

# Proposed amendments to Rules of Small Claims Court Amendment Rules 7.110 (Dismissal of Actions) and 7.310 (Caption)

The Small Claims Court Rules Committee, in compliance with Florida Rule of Judicial Administration 2.140, invites comments on proposed amendments to Rules 7.110 and 7.310. Interested persons have until January 6, 2022, to submit any comments to the chair of the Small Claims Court Rules Committee, Cristen Martinez, and to Bar attorney liaison, Kelly Smith, at [ksmith@floridabar.org](mailto:ksmith@floridabar.org).

<b>Rule Number</b>	<b>Explanation</b>
7.110 Dismissal of Actions	In subdivision (c), adds that a defendant's counterclaim remains pending even if the plaintiff voluntarily dismisses unless the defendant also agrees to dismissal.
7.310 Caption	Edits the caption form.

## 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 of 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) [No change]**

**(c) Dismissal of Counterclaim.** If a counterclaim has been made by the defendant before the plaintiff dismisses voluntarily, the defendant's counterclaim shall remain pending unless the defendant agrees to its dismissal. 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, in an amount 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~~

(1) If it appears on the face of the record that no ~~action~~activity has been taken by filing of pleadings, order of court, or otherwise for a period of 6 months, then the action 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,;

(2) Prior to any action being dismissed for failure to prosecute, 30 days' notice shall be provided to the parties, unless.

(3) An action shall not be dismissed for failure to prosecute if:

(A) a stipulation staying the action has been filed with the court, or;

(B) a stay order has been filed; or

(C) a party shows good cause in writing at least 5 days before the hearing on the motion why the action should remain pending.

### **Committee Notes**

[No change]

FORM 7.310. CAPTION

~~(name of court)~~ In the County  
Court for ..... County,  
Florida  
Case Number: \_\_\_\_\_

A. B., Name

)

)

Plaintiff,

)

)

-vs- v.

)

No. \_\_\_\_\_

)

C. D., Name

)

)

Defendant.

)

(designation of pleading)