

## **RULE 4:35. Trial By Jury Or By The Court**

### **4:35-1. Demand for Jury Trial**

- **(a) Demand; Time; Manner.** Except as otherwise provided by R. 4:67-5 (summary actions), any party may demand a trial by jury of any issue triable of right by a jury by serving upon the other parties a demand therefor in writing not later than 10 days after the service of the last pleading directed to such issue. Such demand may be appended to the party's pleading.
- **(b) Demand; Specification of Issues.** A party's demand may specify the issues to be so tried; otherwise the party shall be deemed to have demanded trial by jury for all issues so triable. If the demand is for trial by jury for only some of the issues, any other party within 10 days after service of the demand or such shorter or longer time as the court orders, may serve a demand for trial by jury of any other or all of the issues so triable.
- **(c) Waiver.** The failure of a party to serve a demand as required by paragraphs (a) and (b) of this rule constitutes a waiver of trial by jury.
- **(d) Withdrawal of Demand; Consent.** When trial by jury has been demanded as provided by this rule, the trial of all issues so demanded shall be by jury, unless all parties or their attorneys, by written and filed stipulation or oral stipulation made in open court and entered on the record, consent to trial by the court without a jury, or unless the court on a party's or its own motion finds that a right of trial by jury of some or all of those issues does not exist.

Note: Source-R.R. 4:39-1, 4:39-2, 4:39-3, 4:40-3. Paragraph (d) amended July 15, 1982 to be effective September 13, 1982; paragraphs (b) and (c) amended July 13, 1994 to be effective September 1, 1994.

### **4:35-2. Advisory Jury and Trial by Consent**

The court on motion or its own initiative may try with an advisory jury any issue not triable of right by a jury, or it may, with the consent of all parties appearing at the trial, order a trial of any such issue with a jury whose verdict has the same effect as if trial by jury had been a matter of right.

Note: Source-R.R. 4:40-1.

### **4:35-3. Trial by the Court**

Except as provided by R. 4:35-1(d) and 4:35-2, all issues of fact not triable of right by a jury shall be decided by the court without a jury, whether or not any other issues are submitted to a jury. If certain of the issues are to be decided by a jury and others by the court, the court shall determine the sequence in which the issues shall be tried.

**Note: Source-R.R. 4:40-2.**

### **4:35-4. Continuous Trials**

Insofar as practicable, all jury and non-jury trials should be continuous and uninterrupted, and should run for the full day as fixed by R. 1:30-3.

Note: Adopted July 5, 2000 to be effective September 5, 2000.