

2022 WL 57943

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Supreme Court of Florida.

IN RE: AMENDMENT TO FLORIDA RULE OF  
APPELLATE PROCEDURE 9.130.

No. SC21-129

|  
January 6, 2022

Original Proceeding – Florida Rules of Appellate  
Procedure

#### Attorneys and Law Firms

Laura A. Roe, Chair, Appellate Court Rules Committee,  
St. Petersburg, Florida, [Elaine D. Walter](#), Vice Chair,  
Appellate Court Rules Committee, Miami, Florida,  
Honorable Stephanie Williams Ray, Past Chair, Appellate  
Court Rules Committee, Tallahassee, Florida, [Joshua E.  
Doyle](#), Executive Director, and Krys Godwin, Staff  
Liaison, The Florida Bar, Tallahassee, Florida, for  
Petitioner

[Kansas R. Gooden](#) on behalf of the Florida Defense  
Lawyers Association, Miami, Florida; [Maegen Peek Luka](#)  
of Newsome Melton, Orlando, Florida, and [Bryan S.  
Gowdy](#) of Creed & Gowdy, P.A., Jacksonville, Florida;  
and [William T. Cotterall](#) on behalf of the Florida Justice  
Association, Inc., Tallahassee, Florida, Responding with  
comments

#### Opinion

PER CURIAM.

\*1 This matter is before the Court for consideration of a  
proposed amendment to [Florida Rule of Appellate  
Procedure 9.130](#) (Proceedings to Review Nonfinal Orders  
and Specified Final Orders). *See* Fla. R. Gen. Prac. & Jud.  
Admin. 2.140(f). We have jurisdiction.<sup>1</sup>

The Florida Bar’s Appellate Court Rules Committee  
(Committee) filed a report proposing an amendment to

[Florida Rule of Appellate Procedure 9.130](#). The  
Committee’s proposal follows a referral by the Court  
asking the Committee to propose rule amendments to  
provide for the interlocutory appeal of nonfinal orders  
granting or denying leave to amend a complaint to assert a  
claim for punitive damages.

The Committee and the Board of Governors of The  
Florida Bar approved the proposed amendment. The  
Committee published its proposal for comment prior to  
filing it with the Court and received two comments. After  
the Committee filed its report, the Court published the  
proposal for comment and received three comments.

After reviewing the proposal, considering the comments  
and response filed, and having had the benefit of oral  
argument, we adopt the proposed amendment to [rule  
9.130](#). Specifically, new subdivision (a)(3)(G) is added to  
authorize appeals of nonfinal orders that grant or deny a  
motion for leave to amend to assert a claim for punitive  
damages.

Accordingly, [Florida Rule of Appellate Procedure 9.130](#)  
is amended as reflected in the appendix to this opinion.  
New language is indicated by underscoring. The  
amendment shall take effect on April 1, 2022, at 12:01  
a.m.

It is so ordered.

[CANADY, C.J.](#), and [POLSTON, LAWSON, MUÑIZ,  
COURIEL](#), and [GROSSHANS, JJ.](#), concur.

[LABARGA, J.](#), dissents with an opinion.

[LABARGA, J.](#), dissenting.

Today, the majority abandons our long-standing certiorari  
procedure for appealing orders that grant leave to include  
a claim for punitive damages in civil cases. In its place,  
through an amendment to [Florida Rule of Appellate  
Procedure 9.130](#), the majority has authorized the  
classification of such orders as nonfinal in nature, thereby  
clearing the way for immediate interlocutory appeal.

The unfortunate consequence of this drastic change in  
appellate procedure will be unnecessary and unwarranted  
delays in civil actions with claims for punitive damages.

Undoubtedly, once the interlocutory vehicle of appellate review is available, it is not unreasonable to expect that the losing party will choose to pursue an immediate appeal of the trial court's order in most, if not all, cases, adding to the caseload of appellate courts. Once the trial court's ruling is appealed, the case will necessarily stall at the trial level until the district court renders a ruling on whether the claim for punitive damages was properly permitted.

Given this additional delay, it is also not unreasonable to anticipate that some claimants in civil cases may reluctantly forgo meritorious claims for punitive damages in order to avoid delay in bringing their cases to a final resolution. Of particular concern are tort cases involving personal injury, where claims for much needed medical and economic relief will stall until the question of punitive damages is resolved. Access to our judicial system with claims authorized by law should not be impeded by unnecessary delay and resulting additional expense.

\*2 Tellingly, during oral argument on August 31, 2021, counsel for the Appellate Court Rules Committee of The Florida Bar (Committee) noted that in a 2018 fifty-state survey, no state had a rule like the one adopted today by the majority.<sup>2</sup> Oral Argument at 4:43, <https://wfsu.org/gavel2gavel/viewcase.php?eid=2761>.

At the heart of the majority's decision is a concern for the privacy of financial discovery. Section 768.72(1), Florida Statutes (2019), specifically provides that "[n]o discovery of financial worth shall proceed until after the pleading concerning punitive damages is permitted." Thus, once the trial court approves the addition of a claim for punitive damages, the claimant is entitled to conduct financial discovery to determine the financial worth of the defendant. This process has been the subject of much discussion throughout the years, with the right to privacy of financial information as the major concern. However, the privacy of the financial information disclosed during discovery can be effectively protected by a confidentiality order entered upon the request of the disclosing party. Thus, there is no reason to abandon the existing fair and efficient certiorari review of these rulings.

Finally, while the majority is correct that "[t]he Committee and the Board of Governors of The Florida Bar approved the proposed amendment," majority op. at 2, the Committee did so grudgingly. Upon receipt of the Court's referral letter, the matter was first evaluated by the Committee's civil practice subcommittee (subcommittee). Although the subcommittee recommended the amendment to rule 9.130, it

acknowledged that the Committee had previously voted to not recommend an amendment to the rule based on similar referrals in recent years. In this instance, however, the subcommittee felt constrained to propose an amendment upon concluding that the Court's referral was a directive to do so. Report of the Appellate Court Rules Committee, app. at G-15. During its January 2021 meeting, the full Committee approved the amendment, while also approving the subcommittee's recommendation that "it would not [have supported the amendment] but for the mandate from the Court." *Id.*

Accordingly, because there is no reason for the majority's drastic, unnecessary, and consequential rule change, I respectfully dissent.

## APPENDIX

### RULE 9.130. PROCEEDINGS TO REVIEW NONFINAL ORDERS AND SPECIFIED FINAL ORDERS

#### (a) Applicability.

(1) - (2) [No Change]

(3) Appeals to the district courts of appeal of nonfinal orders are limited to those that:

(A) - (F) [No Change]

(G) grant or deny a motion for leave to amend to assert a claim for punitive damages.

(4) - (5) [No Change]

#### (b) - (i) [No Change]

#### Committee Notes

[No Change]

#### All Citations

--- So.3d ----, 2022 WL 57943 (Mem)

### Footnotes

- <sup>1</sup> See art. V, § 2(a), Fla. Const.
- <sup>2</sup> Recently, in *In re Amendment to Florida Rule of Civil Procedure 1.280*, 324 So. 3d 459 (Fla. 2021), we noted that analysis of other states' practices is relevant when reviewing our own state's rules.

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