

IN THE SUPREME COURT OF FLORIDA

IN RE: AMENDMENTS TO FLORIDA NO. SC20-1490  
RULE OF CIVIL PROCEDURE 1.510

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**COMMENTS OF FLORIDA SENIOR LIVING ASSOCIATION**

On behalf of The Florida Senior Living Association, we are submitting comments in response to the proposed amendment to the Florida Rules of Civil Procedure 1.510 regarding adopting the federal summary judgment standard. This opinion was published on December 31, 2020. We express our support for the changes regarding public change. Florida Senior Living Association believes that this amendment will be beneficial for Florida citizens while promoting the goals of improving the fairness and efficiency of the civil justice system. This amendment will also create a more consistent structure of Florida courts while saving valuable time and money.

The Florida Senior Living Association is the preeminent association representing companies that operate professionally managed senior living communities offering independent, assisted living, and memory care services. FSLA represents professionally-

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managed providers who care for more than 17 residents in one location. Florida Senior Living Association represents its members before the Florida Legislature, Governor's Executive Agencies, and other state and local entities where senior living policy is decided. Florida's senior living industry has a 14.5-billion-dollar impact on Florida's economy. The massive industry translates to FSLA representing a large number of communities. By positively reforming the summary judgment standard to follow the federal model, our communities will not only save valuable time but not overflow the judicial system when issues arise. This will lead to a more efficient judicial system in Florida.

## **THE STATE SHOULD ADOPT THE FEDERAL SUMMARY JUDGMENT STANDARD**

The previous summary judgment standard used in Florida to determine the holding is the requirement that “summary judgment be awarded where the record shows no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Fla. R. Civ. P. 1.150(c). This previous standard is harmful to Florida courts because the moving party is currently required to disprove the nonmoving party’s case by presenting

negating evidence of at least one or more elements of the nonmoving party's claim.

Even if there is no supportive evidence, the nonmoving party can still survive a motion for summary judgment even if there is no evidence to support one or more elements in its claim. This is a setup for failure, as claims lacking evidentiary support can remain on the court's docket. This wastes not only the time of the court, but the jury's valuable time, the parties' money, and the effort of all actors involved.

- A. The federal summary judgment standard better represents technology's modern advancements and creates a more transparent and more objective standard.

Modern advancements have progressed both technology and the adaptation of the technology into real-life scenarios. The previous standard limited summary judgment because there was a contention with witness testimony. Now technology has advanced so much; there are cameras at our fingertips and every corner, including dash cameras. The change of standard would support the more rational principle.

Summary judgment should not be barred because a witness's testimony contradicts video evidence. *Compare, Lopez v. Wilsonart, LLC*, 275 So. 3d 831 (Fla. 5th DCA 2019). Witness testimony is routinely unreliable due to the subjective mindset of each witness and outside sources. By allowing technology to provide supportive evidence, the Florida court system will become more efficient while reducing litigation costs because lay witnesses will not obstruct film evidence. It is not erroneous to disregard cases on appeal that include clear video evidence.

B. The new summary judgment will be more beneficial and efficient to the Florida court system.

Due to unforeseen circumstances like the Covid-19 pandemic, Florida's court system has been overwhelmed and backlogged. By enacting this new amendment to the summary judgment standard, trials will be less lengthy, reduce cost, and reduce the valuable time at the hand of the court.

The summary judgment goals are to improve efficiency, fairness, reduce expenses, and reserve juries for factual dispute cases, thus saving time. These goals will be set to the forefront with the Florida Rules of Civil Procedure 1.510 Amendment

because any single genuine issue of material will no longer bar a court from awarding summary judgment in order to execute the very goals the Florida Court hopes to achieve.

This amendment will not only open more opportunities for summary judgment, thus creating a faster and more efficient court system, but it will also provide relief to both the moving and nonmoving party.

Individuals will also not need to fear the loss of their rights to a jury trial. Florida courts already adopted the same standard during trial represented by *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986) at the directed-verdict stage. Florida's established directed-verdict standard does not infringe on the right to a jury trial. Since these rules are adjacent to each other, the federal summary-judgment standard's adoption will not infringe on the right to a jury trial. The adoption of the amendment will subsequently make the court system fairer because, in situations where a plaintiff cannot produce necessary evidence, a jury is not useful to find facts. Thus, summary judgment is a more appropriate finding instead of intercrossing different legal avenues that should be very distinct.

**AMENDMENTS TO RULE 1.510 AND ITS RELATION TO THE  
FEDERAL RULES OF CIVIL PROCEDURE RULE 56.**

Reliance upon Federal Rule 56 is a practical roadmap to implement Florida Rules of Civil Procedure amendment 1.510. We urge the court to give express guidance on applying the new rule to all future and current cases to create a universal standard for all Florida courts. Giving express guidance will prevent unnecessary litigation and provide all parties involved specific instructions for the new standard, which will help smoothly implement the new rule.

Florida Senior Living Association supports the full implementation of the federal standard for summary judgment. Thank you for the opportunity to submit comments on the proposed amendment of the Florida Rules of Civil Procedure 1.510 to change Florida's summary judgment standard to reflect the federal standard.

Respectfully submitted this 2nd day of March 2021.

**FLORIDA SENIOR LIVING ASSOCIATION**

/s/ Jason Hand

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## **CERTIFICATE OF SERVICE**

Pursuant to Fla. R. Jud. Admin. 2.140(b)(6) and 2.140(d), I HEREBY CERTIFY that a true and correct copy of the within and foregoing COMMENTS OF FLORIDA SENIOR LIVING ASSOCIATION has been served on the chair of the Florida Bar's Civil Procedure Rules Committee and Bar staff liaison.

This 2nd day of March, 2021.

**FLORIDA SENIOR LIVING ASSOCIATION**

/s/ Jason Hand

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## **CERTIFICATE OF FONT AND WORD COUNT COMPLIANCE**

I HEREBY CERTIFY that the within and foregoing COMMENTS OF FLORIDA SENIOR LIVING ASSOCIATION, which is written in Bookman Old Style 14-point font, complies with the font requirements of Florida Rule of Appellate Procedure 9.045(b). The number of words is 1011, excluding the caption, the certificates of service and compliance, and the signature block.

This 2nd day of March, 2021.

**FLORIDA SENIOR LIVING ASSOCIATION**

/s/ Jason Hand

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