

MEDICAL, DENTAL & PODIATRIC MALPRACTICE PART RULES
Effective January 13, 2023

In accordance with the Uniform Rules for the Supreme Court & the County Court (22 NYCRR) Part 202, the Medical, Dental & Podiatric Malpractice Part for the Supreme Court of Westchester County has been established.

Presiding: HON. LEWIS J. LUBELL, J.S.C.

Personnel: Gardner Miller, Principal Law Clerk
Dorian Wood, Court Attorney-Referee
Meagan Gorton, Part Clerk
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Courtroom: Room 1203

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The Medical, Dental & Podiatric Malpractice Part for the Supreme Court, Westchester County (“MDPM-P”) is a specialized Part designated to hear civil matters in medical, dental and podiatric malpractice actions. These rules are promulgated to apply in medical, dental and podiatric malpractice actions only to the extent that they are not inconsistent with the provisions the Uniform Rules for the Supreme Court & the County Court (22 NYCRR) § 202.56.

A. GENERAL PROVISIONS¹

Appearances By Counsel and Parties. These Rules shall apply to virtual and in-person appearances. Counsel at all court appearances should be fully familiar with the case, fully prepared to discuss pending matters competently, authorized to enter into substantive and procedural agreements on behalf of their clients, and authorized to enter into a disposition of the case.

Any person who intends to appear without a lawyer in an action pending in the MDPM-P is advised to review the information set forth at <http://www.nycourts.gov/courthelp>.

Counsel or self-represented parties are cautioned to arrive on time for virtual and in-person appearances in the MDPM-P. Defaulting or late appearances by counsel or parties, in the absence of an adequate excuse, may be subject to sanctions and/or costs. The parties are reminded that they are expected to be courteous to each other and to Court personnel at all times during virtual and in-person appearances.

¹ Parties are referred to the Westchester Supreme Court Civil Case Management Rules for all civil cases that are not medical, dental and podiatric malpractice actions <https://ww2.nycourts.gov/courts/9jd/civilCaseMgmt.shtml>.

For all scheduled in-person appearances, counsel or self-represented parties may request permission to appear virtually. All requests to appear virtually shall be made at least three (3) business days prior to any scheduled conference and shall be made by email to MedMalWestchester@nycourts.gov. It shall be at the discretion of the MDPM-P whether such a request will be approved.

Virtual appearances may be ordered or permitted by MDPM-P or as directed by Administrative Order. In the event that a virtual appearance is scheduled, it shall be conducted via Microsoft Teams. A Teams link shall be emailed to all parties prior to the scheduled virtual appearance. In the event that a party does not receive a link for a scheduled virtual appearance, the party shall request a link by e-mailing the MDPM-P at MedMalWestchester@nycourts.gov on notice to all other parties, no later than two business days before the virtual appearance date. Teams links are sent only to the parties' service e-mail addresses, as listed on their NYSCEF accounts. The Teams links are not sent to any other e-mail addresses, even if the parties have listed additional e-mail addresses on their NYSCEF accounts. It is the responsibility of the parties to ensure that the service e-mail addresses on their NYSCEF accounts are accurate and are properly monitored.

In the event that a party experiences technical difficulties when attempting to access the Teams link and is also unable to utilize the call-in number, the party shall immediately e-mail the MDPM-P Part Clerk on notice to all other parties. The party shall include in the e-mail a cell phone number or other direct telephone number at which the party can be reached.

A claim that a party did not receive a Teams link shall not be deemed an adequate excuse in the event that a Teams link was sent to a service e-mail address listed on a party's NYSCEF account. No party or attorney shall record any virtual appearance. No individual, other than counsel and the parties, may participate or be present in the same room during a virtual appearance, unless expressly permitted by the Court.

E-Filing. Any medical, dental or podiatric malpractice action commenced in Supreme Court, Westchester County, is subject to mandatory electronic filing utilizing the New York State Courts Electronic Filing System ("NYSCEF") in accordance with the program established by the Chief Administrator of the Courts pursuant to 22 NYCRR 202.5-b and 202.5-bb, the Administrative Judge of the Ninth Judicial District, and the Westchester County Clerk as Clerk of the Supreme and County Courts. In any matter commenced by e-filing assigned to the MDPM-P, counsel and self-represented parties should familiarize themselves with the statewide e-filing rules (22 NYCRR 202.5-b and 202.5-bb are available at <https://iappscontent.courts.state.ny.us/nyscef/staging/legislation.htm>). If a party has opted out of NYSCEF, a copy of any document filed via NYSCEF must be served upon that party by mail within the prescribed time periods and proof of service thereof filed via NYSCEF. General questions about e-filing should be addressed to the E-Filing Resource Center at (646) 386-3033 or efile@nycourts.gov. Questions relating to local e-filing procedures may be addressed to the Civil Calendar Office.

Interpreters, Accommodations and Special Needs. Counsel and any self-represented party shall immediately advise the MDPM-P 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 who is hearing-impaired or has special needs.

General Inquiries and Scheduling. All questions, requests for adjournments, or other inquiries regarding scheduling a matter pending in the MDPM-P shall be addressed to the Part Clerk by email at MedMalWestchester@nycourts.gov. No inquiries shall be directed to Justice Lubell's chambers. Correspondence regarding scheduling, only as expressly permitted herein, may be filed and transmitted to other parties by NYSCEF or e-mail. A party seeking an adjournment shall do so in accordance with these Rules by request transmitted by NYSCEF or e-mail. The MDPM-P does not accept papers of any kind by fax transmission without prior Court approval.

B. PRELIMINARY CONFERENCES

Preliminary Conference Stipulations. As soon as practicable after the filing via NYSCEF of the RJJ and Notice of Medical, Dental or Podiatric Malpractice Action in accordance with 22 NYCRR 202.56 (a) and CPLR 3406, a Court Notice shall be issued by the MDPM-P via NYSCEF setting forth a control date for the submission of a preliminary conference stipulation. Where a request is filed for a preliminary conference in an action involving a terminally ill party governed by CPLR 3407, these rules shall apply only to the extent that they are not inconsistent with the provisions of CPLR 3407. In such cases, the request for a preliminary conference may be filed at any time after commencement of the action and shall be accompanied by the physician's affidavit as required by CPLR 3407 (22 NYCRR 202.12 [I]).

In the event that the parties agree upon a discovery schedule, they may submit by the control date a preliminary conference form stipulation. A Preliminary Conference Stipulation and Order specific to medical, dental and podiatric malpractice actions will be utilized for such actions. The form is available at <https://ww2.nycourts.gov/courts/9jd/civilCaseMgmt.shtml>. The form stipulation must be executed by plaintiff(s) and all answering defendant(s) and uploaded as a "Stipulation – Preliminary Conference (Request to So Order)" via NYSCEF. The fully executed preliminary conference stipulation shall be reviewed to confirm that the schedule proposed by the parties is within the applicable deadline for completion of pre-trial proceedings for such actions (*i.e.*, 15 months for the completion of discovery in complex cases, as set forth in 22 NYCRR 202.19). If the preliminary conference stipulation is deemed acceptable and so-ordered, it shall be uploaded to the NYSCEF system by the Court.

In the event that a party requires guidance from the Court with respect to the preparation of the preliminary conference stipulation, the party may request a preliminary conference prior to the control date set forth in the Court Notice. The request for a preliminary conference shall be made via e-mail to MedMalWestchester@nycourts.gov, on notice to all parties.

Preliminary Conferences. In the event that the parties either fail to upload an executed proposed preliminary conference stipulation by the control date set forth in the Court Notice or have uploaded a proposed preliminary conference stipulation that is not acceptable to the MDPM-P, or request a preliminary conference, a preliminary conference shall be scheduled pursuant to 22 NYCRR 202.56 (b). The MDPM-P shall issue a Notice via NYSCEF specifying the date and time

of the preliminary conference. All preliminary conferences shall be held virtually unless otherwise designated.

The matters to be addressed at the preliminary conference shall include as appropriate, simplification and limitation of factual and legal issues and the establishment of a timetable for the completion of all disclosure proceedings (22 NYCRR 202.12[c], 202.56[b]; CPLR 3406[b]). Counsel for all parties shall consult with respect to these issues prior to the preliminary conference and shall make a good faith effort to reach agreement in advance of the conference (22 NYCRR 202.11).

All counsel appearing at the preliminary conference are expected to be fully familiar with the action and authorized to make binding stipulations or commitments, or shall be accompanied by a person empowered to act on behalf of the party represented (22 NYCRR 202.56[b][3])

Any party may seek to advance the date of a preliminary conference upon a showing of special circumstances (22 NYCRR 202.12 [g]). The request to advance the conference date shall be made via e-mail to MedMalWestchester@nycourts.gov, on notice to all other parties.

In the event that a dispositive motion is filed and accompanies the RJI rather than a request for a preliminary conference, the case shall promptly be referred for a preliminary conference, and the MDPM-P shall issue a control date for the submission of a preliminary conference stipulation, as set forth herein. Unless otherwise directed, the statutory stay in CPLR 3214 for dispositive motions made pursuant to CPLR 3211, 3212 or 3213 is superceded by these Rules, with the exception of motions made pursuant to CPLR 3211 (g). Parties are cautioned that they will be expected to complete all discovery within the designated track and discovery shall not be stayed or otherwise extended due to the pendency of motions.

Adjournments. Adjournments of preliminary conferences shall be granted only upon a showing of good cause (22 NYCRR 202.10). A party may upload to NYSCEF a request for an adjournment by selecting NYSCEF document type “Correspondence (Request for Adjournment).” The adjournment request must state: (1) the appearance date; (2) two proposed adjourned dates, which dates shall be no later than one month following the scheduled virtual preliminary conference; (3) the number of prior adjournments; and (4) whether all parties consent, and, if not, the reasons given for refusing or withholding consent. All requests for adjournments must be made on notice to all parties. When practicable, the request for an adjournment shall be made at least two (2) business days before the scheduled preliminary conference. Unless the parties receive confirmation from the Court either via e-mail or through a Microsoft Teams notification that a conference has been rescheduled, the parties shall appear for the conference as originally scheduled.

C. COMPLIANCE CONFERENCES

The date of the first Compliance Conference shall be noted on the preliminary conference order. To ensure the timely completion of discovery, the first compliance conference shall be held on a date at the discretion of the Part. Counsel for all parties shall consult with respect to all discovery issues and any other issues to be discussed at the conference prior to the compliance

conference and shall make a good faith effort to reach agreement in advance of the conference (22 NYCRR 202.11).

All compliance conferences shall be conducted by the assigned Court Attorney Referee who shall monitor the progress of discovery to completion and ensure that discovery obligations and deadlines are enforced. Requests for modifications to discovery schedules shall be addressed to the Court Attorney Referee at the conference. Applications for extensions of a discovery deadline shall be made as soon as practicable and prior to the expiration of such deadline (22 NYCRR 202.20-e). Inquiries submitted via the NYSCEF system or by email are restricted to scheduling matters and routine submissions only. The Court shall not entertain requests to extend court-ordered discovery deadlines or respond to discovery disputes submitted via e-mail or the NYSCEF system. If assistance is required regarding a discovery issue, a party shall request a compliance conference in a timely manner by e-mailing MedMalWestchester@nycourts.gov, on notice to all other parties.

Adjournments. Adjournments of compliance conferences shall be granted upon a showing of good cause (22 NYCRR 202.10 [b]). A party may upload to NYSCEF a request for an adjournment by selecting NYSCEF document type “Correspondence (Request for Adjournment).” The adjournment request must state: (1) the appearance date, (2) two proposed adjourned dates, which dates shall be no later than 30 days from the scheduled conference date; (3) the number of prior adjournments, and (4) whether all parties consent, and, if not, the reasons given for the refusal or withholding of consent. All requests for adjournments must be made on notice to all other parties. When practicable, the request for an adjournment shall be made at least two (2) business days before the scheduled compliance conference. Unless the parties receive confirmation from the Court either via e-mail or through a Microsoft Teams notification that a conference has been rescheduled, the parties shall appear for the compliance conference as originally scheduled.

The parties are cautioned that any adjournment of the compliance conference will not excuse a failure to provide discovery or failure to adhere to a preliminary conference order or compliance conference order and that discovery shall proceed during the period of any adjournment (22 NYCRR 202.10 [b]). Parties are expected to strictly comply with discovery obligations by the dates set forth in all case scheduling orders (22 NYCRR 202.20-e). Noncompliance with such orders may result in the imposition of an appropriate sanction against that party or for relief pursuant to CPLR 3126 (22 NYCRR 202.20-e [a], 202.56[b]; CPLR 3406[b]).

D. DISCOVERY MATERIALS AND REQUIRED REDACTION

Discovery Materials. Discovery materials are not required to be filed via NYSCEF. However, in any action subject to e-filing, parties and non-parties producing materials in response to discovery demands may enter into a stipulation authorizing the electronic filing of discovery responses and discovery materials to the degree and upon terms and conditions set forth in the stipulation. In the absence of such a stipulation, no party shall file electronically any such materials except in the form of excerpts, quotations, or selected exhibits from such materials as part of

motion papers, pleadings or other filings with the court unless otherwise specified by statute, rule or MDPM-P rule.

Redaction. The parties must comply with the requirements of GBL § 399-dd (6), regarding the redaction of social security numbers and the Uniform Civil Rules of the Supreme and County Courts, 22 NYCRR 202.5 (e), relating to the omission or redaction of confidential personal information, including but not limited to an infant's full name. Failure to comply with these requirements shall result in the issuance of a sealing order, and the parties shall be required to resubmit the documents with appropriate redactions.

E. MOTIONS

General Rules. All motions related to medical, dental and podiatric malpractice actions, including early dispositive motions filed and accompanying the RJI, discovery-related motions, and post-Note of Issue dispositive motions will be assigned to the MDPM-P and shall comply with this Part's specific Part Rules related to motion practice. In cases where an early motion has been filed before a preliminary conference order has been entered, the statutory stay in CPLR 3214 for dispositive motions made pursuant to CPLR 3211, 3212 or 3213 is superceded by these Rules. Parties are cautioned that the deadlines established in compliance conference orders and other scheduling orders shall not be extended and discovery shall not be stayed or otherwise extended due to the pendency of such motions. Working copies of motion papers are not required.

Discovery Motions. No discovery-related motion (including a motion to dismiss predicated upon a discovery violation and including any discovery-related cross-motion) may be interposed and e-filed until a pre-motion conference has been requested and held. If a discovery dispute is addressed during a preliminary conference, the preliminary conference may constitute the pre-motion conference; however, no motion papers may be filed until after a Preliminary Conference Order has been issued. The parties shall be expected to attend pre-motion conferences and attempt in good faith to resolve all discovery disputes. Moreover, absent exigent circumstances, the parties are expected to confer in good faith either in-person or by telephone prior to requesting a pre-motion conference (22 NYCRR 202.20-f). Motions filed before a pre-motion conference has been held may be denied unless good cause is shown as to why such relief is warranted before the conference is held (22 NYCRR 202.12 [h]).

Motions to Vacate a Note of Issue. An application to vacate a Note of Issue or to otherwise challenge readiness for trial shall be made via NYSCEF within twenty (20) days of the service of the Note of Issue as required by 22 NYCRR 202.21 (e). Applications made after the twenty (20) day period has expired shall be denied except in the unusual or unanticipated circumstances recognized by 22 NYCRR 202.21 (d). Any such motion shall be made returnable and heard in this Part. However, no such motion shall be interposed until a pre-motion conference has been requested and held.

Pre-Motion Conferences. A party may request a pre-motion conference by e-mailing MedMalWestchester@nycourts.gov, on notice to all other parties. The parties will be expected to attend such conferences and attempt in good faith to resolve all discovery disputes. To foster the just and expeditious resolution of discovery disputes, pre-motion conferences shall be held to

permit the Court the opportunity to resolve issues before motion practice ensues. Counsel will not be precluded from making any motion deemed appropriate to best represent a party's interests.

Return dates and adjournments. The return date for any motion, whether pre-Note of Issue or post-Note of Issue, including motions for summary judgment and other substantive motions, and discovery-related motions, once made, may not be adjourned more than three (3) times and such return date may not be adjourned for more than a total of sixty (60) days. Any request for an adjournment may be made in writing by e-mailing MedMalWestchester@nycourts.gov, at least two (2) business days prior to the return date, on notice to all parties. A proposed stipulation of the parties or order shall be filed via NYSCEF when any request for an adjournment is made.

In no event shall an adjournment be granted after the time to move or submit opposition or reply papers has expired. It is incumbent upon counsel to ensure that any request for an adjournment of the return date of a motion has been received by this Part and approved within the requisite time period.

All motions should be made returnable on Friday. If a motion is made returnable on another day, the Part Clerk shall administratively adjourn the motion to MDPM-P's motion day as specified herein. No appearances are required on the return date, unless specifically directed by the Court. Oral argument may be requested by noting "Oral Argument Requested" immediately over the index number on the Notice of Motion or in a separately filed letter. If the Court determines in its discretion that oral arguments is required, the requesting party will be so advised and will be required to notify all parties.

Length of Papers. The length of moving, opposition and any reply papers submitted regarding any motion or order to show cause shall conform with 22 NYCRR 202.8-b and contain a certificate of compliance. Any party seeking to bring an application with respect to the length of the motion papers shall promptly file a letter with the request, setting forth the reason(s) for the application as well as whether opposing counsel consents to the request. A proposed stipulation of the parties or proposed order shall be filed via NYSCEF when any application with respect to the length of the motion papers is made. Multiple documents shall not be grouped together under a single exhibit. Each exhibit shall contain only a single document separately uploaded to NYSCEF. Should counsel fail to file a document required to be filed to NYSCEF, that document may not be considered. Exhibits shall be specifically referenced in the papers, or they may not be considered. Citations to legal authority must conform to the New York official style manual.

Orders to Show Cause. Pursuant to AO/270/20 and AO/153/22, motions shall be brought on by order to show cause only when there is genuine urgency, a stay is requested, or a statute mandates so proceeding (22 NYCRR 202.70 [g]).

Motions to be relieved as counsel shall be made by Order to Show Cause returnable in MDPM-P and counsel shall submit a proposed order granting the relief requested (22 NYCRR 202.8a [b]).

F. NOTE OF ISSUE AND MOTIONS FOR SUMMARY JUDGMENT

Once discovery is complete or has been deemed waived, the MDPM-P shall issue a Trial Readiness Order pursuant to which plaintiff will be ordered to serve and file via the NYSCEF system a Note of Issue and Certificate of Readiness within twenty (20) days. Where all parties agree that discovery is complete and request the issuance of a Trial Readiness Order without the necessity of an appearance at a compliance conference, they may submit via the NYSCEF system a signed Trial Readiness Stipulation to be so-ordered. The Trial Readiness Stipulation form specific to medical, dental and podiatric malpractice actions shall be utilized for actions pending in MDPM-P. The form is available at: <https://ww2.nycourts.gov/courts/9jd/civilCaseMgmt.shtml>. The form stipulation must be executed by all parties and uploaded as a “Stipulation – Trial Readiness (Request to So Order)” via NYSCEF.

Time to Move. The deadline for any post-note summary judgment motions shall be set forth in the Trial Readiness Order which shall provide that any motion for summary judgment by any party must be made within sixty (60) days following the filing of the Note of Issue; opposition papers must be served and filed via NYSCEF within thirty (30) days of service and filing via the NYSCEF system of motion papers, and reply papers, if any, must be served and filed via NYSCEF within ten (10) days following service of any opposition papers.

Untimely Motions. Counsel are cautioned that untimely motions cannot be made timely by denominating such as cross motions. The failure of a party to serve and file a motion or cross motion for summary judgment within the 60-day time period pursuant to these Rules and the Trial Readiness Order shall result in the denial of the untimely motion or cross motion.

Adjournments of Summary Judgment Motions. The return date for a motion for summary judgment once made may not be extended more than three (3) times and such return date may not be extended for more than a total of sixty (60) days. Any request for an adjournment may be made in writing by letter filed on NYSCEF at least two (2) business days prior to the return date, on notice to all parties. A proposed stipulation of the parties or proposed order shall be filed via NYSCEF when any request for an adjournment is made.

Statement of Material Facts. All motions for summary judgment must include a statement of material facts in compliance with 22 NYCRR 202.8-g. In the event that a proponent or opponent of a motion for summary judgment fails to provide a statement or counter statement of undisputed facts as required, the Court may order compliance and adjourn the motion, may deny the motion without prejudice to refiling upon compliance, or may take any other action as may be just and appropriate. Further, pursuant to 22 NYCRR 202.8-g (e), in the event the opponent of a motion fails to provide a counter statement of undisputed facts as required, after notice to the opponent, the Court may deem the assertions contained in the proponent’s statement to be admitted for purposes of the motion.

G. SETTLEMENT CONFERENCES

A settlement conference shall be scheduled by the MDPM-P pursuant to CPLR 3409 and 22 NYCRR 202.56(c). The parties may jointly request that the post Note of Issue settlement

conference be advanced by emailing the MDPM-P at MedMalWestchester@nycourts.gov. Where parties are represented by counsel, only attorneys fully familiar with the action and authorized to dispose of the case, or shall be accompanied by a person empowered to act on behalf of the party represented, shall appear at the conference (CPLR 3409; 22 NYCRR 202.56[c][2]). Where appropriate, the court may order parties, representatives of parties, representatives of insurance carriers or other persons having an interest in any settlement to attend the settlement conference (CPLR 3409; 22 NYCRR 202.56[c][3]).

When a medical, dental or podiatric malpractice action is settled, discontinued or otherwise disposed of, counsel or self-represented parties must promptly file a stipulation of discontinuance via NYSCEF before the case is marked settled and disposed (22 NYCRR 202.28). If a stipulation of discontinuance or stipulation of settlement (subject to a compromise order or wrongful death order) is not filed via NYSCEF prior to the scheduled compliance conference, the parties shall appear on the scheduled compliance conference date to report to the Court the status of any such settlement.

If the parties reach a settlement agreement on the record and require time to effectuate the filing of a stipulation of discontinuance or to address any settlement-related issues such as liens, the matter may be set down for an appearance to ensure that discontinuance is effectuated in accordance with CPLR 2104, 3217 and 8020 (c). However, the pendency of settlement negotiations will not delay, adjourn or in any way affect the scheduling of discovery proceedings or trials.

If a stipulation of discontinuance or stipulation of settlement (subject to a compromise order or wrongful death order) is not filed via NYSCEF prior to a scheduled conference, the parties must appear on the scheduled conference date to report the status of any such settlement.

H. COMPROMISE ORDERS

If a cause of action is asserted on behalf of an infant or person judicially declared incompetent or for a defendant's wrongful act, neglect or default that caused decedent's death and the action has been settled, the parties must file a stipulation of settlement subject to a compromise order (sample stipulation of settlement is located on the Ninth Judicial District's website at [https://www.nycourts.gov/LegacyPDFS/courts/9jd/PDFs/Stipulation Settlement-Infant-Compromise-Order.pdf](https://www.nycourts.gov/LegacyPDFS/courts/9jd/PDFs/Stipulation%20Settlement-Infant-Compromise-Order.pdf) under "FORMS"). If the parties fail to timely file a stipulation of settlement subject to a compromise order, they are required to appear at the next scheduled conference.

Applications for a Compromise Order are handled centrally in the CPT-ADR Part. All such applications shall be referred by the MDPM-P to the CPT-ADR Part and all parties are required to comply with the CPT-ADR Part Rules. The CPT-ADR Part Rules and Instructions for an Infant/Incapacitated Person Compromise Order and supporting documents and information required by CPLR 1208, 22 NYCRR 202.67 can be found on the Ninth Judicial District's website at https://www.nycourts.gov/LegacyPDFS/courts/9jd/PDFs/Sample_order_to_show_cause_ICO.pdf. All questions, requests for adjournments or other inquiries regarding a matter pending in the CPT-ADR Part shall be addressed to the CPT-ADR clerk. No inquiries shall be directed to this Part.

Infant Compromise. If a cause of action of a minor/infant or a person who has been declared incompetent has been settled, the parties must file a stipulation of settlement subject to an infant compromise order or an incapacitated person compromise order pursuant to CPLR 1207. If the parties fail to file a stipulation of settlement subject to an infant or incapacitated person compromise order, appearances of all parties at the next scheduled conference are required.

Wrongful Death. If an action is settled that alleges that defendant's wrongful act, neglect or default caused decedent's death, the parties must file a stipulation of settlement subject to a wrongful death compromise order pursuant to EPTL 5-4.6. The parties must specify in the stipulation if the application for the wrongful death compromise will be made in the Central Pre-Trial Alternative Dispute Resolution Part (CPT- ADR Part) or the Surrogate's Court. If the parties elect to make an application for a wrongful death compromise in CPT-ADR Part, the case will be placed on the CPT-ADR Part calendar for the filing of an Order to Show Cause for a Wrongful Death Compromise pursuant to EPTL 5-4.6 with supporting documents and information required by 22 NYCRR 207.38 (a), (b) (1)-(6), and (d).

I. PRE-TRIAL ALTERNATIVE DISPUTE RESOLUTION CONFERENCES

At any time after the filing of a Request for Judicial Intervention, parties may jointly request a settlement conference in the CPT-ADR Part (22 NYCRR 202.29) before the CPT-ADR Part Justice. If the request of the parties is granted, the case shall be referred to the CPT-ADR Part by the MDPM-P by email to the CPT-ADR Clerk at CPT-ADRPartWestchester@nycourts.gov. Parties shall comply with the CPT-ADR Part Rules for all cases referred to the CPT-ADR Part. The rules governing the CPT-ADR Part can be found at <https://ww2.nycourts.gov/courts/9jd/civilCaseMgmt.shtml>.

J. MEDIATION

Parties are strongly encouraged to use the Westchester County Supreme Court's General Civil Mediation Program. Information regarding the General Civil Mediation Program may be found at <https://ww2.nycourts.gov/Courts/9jdADR.shtml>. The rules governing the General Civil Mediation Program can be found at https://ww2.nycourts.gov/courts/9jd/civilCaseMgmt/Rules/ADRrules_westchester.pdf. Parties can access the roster of eligible mediators maintained by the Administrative Judge for the Ninth Judicial District at <https://ww2.nycourts.gov/courts/9jd/ADR.shtml#rom>.

The MDPM-P Justice is available to conduct settlement conferences for all cases pending in the MDPM-P pre-Note of Issue. Parties can jointly request a pre-Note of Issue settlement conference with the MDPM-P Justice by emailing the Part at MedMalWestchester@nycourts.gov.

However, as set forth in the rules, unless otherwise directed by the Administrative Judge, all deadlines and proceedings, including discovery, motion practice and trials, shall not be extended or stayed during mediation.

K. TRIAL ASSIGNMENT PART

Presiding: HON. LEWIS J. LUBELL, J.S.C.
Personnel: Meagan Gorton, Trial Ready Part Clerk
Room: 1203
Phone: (914) 824-5392
E-mail: TAPWestchester@nycourts.gov

1. Trial Calendar

A call of the trial calendar will be held promptly at the time assigned to each case in the Trial Assignment Part (TAP) before the TAP Justice. Trial counsel for all parties must appear and be ready to commence trial (and, in cases in which juries have been demanded, to select a jury) or schedule a trial date. No requests for adjournments will be granted, absent unusual and exigent circumstances. Sanctions and/or costs may be imposed on counsel who are not present upon the call of the TAP Calendar. Failure to proceed may result in the striking of the case from the trial calendar, vacating the Note of Issue, dismissal of the complaint or the striking of the answer, or other remedies, including, but not limited to, those set forth in CPLR 3404 and 22 NYCRR 202.21 and 202.27. Counsel are cautioned that where the Note of Issue is stricken, no case will be restored to the trial calendar without the filing of a new Note of Issue.

2. Rules Regarding Actual Engagement of Counsel

Attorneys are reminded of the rules regarding actual engagement of counsel (22 NYCRR 125.1 [g]): attorneys designated as trial counsel must appear for trial on the scheduled trial date. If any of such attorneys is actually engaged on trial elsewhere, he or she must produce substitute trial counsel or an affidavit of engagement no later than 72 hours prior to the appearance in TAP or the commencement of the trial. If neither trial counsel nor substitute trial counsel is ready to try the case on the scheduled date, sanctions may be imposed. Attorneys are cautioned that the rules regarding actual engagement will be strictly enforced.

3. Trial

Any cases which are not sent out for trial (or jury selection) will be deemed ready and passed to the next available date as directed by the TAP Justice. The TAP will endeavor to send all cases to jury selection, beginning with special preference cases, and then by oldest cases as determined by the date of filing of the Note of Issue. In the event that counsel fail to proceed to select a jury, or timely appear before the assigned IAS Trial Justice, the action may be dismissed, or a default taken, or other sanction imposed, as appropriate under the circumstances. The TAP Justice shall have discretion to assign the trial to any IAS Justice based upon the needs of the Court.

4. Settlement

The parties are cautioned that the all too common practice of appearing at the trial calendar and representing that a settlement has been made will no longer be accepted. Counsel or self-

represented parties must file a stipulation of discontinuance via NYSCEF before the case is marked settled and disposed.

The parties will be permitted to file a stipulation of discontinuance via NYSCEF 72 hours prior to the scheduled trial date and may submit a courtesy copy of the same to the TAP by e-mail to TAPWestchester@nycourts.gov. In the event that the stipulation of discontinuance is filed 72 hours prior to the scheduled trial date, the parties will not be required to appear on the scheduled trial date. If a stipulation of discontinuance is not timely filed, the parties must appear on the scheduled trial date to report to the TAP Justice the status of any such settlement. In the event that the parties reach a settlement agreement on the record and require time to effectuate the filing of a stipulation of discontinuance or to address settlement related issues such as liens, the matter may be taken off the Trial Calendar and referred back to MDPM-P to ensure that discontinuance is effectuated in accordance with CPLR 2104, CPLR 3217 and CPLR 8020 (c).

5. Motions in the TAP Part

Adjournments. Any party seeking an adjournment must file via NYSCEF a letter application for a conference at least 14 days prior to the scheduled trial date. Upon the filing of such an application, the TAP will endeavor to schedule a conference without delay in order to consider the application. However, counsel are advised that the filing of such an application does not guarantee a conference or an adjournment.

Motions. All motions, other than applications for an adjournment, shall be made by Order to Show Cause and may be referred to the MDPM-P for decision. Counsel are cautioned to make such motions in a timely manner. Motions made on the eve of trial without good cause for the delay may be denied by the TAP Justice.