

GENERAL GUIDELINES FOR PART 34 (JUDGE JOHN R. HIGGITT)

Judge Higgitt's inventory is comprised of

1. **all** actions, existing and new, against Montefiore Medical Center; and
 2. all **new** actions (i.e. those actions where the Request for Judicial Intervention was filed on or after July 13, 2020) against:
 - a. Bronx Lebanon Hospital Center,
 - b. St. Barnabas Hospital,
 - c. Mt. Sinai Hospital,
 - d. NYU Langone, and
 - e. Individually-named practitioners only (i.e. those actions not naming an institutional defendant).

01 Mixed-Inventory Cases.

a If an action names a defendant whose cases would normally be assigned to Judge Silver (e.g. New York City Health and Hospitals Corporation [HHC] and/or an HHC facility), and also names an entity/facility whose cases would otherwise be assigned to Judge Higgitt, the action will be assigned to Judge Silver.

b If an action names a defendant whose cases would normally be assigned to Judge Capella, and also names a defendant whose cases would normally be assigned to Judge Higgitt, the action will be assigned to Judge Higgitt.

02 Motions

a To facilitate decision on motions, the parties may stipulate to submit working copies of motion papers by FedEx delivery to chambers at 851 Grand Concourse, Room 6M-20, Bronx, NY 10451. Please include a copy of the parties' stipulation with any such papers.

b Given the toll of the specific time limit for the service of, among other things, motions subject to a time constraint (e.g. CPLR 3212),

and papers responsive to a motion (e.g. CPLR 2214), as implemented by Executive Order 202.8 and extended to August 5 by Executive Orders 202.14, 202.28, 202.38 and 202.48, we will email the parties on all motions to confirm that the motions are ready for submission on their existing return dates. (However, see paper-filed cases, below.)

c Summary judgment motions shall be made within 60 days after the filing of the note of issue.

d The parties are free to request oral argument on any motion; however, oral argument is always at the discretion of the court (see 22 NYCRR § 202.8[d]). The court may decide any motion solely on the papers submitted. If the court requires oral argument, the parties will be notified in writing.

03 Conferences - Discovery, Settlement and Other

If parties believe a discovery or settlement conference is appropriate, they should send an email to jhiggitt@nycourts.gov and dhrubino@nycourts.gov, on notice to all parties, including the email address of all persons who should receive a conference invitation via Skype (or such other electronic meeting platform as the court shall employ). A discovery-related conference may be requested if the parties are unable to reach agreement through the exhaustion of good faith efforts, and the application should describe such efforts and why the court-assisted conference is necessary.

Preliminary Conferences. If a preliminary conference has not been calendared within the required time after the filing of the notice of medical malpractice action (see 22 NYCRR § 202.56[b]), the parties may contact the court by email directed to dhrubino@nycourts.gov. In lieu of an appearance for a preliminary conference, and pursuant to 22 NYCRR § 202.8(f), on or before a date certain to be set by the court, the parties may submit by e-filing, to be so-ordered, a signed stipulation and order, substantially in the form as contained in 22 NYCRR § 202.12, agreeing to a timetable that shall provide for the completion of disclosure within 15 months after the filing of the Request for Judicial Intervention (see 22 NYCRR § 202.12[b]; see *also* 22 NYCRR § 202.56[b]), and in any event no more than 18

months after the filing of the notice of medical malpractice (see 22 NYCRR § 202.12[b][iv]). If the parties are unable to timely efile such a stipulation and order due to disagreements that cannot be resolved through the exhaustion of good faith efforts, the parties shall notify the court by email to dlrubino@nycourts.gov prior to the date certain, and a conference via Skype (or such other electronic meeting platform as the court shall employ) shall be calendared at which the court will address the discrete issues upon which agreement of the parties cannot be reached.

Inventory assessment to identify oldest and inactive actions.

We are assessing each case in the inventory, but are giving particular attention to those cases with a significant period of inactivity and those cases whose notes of issue are the earliest-filed. We may reach out to you to schedule a conference or to get a sense of the stance of the action and what would be the logical next step.

Eventually, we will have the capability and capacity to conduct regular (modest) conference calendars via Skype (or such other electronic meeting platform as the court shall employ) and will implement same if practical, practicable, and efficient. Our assessment of the needs of the cases in this inventory is ongoing.

04 Attendance of medical witnesses at depositions

Administrative Order AO/88/20, effective May 2, 2020, temporarily prevented the court's compulsion of the *personal attendance* of certain medical witnesses during the course of discovery. Administrative Order AO/129/20, effective June 22, 2020, cancelled Administrative Order AO/88/20. Pursuant to Administrative Order AO/129/20,

Counsel and litigants are strongly encouraged to pursue discovery in cooperative fashion and to employ remote technology in discovery whenever possible. In the event that physicians or other medical personnel (including administrative personnel) are unavailable for deposition or other litigation discovery for reasons relating to the treatment of COVID-19 patients, and the parties are unable to resolve the scheduling

issue cooperatively, that issue should be presented to the court for resolution.

In the spirit of AO/129/20, the parties may seek court intervention without the necessity of motion practice by requesting a conference by email to jhiggitt@nycourts.gov and dlrubino@nycourts.gov, only after the exhaustion of good-faith efforts.

05 Dispute resolution.

The court will entertain resolution by summary bench trials and by any other alternative means devised collaboratively by the court and the parties.

06 Infant compromise applications.

Whether the submission for approval of a proposed infant's compromise order requires a motion or may be submitted ex parte, we recommend that the application explicitly state that it should be referred to Judge Higgitt. If you would like to inquire about the status of an infant compromise (whether submitted before or after Judge Higgitt's assumption of medical malpractice duties), you may email dlrubino@nycourts.gov.

07 Proposed stipulations to be so-ordered.

Please email dlrubino@nycourts.gov after e-filing stipulations to be so-ordered so that they may be presented to Judge Higgitt for signature (we do not automatically receive notification of the e-filing of documents).

08 Stayed cases.

Stayed cases will be separately inventoried.

09 Paper-filed cases.

As per Administrative Order AO/115/20, dated and effective May 28, 2020, and Administrative Order AO/121/20, dated June 9, 2020 and effective June 10, 2020, neither of which has been rescinded, modified or superseded, all represented parties must continue existing matters

through electronic filing, which requires a stipulation and consent to convert the action to electronic format.

If you wish to file a document in a non-e-filed action, all parties to the action must execute a stipulation and consent to e-filing. The NYSCEF Resource Center will provide instructions to parties regarding how to convert a paper matter to an e-filed case in NYSCEF, as permitted in 22 NYCRR § 202.5-b(b)(2). You may upload the form “Stipulation and Consent to E-filing” (<https://iappscontent.courts.state.ny.us/NYSCEF/live/forms/stipulation.and.consent.pdf>) at the Electronic Document Delivery System (EDDS) site (<https://iapps.courts.state.ny.us/nyscef/SpecialDocumentTransferHome?id=41>). Upon receipt of the completed form via EDDS, the County Clerk will create the matter as an interlocutory case in NYSCEF and notify the parties that they may thereafter file electronically via NYSCEF. It is anticipated that this process, and the population of the cases minutes with all papers served in relation to the motion, will not be completed prior to the return dates of impending motions, usually necessitating adjournments of the motions.

If it does not appear that a paper-filed action has been approved for conversion to electronic format, and/or the documents to be associated with a motion in a converted action have not been uploaded, the motion is thus not ready for submission, and, on notice to the parties by facsimile or email, we will adjourn the motion to permit the parties time to accomplish same. It is anticipated that the population of the electronic case minutes with all papers served in relation to the motion will not be completed prior to motion return dates, generally necessitating adjournments of motions in recently-converted actions.