NY CLS CPLR, Art. 34

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New York

Consolidated Laws Service **>**

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

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

Article 34 Calendar Practice; Trial Preferences

History

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

Annotations

Notes

Advisory Committee Notes:

Generally. The new CPLR adopts, with only minor language changes, the former provisions in the CPA and rules regulating calendar practice and preferences. The only significant change is the use of precatory language calling for calendar practice which is uniform and integrated as far as practicable in the city of New York. Calendar practice is not regulated by state-wide act or rules but is left to the Appellate Division in each Department and to local courts. This is the practice in the Federal system and in almost all states.

Three states have state-wide calendar rules. Cal RCP 5-14; Mich RCP 35; NJ RCP 4:41-4–4:41-5. See also Judicial Council Draft, South Carolina Rules of Civil Procedure 72 (1958). But cf. Note, Rules for Calendar Making, VIII Bar Notes, North Carolina Bar Association 24 (1957). It should be noted that even in a state like New Jersey with centralized calendar control there is a great deal of local control over the mechanics of calendars. See Report of the New Jersey

Supreme Court's Committee on Pretrial and Calendar Control 13 (mimeographed, March 13, 1957), 80 NJ LJ 258 (1957).

Local calendar problems. In New York, with its wide variety of calendars, it would be difficult, if not impossible, to provide a uniform state-wide calendar practice. In some counties the Supreme Court has many judges sitting simultaneously; in others there are only a few trial terms a year. Some counties have no reported delay in trials while others indicate a calendar delay of years. In some counties practically all trials are by jury but in others there are a substantial percentage of jury waivers and equity cases. Most litigation arises out of negligence, but in one county (New York) approximately a third of the matters arise out of commercial disputes. In some counties there appears to be no problem of providing sufficient trial lawyers with cases ready to be tried, while in at least one county there are complaints that the part of the bar available to try negligence cases is too small and is kept occupied in other counties, so that at times cases can not be provided for the available trial parts. See Interim Report of the Queens County Bar Association on Congested Calendars in the Supreme Court, Tenth Judicial District (January 18, 1954). Finally, details of calendar practice are often affected by the availability of a judge or judges with an interest, temperament and capacity to control calendars.

Action in meeting calendar problems. The Appellate Division in the various Departments has in recent years taken a healthy interest in devising new ways of meeting calendar problems. See, e. g., Chandler, McConnell and Tolman, Administering the Courts—Federal, State and Local, 42 J Am Jud Socy 13, 17–19 (1958); Note, Efforts to Alleviate Calendar Congestion in the New York Supreme Court: Preference Rules and Calendar Classification, 54 Colum L Rev 110 (1954); see also Burger, The Courts on Trial: A Call for Action against Delay, 44 ABAJ 738, 798–99 (1958) (pointing out the need for the Judicial Councils of the Federal circuits to assume their full responsibility to reduce delay). In affirming the constitutionality of Rule V of the New York County Supreme Court Trial Term Rules, which places cases which the court believes should have been brought in a lower court in a calendar status making it virtually impossible to obtain a trial in the Supreme Court, the Appellate Division reasserted its continuing interest in

calendars by declaring in Plachte v The Bancroft, Inc. 3 AD2d 437, 438, 161 NYS2d 892, 893–94 (1st Dept 1957).

Inherent power of courts to control calendars. It is ancient and undisputed law that courts have an inherent power over the control of their calendars, and the disposition of business before them, including the order in which disposition will be made of that business (Landis v North American Co. 299 US 248, 254; accord, American Life Ins. Co. v Stewart, 300 US 203, 215; Morse v Press Pub. Co. 71 App Div 351, 357). Moreover, this power exists independently of statute (Riglander v Star Company, 98 App Div 101, affd 181 NY 531; Clark v Eighth Ave. RR. 114 Misc 707; Reinertsen v Erie RR. 66 Misc 229; Smith v Keepers, 66 How Pr 474; 88 CJS Trial, sec 33).

Indeed, a statute which would impose a mandate upon the court in the otherwise discretionary handling of time of trial is unconstitutional (Riglander v Star Co., 98 App Div 101, affd 181 NY 531; accord, Woerner v Star Co. 107 App Div 248; People v McClellan, 56 Misc 123).

Duty of courts to control calendars. In its discussion of the problem of calendar delay, the court noted its duty to control calendars when it stated:

“But the existence of the power is not the only aspect revealed by the decisional and statutory history. There also appear constantly changing method and experimentation to resolve a stubborn chronic problem of trial delay. More and more the granting and denial of preferences in individual cases or assignment of cases to preferred or classified calendars were associated with efforts at solution. Thus arose, and later disappeared, the short cause calendar. Then arose the commercial calendar, and more recently the nonjury calendars. The problem not being solved, new and further methods and experimentation were indicated.”

Given the power and the existence of the problem, the duty is mandated on the courts. . . . [Id. at 440, 161 NYS2d at 895–96.].

Although new calendar procedures such as those provided by the readiness rule are controversial, there appears to be a release of judicial energy merely from the experimenting

with new methods. See Karlen, Psychological Attitudes and Calendar Delay, 140 NYLJ 118, p 4, col 1 (1958); cf. Botein, Our Courts Face the Future, 13 The Record 117, 120 (1958); Botein, Announcement on Reduction in Delay, 139 NYLJ 110, p 1, col 3 (1958); Peck, Report on Reduction in the Backlog of Cases, 137 NYLJ 79, p 1, col 8 (1957). Placing responsibility for calendar control on the state-wide level might well smother some of this enthusiasm of the bench to meet calendar problems.

Congestion of calendars generally. The committee is aware of the dissatisfaction of the public because of delay in the trial of cases. It is common knowledge that members of the trial bar are disturbed by what appears to be an undue burden on their time in placing an excessive number of cases on the day calendar in some counties, although it is clear that many of the cases cannot possibly be reached; by requirements for their personal appearance in court when stipulations and use of the telephone and mail by court clerks might suffice; by their inability to tell clients and witnesses when they will actually be needed in court; and by the high cost of paperwork and the possibility of delaying tactics arising out of the readiness rules. See Breitel and Corbin, Courts and Bar May Stand or Fall, 13 NY County Lawyers AB Bull 6, 11–12 (1955); Recommended Uniform Calendar System for the City Court of the City of New York, 19 NY Jud Council Rep 165, 174, 175–77, 180 (1953) (containing a description of calendar practice in all the courts in New York city). Moreover, the committee is aware that trial parts are not always kept fully occupied. See id. at 178. Nevertheless, at this stage in the development of calendar control, it believes that state-wide rules would be premature and that they might have a permanent adverse effect by inhibiting the exercise of local initiative and interest by bench and bar acting jointly to meet their responsibility to reduce calendar congestion. For a description of calendar studies in progress, see the Bulletin of the American Bar Foundation, Project on Congestion in the Courts, entitled “Court Congestion.” Cf., e. g., Evans, Calendar Congestion—A New Approach, 26 NYSB Bull 368 (1953) (recommending rotating calendar); 19 NY Jud Council Rep 179 (1953) (recommending a modified rotating calendar based on the practice in Bronx City Court); Cleveland Bar Association, Report of Committee on Court Congestion and Delay in Litigation 23 (1958) (recommending adoption of New York certificate of readiness rule);

Kaufman, Calendar Decongestion in the Southern District of New York, 40 J Am Jud Soc'y 70 (1956) (suggesting adoption of repeated pretrial screenings by a judge and a readiness rule).

Tools for meeting calendar congestion. Supplying the basic tool for meeting court congestion—the availability of a sufficient body of judicial manpower operating in a modernized court system—is not within the terms of reference of the advisory committee. Cf. N.Y. Temp. Comm'n on the Courts, Rep IV 21 et seq., Leg Doc 6(c) (1957); New York State Bar Association, Report of Committee on Calendar Congestion in the Supreme Court in New York City and in the Metropolitan Area, adopted by the Committee on Negligence Litigation (1954); Vanderbilt, Clearing Congested Calendars, 22 DCBAJ 618, 624–26 (1955). Its revisions of the practice have, however, been designed to reduce as far as practicable unnecessary demands on the time of bench and bar so that a greater proportion of our judicial manpower will be available to try cases, so that only those cases which should be tried are tried, and so that the trials are as speedy as just results will permit. Cf., e. g., Brennan, The Congested Calendars in Our Courts—The Problem Can Be Solved, 38 Chicago B Record 103 (1956); Brownell, Bringing Justice Up-To-Date, 137 NYLJ 72, p 4, col 3 (1957); Vanderbilt, supra at 618; Report of Executive Committee of the Attorney-General's Conference on Court Congestion, 40 J Am Jud Soc'y 108 (1957) .

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