NY CLS CPLR R 3401

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Civil Practice Law And Rules (Arts. 1 — 100) **>**

Article 34 Calendar Practice; Trial Preferences (§§ 3401 — 3410)

R 3401. Rules for the hearing of causes

The chief administrator of the courts shall adopt rules regulating the hearing of causes, which may include the filing of notes of issue, the preparation and publication of calendars and the calendar practice for the courts of the unified court system. Insofar as practicable, such rules within the city of New York shall be uniform.

History

Add, L 1962, ch 308; amd, L 1986, ch 355, § 10, eff July 17, 1986.

Annotations

Notes

Prior Law:

Earlier rules: RCP 237; Gen Rules Pr 39, in part.

Advisory Committee Notes:

The first sentence of this rule incorporates power formerly granted by § 85 of the Judiciary Law. It is identical with the first paragraph of former rule 237, except that “may” is changed to “shall.” The first clause of former § 152 of the Judiciary Law provided that “the justices of the supreme court elected in the eighth judicial district may adopt, and from time to time amend rules and

regulations for making calendars of cases at issue to be tried in the supreme court in and for the county of Erie." This clause has been stricken to give the Appellate Division in the Fourth Department the same control over calendars that it has in other Departments.

The second sentence of rule 3401 is designed to provide uniform calendar rules within the city of New York to the extent practicable. These rules should be drafted with a view to keeping the parts in all counties in the city occupied as well as with a realization that a number of lawyers try cases extensively within the city. See Remarks of Justice S. Rabin, in Trauma Related To Psychosis 261–64 (Midwinter Seminar, NYS Ass'n of Plaintiffs' Trial Lawyers, Inc., 1958).

Rule 258 of the rules proposed in the 1915 Report of the Board of Statutory Consolidation provided that "the calendar practice shall be regulated in each department by the respective justices of the appellate division so as to facilitate the dispatch of business." 1 Report of the Board of Statutory Consolidation on the Simplification of the Civil Practice of New York 109 (1915). In the notes to these rules a sample rule to regulate calendar practice in New York county was provided, which required assignment of cases to judges in rotation as soon as a note of issue was filed. Id. at 367. In 1957, the Temporary Commission on the Courts, in their Recommendations Respecting Calendar Congestion and Delay, proposed assignment to masters and set forth rules for the First Department. NY Temp Comm'n on the Courts Rep IV 25, Leg Doc 6(c) (1957). In view of its decision to leave control of calendar practice with the Appellate Division, the advisory committee has made no recommendations with respect to such proposals.

CPLR rule 4313 provides that the clerk of the court shall send notice of appointment to an unofficial referee. The official referee can be notified of any cases placed on his docket in the same way as a judge is so notified.

CPA § 426 directed the clerk to place a case upon the jury or nonjury calendar depending upon waiver of the right to jury trial. See CPLR § 4102 and notes. This direction is omitted as unnecessary. The types of calendars are left to the control of the Appellate Division.

Commentary

EXPERT ANALYSES:

By Howard F. Strongin.

Every practitioner knows that the filing of the note of issue and certificate of readiness is a declaration that all pre-trial discovery is complete and the case is deemed trial ready. The function of the note of issue and certificate of readiness is to give assurance that only those cases ready for trial are on the trial calendar; hence all discovery is either completed or waived. Meidel v Ford Motor Co. (1986, 4th Dept) 117 App Div 2d 991, 499 NYS2d 536.; see, also, Mazzara v Pittsford (1968, 4th Dept) 30 App Div 2d 634, 290 NYS2d 435.. Where a the note of issue and certificate of readiness are inaccurate, or where further pre-trial proceedings are necessary, a party may either move to strike the note of issue and vacate the certificate of readiness so as to permit the discovery to continue, or obtain leave of court to permit discovery to continue notwithstanding the matter's calendar status. 22 NYCRR 202.21(d), (e). A practice question arises, however, with regard to the interplay of these basic tenets of calendar practice and CPLR 3123(a) as it relates to the purpose and use of a notice to admit.

CPLR 3123(a) provides in pertinent part: "At any time after service of the answer or after the expiration of twenty days from service of the summons, whichever is sooner, and not later than twenty days before the trial, a party may serve upon any other party a written request for admission by the latter of the genuineness of any papers or documents, or the correctness or fairness of representation of any photographs, described in and served with the request, or of the truth of any matters of fact set forth in the request, as to which the party requesting the admission reasonably believes there can be no substantial dispute at trial and which are within the knowledge of such other party or can be ascertained by him upon reasonable inquiry." (emphasis inserted).

Is the notice to admit a discovery device whose service is proscribed unless leave of court is obtained once the note of issue and certificate of readiness has been served? Well, maybe.

In Hodes v New York (1991, 1st Dept) 165 App Div 2d 168, 566 NYS2d 611., a personal injury action arising out of a false arrest and malicious prosecution, the Court looked towards the purpose, and apparently the motivation, of plaintiff's counsel in serving a voluminous notice to admit requesting the genuineness of numerous documents and the truthfulness of various questions of fact. The notice contained approximately fifty papers. The defendants did not respond to the notice and the plaintiff then moved for a protective order pursuant to CPLR 3103(a). Denying plaintiff's motion, the Supreme Court apparently evaluated the notice as a disclosure device which was, concededly, served after the filing of the note of issue and certificate of readiness. The Court deemed it a nullity. Plaintiff was given the option of reserving the notice if she withdrew her note of issues; an offer plaintiff turned down.

Although the Appellate Court affirmed the denial of plaintiff's motion, the Court addressed what they perceive to be a "collision between [CPLR 3123(a)] and the court rule disallowing further discovery following the filing of a note of issue and certificate of readiness." (566 N.Y.S.2d at 612.).

The purpose of a notice to admit is to crystallize issues and to eliminate from trial those that are easily provable or not really in dispute. Hodes, 566 N.Y.S.2d at 612; Batchie v Travelers Ins. Co. (1985, 2d Dept) 110 App Div 2d 864, 488 NYS2d 420, later proceeding (2d Dept) 110 App Div 2d 864, 488 NYS2d 421.; Berg v Flower Fifth Ave. Hospital (1984, 1st Dept) 102 App Div 2d 760, 476 NYS2d 895, 42 ALR4th 485.. The net effect is, of course, to expedite the trial of the disputed issues. The notice to admit in *Hodes,* the Court held, went beyond the *limited scope* of matters contemplated in CPLR 3123(a), and was, in effect, a discovery demand clothed in a notice to admit improperly served.

It is not readily discernable from the Court's opinion in *Hodes,* supra, why that portion of the notice to admit which requested an admission as to the genuineness of documents was improper since CPLR 3123(a) explicitly permits a request for admission of the genuineness of documents. So long as the notice is timely served and narrowly crafted to fall within the circumscribed parameters of those matters which a request for admission may be made, it

appears that the practitioner may serve such a notice without leave of court once the case is calendared.

So long as the courthouse doors remain open to civil trials there will be those who will try to prematurely notice their case for trial as well as those who will wake up too late to move to strike the case from the calendar and seek the discovery they need.

Conventional wisdom in some counties dictates that a disposition of a case is not possible until the parties are instructed to commence jury selection. This is nothing more than a tacit encouragement to counsel to prematurely file the note of issue which, in turn, leads to more, and needless, motion practice.

Where, for instance, there is a prior discovery order which indicates that further discovery is to take place, and that discovery has not taken place, it is a violation of the Uniform Court Rules to file the note of issue until such time the discovery is completed. Erena v Colavita Pasta & Olive Oil Corp. (1993, 3d Dept) 199 App Div 2d 729, 605 NYS2d 475, app dismd without op 83 NY2d 847, 612 NYS2d 109, 634 NE2d 605.; 22 NYCRR 202.21(e).

Further, it is an abuse of the Court's discretion to deny a motion to strike the case from the calendar where the note of issue and certificate of readiness was filed and the moving defendant had not appeared in the action. Bentley v Solomon Equities, Inc. (1992, 1st Dept) 188 App Div 2d 418, 591 NYS2d 1007.. Where a defendant's time to answer the complaint had not expired, and therefore the party has not had an opportunity to participate in pretrial discovery, the case was not trial ready and the note of issue should have been stricken as it was prematurely filed. McKenzie v McKenzie (1980, 4th Dept) 78 App Div 2d 585, 432 NYS2d 424..

It is the rare case indeed where the a motion to strike the note of issue is denied because it was not filed within the twenty day time limit set down by 22 N.Y.C.R.R. 202.21. The practitioner is well advised, however, that a failure to *timely* move to strike may not only result in a denial of the motion, but perhaps more importantly be deemed a waiver of the discovery. Williams v Long Island College Hosp. (1989, 2d Dept) 147 App Div 2d 558, 537 NYS2d 853.(physical

examination waived). Absent an adequate reason for the delay, the delay will not be excused. Sewell v Singh (1990, 1st Dept) 160 App Div 2d 592, 554 NYS2d 236.; Franck v Quinones (1978, 1st Dept) 65 App Div 2d 518, 409 NYS2d 652..

In Haviland v Smith (1984, 3d Dept) 101 App Div 2d 626, 474 NYS2d 885., the Third Department held that its statement of readiness rule “will be rigidly enforced” absent a showing of special, unusual, or extraordinary circumstance warranting the issuance a discovery order (five months) *after* the filing of the note of issue and statement of readiness. Mere conclusory and non-specific affidavits in support of such an application are insufficient.

Contrast the holding in *Haviland,* supra, with the majority opinion in Urena v Bruprat Realty Corp. (1992, 1st Dept) 179 App Div 2d 505, 579 NYS2d 28.. Where no prejudice would result a party may be relieved of its waiver for failing to move to vacate a note of issue and certificate of readiness within twenty days of service of the note of issue and certificate of readiness. Judge Rubin’s dissent in *Urena,* supra, however, framed the issue as one dealing with the integrity of the statute. “The issue on this appeal . . . is whether the Civil Practice Law and Rules and the Uniform Court Rules for Trial Courts are to be accorded any meaning or whether counsel may disregard them without concern for the sanctions which they mandate.” In language critical of her brethren, Judge Rubin correctly noted that if the statute is to have meaning, and if the administration of justice is to be efficient, the bench must enforce the time limits imposed by statute and not be afraid to reject untimely applications.

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Notes to Decisions

1. Generally

In the Fourth Department under Supreme Court Rule § 1024.4(e), plaintiff's note of issue should have been stricken on grounds that all pleadings were not complete and that defendant had not had an opportunity to conduct necessary pretrial procedures, where said note of issue was filed only 5 days after defendant's answer and counterclaim. Watertown v RBG Productions, Inc., 40 A.D.2d 1079, 339 N.Y.S.2d 426, 1972 N.Y. App. Div. LEXIS 3133 (N.Y. App. Div. 4th Dep't 1972).

Court properly granted plaintiff's motion to mark case off calendar in consideration of his need to subpoena witness, and of in limine exclusion of testimony of his expert; any prejudice caused defendants was remedied by imposition of $2,500 in costs to be paid to each. Dinnocenzo v Jordache Enters., 228 A.D.2d 306, 644 N.Y.S.2d 200, 1996 N.Y. App. Div. LEXIS 7141 (N.Y. App. Div. 1st Dep't 1996).

Medical malpractice action was properly dismissed, despite plaintiff's request that case be restored to calendar, because neurosurgeon's letter submitted by plaintiff did not satisfy court's order requiring expert's "affidavit of merit," where letter was not sworn to, was not in admissible evidentiary form, and did not include author's expert opinion either that defendants deviated from accepted medical practice in their treatment of plaintiff or that their actions proximately caused plaintiff's injuries. Papineau v Powell, 251 A.D.2d 924, 675 N.Y.S.2d 169, 1998 N.Y. App. Div. LEXIS 7747 (N.Y. App. Div. 3d Dep't 1998).

Party seeking to restore matter to trial calendar after it has been dismissed under CLS CPLR § 3404 must show existence of meritorious cause of action, reasonable excuse for delay, intent not to abandon matter, and lack of prejudice to opposing party. Fishman v City of New York, 255 A.D.2d 485, 679 N.Y.S.2d 908, 1998 N.Y. App. Div. LEXIS 12664 (N.Y. App. Div. 2d Dep't 1998).

Action for medical malpractice and wrongful death would not be restored to trial calendar where (1) failure of counsel's paralegal to move to restore case to calendar when told to do so was not reasonable excuse for 20-month delay in moving to restore, (2) because of plaintiff's inactivity during that period, he failed to rebut presumption of abandonment that attaches when case has been automatically dismissed, and (3) 11 years passed between alleged malpractice and motion to restore, and thus defendants would be prejudiced by restoration. Collins v New York City Health & Hosp. Corp., 266 A.D.2d 178, 697 N.Y.S.2d 341, 1999 N.Y. App. Div. LEXIS 11144 (N.Y. App. Div. 2d Dep't 1999).

Action was properly dismissed under CLS CPLR § 3216, and plaintiff's belated motion for leave to file note of issue and have matter restored to trial calendar was properly denied, where plaintiff's conclusory assertions of law office failure were insufficient to excuse his delay of almost one year in complying with court's order to file note of issue, he did not serve affidavit of merit in opposition to motion to dismiss or in support of his motion to restore, and he did not otherwise show merit of action. Gray v Gray, 266 A.D.2d 261, 698 N.Y.S.2d 262, 1999 N.Y. App. Div. LEXIS 11332 (N.Y. App. Div. 2d Dep't 1999).

When action has been stricken from trial calendar and not restored within one year, motion to vacate automatic dismissal is required, and moving party must show merits of case, reasonable excuse for delay, absence of intent to abandon matter, and lack of prejudice to nonmoving party. Schwartz v Mandelbaum & Gluck, 266 A.D.2d 273, 698 N.Y.S.2d 252, 1999 N.Y. App. Div. LEXIS 13059 (N.Y. App. Div. 2d Dep't 1999).

Court properly denied personal injury plaintiff's motion under CLS Gen Mun § 50-e(6) and CLS CPLR § 3025(c) to amend her notice of claim, verified complaint, and bill of particulars to reflect

correct date of accident and to restore case to trial calendar where there was unexplained 5-year delay in seeking such relief, there was no explanation for inaction of plaintiff's former counsel after he learned of date discrepancy at hearing, he repeated incorrect date in verified bill of particulars and notice to admit 3 years after hearing, and amendment would cause defendant clear prejudice. Kotler v City of New York, 266 A.D.2d 355, 697 N.Y.S.2d 530, 1999 N.Y. App. Div. LEXIS 11574 (N.Y. App. Div. 2d Dep't 1999).

Plaintiff's motion to restore personal injury action to trial calendar was properly denied where action had been dismissed under CLS CPLR § 3404, and he did not show existence of meritorious cause of action. Robinson v West Point Leasing Corp., 266 A.D.2d 526, 698 N.Y.S.2d 554, 1999 N.Y. App. Div. LEXIS 12234 (N.Y. App. Div. 2d Dep't 1999), app. dismissed, 94 N.Y.2d 933, 708 N.Y.S.2d 352, 729 N.E.2d 1151, 2000 N.Y. LEXIS 589 (N.Y. 2000).

Defendant's attorney would be required to pay plaintiff's attorney $1,000 as condition of restoring action to calendar where egregious neglect of defendant's attorney in failing to answer was inexcusable. Leary v Pou Poune, Inc., 273 A.D.2d 8, 708 N.Y.S.2d 108, 2000 N.Y. App. Div. LEXIS 6117 (N.Y. App. Div. 1st Dep't 2000).

Personal injury plaintiff was entitled to vacatur of his default and restoration of action to calendar where he offered sufficient excuse for his unintentional default and proved existence of meritorious claim. Hardy v Schultz, 273 A.D.2d 355, 710 N.Y.S.2d 918, 2000 N.Y. App. Div. LEXIS 7099 (N.Y. App. Div. 2d Dep't 2000).

Plaintiff was not entitled to vacatur of dismissal of action under CLS CPLR § 3404 where (1) unsubstantiated assertions of plaintiff's attorney were insufficient to show either meritorious cause of action or absence of prejudice to defendant or third-party defendant if action were restored to trial calendar, and (2) intermittent periods of disability claimed by plaintiff's attorney were not reasonable excuse for delay, absent showing that disability was continuous throughout period in question. Bray v Thor Steel & Welding Ltd., 275 A.D.2d 912, 713 N.Y.S.2d 400, 2000 N.Y. App. Div. LEXIS 9671 (N.Y. App. Div. 4th Dep't 2000), app. denied, 738 N.Y.S.2d 254,

2000 N.Y. App. Div. LEXIS 13584 (N.Y. App. Div. 4th Dep't 2000), app. denied, 96 N.Y.2d 778, 725 N.Y.S.2d 633, 749 N.E.2d 203, 2001 N.Y. LEXIS 640 (N.Y. 2001).

Plaintiff's motion to vacate automatic dismissal of her action and to restore it to trial calendar was properly denied, despite adequate showing of merit of action, where she failed to show reasonable excuse for her delay in prosecuting action, intent not to abandon action, and absence of prejudice to defendants if action, which arose in 1987, were restored. Ramirez v City of New York, 281 A.D.2d 169, 721 N.Y.S.2d 508, 2001 N.Y. App. Div. LEXIS 1893 (N.Y. App. Div. 1st Dep't 2001).

Plaintiff was not entitled to vacatur of dismissal of her 1990 action where she failed to appear at 1995 status conference, primary cause of delay and inactivity was her failure to contact her attorney or make her location known to her attorney for 4 years, reasons for her attorney's failure to place action on calendar were his inability to contact her and fear of resulting dismissal for unreadiness, plaintiff offered no excuse for not keeping her attorney informed of her location, and thus plaintiff would be deemed to have abandoned action. Kidwell v Xerox Corp., 281 A.D.2d 188, 721 N.Y.S.2d 234, 2001 N.Y. App. Div. LEXIS 2237 (N.Y. App. Div. 1st Dep't 2001).

Plaintiffs' motion to restore action to active calendar was properly denied for failure to submit affidavit of merit and to show excuse for not having answered calendar call where action was marked off active status calendar 27 months before subject motion. Action commenced in September 1994 to recover for injury sustained in July 1992 would be presumed abandoned where record was devoid of any explanation for complete lack of activity for entire 27-month period during which case was off calendar and for additional 5-month period before that beginning with preliminary conference held in August 1996. Roman v City of New York, 281 A.D.2d 246, 721 N.Y.S.2d 535, 2001 N.Y. App. Div. LEXIS 2448 (N.Y. App. Div. 1st Dep't 2001).

Plaintiff did not show that her action against commuter railroad company had merit, and thus she was not entitled to vacatur of dismissal of action under CLS CPLR § 3404 and restoration of action to calendar, where (1) her false arrest and malicious prosecution claims were based on company's alleged vicarious liability for conduct of its conductor, who had complained of

harassment by plaintiff, and record did not show that conductor's conduct was actionable, and (2) plaintiff's claims for intentional infliction of emotional distress failed, absent showing of requisite element of egregious or outrageous conduct. Du Chateau v Metro-North Commuter R.R. Co., 281 A.D.2d 250, 721 N.Y.S.2d 538, 2001 N.Y. App. Div. LEXIS 2449 (N.Y. App. Div. 1st Dep't 2001).

In personal injury action against city, court properly granted city's motion to compel plaintiff to appear for physical examination, and properly denied plaintiff's motion to restore action to trial calendar, in light of plaintiff's past failures to comply with court-ordered examinations. Green v City of New York, 281 A.D.2d 515, 721 N.Y.S.2d 834, 2001 N.Y. App. Div. LEXIS 2566 (N.Y. App. Div. 2d Dep't 2001).

The rule-making power of the Appellate Division for calendar control is limited to an authority to make rules which are not inconsistent with existing statutes. Rovegno v Lush, 45 Misc. 2d 579, 257 N.Y.S.2d 406, 1965 N.Y. Misc. LEXIS 2288 (N.Y. Sup. Ct. 1965).

Order permitting a plaintiff to file a note of issue, where no statement of readiness had been filed, as provided by Supreme Court Rules, Appellate Division, Second Department, Rule VIII, part 7, was available only if there was a compliance with part 6, which required that papers on application for a preference be filed, and this conclusion did not nullify CPLR 3402, which permits the filing of a note of issue 40 days after service of the summons was complete, since CPLR 3401 authorizes the adoption of rules regulating the hearing of causes and the filing of notes of issue. Bedingfield v Dairymaid Farms, Inc., 46 Misc. 2d 146, 259 N.Y.S.2d 292, 1965 N.Y. Misc. LEXIS 2025 (N.Y. Sup. Ct. 1965).

The court should not require particulars of a party as to matters which such party need not prove on the trial. Swift v Swift, 65 Misc. 2d 1014, 319 N.Y.S.2d 655, 1971 N.Y. Misc. LEXIS 1852 (N.Y. Fam. Ct. 1971).

2. Effect of bankruptcy

Motion by plaintiffs to restore personal injury actions to trial calendar was properly denied where actions were stayed by operation of voluntary bankruptcy petition filed by defendant. Cangialosi v Mottoros, 251 A.D.2d 615, 675 N.Y.S.2d 876, 1998 N.Y. App. Div. LEXIS 7939 (N.Y. App. Div. 2d Dep't 1998).

3. Matter restored to calendar

Dismissal of divorce action would be vacated, and action would be restored to trial calendar, even though parties failed to appear at preliminary conference, where both parties denied receiving notice of conference, defendant joined in plaintiff's motion to vacate, and it would be waste of judicial resources to require parties to relitigate various issues and again engage in discovery, forensics, and appointment of law guardian. Pearlman v Pearlman, 251 A.D.2d 390, 673 N.Y.S.2d 322, 1998 N.Y. App. Div. LEXIS 6602 (N.Y. App. Div. 2d Dep't 1998).

Personal injury plaintiffs' motion to vacate dismissal of action under CLS CPLR § 3404 and to restore matter to calendar was properly granted where it was not clear that case was marked off calendar because of any fault of plaintiffs. Morales v City of New York, 251 A.D.2d 469, 673 N.Y.S.2d 588, 1998 N.Y. App. Div. LEXIS 6955 (N.Y. App. Div. 2d Dep't 1998).

Given inherent power of courts to control their calendars and supervise progress and conduct of litigation, court's sua sponte reinstatement of plaintiff's note of issue was not improvident where terms of court's order striking note of issue showed that court clearly intended to reinstate it as soon as plaintiff obtained new counsel, and defendant's reliance on CLS CPLR § 3404 was misplaced because one year did not elapse between striking and reinstatement. Murray-Gardner Mgmt. v Iroquois Gas Transmission Sys., L.P., 251 A.D.2d 954, 674 N.Y.S.2d 820, 1998 N.Y. App. Div. LEXIS 7730 (N.Y. App. Div. 3d Dep't 1998).

Plaintiffs were entitled to restoration of case to trial calendar where they voluntarily withdrew it from calendar without opposition from defendant and with leave to restore it on 10 days notice, and their motion to restore was timely. Cohen v Seiden, 266 A.D.2d 334, 698 N.Y.S.2d 151, 1999 N.Y. App. Div. LEXIS 11533 (N.Y. App. Div. 2d Dep't 1999).

Plaintiff was entitled to restoration of action to trial calendar, even though she did not so move within one year after action was marked off calendar, where her showing of meritorious cause of action, reasonable excuse for delay, and lack of prejudice to defendant was uncontroverted by defendant, who did not oppose motion. Mahon v Rothschild, 273 A.D.2d 23, 708 N.Y.S.2d 863, 2000 N.Y. App. Div. LEXIS 6359 (N.Y. App. Div. 1st Dep't 2000).

Plaintiffs were entitled to have their action restored to trial calendar, even though they took no action during 13 months immediately preceding motion to restore, where (1) their expert clearly articulated facts and opinions which, if believed, proved actionable medical malpractice by defendant in failing to obtain X-ray, which failure led to later hip surgeries and complete replacement, (2) their counsel provided reasonable excuse based on misconception about relationship between present action and related negligence action, (3) plaintiffs served discovery and opposed consolidation motion within year before CLS CPLR § 3404 dismissal, and (4) no meaningful prejudice to defendant resulted from brief interruption in disclosure, because Appellate Division would provide for additional pretrial discovery in granting new physical examination and deposition of injured plaintiff. Campbell v Yanoff, 273 A.D.2d 166, 710 N.Y.S.2d 65, 2000 N.Y. App. Div. LEXIS 7514 (N.Y. App. Div. 1st Dep't 2000).

Defendant was not entitled to dismissal of action as abandoned, absent clear indication that case had ever been “marked ‘off’ or struck from the calendar or unanswered on a clerk’s calendar call” under CLS CPLR § 3404. Fronk v Kam Yeung, 286 A.D.2d 972, 730 N.Y.S.2d 766, 2001 N.Y. App. Div. LEXIS 9087 (N.Y. App. Div. 4th Dep't 2001).

Research References & Practice Aids

Cross References:

Calendars, CLS Unif Tr Ctr Rls § 202.22.

Identification of trial counsel, CLS Unif Tr Ctr Rls § 202.31.

Rescheduling after jury disagreement, mistrial or order for new trial, CLS Unif Tr Ctr Rls § 202.45.

Federal Aspects:

Calendar, USCS Court Rules, United States Supreme Court Rules, Rule 27.

Assignment of cases for trial in United States District Courts, USCS Court Rules, Federal Rules of Civil Procedure, Rule 40.

Jurisprudences:

29 NY Jur 2d Courts and Judges § 116. .

105 NY Jur 2d Trial §§ 3., 4., 40. .

18 Am Jur Pl & Pr Forms (Rev), Motions, Rules, and Orders, Forms 34.– 43.

23B Am Jur Pl & Pr Forms (Rev), Trial, Forms 1.– 54.

Treatises

Matthew Bender's New York Civil Practice:

Weinstein, Korn & Miller, New York Civil Practice: CPLR Ch. 3401, Rules for the Hearing of Causes.

2 Lansner, Reichler, New York Civil Practice: Matrimonial Actions § 36.06.

Warren's Weed: New York Real Property:

Warren's Weed: New York Real Property § 28.50.

Forms:

Bender's Forms for the Civil Practice Form No. CPLR 3401:1 et seq.

LexisNexis Forms FORM 380-17:101.—Request for Judicial Intervention.

2 Medina's Bostwick Practice Manual (Matthew Bender), Forms 17:101 et seq .(calendar practice; trial preference).

Texts:

1 New York Trial Guide (Matthew Bender) § 1.20.

Hierarchy Notes:

NY CLS CPLR, Art. 34

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