

RULE 39. TRIAL BY JURY OR BY THE COURT

(a) **By Jury.** When trial by jury has been demanded as provided in Rule 38 or Rule 76C, the action shall be placed on the Jury Trial List when appropriate under Rule 16, and the trial of all issues so demanded shall be by jury, unless (1) the parties or their attorneys of record, by written stipulation filed with the court or by oral stipulation made in open court and entered in the record, consent to trial by the court sitting without a jury or (2) the court upon motion or of its own initiative finds that a right of trial by jury of some or all of those issues does not exist under the Constitution or statutes of the State of Maine.

(b) **By the Court.** Issues not demanded for trial by jury as provided in Rule 38 shall 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, in the Superior Court the court in its discretion upon motion may order a trial by a jury of any or all issues.

(c) **Hearings Outside County.** Any hearings without a jury may be held at such place in any county or division as the court may appoint; and the clerk in the county or division in which the action is pending shall transmit the papers in the action to the justice or judge to hear the same, who shall return them after hearing.

(d) **Advisory Jury and Trial by Consent.** In all actions in the Superior Court not triable of right by a jury the court upon motion or of its own initiative may try any issue with an advisory jury, or 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.

Advisory Committee's Notes July 1, 2001

Rule 76C, was amended effective January 1, 2001, to recognize that statutory court unification changes now allows removal from District Court by a party only for a jury trial. Thus, the removal process is effectively a jury trial demand. The change to Rule 39 recognizes this reality. The change also avoids any potential for confusion as to whether Rule 38 and Rule 76C, the two means of demanding a jury trial, should be treated any differently for Rule 39 purposes.

Advisory Committee's Note
May 15, 1974

These amendments are intended to accompany those to Rule 38 requiring a jury demand. *See* Advisory Committee's Notes to that rule.

Rule 39(a), taken from the federal rule, provides that an action in which a jury has been demanded shall be listed and tried as a jury action unless prior to trial the parties stipulate to trial by the court or the court orders such trial on the ground that there is no jury right. A motion for trial without jury should ordinarily be made in time to be determined at the pre-trial conference, but the motion is not waived by failure to make it at that time.

Reporter's Notes
December 1, 1959

This rule departs from Federal Rule 39 in order to fit the changes made in Rule 38. The provision for advisory juries is in accord with existing Maine law. The verdict of an advisory jury may be wholly disregarded if it is not satisfactory to the conscience of the court. *Farnsworth v. Whiting*, 106 Me. 430, 76 A. 909. Rule 39(b) incorporates provisions of R.S.1954, Chap. 107, Sec. 30 (repealed in 1959).