

**Medical, Dental and Podiatric Malpractice Conference & Trial Rules**

**Justice Peter J. O'Donoghue  
88-11 Sutphin Boulevard  
Jamaica, New York 11435  
Courtroom 47 - Part MD**

**Tel. Courtroom (718) 298-1123**

Assignment of Cases: Cases are assigned to this Part from the Compliance Conference forward. The date of the Compliance Conference is set forth in the Preliminary Conference Order.

Preliminary Conferences: All preliminary conferences will be held on Tuesdays at 9:30 a.m. at the Preliminary Conference Part, Room 3002 of the courthouse, and they are presided over by the court-appointed referee, unless otherwise directed by the Court. Failure to appear at the scheduled conference may result in discovery being ordered ex-parte or any other appropriate sanction including preclusion or dismissal ordered. Any inquiry pertaining to preliminary conferences shall be made to the Preliminary Conference Part at (718) 298-1046.

Compliance Conferences: Compliance conferences shall be held on the date scheduled in the Preliminary Conference Stipulation and Order. Conferences shall be held before Justice O'Donoghue in Courtroom 47. Failure to appear shall result in dismissal of the action or striking of the answer.

Supplemental and Amended Bills of Particulars: A Supplemental Bill of Particulars may be served within 30 days of completion of the last party deposition. An Amended Bill of Particulars requires motion practice within 60 days of completion of the last party deposition.

Motion Practice: The Motion Calendar will be called every Wednesday at 9:30 a.m. promptly. A second call will follow at 10:30 a.m.

All motions relating to any phase of discovery and/or bill of particulars, including motions to preclude, strike or restore a case to the Trial Calendar, motions to vacate the Note of Issue, or requesting Article 78 relief require personal appearance by counsel for all parties. Counsel should be prepared to discuss and agree upon a discovery schedule. Furthermore, personal appearance is required for summary judgment motions and motions which have been brought by an Order to Show Cause. All other motions and applications may be submitted on papers only.

Oral argument will be entertained only in the court's discretion. Whenever a personal appearance is not required use of calendar service is permitted both to submit papers and to

request counsel

adjournments, which will be limited to two. The first adjournment on consent will be allowed upon written stipulation. All stipulations must contain the signature of the attorney consenting to the adjournment. A form which contains only the name of the firm on the stipulation will not be accepted.

Thereafter, attorneys seeking a further adjournment must appear. In any event, adjournments will be limited to two absent extenuating circumstances. Do not call the Part or Chambers for adjournments as no adjournments will be granted on the telephone. Use service or mail. The members of the Bar are to make every effort to notify their adversaries and co-counsel of all applications for adjournments in advance.

E-File Rules and Protocols: This Part requires working copies of all motions to be submitted at the call of the calendar.

At all Conferences: Counsel must be fully familiar with the file and have authority to discuss settlement, trial scheduling and any outstanding pre-trial procedural matters including CPLR

3101(d) matters and to make binding stipulations and commitments.. All cases shall be conferenced by the Court. At the conference the Court shall also consider the items set forth in

22 NYCRR 202.26(c). Parties shall comply fully with the requirements of 22 NYCRR 202.26(e). If plaintiff's counsel fails to appear for any type of court-ordered appearance, the Court may dismiss the Complaint; if defendant's counsel fails to appear for any type of court-ordered appearance, the Court may strike the Answer. (22 NYCRR 202.27)

Note of Issue: Upon filing the Note of Issue, plaintiff's counsel shall file contemporaneously, and serve upon defense counsel, a CPLR 3101(d) expert exchange. Defendant's counsel shall serve upon plaintiff's counsel a CPLR 3101(d) expert exchange on or before the first pre-trial conference. If the Note of Issue is not timely filed, the case may be dismissed pursuant to CPLR 3216.

Initial Pre-Trial Conferences: (a) In order to provide for a meaningful settlement discussion at the initial conference defense counsel at the time of service of the Note of Issue shall notify the defendant and the insurance carrier, if any, of the anticipated date of the conference (approximately fifth Monday post-note) and that at least two weeks prior to the initial conference the defense shall be required to indicate to a plaintiff's attorney whether or not the defendant has refused to consent to a settlement or whether or not the defense has an interest in entering into settlement discussions. Any committee meetings or internal consultations required to make such a decision shall be held a sufficient time prior to the conference for a decision to be made at least two weeks prior to the conference. At least two weeks prior to the calendar date for the conference plaintiff's attorney shall initiate a telephone conference with defense counsel. Unless defense counsel states that his or her client has refused to consent to settlement or that the insurance carrier has marked the case "no pay", plaintiff's counsel shall convey a

settlement demand at that time. Defense counsel shall discuss this demand with the claims representative prior to the calendar date. The claims representative shall either be present at the conference or available for immediate telephone consultation. If plaintiff is represented by trial counsel

without full settlement authority, the attorney of record shall be present or available for immediate telephone consultation.

(b) At the conference defendants' counsel shall provide the Court with a courtesy copy of the "Notice of Medical, Dental and Podiatric Malpractice Action" previously served pursuant to 22 NYCRR 202.56 and copies of Preliminary Conference and Compliance Conference orders.

Discovery Issues:

At any conference any party may raise any outstanding pre-trial procedural issue but should be prepared with a copy of the demand or notice, if any, and the response. The party raising the issue may submit a brief written affirmation setting forth the nature of the application and any supporting statements or case law.

Adjournments: There will be no adjournments on the Medical, Dental and Podiatric Malpractice Trial Calendar made by stipulation. Requests for an adjournment must be made in person at the call of the calendar.

THE COURT WILL NOT ACCEPT EXPARTE COMMUNICATIONS WRITTEN OR ORAL. NO FAXES WILL BE ACCEPTED BY THIS OFFICE AT ANY TIME.