

## **RULE 47. JURORS**

(a) Examination of Jurors. The court shall conduct the examination of prospective jurors unless in its discretion it permits the parties or their attorneys to do so. The court shall permit the parties or their attorneys to suggest additional questions to supplement the inquiry and shall submit to the prospective jurors such additional questions as it deems proper, or the court in its discretion may permit the parties or their attorneys themselves to make such additional inquiry as it deems proper.

(b) Challenges for Cause. Challenges for cause of individual prospective jurors shall be made at the bench, at the conclusion of the examination.

(c) Peremptory Challenges.

(1) *Manner of Exercise.* After all jurors challenged for cause have been excused, the clerk shall draw the names of eight prospective jurors and shall draw one additional name for each peremptory challenge allowed to any party by this rule or by the court. Peremptory challenges shall be exercised by striking out the name of the juror challenged on a list of the drawn prospective jurors prepared by the clerk. Any party may waive the exercise of any peremptory challenges without thereby relinquishing the right to exercise any remaining peremptory challenge or challenges to which that party is entitled. If all peremptory challenges are not exercised, the court will strike from the bottom of the list sufficient names to reduce the number of jurors remaining to eight.

(2) *Order of Exercise.* In any action in which both sides are entitled to an equal number of peremptory challenges, they shall be exercised one by one, alternatively, with the plaintiff exercising the first challenge. In any action in which the court allows several plaintiffs or several defendants additional peremptory challenges, the order of challenges shall be as determined by the court.

(3) *Number.* Each party shall be entitled to three peremptory challenges. Several defendants or several plaintiffs may be considered as a single party for the purpose of making challenges, or the court may allow additional peremptory challenges and permit them to be exercised separately or jointly.

(d) Alternate Jurors. The court may direct that not more than three jurors in addition to the regular panel be called and impaneled to sit as alternate jurors as provided by law. The manner and order of exercising peremptory challenges to

alternate jurors shall be the same as provided for peremptory challenges of regular jurors. Each side is entitled to one peremptory challenge in addition to those otherwise allowed by this rule if one or two alternate jurors are to be impaneled, and two peremptory challenges if three alternate jurors are to be impaneled. The additional peremptory challenges may be used against an alternate juror only, and the other peremptory challenges allowed by this rule shall not be used against an alternate juror.

(e) Note-Taking by Jurors. The court in its discretion may allow jurors to take handwritten notes during the course of the trial. If note-taking is allowed, the court shall instruct the jury on the note-taking procedure and on the appropriate use of the notes. Unless the court determines that special circumstances exist that should preclude it, jurors should be allowed to take their notes into the jury room and use them during deliberations. Counsel may not request or suggest to a jury that jurors take notes or comment upon their note-taking. Upon the completion of jury deliberations, the notes shall be immediately collected and, without inspection, physically destroyed under the court's direction.

**Advisory Committee's Notes**  
**June 2, 1997**

Rule 47 (e) was adopted to permit note-taking by jurors during trial, subject to the discretion of the court. The subdivision is identical to M.R.Crim.P. 24 (f), which has been successfully implemented at criminal trials, with the intention of making the practice uniform in criminal and civil trials.

**Advisory Committee's Note**  
**January 3, 1978**

This amendment [to subdivision (c)(1)] provides for modification of the manner of exercise of peremptory challenges in the selection of an eight person jury as provided, as of this date, by amendment to Rule 38(a). The rule, as so modified, results in the selection of an eight person jury. The provisions of the rule are subject to any stipulation entered into under Rule 48(b) for reduction in the size of the jury.

This amendment [to subdivision (c)(3) ] is intended to adjust the number of peremptory challenges in accordance with the eight person jury provided for this date in Rule 38(a). The rule, as amended, provides for three peremptory challenges as opposed to two peremptory challenges which were allowed in the

case of the selection of a six person jury. This amendment represents a return to the provisions of the rule as they existed prior to October 1, 1975 when the statutory provisions provided for the use of eight person juries.

Rule 47(d) is amended simultaneously with amendments to Rules 38 and 48 in order to implement the provisions of Chap. 102 of the Public Laws of 1977. Rule 38(a) provides for the selection of eight person juries where requested by either party prior to trial. The amendments to 47(d) represent a return to the system of selection of alternate jurors which existed prior to October 1, 1975 when eight person juries were mandated by the pertinent statutory provisions. The rule now provides for the selection of "not more than 3 jurors" as alternates and provides for a maximum of two peremptory challenges if three alternate jurors are to be selected, and for a single peremptory challenge, for each party, if either one or two alternate jurors are selected. It should be noted that the challenges provided for under Rule 47(d) may be utilized only with respect to potential alternate jurors.

**Advisory Committee's Note  
October 1, 1975**

This amendment, like the simultaneous changes made in Rules 38 and 48, accommodates the jury selection procedures to the 1975 amendment of 14 M.R.S.A. § 1204, providing for six-member juries. *See* Advisory Committee's Notes to Rules 38, 48.

**Advisory Committee's Note  
January 1, 1973**

Rule 47(c) and Rule 47(d) are amended simultaneously with amendments to Rules 38 and 48 in order to implement the permissive 1972 statute authorizing the Supreme Judicial Court to institute 8-member juries (with 6-juror majority verdicts). *See* the Advisory Committee's Note (January 1, 1973) to Rule 38(a).

Rule 47(c)(1) is amended to reflect the smaller number of jurors that will be drawn and Rule 47(c)(3) and Rule 47(d) are amended in order to reduce the number of peremptory challenges and the maximum permissible number of alternate jurors, respectively, approximately in proportion to the reduction of the number of jurors from 12 to 8.

At the same time that Rule 47 is being amended to implement the 8-member jury statute, a new third sentence is added to Rule 47(c)(1) in order to specify by

rule the better practice in regard to waiver of peremptory challenges. That new sentence, taken from Rule 19 of the Local Rules of the United States District Court for the District of Maine, makes clear that a party by waiving the exercise of any one of his peremptory challenges does not thereby relinquish his right to exercise any subsequent remaining peremptory challenge to which he is entitled. This is already the better practice. *See* Field, McKusick and Wroth, *Maine Civil Practice* § 47.3, at 640-41.

**Advisory Committee's Note**  
**December 31, 1967**

These amendments are intended to bring the civil and criminal practice with regard to challenges to the jury and alternate jurors into substantial conformity. They are drawn from Maine Criminal Rule 24 and the practice of the United States District Court for the District of Maine under its Local Rule 19.

In an accompanying statutory change, 14 M.R.S.A. § 1204 has been amended to eliminate the now largely formal practice of drawing two regular panels at the beginning of the term and to substitute for provisions concerning peremptory challenges and alternate jurors an express rule-making power in the Supreme Judicial Court. 1967 Pub. Laws, Chap. 441, Sec. 3. The provision of 14 M.R.S.A. § 1302 for a challenge to the panel has also been repealed. *Id.*, Sec. 4. These changes parallel amendments made to the comparable criminal procedural statutes when the Maine Rules of Criminal Procedure were promulgated. *See* 15 M.R.S.A. § 1258.

Under the amended rule a jury will be specially drawn for the trial of each case. It is envisioned that the practice will be substantially as follows:

All jurors available for the trial of the case will be examined on voir dire. In the federal court Judge Gignoux accomplishes this step with a set of prepared questions which he addresses to all the prospective jurors as a group, directing further questions to a juror as circumstances dictate. After the voir dire, under amended Rule 47(b) counsel will make their challenges for cause at the bench out of the hearing of the jurors. This practice, identical to that under Criminal Rule 24(b), is intended to eliminate any prejudice which might result from a challenge for cause. *See* Reporter's Notes, Me.R.Crim.P. 24.

Under amended Rule 47(c), when challenges for cause have been completed and the challenged jurors excused, the clerk will draw a number of jurors' names

equal to the size of the jury plus the total number of peremptory challenges available to all parties—20 names in the ordinary civil case (12 plus four challenges for each party). As he draws, the clerk will make a list of the drawn jurors. Counsel for each party will then alternately strike from the completed list the names of those whom they wish to challenge peremptorily up to the maximum allowed. When all challenges have been exercised, if more than 12 names remain the court will strike the surplus from the bottom of the list. The remainder will be the jury for the trial of the case. This procedure is based on Maine Criminal Rule 24(c) and local Rule 19(c) of the United States District Court for Maine. Its purpose is to eliminate complexity and potential for prejudice which tend to discourage the exercise of peremptory challenges. *See* Reporter's Notes, Me.R.Crim. P. 24.

Subdivision (c)(3) incorporates the number of peremptory challenges presently allowed by 14 M.R.S.A. § 1204 (Supp. 1966) for cases in which a jury is specially drawn. The last sentence of the subdivision is taken from 28 U.S.C.A. § 1870, source of the comparable federal rule for civil actions. Its effect is the same as that of the last sentence in Maine Criminal Rule 24(b).

Subdivision (d) increases to four the number of alternate jurors permitted in a civil action from the two allowed under 14 M.R.S.A. § 1204 (Supp.1966). The increase brings the number of alternates into line with that permitted by Maine Criminal Rule 24(d). Although both of the comparable Federal Rules permit six alternates, the smaller number seems warranted by the actualities of Maine practice. The rule is generally similar to Federal Civil Rule 47(b), except that the provisions of the latter as to the drawing and functions of alternate jurors are omitted to be consistent with Maine Criminal Rule 24(d). These provisions appear in virtually identical form in 14 M.R.S.A. § 1204 as amended in 1967.

**Reporter's Notes**  
**December 1, 1959**

This rule modifies Federal Rule 47 only in minor respects. It also follows closely existing Maine practice.

R.S.1954, Chap. 113, Sec. 101 [now 14 M.R.S.A. § 1301] provides that the court shall on motion pose certain questions to prospective jurors. At present there is no uniform practice among judges as to permitting counsel to question prospective jurors. While subdivision (a) of this rule preserves a discretion in the

trial judge to permit interrogation by counsel, Federal Rule 47(a) is modified to indicate clearly that questioning by the judge should be the normal procedure.

R.S.1954, Chap. 113, Sec. 95 [now 14 M.R.S.A. § 1204] provides for alternate jurors in both civil and criminal cases.\* It is substantially the same as Federal Rule 47(b), and it seems preferable to incorporate the statute by reference in lieu of adopting the federal rule. Otherwise there would be undesirable minor variations in practice between civil and criminal cases.

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\* [Field, McKusick & Wroth noted: “As amended by 1965 Laws, c. 356, §§ 12, 13, and 1967 Laws, c. 441, § 3, the section now applies only to civil cases and gives the court specific rulemaking authority as to the number of alternates and challenges to them. *See* Advisory Committee's Note . . .” 1 Field, McKusick & Wroth, *Maine Civil Practice* at 635 (2d ed. 1970)].