

RULE 645. SEATING AND ~~[DISCHARGE]~~ RETENTION OF ALTERNATE JURORS.

(A) Alternate jurors, in the order in which they are called, shall replace principal jurors who [, prior to the time the jury retires to consider its verdict,] become unable or disqualified to perform their duties.

(B) [An alternate juror who does not replace a principal juror shall be discharged before the jury retires to consider its verdict.] Alternate jurors shall be retained after the jury retires to consider its verdict. The trial judge shall instruct the retained alternate jurors to continue to observe the admonitions to jurors until they are informed that a verdict has been returned or the jury has been discharged. A retained alternate juror shall not be permitted to be present in the jury room during deliberations unless he or she replaces a principal juror as provided in paragraph (C).

(C) After the jury has retired to consider its verdict, a principal juror who becomes unable to perform his or her duties or is disqualified may be replaced with a retained alternate juror only if the trial judge is satisfied that the proper jury function is not harmed by the replacement. To ensure this, the trial judge shall:

(1) colloquy the alternate juror on the record that the alternate juror has not been exposed to any improper influences; and

(2) once the jury is reconstituted following the replacement of the principal juror by the alternate juror, colloquy and instruct the reconstituted jury on the record that:

(a) the jurors understand that the reason the discharged juror was being replaced has nothing to do with the discharged juror's views on the case; and

(b) the reconstituted jury understands that they must set aside and disregard all past deliberations and begin deliberations anew so as to eliminate the influence of the excused juror and so that the reconstituted jury will consider the evidence in the context of full and complete deliberations with the new juror.

COMMENT: This rule is derived from the last two sentences of former Rule 1108(a). See Rule 633 for the procedures for the examination and challenges of alternate trial jurors.

This rule was amended in 2013 to require that alternate jurors be retained after the jury retires to consider its verdict and to permit the trial judge to seat an alternate juror when a principal juror is unable to perform his or

her duties or is disqualified, and requires replacement. The amendment recognizes that, in cases in which a principal juror becomes unable to serve after deliberations have begun, substitution of a retained alternate juror will be an appropriate alternative to the remedy of a mistrial so long as appropriate steps are taken to ensure that the jury function is not compromised. Paragraph (C) provides the required colloquies and instructions that must be placed on the record when a principal juror is replaced by an alternate juror after the jury has retired to consider its verdict. See also *Commonwealth v. Saunders*, 686 A.2d 25 (Pa. Super. 1996) (replacement of a principal by an alternate juror is proper if steps have been taken to ensure that the jury function remains protected).

The rule does not require that all retained alternate jurors be sequestered. Rather, it is within the discretion of the trial judge to determine what restrictions are placed upon the retained alternate jurors to ensure that the alternate jurors are available and eligible for substitution should that be necessary. Whatever level of sequestration is applied to the principal jurors should also be applied to the alternate jurors.

Retained alternate jurors remain in jury service, subject to all conditions thereof, until all jurors have been discharged. See, e.g., 42 Pa.C.S. §4561.

When an alternate is seated pursuant to paragraph (C), the trial judge has the discretion in re-instructing the reconstituted jury with the original charge in whole or in part.

Nothing in the rule was intended to preclude an agreement among the parties to be tried by less than 12 jurors as provided in Rule 641.

NOTE: New Rule 645 adopted March 1, 2000, effective April 1, 2001[.]; amended November 19, 2013, effective January 1, 2014.

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**COMMITTEE EXPLANATORY REPORTS:**

***Final Report explaining the reorganization and renumbering of the rules and the provisions of Rule 645 published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).***

***Final Report explaining the November 19, 2013 amendment requiring the retention and permitting the substitution of alternate jurors after deliberations have begun published with the Court's Order at 43 Pa.B. ( , 2013).***