

RULE 48. MAJORITY VERDICT; STIPULATIONS AS TO NUMBER

(a) Majority Verdict. A number of jurors equal to at least two-thirds of the total number of jurors serving on a jury may agree on a verdict or any finding submitted to the jury and return it into court as the verdict or finding of the jury, unless otherwise agreed by the parties in accordance with subdivision (b) of this rule. The court shall so instruct the jury.

(b) Number of Jurors. All civil trials by jury shall be to juries consisting of eight or nine jurors unless the parties thereto stipulate that the jury may consist of any number of jurors less than eight. The parties may also stipulate that the verdict or a finding of a stated majority of the jurors shall be taken as the verdict or finding of the jury. Any stipulation as to the number of the jury shall also provide whether and by what amount the number of peremptory challenges to be allowed shall be reduced.

Unless stipulated by the parties, no jury shall be seated with less than eight members. Where personal emergency or disqualification causes a juror to be excused after the jury is seated, no verdict may be taken from a jury reduced to fewer than seven members, unless stipulated by the parties.

Advisory Notes 2004

In 2004, the Maine Legislature amended 14 M.R.S.A. §§ 1204(1) and 1354 to state that verdicts in civil cases may be returned by a vote of two-thirds of the jurors deliberating in the jury panel. This change follows amendments which occurred in 2003, allowing civil jury deliberations to occur with a jury of seven, eight, or nine members. Those changes are discussed in the 2003 Advisory Notes. As a result of this change to a two-thirds vote requirement, jury verdicts may be reported by a vote of six out of nine jurors, six out of eight jurors or five out of seven jurors.

Advisory Notes July 2003

Rule 48(b) is amended to recognize the amendment to 14 M.R.S.A. § 1204 adopted by PL 2003, ch. 299, § 1. The September 15, 2003, effective date is near the effective date of the statutory change. The change in the statute authorizes a

civil jury to be seated with either eight or nine members. The principal purpose of the amendment is to allow ninth jurors, who have been selected as alternates but not allowed to deliberate, to now join the deliberations as a regular juror. Section 1204, as revised, also authorizes a verdict to be returned by a jury of seven, eight or nine members. However, a seven-member jury could only occur if a juror was excused for some compelling reason or disqualified after a jury of eight or nine had been seated.

The Rules and the related law indicating that at least three-quarters of the deliberating jurors must join in any jury verdict is not changed. Thus, with the change in the numbers of available jurors, jury verdicts would be returnable by votes of seven out of nine jurors, six out of eight jurors, or six out of seven jurors. The three-quarters concurrence requirement prevents a five to two vote in the unusual case where a jury may be reduced to seven members reporting a verdict.

The Legislation amending section 1204 was entitled: “An Act To Include Alternates as Regular Jurors.” Accordingly, it does not appear that it contemplates any change in the current widespread practice of selecting eight civil jurors and at least one alternate. The only difference is that if, at the conclusion of the case, nine jurors remain including the juror considered the alternate, all jurors would deliberate including the alternate. Because this change is designed to achieve change in practice regarding jury deliberation, but not regarding jury selection, no changes are recommended in M.R. Civ. P. 47(c) relating to peremptory challenges or M.R. Civ. P. 47(d) relating to alternate jurors. As presently, where more than eight jurors are to be selected, additional peremptory challenges as indicated by M.R. Civ. P. 47(d) should be allowed. Further, the limitations in M.R. Civ. P. 47(d) that no more than three jurors be selected as alternates continues to contemplate that no more than a total of eleven jurors be seated to consider a civil case. If, at the conclusion of any case, more than nine jurors remain, the remaining tenth or eleventh jurors would have to be excused. The change in the law and the rule contemplates that only the first alternate—the ninth juror, be eligible to participate in jury deliberations and join in reporting the verdict.

Advisory Committee’s Notes
May 1, 2000

Subdivision (a) is amended to make reference to jurors rather than juries.

Advisory Committee's Note
January 3, 1978

The amendment of Rule 48(b) is accomplished simultaneously with amendments to Rules 38 and 47 in order to implement the provisions of the Public Laws of 1977, (Chap. 102, which provides as follows:

14 M.R.S.A. § 1204, last ¶, amended by P.L. 1975, c. 41, § 1, is repealed and the following, enacted in its place:

The Supreme Judicial Court may by rule provide for the trial of civil actions by juries of 6, 7 or 8 jurors; provided that the parties to a civil action may stipulate that the jury may consist of any number of jurors less than provided by such rule; and provided further that any party to a civil action shall have the right to a jury consisting of 8 jurors if such party so requests before the day of the trial.

The Committee strongly recommends in the interest of administrative economy, the utilization of six person juries wherever possible, and urges that the provisions of Rule 48 (b) as amended be utilized to accomplish that purpose. The Committee further recommends that the Justice conducting the final pretrial conference make it a point to raise the matter of jury size for discussion at the final pretrial conference and attempt to obtain a stipulation to a six person jury in accordance with the provisions of Rule 48(b). The stipulation should slate the number of jurors agreed upon for selection and *must* also provide “. . . whether and by what amount the number of peremptory challenges to be allowed shall be reduced..”

In addition, the stipulation *may* provide for a stated majority of the jurors which shall, be agreement of the parties, be taken as the verdict or finding of the jury less than the "at least three-fourths" majority now required by Chap. 41 of the 1975 Public Laws.

Advisory Committee's Note
October 1, 1975

The new language in the first sentence of Rule 48(a) is that of the 1975 amendment of 14 M.R.S.A. § 1204, providing for six-member juries. *See* Advisory Committee's Notes to Rules 38, 47. Since the majority must be "at least 3/4," the effect is that if the jury consists of six members, the required majority will

be five. A five-member jury will require a four-juror majority, and a four member jury will require a majority of three. If the jury consists of three members or less, its verdict must be unanimous. The exception already in the rule referring to the right of the parties to stipulate a different majority under Rule 48(b) is in accord with language virtually identical to that rule which added to 14 M.R.S.A. § 1354 by 1975 amendment.

A sentence added to Rule 48(b) makes clear what would have been the better practice under the rules as they formerly stood. When the parties stipulate for a jury of less than six, they must make clear what number peremptory challenges they wish to have.

**Advisory Committee's Note
January 1, 1973**

Rule 48 is amended, simultaneously with the amendment of Rule 38 and Rule 47, in order to implement the statute enacted by the 1972 Special Session of the 105th Legislature authorizing the Supreme Judicial Court to institute 8-member juries, with 6-juror majority verdicts. 1971 Laws, c. 581, amending 14 M.R.S.A. § 1204 and § 1354. *See* the Advisory Committee's Notes (January 1, 1973) to the amendments to Rules 38 and 47.

Rule 48(a) is entirely new. It incorporates the language of amended 14 M.R.S.A. § 1354, with the addition of reference to "any finding submitted to the jury" in order to make clear that the rule applies also to special verdicts and to interrogatories accompanying a general verdict. *See* Rule 49.

Rule 48(b) is present Rule 48 amended for conformity with the other amendments being made to the jury rules. Clearly, if the parties agree to a number of jurors less than eight, their stipulation must include a provision as to the number of such jurors required to bring in a verdict.

**Reporter's Notes
December 1, 1959**

This rule is the same as Federal Rule 48. Very likely the stipulations referred to could be made without benefit of a rule.