

RULE 1.190 | AMENDED AND SUPPLEMENTAL PLEADINGS

(a) Amendments. A party may amend a pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed on the trial calendar, may so amend it at any time within 20 days after it is served. Otherwise a party may amend a pleading only by leave of court or by written consent of the adverse party. If a party files a motion to amend a pleading, the party shall attach the proposed amended pleading to the motion. Leave of court shall be given freely when justice so requires. A party shall plead in response to an amended pleading within 10 days after service of the amended pleading unless the court otherwise orders.

(b) Amendments to Conform with the Evidence. When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment, but failure so to amend shall not affect the result of the trial of these issues. If the evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended to conform with the evidence and shall do so freely when the merits of the cause are more effectually presented thereby and the objecting party fails to satisfy the court that the admission of such evidence will prejudice the objecting party in maintaining an action or defense upon the merits.

(c) Relation Back of Amendments. When the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment shall relate back to the date of the original pleading.

(d) Supplemental Pleadings. Upon motion of a party the court may permit that party, upon reasonable notice and upon such terms as are just, to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. If the court deems it advisable that the adverse



party plead thereto, it shall so order, specifying the time therefor.

(e) Amendments Generally. At any time in furtherance of justice, upon such terms as may be just, the court may permit any process, proceeding, pleading, or record to be amended or material supplemental matter to be set forth in an amended or supplemental pleading. At every stage of the action the court must disregard any error or defect in the proceedings which does not affect the substantial rights of the parties.

(f) Claims for Punitive Damages. A motion for leave to amend a pleading to assert a claim for punitive damages shall make a reasonable showing, by evidence in the record or evidence to be proffered by the claimant, that provides a reasonable basis for recovery of such damages. The motion to amend can be filed separately and before the supporting evidence or proffer, but each shall be served on all parties at least 20 days before the hearing.

Committee Notes

1980 Amendment. The last clause of subdivision (a) is deleted to restore the decision in *Scarfone v. Denby*, 156 So. 2d 694 (Fla. 2d DCA 1963). The adoption of rule 1.500 requiring notice of an application for default after filing or serving of any paper eliminates the need for the clause. This will permit reinstatement of the procedure in federal practice and earlier Florida practice requiring a response to each amended pleading, thus simplifying the court file under the doctrine of *Dee v. Southern Brewing Co.*, 146 Fla. 588, 1 So. 2d 562 (1941).

2003 Amendment. Subdivision (a) is amended in accordance with *Totura & Co., Inc. v. Williams*, 754 So. 2d 671 (Fla. 2000). See the amendment to rule 1.070(j). Subdivision (f) is added to state the requirements for a party moving for leave of court to amend a pleading to assert a claim for punitive damages. See *Beverly Health & Rehabilitation Services, Inc. v. Meeks*, 778 So. 2d 322 (Fla. 2d DCA 2000).

