



March 16, 2021

Via Florida Courts E-Filing Portal

The Honorable Justices of the Florida Supreme Court
500 South Duval Street
Tallahassee, Florida 32399-1925

Re: *In re: Amendments to Florida Rule of Civil Procedure 1.510,*
Case No. SC20-1490

To the Honorable Justices of the Florida Supreme Court:

The Florida Justice Reform Institute (the "Institute") strongly supports the Court's decision to amend Florida Rule of Civil Procedure 1.510 to adopt the federal summary judgment standard. The Institute also supports the Court's adoption of the proposed rule language included in its December 31, 2020, decision, without any further changes.

The Institute is the state's leading organization of concerned citizens, business owners and leaders, doctors, and lawyers who seek the adoption of fair legal practices to promote predictability and personal responsibility in the civil justice system. The Institute has advocated practices that build faith in Florida's court system and judiciary. It represents a broad range of participants in the business community who share a substantial interest in a litigation environment that treats plaintiffs and defendants evenhandedly.

Summary judgment has long been an important litigation tool, offering a pretrial opportunity to resolve a case or an issue on the merits where there is no genuine, disputed issue of material fact for a jury to decide. See *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986) ("Summary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of [our rules] as a whole . . ."). This tool has been central to the overarching purpose of both the Florida and federal rules of civil procedure: "to secure the just, speedy, and inexpensive determination

RECEIVED, 03/12/2021 01:45:31 PM, Clerk, Supreme Court
WWW.FLJJUSTICE.ORG



FLORIDA
Justice Reform
INSTITUTE

of every action.” *In re: Amends. to Fla. R. Civ. P. 1.510*, No. SC20-1490, 2020 WL 7778179, at *1 (Dec. 31, 2020) (“*Amendments to Rule 1.510*”) (quoting Fla. R. Civ. P. 1.010 and Fed. R. Civ. P. 1). As this Court recognized in *Amendments to Rule 1.510*, however, Florida courts’ interpretation of the Florida summary judgment rule had strayed from that overarching purpose, notwithstanding the fact that “the critical sentences in Florida’s summary judgment rule and in the federal summary judgment rule are materially indistinguishable.” *Id.*

The Court’s proposed amendment of Rule 1.510 would right the ship, harmonizing Florida courts with the vast majority of jurisdictions, including the federal courts and a supermajority of states:¹

The summary judgment standard provided for in this rule shall be construed and applied in accordance with the federal summary judgment standard articulated in *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); and *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986).

Id. at *4.

As a result of formally adopting the standard articulated in the *Celotex* trilogy, a litigant opposing summary judgment will no longer be able to simply point to “any competent evidence creating an issue of fact, however, credible or incredible, substantial or trivial” to avoid summary judgment. *Id.* at *2 (internal quotation marks and citation omitted). Such a change is particularly important to the Institute’s members, who are frequently named as

¹ *Id.*; see also Zachary D. Clopton, *Procedural Retrenchment and the States*, 106 Cal. L. Rev. 411, 432, 476-80 (2018) (identifying 37 states); *Salo v. Tyler*, 417 P.3d 581, 583-84 (Utah 2018) (Utah became the 38th state to adopt the standard).



FLORIDA
Justice Reform
INSTITUTE

defendants in Florida state court actions and justifiably seek to avoid costly, lengthy jury trials where the material facts show that they are entitled to judgment as a matter of law. The Institute absolutely agrees with the Court that “the federal summary judgment standard is more rational, more fair, and more consistent with the structure and purpose of our rules of civil procedure.” *Id.* at *1.

The Institute anticipates that some opponents of the federal standard will argue that this Court should delay adoption and instead refer the proposal to The Florida Bar’s Civil Procedure Rules Committee (the “Committee”) under Florida Rule of Judicial Administration 2.140 for more formal consideration. The Court, however, has the benefit of substantial analysis and stakeholder input and may formally adopt the standard without further delay.

Through this proceeding, the Court will receive numerous public comments, including comments the Court specifically solicited from the Committee. See *Amendments to Rule 1.510*, 2020 WL 7778179, at *3. In addition, the Court received briefing from the parties and numerous amici curiae in *Wilsonart, LLC v. Lopez*, No. SC19-1336, 2020 WL7778226 (Fla. Dec. 31, 2020), in response to the Court’s directive to address whether Florida should adopt the federal summary judgment standard. And as the Court recognized, whether Florida should implement the federal summary judgment standard “has long been the subject of thoughtful commentary.” *Amendments to Rule 1.510*, 2020 WL 7778179, at *2. All these considerations are in addition to the simple fact that the federal summary judgment standard has already been employed by the federal courts and numerous states for decades.

Since 1956, this Court has exercised the exclusive constitutional mandate to develop rules of procedure for Florida courts. See art. V, § 2(a), Fla. Const.; *In re Amends. to Fla. Evid. Code*, 278 So. 3d 551, 554 (Fla. 2019). This Court created Florida Rule of Judicial Administration 2.140 to implement that constitutional mandate, and there can be no doubt as to this

Court's authority to amend Rule 1.510 of its own volition. See *In re Amends. to Fla. R. Jud. Admin. 2.140*, 289 So. 3d 1264, 1266-71 (Fla. 2020). Referral to a rules committee remains entirely within the discretion of this Court, but it is a discretion that need not be exercised in this case. See Fla. R. Jud. Admin. 2.140(d), (f). Indeed, the overwhelming justification for adopting the federal standard supports its adoption without any further delay.

Moreover, the Court's proposed amendment of Rule 1.510 is sufficient and requires no additional changes. There is no need to adopt other ancillary amendments, add additional provisions of Federal Rule of Civil Procedure 56 to Rule 1.510, or to replace Rule 1.510 in its entirety with Federal Rule 56. The Court should continue on its stated plan and adopt the proposed amendment effective May 1, 2021, at 12:01 a.m.

For all these reasons, the Institute respectfully requests that the Court adopt the rule amendment as proposed in *Amendments to Rule 1.510*. We thank the Court for its thorough attention to this matter of great public importance.

Respectfully submitted,

/s/ William W. Large

William W. Large (FBN 981273)
President
Florida Justice Reform Institute