



STATE OF NEW YORK  
**UNIFIED COURT SYSTEM**  
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**A. GAIL PRUDENTI**  
Chief Administrative Judge

**JOHN W. McCONNELL**  
Counsel

## MEMORANDUM

May 18, 2015

To: All Interested Persons

From: John W. McConnell

Re: Proposed amendment of 22 NYCRR § 210.14 (Uniform Rules for the City Courts) authorizing the clerk of a City Court to automatically dismiss abandoned cases.

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The Advisory Committee on Local Courts has recommended an amendment of section 210.14 of the Uniform Rules for the City Courts authorizing the clerk of a City Court to automatically dismiss any case struck from the trial calendar and not restored thereto within one year (Exh. A). This recommendation responds to concern about the large number of abandoned cases languishing on many City Court dockets. It would give City Courts the option of dismissing an abandoned case without judicial involvement where such case was struck from the trial calendar by a judge. The amendment would not disturb or diminish a City Court judge's existing authority to dismiss an action for neglect to prosecute. Proposed subdivision (c), which is modeled on section 208.14(c) of the New York City Civil Court Rules, sets forth criteria for restoration of a case to the calendar after it has been stricken.

Persons wishing to comment on this proposal should e-mail their submissions to [rulecomments@nycourts.gov](mailto:rulecomments@nycourts.gov) or write to: John W. McConnell, Esq., Counsel, Office of Court Administration, 25 Beaver Street, 11th Fl., New York, New York 10004. **Comments must be received no later than July 17, 2015.**

All public comments will be treated as available for disclosure under the Freedom of Information Law and are subject to publication by the Office of Court Administration. Issuance of a proposal for public comment should not be interpreted as an endorsement of that proposal by the Unified Court System or the Office of Court Administration.

**EXHIBIT A**

2. Abandoned Cases: Authorizing the Clerk of a City Court to Automatically Dismiss Any Case Struck from the Trial Calendar and Not Restored Thereto Within One Year.  
(22 NYCRR § 210.14)

In response to growing concern about the large number of abandoned cases languishing on many City Court dockets, this measure would amend section 210.14 of the Uniform Rules for the City Courts to authorize the clerk of a City Court to automatically dismiss any case struck from the trial calendar and not restored thereto within one year. This measure would give the City Courts an additional, much needed calendar control tool for dismissing abandoned cases, without the need for judicial involvement. Importantly, it would do so without disturbing or diminishing a City Court judge's current authority to dismiss an action where the plaintiff fails to appear at "any scheduled call of a calendar or at any conference." (22 NYCRR § 210.14(2))

This proposal is substantially similar to CPLR 3404, which applies to post-note of issue cases in Supreme Court. CPLR 3404 provides that if no action is taken within one year to restore a case that has been "marked off" or "struck" from the trial calendar, the clerk may make an appropriate entry dismissing the case for neglect to prosecute, without judicial involvement. It is possible to obtain the benefits of CPLR 3404 through an amendment of court rules. Uniform City Court Act ("UCCA") § 2102 provides that the "CPLR and other provisions of law relating to practice and procedure in the supreme court . . . shall apply in this court as far as the same can be made applicable and are not in conflict with this act."

This measure would make the benefits of CPLR 3404 applicable in the City Courts in a manner that would not conflict with existing judicial discretion to dismiss cases for neglect to

prosecute under section 210.14 of the Uniform Rules of the City Courts; rather, it would give judges an additional option of striking a case from the trial calendar where a plaintiff fails to appear. It is only where the judge chooses to strike a case (rather than dismiss it) that the clerk is authorized to automatically dismiss it after one year without restoration. Finally, proposed subdivision (c), which is modeled on section 208.14(c) of the New York City Civil Court Rules, sets forth clear criteria governing restoration of a case to the calendar after it has been stricken.

The 61 City Courts outside New York City have civil jurisdiction over monetary claims of up to \$15,000 (including small claims) and landlord tenant and traffic matters, and criminal jurisdiction that includes authority to arraign defendants on felony charges and to hear misdemeanors and violations cases. By providing for automatic dismissal of abandoned cases in civil matters, this measure would assist busy City Courts in clearing such cases from their trial calendars in a manner that is expeditious and uniform. With annual filings of well over 200,000 civil cases alone, calendar control is of vital importance to the City Courts.

Proposal

**Section 210.14      Defaults, dismissals and restoration.**

(a) At any scheduled call of a calendar or at any conference, if all parties do not appear and proceed or announce their readiness to proceed immediately or subject to the engagement of counsel, the judge may note the default on the record and enter an order as follows:

(1) if the plaintiff appears but the defendant does not, the judge may grant judgment by default or order an inquest;

(2) if the defendant appears but the plaintiff does not, the judge may dismiss the action and may order a severance of counterclaims or cross-claims or strike the action from the trial calendar; or

(3) if no party appears, the judge may make such order as appears just.

(b) An action stricken from the trial calendar and not restored within one year thereafter shall be deemed abandoned and shall be dismissed by the clerk, without costs, for neglect to prosecute.

(c) Actions stricken from the trial calendar may be restored to the calendar only upon stipulation of all parties so ordered by the court or by motion on notice to all parties made within one year after the action is stricken. Such motion must be supported by affidavit by a person having firsthand knowledge, satisfactorily explaining the reasons for the action having been stricken and showing that it is presently ready for trial.