

Alabama Rules of Civil Procedure

VI. TRIALS

Rule 48.

Juries of less than twelve — Majority verdict.

The parties may stipulate that the jury shall consist of any number less than twelve (12) or that a verdict or a finding of a stated majority of the jurors shall be taken as the verdict or finding of the jury.

(dc) *District court rule.* Rule 48 does not apply in the district courts.

Committee Comments on 1973 Adoption

A jury, within the meaning of Constitution of 1901, § 11, means a jury of twelve. E.g., *Woodward Iron Co. v. Cabiniss*, 87 Ala. 328, 6 So. 300 (1889); Jones, *Trial by Jury in Alabama*, 8 Ala.L.Rev. 274, 291-2 (1956). But the right to a jury of twelve may be waived, even in criminal cases. *Kirk v. State*, 247 Ala. 43, 22 So.2d 431 (1945). There is no statutory means now available, however, for the parties to consent to a jury of less than twelve initially. This rule provides such a means. Since its application is based upon consent of both parties, no reasonable constitutional problem should arise. It should be particularly useful in a case where no alternate jurors have been provided, and a juror becomes disabled before the case is submitted to the jury.

Jury verdicts under present law must be unanimous. E.g., *McCalley v. Penney*, 191 Ala. 369, 67 So. 696 (1918); *Seals Piano & Organ Co. v. Bell*, 17 Ala.App. 331, 84 So. 779 (1920). Compare Jones, *Trial by Jury in Alabama*, 8 Ala.L.Rev. 274, 288-90 (1956). But there are no decisions indicating that the right to a unanimous verdict may not be waived. This rule, taken from Federal Rule 48, would permit the parties to agree in advance to accept a non-unanimous verdict.