

A wholesaler brought a federal diversity action against a large pharmaceutical company for breach of contract. During jury selection, one potential juror stated that five years earlier he had been an employee of the company and still owned several hundred shares of its stock. In response to questioning from the judge, the potential juror stated that he could fairly consider the evidence in the case.

The wholesaler's attorney has asked the judge to strike the potential juror for cause.

Should the judge strike the potential juror for cause?

- A. No, because the potential juror said that he could fairly consider the evidence in the case.
- B. No, because the wholesaler's attorney could use a peremptory challenge to strike the potential juror.
- C. Yes, because other potential jurors still remain available for the jury panel.
- D. Yes, because the potential juror is presumed to be biased because of his relationship to the company.

Explanation:

Challenges to potential jurors

(FRCP 47)

	Number allowed	Basis for disqualification
Peremptory	3 per party*	<ul style="list-style-type: none">• Any basis other than race, ethnicity, or gender• No explanation needed
For cause	Unlimited	<ul style="list-style-type: none">• For bias or lack of impartiality—eg:<ul style="list-style-type: none">– relationship with party– financial stake in party

FRCP = Federal Rule of Civil Procedure.

*When a civil action involves multiple plaintiffs or defendants, the court may grant each side (1) three peremptory challenges or (2) more than three peremptory challenges that each side's parties exercise separately or jointly.

Federal Rule of Civil Procedure 47 permits the court, the parties, or the parties' attorneys to examine potential jurors. During this process, referred to as **voir dire**, the **prospective jurors are questioned** on their backgrounds and **potential biases** before being chosen to sit on the jury.* Each party is entitled to:

- three peremptory challenges – to disqualify a potential juror for any reason (other than race, ethnicity, or gender), without the need for an explanation *and*
- an **unlimited** number of **challenges for cause** – to disqualify a potential juror on the grounds that he/she is biased or otherwise cannot be impartial.

A peremptory challenge is granted automatically. But a **challenge for cause** will **only be granted** if the court finds **evidence of bias** (eg, **employment relationship** with a party, **financial stake** in a party). And here, there is sufficient evidence of bias since the potential juror is a former employee of the pharmaceutical company and still owns several hundred shares of company stock. Therefore, the judge should strike the potential juror for cause.

*The court may examine the jurors or allow the attorneys to do so. If the court examines the jurors, it must either (1) permit the parties or their attorneys to make any further inquiry the court deems proper or (2) ask any of their additional questions the court considers proper.

(Choice A) In deciding how to rule, the judge may consider the potential juror's statement that he could fairly consider the evidence in the case. But this statement alone is not sufficient for the judge to refuse to disqualify the potential juror for cause.

(Choice B) The judge cannot refuse to strike the potential juror for cause simply because the wholesaler's attorney could use a peremptory challenge to strike him. And since there is sufficient evidence that the potential juror cannot be impartial because of his relationship with the company, the judge must exclude him.

(Choice C) The fact that other prospective jurors still remain available for the jury panel is irrelevant in determining whether the judge should strike the potential juror for cause.

Educational objective:

During jury selection, each party is entitled to (1) three peremptory challenges—to disqualify a potential juror for any reason (other than race, ethnicity, gender) and without explanation—and (2) an unlimited number of challenges for cause—to disqualify a potential juror on the grounds that he/she is biased or otherwise cannot be impartial.

References

- Fed. R. Civ. P. 47 (jury selection process).
- 28 U.S.C. § 1870 (challenging prospective jurors).
- *Darbin v. Nourse*, 664 F.2d 1109, 1113 (9th Cir. 1981) (explaining that a challenge for cause is warranted when a prospective juror's relationships, pecuniary interests, or clear biases threaten impartiality).

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