

Florida Supreme Court Signals Major Shift in Summary Judgment Standard

Lawyers and insurance industry professionals are undoubtedly familiar with motions for summary judgment. For years, Florida state courts have followed their own summary judgment standard. While similar to the rule followed by all federal courts and 38 states, the Florida standard allowed judges to routinely deny summary judgment motions in all but the most clear circumstances. On December 31, 2020, the Florida Supreme Court articulated a new standard to bring Florida in line with the federal courts and majority of states.

The prior standard required the moving party to affirmatively disprove the non-movant's theory of the case in order to eliminate any issue of material fact. Failure to do so would result in the motion being denied. This standard has previously been expressly rejected as a requirement in the federal judicial system, which only requires the moving party to show an absence of evidence to support the non-moving party's case. This change effectively shifts the burden of proof from the moving party to the non-moving party. Additionally, Florida courts had also liberally defined issues of material fact as **any** competent evidence creating an issue of fact. The federal standard, however, examines whether the evidence is such that a reasonable jury could return a verdict for the non-moving party. With its opinion, the Florida Supreme Court has signaled its intent to move Florida to the federal standard along with the majority of state courts.

This shifting of the burden from the movant to the non-moving party will almost certainly result in an increase in the number of summary judgment motions granted by Florida trial courts. While some may see this as a more efficient means of disposing of frivolous lawsuits, others will surely argue that it invades the province of the jury and grants too much authority to trial judges. Recognizing the importance of this change, the Florida Supreme Court stayed implementation of the revised standard until May 1, 2021, allowing a period of public comment. Subrogation professionals should be aware of this change and take it into consideration when considering how to handle certain claims.

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