

**IN THE SUPREME COURT
OF THE STATE OF FLORIDA**

**IN RE: Amendments to Florida Rules of
 Civil Procedure**

Case #SC-03-161

**COMMENT OPPOSING ADDITION OF SUBSECTION (f) TO
FLORIDA RULE OF CIVIL PROCEDURE 1.190**

This comment is written to request that this Court not amend Florida Rule of Civil Procedure 1.190 to add that language suggested by the Rules Committee ostensibly to “clarify” the procedures for amending complaints to add claims for punitive damages. The proposed rule addition reads as follows:

(f) To Assert Claim for Punitive Damages. A motion for leave to amend a pleading to assert a claim for punitive damages shall state with particularity any evidence in the record or any evidence to be proffered by the claimant that provides a reasonable basis for recovery of such damages. Any proffer in support of the motion shall contain sufficient detail to permit an opposing party to respond to the proffer and to permit the court to rule on the motion. The motion to amend and any supporting evidence or proffer shall be served on all parties at least 20 days before the time fixed for the hearing.

As written, this amendment will place undue, and likely unanticipated, burdens on plaintiffs seeking to amend their complaints for punitive damages. Specifically, the proposed rule appears to mandate the following:

1. Courts would be required to conduct evidentiary hearings on a Plaintiff’s entitlement to merely amend a complaint. However, the law is clear that no evidentiary hearing is required on this issue. See *Strasser v. Yalamanchi*, 677 So.2d 22 (Fla. 4th DCA 1996); *Solis v. Calvo*, 689 So.2d 366 (Fla. 3d DCA 1997).
2. Plaintiffs would be required to submit specific evidentiary materials supporting the amendment to opposing parties at the same time the initial motion is

filed. The practical result of this provision will be to require plaintiffs to submit such materials well in advance of the 20 day period the rule change seems to suggest. No provision is made for supplementing the record at any time prior to such a hearing.

3. The proposed rule has no provision for a similar requirement that opposing parties provide any advance notice of the basis of their opposition prior to the hearing. This is particularly troubling given that the proposed rule turns the process into an *evidentiary* hearing.

4. The proposed rule contravenes the purpose of the statutory limitations to merely plead a punitive damages claim. According to the legislative history, the purpose of the statutory provisions of §768.72 requiring a showing of a reasonable basis for the amendment was simply to prevent defendants being subjected to unduly burdensome or oppressive financial discovery on meritless claims. The proposed rule does not advance this purpose at all and imposes restrictions on pleading, not discovery.

All of the above issues raise concerns that the proposed rule will unduly impede access to the courts and, given the implication of required evidentiary hearings, result in unwarranted and unanticipated delays in the administration of cases through the judicial process. For these reasons, the Court is encouraged to preserve Florida's preference for liberality in permitting amendments and decline to make this rule change.

BROOKS, LeBOEUF, BENNETT & FOSTER, P.A.

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Certificate of Service

I hereby certify that a true and correct copy of the foregoing was hand-delivered to Madelon Horwich, The Florida Bar, 650 Apalachee Parkway, Tallahassee, FL 32399-2300, this ____ day of March, 2003.
