

**JUDGE’S INSTRUCTIONS WHEN ALTERNATE JUROR EMPANELED
AFTER DELIBERATIONS HAVE BEGUN¹**

As you know, Juror #_____ was excused from the jury. An alternate juror has been selected to take his/her place. The reason that he/she was excused was entirely personal to him/her; it had nothing to do with his/her views on this case or his/her relationship with the other members of the deliberating jury. Please do not speculate on the reason why that juror was excused.²

As of this moment, you are a new jury, and you must start your deliberations over again. The parties have the right to a verdict reached by twelve jurors who have had the full opportunity to deliberate from start to finish. The alternate juror has no knowledge of any earlier deliberations. Consequently, the new deliberating jury must start over at the very beginning of deliberations. Each member of the original deliberating jury must set aside and disregard whatever may have occurred and anything which may have been said in the jury room following my instructions to you. You must give no weight to any opinion expressed by Juror #_____ during deliberations before that juror was excused. Together, as a new jury, you must consider all evidence presented at trial as part of your full and complete deliberations until you reach your verdict.

¹ State v. Banks, 395 N.J. Super. 205 (App. Div.), certif. denied, 192 N.J. 598 (2007) (reversing conviction because juror substituted after panel announced it was deadlocked). But see State v. Musa, 222 N.J. 554 (2015) (as to when a juror can be substituted for a deliberating juror).

² If a bench warrant is issued because of an unexcused absence of a deliberating juror, the court should not advise the remaining jurors of that warrant, as “[t]hat information [is] wholly irrelevant to the task before the jury.” State v. Musa, supra, 222 N.J. at 572 n.2.