

Rule 39. Trial by Jury or by the Court**39.01 By Court**

Issues of fact not submitted to a jury as provided in Rule 38 shall be tried by the court.

39.02 Advisory Jury and Trial by Consent

In all actions not triable of right by a jury, the court, upon motion or upon its own initiative, may try an issue with an advisory jury, or the court, with the consent of both 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.

39.03 Preliminary Instructions in Jury Trials

After the jury has been impaneled and sworn, and before opening statements of counsel, the court may instruct the jury as to the respective claims of the parties and as to such other matters as will aid the jury in comprehending the trial procedure and sequence to be followed. Preliminary instructions may also embrace such matters as burden of proof and preponderance of evidence, the elements which the jury may consider in weighing testimony or determining credibility of witnesses, rules applicable to opinion evidence, and such other rules of law as the court may deem essential to the proper understanding of the evidence.

39.04 Opening Statements by Counsel

Before any evidence is introduced, plaintiff may make an opening statement, whereupon any other party may make an opening statement or may reserve the same until that party's case in chief is opened. Opening statements may be waived by any party to the action without affecting the right of any other party to make such an opening statement.