

Proposed Amendments to Rule 39

Rule 39 is amended as follows:

Rule 39. Trial by Jury or by the Court

(a) ~~By Jury.~~ When a Demand Is Made. **When a jury** trial ~~by jury~~ has been demanded as ~~prescribed by~~ **under** Rule 38, the action shall **must** be so designated **on the docket as a jury action**. The trial ~~of~~ **on** all issues so demanded shall **must** be by jury, unless: (1) the parties or their attorneys of record, ~~by written~~ **file a** stipulation filed with the court **to a nonjury trial** or by an oral stipulation made in open court and entered in **so stipulate on** the record, consent to trial by the court sitting without a jury; or (2) the court ~~up~~, on motion or on its own initiative, finds that a right of trial by jury ~~of~~ **on** some or all of those issues does not exist under the Constitution or statutes of the United States **there is no federal right to a jury trial**.

(b) ~~By the Court~~ When No Demand Is Made. Issues **on which a jury trial is** not **properly** demanded for trial by jury as ~~prescribed by~~ Rule 38 shall **are to** be tried by the court; but, notwithstanding the failure of a party to demand a jury in an action in which such a demand might have been made of right, the court in its discretion upon motion may order a trial by a jury of any or all issues. **But the court may, on motion, order a jury trial on any issue for which a jury might have been demanded.**

(c) ~~Advisory Jury and;~~ Jury Trial by Consent. In all actions **an action** not triable of right by a jury, the court ~~up~~, on motion or on its own initiative: **(1)** may try any issue with an advisory jury; or, ~~except in actions against the United States when a statute of the United States provides for trial without a jury,~~ the court, with the consent of the parties, may order a trial with a jury whose verdict has the same effect as if trial by jury

~~had been a matter of right.~~ **(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 against the United States and a federal statute provides for a nonjury trial.**

(As amended _____, 2009, eff. _____, 2010.)

Advisory Committee Note

The language of Rule 39 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.