

8.03 | FUNCTION OF JUDGE AND JURY

Under Federal Rule of Civil Procedure 38, both the plaintiff and the defendant have the right to request a jury trial within a certain time period (generally until 10 days after service of the defendant's answer). Both a judge and a jury are present at a "jury trial." The jury determines the facts of the case after listening to the accounts of both parties and examining the evidence that the judge has determined is admissible. The role of the judge in a jury trial is to preside over the proceedings, keep order, determine what evidence is admissible (the evidence that the jury may legally consider), and to "instruct" the jury on the law to apply to the facts of the case. If both parties choose not to have a jury trial (or if there is no right to a jury trial for the type of case that is to be tried), then the parties will have a "bench trial" in which the judge determines the facts of the case and applies the law to it; no jury is present.

If you have a "jury trial," the people on the jury will be selected by the methods described in Local Rule of Civil Procedure 47.1. Jury selection, that is determining who is qualified to sit on the jury, is also known as "voir dire." Local Rule of Civil Procedure 47.1 provides in part:

(a) The jury in a civil case shall consist of no fewer than six and not more than twelve members. All verdicts shall be by unanimous vote of the jurors. (b) Challenges shall be permitted as provided in 28 U.S.C. §1870 and Fed. R. Civ. P. 47(b).... (c) Unless otherwise ordered, interrogation of prospective jurors on voir dire examination shall be conducted by the Court...

Peremptory challenges:

Each party will generally be given three peremptory challenges, which enables the parties to reject (in most cases) prospective jurors without cause. This decision is based on subjective considerations of the parties when they feel a prospective juror would be detrimental to their side of the case. Parties cannot use discriminatory reasons such as race to excuse a prospective juror.

Challenge for Cause:

The plaintiff or defendant may also challenge a prospective juror "for cause" when, e.g., the prospective juror lacks a qualification required by law, is not impartial, is related



to either of the parties or will not accept the law as given to him/her by the Court.

*(US District Court, New York, Western District // Buffalo, NY 14202
Pro Se Litigation Guidelines)*

