Supreme Court of Florida

REVISED OPINION

No. 71,672

IN RE: MEDICAL MALPRACTICE
PRESUIT SCREENING RULES - CIVIL RULES OF PROCEDURE

[September 29, 1988]

PER CURIAM.

The Civil Rules Committee of The Florida Bar has proposed the appended "Florida Medical Malpractice Presuit Screening Rules" which apply to the procedures prescribed by Section 768.57, Florida Statutes (Supp. 1986). After full consideration of the recommendations of the Civil Rules Committee and the comments of interested members of the Bar, we adopt the proposed rule, which will become effective upon the filing of this opinion.

It is so ordered.

EHRLICH, C.J., and OVERTON, McDONALD, SHAW, BARKETT, GRIMES and KOGAN, JJ., Concur

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED. THE FILING OF A MOTION FOR REHEARING SHALL NOT ALTER THE EFFECTIVE DATE OF THIS RULE.

RULE 1.650. MEDICAL MALPRACTICE
PRESUIT SCREENING RULE

(a) Scope of Rule. This rule applies only to the procedures prescribed by Section 768.57, Florida Statutes, for presuit screening of claims for medical malpractice.

(b) Notice.

(1) Notice of intent to initiate litigation sent by certified mail to and received by any prospective defendant shall operate as notice to the person and any other prospective defendant who bears a legal relationship to the prospective defendant receiving the notice. The notice shall make the recipient a party to the proceeding under this rule.

(2) The notice shall include the names and addresses of all other parties and shall be sent to each party.

(3) The court shall decide the issue of receipt of notice when raised in a motion to dismiss or to abate an action for medical malpractice.

(c) Discovery.

(1) Types. Upon receipt by a prospective defendant of a notice of intent to initiate litigation, the parties may obtain presuit screening discovery by one or more of the following methods: unsworn statements upon oral examination; production of documents or things; and physical examinations. Unless otherwise provided in this rule, the parties shall make discoverable information available without formal discovery. Evidence of failure to comply with this rule may be grounds for dismissal of claims or defenses ultimately asserted.

(2) Procedures for Conducting.

(A) Unsworn statements -- The parties may require other parties to appear for the taking of an unsworn statement. The statements shall only be used for the purpose of presuit screening and are not discoverable or admissible in any civil action for any purpose by any party. A party desiring to take the unsworn statement of any party shall give reasonable notice in writing to all parties. The notice shall state the time and place for taking the statement and the name and address of the party to be examined. Unless otherwise impractical, the examination of any party shall be done at the same time by all other parties. Any party may be represented by an attorney at the taking of an unsworn statement. Statements may be electronically or stenographically recorded, or recorded on video tape. The taking of unsworn statements is subject to the provisions of Rule 1.310(d) and may be terminated for abuses. If abuses occur, the abuses shall be evidence of failure of that party to comply with the good faith requirements of Section 768.57, Florida Statutes.

(B) Documents or things -- At any time after receipt by a party of a notice of intent to initiate litigation, a

party may request discoverable documents or things. The documents or things shall be produced at the expense of the requesting party within 20 days of the date of receipt of the request. A party is required to produce discoverable documents or things within that party's possession or control. Copies of documents produced in response to the request of any party shall be served on all other parties. The party serving the documents shall list the name and address of the parties upon whom the documents were served, the date of service, the manner of service, and the identify of the document served in the certificate of service. Failure of a party to comply with the above time limits shall not relieve that party of its obligation under the statute but shall be evidence of failure of that party to comply with the good faith requirements of Section 768.57, Florida Statutes.

(C) Physical examinations -- Upon receipt by a party of a notice of intent to initiate litigation and within the presuit screening period, a party may require a claimant to submit to a physical examination. The party shall give reasonable notice in writing to all parties of the time and place of the examination. Unless otherwise impractical, a claimant shall be required to submit to only one examination on behalf of all parties. The practicality of a single examination shall be determined by the nature of the claimant's condition as it relates to the potential liability of each party. The report of examination shall be made available to all parties upon payment of the reasonable cost of reproduction. The report shall not be provided to any person not a party at any time. The report shall only be used for the purpose of presuit screening and the examining physician may not testify concerning the examination in any subsequent civil action. All requests for physical examinations or notices of unsworn statements shall be in writing and a copy shall be served upon all parties. The requests or notices shall bear a certificate of service identifying the name and address of the person upon whom the request or notice is served, the date of the request or notice, and the manner of service.

(3) Work Product. Work product generated by the presuit screening process that is subject to exclusion in a subsequent proceeding is limited to verbal or written communications that originate pursuant to the presuit screening process.

(d) Time Requirements.

(1) The Notice of Intent to Initiate Litigation shall be served by certified mail, return receipt requested, prior to the expiration of any applicable statute of limitations. If an extension has been granted under Section 768.495(2), Florida Statutes, or by agreement of the parties, the notice shall be served within the extended period.

(2) The action may not be filed against any defendant until 90 days after the Notice of Intent to Initiate Litigation was mailed to that party. If the defendant is the State or any subdivision subject to Section 768.29(6)(a), Florida Statutes, the action may not be filed against that defendant until 180 days after the Notice of Intent to Initiate Litigation was mailed to that

party. The action may be filed against any party at any time after the Notice of Intent to Initiate Litigation has been mailed after the claimant has received a written rejection of the claim from that party.

(3) To avoid being barred by the applicable statute of limitations, an action must be filed within 60 days or within the remainder of the time of the statute of limitations after the Notice of Intent to Initiate Litigation was mailed, whichever is longer, after the earliest of the following:

(A) The expiration of 90 days after the date of mailing of the Notice of Intent to Initiate Litigation; or

(B) The expiration of 180 days after mailing of the Notice of Intent to Initiate Litigation if the claim is controlled by Section 768.28(6)(a), Florida Statutes; or

(C) Receipt by claimant of a written rejection of the claim; or

(D) The expiration of any extension of the 90-day presuit screening period stipulated to by the parties in accordance with Section 768.57(4), Florida Statutes.

Original Proceeding - Rules of Civil Procedure (Florida Medical Malpractive Presuit Screening Rules)

Henry Latimer, Chairman, of Fine, Jacobson, Schwartz, Nash, Block & England, Fort Lauderdale, Florida; Wilfred C. Varn of Ervin, Varn, Jacobs, Odom & Kitchen, Tallahassee, Florida; and John F. Harkness, Jr., Executive Director, Tallahassee, Florida,

for The Civil Rules Committee of The Florida Bar, Petitioner