

## Rule 24. Trial Jurors

(a) - (c) [NO CHANGE]

(d) **Peremptory Challenges.**

(1) - (4) [NO CHANGE]

(5) **Improper Bias.** The exclusion of potential jurors based on race or ethnicity is prohibited.

(A) **Objection.** A party may object to the use of a peremptory challenge to raise the issue of improper bias. The court may also raise this objection on its own. The objection shall be made by simple citation to this rule, and any further discussion shall be conducted outside the presence of the panel. The objection must be made before the potential juror is excused, unless the objecting party shows that new information is discovered.

(B) **Response.** Upon objection to the exercise of a peremptory challenge pursuant to this rule, the party exercising the peremptory challenge shall articulate the reasons for the peremptory challenge.

(C) **Determination.** The court shall then evaluate the reasons given to justify the peremptory challenge in light of the totality of circumstances. If the court determines that an objective observer could reasonably view race or ethnicity as a factor in the use of the peremptory challenge, then the peremptory challenge shall be denied. The court need not find purposeful discrimination to deny the peremptory challenge. The court should explain its ruling on the record.

(D) **Circumstances Considered.** In making its determination, the circumstances the court should consider include, but are not limited to, the following:

(i) the number and types of questions posed to the prospective juror, which may include consideration of whether the party exercising the peremptory challenge failed to question the prospective juror about the alleged concern or the types of questions asked about it;

(ii) whether the party exercising the peremptory challenge asked significantly more questions or different questions of the potential juror against whom the peremptory challenge was used in comparison to other prospective jurors;

(iii) whether other prospective jurors provided similar answers but were not the subject of a peremptory challenge by that party;

(iv) whether a reason given to explain the peremptory challenge might be disproportionately associated with race or ethnicity; and

(v) whether the party has used peremptory challenges disproportionately against a given race or ethnicity in the present case or in past cases.

(E) **Reasons Presumptively Invalid.** To provide context for the types of rationales that do not support the exercise of a peremptory challenge, the following are presumptively invalid reasons for a peremptory challenge:

(i) having prior contact with law enforcement officers;

(ii) expressing a distrust of law enforcement or a belief that law enforcement officers engage in racial profiling;

(iii) having a close relationship with people who have been stopped by law enforcement, arrested, or convicted of a crime;

(iv) living in a high-crime neighborhood;

(vi) receiving state benefits; and

(vii) not being a native English speaker.

(F) **Reliance on Conduct.** The following reasons for peremptory challenges may be associated with improper discrimination in jury selection: allegations that the prospective juror was sleeping, inattentive, or staring or failing to make eye contact; or exhibited a problematic attitude, body language, or demeanor. If any party intends to offer one of these reasons or a similar reason as the justification for a peremptory challenge, that party must provide reasonable notice to the court and the other parties during *voir dire* so the behavior can be verified and addressed in a timely manner. A lack of corroboration by the judge or opposing counsel verifying the behavior shall invalidate the given reason for the peremptory challenge.

**(e) - (g) [NO CHANGE]**

**COMMENTS [NO CHANGE]**

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(C) **Determination.** The court shall then evaluate the reasons given to justify the peremptory challenge in light of the totality of circumstances. If the court determines that an objective observer could reasonably view race or ethnicity as a factor in the use of the peremptory challenge, then the peremptory challenge shall be denied. The court need not find purposeful discrimination to deny the peremptory challenge. The court should explain its ruling on the record.

(D) **Circumstances Considered.** In making its determination, the circumstances the court should consider include, but are not limited to, the following:

- (i) the number and types of questions posed to the prospective juror, which may include consideration of whether the party exercising the peremptory challenge failed to question the prospective juror about the alleged concern or the types of questions asked about it;
- (ii) whether the party exercising the peremptory challenge asked significantly more questions or different questions of the potential juror against whom the peremptory challenge was used in comparison to other prospective jurors;
- (iii) whether other prospective jurors provided similar answers but were not the subject of a peremptory challenge by that party;

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