



STATE OF NEW YORK
UNIFIED COURT SYSTEM
TWELFTH JUDICIAL DISTRICT
SUPREME COURT, CIVIL TERM
851 GRAND CONCOURSE
BRONX, NEW YORK 10451-2937

ALICIA M. GEREZ
Acting Supreme Court Justice

Part 19A-Medical Malpractice: Rules and Procedures

Hon. Alicia Gerez

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Alternative Dispute Resolution

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

Compliance with Orders

Strict compliance with Preliminary and Compliance Conference Orders is required (*see Kihl v. Pfeffer*, 94 NY2d 118 [1999]) (When a party fails to comply with a court Order and frustrates the disclosure scheme set forth in discovery rules, it is well within trial court’s discretion to dismiss the complaint, or strike an answer.) All parties are cautioned that there are **no adjournments permitted** of the discovery dates provided in an Order. Unexcused or unjustified failures to comply with requirements and deadlines fixed by the Court in the subject Orders, may result in the imposition of costs, sanctions, penalties or other remedies upon the offending party pursuant to section 130.2.1 of the Rules of the Chief Administrator, 22 NYCRR § 202.27, or other applicable rules or statutes, including but not limited to CPLR § 3126.

Extensions of deadlines set forth in a Preliminary or Compliance Conference Order must be requested from the Court in writing and shall only be granted upon a showing of good cause.

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.

E-file Conversion

All attorneys are required to convert any non-e-filed cases into an e-file.

Letters and Communications to the Court

Communications should include all relevant parties and be transmitted to the Court via email at Bxmedmal-ia19a@nycourts.gov

Motions

Adjournments

Stipulations to extend the time to move for motions will not be accepted by the Court.

In order to extend the time to move, parties must request permission from the Court by submitting a letter through NYSCEF. The letter must state the reason for the extension, the new filing date, and whether all the parties agree to the extension. If the extension is granted, the Court will provide a written response stating same.

Disclosure Disputes

Prior to making a discovery motion, Counsel should consult one another in a good faith effort to resolve any discovery disputes in compliance with Uniform Rule § 202.7(a)(2).

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 email to Bxmedmal-ia19a@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.

Filing a motion

For all motions other than summary judgment, parties must have leave from the Court to make the motion. Unless leave was given during a compliance or status conference, a pre-motion conference must be held prior to filing.

All motions must be electronically filed. Parties must submit their motion on NYSCEF and send a courtesy email to Bxmedmal-ia19a@nycourts.gov informing the Court of the motion.

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 Compliance Conference. 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.

Rules Regarding Conferences

Unless otherwise specified, all conferences will be held virtually on Microsoft Teams. The link for all conferences with this Part is <https://notify.nycourts.gov/meet/0ks7cp>. Calendar invitations are sent to all the emails associated with the case on NYSCEF prior to the conference date. The conference link is also included in those invitations.

Appearances by all Counsel is **mandatory**. Upon a party’s failure to appear for a conference, costs, sanctions or other remedies may be imposed upon the offending party pursuant to section 130.2.1 of the Rules of the Chief Administrator, 22 NYCRR § 202.27, or any other applicable rule and statute.

Attendees are recommended to join the conference a few minutes ahead of time to ensure a timely start. Attorneys appearing at conferences are expected to be fully familiar with all aspects of their case including, but not limited to, what discovery remains outstanding.

Preliminary Conferences

The procedure for scheduling a Preliminary Conference is as follows:

Counsel must:

- (1) File an RJJ (Request for Judicial intervention)

- (2) Ensure the case is properly assigned to Part 19A and is designated as a medical malpractice matter;
- (3) Confer with all Counsel regarding the completion of a proposed Preliminary Conference form and submit same by both uploading the proposed form to NYSCEF *and* sending a courtesy copy to the Court via Bxmedmal-ia19a@nycourts.gov.
 - a. When completing a proposed form for the Court's review, Counsel is directed to use exact dates and refrain from open ended timeframes such as "on or about," "within 45 days," and so forth. Additionally, vague phrases such as "all discovery not yet provided" may not preserve any rights and shall be used sparingly.
- (4) Once submitted, either:
 - a. A preliminary conference will be scheduled to discuss the proposed form prior to signing; or
 - b. The proposed form will be signed and uploaded to NYSCEF with a future compliance conference date provided.

Compliance Conferences

Absent extenuating circumstances (and factoring case complexity), a Compliance Conference will be scheduled no later than four (4) months after the Preliminary Conference order is signed.

The Court directs that prior to any Compliance Conference the parties must:

- (1) Review all prior Court Orders (to the extent prior Orders exist);
- (2) Converse with all Counsel regarding any outstanding discovery; and
- (3) Complete the fillable Compliance Conference Order form and submit to the Court at least **five (5) days in advance** of the date scheduled for a virtual conference. Proposed Compliance Conference Orders can be sent to Bxmedmal-ia19a@nycourts.gov or uploaded to NYSCEF.
 - a. When completing a proposed form for the Court's review, Counsel is directed to use exact dates and refrain from open ended timeframes such as "on or about," "within 45 days," and so forth. Additionally, vague phrases such as "all discovery not yet provided" may not preserve any rights and shall be used sparingly.

In certain cases, the Court may deem it necessary to hold further Compliance Conferences to ensure adherence with outstanding discovery. When a Compliance Conference date is determined, all emails associated with the case on NYSCEF will receive a calendar invitation with the Part conference link.

Pre-Trial and Settlement Conferences

The Court will Schedule a Pre-Trial Conference **ON ALL CASES** no later than four (4) months following the filing of the Note of Issue. The Pre-Trial Conferences will be scheduled at the time the Note of issue is filed and will take place via Microsoft Teams. If it is determined at the virtual Pre-Trial conference that the case has potential to settle or resolve, the Court will schedule a Settlement Conference to take place either via Microsoft Teams or in-person at the courthouse.

Attorneys appearing at the Pre-Trial/Settlement Conference must be fully familiar with all aspects of the case.

Should any case not be scheduled for a Pre-Trial Conference within four (4) months after the filing of the Note of Issue, the parties are to notify the Court via email at Bxmedmal-ia19a@nycourts.gov and request such conference.

Requesting a Conference

To request a conference, parties must send a proposed order to Bxmedmal-ia19a@nycourts.gov and, in the body of the email, request a conference.

The Court will then schedule a conference date where the parties on NYSCEF will receive a calendar invitation and a link to appear virtually.

Adjournment of Conferences

Any application for the adjournment of a conference must be made via email to Bxmedmal-ia19a@nycourts.gov at least one week prior to the scheduled date. Parties must submit a letter to the Part email and to NYSCEF stating the reason for seeking the adjournment and whether all parties consent to the adjournment.

Settlements

When the case has settled, parties must submit a letting to NYSCEF informing the Court that the case has settled. All future settlement conferences will then be adjourned.