

*Reid v. Daley*, 276 So. 3d 878 (Fla. 1st DCA 2019), *reh'g denied* (Aug. 21, 2019)

## Emotional Damages in Legal Malpractice Cases are Limited

Although the parties on both sides in *Reid v. Daley*, 276 So. 3d 878 (Fla. 1st DCA 2019), *reh'g denied* (Aug. 21, 2019) were pro se, at least one issue in the case resonates.

A prisoner filed an amended complaint against his post conviction attorney for money damages and “mental anguish and emotional distress”. The trial court granted a motion to dismiss with prejudice.

The appellate court cited to the legal malpractice of *Rowell v. Holt*, 850 So.2d 474 (Fla. 2003) for the very narrow class of cases in which the impact rule does not apply. The narrow class are cases in which the foreseeable harms are predominantly emotional in nature.

In *Rowell* an attorney failed to turn over a document that would have freed his incarcerated client. The supreme court held that the impact rule did not bar emotional distress damages but emphatically sought to limit its ruling. “This exception to the impact rule was meant to apply only where an attorney “is provided the means to unquestionably break down the walls of wrongful, unjust pretrial restraint” and either fails to do so or chooses not to” (Citing to *Rowell*) *Reid* at 880.

The *Reid* Court reasoned the *Rowell* impact rule exception did not apply since the prisoner/appellant was not a victim of unjust pretrial restraint.

**TAKEAWAY** – Except in the rarest of circumstances, the impact rule will prevent obtaining non-economic damages in legal malpractice cases. However, in a malpractice case which involves a “trial within a trial”, any non-economic damages in the underlying case will be available as compensatory damages in the malpractice case.