



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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Courtroom 600

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. All parties are to add their emails to the case on NYSCEF.

Letters and Communications to the Court

Communications should include all relevant parties and be transmitted to the Court via email at BxSupCiv-IA19A-30@nycourts.gov. Questions or scheduling issues should be addressed to the Part 19A Clerk at tlesane@nycourts.gov.

Motions

Adjournments

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 must be made via email to BxSupCiv-IA19A-30@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 BxSupCiv-IA19A-30@nycourts.gov informing the Court of the motion.

All motions submitted must comply words counts as outlined in the CPLR.

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

Parties must submit a Statement of Material Facts with their motions.

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

All conferences, unless otherwise specified, will be held in person in the Bronx Supreme Court, 851 Grand Concourse, Bronx, New York 10451-2937 in Room 600. Calendar invitations will be sent to all emails associated with each case on NYSCEF prior to the conference date.

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 appear for both in-person and virtual conferences 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.

The Court may accept a proposed Order, or a status update, in lieu of an appearance for Compliance Conferences and Status Conferences, respectively.

A proposed Order may be accepted in lieu of an appearance for a Compliance Conference when:

- (1) the proposed Order is timely submitted, at least 5 days in advance of an upcoming conference,
- (2) the proposed Order is not identical to the previous Order, and
- (3) the Court approves of the contents of the Order.

A status update may be accepted in lieu of an appearance for a Status Conference when:

- (1) the status update is timely provided to the Part email at least 5 days in advance of an upcoming conference,
- (2) the status update provides sufficient detail, and
- (3) the Court accepts the update.

All parties must appear for scheduled conferences unless told explicitly by the Court that the proposed Order or status update will be accepted in lieu of an appearance.

Questions or scheduling issues should be addressed to the Part 19A Clerk at tlesane@nycourts.gov.

Preliminary Conferences

The procedure for scheduling a Preliminary Conference is as follows:

Counsel must:

- (1) File an RJI (Request for Judicial intervention);
- (2) Ensure the case is properly assigned to Part 19A and is designated as a medical malpractice matter; and
- (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 BxSupCiv-IA19A-30@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 conference. Proposed Compliance Conference Orders must be sent to BxSupCiv-IA19A-30@nycourts.gov and 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.

Pre-Trial and Settlement Conferences

The Court will Schedule a Pre-Trial Conference **ON ALL CASES** no later than two (2) weeks following the filing of the Note of Issue. The Court will also schedule a second Pre-Trial Conference about four (4) months following the first Pre-Trial Conference or within a month of a decision on any pending motions for summary judgment. The Pre-Trial Conferences will be scheduled at the time the Note of Issue is filed for an in-person appearance.

Attorneys appearing at the Pre-Trial/Settlement Conference must be fully familiar with all aspects of the case and must have authority from respective parties to settle.

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 BxSupCiv-IA19A-30@nycourts.gov and request such conference.

Requesting a Conference

To request a conference, parties must send a proposed order to BxSupCiv-IA19A-30@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.

Adjournment of Conferences

Any application to adjourn a conference must be made via email to BxSupCiv-IA19A-30@nycourts.gov at least one week prior to the scheduled date. Parties must submit a letter to the Part email and to NYSCEF, stating both the reason for seeking the adjournment, and whether all parties consent to the adjournment.

Settlements

When a case has settled, parties must submit a stipulation of discontinuance and a letter informing the Court of same to NYSCEF.