

Foley and Foley Get Case Reinstated for Client: Justice Before Expediency

In the case of *Estate of McClenton v. Carbone*, a legal malpractice case arising out of a medical negligence case, one trial judge denied an extension of discovery that McClenton had requested to allow defendant Carbone more time and then an hour later a second judge³ dismissed McClenton's case because Carbone would not have time to prepare his defense before the prematurely assigned trial date. The Appellate Division concluded that putting scheduling ahead of justice was a clear abuse of discretion. The court agreed with Foley & Foley's argument on behalf of McClenton. "We held many years ago that '[n]o eagerness to expedite business, or to utilize fully the court's time, should be permitted to interfere with our high duty of administering justice in the individual case.'" The court found that the judges below erroneously placed concerns about the court's schedule and deadlines over fair justice for the plaintiff. The court reinstated the complaint and remanded the matter for trial, holding that the "parties should have a full and fair opportunity to prosecute and defend all claims asserted, have a fair adjudication, and a decision underlying a final disposition deserving of our deference."

Sherry Foley, who represented the plaintiff before the Appellate Division, addressed the improper handling of cases where one judge denies more time for discovery and a second judge relies on that technical ruling to deny plaintiff her day in court. Ms. Foley, calling the denial of discovery and summary dismissal a "one-two punch," said she hoped the ruling would lead to more decisions on the merits and prevent dismissal of a "good case based on technical violations of the rules." "Rules need to be construed to ensure fairness and justice," she said. The court agreed.

You can read the complete decision [here](#).