I believe the creditor who is owed money, should be entitled to immediate payment if he is not willing to work with the Defendant. Bear in mind, that usually the creditor has waited a substantial period of time prior to filing suit, hoping that suit would not be necessary. To force the creditor to file suit, wait for the pretrial, and then wait further on payments, appears to be abusive.

As a practical matter, presently the County Court Judges are making it well known to creditors that a three month payout is more than reasonable, and with or without the rule, are imposing such items. I frankly think the Court is getting into something that has been working well enough, and should not have change made.

If I can be of any further assistance, I would be most happy to oblige.

Very truly yours,



RAYMOND J. ROTELLA
For the firm

RJR:dm