

CIVIL COURT OF THE CITY OF NEW YORK

Civil Court Directive

Subject: Right to Submit an
Order to Show Cause

Class: DRP-152
Category: LT-10
Eff. Date: Mar. 16, 1998

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BACKGROUND:

It has come to my attention that some Clerks have been preventing litigants from initiating Orders to Show Cause. This is especially true when the case file is not located because it has been pulled from the file for some reason (Warrant, other Motion, etc.) In some instances in Landlord/Tenant matters litigants have been told to wait for receipt of a Notice of Eviction before returning to initiate the OSC. This not only prevents a litigant from exercising his/her legal rights, but it also places the litigant in a precarious legal position.

DIRECTIVE:

The Clerical staff is hereby reminded that the Clerk's function is ministerial, and that no litigant may be prevented from seeking access to a Judge through proper legal channels, or from initiating an Order to Show Cause or any other legitimate action or proceeding. It is the role of the Clerk to review papers to ensure that they are in proper form; it is the role of the Judge to decide whether the requested relief should be granted.

If the Clerk believes that there is an issue which should be brought to the attention of the Judge, s/he should attach a note to that effect to the papers (flag). However, no litigant shall be denied the right to submit proper papers to a Judge at the time the litigant chooses.

The Chief Clerk is directed to provide procedures to assure that this is handled properly by the staff.

Dated: March 18, 1998

Fern Fisher-Brandveen
Administrative Judge

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Based upon the Directive of the Administrative Judge, the staff is advised to proceed as follows:

CLERK'S PROCEDURES:

In the event that a litigant's file is not able to be located after a diligent search, the Clerk should attempt to fill out the required papers using whatever papers the litigant has, in conjunction with the information in the HCIS.

If that is not sufficient, and no Warrant has been issued, the Clerk may ask the litigant to return at a time when the papers can be expected to be available and to bring with him/her whatever papers the litigant may have. Under no condition should the Respondent be told to await the service of a Notice of Eviction. The issuance of the Warrant annuls the landlord/tenant relationship and places the Respondent at a disadvantage legally.

In situations where the Respondent has defaulted in a calendar call on the same day as s/he appears in court seeking an OSC, and the papers in the part have not yet been processed, the Clerk should check the HCIS to determine if there has been a Warrant issued on the case.

a) If there has been a Warrant issued, the Clerk should make every attempt to secure the file so as to avoid an eviction.

b) If no Warrant has been issued on the case, the litigant may be told to return at a time when the papers are likely to have been processed and returned to the office.

Dated: March 18, 1998

Jack Baer
Chief Clerk