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April 17, 2017

Honorable Charles W. Johnson
Supreme Court Rules Committee
c/o Clerk of the Supreme Court
Temple of Justice
PO Box 40929
Olympia, WA 98504-0929

RE: Proposed General Rule (GR) 36

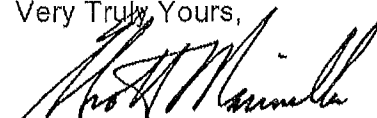
Dear Justice Johnson and Members of the Rules Committee:

The District and Municipal Court Judges' Association Rules Committee and Board have reviewed the ACLU's proposed GR 36. *Batson v. Kentucky*, 106 U.S. 1712 (1986), is a case that continues to evolve. It is not an appropriate basis, however, to create a court rule. While *Batson* may not have achieved its goal of eliminating race based peremptory challenges, the proposed rule creates standards that would be difficult, if not impossible, to implement.

The use of an "objective observer standard" is problematic. If, under that standard, a court could view race or ethnicity as a factor for the challenge, the court shall deny the challenge. Does the rule create a prima facie standard? Further, the comments dictate that certain reasons offered for the challenge may not be considered by the trial court, usurping trial court judges' discretion when ruling on such an objection. The fact that these reasons have been used successfully in the past does not necessarily make them invalid when offered in a particular objection in a specific case. It is up to the trial court judge to make that determination.

The District and Municipal Judges Association urges you to reject the proposed rule for the above reasons. We recommend that members of the legal community confer on this issue and see if consensus can be obtained to address this issue by something other than court rule. Any rule that removes the discretion of the trial court judge in addressing an objection at trial must be viewed with extreme caution.

Very Truly Yours,



Judge G. Scott Marinella
DMCJA President

cc: DMCJA Rules Committee
Ms. J Benway, AOC Staff
Ms. Sharon Harvey, AOC Staff

Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Wednesday, April 19, 2017 3:52 PM
To: Tracy, Mary
Subject: FW: DMCJA Comment re Proposed GR 36, Jury Selection
Attachments: DMCJA Board Comment re Proposed GR 36.pdf

Forwarding.

From: Harvey, Sharon
Sent: Wednesday, April 19, 2017 3:48 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: Benway, Jennifer <Jennifer.Benway@courts.wa.gov>; Peterson, Susan <Susan.Peterson@courts.wa.gov>; Hinchcliffe, Shannon <Shannon.Hinchcliffe@courts.wa.gov>
Subject: DMCJA Comment re Proposed GR 36, Jury Selection

Dear Clerk:

Attached please find the following:

District and Municipal Court Judges' Association Comment regarding Proposed GR 36, Jury Selection

Please let me know if you have any questions or concerns. Thank you and have a wonderful day.

Sincerely,

Sharon R. Harvey
Court Association Coordinator
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