

even though statement of readiness had been filed, since party in medical malpractice action may amend his or her bill of particulars as of right under CLS CPLR § 3042(g) before note of issue is filed; under circumstances, plaintiff was not required to obtain permission to amend by showing adequate reason for delay and merit under CLS CPLR § 3025(b). *Whalen v Marshall* (1989, Sup) 146 Misc 2d 149, 548 NYS2d 878.

Court would deny defendants' motion for order precluding plaintiff from introducing evidence concerning new allegations of malpractice allegedly first set forth in plaintiff's amended bill of particulars, even though statement of readiness had been filed, since party in medical malpractice action may amend his or her bill of particulars as of right under CLS CPLR § 3042(g) before note of issue is filed; under circumstances, plaintiff was not required to

obtain permission to amend by showing adequate reason for delay and merit under CLS CPLR § 3025(b). *Whalen v Marshall* (1989, Sup) 146 Misc 2d 149, 548 NYS2d 878.

2.-5. [Reserved for future use.]

6. Under former § 684.1

Where patient properly instituted malpractice action seeking \$50,000 in damages in Supreme Court and where that action would have continued in Court but for order of removal made without her knowledge, and where removal to civil court would preclude patient from exercising her right to hearing before medical malpractice panel, removal to civil court was improper. *La Placa v Boorstein* (1976) 87 Misc 2d 45, 385 NYS2d 250.

§ 202.57. Judicial review of orders of the State Division of Human Rights; procedure

(a) Any complainant, respondent or other person aggrieved by any order of the State Commissioner of Human Rights or the State Division of Human Rights may obtain judicial review of such order by commencing a special proceeding, within 60 days after service of the order, in the Supreme Court in the county where the alleged discriminatory practice which is the subject of the order occurred or where any person required by the order to cease and desist from an unlawful discriminatory practice or to take other affirmative action resides or transacts business. Such proceeding shall be commenced by the filing of a notice of petition and petition naming as respondents the State Division of Human Rights and all other parties appearing in the proceeding before the State Division of Human Rights.

(b) Except as set forth in subdivision (c) of this section, and unless otherwise ordered by the court, the State Division of Human Rights shall have 20 days after service of the notice of petition and petition to file with the court the written transcript of the record of all prior proceedings upon which its order was made.

(c) Where the petition seeks review of an order issued after a public hearing held pursuant to section 297(4)(a) of the Executive Law:

(1) the petition shall have annexed to it a copy of such order;

(2) the Supreme Court, upon the filing of the petition, shall make an order directing that the proceeding be transferred for disposition to the Appellate Division in the judicial department embracing the county in which the proceeding was commenced; and

(3) the time and manner of the filing of the written transcript of the record of all prior proceedings shall be determined by the Appellate Division to which the proceeding is transferred.

§ 202.58. Small claims tax assessment review proceedings; small claims sidewalk assessment review proceedings; special rules

(a) Establishment. (1) There is hereby established in the Supreme Court of the

State of New York in each county a program to hear special proceedings for small claims tax assessment review pursuant to title 1-A of Article 7 of the Real Property Tax Law; provided, however, that insofar as Hamilton County may lack required personnel and facilities, Fulton and Hamilton Counties shall be deemed one county for the purposes of this rule.

(2) There also is established in the Supreme Court in each county within the City of New York a program to hear special proceedings for small claims sidewalk assessment review pursuant to section 19-152.3 of the Administrative Code of the City of New York.

(b) Commencement of small claims tax assessment review proceeding. (1) A special proceeding pursuant to title 1-A of article 7 of the Real Property Tax Law shall be commenced by a petition in a form in substantial compliance with the forms prescribed by the Chief Administrator of the Courts. Forms shall be available at no cost at each county clerk's office.

(2) Three copies of the petition shall be filed with the county clerk in the county in which the property is located within 30 days after the final completion and filing of the assessment roll containing the assessment at issue, except that in the City of New York, the petition shall be filed before the 25th day of October following the time when the determination sought to be reviewed was made. The petition may be filed with the county clerk by ordinary mail if mailed within the 30-day time period, or in the City of New York, if mailed prior to the 25th day of October, as evidenced by the postmark. A filing fee of \$25 shall be paid at the time of filing, which may be in the form of a check payable to the county clerk.

(3) Within 10 days of filing the petition with the county clerk, the petitioner shall send by mail, a copy of the petition to:

(i) the clerk of the assessing unit named in the petition or, if there is no such clerk, to the officer who performs the customary duties of the clerk, except that in the City of New York the petition shall be mailed to the president of the New York City Tax Commission or to a designee of the president;

(ii) except in the cities of Buffalo, New York, Rochester, Syracuse and Yonkers, to the clerk of any school district within which any part of the real property on which the assessment to be reviewed is located or, if there is no clerk of the school district or such name and address cannot be obtained, to a trustee of the school district;

(iii) the treasurer of any county in which any part of the real property is located; and

(iv) the clerk of a village which has enacted a local law, in accordance with the provisions of subdivision 3 of section 1402 of the Real Property Tax Law, providing that the village shall cease to be an assessing unit and that village taxes shall be levied on a copy of the part of the town or county assessment roll.

(4) The county clerk shall assign a small claims assessment review filing number to each petition, shall retain one copy and shall forward two copies

within two days of filing to the clerk designated by the appropriate administrative judge to process assessment review petitions.

- (c) Commencement of small claims sidewalk assessment review proceeding.
- (1) A special proceeding pursuant to section 19-152.3 of the Administrative Code of the City of New York shall be commenced by a petition in a form prescribed by the Department of Transportation of the City of New York in consultation with the Office of Court Administration. Forms shall be available at no cost at each county clerk's office within the City of New York.
 - (2) Three copies of the petition shall be filed with the county clerk in the county in which the property is located, provided that at least 30 days have elapsed from the presentation of the notice of claim to the Office of the Comptroller pursuant to section 19-152.2 of the Administrative Code. The petition may be filed with the county clerk by ordinary mail. A filing fee of \$25 shall be paid at the time of filing, which may be in the form of a check payable to the county clerk.
 - (3) Within seven days of filing the petition with the county clerk, the petitioner personally shall deliver or send by certified mail, return receipt requested, a copy of the petition to the Commissioner of Transportation of the City of New York or the Commissioner's designee.
 - (4) The county clerk shall assign a sidewalk assessment review filing number to each petition, shall retain one copy and shall forward two copies within two days of filing to the clerk designated by the appropriate administrative judge to process sidewalk assessment review petitions.
- (d) Selection of hearing officer panels. (1) The Chief Administrator of the Courts shall establish panels of small claims hearing officers found qualified to hear small claims tax assessment review proceedings pursuant to title 1-A of article 7 of the Real Property Tax Law and panels of small claims hearing officers found qualified to hear small claims sidewalk assessment review proceedings pursuant to section 19-152.3(d) of the Administrative Code of New York.
- (2) The administrative judge of the county in which the panel will serve, or the deputy chief administrative judge for the courts within the City of New York, if the panel is to serve in New York City, shall invite applicants to apply by publishing an announcement in the appropriate law journals, papers of general circulation or trade journals, and by communicating directly with such groups as may produce qualified candidates.
 - (3) The announcements and communications shall set forth the nature of the position, the qualifications for selection as contained in section 731 of the Real Property Tax Law or section 19-152.3(d) of the Administrative Code of the City of New York, and the compensation.
 - (4) The administrative judge shall screen each applicant in conformance with the requirements set forth in section 731 of the Real Property Tax Law or section 19-152.3(d) of the Administrative Code of the City of New York, for qualifications, character and ability to handle the hearing officer responsibilities, and shall forward the names of recommended nominees, with a summary of their qualifications, to the Chief Administrator for appointment.

(5) Hearing officers shall serve at the pleasure of the chief administrator, and their appointments may be rescinded by the chief administrator at any time.

(6) The chief administrator may provide for such orientation courses, training courses and continuing education courses for persons applying to be hearing officers and for persons serving on hearing officer panels as the chief administrator may deem necessary and desirable.

(e) Assignment of hearing officers. (1) The assessment review clerk of the county in which the panel will serve shall draw names of hearing officers at random from the panel and shall assign to each hearing officer at least the first three, but no more than six, petitions filed with the county clerk pursuant to these rules; provided, however, where necessary to ensure the fair and expeditious administration of justice, the Chief Administrator may authorize the assignment of related petitions and the assignment of more than six petitions to a single hearing officer.

(2) No person who has served as a hearing officer shall be eligible to serve again until all other hearing officers on the panel have had an opportunity to serve.

(3) A hearing officer shall disqualify himself or herself from hearing a matter where a conflict exists as defined by the Public Officers Law or, with respect to small claims tax assessment review hearing officers, by subdivision 2 of section 731 of the Real Property Tax Law. Where a hearing officer disqualifies himself or herself, such hearing officer shall notify the chief administrator or designee and the matter shall be reassigned to another hearing officer.

(4) The hearing officer shall determine, after contacting the parties, the date, time and place for the hearing, which shall be held within 45 days with respect to a small claims tax assessment review proceeding, and within 30 days with respect to a small claims sidewalk assessment review proceeding, after the filing of the petition, or as soon thereafter as is practicable, and which shall be held, where practicable, at a location within the county where the real property is located. The hearing officer shall schedule hearings in the evening at the request of any party, unless special circumstances require otherwise. Written notice of the date, time and place of the hearing shall be sent by mail by the hearing officer to the parties or their attorneys, if represented, at least 10 working days prior to the date of the hearing, provided however, failure to receive such notice in such period shall not bar the holding of a hearing.

(5) Adjournments shall not be granted by the hearing officer except upon good cause shown.

(6) All parties are required to appear at the hearing. Failure to appear shall result in the petition being dismissed or in the petition being determined upon inquest by the hearing officer based upon the available evidence submitted.

(f) Decision and order. (1) The decision and order of the hearing officer shall be rendered expeditiously, and, in a small claims tax assessment review

proceeding, the notice required by section 733(4) of the Real Property Tax Law shall be attached to the petition form.

(2) Costs. (i) In a small claims tax assessment review proceeding, if the assessment is reduced by an amount equal to or greater than half the reduction sought, the hearing officer shall award the petitioner costs against the respondent assessing unit in the amount of \$25. If the assessment is reduced by an amount less than half of the reduction sought, the hearing officer may award the petitioner costs against the respondent assessing unit in an amount not to exceed \$25. (ii) In a small claims sidewalk assessment review proceeding, if the hearing officer grants the petition in full or in part, the hearing officer shall award the petitioner costs against the respondent in the amount of \$25. In any other case, the hearing officer, in his or her discretion, may award the petitioner costs in the amount of \$25, if he or she deems it appropriate.

(3) The hearing officer in a small claims tax assessment review proceeding shall transmit one copy of the decision and order, by ordinary mail, to the petitioner, the clerk of the assessing unit and the assessment review clerk of the court. The hearing officer in a small claims sidewalk assessment review proceeding shall transmit one copy of the decision and order, by ordinary mail, to the petitioner, the Commissioner of Transportation of the City of New York or the Commissioner's designee, and the assessment review clerk of the court.

(4) The assessment review clerk shall file the petition and the attached decision and order with the county clerk.

(5) The assessment review clerk shall make additional copies of the decision and order, as necessary, and, in the case of the small claims tax assessment review proceeding, shall transmit a copy to the clerk of each tax district relying on the assessment that is named in the petition and to the treasurer of any county in which any part of the real property is located. In the case of a small claims sidewalk assessment review proceeding, where the order grants the petition in full or in part, the assessment review clerk shall mail a copy of the decision and order to the Collector of the City of New York.

(g) Advertising by hearing officers. No person who is appointed a hearing officer shall, in any public advertisement published or distributed to advance such person's business or professional interests, refer to his or her status as a hearing officer. No hearing officer shall use letterhead or business cards bearing the title of hearing officer except in direct connection with such person's official duties as hearing officer.

(h)(1) Proceedings pursuant to title 1-A of article 7 of Real Property Tax Law may be heard and determined by a judicial hearing officer. The judicial hearing officer shall be designated and assigned by the appropriate administrative judge to hear such proceedings as determined by that judge or by the assessment review clerk, and the hearing shall be conducted in accordance with this section.

(2) Judicial hearing officers appointed to hear proceedings pursuant to this section shall receive compensation as provided in section 122.8 of the rules

of this Title. A location in which a hearing is held pursuant to this section shall be deemed a "facility designated for court appearances" within the meaning of section 122.8 of this Title.

(i) Collateral proceedings. All applications for judicial relief shall be made in the Supreme Court in the county where the real property subject to review is located. If a judicial hearing officer has heard and determined a proceeding under this section, any application for judicial relief may not be heard by a judicial hearing officer, except upon consent of the parties.

RESEARCH REFERENCES AND PRACTICE AIDS:

24B Carmody-Wait 2d, Judicial Review of Tax Assessments and Taxes §§ 146:172-146:175.

Texts:

NY Real Property Service § 62:53.

§ 202.59. Tax assessment review proceedings in counties outside the City of New York; special rules

(a) Applicability. This section shall apply to every tax assessment review proceeding brought pursuant to title 1 of article 7 of the Real Property Tax Law in counties outside the City of New York.

(b) Statement of income and expenses. Before the note of issue and certificate of readiness may be filed, the petitioner shall have served on the respondent, in triplicate, a statement that the property is not income-producing or a copy of a verified or certified statement of the income and expenses on the property for each tax year under review. For the purposes of this section, a cooperative or condominium apartment building shall be considered income-producing property; an owner-occupied business property shall be considered income-producing as determined by the amount reasonably allocable for rent, but the petitioner is not required to make an estimate of rental income.

(c) Audit. Within 60 days after the service of the statement of income and expenses, the respondent, for the purpose of substantiating petitioner's statement of income and expenses, may request in writing an audit of the petitioner's books and records for the tax years under review. If requested, the audit must be completed within 120 days after the request has been made unless the court, upon good cause shown, extends the time for the audit. Failure of the respondent to request or complete the audit within the time limits shall be deemed a waiver of such privilege. If an audit is requested and the petitioner fails to furnish its books and records within a reasonable time after receipt of the request, or otherwise unreasonably impedes or delays the audit, the court, on motion of the respondent, may dismiss the petition or petitions or make such other order as the interest of justice requires.

(d) Filing note of issue and certificate of readiness; additional requirements.

(1) A note of issue and certificate of readiness shall not be filed unless all disclosure proceedings have been completed and the statement of income and expenses has been served and filed.

(2) A separate note of issue shall be filed for each property for each tax year.