

NY CLS CPLR R 4014

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New York

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Civil Practice Law And Rules (Arts. 1 — 100) >
Article 40 Trial Generally (§§ 4001 — 4019)

R 4014. Duration of trial

Notwithstanding the expiration of the term at which it was commenced, a trial shall continue until it is completed.

History

Add, L 1962, ch 308, eff Sept 1, 1963.

Annotations

Notes

Prior Law:

Earlier statutes: CPA § 436; CCP § 45.

Advisory Committee Notes:

This rule is a simplification of the first phrase of CPA § 436. It is stated as broadly as possible to insure that the trial judge's power to decide and reopen the case is not terminated by the ending of a term. In a case tried by a jury, the trial judge has power to hear motions but, of course, he can not reopen the case to take further evidence after the jury is discharged, unless the parties waive their right to a jury trial. The last phrase of CPA § 436, that the provision included all

proceedings until discharge of a jury or submission on the merits, served no purpose except to illustrate the scope of the rule and is omitted.

Notes to Decisions

I.Under CPLR

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I. Under CPLR

1. Generally

The court has the power to rule upon defendant's motion for judgment dismissing the complaint after the declaration of a mistrial was granted because of certain improprieties during plaintiff's summation necessitating the withdrawal of a juror. *Gullian v Austin R. Newcombe & Co.*, 27 A.D.2d 479, 280 N.Y.S.2d 260, 1967 N.Y. App. Div. LEXIS 4015 (N.Y. App. Div. 3d Dep't 1967).

In a matrimonial action, it was not an abuse of discretion to deny defendant's motion for an adjournment where a trial preference had been granted it to the action and where the underlying reason was defendant's deliberate decision to occupy himself on the date set for the commencement of trial by moving from New York to another state with his second wife, thereby

making the default intentional. *Wilson v Wilson*, 97 A.D.2d 897, 470 N.Y.S.2d 464, 1983 N.Y. App. Div. LEXIS 20689 (N.Y. App. Div. 3d Dep't 1983).

It was unreasonable for Special Term in a matrimonial proceeding to deny defense counsel's application for an adjournment and order an inquest, where there was pending at time a motion by defendant to strike plaintiff's action from calendar and to compel plaintiff to submit to an examination before trial, and where defense counsel was to go on trial the next day; furthermore, since defense counsel's subsequent default in answering calls of the calendar was direct result of improper denial of an adjournment, sanctions against the attorney in order to obtain vacatur of the inquest would be reversed. *Anderson v Anderson*, 111 A.D.2d 730, 489 N.Y.S.2d 773, 1985 N.Y. App. Div. LEXIS 49974 (N.Y. App. Div. 2d Dep't 1985).

2. Family Court proceedings

In paternity proceeding, Family Court did not err in refusing to grant respondent additional continuance to enable him to secure deposition of out-of-state witness who was one of 5 people present in mother's camper on night mother allegedly had sexual relations with respondent, assertedly her only sexual contact with respondent in relevant period, where (1) other 4 witnesses were deposed and their depositions were made part of record, (2) respondent had been granted letters to take deposition of out-of-state witness, and (3) matter was restored to calendar after 7-month wait for deposition; court's decision to proceed was within its discretion given delay, absence of indication that missing witness's testimony would add anything to record, and clear and convincing evidence of respondent's fatherhood. *Pandozy v Dwayne "OO"*, 144 A.D.2d 739, 535 N.Y.S.2d 458, 1988 N.Y. App. Div. LEXIS 10941 (N.Y. App. Div. 3d Dep't 1988).

II. Under Former Civil Practice Laws

3. Continuing trial into subsequent appointed term

There is nothing in the statutes or Constitution which prevents the continuation of a trial term beyond the duration of the original time set, even though in the meantime another term of the court is appointed to be held; in fact the provisions of CPA § 436 and § 432 of the Code of Criminal Procedure authorized the continuation of a term beyond the expiration of the time appointed. *People ex rel. Weick v Warden of City Prison*, 117 A.D. 154, 102 N.Y.S. 374, 1907 N.Y. App. Div. LEXIS 210 (N.Y. App. Div.), *aff'd*, 188 N.Y. 549, 80 N.E. 1118, 188 N.Y. (N.Y.S.) 549, 1907 N.Y. LEXIS 1169 (N.Y. 1907).

4. Continuance of extraordinary term

When an extraordinary term is convened for the disposal of business which may be brought before it, it is deemed to continue until the decision of motions submitted though it has expired for the purpose of new business. *Saranac Land & Timber Co. v Roberts*, 227 N.Y. 188, 125 N.E. 102, 227 N.Y. (N.Y.S.) 188, 1919 N.Y. LEXIS 666 (N.Y. 1919).

5. Time for objections

Where a trial was commenced before a justice of the supreme court holding under one election and was continued after that term had expired, he having been reelected, and no objection was made until after judgment, held too late to object. *Kelly v Christal*, 16 Hun 242 (N.Y.), *aff'd*, 81 N.Y. 619, 81 N.Y. (N.Y.S.) 619, 1880 N.Y. LEXIS 279 (N.Y. 1880).

6. Passing judgment during prolonged term

Where a term was prolonged for the trial of one case; held, that judgment might be passed in others where convictions had been previously had. *Lowenberg v People*, 27 N.Y. 336, 27 N.Y. (N.Y.S.) 336, 26 How. Pr. 202, 1863 N.Y. LEXIS 26, 1863 N.Y. Misc. LEXIS 359 (N.Y. 1863).

Research References & Practice Aids

Jurisprudences:

28 NY Jur 2d Courts and Judges § 90. .

7A Am Jur PI & Pr Forms (Rev), Continuance, Forms 1.– 11.

Law Reviews:

The CPLR and the trial lawyer. 9 N.Y.L. Sch. L. Rev. 269.

Treatises

Matthew Bender's New York Civil Practice:

Weinstein, Korn & Miller, New York Civil Practice: CPLR Ch. 4014, Duration of Trial.

Matthew Bender's New York CPLR Manual:

CPLR Manual § 23.02. Trials; general rules.

Annotations:

What constitutes bringing an action to trial or other activity in case sufficient to avoid dismissal under state statute or court rule requiring such activity within stated time. 32 ALR4th 840.

Forms:

2 Medina's Bostwick Practice Manual (Matthew Bender), Forms 18:101 et seq .(trial generally).

Hierarchy Notes:

NY CLS CPLR, Art. 40

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