How to Obtain Relief When Trial Judges Won't Render Decisions

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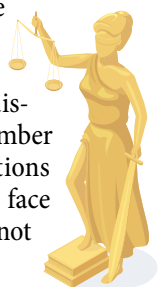
This article examines the legal framework—and attendant practical considerations—through which a ruling can be coaxed from a reluctant court.

You did it. The motion is on file – it looks like a winner – and now it's ripe for a ruling. You and your opposing counsel both know any ruling on this motion will have a serious impact on the case. Despite this (or perhaps because of it), the motion sits on the court's docket. Trial gets closer and rather than garnering the court's attention, your motion garners dust. What can you do? This article examines the legal framework—and attendant practical considerations—through which a ruling can be coaxed from a reluctant court.

Efforts to Obtain a Ruling at the Trial Court Level

The ABA Model Code of Judicial Conduct encourages judges to timely rule on matters before them. *See, e.g.,* Canon 2 ("A judge shall perform the duties of judicial office impartially, competently, and diligently."); Canon 2, Rule 2.7. The bars of most—if not all—states have adopted some variation of this canon. Despite this, there are instances when judges don't timely issue rulings on motions. Fortunately, as discussed below, there are a number of informal and formal options available to you should you face a scenario where a judge is not timely ruling on key issues.



Confirming Compliance with Your Jurisdiction's Rules Related to Motion Practice

A practitioner should first look to the rules of civil procedure, trial court rules, or local rules, where applicable, for their jurisdiction, to confirm that they have conformed with their jurisdiction's motion practice requirements. A judge may not have issued a ruling yet simply because the movant missed a step in the process. As an example, under West Virginia's Rules of Civil Procedure, a hearing on a motion is not scheduled unless the movant contacts the court and requests a hearing date. Only then, once the date is set and a notice of hearing is filed, does the countdown begin for the opposing party to respond and the motion to be heard. W.Va. R. Civ. P.6(d). If a movant simply files their motion and does not seek a hearing date from the court, their motion could languish on the docket and no ruling be issued.

Further, motion practice may also be modified by a case's scheduling order, or a standing Case Management Order ("CMO") as is typically found in mass litigation, such as that involving asbestos claims. For instance, West Virginia's Asbestos CMO requires that parties opposing specific motions, such as medical court orders, must file their opposition (or objec-

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tion) to the motion within five (5) judicial days. 2012 Asbestos CMO ¶ 16 (D), Kanawha County Cir. Ct., Civ. No. 03-C-9600 (Jan. 6, 2012). Moreover, if a movant's motion is an "emergency/expedited motion," then counsel must inform the court, and the court will enter a separate briefing schedule. *Id.*

Constitutional, Statutory, or Other Requirements Regarding a Court's Timeline in Issuing a Ruling

Generally, trial courts have substantial control over the management of their dockets, including how they prioritize ruling on pending motions. (*See, e.g., Atchison, Topeka & Santa Fe Ry. v. Hercules, Inc.*, 146 F.3d 1071, 1074 (9th Cir. 1998) (referring to the court's inherent authority to control its docket)). There are, however, a number of constitutional and other limitations placed on the court's inherent authority to sit on a motion or delay issuing key rulings.

For instance, New York's CPLR Rule 2219 sets a time by which decisions are supposed to be made. Under the rule, "[a] n order determining a motion relating to a provisional remedy shall be made within twenty days, and an order determining any other motion shall be made within sixty days, after the motion is submitted for decision." While the rule does provide that a decision must be rendered within a certain timeframe, there is no repercussion in the event it is not followed. Although not frequently relied upon by practitioners, it does provide an authority for litigants to cite if the court is taking an excessive amount of time to rule.

Connecticut state court also has a process where an attorney can "reclaim" a motion to the court's calendar for adjudication. Reclaiming the motion requires completing a form that is designed to bring a motion to the court's attention and may be required for bringing certain motions before a court. This rule presents another avenue that a movant may pursue in the event they require a ruling on their motion

and believe the court is taking too long in issuing a decision. Reclaiming a motion is only available if oral argument has not yet been had on the motion; otherwise, a movant must rely on Section 11-19 of the Connecticut Rules of Court. Pursuant to Section 11-19, a trial judge is required to rule on a "short calendar matter" within 120 days after it is submitted, regardless of whether oral argument has been had on the motion. However, a party is deemed to have waived the 120-day requirement if they do not file a motion seeking the reassignment of the short calendar matter.

There may also be constitutional limitations or mandates that encourage a court to rule on a motion and could form a basis for challenging inaction of a court. As an example, California has a constitutional requirement that all judicial officers must render decisions within 90 days of submission, or they do not get paid. (Cal. Const., art. VI, § 19).

Common Sense Considerations

Judges are people too and may have a substantial caseload. This is especially true for judges who serve on mass litigation panels. Before seeking formal relief, it may be beneficial to reach out to the court as a courtesy and remind the court of any pending motion(s). Further, there may be an implicit requirement that counsel do so under local practice and prior to seeking mandamus relief, outlined below. A judge may also appreciate this practical approach—as it is always possible the court missed the motion (e.g., perhaps the clerk forget to put it on the judge's radar).

Seeking Appellate Relief Through a Petition for Writ of Mandamus

If a movant has been unsuccessful in obtaining a ruling at the trial court level, that party may want to seek an appellate court's intervention. A party may file a petition for writ of mandamus, where the movant, now petitioner, seeks an order from the appellate court making the lower court issue a ruling.

Few writ petitions are granted. And they may not be considered in a sufficiently timely fashion to aid litigants at the trial level.

In the federal system, writ review is governed by 28 U.S.C. § 1651(a). The Ninth Circuit refers to this as an "extraordinary," "exceptional" or "drastic" remedy. The petitioner must establish that its position is "clear and indisputable," and that some combination of the following guidelines justifies overriding the judicial preference against "piecemeal" appellate review of a trial court's everyday decisions.

(1) whether the party seeking the writ has no other adequate means, such as direct appeal, to attain the relief he desires;
(2) whether the petitioner will be damaged or prejudiced in a way that is not correctable on appeal;
(3) whether the district court's order is clearly erroneous as a matter of law – does the Court of Appeal have "the definite and firm conviction that a mistake has been committed;"
(4) whether the district court's order is an oft repeated error or manifest persistent disregard for the federal rules;
(5) whether the district court's order raises new and important problems or issues of law of first impression;
(6) whether the injury alleged by petitioners, although not correctable on appeal, is the kind that justifies invocation of ... mandamus authority;
(7) whether the petition presents an issue of law which may repeatedly evade appellate review; and
(8) whether there are other compelling factors relating to the efficient and orderly administration of the district courts.

In re Cement Antitrust Litigation, 688 F.2d 1297, 1301 (9th Cir. 1982). These are to be applied flexibly: the "guidelines serve only as a useful starting point, an analytic framework for determinations regarding the propriety of mandamus relief." *Id*. The predominant issue is generally whether the district court's order is "clearly erroneous." That will be unavailable if the whole problem is that there is no order yet.

Grounds that a litigant impatient for a ruling could advance, however, would include:

(1) "has no other adequate means, such as direct appeal, to attain the relief" desired;
(2) "the petitioner will be damaged or prejudiced in a way that is not correctable on appeal,"
(4) the district court's inaction may be "oft repeated," and characterized as "disregard for the federal rules;" and
(8) writ relief could further "the efficient and orderly administration of the district courts."

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Many states have similar barriers to writ relief. For example, in California the classic formulation of the "general criteria for determining the propriety of an extraordinary writ" identifies the following factors for determining whether the cause is extraordinary enough for extraordinary relief:

(1) the issue tendered in the writ petition is of widespread interest or presents a significant and novel constitutional issue;
(2) the trial court's order deprived petitioner of an opportunity to present a substantial portion of his cause of action;
(3) conflicting trial court interpretations of the law require a resolution of the conflict;
(4) the trial court's order is both clearly erroneous as a matter of law and substantially prejudices petitioner's case;

(5) the party seeking the writ lacks an adequate means, such as a direct appeal, by which to attain relief; and
(6) the petitioner will suffer harm or prejudice in a manner that cannot be corrected on appeal.

Omaha Indem. Co. v. Superior Court (Greinke) (1989) 209 Cal.App.3d 1266, 1273-1274 (citations omitted and paragraphing altered for clarity). As in the federal system, the lack of an order to challenge via writ is a problem. But also as in the federal system, some grounds for writ relief could be present, particularly (5) and (6) above.

It is very difficult to obtain mandamus relief. However, there are instances where lower courts have not issued rulings on pending motions and mandamus relief has been granted, including in mass litigation. As an example, Judge Polster, who presides over the federal multi- district litigation, ("MDL") *In re: Opioid Litigation,* has had several mandamus petitions filed addressing his decisions in the MDL, including petitions seeking to compel the court to adjudicate motions to remand. (*See, e.g.*, Order, 21-3637 (6th Cir., Mar. 11, 2022) Doc. 6-1). Some of the motions to remand had been pending for almost four years, while Judge Polster had issued a moratorium on filing substantive motions, including motions to remand.

The Sixth Circuit agreed with petitioners, finding that the cases had been pending for an "unduly long time." Notably, the Sixth Circuit relied upon 28 U.S.C. § 1447(c), stating that "[t]he seemingly mandatory nature of this provision weighs in favor of finding that the district court clearly abused its discretion in abating rulings on the pending remand motions. Subject matter jurisdiction is of paramount importance." As a result, the Sixth Circuit ordered the court to submit a status report every thirty days to advise the court on the 300 pending motions to remand and the actions taken in complying with the order.

Finally, a lower court may act on a pending motion by virtue of the petition for mandamus relief having been filed, thereby mooting the issue.

Other Avenues of Relief

Even if all prior avenues have been exhausted, other entities may intervene if they deem a judge has failed to or been slow to rule. Their intervention may not result in direct relief to a litigant, although it could have the effect of deterring similar conduct in the future. As an example, Judge Ursula Hall, a judge in Houston/Harris County, Texas, had multiple mandamus petitions filed against her contending that she was slow to rule or failing to rule on pending motions. She later appealed a public warning and order of additional education that was issued by The Texas Commission on Judicial Conduct that concluded she violated judicial ethics rules and the Texas Constitution by never ruling on a litigant's discovery motions and handling a recusal matter too slowly.

Conclusion

Almost every litigant will encounter a situation where a court has not ruled on their motion. Sometimes the remedy is as simple as waiting it out or contacting the court to remind them of the pending motion. Other times, a more extreme option – such as seeking writ of mandamus – may be warranted, especially if the delay is egregious.