

## Who Will Decide Your Case: Judge or Jury?

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The party bringing the lawsuit—the plaintiff—is described as the master of his complaint. The United States Supreme Court has even said that the plaintiff is “ordinarily allowed to select whatever forum [she] considers most advantageous.” *Atl. Marine Const. Co., Inv. v. U.S. Dist. Court for W. Dist. Of Texas*, 134 S. Ct. 568, 581 (2013). But how much control does the plaintiff have over the most crucial question—who will decide my case?

Often times, clients assume their quests for justice will take place in front of a jury of peers. While the right to a jury trial is a constitutionally protected right, that right is not guaranteed in every type of case. In a civil case in South Carolina, the right to a jury trial depends on whether the character of the lawsuit is legal or equitable. The distinction between equitable and legal actions dates back to when South Carolina courts were split between courts of equity and courts of law. At the time the South Carolina Constitution was adopted, jury trials only existed in courts of law. Consistent with that tradition, our courts today only grant jury trials in actions that would have been entitled to a jury trial at the time the constitution was adopted. If a cause of action is entitled to a jury trial, any one of the parties can demand a jury trial. If the jury trial is demanded properly with respect to time and procedure, the legal action must be heard by a jury.

The determination as to whether the action is legal or equitable is made by the judge. The judge looks to the body of the complaint—the document that initiated the lawsuit—to determine the plaintiff’s main purpose in bringing the action. Typically, the decision is simple: if what the plaintiff is complaining of is historically considered to be an equitable cause of action, then the judge will be the fact-finder. If what the plaintiff is complaining of is historically considered to be a *legal* cause of action, then any one of the parties can successfully demand a jury trial. However, at times, the decision of whether a cause of action is legal or equitable can be more complex depending on the *relief* sought by the plaintiff. If the plaintiff is primarily seeking money damages, then the purpose is considered legal and can be heard by a jury if the plaintiff or the defendant demands one. On the other hand, if the plaintiff is asking for the judge to force defendant to act, or to prevent the defendant from acting, or if the plaintiff is seeking some other power traditionally reserved for courts of equity, then the action will be considered *equitable* and, thus, will ultimately be decided by a judge.

When a lawsuit has both equitable and legal claims, the jury will decide all legal claims first, and then the judge will subsequently decide all outstanding equitable issues. If there are common issues between the legal and equitable claims, the judge will defer to all decisions made by the

jury. In very rare circumstances, the judge will utilize her discretion to try an equitable claim first, but the United States Supreme Court has cautioned that this discretion is very narrowly limited.

Depending on the circumstances in your case, you may or may not want a jury trial. Whether you seek a jury trial is an important decision that should not be made without consulting an attorney.