

Medical, Dental and Podiatric Malpractice Conference and Part Rules

Justice Tracy Catapano-Fox

Presiding Justice

Courtroom 48

Courtroom telephone – (718) 298-1172

Principal Law Clerk – Kally Konstantinidis, Esq.

Secretary – Ms. Kris Corda

Part Clerk – Mr. Eric Justvig

Part email – QSCMDP@nycourts.gov

Justice Kevin Kerrigan

Courtroom 63

Courtroom telephone – (718) 298-1213

Principal Law Clerk – Caitlin Saginario, Esq.

Secretary – Ms. Roseann Geiger

Part Clerk – Mr. Carmine Baldi

Part email – QSCPart10@nycourts.gov

Assignment of Cases – Cases are assigned to the medical, dental and podiatric malpractice Part [MDP] from the filing of the Notice of Medical Malpractice. All communications with Chambers must include all parties, and no ex-parte communications will be permitted.

DISCOVERY

Preliminary Conferences – All preliminary conferences will be held on Tuesdays of each week, and the parties are directed to email their fully executed Preliminary Conference Order [PC] directly to QSCMDP@nycourts.gov at least one week before the scheduled preliminary conference date. If the parties timely submit the PC Order, no appearance will be required at the preliminary conference. **All appearing parties must execute the PC Order.** However, if a fully executed PC Order is not timely submitted by uploading a copy of the Order to NYSCEF, the parties will receive a **Microsoft Teams** link for a virtual preliminary conference. Failure to submit a fully executed PC order or to appear at the virtual conference will result in a default PC Order being issued by the Court. A copy of a blank PC

Order can be found on the Court's Website here: [malpractice pcfom.pdf \(nycourts.gov\)](#)

Compliance Conferences – All compliance conferences (CC) will be held virtually on Tuesday and the parties will receive a **Microsoft Teams** virtual link for the conference. Failure to appear at the virtual conference will result in a default CC Order issued by the Court or other appropriate sanction. If the parties prefer an in-person conference, they can send a request by email to the assigned judge. A copy of a blank Compliance Conference Stipulation and Order can be found on the Court's Website here: [med mal cc form.pdf \(nycourts.gov\)](#)

Virtual Conferences – Attorneys and parties (represented and self-represented) are directed to ensure that they appear in professional attire and have an appropriate virtual background during any virtual conference. Attorneys and parties should have sufficient technical capability and equipment to participate in the virtual conference, and should adhere to the same rules of conduct and decorum as expected within the courthouse.

Supplemental and Amended Bills of Particulars – A Supplemental Bill of Particulars may be served within thirty (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 without Court permission pursuant to CPLR §3042(b). Subsequent to the filing of the Note of Issue, an Amended Bill of Particulars can only be permitted by motion within sixty (60) days from the date of completion of the last party deposition.

Depositions – Plaintiff's deposition shall take place within ninety (90) days from the date of the Preliminary Conference Order. Plaintiff's failure to appear for his/her deposition may result in the imposition of sanctions including dismissal of the Complaint. Failure to notice and schedule plaintiff's deposition within the above stated ninety (90) days may result in sanctions, including waiver of the right to depose plaintiff. Adjournments of plaintiff's deposition may not occur without good cause, and require Court permission. The inability to obtain authorizations or medical records prior to plaintiff's deposition will not be considered good cause for an adjournment. Should records subsequently reveal the need for additional discovery, a further limited deposition of plaintiff may be held by agreement of the parties or Court Order, and will occur subsequent to the completion of all defendants' depositions.

All individually named defendants shall be deposed prior to the Compliance Conference, and failure appear for deposition may result in sanctions, including striking the non-appearing defendant's Answer. 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 at a co-defendant's deposition, the deposition shall proceed as scheduled. The depositions of all individually named defendants shall be held in the order of the caption unless otherwise agreed upon by the parties. In the event that a defendant is unable to proceed on the scheduled date, then the next individually named defendant's deposition shall proceed as scheduled. All depositions shall proceed expeditiously, and any issues that arise during the deposition may be presented to the Court for determination.

Plaintiff shall identify the individuals representing institutional defendants sought for deposition within one week of completion of all individual defendants' depositions. Institutional witnesses shall be produced within thirty (30) days of identification, if still employed. If a witness is no longer in the employ of the defendant(s), then said institutional defendant must provide the last known address, medical license number, date of birth, last known contact telephone number and email address for said individual within fifteen (15) days of identification.

Attorneys may contact the chambers of the assigned judge for rulings on objections or applications relevant to depositions. A witness' deposition shall continue day-to-day until completed and shall follow the Uniform Rules for the Conduct of Depositions Part 221. The deposition transcript shall be delivered to the deposed party within thirty (30) days of the deposition and shall be duly executed and returned in accordance with CPLR §3116. Subpoenas for depositions of non-party witnesses shall be served no later than forty-five (45) days after the completion of all party depositions or forty-five (45) days after identification of said witness.

Motions – All motions shall be noticed for Wednesdays at 9:30 am in courtroom 48, where the motion calendar will be called. A second call will immediately follow the 9:30 am call. All motion papers must be submitted through NYSCEF, and no working papers are required or expected. All motions related to discovery, seeking sanctions pursuant to CPLR §3124 or CPLR §3126, or Article 78 petitions, require personal appearance by counsel for all parties. If the parties/attorneys are

requesting oral argument, they must notify the opposing parties at least three (3) business days prior to the return date of the motion, and all parties must appear in person for the oral argument. Adjournment requests will be automatically granted for the first request, and all other requests must be made on consent of the Court. Adjournments are generally limited to one per party absent extenuating circumstances, and must be made on notice to all parties. Summary judgment motions pursuant to CPLR §3212 shall be made no later than one hundred twenty (120) days from the filing of the Note of Issue.

CPLR §3101(d) disclosures – Within four (4) weeks of the filing of the Note of Issue, plaintiff’s counsel shall file in NYSCEF an expert witness disclosure pursuant to CPLR §3101(d), and shall communicate a settlement demand to defendants. All defendants shall file in NYSCEF an expert witness disclosure pursuant to CPLR §3101(d) within four (4) weeks of the filing of plaintiff’s CPLR §3101(d) disclosure. If necessary, any party may supplement the CPLR §3101(d) disclosure up to thirty (30) days from the date of trial.

Alternative Dispute Resolution – The parties are encouraged to consider alternative dispute resolution in resolving matters. If the parties are interested in ADR, they should email the Court at QSCMDP@nycourts.gov to obtain the necessary paperwork.

TRIALS

Post Note of Issue Pre-Trial Conference – Upon the filing of the Note of Issue, the parties will be required to appear for a pre-trial conference. All pre-trial conferences are scheduled on Wednesdays at a time designated by the Court. The parties/attorneys will receive a **Microsoft Teams** link prior to the scheduled conference.

Trial Conference – All trial-ready conferences will occur in person on Mondays at 9:30 am. The parties must exchange a witness list of individuals who may be called to testify, at least sixty (60) days prior to trial. Failure to timely disclose a witness without good cause may result in sanctions. All required notices must be uploaded into NYSCEF, including Notice of Medical, Dental or Podiatric Malpractice Action, prior to the first trial conference. **All parties are encouraged to meet and confer prior to the trial conference.** Defense counsel must notify plaintiff and the Court one (1) week before the first trial conference whether the

matter is settled. All parties must appear at the trial conference with full settlement authority and access to any necessary parties by telephone to reach settlement, and said necessary parties may be directed to appear in-person at the Court's discretion. All parties must have the authority to consider alternative dispute resolution (ADR) methods at the conference, and must articulate to the Court why alternative dispute resolution would not be appropriate.

Trials – All parties must submit any motions *in limine* to the Court one (1) week prior to jury selection, and said motions shall be uploaded into NYSCEF. Jury selection shall occur expeditiously and the parties should present a proposed witness schedule list to the Court prior to jury selection, along with any proposed verdict sheet and jury charges. The parties should be prepared to proceed with the trial day-to-day and any adjournment requests shall be granted solely at the Court's discretion.

Accommodations – Counsel and any self-represented party, at least ten (10) days prior to the trial, shall advise the MDP Clerk by email if the services of a foreign language interpreter are required for any party or witness, or if any accommodations or special equipment are required for any party or witness.

Infant Compromise and Death Compromise Orders – Petitions for an Infant Compromise Order must comply with CPLR §1208 and 22 NYCRR §202.67. Petitions for Death Compromise Orders must comply with EPTL §5-4.6. The petition and supporting documentation is reviewed by Chambers. In the event that additional documentation is needed or the submission is incomplete, Chambers will notify the attorney by email. All documents requested by the Court must be uploaded to NYSCEF and followed up with an email to the Court Clerk with the documents attached. Infant Compromise hearings will be scheduled by Chambers only upon a determination that all required documentation has been submitted.

Effective 9/11/2023