

## NY CLS CPLR, Art. 40

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***New York***

***Consolidated Laws Service*** >  
***Civil Practice Law And Rules (Arts. 1 — 100)*** >  
***Article 40 Trial Generally (§§ 4001 — 4019)***

### Article 40 Trial Generally

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#### History

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Add, L 1962, ch 308, eff Sept 1, 1963.

Annotations

#### Notes

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##### **Advisory Committee Notes:**

The provisions of this article apply to all forms of trial. No attempt has been made to set forth every detail of trial conduct and procedure. Rules respecting courtesy such as the provision in former rule 161 that counsel should stand are not covered. The provision in RCP 161 which limited examination by counsel and that in RCP 164 which permitted exclusion of the jury during legal arguments are omitted as unnecessary; the court has inherent power to regulate the trial in such ways.

The CPA and the RCP included several other trial provisions which have been omitted from this article. CPA § 422, which defined an issue of fact, has been omitted as unnecessary. Moreover, in its former form it was inadequate: it excluded issues which arose on a motion or in an action without pleadings pursuant to CPA § 218-a and RCP 118 (CPLR § 3031). CPA § 423 is covered by CPLR § 4101 and rule 4211. The necessity for CPA § 424 is eliminated by § 3019(f). CPA §

432 was ambiguous and confusing. It apparently referred to the use of more than one judge in succession and not to several judges simultaneously sitting. 6 Carmody-Wait, Cyclopedia of New York Practice 4 (1953). Yet, while a trial of one issue may not be held before several successive judges and decided in part by each, a referee, for example, may preside over a hearing of part of an issue pursuant to rule 4212.

CPA §§ 433 and 433-a have been covered in article 32 and by amendment of the Judiciary Law, and CPA § 438 by amendment of the Judiciary Law. CPA § 434 has been covered in § 3025(c). Former rules 162 and 163 are now covered by § 2302(b); rule 166(1) is now covered by § 3025 and rule 166(2) is considered with § 4401.

## **Research References & Practice Aids**

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### **Cross References:**

Note of issue, CLS CPLR Rule 3402.

Arbitration, CLS CPLR §§ 7501 et seq.

Trials, CLS NYC Civ Ct Act §§ 1301 et seq.; UCCA §§ 1301 et seq.; UDCA §§ 1301 et seq.; UJCA §§ 1301 et seq.

Proceeding upon failure of claimant to file claim within six months or to appear or proceed, CLS Ct Cl Act § 19.

Procedure for determining just compensation, CLS EDPL §§ 501 et seq.

Review of court authorization to retain involuntary patient, CLS Men Hyg § 9.35.

Trials and hearings, CLS SCPA §§ 502–507.

### **Jurisprudences:**

6A NY Jur 2d Article 78 and Related Proceedings § 322. .

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