



STATE OF NEW YORK
UNIFIED COURT SYSTEM

851 Grand Concourse
Bronx, NY 10451

**PART 34 - MEDICAL MALPRACTICE
RULES AND PROCEDURES**

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LETTERS AND COMMUNICATION TO THE COURT

Communications shall include all relevant parties and be transmitted to the Court via e-mail at BXMEDMAL-IA34@nycourts.gov.

RULES REGARDING CONFERENCING CASES

Beginning March 1, 2023, all conferences shall be in person unless otherwise specified. Appearance by all counsel is mandatory. Attorneys appearing at conferences are expected to be fully familiar with all aspects of their case, including what remains outstanding. In general, the Court encourages the parties to make earnest efforts to resolve disputes prior to seeking the Court's intervention. Should all parties enter into a stipulation and e-mail the stipulation to the Court prior to the conference date and in compliance with the within Court rules, no appearances will be necessary.

Preliminary Conferences

The procedure for scheduling a Preliminary Conference ("PC") is as follows: Counsel must (1) file a Request for Judicial Intervention ("RJI"); and (2) ensure the case is assigned to Part 34 and is designated a medical malpractice matter.

At least one week before any PC date, the parties shall complete and submit a fillable PC Order form for the Court's approval. The completed and fully executed PC Order form shall be sent to BXMEDMAL-IA34@nycourts.gov. The e-mail must include all parties on the e-mail chain. The subject line of the e-mail shall include the: Index Number, Caption and PC date.

If the parties agree on all matters and the Court approves the terms of a proposed Stipulation and/or Order, the Stipulation and/or Order shall be “So Ordered” by the Court and uploaded to NYSCEF. The Court shall schedule a Compliance Conference date.

Should the Court not receive a PC Order prior to the scheduled conference, the parties will be required to appear in person for the PC.

Bill of Particulars: Any proposed PC Order shall state the date plaintiff served the Bill of Particulars (“BP”). The failure to serve a BP will result in the Court forestalling issuance of a PC Order until a BP has been provided. The continued failure to provide a BP may result in an Order imposing costs or other sanctions upon the offending party pursuant to §130.2.1 of the Rules of the Chief Administrator, 22 NYCRR §202.27, or any other applicable rule or statute.

Medical Authorizations: When a defendant serves a demand for authorizations together with a demand for a BP, Counsel for plaintiff shall serve the authorizations with the BP.

Should the Court not receive a PC Order prior to the scheduled conference, the parties will be required to appear in person for the PC.

Compliance Conferences

The date for the initial Compliance Conference (“CC”) shall be set by the Court in the PC Order. Absent an extenuating circumstance, a CC shall be scheduled no later than four (4) months after the PC.

At least one week before any CC date, and after conversing with all Counsel regarding outstanding discovery, the parties shall complete and submit a fillable CC Order form for the Court’s approval. The completed and fully executed CC Order form shall be sent to BXMEDMAL-IA34@nycourts.gov. The e-mail must include all parties on the e-mail chain. The subject line of the e-mail shall include the: Index Number, Caption and CC date. The body of the e-mail must indicate that the Order is on consent.

If the parties agree on all matters and the Court approves the terms of a proposed Stipulation and/or Order, the Stipulation and/or Order shall be “So Ordered” by the Court and uploaded to NYSCEF. The next CC date will be set in the Stipulation and Order to ensure the completion of discovery.

The Court may deem it necessary to hold further Compliance Conferences to ensure adherence with outstanding discovery.

Should the Court not receive a CC Order prior to the scheduled conference, the parties will be required to appear in person for the CC.

Definite Terms

When completing a PC or CC Order for the Court's review, Counsel is directed to use dates certain, such as "on December 31, 2022." Open ended dates such as "on or before December 31, 2021," "within 45 days," or non-specific directives such as "all discovery not yet provided" or "unless otherwise provided," or "to the extent not yet provided," may not preserve any rights and are to be used sparingly.

Compliance with Orders

Strict compliance with all PC and CC Orders is required (*see Kihl v Pfeffer*, 94 NY2d 118 [1999]). Unexcused or unjustified failures to comply with requirements and deadlines fixed by the Court in the subject Order, may result in the imposition of costs, sanctions, penalties or other remedies upon the offending party pursuant §130.2.1 of the Rules of the Chief Administrator, 22 NYCRR §202.27, or other applicable rule or statute, including but not limited to CPLR §3126.

Extensions of deadlines set forth in the PC, CC or other discovery Orders must be requested from the Court in writing and shall only be granted upon a showing of good cause.

Failure to Appear

Upon a party's failure to appear for a conference, costs, sanctions or other remedies may be imposed upon the offending party pursuant to §130.2.1 of the Rules of the Chief Administrator, 22 NYCRR §202.27, or any other applicable rule and statute.

Adjournment of Conferences

Any application for the adjournment of a conference must be made via e-mail to BXMEDMAL-IA34@nycourts.gov at least one week prior to the scheduled date. The party must state the reason for seeking an adjournment.

MOTIONS

Disclosure Disputes

Prior to making a discovery motion, Counsel shall consult one another in a good faith effort to resolve any discovery disputes in compliance with Uniform Rule §202.7(a)(2). Absent good cause, failure to comply with a discovery Order may result in the imposition of penalties upon the offending party and, where warranted, upon Counsel. Such penalties may include waiver of the discovery, preclusion, dismissal, striking of an Answer, costs, sanctions and/or attorneys' fees.

Discovery Motion Rules

If the parties are unable to resolve a discovery dispute after good faith efforts, an application shall be made for a pre-motion conference to discuss the discovery dispute and all other discovery issues in the case. The application shall be made via e-mail to BXMEDMAL-IA34@nycourts.gov and shall state the nature of the discovery dispute and the applicable law relative thereto. Where possible, a conference will be scheduled by the Court if the issue cannot be otherwise resolved. If the discovery dispute is not resolved at the conference, a briefing schedule will be issued for the motion to be made.

Motions for Summary Judgment

Any motions for summary judgment must be made within ninety (90) days from the filing of the Note of Issue and Certificate of Readiness.

NOTE OF ISSUE

A Note of Issue and Certificate of Readiness must be filed by the deadline imposed by the Court at the final CC. A Note of Issue and Certificate of Readiness may not be filed unless a stipulation has been executed by all Counsel indicating that discovery is complete, and a copy of the stipulation has been "So Ordered" by the Court.

PRE-TRIAL/SETTLEMENT CONFERENCES

The Court shall schedule a Pre-Trial Conference ("PTC") on all cases no later than four (4) months following the filing of the Note of Issue. The PTC shall be scheduled at the time of the filing of the Note of Issue. If it is determined at the PTC that the case has potential to settle or resolve, the Court will schedule a Settlement Conference ("SC").

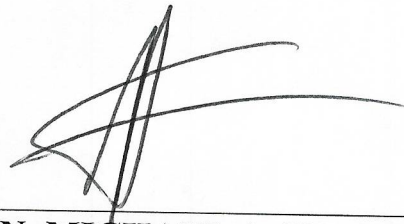
Attorneys appearing at the PTC/SC must be fully familiar with all aspects of the case.

Should any case not be scheduled for a PTC within four (4) months after the filing of the Note of Issue, the parties are to notify the Court via e-mail at BXMEDMAL-IA34@nycourts.gov and request such conference.

ALTERNATIVE DISPUTE RESOLUTION

Any party and/or parties interested in referring a case for Alternative Dispute Resolution (“ADR”) is directed to conspicuously indicate their interest in ADR on the PC and/or CC Order.

Dated: March 1, 2023

A handwritten signature in black ink, consisting of several fluid, overlapping strokes, positioned above a horizontal line.

HON. MICHAEL A. FRISHMAN