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SID J. WHITE
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CLERK, SUPREME COURT
By
Deputy Clerk

The Honorable Sid White
Clerk of the Court
Supreme Court of Florida
Tallahassee, FL 32399-1927

Re: **Case No.: 71,672**
(Florida Medical Malpractice Presuit Screening Rules)

Dear Sir:

In regard to the proposed presuit screening rules, I would submit the following comments:

1. I agree with the comment of Ross L. Fogleman, III, that the statute does not authorize extension of the Statute of Limitations as contemplated by the rule in Section 4(c) of the proposed rule.

2. I believe the presuit screening process authorized by Section 768.57 is intended to promote review of records and other documents by both parties and to allow physical examination of a claimant. I believe the provisions in proposed rule 3(b)(1) allowing parties to require other parties to appear for an unsworn statement goes beyond the intent of the statute and creates a potential problem in that such unsworn recorded statements which cannot be used in the litigation, will lead to unnecessarily difficult problems and frustrations if a party changes his testimony during litigation based on refreshed recollection from review of records or other witnesses' testimony, or based on intentional misrepresentations during the screening process. Unsworn statements are not necessary to make the presuit screening process effective, and will inevitably become the basis for some sort of impeachment efforts by the parties during litigation.

Section 768.57(5) F.S. apparently contemplates that statements or discussions can be part of the screening process, but does authorize any party to require a statement from another party. Section 768.57(6) states ". . . the parties shall make discoverable information available without formal discovery." I see no basis for interpreting that language to include a requirement for a party to make an unsworn statement.

If the Court feels that a required statement is authorized and appropriate then I would suggest that no record of any statement be permitted. If there is to be a record, then the statement should be under oath, to bind the parties to tell the truth subject to perjury, since they would not be subject to impeachment or other use in subsequent litigation. The fundamental problem with required statements is that during the presuit screening process, the parties cannot be prepared for the detailed examination which would be expected during deposition, and therefore I believe that mandatory unsworn statements during the screening process will be more harmful than beneficial to the system.

4. The Legislature has now adopted new legislation (88-1) which needs to be thoroughly reviewed in light of the proposed rules to be sure that the final draft is up to date. I trust these ideas will be of assistance.

Sincerely,

James C. Rinaman, Jr.

JCR:ccc