

CPLR ARTICLE 41: JURY TRIAL.

Copyright 2007, Yosef Seigel. MAY BE FREELY DISTRIBUTED

There is a right to a jury trial (unless waived) for: 1) action for a sum of money; 2) ejectment, dower, waste, abatement and damages for nuisance, replevin of chattel (return property), claims on Real Property; and 3) where entitled by law or constitution.

Except that EQUITABLE defenses or counter-claims are tried by the COURT.

Demand for Jury trial shall be made in Note of Issue, if not made, any other party may so demand by serving and filing the demand within 15 days after. If no party demands a jury, it is deemed waived.

If the party filing the Note of Issue only specifies *some* of the issues to be tried by a jury, any other party can demand that other issues be so tried, within **10 days**.

A party can formally waive jury in writing to the Clerk, or orally to the Court. For a party who demanded a jury trial and then fails to show, the demand is deemed waived. In any case of waiver *after* a demand is made however, it is valid for the waiving party. The demand for jury still remains unless the other parties consent to waive it.

The Chief Administrator *may* make rules of local courts that a jury demand is deemed made unless specifically waived in the Note of Issue.

A failure to comply with these guidelines may be relieved by the Court if it doesn't prejudice the other parties.

If issues otherwise triable by a jury didn't present until after trial began; the Court **shall** give parties an opportunity to demand a jury.

A civil Jury is composed of the first 6 people who appeared when called, and were approved and not discharged; these 6 are then sat and sworn. On the request of a party - and unless the Court orders otherwise - 1 or 2 alternate jurors can be called. Alternate jurors sit with the jury, and can replace any member who can't continue, otherwise they are Discharged on the final Submission of the case when the jury retires to deliberate.

If a party so requests, the Court **shall** be present when prospective jurors are examined for "indifference". Parties can object on specific grounds as to a particular juror by "challenging", and if the opposing party will not stipulate, the Court shall Try the issue of the challenge. Each side (plaintiff/defendant) also gets 3 "peremptory" (without stated grounds) challenges, plus an extra 1 each if there are 2 alternate jurors; **except** that 3rd party defendants are not considered to be on the same side as the other defendants for this purpose. The Court can also allocate the challenges among multiple parties on either

or both sides as it sees fit; or can grant an extra number of challenges to each side equally, this shall be *before* examination of jurors begins.

Grounds for regular challenge include: that the juror is an employee of one party; a stockholder of a party which is a corporation, or of an insurance company which may be liable in a personal injury case; that the juror is related within the 6th degree by blood or marriage to Kevin Bacon (just kidding :) *to the party* [if the party so related is objecting, is shall be before trial opens, else by another party within 6 months of verdict].

It is NOT valid grounds for challenge that a juror is a resident of - or is taxed by - a city/village/town which is party; nor as regards a Village is it a problem for the Judge to be a taxed resident. Villages are also not subject to undertaking requirements.

At the close of the evidence (or earlier if the Court so directs), parties can file written requests that the jury be "instructed" in matters of law. The Judge shall inform *counsel* before closing arguments as to his/her proposed course of action regarding such instruction; however the jury is not so instructed until after the closing arguments are made.

Objections to the instructions must be made before the jury retires, but the parties **shall** be given the opportunity of arguing the objection away from the jury.

If the jury views the premises at issue in a case, the jurors must be kept together under the supervision of a **public servant**; the Court must be present; and the parties/attorneys have a right to attend, but can waive it. No arguments or discussion are allowed at the viewing.

A jury can make a GENERAL VERDICT as to which party prevailed; or a SPECIAL VERDICT of just the factual issues, and the Court will then decide the parties' rights. For a special verdict the Court gives jurors specific written questions to answer (or some other appropriate method), any issue not specifically submitted to the jury is deemed a waiver of the right to a jury trial on that issue if a party does not demand *before* the jury retires that it be submitted to them.

The Court can make any findings not made by the jury, or else findings are deemed made to the extent that they implicitly underlie a final judgment.

In the case of a general verdict, the Court can give the jury written questions to answer. If each juror's answers are consistent with each other - but not with the verdict they collectively made - then the judge can render a decision on the *answers*, not the verdict, or direct that jurors re-deliberate, or order a new trial. If the answers are inconsistent both with the verdict, and with each other, the judge can order re-deliberation or a new trial, but cannot make a judgment.

In a medical/dental/podiatric malpractice case, the Court shall have the jury break down damages by category, amounts, and whether the costs incurred pre- or post-verdict.

In a wrongful death case the jury shall determine the total amount of monetary loss. For future pain and suffering, the amount of money, and for how many years it accrues. For a future monetary loss in a non-death case, the amount of money *per year*, and for how many years, when the loss commenced, whether permanent, and the growth rate of the amount over time. If any of the above needs will change in the future, the jury shall compute each damage as a separate item from the time that the amount will change. In non-wrongful death cases, the Court must inform the jury that their findings will be used by the Court to determine future payments over time.

Verdict need not be unanimous, only 5/6ths majority is required. If a jury cannot agree after being kept them as long as reasonable, the Court shall discharge them and order a new trial before another jury.

The Clerk shall enter the verdict by noting the time & place of trial, names of jurors and witnesses, the verdict, and the answers to written questions.