

RULE CRLJ 38  
JURY TRIAL

(a) Demand. When a trial by jury is authorized by the constitution, statutes, or decisions of the Supreme Court, any party may demand a jury which shall be selected and impaneled as required by law and this rule. At or prior to the time the case is called to be set for trial, or at such other time as directed by the court, any party may demand a jury trial of any issue triable by a jury by serving upon the other parties a demand therefor in writing, by filing the demand with the clerk, and by paying any required jury fee.

(b) Specification of Issues. In the demand a party may specify the issues which it wishes tried by a jury; otherwise, the demand shall be considered a demand for all issues so triable. If the demand requests jury trial of only some of the issues, any other party within 14 days of service of the demand or such lesser time as the court may order, may serve a demand for trial by jury of any other or all of the issues of fact in the action.

(c) Waiver of Jury Trial. The failure of a party to serve a demand as required by this rule, to file it as required by this rule, and to pay the required jury fee in accordance with this rule, constitutes a waiver of trial by jury. A demand for trial by jury once made may not be withdrawn without the consent of the parties.

(d) Impaneling the Jury.

(1) Voir Dire. A voir dire examination shall be conducted for the purpose of discovering any basis for challenge for cause and for the purpose of gaining knowledge to enable an intelligent exercise of peremptory challenges. The judge shall initiate the voir dire examination by identifying the parties and their respective counsel and by briefly outlining the nature of the case. The judge and the parties may then ask the prospective jurors questions touching their qualifications to serve as jurors in the case, subject to the supervision of the court as appropriate to the facts of the case.

(2) Challenges for Cause. If the court is of the opinion that grounds for challenge to a juror exist, it shall excuse that juror. Otherwise, any party may challenge the juror for cause. Challenges for cause shall be allowed as provided in RCW 4.44.150 through 4.44.190.

(3) Peremptory Challenges. The number and the manner of exercising peremptory challenges shall be as provided in RCW 4.44.130, 4.44.140, and 4.44.190.

(4) Order of Taking Challenges. (Reserved. See RCW 4.44.220.)

(5) Objections to Challenges. (Reserved. See RCW 4.44.230.)

(6) Trial of Challenge. (Reserved. See RCW 4.44.240.)

(e) Alternate Jurors. The court may direct that not more than three jurors in addition to the regular jury be called and impaneled to serve as alternate jurors. Alternate jurors, in the order in which they are called, shall replace jurors who, prior to the time the jury retires to consider its verdict, are unable to continue. Alternate jurors shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges for cause, and shall take the same oath as the regular jurors. Each party shall be entitled to one additional peremptory challenge which may only be exercised against alternate jurors, and other peremptory challenges allowed shall not be used against alternate jurors. If the court has found that there is a conflict of interest between parties on the same side, the court may allow each conflicting party a peremptory challenge to exercise against alternate jurors. An alternate juror who does not replace a regular juror may be discharged or temporarily excused after the jury retires to consider its verdict. When an alternate juror is temporarily excused but not discharged, the trial judge shall take appropriate steps to protect such juror from influence, interference or publicity which might affect that jurors ability to remain impartial, and the trial judge may conduct brief voir dire before seating such alternate juror for any trial or deliberations. An alternate juror may be recalled at any time that a regular juror is unable to serve. If the jury has commenced deliberations prior to replacement of a regular juror with an alternate juror, the jury shall be instructed to disregard all previous deliberations and to begin deliberations anew.

(f) Juries of Fewer Than Six. The parties may at any time stipulate that the jury shall consist of at least three but fewer than six jurors, or that a verdict of a stated majority shall be taken as the verdict or finding of the jury.

(g) Oath. (Reserved. See RCW 4.44.260.)

(h) Note-Taking by Jurors. In all cases, jurors shall be allowed to take written notes regarding the evidence presented to them and keep these notes with them during their deliberation. The court may allow jurors to keep these notes with them in the jury room during recesses, in which case jurors may review their own notes but may not share or discuss the notes with other jurors until they begin deliberating. Such notes should be treated as confidential between the jurors making them and their fellow jurors, and shall be destroyed immediately after the verdict is rendered.

[Amended effective September 1, 1989; amended effective October 1, 2002.]

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