



WASHINGTON
COURTS

**DISTRICT AND MUNICIPAL
COURT JUDGES' ASSOCIATION**

BOARD MEETING

June 5, 2016

**CAMPBELL'S RESORT
CHELAN, WASHINGTON**

DISTRICT AND MUNICIPAL COURT JUDGES' ASSOCIATION SCHEDULE OF BOARD MEETINGS

2015-2016

<i>DATE</i>	<i>TIME</i>	<i>MEETING LOCATION</i>
<i>Tentative: Friday, July 10, 2015</i>	12:30 – 3:30 p.m.	AOC SeaTac Office Center
<i>Friday, Aug. 14, 2015</i>	12:30 – 3:30 p.m.	AOC SeaTac Office Center
<i>Thursday, Sept. 3, 2015</i>	10:30 a.m. – 1:30 p.m.	AOC Puget Sound Conference Room, Olympia
<i>Friday, Oct. 9, 2015</i>	12:30 – 3:30 p.m.	AOC SeaTac Office Center
<i>Friday, Nov. 13, 2015</i>	12:30 – 3:30 p.m.	AOC SeaTac Office Center
<i>Friday, Dec. 11, 2015</i>	12:30 – 3:30 p.m.	AOC SeaTac Office Center
<i>Friday, Jan. 8, 2016</i>	12:30 – 3:30 p.m.	AOC SeaTac Office Center
<i>Friday, Feb. 12, 2016</i>	12:30 – 3:30 p.m.	AOC SeaTac Office Center
<i>Friday, March 11, 2016</i>	12:30 – 3:30 p.m.	AOC SeaTac Office Center
<i>Friday, April 8, 2016</i>	12:30 – 3:30 p.m.	AOC SeaTac Office Center
<i>Friday, May 13, 2016 & Saturday, May 14, 2016</i>	May 13: 12:00-5:00 p.m. May 14: 9:00-1:00 p.m.	Best Western Dayton, WA
<i>Sunday, June 5, 2016</i>	9:00 a.m. – 12:00 p.m.	Campbell's Resort, Chelan, WA, in conjunction with Spring Program

AOC Staff: Sharon Harvey

(AOC Conference Room Reserved)

Updated: October 27, 2015



DMCJA BOARD MEETING
SUNDAY, JUNE 5, 2016
9:00 AM – 12:00 PM
CAMPBELL'S RESORT
CHELAN, WA

PRESIDENT JUDGE DAVID STEINER

AGENDA

TAB

Call to Order

General Business

- A. Minutes – May 14, 2016 (pp 1-4)
- B. Treasurer's Report – *Judge Burrowes* (p 5)
- C. Special Fund Report – *Judge Ahlf* (p 6)
- D. Standing Committee Reports
- E. Trial Court Advocacy Board (TCAB)
- F. Judicial Information System Committee (JISC) Report – *Judge Marinella and Judge Svaren*
- G. Judicial Information System (JIS) Report – *Ms. Vicky Cullinane*

1

Liaison Reports

- A. District and Municipal Court Management Association (**DMCMA**) – *Ms. Linda Baker*
- B. Administrative Office of the Courts (**AOC**) – *Mr. Dirk Marler*
- C. Superior Court Judges' Association (**SCJA**) – *Judge Sean O'Donnell*
- D. Washington State Bar Association (**WSBA**) – *Sean Davis, Esq.*
- E. Washington State Association for Justice (**WSAJ**) – *Loyd Willaford, Esq.*
- F. Board for Judicial Administration (**BJA**) – *Judges Garrow, Jasprica, Lambo, and Ringus*

Action

- A. Whether to adopt the DMCJA Rules Committee's Recommendation regarding ACLU's Proposed Amendments to General Rule 35, *Jury Selection* (pp 13-20)

2

Discussion

- A. Washington Pattern Jury Instruction Committee – Should the current DMCJA representative be nominated to the Supreme Court without opening the process to other DMCJA members? (pp 21-22)
- B. DMCJA Board Meeting Schedule: Should the Board meet in the month of July? (p 23)

3

Information

- A. Thank you Judge Charles Short and Judge Rebecca Robertson for your service as DMCJA Board Members.
- B. Thank you Judge Michael Lambo and Judge Kevin Ringus for your service as BJA Representatives.

4

C. 2016-2017 DMCJA Priorities (pp 25-27)	
Other Business A. The New Board Dinner will be held Tuesday, June 7, 2016, 6:00 p.m., at the Hotel Restaurant, <i>Cascade Room</i> .	
Adjourn	



DMCJA Board of Governors Meeting
Saturday, May 14, 2016, 11:10 a.m. – 1:00 p.m.
Best Wester
Dayton, WA

MEETING MINUTES

Members Present:

Chair, Judge David Steiner
Judge Scott Ahlf
Judge Joseph Burrowes
Judge Linda Coburn
Judge Karen Donohue
Judge Douglas Fair
Judge Janet Garrow (non-voting)
Judge Michelle Gehlsen
Judge Michael Lambo (non-voting)
Judge G. Scott Marinella
Judge Samuel Meyer
Judge Kevin Ringus (non-voting)
Judge Rebecca Robertson
Judge Douglas Robinson
Judge Charles Short
Judge David Svaren
Judge Tracy Staab

Guests:

Judge Sean P. O'Donnell, SCJA
Loyd Willaford, Esq., WSAJ

AOC Staff:

Ms. Sharon R. Harvey, Primary DMCJA Staff

Members Absent:

Judge Judy Jasprica (non-voting)
Commissioner Rick Leo

CALL TO ORDER

Judge David Steiner, District and Municipal Court Judges' Association (DMCJA) President, noted a quorum was present and called the DMCJA Board of Governors (Board) meeting to order at 10:50 AM. Judge Steiner asked attendees to introduce themselves.

GENERAL BUSINESS

A. Minutes

The Board moved, seconded, and passed a vote (M/S/P) to approve the Board Minutes for April 8, 2016.

B. Treasurer's Report

M/S/P to approve the Treasurer's Report. Judge Burrowes reported that business accounts and checking account statements are located in the Board packet.

C. Special Fund Report

M/S/P to approve the Special Fund Report. Judge Ahlf reported that a significant percentage of the membership has not paid their dues and inquired on what to do with those who have not paid their dues. The Board voted to extend the payment deadline to May 31, 2016.

D. Standing Committee Reports

1. Rules Committee Minutes for March 23, 2016

Judges Robertson and Garrow reported on the Rules Committee (Committee) meeting on March 23, 2016. The Committee discussed issues regarding General Rule (GR) 26 relating to mandatory education for court

administrators; Infraction Rules for Courts of Limited Jurisdiction (IRLJ) 3.5, Decision on Written Statements, that was proposed by the Technology Subcommittee; and ACLU-WA proposed new General Rule 35, pertaining to jury selection.

E. Trial Court Advocacy Board (TCAB) Update

Judge Marinella reported that the TCAB discussed local funding and working on state funding at its last meeting. Justice in Jeopardy initiatives were also addressed. The TCAB further discussed Senate Bill (SB) 5454, *An act relating to court operations*, which passed the legislature in 2005. The bill was to provide state funding to trial courts, however, this has not yet been actualized. Monies for the bill were to be located in a separate account so that it would be protected from road funding or building a bridge funds. The promises of SB 5454 would benefit both trial court levels.

LIAISON REPORTS

A. Board for Judicial Administration (BJA)

Judge Garrow, BJA Policy and Planning Committee Chair, reported that the Policy and Planning Committee will submit five proposals to the BJA at its next meeting on May 20, 2016. Judge Ringus reported that the BJA, which did not meet in April, will extend the time of its May meeting. Mr. Ramsey Radwan, AOC Management Services Division Director, will provide a revenue update at the next meeting. Judge Garrow will discuss the Policy and Planning Committee's strategic issue management initiative. Mr. Eric Johnson, Washington State Association of Counties (WSAC), will discuss WSAC's legislative agenda and fiscal sustainability initiative. The BJA will also address a resolution regarding the BJA having hiring authority over the Office of Judicial and Legislative Relations position. The BJA will further discuss proposed rule changes from the Court Management Council.

B. Superior Court Judges' Association (SCJA)

Judge O'Donnell reported that the SCJA, via its leadership, continues to speak with Ms. Callie Dietz, State Court Administrator, regarding mediation. Judge O'Donnell mentioned that the Board had a discussion about the vacant BJA lobbyist position, which is also known as the Association Director for the Office of Judicial and Legislative Relations. He further reported that the SCJA Board voted to continue to pursue legislation regarding the Office of the Superior Courts. Judge Steiner inquired about SCJA's position regarding mediation and how and whether it will occur. Judge O'Donnell informed that Judge Downes will meet with Ms. Dietz face to face regarding the issue of mediation. He then expressed that the SCJA leadership will keep details regarding the mediation confidential. At present, there is nothing concrete regarding the hiring of a mediator.

C. Washington State Association for Justice (WSAJ)

Mr. Willaford reported that the WSAJ met and discussed the DMCJA proposed amendments to Civil Rules of Courts of Limited Jurisdiction (CRLJ) 26, Time for Discovery, and opposed it because of concerns regarding the limited discovery deadline. Mr. Willaford further informed that the WSAJ is still gathering its concerns and comments regarding civil education. He will submit these concerns to Judge Burrowes upon completion.

ACTION

A. *Whether to adopt the DMCJA Rules Committee's Recommendation regarding ACLU's Proposed Amendments to General Rule 35, Jury Selection*

This issue relates to an ACLU proposed amendment to General Rule 35 regarding peremptory challenges. The amendment addresses potential bias in peremptory juror exclusions. The Committee recommends that the Board not endorse the ACLU's proposed Rule because the Washington Supreme Court is continuing to closely review this important area of law. A Board member requested that the vote regarding whether to endorse the proposed Rule be delayed in order for the Board member to prepare a memo on major factors regarding the proposed Rule.

M/S/P to postpone a vote on whether to endorse the ACLU's proposed Rule until Board members are presented with additional materials on the subject.

B. DMCJA National Leadership Grant Applications

The Board discussed the four applications for the National Leadership Grant. After careful consideration, the Board voted to award grants as follows: (1) Judge Marilyn Paja, Kitsap County District Court, was awarded \$1,050 to attend the National Association of Women Judges (NAWJ) Annual Conference; (2) Judge Janet Garrow, King County District Court, was awarded \$600 to attend the NAWJ Annual Conference; Judge Karen Donohue, Seattle Municipal Court, was awarded \$985 to attend the NAWJ Annual Conference. Judge Kayne, Medical Lake Municipal Court, was not awarded grant funding this year.

C. DMCJA Vice-President to serve on the BJA Policy and Planning Committee

The Board discussed whether to appoint the DMCJA Vice-President to serve on the BJA Policy and Planning Committee (Committee) for a two-year term. Judge Garrow, Committee Chair, informed that the Committee Charter had been amended in order to create continuity and leadership opportunities. Judge Marinella, who currently serves on the BJA Policy and Planning Committee, expressed that selecting the DMCJA Vice-President not only creates continuity but is also beneficial because the Vice-President serves as the DMCJA Long Range Planning Committee Chair. M/S/P for the DMCJA Vice-President to serve as a member of the BJA Policy and Planning Committee.

D. DMCJA Rules Committee Recommendation regarding Proposed Amendments to GR 26

This topic relates to a request regarding mandatory education for court administrators. There was discussion regarding whether the District and Municipal Court Management Association (DMCMA) supports the proposed amendment to General Rule (GR) 26. Judge Garrow informed that the DMCJA Rules Committee requested a GR 9 form from the rule's proponents. The Rules Committee will address the Rule upon receipt of the GR 9 form and provide a recommendation to the Board regarding whether to endorse GR 26.

E. Whether the DMCJA Should Reconsider its Proposed Amendment to CrRLJ 3.2

The Board voted to make this issue an action item. M/S/P to adopt the Rules Committee's recommendation to request that the Supreme Court Rules Committee delay consideration of the proposed amendment to CrRLJ 3.2.

F. DMCJA Bylaws – Interpretation of Bylaw regarding BJA Representative Term Limits

The Board voted to make this issue an action item. M/S/P that Judge Ringus is eligible to serve an additional term as a DMCJA Representative on the BJA.

G. Request for DMCJA Representative on Traffic-Based Financial Obligations Workgroup

The Board voted to make this issue an action item. M/S/P to appoint Judge Elizabeth Cordi-Bejarano, SeaTac Municipal Court, to represent the DMCJA on the Senate Bill (SB) 6360 Workgroup.

DISCUSSION

A. Washington State Center for Court Research (WSCCR) Follow-up: Whether to invite a researcher to discuss effective methods of handling drug addiction in the courts

Judge Steiner informed that the DMCJA Long Range Planning Committee will identify issues for WSCCR to research. Drs. Carl McCurley and Andrew Peterson attended the February 2016 Board meeting and were informed that courts of limited jurisdiction judges are concerned with the drug epidemic's impact on trial courts.

Dr. Carl McCurley, WSCCR Director, recommended that Dr. Michael McDonnell address the group on the subject. Thus, the Board discussed whether to invite Dr. McDonnell to speak to the Board regarding methods for the courts to address drug addiction. The Board decided to task the DMCJA Education Committee with contacting Dr. McDonnell for him to speak to the entire DMCJA membership at an Annual Conference.

B. Whether the DMCJA Should Reconsider its Proposed Amendment to CrRLJ 3.2

Judge Steiner informed that the DMCJA Rules Committee recommends that the Board request the Supreme Court delay its decision regarding the DMCJA's proposed amendment to CrRLJ 3.2. The DMCJA proposed that CrRLJ 3.2 (b)(4) be deleted to be consistent with the corresponding Superior Court Rule. After receiving comments that the Rule would adversely impact low-income defendants, the DMCJA now would like to work with the SCJA to develop a solution to the concerns outlined in comments regarding the issue.

M/S/P to make this issue an action item.

C. Judge Sean O'Donnell's Request that the BJA have final hiring authority for the new Judicial Lobbyist (Departure of Mellani McAleenan, Esq.)

Judge O'Donnell informed that the SCJA has proposed a resolution regarding the vacant Associate Director, Office of Judicial and Legislative Relations position. This position was formerly held by Ms. Mellani McAleenan. The SCJA's proposed resolution states, "It is the position of the Board for Judicial Administration that the Administrative Office of the Courts should delegate its authority for final hiring approval of the new lobbyist to the BJA." The DMCJA Board did not support the proposed resolution.

D. DMCJA Bylaws – Interpretation of Bylaw regarding BJA Representative Term Limits

This issue relates to Article VIII, Section 1 of the DMCJA Bylaws, which states in relevant part, "Representatives shall not serve more than two terms consecutively." The Board discussed whether Judge Ringus was eligible for an additional term as a DMCJA Representative on the BJA. After thorough discussion, the Board determined that Judge Ringus is eligible to serve an additional term on the BJA in light of historical precedence in which a former DMCJA judge was considered eligible to serve an additional term with a similar fact pattern. Here, Judge Ringus served a two-year term and a subsequent four-year term.

M/S/P to make this an action item.

E. Request for DMCJA Representative on Traffic-Based Financial Obligations Workgroup

Judge Steiner recommended that Judge Elizabeth Cordi-Bejarano, SeaTac Municipal Court, serve as the DMCJA Representative on the workgroup developed from Senate Bill (SB) 6360, *Developing a plan for the consolidation of traffic-based financial obligations*.

M/S/P to make this an action item.

INFORMATION

Judge Steiner informed that the Annual Spring Conference will be held June 5-8, 2016, at the Campbell's Resort, in Chelan, WA. The DMCJA sent flowers to a memorial service for Mr. Don Dietz, husband of State Court Administrator, Ms. Callie Dietz. He further informed that the DMCJA submitted a letter of support for a Minority and Justice Commission grant application regarding legal financial obligation reform.

OTHER BUSINESS

The Board was informed that the next Board meeting is Sunday, June 5, 2016, from 9:00 am to 12:00 pm, at the Campbell's Resort, in Chelan, WA.

ADJOURNED at 1:00 PM.

District and Municipal Court Judges' Association

President

JUDGE DAVID STEINER
King County District Court
585 112th Ave SE
Bellevue, WA 98004
(206) 477-2102

President-Elect

JUDGE G. SCOTT MARINELLA
Columbia County District Court
535 Cameron St
Dayton, WA 99328-1279
(509) 382-4812

Vice-President

JUDGE SCOTT K. AHLF
Olympia Municipal Court
900 Plum St SE
PO Box 1967
Olympia, WA 98507-1967
(360) 753-8312

Secretary/Treasurer

JUDGE JOSEPH M. BURROWES
Benton County District Court
7122 W Okanogan Pl. Bldg A
Kennewick, WA 99336-2359
(509) 735-8476

Past President

JUDGE DAVID A. SVAREN
Skagit County District Court
600 S 3rd Street
PO Box 340
Mount Vernon, WA 98273-0340
(360) 336-9319

Board of Governors

JUDGE KAREN DONOHUE
Seattle Municipal Court
(206) 684-7903

JUDGE DOUGLAS J. FAIR
Snohomish County District Court
(425) 744-6804

JUDGE MICHELLE K. GEHLEN
Bothell Municipal Court
(425) 487-5587

JUDGE SAMUEL MEYER
Thurston County District Court
(360) 786-5562

COMMISSIONER SUSAN J. NOONAN
King County District Court
(206) 477-1720

JUDGE REBECCA C. ROBERTSON
Federal Way Municipal Court
(253) 835-3000

JUDGE DOUGLAS B. ROBINSON
Whitman County Dist. Court
(509) 397-5297

JUDGE CHARLES D. SHORT
Okanogan County District Court
(509) 422-7170

JUDGE TRACY A. STAAB
Spokane Municipal Court
(509) 625-4400

To: President Steiner; DMCJA Officers; DMCJA Board of Governors

From: Joseph M. Burrowes, DMCJA Treasure

Subject: Monthly Treasure's Report for May 2016

Dear President Steiner, Officers and Members of the DMCJA:

The following is a summary of the total DMCJA accounts, expenditures and deposits, as well as an update regarding the finances of our associations.

ACCOUNTS

US Bank Platinum Business Money Market Account	
Fund Balance as of April 2016:	\$100,647.74
Interest for April 2016	\$ 8.25
Bank of American Accounts:	
Investment Account as of May 31, 2016:	\$ 23,548.72
Checking Account as of May 31, 2016:	\$102,350.72
Balance as of May 31, 2016	\$125,899.44

EXPENDITURES

Total 2015/2016 adopted budget:	\$253,400.00
Total expenditures to date, April 31, 2016:	\$ 95,797.15
Total remaining budget as of April 31, 2016:	\$157,602.85

DEPOSITS AND CREDITS

Total deposits from April 2016 to May 31, 2016:	\$524.00
Total Interest as of April 31, 2016:	\$.39

FEE'S

Total fee's as of May 31, 2016:	\$.0
---------------------------------	-------

DMCJA
Dues Received as of
May 31, 2016

LastFirstMiddle		Gen. Dues	Spec Fund
	Pos.	Paid	Paid
Ahlf, Scott K.	Judge	Paid	Paid
Allen, Sandra L.	Judge	Paid	Paid
Andersen, Bradley	Judge	Paid	
Anderson, Marcine S.	Judge	Paid	Paid
Andrew, Stewart R.	Judge	Paid	Paid
Arb, Susan C.	Judge	Paid	Paid
Baker, Jeffrey J.	Judge	Paid	
Ball, Dennis	Comm	Paid	Paid
Barlow, Brian D.	Comm	Paid	Paid
Bates, Christopher	Judge	Paid	
Bathum, Richard	Judge	Paid	Paid
Beall, Andrea L.	Judge	Paid	Paid
Bejarano, Elizabeth M.	Judge	Paid	Paid
Bennett, Roger A.	Judge	Paid	
Blauvelt, III, Arthur A.	Judge	Paid	Paid
Blinn, Grant	Judge	Paid	Paid
Bobbink, Michael	Judge	Paid	Paid
Bradley, Claire A.	Judge	Paid	Paid
Brown, Thomas D.	Judge	Paid	Paid
Brueher, Gary J.	Judge	Paid	Paid
Buckley, Brett	Judge	Paid	Paid
Bui, Tam T.	Judge	Paid	Paid
Burrowes, Joseph M.	Judge	Paid	Paid
Butler, Katharine A.	Judge	Paid	Paid
Buttorff, Karla E.	Judge	Paid	Paid
Buzzard, James M.B.	Judge	Paid	
Buzzard, R.W.	Judge	Paid	
Buzzard, Steven R.	Judge	Paid	Paid
Caniglia, Gerald	Comm	Paid	
Castelda, Anthony	Judge		
Chapman, Arthur R.	Judge	Paid	Paid
Chow, Mark C.	Judge	Paid	Paid
Christie, David M.	Judge	Paid	Paid
Chung, Robert E.	Magis	Paid	Paid
Clough, Steve M.	Judge	Paid	Paid
Coburn, Linda	Judge	Paid	Paid
Connolly Walker, Patricia	Judge	Paid	
Cooper, Terri K.	Comm	Paid	Paid
Copland, Thomas A.	Judge	Paid	Paid
Crowell, Chancey C.	Judge	Paid	Paid
Curry, John F.	Judge	Paid	Paid
Dacca, Franklin L.	Judge	Paid	Paid
Dane, Melanie	Judge	Paid	Paid
Decker, Tarrell	Judge	Paid	Paid
Delaney, Howard F.	Comm	Paid	
DeLaurenti, II, Charles J.	Judge	Paid	Paid
Derr, Sara B.	Judge	Paid	Paid
Devilla, Francis	Magis	Paid	Paid
Docter, James N.	Judge	Paid	Paid
Doherty, John H.	Judge	Paid	Paid

LastFirstMiddle		Gen. Dues	Spec Fund
	Pos.	Paid	Paid
Donohue, Karen	Judge	Paid	Paid
Druffel, Bill	Judge	Paid	
Dunn, Michael A.	Judge	Paid	Paid
Ebenger, David	Judge	Paid	
Eide, D. Mark	Judge	Paid	Paid
Eilmes, Kevin G.	Comm	Paid	Paid
Eisenberg, Adam	Magis	Paid	Paid
Elich, Matthew S.	Judge	Paid	
Ellington, Thomas M.	Judge	Paid	Paid
Ellis, Darrel R.	Judge	Paid	Paid
Eng, Park	Magis	Paid	Paid
Engel, Donald	Judge	Paid	Paid
Fair, Douglas J.	Judge	Paid	Paid
Fassbender, Jennifer	Judge	Paid	Paid
Faubion, William J.	Judge	Paid	
Faul, Bronson	Judge	Paid	
Finkle, Michael J.	Judge	Paid	Paid
Fitterer, Richard C.	Judge	Paid	Paid
Fore, Roy S.	Judge	Paid	Paid
Fraser, Beth	Judge	Paid	Paid
Freedman, Larry	Comm	Paid	
Garrison, Douglas K.	Judge	Paid	Paid
Garrow, Janet E.	Judge	Paid	Paid
Gehlsen, Michelle K.	Judge	Paid	Paid
George, Todd N.	Comm	Paid	Paid
Gibson, Laurel	Judge	Paid	Paid
Gilbert, Warren M.	Judge	Paid	Paid
Gillings, Fred L.	Judge	Paid	Paid
Goddard, Dianne E.	Comm	Paid	Paid
Goelz, Douglas E.	Judge	Paid	Paid
Goodwin, Jeffrey D.	Judge	Paid	Paid
Grant, David	Judge	Paid	Paid
Green, Nathaniel	Judge	Paid	Paid
Gregory, Willie J.	Judge	Paid	Paid
Grim, Robert W.	Judge	Paid	Paid
Hagensen, John P.	Judge	Paid	Paid
Hamilton, Robert W.	Judge	Paid	
Hanlon, Tamara A.	Comm	Paid	Paid
Hansen, Randall L.	Comm	Paid	Paid
Hansen, Rick L.	Judge	Paid	Paid
Harmon, Nancy A.	Judge	Paid	Paid
Harn, Corinna D.	Judge	Paid	Paid
Harper, Anne C.	Judge	Paid	Paid
Harrison, Noah	Comm	Paid	Paid
Hart, John H.	Judge	Paid	Paid
Hatch, David S.	Judge	Paid	
Hawkins, W. H.	Judge	Paid	Paid
Hayes, Debra R.	Judge	Paid	Paid
Hedine, Kristian E.	Judge	Paid	Paid
Heller, James R.	Judge	Paid	Paid
Henke, Drew	Judge	Paid	Paid
Henry, John R.	Judge	Paid	
Heslop, Ronald D.	Judge	Paid	Paid
Hightower, Judith	Judge	Paid	Paid
Hill, Tyson R.	Judge	Paid	
Hille, Adalia A.	Judge	Paid	Paid
Hirakawa, Gregg	Judge	Paid	Paid

LastFirstMiddle		Gen. Dues	Spec Fund
	Pos.	Paid	Paid
Hitchcock, Kathleen E.	Judge	Paid	Paid
Holman, Stephen J.	Judge	Paid	Paid
Howard, Anthony E.	Judge	Paid	Paid
Hurson, James E.	Judge	Paid	Paid
Hyde, Stephen J.	Judge	Paid	
Imler, Kyle L.	Judge	Paid	Paid
Jahns, Jeff	Judge	Paid	Paid
Jasprica, Judy Rae	Judge	Paid	Paid
Jenkins, Timothy A.	Judge	Paid	Paid
Johnson, Dan B.	Judge	Paid	Paid
Jorgensen, Karli K.	Judge	Paid	Paid
Jurado, Terry L.	Judge	Paid	Paid
Kaino, Kristopher A.	Judge	Paid	Paid
Kathren, Daniel F.	Judge	Paid	
Kayne, Richard	Judge	Paid	Paid
Kernan, Tina	Judge	Paid	
Kipling, Linda B.	Comm	Paid	Paid
Knowlton, John O.	Judge	Paid	Paid
Kondo, C. Kimi	Judge	Paid	Paid
Koss, David	Judge	Paid	Paid
Ladenburg, David B.	Judge	Paid	Paid
Lambo, Michael J.	Judge	Paid	Paid
Landes, Jill	Judge	Paid	
Langsdorf, Sonya L.	Judge	Paid	Paid
Larson, David A.	Judge	Paid	Paid
Leland, Richard M.	Judge	Paid	
Leo, Rick	Comm	Paid	Paid
Leone, Lisa	Judge	Paid	Paid
Lev, Debra A.	Judge	Paid	Paid
Lewis, Terrance G.	Judge	Paid	Paid
Lineberry, Jeanette A.	Judge	Paid	Paid
Logan, Mary C.	Judge	Paid	Paid
Luken, Terri	Magis	Paid	Paid
Lyon, Patricia L.	Judge	Paid	Paid
Maher, Dennis P.	Judge		
Mahoney, Susan L.	Judge	Paid	Paid
Mano, Jr., Joseph M.	Judge	Paid	Paid
Marinella, G. Scott	Judge	Paid	Paid
Markley, Marlynn	Comm		
Marshall, Ronald S.	Judge	Paid	Paid
Maurer, Aimee	Judge	Paid	Paid
Maxwell, John E.	Judge	Paid	Paid
McBeth, Dale A.	Judge	Paid	
McCann, Kevin A.	Judge	Paid	Paid
McCauley, Judith L.	Judge	Paid	Paid
McCulloch, Sara L.	Judge	Paid	Paid
McKenna, Edward	Judge	Paid	Paid
Meadows, Victoria C.	Judge	Paid	
Meyer, David	Judge	Paid	Paid
Meyer, Samuel G.	Judge	Paid	Paid
Meyer, Thomas L.	Judge	Paid	Paid
Michels, Steven L.	Judge	Paid	Paid
Miller, John A.	Judge	Paid	Paid
Mistachkin, David J.	Judge	Paid	Paid
Moore, Stephen E.	Judge	Paid	Paid
Murphy, Therese	Judge	Paid	Paid
Nault, Peter L.	Judge	Paid	Paid

LastFirstMiddle		Gen. Dues	Spec Fund
	Pos.	Paid	Paid
Odell, Timothy B.	Judge	Paid	
Olbrechts, Kristen	Judge	Paid	Paid
Olson, John R.	Comm	Paid	
Olwell, Kelley C.	Judge	Paid	Paid
Osborne, Steve	Judge	Paid	Paid
Osler, Kelli E.	Judge	Paid	
O'Toole, Lisa Napoli	Judge	Paid	Paid
Paglisotti, Lisa A.	Judge	Paid	
Paja, Marilyn G.	Judge	Paid	Paid
Parcher, Kristen L.	Comm	Paid	
Parise, Anthony	Comm	Paid	Paid
Penoyar, Elizabeth	Judge	Paid	Paid
Petersen, David L.	Judge	Paid	Paid
Peterson, Vance W.	Judge	Paid	Paid
Phillips, Glenn M.	Judge	Paid	Paid
Porter, Rick L.	Judge	Paid	Paid
Portnoy, Linda S.	Judge	Paid	Paid
Putka, Edward J.	Judge	Paid	
Reynier, Jr., Ronald	Judge	Paid	Paid
Ringus, Kevin G.	Judge	Paid	Paid
Roach, Jerry	Judge	Paid	Paid
Robertson, Rebecca C.	Judge	Paid	Paid
Robinson, Douglas B.	Judge	Paid	Paid
Rochon, L. Stephen	Judge	Paid	Paid
Roewe, Michael	Comm	Paid	
Rosen, Steven	Judge	Paid	Paid
Ross, Margaret Vail	Judge	Paid	Paid
Roy, Kevin M.	Judge	Paid	Paid
Rozzano, Mara J.	Judge	Paid	Paid
Sage, C Scott	Judge	Paid	
Samuelson, Wade	Judge	Paid	Paid
Sanderson, Brian K.	Judge	Paid	Paid
Schreiber, Vernon L.	Judge	Paid	Paid
Schwepe, Alfred G.	Judge	Paid	Paid
Seaman, Shane	Comm	Paid	Paid
Shadid, Damon G.	Judge	Paid	Paid
Shah, Ketu	Judge	Paid	Paid
Short, Charles D.	Judge	Paid	Paid
Smiley, Pete	Comm	Paid	
Smith, Douglas J.	Judge	Paid	
Solan, Susan	Judge	Paid	Paid
Staab, Tracy	Judge	Paid	Paid
Steele, George A.	Judge	Paid	Paid
Steiner, David A.	Judge	Paid	Paid
Stephenson, Elizabeth D.	Judge	Paid	Paid
Stewart, N. Scott	Judge	Paid	Paid
Stewart, Wayne	Judge	Paid	Paid
Stewart, William J.	Judge	Paid	Paid
Stiles, Brock D.	Judge	Paid	Paid
Sussman, Claire	Judge	Paid	Paid
Svaren, David A.	Judge	Paid	Paid
Swanger, James P.	Judge	Paid	Paid
Szambelan, Michelle	Judge	Paid	Paid
Tanner, Terry M.	Judge	Paid	Paid
Tedrick, Marjorie	Judge	Paid	
Tolman, Jeff	Judge	Paid	Paid
Towers, Lorrie C.	Judge	Paid	Paid

LastFirstMiddle		Gen. Dues	Spec Fund
	Pos.	Paid	Paid
Tripp, Gregory J.	Judge	Paid	Paid
Tripp, Wendy	Comm	Paid	
Tucker, Donna K.	Judge	Paid	Paid
Turner, Michael S.	Judge	Paid	Paid
Tveit, Gina	Judge	Paid	
Valerien, Michael C.	Comm	Paid	Paid
Van De Veer, Philip J.	Judge	Paid	Paid
Van Slyck, Laura	Judge	Paid	Paid
Verge, Thomas L.	Judge	Paid	
Verhey, Elizabeth	Judge	Paid	Paid
Walden, Kimberly A.	Judge	Paid	Paid
Whitener-Moberg, Janis	Judge	Paid	Paid
Wilcox, Kalo	Judge	Paid	Paid
Williams, Matthew	Judge	Paid	Paid
Wilson, Donna	Judge	Paid	Paid
Wohl, Paul	Comm	Paid	Paid
Woodard, Susan J.	Judge	Paid	Paid
Wyninger, Karen S.	Comm	Paid	Paid
Zimmerman, Darvin J.	Judge	Paid	

Percent of members in good standing in 2016

82.01%

TO: Judge David Steiner, President, DMCJA Board
FROM: Judge Frank Dacca, Chair, DMCJA Rules Committee
SUBJECT: Proposed General Rule 35
DATE: March 30, 2016

As you know, the ACLU-W Committee has proposed a new GR rule to address potential bias in peremptory juror exclusions and has requested comment from the DMCJA. In addition to a proposed GR 35, Mr. Salvador Mungia has further submitted a letter dated February 23, 2016 outlining the background and issues relating to this proposal.

At your request, the DMCJA Rules Committee considered the proposed new GR and the issues cited in Mr. Mungia's letter at its regular meeting on March 23, 2016. At the outset, the Committee wishes to point out that a GR 35 currently exists under the title of Official Certified Superior Court Transcripts. Therefore, any new such GR would be GR 36, not GR 35.

In its discussion, the Rules Committee expressed its appreciation of the thoughtful concern demonstrated by the ACLU regarding this developing area of case law. The Committee is also cognizant that the Supreme Court of Washington is continuing to closely review this important area in cases which may come under consideration. For these reasons, the Rules Committee recommends that the Board not endorse this proposed Rule.

Thank you for consideration of these comments. If you have any questions, please contact me at 253-798-7712 or fdacca@co.pierce.wa.us.

Attachments: Letter from Mr. Mungia Regarding Proposed GR 35
Proposed New General Rule, GR 35

CC: DMCJA Rules Committee
J Benway, AOC Staff

Direct: (253) 620-
E-mail:

February 23, 2016

Jennifer Benway
Legal Services Senior Analyst
Administrative Office of the Court
P.O. Box 41170
Olympia, WA 98504-1170

RE: DMCJA Rules Committee

Dear Jennifer:

I want to thank the DMCJA Rules Committee for considering our Proposed General Rule 35. This ACLU-W committee has been working on this issue for over two years. We are now taking the proposed rule to various stakeholders with one of the obvious stakeholders being the DMCJA.

A. The Problem: *Batson* isn't working

The three-part test set forth in *Batson v. Kentucky*, 476 U.S. 79 (1986) is not working.¹ As Michigan State University law professors Catherine M. Grosso and Barbara O'Brien wrote in their article about racial bias in jury selection in North Carolina:

Among those who laud its mission, it seems that the only people not disappointed in *Batson* are those who never expected it to work in the first place.

¹ As you know, in order to make a *Batson* challenge, a party challenging a peremptory challenge "must make out a prima facie case of purposeful discrimination by showing that the totality of the relevant facts gives rise to an inference of discriminatory purpose." *Batson*, 476 U.S. at 93-94. Second, "the burden shifts to the State to come forward with a [race]-neutral explanation" for the challenge. *Id.* at 97. Third, "the trial court then [has] the duty to determine if the defendant has established purposeful discrimination." *Id.*

Reply to:

Tacoma Office
1201 Pacific Ave., Suite 2100 (253) 620-6500
Tacoma, WA 98402 (253) 620-6565 (fax)

Seattle Office
600 University, Suite 2100 (206) 676-7500
Seattle, WA 98101 (206) 676-7575 (fax)

Their 2012 study found that North Carolina prosecutors used 60 percent of their peremptory challenges to strike black jurors, who made up only 32 percent of potential jury members. The study also found that defense attorney used 87 percent of their strikes against white jurors, who made up 68 percent of the jury pool.

In Houston County, Alabama, prosecutors between 2005 and 2009 used their peremptory strikes to eliminate 80 percent of the blacks qualified for jury service in death penalty cases. The result was that half of these juries were all white, and the remainder had only a single black member, even though the county is 27 percent black.

In 2012, a state trial judge in North Carolina found that prosecutors in his state had created a “cheat sheet” of race-neutral reasons to offer when challenged. Among the reasons given were “air of defiance,” “arms folded” and monosyllabic responses. (New York Times, August 16, 2015.)

Here are some reasons prosecutors have offered for excluding blacks from juries: They were young or old, single or divorced, religious or not, failed to make eye contact, lived in a poor part of town, had served in the military, had a hyphenated last name, displayed bad posture, were sullen, disrespectful or talkative, had long hair, wore a beard. (New York Times, August 16, 2015.)

As was stated in the Washington Post:

Studies and experience have concluded that only the most incompetent lawyer will fail to come up with a justification that a judge can accept.

(Washington Post, October 25, 2015.)

B. Washington State is no exception

“Twenty-six years after *Batson*, a growing body of evidence shows that racial discrimination remains rampant in jury selection,” wrote Washington State Supreme Court Justice Wiggins in *State v. Saintcalle*, 178 Wn.2d 34, 309 P.3d 326 (2013). “In part, this is because *Batson* recognizes only ‘purposeful discrimination,’ whereas racism is often unintentional, institutional or unconscious.”

Kirk Saintcalle, an African American defendant, challenged his first-degree felony murder conviction for a 2007 homicide, alleging racial bias in jury selection at his trial. The only black person in the jury pool was singled out by prosecutors for additional questioning about her views on race in the justice system. During that questioning, she revealed that a friend had been murdered two weeks earlier.

The prosecutor used a peremptory challenge to dismiss the potential juror claiming he did so because the potential juror said she did not know how her friend's murder would affect her during the trial. The prosecutor also justified his use of the peremptory by stating that the potential juror had checked out during voir dire. The prosecutor attempted to use a peremptory challenge against the sole Mexican-American juror in the venire but the judge sustained a *Batson* challenge to that strike rejecting each of the prosecutor's proffered reasons as pretextual.

The Court ruled that *Batson* requires a finding of purposeful discrimination and the trial court's finding of no purposeful discrimination was not clearly erroneous. Accordingly, the Court sustained the trial court's rejection of the *Batson* challenge. The Court made it clear, however, that *Batson* is not working.

However, we also take this opportunity to examine whether our *Batson* procedures are robust enough to effectively combat race discrimination in the selection of juries. We conclude that they are not. Twenty-six years after *Batson*, a growing body of evidence shows that racial discrimination remains rampant in jury selection. In part, this is because *Batson* recognizes only "purposeful discrimination," whereas racism is often unintentional, institutional, or unconscious. We conclude that our *Batson* procedures must change and that we must strengthen *Batson* to recognize these more prevalent forms of discrimination.

C. The *Batson* bar is high

As the *Saintcalle* Court noted, *Batson* requires a finding of purposeful discrimination – an element that makes it difficult on the attorney making the objection, difficult on the attorney accused of engaging in behavior alleged to be purposeful, and difficult on the judge if the judge upholds the objection.

In addition, Washington courts have used the expansive language of *State v. Vreen*, 143 Wn.2d 923, 927 (2002) that the prosecutor's explanations need not be "persuasive, or even plausible" to accept a range of reasons for peremptory challenges. See, e.g., *State v. Williams*, No. 28608-4-II, 2003 Wash. App. LEXIS 2893 at *7 (Wash. Ct. App. Dec. 9, 2003); *State v. Titalii*, No. 30187-3-II, 2005 Wash. App. LEXIS 2571 at *17 (Wash. Ct. App. Sept. 27, 2005).

The following are some reasons given for exercising peremptory challenges that have survived *Batson* objections.

- The potential juror expressed hostility to the justice system by noting the racial disparities in the seated jury pool, asking "[i]s this really a makeup of Tacoma or Pierce County?" *State v. Thomas*, 166 Wn.2d 380, 396 (Wash. 2009).

- The potential juror has low intelligence. Opening Brief of Appellant at *7, *State v. Sadler*, 147 Wn. App. 97 (Wash. Ct. App. 2008) (No. 35021-1-II), available at <http://www.courts.wa.gov/content/Briefs/A02/350211%20appellant.pdf>.
- “[The potential juror] has a large family, similar to the family makeup of the defendants.” *State v. Titalii*, No. 30187-3-II, 2005 Wash. App. LEXIS 2571 at *15 (Wash. Ct. App Sept. 27, 2005).
- The potential juror answered “[t]here is no comment to make. None of it's applicable to me. I'll do my best” when asked if she could set aside prejudice. *State v. Jalothot*, No. 28660-2-II, 2003 Wash. App. LEXIS 1716 at *8 (Wash. Ct. App. July 29, 2003).
- The potential juror was suspicious of the criminal justice system because she said “it's not infallible. There's problems, as there are anywhere else” to a question about flaws in the system. *State v. Nordlund*, No. 26859-1-II, 2002 Wash. App. LEXIS 2219 at *14 (Wash. Ct. App. Sept. 13, 2002).
- The potential juror mentioned “beyond a shadow of a doubt” in an answer when the legal standard was actually “beyond a reasonable doubt.” *State v. Powell*, 55 Wn. App. 914, 916 n.1 (Wash. Ct. App. 1989).

In several cases the reasons proffered for striking a minority juror also applied to non-minority jurors who were not removed. See, e.g., Opening Brief of Appellant at *7, *State v. Sadler*, 147 Wn. App. 97 (Wash. Ct. App. 2008) (No. 35021-1-II), available at <http://www.courts.wa.gov/content/Briefs/A02/350211%20appellant.pdf> (a minority juror was challenged in part for (1) having a military background and (2) not understanding the word “sodomasochism” – several jurors with similar characteristics were not challenged); *State v. Luvane*, 127 Wn.2d 690, 700 (Wash. 1995) (a minority juror was removed because (1) a family member had a criminal history and (2) the juror appeared uncomfortable discussing the death penalty – the prosecutor did not challenge several other jurors had similar characteristics).

D. The Proposal

Our Proposed General Rule 35 eliminated the requirement for a finding of purposeful discrimination. Instead, it employs a test of whether an objective person viewing the peremptory challenge could find that race or ethnicity was a factor for the peremptory challenge. The proposed rule includes comments to provide guidance to judges and lawyers. Comments four and five provide examples that are discussed in case law and provides that if those are the proffered reasons then there is a rebuttal presumption that the peremptory challenge is invalid.

E. Our Request

We have two requests. The first is that we would like to have any feedback you may have regarding the proposed rule. We have presented the proposed rule to the Washington State Minority and Justice Commission and received the comment that the trial judge should not have to rely upon an objection being made by a litigant but instead *sua sponte* rule that a peremptory challenge is invalid under the rule. We thought that was a valid point and will be including that in the next draft. Any suggestions you may have will be welcomed and considered.

Second, we would like to have the DMCJA endorse either the rule itself or at least the overall concept and framework of the proposed rule. We have received the latter from the Minority and Justice Commission and would welcome a similar endorsement from the DMCJA. I am presuming that your committee will be making a recommendation to the DMCJA Board for the endorsement we are seeking so I am hoping your committee will recommend supporting the proposed rule.

I am available to meet with either the committee, or the DMCJA Board, if requested to do so to answer questions or provide further information.

Once again, thank you for taking the time to consider this proposal.

Salvador A. Mungia

1 RULE 35. JURY SELECTION

2 (a) **Scope of rule.** This procedure is to be followed in all jury trials.

3
4 (b) A party may object to an adverse party's use of a peremptory challenge on the
5 grounds that the race or ethnicity of the prospective juror could be viewed as a
6 factor in the use of the challenge. When such an objection is made the
7 adverse party must, on the record, articulate the reasons for the peremptory
8 challenge.

9 (c) Using an objective observer standard the court shall evaluate the reasons
10 proffered for the challenge. If the court determines that an objective observer
11 could view race or ethnicity as a factor for the peremptory challenge then the
12 challenge shall be denied.

13 **Comment**

14 [1] The purpose of this rule is to eliminate the unfair exclusion of potential jurors
15 based on race. This rule provides a different standard than that provided for in *Batson v.*
16 *Kentucky*, 476 U.S. 79 (1986) to determine whether a peremptory challenge is invalid.
17 For purposes of this rule it is irrelevant whether it can be proved that a prospective juror's
18 race or ethnicity actually played a motivating role in the exercise of a peremptory
19 challenge.
20 challenge.

21 [2] An objective observer is one who is aware that purposeful discrimination and
22 unintentional, institutional, or unconscious bias have resulted in the unfair exclusion of
23 potential jurors based on race in Washington.

24 [3] In determining whether an objective observer could view race or ethnicity as a
25 factor in the use of the peremptory challenge, the court shall consider the following: (a)
26 the number and types of questions posed to the prospective juror, and (b) whether other

1 prospective jurors provided similar answers but were not the subject of a peremptory
2 challenge by that party.

3 [4] Because historically the following reasons proffered for peremptory challenges
4 have operated to exclude racial and ethnic minorities from serving on juries in
5 Washington, there is a presumption that the following are invalid reasons for a
6 peremptory challenge: (a) having prior contact with law enforcement officers; (b)
7 expressing a distrust of law enforcement or a belief that law enforcement officers engage
8 in racial profiling; (c) having a close relationship with people who have been stopped,
9 arrested, or convicted of a crime; (d) living in a high-crime neighborhood; (e) having a
10 child outside of marriage; (f) receiving state benefits; and (g) not being a native English
11 speaker.
12

13 [5] If any party intends to exercise a preemptory challenge on the basis that a
14 prospective juror has been sleeping, not paying attention, or providing unintelligent
15 answers, sufficient advance notice must be provided to the court and opposing party so
16 that the behavior can be verified and addressed in a timely manner.
17
18
19
20
21
22
23
24
25
26

May 5, 2016

Judge David A. Steiner, President
District and Municipal Court Judges' Association
King County District Court
1309 114th Ave. SE, Ste 100
Bellevue, WA 98004

Re: DMCJA Representative on Washington Supreme Court Pattern Jury Instruction
Committee — Judge Anne C. Harper

Dear Judge Steiner,

I am writing on behalf of the Washington Pattern Jury Instruction (WPI) Committee to request that the District and Municipal Court Judges' Association (DMCJA) nominate Judge Anne C. Harper to serve another four-year term on the Committee. Judge Harper's term on the WPI Committee expires on July 15, 2016.

Membership on the WPI Committee is by appointment of the Supreme Court. Nominations for appointment are made by several different associations of attorneys and judges, pursuant to the order of the Supreme Court establishing the membership of the WPI Committee.

The DMCJA has two representatives on the WPI Committee. The DMCJA's other member, in addition to Judge Harper, is Judge Marilyn G. Paja, whose term expires in 2018.

WPI Committee members have often served multiple terms. The Committee has encouraged this practice, as there is a steep learning curve for new members. The Committee has been fortunate to attract members who derive great satisfaction from the work and who often wish to serve several terms, despite the considerable demands on their time. Judge Harper has been a hardworking and valuable member of the Committee, and her continued service would be of great value to the Committee.

Judge Harper has graciously expressed her willingness to continue her service on the Committee for an additional term.

Please let me know when the DMCJA has made its decision. There are several associations whose representatives' terms expire this July, and it is helpful to the Supreme Court administratively if the Pattern Jury Instruction Committee sends the Supreme Court a single package of information with the names of all of the different associations' nominees for appointment to the WPI Committee.

DMCJA
May 5, 2016
Page 2

You may direct any questions and your correspondence to the Committee's staff person, Lynne Alfasso, Administrative Office of the Courts, P.O. Box 41174, Olympia WA 98504-1174, or Lynne.Alfasso@courts.wa.gov. or (360) 357-2125.

Thank you very much for your Association's continued support of the WPI Committee's work.

Sincerely,

Lynne Alfasso
WPI Committee Staff
(On behalf of WPI Committee Co-Chairs Judge William L. Downing and Judge Helen L. Halpert)

cc: Judge Anne C. Harper, King County District Court
Ms. Sharon Harvey, Administrative Office of the Courts (by e-mail)

DISTRICT AND MUNICIPAL COURT JUDGES' ASSOCIATION SCHEDULE OF BOARD MEETINGS

2016-2017

DATE	TIME	MEETING LOCATION
<i>Friday, July 8, 2016</i>	12:30 – 3:30 p.m.	AOC SeaTac Office Center
<i>Friday, Aug. 12, 2016</i>	12:30 – 3:30 p.m.	AOC SeaTac Office Center
<i>Sunday, Sept. 11, 2016</i>	9:00 a.m. – 12:00 noon	2016 Annual Judicial Conference, Spokane, WA
<i>Friday, Oct. 14, 2016</i>	12:30 – 3:30 p.m.	AOC SeaTac Office Center
<i>Friday, Nov. 4, 2016</i>	12:30 – 3:30 p.m.	AOC SeaTac Office Center
<i>Friday, Dec. 9, 2016</i>	12:30 – 3:30 p.m.	AOC SeaTac Office Center
<i>Friday, Jan.13, 2017</i>	12:30 – 3:30 p.m.	AOC SeaTac Office Center
<i>Friday, Feb. 10, 2017</i>	12:30 – 3:30 p.m.	AOC SeaTac Office Center
<i>Friday, March 10, 2017</i>	12:30 – 3:30 p.m.	AOC SeaTac Office Center
<i>Friday, April 14, 2017</i>	12:30 – 3:30 p.m.	AOC SeaTac Office Center
<i>May 2017</i>	TBD	In conjunction with Board Retreat
<i>June 2017</i>	TBD	In conjunction with Spring Program

AOC Staff: Sharon Harvey

Updated: May 16, 2016

2016-2017 DMCJA Priorities

On May 13, 2016, the Board reviewed the DMCJA Long Range Planning Committee Report dated March 25, 2016 and prioritized DMCJA goals as follows:

1. Adequate Court Funding

The issue of court funding permeates all of the priorities below. The Courts of Limited Jurisdiction (CLJ) cannot provide services or justice when we are chronically underfunded. We need to educate the public, from the voters to the legislators, regarding the effect that minimal funding has on our ability to serve the public's constitutionally protected interests. This includes legislative cuts to AOC's budget that resonate through every level of the courts. We should assess the mandated services the court provides and question how we are expected to provide these services in an environment of shrinking budgets.

2. JIS/Case Management

Our current case management system is, in the world of computer software, a Model T in a Tesla world. We remain vulnerable to system failure and are forced to work every day with an antiquated system. We saw our CLJ priority slip when the system being designed for the Court of Appeals was upgraded to a full case management system. We need to continue to state our case for high priority to AOC and the legislature so that, if anything, we move up, rather than down in priority.

3. Courthouse Security

The safety of all of the participants in our courthouses remains a top priority for the DMCJA. Without adequate security, the safety of all participants is in needless jeopardy, including:

- Members of the public summonsed in for jury duty; traffic infractions; civil cases and criminal cases
- Every party involved in domestic violence cases, including alleged victims and witnesses, who appear to deal with: domestic violence criminal cases; protection order cases; stalking and anti-harassment cases
- Courthouse staff who are required to work every day in a building where disputes are resolved and where some of those involved in those disputes will present a risk for violence

4. Educate Justice Partners

To accomplish the goals of our member courts and the DMCJA as a whole, we must educate the executive and legislative branches of both local and state government. Through such education, the other branches of government will learn of our accomplishments and needs. The Public Outreach Committee is tasked with developing materials that will assist both urban and rural court judges in educating governmental agencies and the public. We may likely find that topics of importance to the judiciary may be just as important to cities, counties and the state. These topics include, but are not limited to security concerns, court funding, the separation of powers, court administration, access to justice and access to court records and court information. Committee members suggested several ways to begin educating our justice partners, including creating reference materials for judges to obtain in a centralized repository on the Inside Courts web site. Initially, this repository will contain documents for use in contacting and informing legislators, council members, and partner organizations of our accomplishments and needs. We anticipate that the public outreach committee will evolve into a

resource for judges to find programs and plans for such things as state of the court addresses to the local funding sources and other community partners. Such partners may include: Association of Washington Cities (AWC), Washington Association of Prosecuting Attorneys (WAPA), Washington State Association of Municipal Attorneys (WSAMA), Washington State Association of Counties (WSAC), risk management agencies, city and county councils, local school districts, and civic and social clubs. Our members have done some amazing work in their communities and it is time for the public and governmental entities to learn about our courts and judges.

The following are additional DMCJA goals that are equal in priority:

- Preserving the Independence, Integrity, Quality, and Consistency of the Courts of Limited Jurisdiction
The purpose of this priority is to insure that justice is dispensed fairly throughout the state for all criminal defendants. The DMCJA thinks the court system is bifurcated and administrative court funding should be consistently applied throughout the State to allow all courts to maintain their independence from the executive and legislative branches of government. Judges should not be in jeopardy of losing their positions based upon the exercise of judicial independence. This priority is consistent with the goals recited in the Educate Justice Partners priority above. The DMCJA needs to work to maintain the quality and consistency of justice across all CLJ. We must continue to work to remove statutory disparities between district and municipal courts and monitor regional courts initiatives.
- Access to Justice (Interpreters and Technology Expansion)
Access to justice is critical to the citizens of the State of Washington. Access includes: quality interpreter services, courtroom and court staff accessibility, and technological related access. Several issues related to interpreters were highlighted, including ADA/foreign language interpreters, the quality of interpretation options and access to interpreters. In our digitized world, members of the public should also have the option of using technology to access the courts.
- Foster Development of Therapeutic/Community Courts
The purpose of this goal is to address pressing issues of mental health and drug addiction in our community. The Board is concerned with the consistent management of mentally ill offenders. Defendants who do not arise to the level of the criminally insane, RCW 10.77, but need housing and services should be able to get the attention that they need in all Washington State courts.
- Statewide Relicensing Program
The issue of driver's license suspensions is significant to district and municipal courts. For this reason, the Committee thinks the Statewide Relicensing Program should continue to be a DMCJA priority. However, the Committee voted to support this Program only if it is funded and mandatory. The Committee noted that Senate Bill 6360, *Developing a plan for the consolidation of traffic-based financial obligations*, tasks the Office of the Attorney General to convene a work group of stakeholders, which includes a DMCJA member. The Committee is to provide input and feedback on the development of a plan and program for the efficient statewide consolidation of an individual's traffic-based financial obligations imposed by courts of limited jurisdiction into a unified and affordable payment plan.

- Member Involvement

All DMCJA service within the Association is voluntary. For this reason, the Board should actively encourage the participation of DMCJA members in the committee work and governance of our organization. Face to face committee meetings during the spring conference may still help in this regard. Approximately twenty-eight percent (28%) of the membership participate on DMCJA Committees.

- Collection of Legal Financial Obligations (LFOs)

This issue was originally categorized under the heading of getting judges out of the money collection business. At the 2015 board retreat, the DMCJA Board discussed the difficulties of removing the courts from collecting LFOs and determined that a legislative change is necessary, because laws require district and municipal courts to collect fines. In discussing this issue, the Committee determined that the category should be amended from *Courts out of the Collection Business* to the broader category of *Collection of Legal Financial Obligations*. The Committee recommends that the DMCJA consider the *State v. Blazina*, 182 Wash.2d 827, 344 P.3d 680 (2015) decision, legislative proposals, and court funding issues to address the issue of the courts' involvement in the collection of LFOs.



DMCJA BOARD MEETING
SUNDAY, JUNE 5, 2016
9:00 AM – 12:00 PM
CAMPBELL'S RESORT
CHELAN, WA

PRESIDENT JUDGE DAVID STEINER

SUPPLEMENTAL AGENDA

TAB

Call to Order

General Business

- A. Minutes – May 14, 2016 (pp 1-4)
- B. Treasurer's Report – *Judge Burrowes* (p 5)
 - 1. **Bank of America Statement for May 2016**
 - 2. **DMCJA Account Ledger 2015-2016**
- C. Special Fund Report – *Judge Ahlf* (p 6)
- D. Standing Committee Reports
- E. Trial Court Advocacy Board (TCAB)
- F. Judicial Information System Committee (JISC) Report – *Judge Marinella and Judge Svaren*
- G. Judicial Information System (JIS) Report – *Ms. Vicky Cullinane*

1

X

X

Liaison Reports

- A. District and Municipal Court Management Association (**DMCMA**) – *Ms. Linda Baker*
- B. Administrative Office of the Courts (**AOC**) – *Mr. Dirk Marler*
- C. Superior Court Judges' Association (**SCJA**) – *Judge Sean O'Donnell*
- D. Washington State Bar Association (**WSBA**) – *Sean Davis, Esq.*
- E. Washington State Association for Justice (**WSAJ**) – *Loyd Willaford, Esq.*
- F. Board for Judicial Administration (**BJA**) – *Judges Garrow, Jasprica, Lambo, and Ringus*

Action

- A. Whether to adopt the DMCJA Rules Committee's Recommendation regarding ACLU's Proposed Amendments to General Rule 35, *Jury Selection* (pp 13-20)
 - 1. **Memorandum submitted by Judge Linda Coburn**

2

X

Discussion

- A. Washington Pattern Jury Instruction Committee – Should the current DMCJA representative be nominated to the Supreme Court without opening the process to other DMCJA members? (pp 21-22)
- B. DMCJA Board Meeting Schedule: Should the Board meet in the month of July? (p 23)

3

<p>Information</p> <ul style="list-style-type: none">A. Thank you Judge Charles Short and Judge Rebecca Robertson for your service as DMCJA Board Members.B. Thank you Judge Michael Lambo and Judge Kevin Ringus for your service as BJA Representatives.C. 2016-2017 DMCJA Priorities (pp 25-27)	4
<p>Other Business</p> <ul style="list-style-type: none">A. The New Board Dinner will be held Tuesday, June 7, 2016, 6:00 p.m., at the Hotel Restaurant, <i>Cascade Room</i>.	
<p>Adjourn</p>	



P.O. Box 15284
Wilmington, DE 19850

Customer service information

1.888.BUSINESS (1.888.287.4637)

bankofamerica.com


Bank of America, N.A.
P.O. Box 25118
Tampa, FL 33622-5118

WASHINGTON STATE DISTRICT AND
COURT JUDGES ASSN
7122 W OKANOGAN PL BLDG A
KENNEWICK, WA 99336-2359

Your Bus Platinum Privileges combined statement

for May 01, 2016 to May 31, 2016

Your deposit accounts	Account/plan number	Ending balance	Details on
Business Economy Checking	[REDACTED]	\$104,412.72	Page 3
Business Investment Account	[REDACTED]	\$23,549.12	Page 5
Total balance		\$127,961.84	

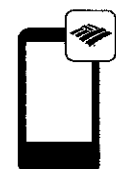


Small Business
Online Banking

Banking at your fingertips

Our **Mobile Banking app**¹ can help you gain more control.

Text **BizAPP** to **226526** to download the app.² By texting us, you agree to receive an automated text message reply. Not a condition of purchasing any products or services.



TIP OF THE MONTH

¹ The Mobile Banking app is available on iPad, iPhone, and Android devices.² For the text message, supported carriers include: Alltel, AT&T, Cellular One, T-Mobile, Virgin Mobile, US Cellular, Verizon Wireless. Message and data rates may apply. Text STOP to 226526 to cancel and text HELP to 226526 for help. ARGMRXW | SSM-02-16-0413.B

IMPORTANT INFORMATION: BANK DEPOSIT ACCOUNTS

Updating your contact information - We encourage you to keep your contact information up-to-date. This includes address, email and phone number. If your information has changed, the easiest way to update it is by visiting the Help & Support tab of Online Banking. Or, you can call our Customer Service team.

Deposit agreement - When you opened your account, you received a deposit agreement and fee schedule and agreed that your account would be governed by the terms of these documents, as we may amend them from time to time. These documents are part of the contract for your deposit account and govern all transactions relating to your account, including all deposits and withdrawals. Copies of both the deposit agreement and fee schedule which contain the current version of the terms and conditions of your account relationship may be obtained at our financial centers.

Electronic transfers: In case of errors or questions about your electronic transfers - If you think your statement or receipt is wrong or you need more information about an electronic transfer (e.g., ATM transactions, direct deposits or withdrawals, point-of-sale transactions) on the statement or receipt, telephone or write us at the address and number listed on the front of this statement as soon as you can. We must hear from you no later than 60 days after we sent you the FIRST statement on which the error or problem appeared.

- Tell us your name and account number.
- Describe the error or transfer you are unsure about, and explain as clearly as you can why you believe there is an error or why you need more information.
- Tell us the dollar amount of the suspected error.

For consumer accounts used primarily for personal, family or household purposes, we will investigate your complaint and will correct any error promptly. If we take more than 10 business days (10 calendar days if you are a Massachusetts customer) (20 business days if you are a new customer, for electronic transfers occurring during the first 30 days after the first deposit is made to your account) to do this, we will credit your account for the amount you think is in error, so that you will have use of the money during the time it will take to complete our investigation.

For other accounts, we investigate, and if we find we have made an error, we credit your account at the conclusion of our investigation.

Reporting other problems - You must examine your statement carefully and promptly. You are in the best position to discover errors and unauthorized transactions on your account. If you fail to notify us in writing of suspected problems or an unauthorized transaction within the time period specified in the deposit agreement (which periods are no more than 60 days after we make the statement available to you and in some cases are 30 days or less), we are not liable to you for, and you agree to not make a claim against us for the problems or unauthorized transactions.

Direct deposits - If you have arranged to have direct deposits made to your account at least once every 60 days from the same person or company, you may call us at the telephone number listed on the front of this statement to find out if the deposit was made as scheduled. You may also review your activity online or visit a financial center for information.

© 2016 Bank of America Corporation


Bank of America, N.A. Member FDIC and  Equal Housing Lender

**Your Business Economy Checking
Bus Platinum Privileges**

WASHINGTON STATE DISTRICT AND COURT JUDGES ASSN

Account summary

Beginning balance on May 1, 2016	\$113,860.98	# of deposits/credits: 2
Deposits and other credits	2,586.00	# of withdrawals/debits: 22
Withdrawals and other debits	-12,034.26	# of deposited items: 8
Checks	-0.00	# of days in cycle: 31
Service fees	-0.00	Average ledger balance: \$109,533.68
Ending balance on May 31, 2016	\$104,412.72	

Your account has overdraft protection provided by deposit account number 

Deposits and other credits

Date	Description	Amount
05/06/16	Counter Credit	524.00
05/31/16	Counter Credit	2,062.00
Total deposits and other credits		\$2,586.00

Withdrawals and other debits

Date	Description	Amount
05/17/16	Bank of America Business Card Bill Payment	-1,510.81
05/17/16	Bank of America Business Card Bill Payment	-296.23

continued on the next page



Do what you love.
Let us help with the rest.

Watch videos about products and services that can make running your business easier, including the Clover® Station* point-of-sale system.

Visit bankofamerica.com/SBvideos.

*Clover Station requires Clover Mobile, Clover Mini, or FD40 equipment to accept EMV® and Apple Pay™ transactions.
©2015 Bank of America Corporation ARKCBSKB | SSM-09-15-0535.B

Withdrawals and other debits - continued

Date	Description	Amount
05/20/16	Administrative Off of the Courts Bill Payment	-2,332.92
05/20/16	Melanie Stewart Bill Payment	-2,000.00
05/20/16	Administrative Off of the Courts Bill Payment	-1,254.99
05/20/16	Applied Technologies Bill Payment	-438.00
05/20/16	Scott Ahlf Bill Payment	-414.00
05/20/16	Doug Fair Bill Payment	-375.40
05/20/16	Kevin Ringus Bill Payment	-369.85
05/20/16	David Svaren Bill Payment	-353.16
05/20/16	Linda Coburn Bill Payment	-352.40
05/20/16	Michelle Gehlsen Bill Payment	-336.20
05/20/16	David Steiner Bill Payment	-315.84
05/20/16	Michael Lambo Bill Payment	-308.12
05/20/16	Janet Garrow Bill Payment	-307.80
05/20/16	Karen Donohue Bill Payment	-301.32
05/20/16	Charles Short Bill Payment	-238.68
05/20/16	G. Scott Marinella Bill Payment	-221.94
05/20/16	Tracy Staab Bill Payment	-140.40
05/20/16	Douglas Robinson Bill Payment	-97.20
05/20/16	Samuel Meyer Bill Payment	-54.00
05/20/16	Joseph Burrowes Bill Payment	-15.00
Total withdrawals and other debits		-\$12,034.26

Daily ledger balances

Date	Balance (\$)	Date	Balance (\$)	Date	Balance (\$)
05/01	113,860.98	05/17	112,577.94	05/31	104,412.72
05/06	114,384.98	05/20	102,350.72		

Your Business Investment Account

Bus Platinum Privileges

WASHINGTON STATE DISTRICT AND COURT JUDGES ASSN-GRAYS HARBOR

Account summary

Beginning balance on May 1, 2016	\$23,548.72	# of deposits/credits: 1
Deposits and other credits	0.40	# of withdrawals/debits: 0
Withdrawals and other debits	-0.00	# of days in cycle: 31
Service fees	-0.00	Average ledger balance: \$23,548.73
Ending balance on May 31, 2016	\$23,549.12	Average collected balance: \$23,548.73


Annual Percentage Yield Earned this statement period: 0.02%.
Interest Paid Year To Date: \$1.96.

Deposits and other credits

Date	Description	Amount
05/31/16	Interest Earned	0.40
Total deposits and other credits		\$0.40

Daily ledger balances

Date	Balance (\$)	Date	Balance(\$)
05/01	23,548.72	05/31	23,549.12

 To help you BALANCE YOUR CHECKING ACCOUNT, visit bankofamerica.com/statementbalance or the Statements and Documents tab in Online Banking for a printable version of the How to Balance Your Account Worksheet.

This page intentionally left blank

DMCJA 2015-2016 Budget

ITEM COMMITTEE	Beginning Balance	Total Costs	Ending Balance
1 Access to Justice Liaison	\$500.00	\$0.00	\$500.00
2 Audit	\$2,000.00	\$0.00	\$2,000.00
3 Bar Association Liaison	\$5,000.00	\$0.00	\$5,000.00
4 Board Meeting Expense	\$30,000.00	\$33,371.90	-\$3,371.90
5 Bookkeeping Expense	\$3,000.00	\$2,275.00	\$725.00
6 Bylaws Committee	\$250.00	\$0.00	\$250.00
7 Conference Committee	\$3,500.00	\$16.69	\$3,483.31
Conference Incidental Fees For Members			
8 Spring Conference 2016	\$40,000.00	\$0.00	\$40,000.00
9 Diversity Committee	\$2,000.00	\$5.95	\$1,994.05
10 DMCJA/SCJA Sentencing Alternatives	\$2,500.00	\$2,724.10	-\$224.10
11 DMCMA Liaison	\$500.00	\$0.00	\$500.00
12 DOL Liaison Committee	\$500.00	\$24.71	\$475.29
13 Education Committee	\$9,000.00	\$6,901.78	\$2,098.22
14 Educational Grants	\$5,000.00	\$4,521.68	\$478.32
15 Education-PJ Conference	\$12,000.00	\$0.00	\$12,000.00
16 Education-Security	\$2,000.00	\$0.00	\$2,000.00
17 Judicial Assistance Committee*	\$14,000.00	\$13,010.71	\$989.29
18 Judicial Community Outreach	\$4,000.00	\$3,100.00	\$900.00
19 Legislative Committee	\$6,000.00	\$2,365.82	\$3,634.18
20 Legislative Pro-Tem	\$2,500.00	\$679.24	\$1,820.76
21 Lobbyist Contract	\$55,000.00	\$22,000.00	\$33,000.00
22 Lobbyist Expenses	\$1,000.00	\$68.00	\$932.00
23 Long-Range Planning Committee	\$1,500.00	\$691.87	\$808.13
24 MCA Liaison	\$1,500.00	\$360.25	\$1,139.75
25 National Leadership Grants	\$5,000.00	\$0.00	\$5,000.00
26 Nominating Committee	\$400.00	\$24.00	\$376.00
27 President Expense	\$7,500.00	\$3,614.25	\$3,885.75
28 Professional Services	\$15,000.00	\$11,088.60	\$3,911.40
29 Reserves Committee	\$250.00	\$0.00	\$250.00
30 Rules Committee	\$500.00	\$53.21	\$446.79
31 Salary and Benefits Committee	\$2,500.00	\$0.00	\$2,500.00
32 SCJA Board Liaison	\$1,000.00	\$76.00	\$924.00
33 Technology/CMS Committee	\$7,500.00	\$0.00	\$7,500.00
34 Therapeutic Courts	\$3,500.00	\$8.76	\$3,491.24
35 Treasurer Expense and Bonds	\$1,000.00	\$20.00	\$980.00
36 Trial Court Advocacy Board	\$5,000.00	\$5,000.00	\$0.00
37 Uniform Infraction Committee	\$1,000.00	\$0.00	\$1,000.00
TOTAL	\$253,400.00	\$112,002.52	\$141,397.48
TOTAL DEPOSITS MADE	\$148,986.88		
CREDIT CARD (balance owing)	\$0.00		

*includes \$7,000 from the SCJA

District and Municipal Court Judges' Association

TO: President Steiner; DMCJA Officers; DMCJA Board of Governors
FROM: Linda W.Y. Coburn, DMCJA Board Member

SUBJECT: Proposed General Rule 35

DATE: June 1, 2016

This association has been asked to comment on proposed General Rule 35.¹ This rule is proposed by the ACLU-W Committee. The DMCA Rules Committee recommends that the Board not endorse this proposed rule because “the Supreme Court of Washington is continuing to closely review this important area in cases which may come under consideration.”² At previous board meetings, members of the Rules Committee also expressed a concern that the recommended objective observer standard would be difficult for a judge to apply.

The rules committee has not put forth an alternative recommendation to address the concerns around discriminatory practices in jury selection. However, not weighing in on this issue is equivalent to condoning a current system that has proven to be inadequate at best and discriminatory at worse.

There will always be developing case law. The fact that cases may come under review by our Supreme Court should not be a basis to sit on our hands. In fact, the Supreme Court has openly acknowledged that *Batson* is not working and are open to opportunities to properly address it. That could not be more evident than the length and depth of the opinions given in *State v. Saintcalle*, 178 Wn.2d 34, 35-36 (2013). I strongly urge each of you to read this case before taking a position on this issue or choosing to not take a position on this issue.

While the Supreme Court in *Saintcalle* affirmed the conviction and held that the State offered race-neutral reasons for exercising a peremptory strike on the lone African-American venire person, it did so acknowledging that the current *Batson* standard needs to change. *Id.* Despite thoughtful, detailed reasoning as to why the current system is not acceptable, the court declined to create a new standard in *Saintcalle* because the issue had not been raised, briefed, or argued, and the parties did not seek to advance a new standard *in that case*. That is a far cry from suggesting that members of the legal community should not propose solutions and wait for the Supreme Court to take action through the appeal process. The court has pronounced the recognition of a very serious problem and the need to change.

¹ As pointed out in the March 30, 2016 letter from Judge Frank Dacca, chair of the DMCJA rules committee, General Rule (GR) 35 already exists and any additional rule would be GR 36, not GR 35.

² March 30, 2016 letter from Judge Dacca.

THE PROBLEM

[W]e . . . examine whether our *Batson* procedures are robust enough to effectively combat race discrimination in the selection of juries. We conclude that they are not. Twenty-six years after *Batson*, a growing body of evidence shows that racial discrimination remains rampant in jury selection. In part, this is because *Batson* recognizes only ‘purposeful discrimination,’ whereas racism is often unintentional, institutional, or unconscious. We conclude that our *Batson* procedures must change and that we must strengthen *Batson* to recognize these more prevalent forms of discrimination.”

Id. Nothing prohibits the court from addressing this issue through its rule-making authority. In fact, asking the court to address this issue through the rule-making process would allow the court to better examine the system as a whole as opposed to focusing on whether the trial court properly ruled on a *Batson* challenge under the very standard that needs to be changed.

“In over 40 cases since *Batson*, Washington appellate courts have *never* reversed a conviction based on a trial court’s erroneous denial of a *Batson* challenge.” *Id.* 45-46. That is not surprising considering the United States Supreme Court’s recent decision in *Foster v. Chatman*, No. 14-8349, 578 U.S. ____ (2016).

In *Foster*, the State used peremptory challenges to strike all four black prospective jurors qualified to serve on the jury. Despite a *Batson* challenge, the trial court and Georgia Supreme Court upheld the decision holding that the State provided race-neutral reasons for striking the black jurors. Thirty years later, through a writ of habeas corpus, the Supreme Court reversed the conviction after considering documents from the prosecution’s case file from trial, which was obtained through the Georgia’s Opens Records Act. The file included:

- 1) copies of the jury venire list on which names of each black prospective juror were highlighted in bright green, with a legend indicating that the highlighting “represents Blacks”;
- 2) a draft affidavit from an investigator comparing black prospective jurors and concluding, “If it comes down to having to pick one of the black jurors, [this one] might be okay”;
- 3) notes identifying black prospective jurors as “B#1,” “B#2,” and “B#3”;
- 4) notes with “N” (for “no”) appearing next to the names of all black prospective jurors;
- 5) a list titled “[D]efinite NO’s” containing six names, including the names of all the qualified black prospective jurors;
- 6) a document with notes on the Church of Christ that was annotated “NO. No Black Church”; and

7) the questionnaires filled out by five prospective black jurors, on which each juror's response indicating his or her race had been circled.

The Court held that the "prosecutors were motivated in substantial part by race when they struck two of the black jurors from the jury 30 years ago. Two peremptory strikes on the basis of race are two more than the Constitution allows."

It took 30 years and a highly unusual circumstance of disclosed documentation to show that the prosecution focused on jurors' race. But for the discovery of the notes in the prosecutors' file, the strikes against those black jurors in *Foster* would simply have been added to a long list of denied *Batson* challenges because prosecutors were able to articulate a race-neutral basis for why they struck jurors from the panel.

However, since *Batson*, there has been a plethora of research, case studies and analysis that suggest that the nature of implicit bias is such that attorneys cannot recognize it in themselves. One particularly insightful study is an experiment where the only difference between prospective jurors was their race. See Saintcalle, 178 Wn.2d at 90 (Gonzalez, J., concurring) (citing Samuel R. Sommers & Michael I. Norton, *Race-Based Judgments, Race-Neutral Justifications: Experimental Examination of Peremptory Use and the Batson Challenge Procedure*, 31 Law & Hum. Behav. 261, 266-67 (2007).

In one condition, the first prospective juror was depicted as white and the second prospective juror as black; in a second condition, the races were reversed but the underlying information remained the same. When the first profile was black, attorneys chose to challenge that prospective juror 79 percent of the time; when that same profile was white, attorneys challenged that prospective juror only 43 percent of the time. Likewise, when the second profile was depicted as black, attorneys challenged that prospective juror 57 percent of the time; when that same profile was white, attorneys challenged that prospective juror only 21 percent of the time. Thus the attorneys, acting as prosecutors, were significantly more likely to challenge a juror profile when it was depicted as a black prospective juror as opposed to a white prospective juror, all else being equal.

Id.

When participants³ were asked to explain his or her choice of whom to strike,

[a] full 96 percent of participants cited relevant underlying substantive information from either profile as 'their most important justification,' and only 8 percent of the attorneys (and an even smaller proportion of college students and law students) cited race as being influential at all. . . . The experimenters rightly concluded that their study 'provides clear empirical evidence that a prospective juror's race can influence peremptory challenge use and that self-report justifications are unlikely to be useful for identifying this influence.'

³ Similar effect was found among college students and law students.

Id. Thus, a standard that only addresses “purposeful” discrimination will not work when attorneys themselves are unaware that their choices may be influenced by race. Relying on the trial judge to determine whether the race-neutral justification for striking a juror is pre textual does not help.

[S]ocial science research tells us that trial judges generally are unable to accurately and reliably determine credibility based on demeanor alone, regardless of their confidence in doing so. *See, e.g.,* Paul Ekman & Maureen O'Sullivan, *Who Can Catch a Liar?*, 46 *Am. Psychologist* 913, 913–17 (Sept. 1991) (experimenters presented video clips of individual persons describing feelings about a movie each was allegedly watching; trial judges performed only slightly better than chance in determining who was lying about watching the movie, and confidence was not correlated to performance); *see also, e.g.,* Saul M. Kassir, *Human Judges of Truth, Deception, and Credibility: Confident But Erroneous*, 23 *Cardozo L. Rev.* 809 (2002).

Saintcalle, 178 Wn.2d at 94 (Gonzalez, J., concurring).

PROPOSED SOLUTIONS

1) Proposed GR 35.

This proposed rule attempts to give tools to trial judges so that they are better equipped at analyzing *Batson* challenges. The comments to the rule provide examples of what should not be acceptable race-neutral reasons to justify a peremptory strike. Having the experiences listed in comment four of the proposed rule, alone, should not be a basis to withstand a *Batson* challenge. The comments also advise that if parties intend to strike a juror based on their inattentiveness then the party must timely raise the issue with the opposing party and the court so that the behavior can be verified and addressed. These comments simply articulate what trial judges should already be demanding from parties in order to properly consider *Batson* challenges.

The biggest change from the current framework is the removal of the requirement that the court find purposeful discrimination. The proposed rule introduces the use of an “objective observer standard.” Comment to the rule defines “objective observer” as “one who is aware that purposeful discrimination and unintentional, institutional, or unconscious bias have resulted in the unfair exclusion of potential jurors based on race in Washington.” Using this standard in evaluating the reason given for the peremptory challenge, the court determines whether an objective observer could view race or ethnicity as a factor for the peremptory challenge. If the then answer is in the affirmative, the challenge shall be denied.

While some have questioned the ability of the trial court to apply such a standard, it is important to note that the “objective observer” standard is not a foreign concept. It is used to determine whether government violates the Establishment Clause. *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 308, 120 S.Ct. 2266, 147 L.Ed.2d 295 (2000). The objective observer under that

analysis is presumed to be aware of the “ ‘text, legislative history, and implementation’ ” of the state action. *Id.*

Thus, while it may be challenging to apply, it is not a foreign concept that is new to courts. It certainly would be easier to apply than the current framework which places attorneys and trial judges in an uncomfortable position of having to declare someone as acting purposefully to discriminate. Furthermore, this standard would instill confidence in the fairness of our system of justice.

2) Abolish Peremptory Challenges

Those who oppose or are hesitant to abolish peremptory challenges routinely argue that this has been a historical practice that has helped ensure the fairness of trials. However, aside from the fact that it has been a historical practice, there is no guarantee in the United States Constitution or the Washington State Constitution of a right to strike jurors, who are otherwise qualified, without cause. What is guaranteed is the right to a fair and impartial jury. U.S. Const. amend. VI; Const. art. I, § 21 and § 22 (amend.10).

It is true that court rules and statute have established parameters of the exercise of peremptory challenges. However, court rules and statutes that allow for a violation of a right to a fair and impartial jury are unconstitutional.

Justice Gonzalez goes to great length to explain the historical beginnings of the peremptory challenge. *See Saintcalle*, 178 Wn.2d at 75-76 (Gonzalez, J., concurring). It is important to understand that this tradition of peremptory challenges was carried over from England and adopted in the Washington Territory without substantial debate. More importantly, this long-standing tradition was created during a time when Blacks and women were not allowed to serve on a jury. Certainly, the research and data developed over the past 30 years provides crucial insight as to the harm that has come from the peremptory challenges now that Blacks and women are allowed to serve on the jury.

Further, there is nothing to substantiate that peremptory challenges actually create a more fair and unbiased jury. One study created “shadow” juries made up of jurors who were excused via peremptory challenges. These shadow juries actually observed the trial they were excused from. The researchers found that “[i]n the aggregate, prosecutors ‘made about as many good challenges as bad ones,’ defense counsel fared only ‘slightly better,’ and the results brought into question ‘the role of peremptory challenges in furthering the constitutionally prescribed goal of trial by an impartial jury.’ ” *Saintcalle*, 178 Wn.2d at 103 (Gonzalez, J., concurring) (quoting Hans Zeisel & Shari Seidman Diamond, *The Effect of Peremptory Challenges on Jury and Verdict: An Experiment in a Federal District Court*, 30 Stan. L.Rev. 491, 498–500 (1978)).

The reality is attorneys find it difficult to give up the one area of the trial where they have control – peremptory challenges. Any attorney who has had any success at trial, most likely attributes part of that success to the attorney’s ability to remove jurors who they deemed as unfavorable.

[M]ost lawyers rely on intuition, lore, and anecdotal experience in exercising peremptory challenges. But in practice attorneys rarely if ever can actually confirm the effectiveness of their decisions concerning peremptory challenges. Thus, anecdotal experience and lore in this context are based on nothing more than intuition, which is entirely arbitrary, erratic, and unreliable without any sort of regular experiential validation. Over time, well-established psychological tendencies—such as confirmation bias (the tendency to look for confirmation but not falsification of our hypotheses) and selective information processing (the tendency to readily accept confirming evidence but devalue contradictory evidence)—likely entrench attorneys’ preexisting biases, including closely held racial stereotypes and generalizations, and give attorneys false confidence in the effectiveness of their decisions concerning peremptory challenges..

Saintcalle, 178 Wn.2d at 104 (Gonzalez, J., concurring) (internal citations omitted).

There are skilled attorneys who do an amazing job of excusing jurors for cause. Many, however, do a poor job of voir dire. The existence of peremptory challenges, unfortunately, has created attorneys who, instead of further developing their voir dire abilities to explore and establish for-cause challenges, have relied on using peremptory challenges as an easy, non-controversial way to excuse jurors who they “believe” would be unfavorable. At the same time, some courts adhere to a preset time frame for voir dire even when information is disclosed that should be explored further to determine if a for-cause challenge is appropriate.

In other words, if adjustments need to be made to assure that parties are given the appropriate amount of time to explore for-cause challenges, so be it. Time constraints should not be a reason to continue to use a framework that has proven to do exactly opposite of what was intended. Instead of creating a more diverse jury, *Batson*’s parameters have simply created a sophisticated way to strike jurors of color for facially race-neutral reasons.

As Justice Breyer observed, “the use of race-and gender-based stereotypes in the jury-selection process seems better organized and more systematized than ever before.” *Miller-El v. Dretke*, 545 U.S. 231, 270, 125 S.Ct. 2317, 162 L.Ed.2d 196 (2005) (Breyer, J., concurring). The recent holding in *Foster* likely will simply be a lesson on what to avoid when documenting thoughts about jury selection so as not to create the appearance of racial focus.

When *Batson* was decided, Justice Marshall opined that “[t]he decision today will not end the racial discrimination that peremptories inject into the jury-selection process. That goal can be accomplished only by eliminating peremptory challenges entirely.” *Batson v. Kentucky*, 476 U.S. 79, 102-03, 106 S.Ct. 1712, 1726 (1986)(Marshall, J., concurring).

WHAT NOW?

Given the undisputed problems with the current *Batson* framework, I move that the DMCJA take the position that asks our Supreme Court to consider proposed GR 35 and solicit public comment on it as well as an alternative proposal to abolish the use of peremptory challenges. Just because some would consider this change to be radical and unprecedented, that should not be the determining factor of whether it is the right thing to do.

As Justice Gonzalez noted, “[i]t should be remembered that in 1911, Washington became only the second state in the nation to allow women to serve on juries. See Joanna L. Grossman, *Women's Jury Service: Right of Citizenship or Privilege of Difference?*, 46 Stan. L. Rev. 1115, 1135 n.118 (1994) (citing Laws of 1911, ch. 57, § 1). Prior to that time, the Supreme Court of the Washington Territory proved unwilling to break free from the long standing and entrenched legal tradition of all-male juries.” *Saintcalle*, 178 Wn.2d at 75 (Gonzalez, J. concurring).

Just as we look back and scratch our heads in disbelief that this State once prohibited women from serving on juries, one day we may be looking back and scratch our heads in disbelief that we allowed attorneys to excuse qualified jurors with no explanation. Understanding human nature and how biases can play a role in “gut instincts,” why would we allow parties to have a free pass to remove anyone they wish who otherwise is a qualified juror?