

TO:

Rule 28 Distribution

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ATTACHMENT¹

RULES OF CRIMINAL PROCEDURE

Rule 18.4. Challenges

(a) [No change]

(b) **Challenge for Cause.** ~~On motion or on its own, the court must~~ The court, on motion or on its own, must excuse a prospective juror or jurors from service in the case if there is a reasonable ground to believe that the juror or jurors cannot render a fair and impartial verdict. A challenge for cause may be made at any time, but the court may deny a challenge if the party was not diligent in making it.

~~(c) Peremptory Challenges.~~

~~(1) Generally. The court must allow both parties the following number of peremptory challenges:~~

~~(A) 10, if the offense charged is punishable by death;~~

~~(B) 6, in all other cases tried in superior court; and~~

~~(C) two, in all cases tried in limited jurisdiction courts.~~

~~(2) If Several Defendants Are Tried Jointly. If there is more than one defendant, each defendant is allowed one-half the number of peremptory challenges allowed to one defendant. The State is not entitled to any additional peremptory challenges.~~

~~(3) Agreement Between the Parties. The parties may agree to exercise fewer than the allowable number of peremptory challenges.~~

COMMENT [No change]

Rule 18.5. Procedure for Jury Selection

(a) [No change]

(b) **Calling Jurors for Examination.** The court may call to the jury box a number of prospective jurors equal to the number to serve plus the number of alternates ~~plus the number of peremptory challenges that the parties are permitted.~~ Alternatively, and at the court's discretion, all members of the panel may be examined.

(c)-(d) [No change]

(e) **Scope of Examination.** The court must ensure the reasonable protection of the prospective jurors' privacy. Questioning must be limited to inquiries designed to elicit

¹ Additions to the text of the rule are shown by underscoring and deletions of text are shown by ~~strike-through~~.

information relevant to asserting a possible challenge for cause ~~or enabling a party to intelligently exercise the party's peremptory challenges.~~

(f) Challenge for Cause. Challenges for cause must be on the record and made out of the hearing of the prospective jurors. The party challenging a juror for cause has the burden to establish by a preponderance of the evidence that the juror cannot render a fair and impartial verdict. If the court grants a challenge for cause, it must excuse the affected prospective juror. If insufficient prospective jurors remain on the list, the court must add a prospective juror from a new panel. ~~All challenges for cause must be made and decided before the court may call on the parties to exercise their peremptory challenges.~~

(g) Stipulation to Remove a Prospective Juror. The parties may stipulate to the removal of a juror. ~~**Exercise of Peremptory Challenges.** After examining the prospective jurors and completing all challenges for cause, the parties must exercise their peremptory challenges on the list of prospective jurors by alternating strikes, beginning with the State, until the peremptory challenges are exhausted or a party elects not to exercise further challenges. Failure of a party to exercise a challenge in turn operates as a waiver of the party's remaining challenges, but it does not deprive the other party of that party's full number of challenges. If the parties fail to exercise the full number of allowed challenges, the court will strike the jurors on the bottom of the list of prospective jurors until only the number to serve, plus alternates, remain.~~

(h) Selection of Jury; Alternate Jurors.

(1) *Trial Jurors.* ~~After the completion of the procedures in (g) the court has resolved any challenges for cause,~~ the prospective jurors remaining in the jury box or on the list of prospective jurors constitute the trial jurors.

(2)-(3) [No change]

(i) Deliberations in a Capital Case. [No change]

COMMENT [as amended 2022]

Rule 18.5(b). [No change to the first two paragraphs of the comment]

The struck method calls for all of the jury panel members to participate in voir dire examination by the judge and counsel. Following disposition of the for cause challenges, ~~the juror list is given to counsel for the exercise of their peremptory strikes. When all the peremptory strikes have been taken and the court has resolved all related issues under *Batson v. Kentucky*, 476 U.S. 79 (1986), the clerk calls the first 8 or 12 names, as the law may require, remaining on the list, plus the number of alternate jurors thought necessary by the judge, who become the trial jury.~~

Rule 18.5(d). [No change to comment]

RULES OF CIVIL PROCEDURE

Rule 47. Jury Selection; Voir Dire; Challenges

(a)-(b) [No change]

(c) Voir Dire Oath and Procedure.

(1)-(2) [No change]

(3) *Extent of Voir Dire.*

(A) [No change]

(B) *Extent of Questioning.* Voir dire questioning of a jury panel is not limited to the grounds listed in Rule 47(d) and may include questions about any subject that might disclose a basis for the exercise of a for cause peremptory challenge.

(d) [No change]

(e) Peremptory Challenges.

~~(1) *Procedure.* When the voir dire is finished and the court has ruled on all challenges for cause, the clerk will give the parties a list of the remaining prospective jurors for the exercise of peremptory challenges. The parties must exercise their challenges by alternate strikes, beginning with the plaintiff, until each party's peremptory challenges are exhausted or waived. If a party fails to exercise a peremptory challenge, it waives any remaining challenges, but it does not affect the right of other parties to exercise their remaining challenges.~~

~~(2) *Number.* Each side is entitled to 4 peremptory challenges. For this rule's purposes, each action—whether a single action or two or more actions consolidated for trial—must be treated as having only two sides. If it appears that two or more parties on a side have adverse or hostile interests, the court may allow them to have additional peremptory challenges, but each side must have an equal number of peremptory challenges. If the parties on a side are unable to agree on how to allocate peremptory challenges among them, the court must determine the allocation.~~

(f) (c) Alternate Jurors.

(1)-(4) [No change]

~~(5) *Additional Peremptory Challenges.* In addition to the peremptory challenges otherwise allowed by law, each side is entitled to one peremptory challenge if one or two alternate jurors will be impaneled, two peremptory challenges if 3 or 4 alternate jurors will be impaneled, and 3 peremptory challenges if 5 or 6 alternate jurors will be impaneled.~~

COMMENT [as amended 2022]

1995 Amendment to Rule 47(a) and (e)

[Formerly Rule 47(a)]

[No change to the first two paragraphs of the comment]

The “struck” method calls for all of the jury panel members to participate in voir dire examination by the judge and counsel. Although the judge may excuse jurors for cause in the presence of the panel, challenges for cause are usually reserved until the examination of the panel has been completed and a recess taken. Following disposition of the for cause challenges, ~~the juror list is given to counsel for the exercise of their peremptory strikes. When all the peremptory strikes have been take, and all legal issues arising therefrom have been resolved,~~ the clerk calls the first eight names remaining on the list, plus the number of alternate jurors thought necessary by the judge, who shall be the trial jury.

COMMENT

~~**1961 Amendment to Rule 47(e)**~~

~~**[Formerly Rule 47(a)(3)]**~~

~~[Rule 47(e) (formerly Rule 47(a)(3)] now compels the plaintiff to exercise all of his peremptory challenges prior to the defendant. The amended rule provides that the parties shall exercise their peremptory challenges alternately. Under the present rule, while the plaintiff receives the same number of peremptory challenges as the defendant, the order of exercising them resulted in an obvious inequity. The purpose of the proposed rule is to eliminate the inequity by giving both parties peremptory challenges which are not only equal in number but also in practical weight and value.~~