



**STATE OF NEW YORK
UNIFIED COURT SYSTEM**

**111 Centre Street, Room 1240
New York, NY 10013
(646) 386-4200**

**RULES REGARDING CONFERENCING PROCEDURES
FOR MEDICAL MALPRACTICE CASES
(NEW YORK COUNTY)**

Hon. George J. Silver

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Amidst the ongoing COVID-19 pandemic, the court would like to protect against any disruption to the continuation of discovery. Pursuant to the direction of the Hon. George J. Silver, the court asks that, in general, the parties: 1.) review all prior court orders in each respective medical malpractice case (to the extent that prior orders exist); 2.) converse with one another regarding discovery owed; and 3.) fill out and submit to the court (via the court's dedicated e-mail address manmedmal@nycourts.gov) the separately uploaded fillable preliminary conference or compliance conference stipulation and order as it applies to a given case. The same should be submitted to the court at your earliest convenience unless an existing order remains in place pursuant to a recently held conference.

From there, the court will review submitted orders, and where necessary, schedule virtual conferences. If no conference is either requested or required, the court will sign a proposed stipulation and/or order and the parties will be assigned a new date for compliance. At least a week prior to that new date, counsel shall complete a new form together and return it by email to manmedmal@nycourts.gov. Once again, the court will review the stipulation and/or order, adjust it where necessary, and may schedule a further conference at a later date to ensure compliance with outstanding discovery. Once signed, the order will be uploaded to New York State Courts E-Filing System ("NYSCEF").

In the event the parties cannot agree to terms, and want intervention from the court, the parties can check of the appropriate box on the compliance conference stipulation and order requesting a conference, and e-mail the court at manmedmal@nycourts.gov stating the nature of the issue requiring the court's attention, and the names and e-mail addresses of the attorneys that will attend the

remote conference. The parties are encouraged to provide a range of dates reflecting the availability of the attorneys that will attend the remote conference.

In general, the court encourages the parties to make earnest efforts to resolve disputes prior to seeking the court's intervention. To facilitate agreement, and obviate the need for the court's intervention in all but the most extenuating circumstances, the court submits the following rules for guidance:

1. Any proposed preliminary conference ("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 section 130.2.1 of the Rules of the Chief Administrator, 22 NYCRR §202.27, or any other applicable rule or statute.
2. **Medical Authorizations:** When a defendant serves a demand for authorizations together with a demand for a BP, counsel for the plaintiff shall serve the authorizations with the BP.
3. **Compliance Conference following the Preliminary Conference:** The date for a compliance conference ("CC") shall be set by the court in the PC Order. Absent an extenuating circumstance (and factoring case complexity), a compliance conference will be scheduled no later than three to four months after the PC order (This will most likely be shortly after the date prescribed by the PC order for the deposition of the plaintiff[s]).
4. **At least one week before the scheduled CC date the parties shall submit, for the court's approval, a completed and fully executed compliance conference stipulation and order to the court's e-mail address (manmedmal@nycourts.gov).** A proposed CC order should include all parties on the email chain. The subject line of the email shall include the: **Index Number, Caption and CC Date.**
5. 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 compliance conference date will be set in the stipulation and order to ensure the completion of discovery.
6. Any discovery issue on which the parties cannot agree shall be highlighted in the space provided for in the stipulation and/or order and the parties shall indicate a request for a CC in the space provided. Upon receipt of same, the court will schedule a virtual conference and will notify the parties of the time and date of the conference via the email addresses provided on the stipulation and/or order submitted. Counsel



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should note that the actual conference date may not be the same date that CC is scheduled for. Each conference shall be scheduled for a date and time certain and shall not exceed 30 minutes.

7. **Counsel will be held to the dates prescribed. Each attorney is expected to know the discovery that has and has not been provided.**
8. **Settled cases.** If a case settles, the parties must promptly present a copy of a filed Stipulation of Discontinuance by e-mailing same to manmedmal@nycourts.gov.
9. **Adjournment of Conferences:** Any application for the adjournment of a conference must be made via email to manmedmal@nycourts.gov at least one week before the scheduled date.
10. **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 section 130.2.1 of the Rules of the Chief Administrator, 22 NYCRR §202.27, or any other applicable rule or statute.
11. **Letters and Other Communications:** Communications should be transmitted to the court via the manmedmal@nycourts.gov e-mail address.
12. Wherever possible, dates certain, such as "on December 31, 2021" shall be used. 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.
13. **Discovery Order Compliance.** 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 orders, may result in the imposition of costs, sanctions, penalties or other remedies upon the offending party pursuant section 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.

Motions

- a. **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.
- b. **Discovery Motion Rules.** If the parties are unable to resolve a discovery dispute after a good faith effort, 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 manmedmal@nycourts.gov shall state the nature of the discovery dispute and applicable law relative thereto. Where possible, a conference will then 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.
- c. **Motions for Summary Judgment.** In consideration of the ongoing pandemic, the court will afford parties ninety (90) days from the filing of the Note of Issue to move for summary judgment.

Alternative Dispute Resolution

Any party and/or parties interested in referring a case for alternative dispute resolution (“ADR”) are directed to conspicuously indicate their interest in ADR on the preliminary conference and/or compliance conference stipulation and order.

Note of Issue

A Note of Issue and Certificate of Readiness may not be filed unless a stipulation has been executed by all counsel indicating that all discovery is complete and a copy of the stipulation has been “So Ordered” by the court.

Dated: September 10, 2020


HON. GEORGE J. SILVER