

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2009-021481

06/10/2011

HON. GARY E. DONAHOE

CLERK OF THE COURT
S. Yoder
Deputy

MARY ELLEN DALTON, et al.

JOHN A MICHEAELS

v.

SCOTTSDALE HEALTHCARE HOSPITALS, et
al.

MICHAEL E BRADFORD
CALVIN L RAUP
JUDGE KLEIN

JURY TRIAL SET

Courtroom ECB 511

8:29 a.m. This is the time set for Status and Scheduling Conference. Counsel John A. Michaels appears telephonically on behalf of Plaintiffs May Ellen Dalton and Richard Bryon Dalton. Counsel Calvin L. Raup appears telephonically on behalf of Defendants Timothy Scanlon, Donald Bret Larsen, Teri A. Bagnasco and Scottsdale Emergency Associates, Ltd. Counsel peter F. Fisher appears telephonically in place of Michael E. Bradford, counsel of record for Defendants Richard M. Spiegel and Family Mental Health Associates, Ltd. The Scottsdale Healthcare Defendants are no longer in the case.

A record of the proceedings is made by audio and/or videotape in lieu of a court reporter.

Discussion is held regarding the status of the case and the setting of a trial date.
Accordingly,

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IT IS HEREBY ORDERED setting this matter for an **eight-day** Jury Trial beginning on **March 12, 2012 at 9:30 a.m.**

Note: Judge Klein will be assuming this calendar as of June 27, 2011.

**THE HONORABLE ANDREW G. KLEIN
MARICOPA COUNTY SUPERIOR COURT
OLD COURTHOUSE
1st FLOOR, COURTROOM 103
125 WEST WASHINGTON STREET
PHOENIX AZ 85003
602-506-4645 TEL
602-372-8671 FAX**

Trial days are Monday through Thursday.

NOTE: This Court utilizes FTR for an electronic record of the proceedings. However, any party may request the presence of a court reporter by contacting the division three (3) court business days before the scheduled hearing.

IT IS FURTHER ORDERED setting this matter for a **Final Trial Management Conference** for **February 10, 2012 at 8:30 a.m.** (time allotted: **one hour**) before Judge Klein. All counsel must *appear in person* and cannot appear telephonically.

IT IS FURTHER ORDERED setting Oral Argument on all pending motions, including Plaintiffs' motion in limine and the two motions for partial summary judgment on **September 16, 2011 at 2:30 p.m.** before Judge Klein.

8:50 a.m. Matter concludes.

Based upon the foregoing trial and oral argument setting,

IT IS HEREBY ORDERED vacating the Oral Argument set on August 22, 2011.

IT IS FURTHER ORDERED as follows:

DUTIES PRIOR TO THE PRETRIAL MANAGEMENT CONFERENCE

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1. **MOTIONS IN LIMINE.** All motions in limine shall be filed no later than **5:00 p.m. on January 23, 2012**, and such motions must meet the test of *State v. Superior Court*, 108 Ariz. 396, 397; 499 P.2d 152 (1972): The primary purpose of a motion in limine is to avoid disclosing to the jury prejudicial matters which may compel a mistrial. See also, Ariz. R. Evid. 103(c). A written response to a motion in limine may be filed no later than ten (10) calendar days thereafter. The Court may rule on motions in limine without oral argument. No replies shall be filed. The parties must comply with Rule 7.2(a) Ariz.R.Civ.P., prior to filing any motion in limine. Any motion in limine filed without the movant having first complied with Rule 7.2(a), will be stricken by the Court.

2. **JOINT PRETRIAL STATEMENT.** Counsel shall file with the Court no later than **5:00 p.m. on February 3, 2012**, a **Joint Pretrial Statement** signed by all counsel.
 - a) **Deposition Summary:** In addition to the information required by Rule 16(d), counsel shall at the Pretrial Management Conference provide to the Court copies of any deposition transcripts to be read to the jury. The offering party will highlight the portions to be read, the other side will highlight Rule 106 additions, and any objections for the court to rule on will be clearly marked in the margin. The parties are encouraged to agree on narrative summaries of deposition testimony, using brief question and answer excerpts only to emphasize very important testimony or to cover areas of testimony that cannot be summarized to the satisfaction of all counsel. No stipulation should be unreasonably refused.

 - b) **Final Trial Witnesses:** In addition to the information required by Rule 16(d), the Joint Pretrial Statement shall include an exhibit titled: **Final Trial Witness List**. This list shall contain the name of each witness a party *actually intends to call* at trial, the day on which they intend to call each witness and the estimated time needed for direct, cross and re-direct examination.

3. **JURY INSTRUCTIONS; VOIR DIRE QUESTIONS.** Counsel shall meet and agree on as many proposed jury instructions as possible. Counsel shall file with the Court, with their Joint Pretrial Statement, copies of:
 - a) Proposed voir dire questions.

 - b) A joint set of agreed-upon preliminary and final jury instructions and **proposed forms of verdicts**.

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- c) Separate sets of requested instructions that have not been agreed upon. Please read *Rosen v. Knaub*, 175 Ariz. 329; 85 P.2d 381 (1993) and the RAJI Civil 4th Statement of Purpose and Approach before preparing requests for non-RAJI instructions.

Recommended Arizona Jury Instructions (RAJI) need not be typed and may be requested in the following manner: RAJI 4th Standard 1 - Duty of Jurors. Non-RAJI instructions should be typed. Each instruction should cover only one subject.

Any jury instructions not filed with the Court together with the Joint Pretrial Statement will be deemed waived by the Court, unless the Court concludes that good cause exists for the untimely submission.

DUTIES AT PRETRIAL MANAGEMENT CONFERENCE

- 4. At the Pretrial Management Conference, counsel shall be prepared to discuss:
 - a) Time limits in voir dire, opening statements, examination of witnesses and closing arguments.
 - b) Stipulations for the foundation and authenticity of exhibits.
 - c) Preliminary jury instructions, juror notebooks (counsel shall bring any proposed juror notebooks to the conference), mini opening statements and voir dire.
 - d) Agreed-upon deposition summaries and excerpts from deposition transcripts and the editing of any videotaped depositions.
 - e) Use of short-trial or summary jury trial.
 - f) Any special scheduling or equipment issues.
- 5. Counsel shall call the courtroom clerk at 602-506-3553 no later than **February 27, 2012** to make arrangements for delivering exhibits. The exhibits will be marked serially as they are listed in the Joint Pretrial Statement – Plaintiff's first, Defendant's second. Please advise the clerk, by signed stipulation or on the record referring specifically to the Joint Pretrial Statement, which exhibits may be marked directly into evidence. **Prior to**

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presenting the exhibits to the clerk, counsel shall also meet and confer to **eliminate any duplicate exhibits.**

The Court requires one set of exhibits to be marked and a second set in a binder for the Judge's use during the trial.

6. One day's jury fees will be assessed unless the court is notified of settlement before 2:00 p.m. on the judicial day before the trial. Counsel are reminded to promptly notify the court of any settlement pursuant to Rule 5.1(c), Ariz.R.Civ.P.
7. The dates set forth in this Order are FIRM dates and will not be extended or modified by this Court absent good cause. Lack of preparation will not ordinarily be considered good cause.

ALERT: eFiling through AZTurboCourt.gov is mandatory in civil cases for attorney-filed documents effective May 1, 2011. See Arizona Supreme Court Administrative Orders 2010-117 and 2011-010. The Court may impose sanctions against counsel to ensure compliance with this requirement after May 1, 2011.