

Rule 39. Trial by Jury or by the Court

(a) WHEN A DEMAND IS MADE. When a jury trial has been demanded under Rule 38, the action must be designated on the docket as a jury action. The trial on all issues so demanded must be by jury unless:

(1) the parties or their attorneys file a stipulation to a nonjury trial or so stipulate on the record; or

(2) the court, on motion or on its own, finds that on some or all of those issues there is no right to a jury trial.

(b) WHEN NO DEMAND IS MADE. Issues on which a jury trial is not properly demanded are to be tried by the court. But the court may, on motion, order a jury trial on any issue for which a jury might have been demanded.

(c) ADVISORY JURY; JURY TRIAL BY CONSENT. In an action not triable of right by a jury, the court, on motion or on its own:

(1) may try any issue with an advisory jury; or

(2) may, with the parties' consent, try any issue by a jury whose verdict has the same effect as if a jury trial had been a matter of right, unless the action is one for which an applicable statute provides a nonjury trial.

COMMENT TO 2017 AMENDMENTS

Rule 39 has been amended consistent with the 2007 stylistic changes to *Federal Rule of Civil Procedure 39*. As with the prior version of the rule, the exception in subsection (c)(2) is framed in terms of local practice.

COMMENT

Identical to *Federal Rule of Civil Procedure 39* except that "statutes of the United States" in section (a) has been changed to "applicable law" and the exception clause in section (c) has been rephrased so as to comprehend any applicable statute.