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RECEIVED, 02/01/2021 10:25:28 AM, Clerk, Supreme Court

Honorable Stephanie Williams Ray
Chair, The Florida Bar Appellate Court Rules Committee
First District Court of Appeal
2000 Drayton Drive
Tallahassee, Florida 32399-0001
rays@1dca.org

Re: Proposed Amendment to Rule 9.130

Dear Honorable Judge Ray:

This letter is being submitted on behalf of the Florida Justice Association[®] (FJA[®]). The **FJA** is dedicated to strengthening and upholding Florida's civil justice system and protecting the rights of Florida's citizens and consumers. The **FJA** was founded in 1961 and currently has more than 3,500 members, including trial lawyers, consumer advocates, and injured victims. We passionately believe that all Floridians benefit when they have a fair chance to seek justice in our state's courts and that Florida's consumers are kept safer when wrongdoers are held accountable.

The **FJA** writes to oppose the adoption of the recent proposed amendment to Rule 9.130 (Proceedings to Review Nonfinal Orders and Specified Court Orders).

We urge the Appellate Court Rules Committee to reject this proposed amendment

because it imposes an unnecessary burden on the administration of justice in this state—flooding appellate judges with new interlocutory appeals, raising costs for civil litigants on both sides, and doing nothing to further ensure fair and just results. This Committee has considered this proposed change in the past, and we ask that the Committee maintain its well-settled position that this proposed amendment is not needed in Florida.

The generally recognized purpose of Rule 9.130 is to promote the efficient allocation of Florida’s limited judicial resources and to protect litigants from specific, and limited, irreparable harm that would result from a departure from the law. The thrust of our opposition is thus twofold. First, the proposed amendment is unnecessary, as the current approach is fair and efficient, promoting faster resolution of cases. Second, the amendment would impose an immense burden on an already overloaded court system, resulting in substantially more appeals and burdensome delays.

First, the current system works effectively, allowing cases to move expeditiously toward resolution in the trial court, with most cases concluding before an appeal becomes necessary. By requiring an evidentiary proffer and leave of court before a claim for punitive damages can be asserted, F.S. 768.72 already provides efficient judicial review of such claims at the trial court level. This proposed change is a solution in search of a problem, which will lead to more appeals, more costs, and more delays.

This leads to our second point. The proposed amendment will impose a high burden on appellate courts, which will end up with a new wave of appeals from nearly every civil case in which a punitive damage claim is sought. If the proposed amendment is adopted, the unsuccessful party in each case in which punitive damages are at issue will invariably appeal the trial court's ruling as a matter of course. Because such rulings typically come after discovery has been completed, cases will essentially be stayed while the appeal runs its course. The proposed amendment adds a nearly certain appeal to every case in which punitive damages are sought, not only burdening the appellate courts, but substantially increasing the time and costs of litigation for the parties.

Existing avenues are available and appropriate to suit the needs of civil litigants, both defense and plaintiff, as well as the Judiciary, and most importantly, the public. Those avenues should be retained and not expanded upon. We respectfully ask that the proposed amendments not be adopted by this Committee. Thank you for your consideration.

Sincerely,

s/ Eric Romano

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November 30, 2020

Honorable Stephanie Williams Ray
Chair Appellate Court Rules Committee
First District Court of Appeal
2000 Drayton Drive
Tallahassee, Florida 32399-0001
rays@1dca.org

Re: *Florida Rule of Appellate Procedure 9.130*

Dear Judge Ray:

We write regarding the Florida Supreme Court's request that the Appellate Rules Committee draft an amendment to rule 9.130 that would add determinations regarding punitive damages amendments to the list of immediately appealable, non-final appeals. We agree that any amendment should be bilateral—making a decision granting or denying leave to amend to assert a claim for punitive damages immediately appealable. Allowing an appeal only when leave is granted—and not when it is denied—would be neither fair nor equitable.

However, we are concerned that adding another item to the list of non-final appeals will lead to longer delays of cases at the trial court level while such non-final appeals are pending. With the addition of orders on punitive damages, rule 9.130 now has approximately twenty different types of non-final orders that are appealable immediately. By comparison, the federal judicial system does not allow non-final appeals for many of the orders listed in rule 9.130.

As the committee is aware, orders on punitive damages are currently reviewable (albeit in a limited fashion) by way of a petition for writ of certiorari, which is a more expedited process than a non-final appeal under rule 9.130. Currently, three of the district courts of appeal (1st, 3rd, and 5th), by way of administrative order, allow for generous agreed extensions of times (60 to 120 days for initial and answer briefs) in most non-final civil appeals, but these same extensions of time are not allowed in extraordinary writ proceedings. By moving the review of punitive damages orders from the district courts' certiorari jurisdiction to their rule 9.130 jurisdiction, the Florida Supreme Court effectively will be lengthening the time it takes for litigation to be completed.

If the Florida Supreme Court is inclined to add another type of non-final appeal to rule 9.130, then it should also consider adopting an appellate rule that would assist in achieving the "just, speedy, and inexpensive determination of every action." *See Fla. R. Civ. P. 1.010* (quoting). As appellate practitioners, we appreciate extensions of time as much as anyone. But if the Florida Supreme Court believes that even more non-final orders should be immediately reviewable by the district courts, then we believe the Florida Supreme Court needs to consider seriously curtailing the time it takes for such appeals to be processed to achieve the speedy resolution of cases to which Floridians are entitled.

Specifically, we ask that the committee propose an amendment to the rule that would result in a speedier disposition of appeals under rule 9.130. Currently, rule 9.130 gives an appellant 30 days after rendition of the order to file a notice of appeal and then an additional 15 days to file a brief. That amounts to 45 days to complete the initial brief, compared to the 30-day period for preparing a petition for certiorari under rule 9.100. On top of this 45 days, the district courts

regularly grant extensions of time pursuant to either their generous administrative orders or court-allowed extensions on a case-by-case basis.

Similar to extraordinary writs, non-final appeals should move at a faster pace than final appeals. In much the same way that practitioners have to take into account the tighter time limits involved in an extraordinary writ, practitioners who are unprepared to meet that expedited pace of a non-final appeal (which is its own form of extraordinary) should consider whether or not they truly need to file a non-final appeal.

In the same vein, it would further the purposes of rule 9.130 to include time limitations on the courts themselves. Specifically, delineating that all motions filed within non-final appeals must be disposed of within a certain time frame and that all non-final appeals must be brought to conclusion within a certain time frame, absent an explanation. As a starting point, we propose the following amendment to rule 9.130:

(j) Deadlines for Decision and Extensions. Excluding proceedings under rules 9.330 and 9.331, the court must decide all appeals under this rule by no later than 180 days after the notice of appeal was filed, unless the court enters an order with specific findings as to why the court was unable to comply with this deadline and the circumstances causing the delay. The court must dispose of all motions filed under rules 9.330 and 9.331 by no later than thirty and sixty days, respectively, from when the motion was filed, unless the court enters an order with specific findings as to why the court was unable to comply with this deadline and the circumstances causing the delay. Each year, the chief judge of the court shall report to the chief justice of the supreme court, on a case-by-case basis, all cases where the court entered an order regarding its inability to comply with these deadlines. Absent a showing of extraordinary or emergency circumstances, the court shall not grant any extensions on reply or cross-reply briefs or on motions and responses under rules 9.330 and 9.331, and it shall not grant any extensions on initial or answer briefs that exceed fifteen days.

We thank you and the entire committee in advance for consideration of this comment and for your service to the State of Florida.

Very truly yours,

s/Bryan S. Gowdy

Bryan S. Gowdy

s/Maegen Peek Luka

Maegen Peek Luka

cc:

Ms. Krys Godwin, Bar Staff Liaison to App. Court Rules Comm. (kgodwin@floridabar.org)