

CPLR ARTICLE 34:
CALENDAR/TRIAL PRACTICE.

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The chief administrator shall make rules regarding trial & calendar practice; such rules to be uniform within the counties of NYC, as practicable.

A case can be "calendared" after joinder of issue, or else 40 days following completion of service. A "Note of Issue" shall be served on all parties; and 2 copies filed with the Clerk within 10 days thereafter.

Any newly added party shall be served with a note of issue by the party who so added, within 5 days of such adding. The adding party shall serve a statement on all appearing parties regarding the newly added person. The adding party shall file the note of issue, statement to parties, and proofs of service with the clerk, notifying him of the change in caption.

Cases with added parties shall retain their place on the calendar (unless otherwise ordered).

Preference of cases is *generally* according to filing date of note of issue, **except:**

- 1) if the state be a party;
- 2) if the statute specifies a particular action for preference;
- 3) in the interests of justice;
- 4) if a party is over 70 years old;
- 5) for medical/dental/podiatric malpractice;
- 6) personal injury actions; where a party is terminally ill, allegedly resultant therefrom.

Motion on notice for preference shall be made with the note of issue by the party so filing; else by any other party within 10 days thereafter. **Except:** at any time by a party who has reached 70 years old, or become terminally ill resultant from the underlying cause of action in a personal injury case.

A case is "abandoned" if marked "off-calendar" and not restored within 1 year; and such shall be dismissed by the clerk without costs and without the requirement of being so ordered.

Arbitration shall be pursuant to the rules of the **Chief Judge of the Court of Appeals**, and shall be for amounts not exceeding \$6,000.00 in a lower civil court [unless within nyc, up to \$10,000.00]. a new jury trial shall be as of right upon demand of a party after determination of arbitration; but such demander may be liable for the costs of arbitration.

Judicial hearing officers (JHOs) may be arbitrators.

Costs of arbitration to be a state charge against the office of court administration.

In a medical/dental/podiatric malpractice case, the plaintiff shall file a certificate to that effect within 60 days of joinder of issue, together with proof of service; such time limit to extend only on motion.

Malpractice cases shall be set down for a pre-calendar conference **after** joinder of issue but **before** note of issue filed. Discovery shall be completed within 12 months thereafter; parties to be ready for trial within 18 months. Failure to comply with timeframes may result in imposition of costs, or "reasonable" attorney fees for opposing counsel. The judge assigned for pre-calendar conferencing shall hear & determine pre-trial motions; and shall be assigned for trial, when practicable.

A terminally ill party shall notify the clerk in writing; and include a Dr.'s affidavit specifying the nature of illness, and life expectancy (if known). The case shall be set down for a preliminary conference within 20 days thereafter; discovery then to be completed within 90 days unless good cause shown. At the preliminary conference the court shall order that date by which note of issue & certificate of readiness must be filed; parties to be ready for trial within 1 year. Motions for dismissal herein do **not** stay disclosure!