

**Rule 38. Jury Trial of Right****38.01 Right Preserved**

In actions for the recovery of money only, or of specific real or personal property, the issues of fact shall be tried by a jury, unless a jury trial is waived or a reference is ordered.

**38.02 Waiver**

In actions arising on contract, and by permission of the court in other actions, any party thereto may waive a jury trial by:

- (a) failing to appear at the trial;
  - (b) written consent, by the party or the party's attorney, filed with the court administrator;
- or
- (c) oral consent in open court, entered in the minutes.

Neither the failure to file any document requesting a jury trial nor the failure to pay a jury fee shall be deemed a waiver of the right to a jury trial.

(Amended effective March 1, 1994.)

***Advisory Committee Comment - 1993 Amendment***

*The committee is of the opinion that waiver of the right to a jury trial should not be found from inaction or failure to pay a jury fee. The amendment, coupled with the abolition of the note of issue, should obviate any confusion or inadvertent waiver of the constitutionally protected right to a jury trial. See Schweich v. Ziegler, Inc., 463 N.W.2d 722 (Minn. 1991).*

**38.03 Placing Action on Calendar**

Rule 38.03 is repealed, effective January 1, 1992.

***Task Force Comment - 1991 Adoption***

*This amendment to repeal this rule is appropriate because the use of notes of issue filed by the parties will be replaced by the court-initiated scheduling. See proposed Minn. Gen. R. Prac. 111.*