

The Supernumerary Juror and Peremptory Challenges

Francis J. Carney

Let's assume this is your seating chart for a panel of 30, of whom 27 actually show up on the day of trial:¹

1	2	3	4	5	6	7	8	9	10
11	12	13	14	15	16	17	18	19	20
21	22	23	24	25	26	27			

Example 1- No Cause Strikes and No Alternate

If no one is stricken for cause, and there are no alternates, then your jury is selected from the first 14 panelists (8 jurors + 6 total peremptories). Do *not* exercise peremptories on Numbers 15 and below—jurors are chosen "from the top," so there's no way panelists below 14 can be picked, and thus there is no reason for you to give them any consideration in making your peremptory challenges:²

1	2	3	4	5	6	7	8	9	10
11	12	13	14	15	16	17	18	19	20
21	22	23	24	25	26	27			

¹Keep in mind that a few citizens from each panel "called" for jury duty may not actually show up on the day of trial, and that the jury clerk may not be able to replace them in the venire in time. More rarely, jurors from your panel may be "poached" from the jury assembly room to fill out the jury panel on a higher-profile case, such as a major felony trial. The problem of "no-shows" seems to be increasing, and the courts are seeking ways to address it.

²And keep in mind, as my friend Gerry D'Elia reminds me, you don't *have* to use all your peremptories. If you really, really like the panel, you can waive one or all of your peremptories.

Example 2- No Cause Strikes, But One Alternate

Assume there were no challenges for cause granted, but that there will be an alternate juror. In that case, Rule 47(e) gives each side 1 additional peremptory strike per side, or 4 per side, for a total of 8. So now we count 9 for the jury, plus 8 for the peremptories, so we need to count down 17, or to juror #17. So #18 to #27 are supernumeraries;³ ignore them in your peremptories:

1	2	3	4	5	6	7	8	9	10
11	12	13	14	15	16	17	18	19	20
21	22	23	24	25	26	27			

Example 3- Some Cause Strikes, and No Alternate

Let's assume that panelists 2, 4, 12, 15, 16, and 26 are stricken for cause. If our jury is to consist of 8 (with no alternates) then our cutoff panelist is #19— 8 jurors, plus 6 total peremptories is 14, so we count down only to that point to strike with our peremptories; everyone below that is a supernumerary, cannot be chosen, and a peremptory exercised on them is wasted. So only bother with striking jurors down to #19:

1	2	3	4	5	6	7	8	9	10
11	12	13	14	15	16	17	18	19	20
21	22	23	24	25	26	27			

Example 4- Some Cause Strikes, and One Alternate

Now assume we're going to have one alternate, so we'll have a jury of 9. In that case, Rule 47(e) gives each side 1 additional peremptory strike per side, or 4 per side, for a total of 8.

³“Exceeding what is necessary, required, or desired.” Merriam-Webster, online edition.

So now we count 9 for the jury, plus 8 for the peremptories, so we need to count down 17, or to juror #22:

1	2	3	4	5	6	7	8	9	10
11	12	13	14	15	16	17	18	19	20
21	22	23	24	25	26	27			

Example 5- Some Cause Strikes, and Two Alternates

Let's assume we're going to have two alternates, so we'll have a jury of 10. In that case, Rule 47(e) gives only 1 additional strike per side, and that still leaves only a total of 8. So now we count 10 for the jury, plus 8 for the peremptories, and thus we need to count down 18, or to juror #23:

1	2	3	4	5	6	7	8	9	10
11	12	13	14	15	16	17	18	19	20
21	22	23	24	25	26	27			

Example 6- More Cause Strikes, and One Alternate

Finally, assume the panel size was 27, but that there were more strikes for cause, and 1 alternate juror is going to be used. We still need to count down 17:

1	2	3	4	5	6	7	8	9	10
11	12	13	14	15	16	17	18	19	20
21	22	23	24	25	26	27	⊖		

But wait, we can't– there is no juror #28: there's not enough people left to exercise peremptories and end up with the jury of 9. This is why a panel of 25 can easily get close to being too small, and even with a larger panel this can happen.

When it gets close, you can see why the trial judge will be more reluctant to grant challenges for cause. While usually a panel of 30 will be enough, it's important to ask for a larger panel/venire if the cause is "notorious" or the trial will be lengthy.⁴

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⁴Because the longer trials pose a greater likelihood that panelists will have to be excused for undue hardship.