

## **Rule 24. Trial Jurors**

### **(a) EXAMINATION.**

(1) *In General.* The court may examine prospective jurors or may permit the attorneys for the parties to do so.

(2) *Court Examination.* If the court examines the jurors, it must permit the attorneys for the parties to:

(A) ask further questions that the court considers proper; or

(B) submit further questions that the court may ask if it considers them proper.

### **(b) PEREMPTORY CHALLENGES.**

(1) *Number of Peremptory Challenges.* Each side is entitled to an equal number of peremptory challenges to prospective jurors as specified below.

(A) *Offenses Punishable by Imprisonment of More Than One Year.* Each side has ten peremptory challenges when the defendant is charged with a crime punishable by imprisonment of more than one year.

(B) *Offenses Punishable by Fine, Imprisonment of One Year or Less, or Both.* Each side has three peremptory challenges when the defendant is charged with a crime punishable by fine, imprisonment of one year or less, or both.

(C) *Multiple Defendants or Prosecuting Authorities.* If there is more than one defendant, or if a case is prosecuted both by the United States and the District of Columbia, the court may allow additional peremptory challenges and permit them to be exercised separately or jointly, but in no event shall one side be entitled to more peremptory challenges than the other.

(2) *Procedure.* The trial judge must permit the parties to exercise peremptory challenges outside the presence of the prospective jurors. The trial judge may choose an alternating or simultaneous procedure, or a combination thereof.

(A) Under an alternating procedure, the prosecution makes the first peremptory challenge(s) with each side proceeding in turn thereafter.

(B) Under a simultaneous procedure, each party exercises its challenges by simultaneously submitting to the court its list of venire persons to be stricken.

### **(c) ALTERNATE JURORS.**

(1) *In General.* The court may impanel up to six alternate jurors to replace any jurors who are unable to perform or who are disqualified from performing their duties.

(2) *Procedure.*

(A) Alternate jurors must have the same qualifications and be selected and sworn in the same manner as any other juror.

(B) Alternate jurors replace jurors in the same sequence in which the alternates were selected. An alternate juror who replaces a juror has the same authority as the other jurors.

(3) *Retaining Alternate Jurors.* 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.

(4) *Peremptory Challenges.* Each side is entitled to the number of additional peremptory challenges to prospective alternate jurors specified below. These additional challenges may be used only to remove alternate jurors.

(A) *One or Two Alternates*. One additional peremptory challenge is permitted when one or two alternates are impaneled.

(B) *Three or Four Alternates*. Two additional peremptory challenges are permitted when three or four alternates are impaneled.

(C) *Five or Six Alternates*. Three additional peremptory challenges are permitted when five or six alternates are impaneled.

#### COMMENT TO 2017 AMENDMENTS

Subsection (b)(2) has been amended to permit greater flexibility in the manner of exercising peremptory challenges. For example, the court may now require that all challenges be exercised simultaneously, or that fewer than all be exercised simultaneously and that the remainder be exercised in an alternating fashion, or, as before the amendment, that all be exercised in an alternating fashion.

#### COMMENT TO 2016 AMENDMENTS

This rule has been redrafted to conform to the general restyling of the federal rules in 2002. In addition to basic changes in style, the 2002 federal amendments to paragraph (a) were intended to clarify that a defendant may personally conduct voir dire only if the defendant is acting pro se.

Paragraph (b) of this rule differs from the federal rule in several respects. First, it omits the reference to the number of peremptory challenges in capital cases. The District of Columbia has no death penalty.

Second, subparagraph (b)(1) allows each side an equal number of peremptory challenges, as required by D.C. Code § 23-105 (a) (2012 Repl.).

Third, subparagraph (b)(1)(A) allows ten peremptory challenges for each side in cases where the offense charged is punishable by more than one year of imprisonment, to conform to the requirements of D.C. Code § 23-105 (a) (2012 Repl.).

Fourth, subparagraph (b)(1)(B) substitutes the title, "Offenses Punishable by Fine, Imprisonment of One Year or Less, or Both" for the title "Misdemeanor Case" used in the federal rule. See, e.g., D.C. Code §§ 16-1022, -1024 (2012 Repl.) (defining the crime of parental kidnapping as a felony although punishable by a term of imprisonment not to exceed six months).

Fifth, subparagraph (b)(1)(C) retains language from the former rule recognizing that two prosecuting authorities may bring a case in Superior Court.

Finally, subparagraph (b)(2) retains language from the former rule providing that peremptory challenges must be made at the bench and that the prosecution must make the first peremptory challenge with each side proceeding in turn thereafter.