

VIII. TRIAL CONSIDERATIONS - FEDERAL

A. Right to a Jury Trial

In federal court, pursuant to the Seventh Amendment, parties possess a right to a jury trial in all actions at law (for damages) for actions exceeding \$20. In equity cases (actions seeking equitable remedies), the parties do not have a right to a jury trial. A party may possess both legal and equitable claims in one action. Pursuant to the Federal Rules, the legal claim should be tried first.

1) Waiver of Right to a Jury Trial

A jury trial must be demanded within ten days of the filing of the last pleading directed to the issue for which the basis for a right to a jury trial exists. Otherwise, the right is waived.

B. Number of Jurors & Verdict

A minimum of six and a maximum of twelve jurors shall participate in the verdict. Unless the parties otherwise stipulate, (1) the verdict shall be unanimous and (2) no verdict shall be taken from a jury reduced in size to fewer than six members.

C. Judicial Findings and Conclusions

In a bench trial, the judge is the finder of fact and decides questions of law. In a jury trial, the jury is the finder of fact and the judge decides questions of law.

D. Jury Instructions

a) General

At the close of the evidence any party may serve written requests that the court instruct the jury on the law as set forth in the requests. The court must inform counsel of its proposed action upon the requests prior to their arguments to the jury, but the court instructs the jury after the arguments are completed.

b) Objections – Preservation of Error in Jury Charge

No party may assign as error the giving or failing to give a written instruction unless that party **objects** with particularity before the jury retires to consider its verdict. Opportunity must be given to make the objection out of the hearing of the jury.

c) Judge Cannot Express Opinion

In charging the jury, the court shall not express its opinion of the evidence.

IX. TRIAL CONSIDERATIONS - ALABAMA

A. Jury Considerations

★★★ 1. Right to Jury Trial

In determining whether a party has a right to a jury trial, Alabama courts look to Article 1, § 11, of the Constitution of Alabama. That section provides: “That the right of trial by jury shall remain inviolate.” This provision has been interpreted to provide for jury trial in those classes of cases in which the right existed at common law, or in which it was used at the time of the adoption of the Constitution (1901). At common law, purely legal claims (or claims for money damages) were guaranteed the right to a jury trial. On the other hand, equitable claims carry no right to a jury trial. Therefore, in order to determine whether an issue may be tried by a jury, the court will examine the nature of the relief requested. If it is equitable, no right will exist.

★★★ a) When Demanded

Any party may demand a trial by jury by serving upon the other parties a demand in writing at any time after the commencement of the action and not later than thirty (30) days after the service of the last pleading directed to such issue.

b) Number of Jurors

A jury generally consists of **12** individuals. However, the parties may agree to have a jury consist of less than twelve individuals.

c) Unanimity

Generally, a jury verdict must be unanimous. However, the parties may agree to accept a non-unanimous verdict.

2. Jury Selection

a) Mechanics of Questioning

The court may either question the jurors or permit the attorneys to question the jurors. If the court questions the jurors, the attorneys must be permitted to ask supplemental questions.

b) The Selection Process

The court will draw a group of **at least 24** individuals. Each party may alternately strike jurors until the size of the jury is reached. The party who demanded the jury trial goes

first. Additionally, alternate jurors, the last jurors to be struck, may remain but may not exceed 6.

3. Jury Instructions

a) General

At the close of the evidence any party may serve written requests that the court instruct the jury on the law as set forth in the requests. The court must inform counsel of its proposed action upon the requests prior to their arguments to the jury, but the court instructs the jury after the arguments are completed. The judge shall write "given" or "refused" as the case may be, on the request which thereby becomes a part of the record. Those requests marked "given" shall be read to the jury without reference as to which party filed the request. Neither the pleadings nor "given" written instructions shall go into the jury room.

b) Objections – Preservation of Error in Jury Charge

No party may assign as error the giving or failing to give a written instruction unless that party **objects** with particularity before the jury retires to consider its verdict. Opportunity must be given to make the objection out of the hearing of the jury.

c) Judge Cannot Express Opinion

In charging the jury, the court shall not express its opinion of the evidence.