

Form 1.901

See the discussion above about rule 1.100.

Form 1.923

The proposed changes are in response to an e-mail from George Savage, an attorney who is not a member of the Committee (see Appendix D). Mr. Savage sought to amend eviction form 1.923, based on his personal experience that proper service was not being accomplished on defendants who were appearing in court in response to eviction notices but who then became subject to unpaid rent damages claims.

Form 1.923 is for “eviction summons/residential.” It is a five-day summons and may be served by posting to the property. However, eviction proceedings often involve damages for unpaid rent. Suits to recover damages require personal service of the summons. Posting the summons to the property in cases where damages are sought would not be proper service.

The proposed amendment removes “or were posted at your home” from the fourth sentence of subdivision (5), to properly reflect Florida case law and remove any misleading language that might imply that “posting” the summons is sufficient in a claim for money damages.

Eviction proceedings are often accomplished on an expedited basis and the parties frequently do not have lawyers. A potential problem of the proposed change is that service of process by both posting on the premises for the eviction and by personal service for a damages claim may extend and complicate resolution of matters that could otherwise be accomplished at the eviction hearing. However, to allow otherwise compromises, if not violates, due process to the potential detriment of viable defenses of unknowing defendants to damages claims.

Form 1.975

This is a new form, suggested by the Committee’s standing subcommittee on federal rules. The federal rules (Rule 5.1, see Appendix D) were amended to provide for notice when a constitutional challenge to a statute is being made. Because section 86.091, Florida Statutes, requires notice to the state of such challenges, the Committee is proposing new rule 1.071 and new form 1.975 to

1.908.	WRIT OF REPLEVIN	[NO CHANGE]
1.909.	DISTRESS	[NO CHANGE]
1.910.	SUBPOENA FOR TRIAL	[NO CHANGE]
1.911.	SUBPOENA DUCES TECUM FOR TRIAL	[NO CHANGE]
1.912.	SUBPOENA FOR DEPOSITION	[NO CHANGE]
1.913.	SUBPOENA DUCES TECUM FOR DEPOSITION	[NO CHANGE]
1.914.	EXECUTION	[NO CHANGE]
1.915.	WRIT OF POSSESSION	[NO CHANGE]
1.916.	REPLEVIN ORDER TO SHOW CAUSE	[NO CHANGE]
1.917.	NE EXEAT	[NO CHANGE]
1.918.	LIS PENDENS	[NO CHANGE]
1.919.	NOTICE OF ACTION; CONSTRUCTIVE SERVICE — NO PROPERTY	[NO CHANGE]
1.920.	NOTICE OF ACTION; CONSTRUCTIVE SERVICE — PROPERTY	[NO CHANGE]
1.921.	NOTICE OF PRODUCTION FROM NONPARTY	[NO CHANGE]
1.922.	SUBPOENA DUCES TECUM WITHOUT DEPOSITION	[NO CHANGE]
→ ↗	1.923. EVICTION SUMMONS/RESIDENTIAL <u>Committee vote: 38-0</u> <u>Board of Governors vote: 41-0</u>	[AMENDED] ←
1.932.	OPEN ACCOUNT	[NO CHANGE]
1.933.	ACCOUNT STATED	[NO CHANGE]
1.934.	PROMISSORY NOTE	[NO CHANGE]
1.935.	GOODS SOLD	[NO CHANGE]
1.936.	MONEY LENT	[NO CHANGE]
1.937.	REPLEVIN	[NO CHANGE]
1.938.	FORCIBLE ENTRY AND DETENTION	[NO CHANGE]
1.939.	CONVERSION	[NO CHANGE]
1.940.	EJECTMENT	[NO CHANGE]
1.941.	SPECIFIC PERFORMANCE	[NO CHANGE]
1.942.	CHECK	[NO CHANGE]
1.944.	MORTGAGE FORECLOSURE	[NO CHANGE]
1.945.	MOTOR VEHICLE NEGLIGENCE	[NO CHANGE]
1.946.	MOTOR VEHICLE NEGLIGENCE WHEN PLAINTIFF IS UNABLE TO DETERMINE WHO IS RESPONSIBLE	[NO CHANGE]
1.947.	TENANT EVICTION	[NO CHANGE]
1.948.	THIRD-PARTY COMPLAINT. GENERAL FORM	[NO CHANGE]

FORM 1.923. EVICTION SUMMONS/ RESIDENTIAL

EVICTION SUMMONS/RESIDENTIAL

TO:
Defendant(s)

.....
.....

PLEASE READ CAREFULLY

You are being sued by to require you to move out of the place where you are living for the reasons given in the attached complaint.

You are entitled to a trial to determine whether you can be required to move, but you **MUST** do ALL of the things listed below. You must do them within 5 days (not including Saturday, Sunday, or any legal holiday) after the date these papers were given to you or to a person who lives with you or were posted at your home.

THE THINGS YOU MUST DO ARE AS FOLLOWS:

(1) Write down the reason(s) why you think you should not be forced to move. The written reason(s) must be given to the clerk of the court at County Courthouse
.....
....., Florida

(2) Mail or give a copy of your written reason(s) to:
.....
Plaintiff/Plaintiff's Attorney
.....
.....
Address

(3) Pay to the clerk of the court the amount of rent that the attached complaint claims to be due and any rent that becomes due until the lawsuit is over. If you believe that the amount claimed in the complaint is incorrect, you should file with the clerk of the court a motion to have the court determine the amount to be paid. If you file a motion, you must attach to the motion any documents supporting your position and mail or give a copy of the motion to the plaintiff/plaintiff's attorney.

(4) If you file a motion to have the court determine the amount of rent to be paid to the clerk of the court, you must immediately contact the office of the judge to whom the case is assigned to schedule a hearing to decide what amount should be paid to the clerk of the court while the lawsuit is pending.

IF YOU DO NOT DO ALL OF THE THINGS SPECIFIED ABOVE WITHIN 5 WORKING DAYS AFTER THE DATE THAT THESE PAPERS WERE GIVEN TO YOU OR TO A PERSON WHO LIVES WITH YOU OR WERE POSTED AT YOUR HOME, YOU MAY BE EVICTED WITHOUT A HEARING OR FURTHER NOTICE

(5) If the attached complaint also contains a claim for money damages (such as unpaid rent), you must respond to that claim separately. You must write down the reasons why you believe that you do not owe the money claimed. The written reasons must be given to the clerk of the court at the address specified in paragraph (1) above, and you must mail or give a copy of your written reasons to the plaintiff/plaintiff's attorney at the address specified in paragraph (2) above. This must be done within 20 days after the date these papers were given to you or to a person who lives with you ~~or were posted at your home~~. This obligation is separate from the requirement of answering the claim for eviction within 5 working days after these papers were given to you or to a person who lives with you or were posted at your home.

THE STATE OF FLORIDA:
To Each Sheriff of the State: You are commanded to serve this summons and a copy of the complaint in this lawsuit on the above-named defendant.

DATED on

Clerk of the County Court

By _____
As Deputy Clerk

NOTIFICACION DE DESALOJO/RESIDENCIAL

A:
Demandado(s)
.....
.....

SIRVASE LEER CON CUIDADO

Usted esta siendo demandado por para exigirle que desaloje el lugar donde reside por los motivos que se expresan en la demanda adjunta.

Usted tiene derecho a ser sometido a juicio para determinar si se le puede exigir que se mude, pero ES NECESARIO que haga TODO lo que se le pide a continuacion en un plazo de 5 dias (no incluidos los sabados, domingos, ni dias feriados) a partir de la fecha en que estos documentos se le entregaron a usted o a una persona que vive con usted, o se colocaron en su