

Alternate Jurors¹

Discharged Alternate

Note: If the alternate juror(s) are to be discharged once the jury has retired to deliberate, the following instruction may be given:

I want to thank you for your service at this trial. I appreciate your participation and attention. It may be disappointing not to participate in the deliberations but your availability to do so served an important role.

You will recall that I told you and the other jurors that you were not to discuss this case with anyone. While the other jurors are deliberating and until the case is over, you still must not discuss the case with them. Otherwise, the prohibition on discussing the case with others no longer applies. There is no law that requires that you discuss the case. At the same time, there is no law that prohibits you from discussing the case. Whether or not to do so is left entirely to your own individual discretion.

Again, thank you, and you are now excused. ²

Retained Alternate

Note: If, after excusing jurors to deliberate, the alternate(s) are to remain, the following instruction may be given:

The alternate jurors will please remain. You will be kept separate and apart from the deliberating jurors. And because you may yet be called upon to substitute for a juror, you still must not discuss the case [(among/between) yourselves or] with the other jurors or anyone else].

¹ See generally CPL 270.30 [Trial jury; alternate jurors]; and CPL 270.35 [Trial jury; discharge of juror; replacement by alternate juror].

² *People v Murray*, 39 NY3d 10, 15 [2022] ["when the trial judge thanked the alternate jurors for their service and 'excused [them] from this case,' the alternate jurors were discharged. At that point, the alternates 'cease[d] to function' as jurors . . . and were no longer available for service under the statute" [CPL 270.35].