

Proposal 22-08
Amends Supreme Court Rule 434 (Jury Selection)
Offered by Supreme Court Committee on Equality

Rule 434. Jury Selection

(d) Peremptory Challenges. A defendant tried alone shall be allowed seven peremptory challenges in a case in which the punishment may be imprisonment in the penitentiary, and five in all other cases; except that, in a single trial of more than one defendant, each defendant shall be allowed five peremptory challenges in a case where punishment may be imprisonment in the penitentiary, and three in all other cases. If several charges against a defendant or defendants are consolidated for trial, each defendant shall be allowed peremptory challenges upon one charge only, which single charge shall be the charge against that defendant authorizing the greatest maximum penalty. The State shall be allowed the same number of peremptory challenges as all of the defendants.

(1) *Objection.* A party may object to the use of a peremptory challenge to raise the issue of improper bias based on race, ethnicity, gender, gender identity, sexual orientation, national origin, religious affiliation, or perceived membership in any of those groups. The trial court may also object on its own motion. The objection may be made orally or in writing and shall be made by simple citation to this rule. The objection must be made before the challenged potential juror is excused and proceedings on the objection shall be conducted outside the presence of the venire.

(2) *Response.* Immediately upon objection to the exercise of a peremptory challenge pursuant to this rule, the party exercising the peremptory challenge shall articulate the reasons the peremptory challenge has been exercised.

(3) *Determination.* The court shall evaluate the reasons given to justify the peremptory challenge in light of the totality of the circumstances. If the court determines that an objective observer could view any of the protected classes listed in Rule 434(d)(1) above as a factor in the use of the peremptory challenge, then the peremptory challenge shall be denied. The court need not find purposeful discrimination and shall explain its ruling on the record.

(4) *Nature of Observer.* For purposes of this rule, the “objective observer” is defined as a person aware that implicit, institutional, and unconscious biases, in addition to purposeful discrimination, have resulted in the unfair exclusion of potential jurors.

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

(i) identity of membership in a protected class, as defined in Rule 434(d)(1), between the party exercising the challenge and the excluded venire member;

(ii) a pattern of strikes against members of the identified protected class, as defined in Rule 434(d)(1);

(iii) a disproportionate use of strikes against members of the identified suspect class, as defined in Rule 434(d)(1);

(iv) the level of representation from the identified suspect class, as defined in Rule 434(d)(1), in the venire compared to the level of representation on the empaneled jury;

(v) the striking party's questions to members of the venire during voir dire and any statements made when exercising peremptory challenges;

(vi) whether the members of the identified suspect class, as defined in Rule 434(d)(1), were heterogeneous, sharing class membership as their only common characteristic;

(vii) and, the membership of the defendant, victim, and witnesses in the identified suspect class, as defined in Rule 434(d)(1).

(6) *Reasons Presumptively Invalid.* When offered by the party seeking to strike the challenged venireperson, the following reasons shall be presumptively invalid subject to rebuttal by further voir dire:

(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, arrested, or convicted of a crime;

(iv) living in a neighborhood with a high crime rate;

(v) having a child outside of marriage;

(vi) receiving state benefits;

(vii) not being a native English speaker or the ability to speak another language;

(viii) dress, attire, or personal appearance;

(ix) employment in a field that is disproportionately occupied by members of a protected class, as defined by Rule 434(d)(1), or that serves a population disproportionately comprised of members of a protected class or classes listed in Rule 434(d)(1);

(x) and, lack of employment or underemployment of the venireperson or venireperson's family member.

(7) *Reliance on Conduct.* When offered by a party seeking to strike the challenged venireperson, the following reasons shall be considered valid only if the party exercising the peremptory strike provides prompt notice to the court and the other parties and the behavior is verified by either the court or opposing counsel or other court room personnel:

(i) the venireperson was sleeping, inattentive, staring, or failing to make eye contact; or

(ii) the venireperson exhibited a problematic attitude, body language, or demeanor.

(8) *Scope.* This subsection (d) applies in all jury trials in which peremptory challenges are otherwise provided by law or court rule.

Comment

[1] Facially neutral justifications for peremptory strikes have been used for decades to disproportionately exclude jurors of color during voir dire. Section (d)(4) is intended to clarify that a justification for a peremptory strike need not be overtly race-based (or overtly based on ethnicity,

gender, gender identity, sexual orientation, national origin, religious affiliation) on its face in order to be denied under the Rule. Properly administering this amended Rule requires that the judge understand that it is possible for peremptory strikes to be justified with neutral pretext but to be improperly based on the prospective juror's membership in a protected class. Section (d)(4) is in keeping with the Supreme Court of Illinois Judicial College Comprehensive Educational Plan, which describes "Informed and impartial decision-maker" as one of the core elements of judicial excellence. This framework articulates that a core competency for judges is to "[u]nderstand[] how one's personal perspective, values, preferences, mental state and way of thinking can impact decision-making and others' perceptions of fairness" ... and "[d]evelop[] and appl[y] strategies to ... address biases in judgment and behavior."