

Proposed Amendments to Rule 38

Rule 38 is amended as follows:

Rule 38. **Right to a Jury Trial of Right; Demand**

(a) Right Preserved. The right of trial by jury as declared by the Seventh Amendment to the Constitution---or as given**provided** by a **federal** statute of the United States shall be--**is** preserved to the parties inviolate.

(b) Demand. Any party may demand a trial by jury of **On** any issue triable of right by a jury, **a party may demand a jury trial** by: (1) serving upon the other parties **with a written** demand therefor--**which may be included** in writing at any time after the commencement of the action and not **a pleading--no** later than 10 days after the service of the last pleading directed to the issue; **is served**; and (2) filing the demand as required by **in accordance with** Rule 5(d).--Such demand may be indorsed upon a pleading of the party.

(c) Demand; Specification of **Specifying** Issues. In the **its** demand, a party may specify the issues which the party **that it** wishes ~~to have~~ **to have** tried **by a jury**; otherwise the party shall be deemed, **it is considered** to have demanded **a jury** trial by jury for **on** all the issues so triable. If the party has demanded **a jury** trial by jury for **on** only some of the issues, any other party **may--**within 10 days after service of **being served with** the demand or such lesser **within a shorter** time as **ordered by** the court may order, may--serve a demand for **a jury** trial by jury of **on** any other or all of the **factual** issues of fact in the action **triable by jury**.

(d) Waiver; **Withdrawal**. The failure of a party to serve a demand as required by this rule and to file it as required by this rule constitutes a waiver by the party of trial by

~~jury. A~~ **A party waives a jury trial unless its demand is properly served and filed. A proper** demand for trial by jury made as herein provided may not be withdrawn without the consent of **only if** the parties **consent**.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; July 28, 1988, eff. Nov. 1, 1988; Dec. 18, 2001, eff. Apr. 1, 2002; _____, **2009, eff.** _____, **2010**.)

Advisory Committee Note

The language of Rule 38 has been amended as part of the general restyling of these rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.