



Law Office of the COOK COUNTY PUBLIC DEFENDER

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September 28, 2022

Illinois Supreme Court Rules Committee
222 N. LaSalle Street, 13th Floor
Chicago, Illinois 60601
Sent via email to RulesCommittee@illinoiscourts.gov.

Re: Written Comments for October 5, 2022 Public Hearing

Dear Illinois Supreme Court Rules Committee:

Thank you for the opportunity to provide comment on the proposed rule changes included on the agenda for your October 5, 2022 Public Hearing. The Law Office of the Cook County Public Defender represents more than 80% of people accused of felonies in Cook County, and we are appointed in over 70,000 cases annually. We write to register our support for two of the proposed changes that would positively impact our indigent clients: Proposal 21-04 and Proposal 22-08.

Proposal 21-04: Amends Supreme Court Rules 23 (Disposition of Cases in the Appellate Court) and 361 (Motions in Reviewing Court)

The Cook County Public Defender's Office supports these proposed changes. It is not uncommon for a convicted person to have sentencing issues that are comparatively clear-cut along with trial issues that are more complicated. For clients with shorter sentences, especially, a partial summary remand on the sentencing issue is the only way to make sure they receive meaningful relief that is not functionally denied due to delay caused by the more complex trial issues.

No one should be in the position of having to choose between staying in prison longer than the law allows or abandoning their right to challenge the sufficiency of the evidence or fairness of their trial. The prosecution has frequently taken the position that the Appellate Court does not have the power to do partial summary remands on sentencing issues. This rule would clarify that authority and provide important relief to people whose sentences violate the law.

Proposal 22-08: Amends Supreme Court Rule 434 (Jury Selection)

We are very excited to support this proposed rule change from the Supreme Court Committee on Equality. The proposed changes provide increased levels of scrutiny, transparency, and fairness to the jury selection process. For decades, it has been common practice for prospective jurors to be stricken due to their past contact with law enforcement or the criminal justice system.

Reasons Presumptively Invalid – 434(d)(6)

We are glad to see this enumerated list of reasons to strike a prospective juror identified as presumptively invalid, but we believe some small amendments are necessary to achieve the Rule's purpose.



Given the disproportionate contact that law enforcement initiates with Black people and other people of color, all the enumerated forms of criminal legal system contact identified as presumptively invalid reasons to strike a proposed juror in proposed section (d)(6) have historically operated as ways to remove—disproportionately—Black people and other prospective jurors subject to increased policing and prosecution. The further inclusion of protections against use of employment, neighborhood of residence, and appearance as reasons to strike prospective jurors also acknowledge the well-documented racial wealth gap and employment discrimination against people with criminal records and against people of color directly. Making these reasons to strike prospective jurors presumptively invalid thus helps to correct the racial biases already permeating every aspect of our society, including the court system.

As the Supreme Court itself wrote in its June 23, 2020 Statement on Racial Justice, Next Steps for Judicial Branch:

“Racism exists, whether it be actualized as individual racism, institutional racism or structural racism, and it undermines our democracy, the fair and equitable administration of justice, and severely diminishes individual constitutional protections and safeguards of full citizenship with the attendant rights and benefits sacred to all.”

The use of unjustified peremptory strikes has thus denied our clients their right to a fair trial and a jury of their peers. Everyone who receives representation from our office has been determined to be indigent and unable to afford a private attorney, and our clients are disproportionately Black and Latinx compared to the general public.

In the spirit of the proposed rule, we believe some further clarification is necessary within section 6(i) to clarify that the prior contact with law enforcement officers was negative. Sections 6(ii) (“expressing a distrust of law enforcement or a belief that law enforcement officers engage in racial profiling”) and 6(iii) (“having a close relationship with people who have been stopped, arrested, or convicted of a crime”) are clearly designed to prevent exclusion of prospective jurors who are members of protected classes subject to disproportionate policing and criminalization. A similar level of specificity is necessary to prevent section 6(i) from accidentally resulting in the opposite impact of its intended goal of increasing racial equity. Simply amending the proposed language to clearly identify “negative or accusatory contact” would suffice.

Reliance on Conduct – 434(d)(7)

Similarly, we are encouraged to see the proposed procedures limiting the striking of prospective jurors based on conduct described in Rule 434 section d(7). Certain behaviors such as “staring or failing to make eye contact” are themselves so vague or subject to interpretation that they have historically been used as pretexts or have become vehicles for unexamined biases.

In addition, it is well-documented that implicit bias can lead some observers to believe Black people are louder, [angrier](#), or [more aggressive](#) than white people or people of other races and ethnicities. The extremely broad and seemingly low standards for “problematic attitude, body language, or demeanor” were thus avenues for racially biased striking of prospective jurors, and we strongly support the proposed limits on their use.

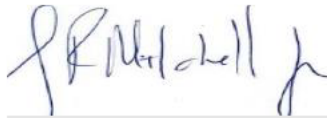


In summary, the adoption of Proposal 22-08 would be an important and tangible step forward in increasing racial equity in one of the criminal process' most fundamental and sacred elements: the right to a jury of one's peers. We also urge the Committee not to rest on these changes alone. Implicit and explicit bias are also rampant in for-cause challenges during jury selection, particularly when it comes to excluding individuals who have prior criminal convictions. We look forward to the opportunity to contribute towards efforts to eradicate racial and other biases in for-cause challenges if the Rules Committee and the Committee on Equality choose to explore this area that is ripe for reform.

In summary, we urge the committee to adopt the above rules with the changes discussed above and to do so on as fast a timeline as is practicable. The proposed improvements in the fairness of our court system simply cannot wait.

Thank you again for the opportunity to comment on these proposed rule changes. The Law Office of the Cook County Public Defender is happy to answer any additional questions the Committee may have and can be reached at 312-603-0600 at your convenience.

Sincerely,



Sharone R. Mitchell, Jr.
Cook County Public Defender

