

Amy I. Muth
PresidentTeresa Mathis
Executive Director

April 27, 2017

The Honorable Susan L. Carlson,
Clerk of the Washington State Supreme Court
Washington State Supreme Court Temple of Justice
P.O. Box 40939
Olympia, WA 98504
supreme@courts.wa.gov

RE: *Proposed New General Rule 36 – Jury Selection*

Dear Justices of the Supreme Court:

The Washington State Association of Criminal Defense Attorneys (WACDL) supports Proposed General Rule 36.

WACDL was formed thirty years ago with the stated purpose “to protect and insure by rule of law those individual rights guaranteed by the Washington and Federal Constitutions, and to resist all efforts made to curtail such rights.” Purposeful racial discrimination in selection of the venire violates a defendant’s right to equal protection because it denies an accused the protection that a trial by jury is intended to secure. *Batson v. Kentucky*, 476 U.S. 79, 86, 106 S. Ct. 1712, 1717, 90 L. Ed. 2d 69 (1986). Unfortunately, after thirty years the standard set forth by the Court in *Batson* does not work, and this court knows that. See, *State v. Saintcalle*, 178 Wn.2d 34, 36, 43, 309 P.3d 326 (2013)

There are many reasons why the *Batson* rule is broken:

- The requirement that a party challenging a preemptory challenge must prove purposeful discrimination;
- The role of implicit bias in human behavior; and
- Social and economic factors that suppress minority representation in the jury selection process as a whole.

Proposed General Rule 36 helps to address the problems caused by the requirement of proving purposeful discrimination. Currently, every *Batson* objection draws a response along the lines of “are you calling me a racist?” By adopting a test with an “objective observer” standard drawn from the appearance of fairness doctrine, the requirement that the trial court find fault or labeling a party “racist” is removed.

We are urging the Washington State Supreme Court to adopt Proposed General Rule 36 as written.

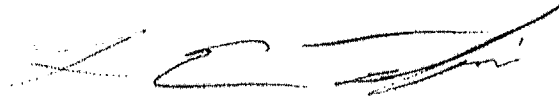
We do not take a position on whether or not the rule should include gender as a category within its scope. THE ACLU is correct when they note such a change would be consistent with U.S. Supreme Court's rulings that both race and gender discrimination are forbidden under *Batson*. However, the social and economic factors that act to suppress minority participation in the jury venire as a whole do not have the same impact on gender issues.

What is most important is for the Washington Supreme Court to adopt stronger protections than those provided by the *Batson* test.

Sincerely,

A handwritten signature in black ink, appearing to be 'Amy I. Muth', written in a cursive style.

Amy I. Muth
President

A handwritten signature in black ink, appearing to be 'Leslie E. Tolzin', written in a cursive style.

Leslie E. Tolzin
Chair, WACDL Jury Diversity Task Force

Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Thursday, April 27, 2017 4:56 PM
To: Tracy, Mary
Subject: FW: WACDL - proposed general rule 36 - comments 2017 april 26 final
Attachments: WACDL - proposed general rule 36 - comments 2017 april 26 final.docx

Forwarding.

From: Teresa Mathis [mailto:teresa.mathis@wacdl.org]
Sent: Thursday, April 27, 2017 4:41 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: Itolzin@co.pierce.wa.us; amy@amymuthlaw.com
Subject: WACDL - proposed general rule 36 - comments 2017 april 26 final

Attached are WACDL's comments on the proposed General Rule 36, regarding jury selection.

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