

Rule 48. Number of Jurors; Verdict; Polling

(a) NUMBER OF JURORS. A jury must begin with at least 6 jurors, but the court may empanel up to 6 additional jurors as it deems necessary. Each juror must participate in the verdict unless excused under Rule 47(c).

(b) VERDICT. Unless the parties stipulate otherwise, the verdict must be unanimous and must be returned by a jury of at least 6 members.

(c) POLLING. After a verdict is returned but before the jury is discharged, the court must on a party's request, or may on its own, poll the jurors individually. If the poll reveals a lack of unanimity or lack of assent by the number of jurors that the parties stipulated to, the court may direct the jury to deliberate further or may order a new trial.

COMMENT TO 2017 AMENDMENTS

This rule is substantially similar to *Federal Rule of Civil Procedure 48*, as amended in 2007 and 2009, except for language in section (a), which specifies that the decision to empanel additional jurors rests with the court.

Section (c) regarding polling is new to the federal and Superior Court civil rules. In *Harris v. United States*, 622 A.2d 697 (D.C. 1993), the District of Columbia Court of Appeals examined under what conditions a trial court should require a jury to resume deliberations after a juror dissents in open court during a jury poll. The court noted that there is less coercive potential if the dissenting juror is earlier in line and the poll is terminated. *Id.* at 703.

COMMENT

Identical to *Federal Rule of Civil Procedure 48* except that a jury demand under SCR Civ 38 is conclusively presumed to be to a jury of 6 persons unless the demand expressly states otherwise.