

Medical, Dental and Podiatric Malpractice Conference & Trial Rules  
Effective Date: March 1, 2020

Justice Peter J. O'Donoghue  
88-11 Sutphin Boulevard  
Jamaica, New York 11435

Courtroom 47 - Part MD

Tel. Courtroom (718) 298-1123

Assignment of Cases: Cases are assigned to this Part from the filing of the Notice of Medical Malpractice. The date of the Compliance Conference is set forth in the Preliminary Conference Order.

Preliminary Conferences: All preliminary conferences will be held on Tuesdays at 9:30a.m. in the Preliminary Conference Part, Room 314 of the courthouse, and they are presided over by the court-appointed referee, unless otherwise directed by the Court. Failure to appear at the scheduled conference may result in discovery being ordered ex-parte or any other appropriate sanction including preclusion or dismissal ordered. Any inquiry pertaining to preliminary conferences shall be made to the Preliminary Conference Part at (718) 298-1046.

Compliance Conferences: Compliance conferences shall be held on the date scheduled in the Preliminary Conference Stipulation and Order. Conferences shall be held before Justice O'Donoghue in Courtroom 47. Failure to appear at the scheduled conference may result in discovery being ordered ex-parte or any other appropriate sanction including preclusion or dismissal ordered.

Supplemental and Amended Bills of Particulars: A Supplemental Bill of Particulars may be served within 30 days of completion of the last party deposition. Prior to the filing of the Note of Issue, an Amended Bill of Particulars may be served once as of course pursuant to CPLR 3042(b). Post Note of Issue filing, an Amended Bill of Particulars requires motion practice within 60 days of completion of the last party deposition.

Depositions:

(a) Examinations before trial shall be conducted as follows:

The deposition of all plaintiff(s) shall be held no more than 90 days from the date of the Preliminary Conference Order or plaintiff(s) may face dismissal of the complaint. (CPLR 3126). On the date of the scheduled deposition, the witness and the court reporter shall appear at the designated location at the designated time unless all parties agreed to an EARLIER deposition date. If any defendant fails to appear at plaintiff(s) deposition within the said 90 days, that

defendant will be deemed to have waived the right to plaintiff's deposition.

Defendants may not adjourn the deposition date(s) of plaintiff(s) without "good cause" and the inability to obtain either authorizations or medical records prior to plaintiff(s) deposition shall NOT be deemed "good cause" for adjournment of the deposition(s) of plaintiff(s). If the records subsequently obtained reveal the need for additional information, a further limited deposition(s) of plaintiff(s) may be held by agreement of the parties or by Order of the Court. Such limited deposition shall be held subsequent to the completion of all defendants' depositions.

All individually named defendants shall be deposed prior to the Compliance Conference or their answer may be stricken (CPLR 3126). On the date of the scheduled deposition, the witness and the court reporter shall appear at the designated location at the designated time unless all parties agreed to an EARLIER deposition date. If plaintiff fails to appear at a defendant's deposition prior to the Compliance Conference, plaintiff will be deemed to have waived the right to that defendant's deposition. If a defendant's attorney is unable or unavailable to appear and participate in a deposition of a co-defendant, that deposition shall proceed as scheduled. The depositions of all individually named defendants shall be held in order of caption unless a defendant is unable to proceed on his or her date. Then the next individually named defendant's deposition shall proceed. It is the Court's intent that each individually named defendant's deposition shall be scheduled up to thirty (30) days apart, regardless of caption order. If a defendant's attorney is unable or unavailable to appear and participate in a deposition of a co-defendant, that deposition shall proceed as scheduled.

(b) Plaintiff shall identify names for institutional defendants for deposition designation purposes which are revealed through the depositions of individual defendants within one week of completion of all individual defendants' depositions. Institutional witnesses shall be produced within 30 days of identification if still employed. On the date of the scheduled deposition, the witness and the court reporter shall appear at the designated location at the designated time unless all parties agreed to an EARLIER deposition date. If no longer employed, then the last known address and medical license number and date of birth and last known contact number shall be provided within 15 days.

(c) Unless otherwise directed prior to the examinations before trial, attorneys seeking rulings on objections or making application for any other relief pertaining to the depositions shall promptly call Chambers, with their reporter present, or shall communicate with the Emergency Justice, for a determination.

(d) Once begun, that particular party deposition shall continue day to day until completed. The attorneys shall follow Uniform Rules for N.Y.S. Trial Courts PART 221. Uniform Rules For The Conduct Of Depositions.

(e) The transcript of an examination before trial shall be delivered to the party deposed within thirty (30) days of the deposition, and shall be returned, duly executed, pursuant to CPLR

3116.

(f) Subpoenas for the examination before trial of any non-party witness shall be served no later than 45 days after the completion of party depositions, provided such witness is known by completion of party depositions, and if not known at that time, within 45 days of first disclosure or identification of such witness or within the discretion of the Court.

Motion Practice: All Motions Must Be Noticed for Wednesday 9:30a.m.. The Motion Calendar will be called every Wednesday at 9:30 a.m. promptly. A second call will follow at 10:30 a.m.. ALL motion papers must be submitted at the calendar call on the return or adjourn date. The court clerk will not accept motion papers at any other time. ALL motion papers sent to chambers will be discarded.

Electronically Filed (e-filed) cases:

On the first return date, working copies of the moving papers that have been electronically filed (e-filed) shall be submitted even if the motion is adjourned by stipulation. If a working copy is not submitted the motion will be marked off. Service will be accepted at the call of the Calendar and not before.

All motions relating to any phase of discovery and/or bill of particulars, including motions to preclude, strike or restore a case to the Trial Calendar, motions to vacate the Note of Issue, or requesting Article 78 relief require personal appearance by counsel for all parties. Counsel should be prepared to discuss and agree upon a discovery schedule. Furthermore, personal appearance is required for summary judgment motions and motions which have been brought by an Order to Show Cause. All other motions and applications may be submitted on papers only.

Oral argument will be entertained only in the court's discretion. Whenever a personal appearance is not required use of calendar service is permitted both to submit papers and to request counsel adjournments, which will be limited to one per side. The first adjournment on consent will be allowed upon written stipulation, **except with respect to summary judgement motions. NO ADJOURNMENTS ON CONSENT SHALL BE PERMITTED WITH RESPECT TO SUMMARY JUDGMENT MOTIONS.** All stipulations must contain the signature of the attorney consenting to the adjournment and his/her contact information including email address and cell phone number with texting capability. A form which contains only the name of the firm on the stipulation will not be accepted.

Thereafter, attorneys seeking a further adjournment must appear. In any event, adjournments will be limited to one per side absent extenuating circumstances. Do not call the Part or Chambers for adjournments as no adjournments will be granted on the telephone. Use service. The members of the Bar are to make every effort to notify their adversaries and co-counsel of all applications for adjournments in advance, and are required to exchange contact information including email address and cell phone number with texting capability.

E-File Rules and Protocols:

Summary Judgment Motions: Pursuant to CPLR 3212, any motion for summary judgment shall be served and filed no later than **60 days after the filing of the Note of Issue**. The return date for any motion for summary judgment shall be noticed for the next motion day immediately following the serving and filing of the motion for summary judgment. The Court will consider imposing sanctions on attorneys and law firms that make frivolous motions. For E-file cases, the Court requires Working copies to contain **ONLY** the following portions which shall be filed with the Part Clerk at the call of the calendar:

- Notice of Motion, Cross Motion
- Attorneys' Affirmations in Support, Opposition and Reply
- All Bills of Particulars
- All Expert Reports

Working copies of other exhibits shall not be submitted unless specifically requested.

Non-Summary Judgment Motions: The Court only requires Working copies of the following portions which shall be filed with the Part Clerk at the call of the calendar:

- Notice of Motion, Cross Motion
- Attorneys' Affirmations in Support, Opposition and Reply

Working copies of other exhibits shall not be submitted unless specifically requested.

Documentation Requiring Signature: Working copies of documentation requiring the signature of Justice O'Donoghue, including but not limited to Stipulations of ANY Kind, Infant Compromise Orders, EPTL Orders, Orders of Settlement, shall be filed with the Part Clerk.

Working Copies of Stipulations of Adjournments of Motions shall be submitted at the call of the motion calendar.

At all Conferences: All parties shall bring copies of the Compliance Conference Order and all subsequent stipulations and Orders to ALL conferences. Counsel must be fully familiar with the file and have authority to discuss settlement, trial scheduling and any outstanding pre-trial procedural matters including CPLR 3101(d) matters and to make binding stipulations and commitments.. All cases shall be conferenced by the Court. At the conference the Court shall also consider the items set forth in 22 NYCRR 202.26(c). Parties shall comply fully with the requirements of 22 NYCRR 202.26(e). A failure to comply with this subdivision may be deemed a default under CPLR 3404. If plaintiff's counsel fails to appear for any type of court-ordered appearance, the Court may dismiss the Complaint; if defendant's counsel fails to appear for any type of court-ordered appearance, the Court may strike the Answer. (22 NYCRR 202.27)

Note of Issue: Within four (4) weeks of the filing of the Note of Issue, plaintiff's counsel shall file and serve upon defense counsel, a CPLR 3101(d) expert exchange and settlement demand. Defendant's counsel shall serve upon plaintiff's counsel a CPLR 3101(d) expert exchange within four (4) weeks of being served with plaintiff's CPLR 3101(d) exchange. If necessary, any party may supplement their 3101(d) expert information up to 30 days prior to trial and all sides shall disclose in writing, no later than sixty (60) days prior to trial, a list of witnesses anticipated to be called at the time of trial. If the Note of Issue is not timely filed, the case may be dismissed pursuant to CPLR 3126 and/or 3216. If any party fails to timely serve its CPLR 3101(d) exchange, the case may be dismissed on the grounds of "failure to prosecute".

Initial Pre-Trial Conferences: (a) In order to provide for a meaningful settlement discussion at the initial conference defense counsel at the time of service of the Note of Issue shall notify the defendant and the insurance carrier, if any, of the anticipated date of the conference (approximately fifth Monday post-note) and that at least two weeks prior to the initial conference the defense shall be required to indicate to a plaintiff's attorney whether or not the defendant has refused to consent to a settlement or whether or not the defense has an interest in entering into settlement discussions. Any committee meetings or internal consultations required to make such a decision shall be held a sufficient time prior to the conference for a decision to be made at least two weeks prior to the conference. At least two weeks prior to the calendar date for the conference plaintiff's attorney shall initiate a telephone conference with defense counsel. Defense counsel shall discuss the settlement demand with the client and the claims representative prior to the calendar date. The claims representative shall either be present at the conference or available for immediate telephone consultation. If plaintiff is represented by trial counsel without full settlement authority, the attorney of record and plaintiff shall be present or available for immediate telephone consultation.

(b) At the conference plaintiff's counsel shall provide the Court with a courtesy copy of the "Notice of Medical, Dental and Podiatric Malpractice Action" previously served pursuant to 22 NYCRR 202.56 and all parties shall bring copies of the Compliance Conference Order and all subsequent stipulations and Orders.

Discovery Issues:

At any conference any party may raise any outstanding pre-trial procedural issue but should be prepared with a copy of the demand or notice, if any, and the response. The party raising the issue may submit a brief written affirmation setting forth the nature of the application and any supporting statements or case law.

Adjournments: There will be no adjournments on the Medical, Dental and Podiatric Malpractice Trial Calendar made by stipulation. Requests for an adjournment must be made in person at the call of the calendar.

THE COURT WILL NOT ACCEPT EX-PARTE COMMUNICATIONS WRITTEN OR ORAL.  
NO FAXES WILL BE ACCEPTED BY THIS OFFICE AT ANY TIME.