

## **CHAPTER 28-14 TRIAL BY JURY**

### **28-14-01. Jury ballots.**

At the opening of the court the clerk shall prepare separate ballots containing the names of the persons returned as jurors, which must be folded as nearly alike as possible so that the names cannot be seen, and shall deposit them in the trial jury box.

### **28-14-02. Challenge to array.**

Either party to an action may challenge the array of jurors for any legal cause, which must be done by motion setting forth particularly the causes of challenge, and the party opposing the challenge may join issues of law or fact on such motion, and the issues so formed must be tried and decided by the court.

### **28-14-03. Clerk to draw jury.**

When the action is called for trial by jury, the clerk shall draw from the trial jury box of the court the ballots containing the names of the jurors summoned, until the jury is completed or the ballots are exhausted.

### **28-14-03.1. Size of juries in civil cases.**

In all civil actions when a jury is impaneled, a jury must consist of six qualified jurors unless any party makes a timely written demand for a jury of nine.

### **28-14-04. Examination of jurors.**

Superseded by N.D.R.Civ.P., Rule 47.

### **28-14-05. Challenges - Classification - By whom - Number allowed.**

Superseded by N.D.R.Civ.P., Rule 47.

### **28-14-06. Challenges for cause - Grounds.**

Challenges for cause may be taken on one or more of the following grounds:

1. A want of any of the qualifications prescribed by law to render a person competent as a juror;
2. Consanguinity or affinity within the fourth degree to either party;
3. Standing in the relation of guardian and ward, master and servant, debtor and creditor, employer and employee, attorney and client, or principal and agent to either party, or being a member of the family of either party, or being a partner in business with either party, or surety on any bond or obligation for either party;
4. Having served as a juror or been a witness on a previous trial between the same parties for the same claim for relief;
5. Interest on the part of the juror in the event of the action, or in the main question involved in the action, except the juror's interest as a member or citizen of a municipal corporation;
6. Having an unqualified opinion or belief as to the merits of the action founded upon knowledge of its material facts or some of them;
7. The existence of a state of mind in the juror evincing enmity against or bias for or against either party; or
8. That the juror does not understand the English language as used in the courts.

### **28-14-07. Trial of challenge.**

Challenges for cause must be tried by the court. The juror challenged and any other person may be examined as a witness on the trial of the challenge.

### **28-14-08. Oath to jurors.**

Superseded by N.D.R.Ct. 6.10.

**28-14-09. Alternate jurors.**

Superseded by N.D.R.Civ.P., Rule 47.

**28-14-10. Order of trial.**

When the jurors have been sworn, the trial must proceed in the following order, unless the judge for special reasons directs otherwise:

1. The plaintiff, after stating the issue and the plaintiff's case, shall produce the evidence on the plaintiff's part;
2. The defendant then may open the defendant's defense and offer the defendant's evidence in support thereof;
3. The parties then respectively may offer rebutting evidence only, unless the court, for good reasons in furtherance of justice, permits them to offer evidence upon their original case;
4. The court may charge the jury when the evidence is concluded or after the argument, if any, of the plaintiff and defendant;
5. Unless the case is submitted to the jury on either or both sides without argument, the plaintiff shall commence and may conclude the argument; and
6. If several defendants having separate defenses appear by different counsel, the court shall determine their relative order in the evidence and argument.

**28-14-11. Instructions to jury - Written or oral.**

Superseded by N.D.R.Civ.P., Rule 51.

**28-14-12. Requested instructions.**

Superseded by N.D.R.Civ.P., Rule 51.

**28-14-13. Written instructions may be submitted to counsel.**

Superseded by N.D.R.Civ.P., Rule 51.

**28-14-14. Exceptions to instructions.**

Superseded by N.D.R.Civ.P., Rule 51.

**28-14-15. View by jurors.**

When in the opinion of the court it is proper for the jurors to have a view of the property which is the subject of litigation, or of the place in which any material fact occurred, it may order them to be conducted in a body under the charge of an officer to the place, which must be shown to them by some person appointed by the court for that purpose. While the jurors are thus absent, no person, other than the person so appointed, may speak to them on any subject connected with the trial.

**28-14-16. Admonitions to jurors - Keeping in charge.**

The jurors sworn to try a civil action may be kept in charge of proper officers during each recess of the court pending the trial. Whether the jurors are permitted to separate or are kept in charge of an officer, they must be admonished by the court that it is their duty not to converse with or suffer themselves to be addressed by any person on any subject of the trial, and that it is their duty not to form or express an opinion thereon until the case is submitted finally to them.

**28-14-17. What papers jurors may take.**

Upon retiring for deliberation, the jurors may take with them all papers which have been received as evidence in the cause, except depositions or copies of such papers as ought not in the opinion of the court to be taken from the person having them in possession, and they also may take with them notes of the testimony or other proceedings on the trial taken by any juror, but none taken by any other person.

**28-14-18. Conduct of jurors in retirement.**

When the case finally is submitted to the jurors, they may decide in court or retire for deliberation. If they retire, they must be kept together in some convenient place under charge of an officer, until they agree upon a verdict, are temporarily dismissed by the court, or are permanently discharged by the court. Unless, by order of the court, the officer having the jurors under the officer's charge must not suffer any communication to be made to them, or make any personally except to ask them if they have agreed upon a verdict, and the officer, before the verdict is rendered, must not communicate to anyone the state of their deliberations or the verdict agreed upon. If the jurors have not agreed upon a verdict during normal working hours of any day of deliberations, the trial judge may temporarily dismiss the jurors and direct them when to resume deliberations. If a trial jury contains both male and female members, the trial judge may direct that the female members of the jury be placed in charge of a female bailiff and permitted to retire to a suitable place for rest, and the male members of the jury placed in charge of a male bailiff for a similar purpose. Whenever the jurors are dismissed or separated, as above stated, the trial judge shall admonish the members thereof that they must not in any manner discuss the case with anyone, nor permit anyone to discuss it with them, while they are so dismissed or separated, and that they must discuss and consider the case only in the room when all members of the jury are present.

**28-14-19. Additional information as to law.**

After the jurors have retired for deliberation, if there is a disagreement between them as to any part of the testimony, or if they desire to be informed of any point of law arising in the case, they may require the officer to conduct them into court. Upon their being brought into court, the information required must be given in the presence of or after notice to the parties or counsel.

**28-14-20. Sick juror discharged.**

If after the impaneling of a jury and before a verdict, a juror becomes sick so as to be unable to perform the juror's duty, the court may order the juror to be discharged. In that case the trial may proceed by agreement of the parties with the remaining jurors, or an alternate juror may be called, or another juror may be sworn and the trial begun anew, or the jurors may be discharged and a new jury then or afterwards impaneled.

**28-14-21. Verdict prevented - New trial.**

In all cases when the jurors are discharged or prevented from giving a verdict by reason of accident or other cause during the progress of the trial or after the cause is submitted to them, the action may be tried again immediately or at a future time as the court may direct.

**28-14-22. Sealed verdict - Adjournment.**

While the jury is absent, the court may adjourn from time to time in respect to other business, but it nevertheless is open for every purpose connected with the cause submitted to the jury, until a verdict is rendered or the jurors are discharged. The court may direct the jurors to bring in a sealed verdict at the opening of the court in case of an agreement during a recess or adjournment for the day. A final adjournment of the court for the term discharges the jurors.

**28-14-23. How verdict received - Polling jurors.**

When the jurors have agreed upon a verdict, the members thereof must be conducted into court, their names called by the clerk, and the verdict rendered by the foreman. The verdict must be in writing signed by the foreman and must be read by the clerk to the jurors and inquiry made whether it is their verdict. If any juror disagrees, all jurors must be sent out again, but if no disagreement is expressed and neither party requires the jurors to be polled, the verdict is complete and the jury must be discharged from the case. Either party may require the jurors to be polled, which is done by the court or clerk asking each juror if it is that juror's verdict. If any one answers in the negative, the jurors again must be sent out.

**28-14-24. Correcting verdict.**

When the verdict is announced, if it is informal or insufficient in not covering the issue submitted, it may be corrected by the jury under the advice of the court, or the jurors again may be sent out.

**28-14-25. Verdict and entries.**

Upon receiving a verdict, either general or special, an entry must be made by the clerk in the minutes of the court, specifying the time of trial, the names of the jurors and witnesses, and setting out the verdict at length, and when a special verdict is found, either the judgment rendered thereon or, if the case is reserved for argument or further consideration, the order thus reserving it. The verdict and any interrogatories must be filed with the clerk.