

Supreme Court of Florida

No. 76,500

AMENDMENT TO RULES OF CIVIL PROCEDURE,
RULE 1.650(d)(2).

[October 25, 1990]

PER CURIAM.

We have before us a petition by the Civil Procedure Rules Committee of The Florida Bar to amend Rule of Civil Procedure 1.650(d)(2) to conform with section 766.106(3)(a), Florida Statutes (1989).*

* We have jurisdiction pursuant to article V, section 2(a) of the Florida Constitution.

The existing rule 1.650 was adopted by this Court to provide uniform procedures for implementing the medical malpractice presuit notice requirements of section 768.57, Florida Statutes (Supp. 1986)(renumbered as section 766.106, Florida Statutes (Supp. 1988)). In re Medical Malpractice Presuit Screenina Rules--Civil Rules of Procedure, 536 So.2d 193 (Fla. 1988). At the time rule 1.650 was promulgated and adopted by this Court, the legislatively imposed time requirements for a prospective defendant to act on a notice of intent to initiate litigation in a medical malpractice case depended upon whether the claim was brought against a private party (in which case the period was 90 days), or against an agency of the state of Florida (in which case the period was 180 days). **See §** 768.57(3)(a), Fla. Stat. (1987). In an effort to maintain consistency between the statute and the rule, the time requirements set forth in rule 1.650(d)(2) mirrored those in section 768.57(3)(a).

Subsequent to the adoption of rule 1.650(d)(2), the legislature amended section 768.57(3)(a) and reduced the notice requirement for bringing a medical malpractice action against a state agency from 180 days to 90 days. Ch. 88-173, Laws of Fla. (codified at § 766.106(3)(a), Fla. Stat. (Supp. 1988)).

Despite the change in the statutory requirements, rule 1.650(d)(2) still contains the **90-day/180-day** dichotomy. Thus, the rule is in direct conflict with the statute.

Accordingly, we hereby adopt the proposed amendment, as follows:

RULE 1.650 MEDICAL MALPRACTICE PRESUIT
SCREENING RULE

. . . .

(d) Time Requirements

. . . .

(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.

This amendment shall become effective immediately.

It is so ordered.

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

THE FILING OF A MOTION FOR REHEARING SHALL NOT ALTER THE EFFECTIVE DATE OF THIS RULE.

Original Proceeding - Florida Rules of Civil Procedure

Honorable Wayne L. Cobb, Circuit Judge, Chairman, Dade City, Florida; and Bruce J. Berman, Past Chairman, Miami, Florida, Civil Procedure Rules Committee of The Florida Bar; and John F. Harkness, Jr., Executive Director, The Florida Bar, Tallahassee, Florida,

for Petitioner