

## CHAPTER 546

## TRIALS

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NOTE: For rules of civil procedure, district court, see Appendix 8.

- 546.01 [Repealed, 1974 c 394 s 11]
- 546.02 [Repealed, 1974 c 394 s 11]
- 546.03 [Repealed, 1974 c 394 s 11]
- 546.04 [Repealed, 1974 c 394 s 12]
- 546.05 [Repealed, 1974 c 394 s 11]
- 546.06 [Repealed, 1974 c 394 s 11]

**546.07 ORDER OF TRIAL; ABSENCE OF PARTIES.** The issues on the calendar of a general term shall be disposed of in the following order, unless the court shall otherwise direct:

- (1) Jury cases;
- (2) Issues of fact to be tried by the court;
- (3) Issues of law.

If a party be absent, unless the court for good cause shall otherwise order, the adverse party may proceed with his case and take a dismissal of the action or a verdict or judgment as the case may require. If neither be present, the cause shall be stricken from the calendar.

[R. L. s. 4167] (9291)

**546.08 CONTINUANCE.** A motion to postpone a trial for the absence of evidence can only be made upon affidavit, stating the evidence expected to be obtained, the reasons for its absence, and for expecting that it can be procured, and showing its materiality and that due diligence has been used to procure it; and if the adverse party thereupon admits that such evidence would be given and that it be considered as actually given on the trial, or offered and rejected as improper, the trial shall not be postponed.

[R. L. s. 4168] (9292)

**546.09 JURY, HOW IMPANELED; BALLOTS; RULES OF COURT; EXAMINATION; CHALLENGES.** When a jury issue is to be tried the clerk shall draw from the jury box ballots containing the names of jurors until the jury is completed or the ballots are exhausted. If exhausted, the court shall direct the sheriff to summon from the bystanders, or the body of the county, qualified persons to complete the jury. The ballots containing the names of jurors sworn to try the case shall not be returned to the box until the jury is discharged. All others so drawn shall be returned as soon as the jury is completed. The judge or judges of any district court may provide by rule that in selecting a jury the clerk shall draw 12 names for a jury of 12 and six names for a jury of six, together with sufficient additional names to cover the requirements of the provisions of sections 546.10 and 546.095. These jurors shall then be examined as to their qualifications to sit as jurors in the action and if any juror be excused for any reason, another shall be immediately called in his place.

[R L s 4169; 1909 c 417 s 1; 1943 c 228 s 1; 1971 c 917 s 2] (9293)

546.095 [Repealed, 1974 c 394 s 11]

**546.10 CHALLENGES.** In any civil action or proceeding either party may challenge the panel, or individual jurors thereon, for the same causes and in the same manner as in criminal trials, except that the number of peremptory challenges to be allowed on either side shall be as provided in this section. Before challenging a juror, either party may examine him in reference to his qualifications to sit as a juror in the cause. A sufficient number of jurors shall be called in the action so that six shall remain after the exercise of the peremptory challenges, as provided in this section and section 546.09, and to provide alternate jurors when ordered by the court under the provisions of section 546.095. Each party shall be entitled to two peremptory challenges, which shall be made alternately beginning with the defendant. The parties to the action shall be deemed two, all plaintiffs being one party, and all defendants being the other party, except, in case two or more defendants have adverse interests, the court, if satisfied that the due protection of their interests so requires, may allow the defendant or defendants on each side of the adverse interests not to exceed two peremptory challenges. When the peremptory challenges have been exhausted or declined, the first six of the remaining jurors shall constitute the jury.

[R. L. s. 4170; 1913 c. 217 s. 1; 1927 c. 281; 1943 c. 228 s. 2; 1971 c. 917 s. 3; 1973 c. 453 s. 1] (9294)

**546.11 ORDER OF TRIAL.** When the jury is completed and sworn, the trial shall proceed in the following order, unless for special reasons the court shall otherwise direct:

(1) The plaintiff, after stating the issue, shall produce the evidence on his part;

(2) The defendant may then open his defense, and produce his evidence in support thereof;

(3) The parties may then respectively offer rebutting evidence only, unless the court, in furtherance of justice, shall permit either to introduce evidence upon his original case;

(4) When the evidence is concluded, unless the case be submitted by one side or both without argument, the defendant shall open and the plaintiff close the argument to the jury; provided, that if the defendant have the affirmative of the issue to be tried the foregoing order of trial shall be reversed;

(5) If several defendants, having separate defenses, appear by different counsel, the court shall determine their relative order in respect to both evidence and argument;

(6) When the argument is closed the court may charge the jury.

[R. L. s. 4171] (9295)

**546.12 VIEW OF PREMISES; PROCEDURE.** When the court deems it proper that the jury should view real property which is the subject of litigation, or the place where a material fact occurred, it may order them to be taken, in a body and in the custody of proper officers, to the place, which shall be shown to them by the judge, or by a person appointed by the court for that purpose; and while the jurors are thus absent, no one other than the judge or person so appointed shall speak to them on any subject connected with the trial.

[R. L. s. 4172] (9296)

**546.13 SICKNESS OF JUROR; FOOD AND LODGING.** If a juror becomes sick or otherwise unable to perform his duty, the court may discharge him. In that case, unless the parties consent to accept the verdict of the remaining jurors, another may be sworn in his place and the trial begun anew, or the jury may be discharged and another then or afterward impaneled. If the court, while a jury is kept together, shall order that they be provided with food and lodging, the sheriff shall furnish the same at the expense of the county.

[R. L. s. 4173] (9297)

**546.14** [Repealed, 1974 c. 394 s. 11]

**546.15 JURORS MAY TAKE CERTAIN PAPERS.** On retiring for deliberation, the jury may take with them all papers received in evidence except depositions; but the court may direct that copies be made for their use of such records and documents as ought not, in its judgment, to be taken from those entitled to their possession. The jurors may also take with them notes of the testimony and

proceedings made by themselves, but none others. All such papers, except the notes aforesaid, shall be returned to the clerk before the jurors are discharged.

[R. L. s. 4175] (9299)

**546.16 VERDICT, WHEN RECEIVED; CORRECTING SAME; POLLING JURY.**

While the jury are absent the court may adjourn from time to time, in respect to other business, but it shall be considered open, for all purposes connected with the cause submitted, until a verdict is rendered or the jury discharged. A final adjournment shall discharge the jury. Before the verdict is recorded either party may require the jury to be polled, whereupon the clerk shall ask each juror if it be his verdict. If any answer in the negative, the jury shall be sent out for further deliberation. If the verdict be defective in form or insufficient, it may be corrected under the advice of the court, or the jury may be again sent out.

[R. L. s. 4176] (9300)

**546.17 VERDICT BY FIVE-SIXTHS OF JURY.** In any civil action or proceeding in any court of record the jury therein may return a verdict, after six hours of deliberation, upon an agreement by five-sixths of its number. The jury's deliberation commences when the officer in charge of the jury is sworn. The clerk records that time.

[1913 c 63 s 1; 1955 c 220 s 1] (9301)

**546.18 VERDICT; HOW SIGNED.** Where the verdict is agreed to by the full membership of the jury the foreman only shall sign the verdict, when less than the full number agree on the verdict the same shall be signed by all the jurors who concur therein, and the clerk of court shall enter on his minutes the number of jurors concurring in the verdict.

[1913 c. 63 s. 2] (9302)

**546.19 VERDICT, GENERAL AND SPECIAL.** A general verdict is one by which the jury find generally upon all the issues in favor of the plaintiff or defendant. A special verdict is one by which they find the facts only, and it shall so present the conclusions of fact as established by the evidence that nothing remains to the court but to draw from them conclusions of law.

[R. L. s. 4177] (9303)

546.20 [Repealed, 1974 c 394 s.12]

546.21 [Repealed, 1974 c 394 s 11]

**546.22 JURY TO ASSESS RECOVERY.** When a verdict is found for the plaintiff in an action for the recovery of money, or for the defendant when a counter-claim for the recovery of money is established beyond the amount of the plaintiff's claim as established, the jury shall assess the amount of the recovery.

[R. L. s. 4180] (9306)

**546.23 VERDICT IN REPLEVIN.** In an action for the recovery of specific personal property, if the property has not been delivered to the plaintiff and the jury find that he is entitled to its recovery, or if the property is not in the possession of the defendant, and by his answer he claims a return thereof, and the verdict is in his favor, the jury shall assess the value of the property and the damages, if any are claimed in the complaint or answer, which the prevailing party has sustained by reason of the detention, or taking and withholding, of such property. When the verdict is in favor of the party having possession of the property its value shall not be found.

[R. L. s. 4181] (9307)

**546.24 RECEIVING VERDICT.** When the verdict is given, and is such as the court may receive, the clerk shall immediately file said verdict in open court, and read it to the jury, and inquire of them whether it is their verdict. If any juror disagrees, the fact shall be entered in the minutes, and the jury again sent out; but if no disagreement is expressed, the verdict is complete, and the jury shall be discharged from the case. The clerk shall forthwith record such verdict in full in the court minutes.

[R L s 4182; 1949 c 126 s 1] (9308)

**546.25 ENTRIES ON RECEIVING VERDICT; RESERVING CASE.** Upon receiving the verdict an entry shall be made in the minutes, specifying the time and place of trial, the names of the jurors and witnesses, the verdict, and any order of

the court made in reference to the case. The court may reserve the case for argument and further consideration.

[*R L s 4183; 1974 c 394 s 9*] (9309)

546.26 [Repealed, 1974 c 394 s 12]

**546.27 DECISION BY THE COURT.** When an issue of fact has been tried by the court, the decision shall be in writing, the facts found and the conclusion of law shall be separately stated, and judgment shall be entered accordingly. All questions of fact and law, and all motions and matters submitted to a judge for his decision, shall be disposed of and his decision filed with the clerk within 90 days after such submission, unless sickness or casualty shall prevent, or the time be extended by written consent of the parties. No part of the salary of any judge shall be paid unless the voucher therefor be accompanied by a certificate of the judge that he has fully complied with the requirements of this section.

[*R L s 4185; 1969 c 1034 s 1*] (9311)

NOTE: The first sentence superseded, Rules of Civil Procedure, Rules 52.01, 86.01 and 86.02.

**546.28 ASSESSMENT OF DAMAGES WITHOUT ANSWER.** A defendant, without answering, may appear in the action and demand in writing an assessment of the amount which the plaintiff is entitled to recover; and thereupon the court, upon application of either party, shall direct the manner of such assessment. When the amount is thus ascertained, the clerk shall enter judgment therefor as in other cases.

[*R L s 4122*] (9245)

546.29 [Repealed, 1974 c 394 s 12]

546.30 [Repealed, 1974 c 394 s 11]

**546.31 TRIAL UNFINISHED AT END OF TERM.** When the trial of any action or proceeding, or of an indictment, is not concluded at the expiration of the term in which it was begun, it may be concluded; and all proceedings may be had in the case in the same manner and with like effect as if it had been concluded within such term.

[*R. L. s. 4188*] (9314)

**546.32 TRIAL IN VACATION BY CONSENT.** With consent of parties the court may try and decide issues of law or fact in vacation, and thereupon judgment may be rendered at any time with the same effect as upon issues tried in term time.

[*R. L. s. 4189*] (9315)

**546.33 TRIAL BY REFEREES; FEES PAID BY THE COUNTY.** When, in a trial by referee the court shall state in the order of appointment that the reference is made necessary by press of business, the fees of the referee, as taxed and allowed by the court, shall be paid out of the county treasury, as the salaries of county officers are paid.

[*R L s 4190; 1921 c 279 s 2; 1974 c 394 s 10*] (9316)

546.34 [Repealed, 1974 c 394 s 12]

**546.35 SELECTION OF REFEREES; MAJORITY MAY ACT.** If the parties do not agree upon the persons to be appointed, the selection shall be made by the court from the resident electors of the state. If two be appointed, they shall meet and act together; if three, all shall meet, but two may do any act which might be done by all.

[*R. L. s. 4192*] (9318)

546.36 [Repealed, 1974 c 394 s 12]

**546.37 MINORS MAY BE EXCLUDED, WHEN.** When a cause of a scandalous or obscene nature is to be tried, the court or referee may exclude from the courtroom all minors whose presence is not necessary as parties or witnesses.

[*R. L. s. 4194*] (9320)

546.38 [Repealed, 1974 c 394 s 12]

546.39 [Repealed, 1974 c 394 s 12]

546.40 [Repealed, 1974 c 394 s 12]

546.41 [Repealed, 1974 c 394 s 12]