

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

**Courtroom 47 - Part 13  
Tel. Courtroom (718) 298-1123**

## **Medical Malpractice Conference & Trial Rules**

**Post Note Cases** are assigned to this Part upon filing the Note of Issue. Upon assignment an initial pre-trial conference shall be scheduled. Calendars are published in the New York Law Journal, E-Law and [www.nycourts.gov](http://www.nycourts.gov) approximately three weeks prior to the initial conference. Follow-up conferences or hearings shall be scheduled at the initial conference.

**At 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 conferred 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).

### **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 **one month** 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. Unless defense counsel states that his or her client has refused to consent to settlement or that the insurance carrier has marked the case "no pay", plaintiff's counsel shall convey a settlement demand at that time. Defense counsel shall discuss this demand with 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 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 copies of Preliminary Conference and Compliance Conference orders.

### **CPLR 3101(d):**

Counsel's attention is called to the case of Thomas v. Alleyne, (302 AD2d 36, 752 NYS2d 362, Second Dept. December 2002) for the applicable standard for disclosure and protective orders under CPLR 3101(d).

### **Motion Practice:**

#### **Summary Judgment Motions:**

Summary judgment motions shall be made within 120 days after the filing of the Note of Issue. No extensions of time to file a summary judgment motion shall be granted unless "good cause" is shown. Failure to conduct depositions does not constitute "good cause". All motions to restore cases to the active trial calendar will require mandatory appearances.

**Motion Calendar:**

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 (a) Orders to Show Cause and (b) motions relating to (1) any phase of discovery and/or bill of particulars including motions to preclude, strike or restore a case to the Trial Calendar, and/or vacate the Note of Issue; (2) contempt; (3) summary judgment and (4) requesting Article 78 relief requires personal appearance by counsel for all parties. Counsel shall be prepared to discuss and agree upon a discovery schedule. 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 two. The Court further directs that any attorney appearing on a case for any purpose must be familiar with the case, ready, and authorized to resolve any and all issues.

**Adjournments:****Motion Calendar:**

The first adjournment on consent will be allowed upon written stipulation. All stipulations must contain the printed name and signature of the attorney consenting to the adjournment. 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 two absent extenuating circumstances. Do not call the Part or Chambers for adjournments as no adjournments will be granted on the telephone. Use service or mail. The members of the Bar are to make every effort to notify their adversaries and co-counsel of all applications for adjournments in advance.

**Conference Calendar:**

With respect to conferences scheduled for the first time one adjournment by stipulation shall be permitted.

**Trial Calendar:**

No adjournments by stipulation on the Medical Malpractice Trial Calendar shall be granted. Requests for an adjournment must be made in person at the call of the calendar.

**ON MEDICAL MALPRACTICE CASES THE COURT WILL NOT ACCEPT EX-PARTE COMMUNICATIONS WRITTEN OR ORAL. NO FAXES WILL BE ACCEPTED BY THIS OFFICE AT ANY TIME UNLESS REQUESTED BY THE COURT.**

## **PART 13 - IAS RULES**

All telephone inquiries concerning matters pending in IAS Part 13, Civil Term of the Supreme Court, County of Queens, Honorable Peter J. O'Donoghue presiding, shall be made directly to the Part at telephone number (718) 298-1123. Contact with chambers shall not be made unless so directed after contacting the Part at the above listed telephone number.

### **Preliminary Conferences**

A preliminary conference shall be scheduled (1) automatically by the Court within 45 days after filing a Request for Judicial Intervention, pursuant to 22 NYCRR 202.12(b), or (2) upon filing a written Request for a Preliminary Conference with the Clerk's Office, Room 140, in compliance with 22 NYCRR 202.12(a) or an appropriate notice is filed in malpractice or certiorari cases pursuant to 22 NYCRR 202.56 and 202.60.

All preliminary conferences will be held on TUESDAYS at 9:30 a.m. at 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 preliminary 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 Ritholtz in Room 313.

## Motion Practice

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**Motion Practice: Summary Judgment Motions:** Summary judgment motions shall be made within 120 days after the filing of the Note of Issue. No extensions of time to file a summary judgment motion shall be granted unless "good cause" is shown. Failure to conduct depositions does not constitute "good cause". All motions to restore cases to the active trial calendar will require mandatory appearances.

The Court further directs that any attorney appearing on a case for any purpose must be familiar with the case, ready, and authorized to resolve any and all issues.

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