

Rule 23. Jury or Nonjury Trial

(a) Jury Trial. If the defendant is entitled to a jury trial, the trial must be by jury unless:

- (1) the defendant waives a jury trial in writing and orally in open court;
- (2) the government consents; and
- (3) the court approves.

(b) Jury Size.

(1) In General. A jury consists of 12 persons unless this rule provides otherwise.

(2) Stipulation for a Smaller Jury. At any time before the verdict, the parties may, with the court's approval, stipulate in writing that:

(A) the jury may consist of fewer than 12 persons; or

(B) a jury of fewer than 12 persons may return a verdict if the court finds it necessary to excuse a juror for just cause after the trial begins.

(3) Court Order for a Jury of 11. After the jury has retired to deliberate, the court may permit a jury of 11 persons to return a verdict, even without a stipulation by the parties, if, due to extraordinary circumstances, the court finds it necessary to excuse a juror for just cause.

(c) Nonjury Trial. In a case tried without a jury, the court must find the defendant guilty or not guilty. If a party requests before the finding of guilty or not guilty, the court must state its specific findings of fact in open court or in a written decision or opinion.

COMMENT TO 2016 AMENDMENTS

This rule has been redrafted to conform to the general restyling of the federal rules in 2002. It differs from the federal rule in several respects.

Subparagraph (a)(1) retains the requirement that the jury trial waiver be made "orally in open court," as well as in writing, to reflect the requirements of D.C. Code § 16-705 (a) (2012 Repl.) as interpreted by District of Columbia case law. See *Jackson v. United States*, 262 A.2d 106 (D.C. 1970); see also *Lopez v. United States*, 615 A.2d 1140 (D.C. 1992).

Subparagraph (b)(2)(B) retains the phrase "just cause" to be consistent with subparagraph (b)(3).

Subparagraph (b)(3) retains the phrases "due to extraordinary circumstances," "finds it necessary" and "just cause" (in place of the phrase "good cause" used in the federal rule) to reflect the requirements of D.C. Code § 16-705 (c) (2012 Repl.).