

1 **Chapter 2**  
2 **Rules of Criminal Procedure**

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4 **Rule 2.18 Juries.**

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6 **[Proposed Rule 2.18(15)]**

7 **2.18(15) Alternate jurors.** The court may require selection of one or more alternate  
8 jurors whose qualifications, powers, functions, facilities, and privileges will be the  
9 same as principal jurors.

10 *a. Selecting alternates.*

11 (1) Prior to commencing jury selection the court must determine on the record, with  
12 input of counsel, how many alternate jurors will be selected, the method used to  
13 identify the alternate jurors, and whether the identity of the alternate jurors should be  
14 revealed prior to commencement of trial or delayed until commencement of jury  
15 deliberations. The clerk will call for examination the number of prospective jurors  
16 equal to the sum of the following:

17 1. The number of prospective jurors to be selected pursuant to rule 2.18(1).

18 2. The number of additional prospective jurors necessary to allow for the number of  
19 alternates to be selected and one additional strike for each party. For example, in the  
20 case of a single defendant, if one alternate is to be selected, three additional  
21 prospective jurors will be called to allow for one additional strike for each party; if two  
22 alternates are to be selected, four additional prospective jurors will be called; if three  
23 alternates are to be selected, five additional prospective jurors will be called; and so  
24 on.

25 (2) Jury examination will proceed contemporaneously for both principal and  
26 alternate jurors. After the parties have passed the panel for cause, and exercised all  
27 strikes, both principal and alternate jurors will be sworn to hear the case and sit at  
28 the trial. The identity of the alternate jurors will be revealed either when the jury is  
29 sworn to hear the case or before the jury retires to deliberate.

30 (3) If a jury is being selected for trial of an action outside of the county pursuant to  
31 rule 2.11(10)(d), the court will require selection of two alternate jurors to be sworn  
32 with the principal jurors to try the case and sit at the trial. The alternate jurors will be

1 used or discharged in accordance with this rule 2.18(15). The court may require  
2 selection of more than two alternate jurors.

3 *b. Alternate juror acting as principal juror.*

4 (1) An alternate juror will, in the sequence he or she was drawn for examination,  
5 replace any principal juror who is disqualified or becomes unable to perform the  
6 juror's duties. After the jury retires to deliberate, the court may retain alternate jurors  
7 in recess and either sequester the alternate jurors or release them with appropriate  
8 admonitions. Only when called as a replacement juror may a retained alternate juror  
9 be present during, or participate in, any jury deliberations. The court must ensure  
10 that each retained alternate juror does not discuss the case with anyone until the  
11 alternate juror replaces a principal juror or is discharged.

12 (2) If an alternate juror replaces a principal juror after deliberations have begun, the  
13 court must be sure the replacement will not harm the proper jury function. To ensure  
14 this, the court will:

15 1. Allow voir dire by the parties or engage in a colloquy with the alternate juror on  
16 the record to ensure the alternate juror has not been exposed to any improper  
17 influences.

18 2. Once the jury is reconstituted following an alternate juror's replacement of a  
19 principal juror, discuss with and instruct the reconstituted jury on the record that:

20 (i) The jurors understand that the reason for replacing the discharged juror has  
21 nothing to do with the discharged juror's views on the case.

22 (ii) The jurors understand that they must set aside and disregard all past  
23 deliberations and begin deliberations anew to eliminate the influence of the discharged  
24 juror and ensure the reconstituted jury will consider the evidence in the context of full  
25 and complete deliberations with the alternate juror.

26 (3) Once the reconstituted jury has reached a verdict, but before the verdict is  
27 announced or revealed to the court, the court must determine whether the amount of  
28 time the reconstituted jury deliberated is sufficient for full and complete deliberations  
29 with the alternate juror. If necessary, the court may instruct the jury to continue its  
30 deliberations to ensure full, conscientious, and careful deliberations by all twelve  
31 jurors.