

Alabama Rules of Civil Procedure

VI. TRIALS

Rule 47.

Jurors.

(a) *Examination of jurors.* The court may permit the parties or their attorneys to conduct the examination of prospective jurors or may itself conduct the examination. In the latter event, the court shall permit the parties or their attorneys to supplement the examination as may be proper.

(b) *Selection of jurors and alternate jurors.* Jurors shall be drawn and selected as provided in Code of Alabama 1975, § 12-16-70 et seq., unless otherwise superseded or modified herein.

Regular jurors shall be selected from a list containing the names of at least twenty-four (24) competent jurors and shall be obtained by the parties or their attorneys alternately striking one (1) from the list until twelve (12) remain, the party demanding the jury having the first strike.

The court may direct that not more than six (6) jurors in addition to the regular jury be called and impaneled to sit as alternate jurors. Alternate jurors shall have the same qualifications, shall be subject to the same examination, shall take the same oath, and shall have the same functions, powers, facilities, and privileges as regular jurors. Unless the parties agree otherwise, the parties shall be entitled to strike from a list containing the names of three (3) competent jurors for each alternate juror required in addition to at least twenty-four (24) competent jurors required for a regular jury.

When the court has determined the total number of jurors, including alternates, to be impaneled and has imparted that information to counsel and the clerk, the parties will proceed to strike the jury. When they reach the number determined by the court to be impaneled, the striking shall continue until the regular number of jurors is reached. The alternate jurors will be those jurors whose names had not been struck when the total number determined by the court had been reached, but whose names were stricken before the regular number of jurors was reached. When the jury has been selected, the clerk shall furnish the court with a list of the alternate jurors, in inverse order in which their names were stricken, i.e., the last name stricken will be listed as alternate juror number 1, the next to last name stricken as alternate juror number 2 and so on until the number of alternates determined by the court is reached. The regular jury and the alternates will be impaneled. Jurors who, prior to the time the jury retires to consider its verdict, become or are found to be unable or disqualified to perform their duties shall be discharged. Just prior to the time the jury retires to

consider its verdict, the court shall supply any vacancies from the list furnished by the clerk, beginning with the last name stricken, then next to last and so on until the regular number of jurors has been reached.

The court may retain alternate jurors after the jury retires to deliberate. The court must ensure that a retained alternate does not discuss the case with anyone until that alternate replaces a juror or is discharged. If an alternate replaces a juror after deliberations have begun, the court must instruct the jury to begin its deliberations anew.

(c) *Multiple claims, parties, and actions.* In all claims or actions tried together, for the purpose of striking the jury, two or more parties having relatively similar interests may be aligned as a single party or the court may add additional names to the list and permit strikes to be exercised separately or jointly; but, in all events, the plaintiff shall be entitled to one-half of the total number of strikes allocated to all parties unless the total number of strikes cannot be divided equally, in which event plaintiff shall have no less than one (1) less than the total number of strikes allocated to all other parties, nor more than one (1) more than the total number of strikes allocated to all other parties.

(dc) *District court rule.* Rule 47 does not apply in the district courts.

[Amended 4-25-73; Amended eff. 10-1-95; Amended eff.1-12-15.]

Supreme Court Note

Rule 47(c) was promulgated on January 3, 1973, to read as follows:

“(c) Multiple Claims, Parties and Actions. In all claims or actions tried together, for the purpose of striking the jury, two or more parties having relatively similar interests may be aligned as a single party or the court may add additional names to the list and permit strikes to be exercised separately or jointly; but, in no event, shall the plaintiff receive one strike less than one-half of the total strikes.”

Rule 47(c) was modified on April 25, 1973, so as to appear in its present form.

Committee Comments on 1973 Adoption

Rule 47(a) is the same as Minn.R.C.P. 47.01. It omits language which appears in Federal Rule 47(a) and which would permit the court to put all the

questions to the prospective jurors without allowing the attorneys to put any questions directly. The rule here proposed, unlike the federal rule, preserves the practice under the statute it supersedes, Code of Ala., Tit. 7, § 52, by which the parties have a right to put supplementary questions if the court has conducted the initial examination. The statute which places on the court the primary and imperative duty to ensure a qualified and impartial jury, Code of Ala., § 12-16-6, is not superseded by these rules. Rule 47(a) merely provides a procedure by which that duty may be discharged.

Except for special acts made applicable to Jefferson County (App. §§ 992-995, Code of Ala. and The Twenty-ninth Judicial Circuit (Talladega County) (Tit. 13, § 125 (93d), Code of Ala.), Alabama law has made no provision for alternate jurors. Each of these acts appears to be identical. This form was used as the basis for the 1957 Alabama proposal as to alternate jurors. One facet of these statutes is its express procedure for selecting the alternate juror(s) when a struck jury is used. The Federal Rule simply provides for additional challenges in the event of alternate jurors but relegates the decision as to whether to use the common law or struck jury methods to local custom and practice. For a description of the various practices, see *The Jury System in the Federal Courts*, 26 F.R.D. 409, 468 (1960).

Recent changes in the federal rules have increased the number of permissible alternate jurors to 6. Further, the Federal Rule has been clarified so as to include replacement of a principal juror who has a disqualification which is discovered after commencement of the trial.

Rule 47(b) provides a method of alternate juror selection which prevents the alternate from being aware of his status as such until the jury retires to consider its verdict.

Note that Rule 47(b) supersedes Title 30, § 53, Code of Alabama, which provided for selection of a jury by preemptory challenges.

Rule 47(c) is a hybrid version of Tit. 28, § 1870, U.S.C.A., wherein the court is given discretion to consider "several plaintiffs or several defendants" as a "single-party for purposes of making challenges." The applicability of this statute to consolidated actions has been a point of conflict. One alternative gives each side the minimum number of challenges regardless of how many cases have been consolidated. Another theory is to multiply the number of challenges by the number of actions that are consolidated. Compare *Conn. Mutual Life Ins. Co. v. Hillmon*, 188 U.S. 208, 23 S.Ct. 294, 47 L.Ed. 446 (1903) (three challenges, dictum) with *Davis v. Jessup*, 2 F.2d 433 (6th Cir.1924) and *Butler v. Evening*

Post Publishing Co., 148 Fed. 821 (4th Cir.1906), cert. denied 204 U.S. 670, 27 S.Ct. 785, 51 L.Ed. 672 (1907).

At first blush it would appear that the use of an odd number of alternates, such as 1, 3 or 5, would result in an uneven division of strikes by the sides. For example, if 1 alternate juror was used, 3 jurors in addition to the regular number of 24 jurors would result in a total of 27 jurors, from which 15 would have to be struck in order to return to 12 jurors. Of course, the last juror struck becomes the first alternate. However, note that the Rule speaks of “at least 24 jurors” as the amount from which a jury is to be struck. If the trial court tendered 25 or 27 or some other odd numbered amount of jurors from which to strike the jury, this uneven division of the total number of strikes will not occur when either 1, 3 or 5 jurors are desired.

**Committee Comments to October 1, 1995,
Amendment to Rule 47**

The amendment updates the Code citations to correspond to the Code of Alabama 1975 and removes a paragraph in subdivision (b) that discussed the impact of a Code section in Code of Alabama 1940 (Recomp. 1958) that was not carried over to Code of Alabama 1975. Other changes are technical.

Note from the reporter of decisions: The order amending Rule 47(b), effective January 12, 2015, is published in that volume of *Alabama Reporter* that contains Alabama cases from ___ So. 3d.