

HON. TIMOTHY J. WALKER, J.C.C.
Acting Supreme Court Justice
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As of October 4, 2019

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: TBD

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

Generally every 3rd and 4th Wednesday - Morning session commencing at 9:30 a.m.; Afternoon session commencing at 2:00 p.m.;

Generally every 1st and 2nd Wednesday - Afternoon session only.

1. 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. 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.

2. Hard copies of all moving and opposing submissions for consideration by the Court (other than those relating to Orders to Show Cause - see below), shall be **received** by Chambers at least three (3) business days prior to the return date, and before **2:00 p.m.** Hard copies of reply submissions, if any, must be **received** by Chambers at least one (1) business day prior to the return date, and before **2:00 p.m.**, and shall not re-iterate previous submissions. Cross-motions shall be governed by the CPLR, and the Court requires **strict** compliance with CPLR §2214(b). Except for applications for Orders to Show Cause, the originals of all submissions shall be filed with the office of the clerk of the county in which the matter is commenced/pending. 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.

3. Motions shall be called in the order in which attorneys check in with the Court Clerk. Please report in immediately upon arrival.

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

5. Matters shall not be scheduled until Chambers receives a paid, stamped RJI and/or E-filing notification showing the original papers were filed with the office of the clerk of the county in which the matter is commenced/pending, and the appropriate filing fee has been paid.

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 copies of all pleadings and 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 include jury selection and trial dates. If no one appears, the Court shall issue a Scheduling Order based on its review of the file.

Absent prior approval to the contrary, counsel whose offices are located in the 8th Judicial District shall attend conferences in person. 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.

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

TRIALS:

1. The Court adheres strictly to jury selection and trial schedules. Exhibits shall be pre-marked. Counsel shall contact Chambers to arrange for same prior to the scheduled commencement date of jury selection.

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

5. The deadline for expert disclosure, absent good cause shown, is thirty (30) days prior to the scheduled commencement date of jury selection.

All dates set by the Court (in Scheduling Orders or otherwise) are date 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.

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.**