

Florida Punitive Damages Amendments Now Subject to Interlocutory Appeal

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The Florida Supreme Court just changed the litigation landscape regarding punitive damage claims. On January 6, 2022, the Court amended Florida Rule of Appellate Procedure 9.130, effective April 1, 2022, to explicitly permit interlocutory appeals of orders granting or denying leave to amend a complaint to add a claim for punitive damages. See [In Re: Amendment to Florida Rule of Appellate Procedure 9.130](#), No. SC21-129 (Jan. 6, 2022) (“[appeals] to the district courts of appeal of non-final orders are limited to those that ... (G) grant or deny a motion for leave to amend to assert a claim for punitive damages.”).

While Florida law has long required a plaintiff to obtain leave of court to add a claim for punitive damages only after a sufficient proffer of evidentiary support, the appellate rule in its current form does not provide for an appeal or certiorari review of the sufficiency of that evidence. A court’s simple compliance with the statutory procedural rules leaves the parties without the option of an interlocutory appeal. Without the ability to appeal, defendants become subject to detailed financial worth discovery and the requirement to post a bond to stay satisfaction of a punitive damages judgment pending resolution of a post-judgment appeal. The amendment now allows interlocutory review of both procedural and evidentiary challenges.

Of note, Justice Jorge Labarga, the sole dissenting judge, states that “the heart of the majority’s decision is a concern for the privacy of financial discovery” but, with the availability of confidentiality orders to protect the information, “there is no reason to abandon the existing fair and efficient certiorari review of these rulings.” The Justice pointed to a “not unreasonable” expectation that the losing party will choose to immediately appeal the order “in most, if not all, cases,” thereby stalling cases at the trial level and adding to the appellate courts’ caseload. In turn, the Justice anticipates that some civil claimants might forgo punitive damages claims simply to avoid delays in resolving the cases – a scenario he finds particularly concerning in personal injury matters where medical and economic relief will stall pending resolution of an appeal.

Only time will tell if Justice Labarga’s prediction will manifest in the future. For now, the amendment is a game changer for defending punitive damage claims in Florida.

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