

Rule 48. Number of Jurors; Participation in Verdict

The court shall seat a jury of not fewer than six and not more than twelve members and all jurors shall participate in the verdict unless excused from service by the court pursuant to Rule 47.04. Unless otherwise provided by law or the parties otherwise stipulate, (1) the verdict shall be unanimous and (2) no verdict shall be taken from a jury reduced in size to fewer than six members.

(Amended effective January 1, 1999.)

Advisory Committee Comment - 1998 Amendment

This rule requires the court to permit all jurors to participate in deliberations. Rule 47.02 is abrogated to abolish alternate jurors, and Rule 48 expressly provides that all jurors participate in the deliberations. The rule prohibits a verdict from a jury of fewer than six jurors, unless the parties agree to a lesser number.

*The rule does not provide any constraints on what size jury is appropriate in any particular case. Practical considerations of cost, courtroom design, and imposition on potential jurors as well as those seated may militate toward a jury of six. Where the trial is likely to be long, or where other considerations make it likely that jurors will need to be excused from service, more than six jurors should be seated. The rule also permits a twelve-person jury as was historically used in civil trials. Juries of twelve significantly reduce the likelihood of unusual or aberrant jury verdicts, and should be considered where the issues are unusually complex or important, or present difficult fact-finding challenges to the jury. See generally *Developments in the Law - The Civil Jury*, 110 Harv. L. Rev. 1408, 1468-80 (1997).*

*This rule expressly mandates seating a jury of from six to twelve jurors. Seating a larger jury is not provided for, and should be considered only in very unusual circumstances where more than six jurors are likely to be excused, making it inevitable that fewer than six will remain. Rather than risk a mistrial in that situation, the court should seek a stipulation of the parties that a verdict may be taken from a jury smaller than six. See generally *Manual for Complex Litigation* section 22.41 and n.408 (3rd ed. 1995). It may be permissible to seat a jury of larger than twelve, so long as twelve or fewer remain for deliberations, but there is no clear authority or precedent for this. If the parties stipulate to a larger jury, it should certainly not be error to seat one.*

The last sentence of the rule requires a verdict to be unanimous unless there is an agreement to a less-than-unanimous verdict or it is otherwise provided by law. Both the Minnesota Constitution and statutory law allow verdicts in civil cases, even without stipulation of the parties, to be returned by 5/6ths of the jurors after six hours of deliberations. See Minnesota Constitution, article I, section 4, and Minnesota Statutes 1996, section 546.17. Where jury of more than six, but fewer than twelve, jurors deliberates, a 6/7ths, 7/8ths, 8/9ths, 9/10ths or 10/11ths verdict is permitted. For a twelve-person jury, ten of the twelve jurors (the equivalent of 5/6ths) can return a verdict.