

**APPELLATE COURT RULES COMMITTEE MEETING  
FRIDAY, JANUARY 15, 2021  
9:00 A.M.–12:00 P.M. (ET)**

**EXCERPT OF MEETING MINUTES**

**(NOT YET ADOPTED BY COMMITTEE)**

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**C. STANDING SUBCOMMITTEES**

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**2. Civil Practice—Elaine Walter, Chair; Josh Levine, Vice Chair**

Chair Ray yielded the floor to subcommittee chair, Elaine Walter, who addressed the following referrals.

a. **20-AC-11**: Based on a referral from the Florida Supreme Court, the subcommittee proposed a rule amendment 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 adopted the subcommittee’s proposal at its October 2020 meeting. The proposed amendment was published in *The Florida Bar News* for comments, and two comments were received. The comments, and the subcommittee’s evaluation of the comments with supporting materials, are included in the agenda materials, pp. 32-75. The subcommittee voted not to reconsider the proposal based on the two comments, but voted (15-2) that, but for the Court’s directive to propose a rule amendment, it would not have supported adding such orders to rule 9.130. The majority of the subcommittee wanted to provide the Court with that additional information and thought the same information from the full Committee would be helpful for the Court’s consideration.

Chair Ray opened the matter for discussion and yielded the floor to guest, Eric Romano, President of the Florida Justice Association, to discuss the Association’s comment to the proposed rule amendment. Mr. Romano discussed his background and that of the Florida Justice Association. He addressed two concerns with the proposed rule. First, he commented that the current process seems to work effectively and

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efficiently in that Section 768.72, Florida Statutes, already provides for an effective judicial review process for any claim for punitive damages before the claim can be asserted and before the defendant can be subject to financial discovery, and that most cases involving punitive damages are resolved at the trial court level before they reach the appellate court. Second, he commented that if the proposed rule were adopted, it would add an almost certain appeal to any case in which a claim for punitive damages is sought, which would result in significant delays and associated costs and an influx of appeals, which would burden Florida's appellate courts. The Florida Justice Association's written comment was included in the agenda materials, pp. 48-50.

Chair Ray yielded the floor to Bryan Gowdy. Mr. Gowdy discussed his background and addressed his joint comment with Maegen Luka regarding concerns that the passage of this rule amendment would increase the number of interlocutory appeals in appellate courts. He noted that since he began practicing, the list of interlocutory appeals has grown substantially and that a common complaint regarding litigation is how slowly the process proceeds. Mr. Gowdy commented that the problem with the growing list of nonfinal order appeals is that currently, in three of the five District Courts of Appeal, most nonfinal order appeals are treated like final order appeals with respect to administrative orders permitting extensions of time. He noted that the current means for limited review of orders granting leave to assert a claim for punitive damages—petitions for writ of certiorari—proceed more quickly, with the petition being due within 30 days from the date of the order being challenged. He suggested that to avoid further delays in litigation, an alternative briefing timeline and procedure for extensions be considered for all nonfinal order appeals. He and Maegen Luka offered a proposed amendment to rule 9.130 as a starting point for consideration.

Chair Ray yielded the floor to Ms. Luka, who echoed the comments of Mr. Gowdy and suggested that if another item is added to the growing list of nonfinal order appeals in rule 9.130, the timing of those appeals should be considered. Mr. Gowdy's and Ms. Luka's comments, including their proposed amendment to rule 9.130, was included in the agenda materials, pp. 51-52.

Ms. Walter noted that a separate referral is being recommended for addressing the timeline for nonfinal order appeals. Chair Ray considered

Mr. Gowdy's and Ms. Luka's comments a separate referral and noted that the Committee for the Rules of Judicial Administration may need to be apprised of the referral as well.

Chair Ray opened the matter for further discussion. Former Committee Chair, Tom Hall, commented that he had voted that he would not have recommended an amendment but for the Court's request. He noted that the matter had come up in the Committee twice before that he was aware of with no action recommended. This was for a variety of reasons including the number of additional interlocutory appeals that would result from such an amendment. He commented that appeals could be expected in all cases involving a ruling on a motion for leave to amend to add a punitive damages claim. Mr. Hall noted that efforts were made to find data on the number of interlocutory appeals that would likely result from an amendment in this regard, and while those numbers could not be identified, those who voted against the amendment believed the number would be substantial. Mr. Hall echoed concerns about delay and noted that as a practical matter, while trial courts are permitted to proceed pending a nonfinal order appeal (except for the entry of judgment), they often do not proceed, and the litigation pauses pending resolution of the appeal. Mr. Hall commented that the proposed amendment should be provided to the Court because it was requested but suggested that the Committee's best advice should be provided along with the proposed amendment.

Chair Ray clarified the motion before the Committee—whether the Committee would have recommended the proposed rule amendment but for the Court's request. A roll call vote was taken, with 25 members voting that they would not have recommended the amendment but for the Court's request, and 9 members voting that they would have.

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Respectfully submitted,



Sarah Lahlou-Amine, Secretary  
Appellate Court Rules Committee