

1.09 Waiver of jury trial (suggested procedures, questions, and statements)

Introductory note

Trial by jury is a fundamental constitutional right, and waiver of the right to a jury trial should be accepted by a trial judge only when three requirements are satisfied:

1. the procedures of Fed. R. Crim. P. 23(a) have been followed;
2. the waiver is knowing and voluntary; and
3. the defendant is competent to waive a constitutional right.

Fed. R. Crim. P. 23(a) requires that the accused's waiver of the right to trial by jury be:

1. made in writing;
2. approved by the court; and
3. consented to by the government.

Following this rule alone does not satisfy the requirement that the waiver be knowing and voluntary, however.

The trial judge should ascertain on the record:

1. whether the accused understands that he or she has a right to be tried by jury;
2. whether the accused understands the difference between a jury trial and a nonjury trial; and
3. whether the accused has been made to understand the advantages and disadvantages of a jury trial.

A defendant's mental capacity to waive a jury trial must be considered in approving the waiver. A defendant is not competent to waive a constitutional right if mental incapacity or illness substantially impairs his or her ability to make a reasoned choice among the alternatives presented and to understand the nature and consequences of the waiver.