

HON. TIMOTHY J. WALKER, J.C.C.
Acting Supreme Court Justice
Presiding Judge, Commercial Division,
8th Judicial District
E-Mail: tjwalker@nycourts.gov
Part 22 - Fourth Floor
25 Delaware Avenue
Buffalo, New York 14202
PHONE: 716-845-7479
FAX: 716-845-7505

As of February 2023

Law Clerk:	Darryl J. Colosi, Esq.	(716) 845-7480 E-Mail: dcolosi@nycourts.gov
Secretary:	Christine D. Paz	(716) 845-7479 E-Mail: cpaz@nycourts.gov
Court Clerk:	John H. Garbo, Jr.	(716) 845-9415 E-Mail: jgarbo@nycourts.gov
Court Reporter:	Carolyn Kerr	(716) 845-2127 E-Mail ckerr@nycourts.gov

MOTIONS: Attorneys shall contact John Garbo prior to scheduling same.

Generally every Wednesday. On submission, until further notice. In the event the Court determines oral argument is required, Mr. Garbo will schedule same after consulting with counsel.

1. This Court is paperless, and hard copies of motion submissions shall not be sent to Chambers unless the party is not registered with the NYSCEF System. In that event, motion submissions shall be scanned and emailed to the Court in order to avoid the delivery of hard copies. **Unless otherwise advised by the Court, all motions shall be decided on submission.**

2. Reply submissions, if any, shall not re-iterate previous submissions.

3. **Affidavits and Affirmations shall not contain citations to case and/or statutory law.**

4. Cross-motions shall be governed by the CPLR, and the Court requires **strict** compliance with CPLR §2214(b).

5. Discovery motions shall be subject to a conference with the Law Clerk prior to

filing the motion. In such case, counsel shall first email the Law Clerk, copying opposing counsel, and briefly set forth the discovery-related dispute. Opposing counsel shall have a reasonable opportunity to email a brief response, after which the Law Clerk will determine whether a conference, or motion practice is required.

6. Matters shall not be scheduled until Chambers receives a paid, stamped RJI and/or E-filing notification showing the appropriate filing fee has been paid.

7. This Court is a teaching court. Junior members of legal teams representing clients are invited to argue motions they have assisted in preparing, and to question witnesses with whom they have worked. Opportunities to train less experienced attorneys in oral advocacy are increasingly in short supply - due to the decline in the number trials, and the Pandemic. Where junior lawyers are familiar with the matter under consideration, but have little (or no) experience arguing before a court, they should be encouraged to speak by the presiding judge and the law firms involved in the case. This Court is amenable to permitting multiple lawyers (i.e., one junior and one senior) to argue for one party if this creates an opportunity for a junior lawyer to participate. The ultimate decision as to who speaks on behalf of the client rests with the lawyers in charge of the case, not with the court. Requests for oral argument are more likely to be granted if counsel identify lawyers out of law school five (5) years or less who will argue the motion (alone, or with a more senior lawyer) and who reference this rule in the request.

8. In connection with motions for summary judgment, the court requires the submission of statement(s) of material undisputed facts and counter-statement(s) of material undisputed facts. Each counter-statement of material undisputed fact shall repeat the fact to which it is responding. A party's failure to submit a counter-statement of material undisputed facts shall result in the court deeming movant's statement of material undisputed facts admitted. While certain of the Appellate Divisions did not require strict adherence to Rule 202.8-g of the Commercial Division's Uniform Rules at the time when such Rule mandated the submission of a counter-statement of material undisputed facts, this court finds the submission of the statement and counter-statement to be very helpful in narrowing the issues and minimizing unnecessary and unhelpful posturing. Counsel may request in writing (email to the court's law clerk shall suffice) to be relieved from this requirement, before any dispositive motions are filed. In the event the court does not respond to any such request before a party's deadline to file a dispositive motion, the party shall deem the request denied.

ORDERS:

Shall be submitted to Chambers by the prevailing party's counsel within five (5) business days of a decision as to same, together with verification that the order has been served upon all opposing counsel (or *pro se* litigants), and that no objection has been received within three (3) business days of service. **Orders will not be signed without said verification.**

SCHEDULING ORDERS:

The Court requires strict adherence to Scheduling Orders. The time within which to file

dispositive motions shall not be enlarged by a party's failure to timely file the Trial Note of Issue and Statement of Readiness. Accordingly, the deadline by when dispositive motions shall be served and filed shall run from the date the Trial Note of Issue was ordered to be filed, not the date it was actually filed (*see Gibbs v. St. Barnabas Hospital*, 16 NY3d 74, 81 [2010] ["The failure to comply with deadlines not only impairs the efficient functioning of the courts and the adjudication of claims, but it places jurists unnecessarily in the position of having to order enforcement remedies to respond to the delinquent conduct of members of the bar, often to the detriment of the litigants they represent. Chronic noncompliance with deadlines breeds disrespect for the dictates of the Civil Practice Law and Rules and a culture in which cases can linger for years without resolution"]).

The Court shall make every effort to dispose of all matters within the following standards and goals benchmarks as to when civil cases should be resolved¹:

Expedited Cases

- Pre-note Period 8 months from RJI to Note
- Note Period 15 months from Note to Disposition
- Overall Period 23 months from RJI to Disposition

Standard Cases

- Pre-note Period 12 months from RJI to Note
- Note Period 15 months from Note to Disposition
- Overall Period 27 months from RJI to Disposition

Complex Cases

- Pre-note Period 15 months from RJI to Note
- Note Period 15 months from Note to Disposition
- Overall Period 30 months from RJI to Disposition

(*see also, The State of Our Judiciary 2018 - Excellence Initiative Year Two, February 2018*, p. I, at <http://www.nycourts.gov/excellence-initiative/>).

CONFERENCES:

Conferences shall be automatically scheduled upon Chambers' receipt of a filed RJI or calendar note of issue. Conferences may also be scheduled upon request (directed to Christine Paz). Prior to a preliminary conference, counsel shall provide Chambers with a one (1) paragraph summary of the case. At the conference, a scheduling order shall be issued after consultation with, and agreement among counsel, which shall, unless circumstances dictate otherwise, include jury selection and trial dates. If no one appears, the Court shall issue a Scheduling Order based on its review of the file.

¹Applicable to general civil matters. Not applicable to tax *certiorari* or foreclosure matters.

Until further notice, all conferences shall be by Microsoft Teams.

In the event one or more attorneys is absent from a conference, the Court shall proceed with the attorneys who appeared. Counsel shall bring calendars, including trial availability, to all conferences. Conferences shall take place with the Law Clerk (or the Court, as matters dictate). Counsel shall also be prepared to discuss a timely and cost-effective resolution of all matters affecting the case, including the ultimate resolution of the case itself.

TRIALS:

1. The Court adheres strictly to jury selection and trial schedules. Exhibits shall be pre-marked, as set forth below.

2. Requests to charge, witness lists, and proposed verdict sheets shall be submitted to Chambers (after consultation with opposing counsel, so as to narrow issues and limit redundancy) two (2) weeks prior to the scheduled commencement date of jury selection. Motions *in limine* shall be filed and served **so as to be heard** two (2) weeks prior to the scheduled commencement date of jury selection.

3. Counsel shall exchange a list of the deposition testimony that will be offered into evidence and confer in good faith to agree upon those portions of the deposition testimony that will be admitted into evidence without objection.

4. Counsel shall confer in good faith to agree upon those exhibits that shall be admitted into evidence without objection, and shall pre-mark them electronically with the Court's Reporter, Carolyn Kerr. Counsel shall email exhibits in PDF format **one week prior to jury selection** to Ms. Kerr at ckerr@nycourts.gov. Each exhibit shall, unless directed otherwise, be its own separate file. If there is any stipulation among counsel as to the admissibility into evidence of any exhibit, counsel shall advise the Court Reporter and it will so be marked. Otherwise, exhibits shall be marked for Identification only. Counsel shall, unless otherwise directed by the Court/Law Clerk, upload all marked exhibits (Evidence and Identification) to the NYSCEF System.

5. An initial charging conference shall be held upon the conclusion of jury selection, and a final charging conference shall be held prior to summations.

6. Expert disclosure shall be staggered. The deadline for expert disclosure, absent good cause shown, is forty-five (45) days prior to the scheduled commencement date of jury selection (plaintiff), and thirty (30) days prior to the scheduled commencement date of jury selection (defendant).

All dates set by the Court (in Scheduling Orders or otherwise) are dates certain, and any adjournments of those dates require Court approval, even if counsel have consented to an adjournment.

TROs:

Shall be issued on a case-by-case basis, and shall be on notice to opposing counsel, if known. TROs in cases assigned to another Judge shall be granted only upon approval by that Judge or his/her Law Clerk. Absent extraordinary circumstances, the Court will not issue a TRO without a conference.

DISCONTINUANCE AND SETTLEMENT:

In any discontinued action, the attorney for the defendant shall file a stipulation or statement of discontinuance with the appropriate county clerk within twenty (20) days of such discontinuance, and shall provide Chambers with a date-stamped copy of same. If the action has been noticed for judicial activity within twenty (20) days of such discontinuance or settlement, the stipulation or statement shall be filed **before the date scheduled for such activity, or the attorneys shall appear in Court for purposes of placing the settlement on the record before the date scheduled for such activity.**