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April 7, 1988

Sid White, Clerk  
Supreme Court of Florida  
Tallahassee, Florida 32399-1927

Re: Case No. 71,672  
Florida Medical Malpractice Pre-Suit Screening Rules

Dear Mr. White:

In order to avoid hopelessly complicating an already burdensomely complicated situation I suggest the following must be accomplished.

**Section 3(a). Discovery.** "Evidence of failure to comply with this rule may be grounds for dismissal of claims or defenses ultimately asserted." The courts should be given some guidance and it should be in the form of stating:

(1) that the failure to comply with an intentional effort to obstruct the process and (2) that the complained of failure had a direct bearing upon the failure or inability of the defending party to make a decision about the case, and that the defendant would have settled if the omitted discovery had been supplied.

The same goes for Subsection 3(b)(2) (last paragraph of that subsection.) Failure of either party to comply with the time constraints should have a proximate cause element. That is it must be shown that the failure affected the result of the pre-suit screening period.

For instance in both of these instances if a plaintiff fails to comply with some discovery requirement and the defendant brings this up as a reason for dismissal, the defendant should be required to show that had he obtained the information, he would have attempted to resolve the case during the pre-suit screening period.

Respectfully submitted,



Walter C. Ward

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**FILED**

SID J. WHITE

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CLERK, SUPREME COURT

By \_\_\_\_\_

Deputy Clerk

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