

**SUPREME COURT OF NEW JERSEY**

It is ORDERED that the attached amendments to Rules 1:8-3 (“Examination of Jurors; Challenges”), 1:8-5 (“Availability of Petit Jury List”), and 1:38-5 (“Administrative Records Excluded from Public Access”) of the Rules Governing the Courts of the State of New Jersey are adopted to be effective September 1, 2022; and

It is FURTHER ORDERED that attached new Rule 1:8-3A (“Reduction of Bias in the Exercise of Peremptory Challenges”) is adopted to be effective January 1, 2023.

For the Court,



Chief Justice

Dated: July 12, 2022

Rule 1:8-3. Examination of Jurors; Challenges

(a) Examination of Jurors. ...no change

(b) Challenges in the Array; Challenges for Cause. Any party may challenge the array in writing on the ground that the jurors were not selected, drawn or summoned according to law. A challenge to the array shall be decided before any individual juror is examined. A challenge to any individual juror which by law is ground of challenge for cause must be made before the juror is sworn to try the case, but the court for good cause may permit it to be made after the juror is sworn but before any evidence is presented. All such challenges shall be tried by the court on the record and outside the hearing of the other jurors. The court shall require the party challenging the juror to state the basis for the challenge and shall permit the other party or parties to state their position. If the court finds there is a reasonable basis to doubt that the juror would be fair and impartial, the court shall grant the for-cause challenge and state the reason for its determination.

(c) Peremptory Challenges in Civil Actions. ...no change

(d) Peremptory Challenges in Criminal Actions. ...no change

(e) Order of Exercising of Peremptory Challenges. ...no change

(f) Conference Before Examination. ...no change

(g) Jury Selection Must be Conducted in Open Court. ...no change

Note: Source — R.R. 3:7-2(b)(c), 4:48-1, 4:48-3. Paragraphs (c) and (d) amended July 7, 1971 to be effective September 13, 1971; paragraph (d) amended July 21, 1980 to be effective September 8, 1980; paragraph (a) amended September 28, 1982 to be effective immediately; paragraph (d) amended July 22, 1983 to be effective September 12, 1983; paragraph (d) amended July 26, 1984 to be effective September 10, 1984; paragraph (d) amended November 5, 1986 to be effective January 1, 1987; paragraph (c) amended November 7, 1988 to be effective January 2, 1989; paragraph (e) added July 14, 1992 to be effective September 1, 1992; paragraph (b) amended July 13, 1994 to be effective September 1, 1994; paragraph (f) added July 5, 2000 to be effective September 5, 2000; paragraph (f) amended July 27, 2006 to be effective September 1, 2006; paragraph (g) added July 9, 2013 to be effective September 1, 2013; paragraphs (a) and (d) amended July 27, 2018 to be effective September 1, 2018; paragraph (b) amended July 12, 2022 to be effective September 1, 2022.

### Rule 1:8-5. Availability of Petit Jury List

The list of the general panel of petit jurors, including jurors who have been disqualified, excused, or deferred, as well as jurors who are scheduled to report for selection, shall be made available by the clerk of the court to any party requesting the same at least 10 days prior to the date fixed for trial. Such lists shall not be provided to anyone who is not a party to the case. Any provision of juror lists shall be subject to a prohibition against unauthorized use or dissemination.

Note: Source — R.R. 3:7-2(a). Amended July 16, 1979 to be effective September 10, 1979; amended September 28, 1982 to be effective immediately; amended July 27, 2018 to be effective September 1, 2018; amended July 12, 2022 to be effective September 1, 2022.

Rule 1:38-5. Administrative Records Excluded from Public Access

The following administrative records are excluded from public access:

(a) ...no change

(b) ...no change

(c) ...no change

(d) ...no change

(e) ...no change

(f) ...no change

(g) Records used to compile juror [Juror] source lists, and the list prepared pursuant to N.J.S.A. 2B:20-2[,]; jury qualification questionnaires completed pursuant to N.J.S.A. 2B:20-3, any other questionnaires completed by prospective jurors, and individual juror information maintained by the Judiciary[,]; and [preliminary] lists prepared pursuant to N.J.S.A. 2B:20-4 of persons [to be] summoned for possible service as grand or petit jurors, which shall remain confidential, except as provided in Rule 1:8-5, unless otherwise ordered by the Administrative Director of the Courts [Assignment Judge];

(h) ...no change

(i) ...no change

(j) ...no change

(k) ...no change

(l) ...no change

(m) ...no change

(n) ...no change

(o) ...no change

(p) ...no change

(q) ...no change

(r) ...no change

(s) ...no change

Note: New Rule 1:38-5 adopted July 16, 2009 to be effective September 1, 2009; paragraph (g) amended January 5, 2010 to be effective immediately; paragraph (p) amended and new paragraph (q) added October 18, 2011 to be effective immediately; new paragraph (r) adopted November 12, 2014 to be effective immediately; paragraph (h) amended December 9, 2014 to be effective immediately; paragraph (b) amended May 30, 2017 to be effective immediately; new paragraph (s) adopted April 23, 2019 to be effective May 1, 2019; paragraph (g) amended July 12, 2022 to be effective September 1, 2022.

Rule 1:8-3A. Reduction of Bias in the Exercise of Peremptory Challenges

(a) A party may exercise a peremptory challenge for any reason, except that a party shall not use a peremptory challenge to remove a prospective juror based on actual or perceived membership in a group protected under the United States or New Jersey Constitutions or the New Jersey Law Against Discrimination. This Rule applies in all civil and criminal trials.

(b) Upon the exercise of a peremptory challenge, the court or any party who believes that the challenge may violate paragraph (a) above may call for review of the challenge pursuant to this Rule.

(c) Any such review shall take place outside the hearing of the jurors.

(d) In the review of a contested peremptory challenge,

(1) The party exercising the peremptory challenge shall give the reasons for doing so; and

(2) The court shall determine, under the totality of the circumstances, whether a reasonable, fully informed person would find that the challenge violates paragraph (a) of this Rule.

(e) A peremptory challenge violates paragraph (a) of this Rule if a reasonable, fully informed person would believe that a party removed a prospective juror based on the juror's actual or perceived membership in a group protected under that paragraph.

(f) If the court finds that a reasonable, fully informed person would view the contested peremptory challenge to violate paragraph (a) of this Rule, the court shall impose an appropriate remedy. No finding of purposeful discrimination or bias is required.

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#### Official Comment

(1) Paragraph (a) prohibits the exercise of a peremptory challenge to remove a prospective juror based the juror's actual or perceived membership in groups protected by the United States or New Jersey Constitutions and the New Jersey Law Against Discrimination. Currently, the statute protects against discrimination on the basis of race or color; religion or creed; national origin, nationality, or ancestry; sex, pregnancy, or breastfeeding; sexual orientation; gender

identity or expression; disability; marital status or domestic partnership/civil union status; and liability for military service. The Rule is intended to cover any future amendments to the statute.

(2) Consistent with RPC 3.1, any call for a review of a peremptory challenge should be advanced in good faith.

(3) In considering the reasons given for a peremptory challenge pursuant to paragraph (d)(1), the court shall bear in mind that the following reasons have historically been associated with improper discrimination, explicit bias, and implicit bias in jury selection and are therefore presumptively invalid: “(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 high-crime neighborhood; (v) having a child outside of marriage; (vi) receiving state benefits; (vii) not being a native English speaker”; (viii) having friends or family members who were victims of crime; and (ix) understating the degree to which the juror or the juror’s family or friends have been victims of crime, based on a belief that only serious violent crime results in victimization. See Wash. Gen. R. 37(h).

A party exercising a challenge on one of those bases may overcome the presumption of invalidity by demonstrating to the court’s satisfaction that the challenge was not exercised in violation of paragraph (a), but rather based on a legitimate concern about “the

prospective juror’s ability to be fair and impartial in light of particular facts and circumstances at issue in the case.” See Conn. Proposed New Rule (h).

The court shall also consider that certain conduct-based reasons for peremptory challenges have also historically been associated with improper discrimination, explicit bias, and implicit bias in jury selection. “Such reasons include allegations that a prospective juror: was sleeping, inattentive, staring, or failing to make eye contact; exhibited a problematic attitude, body language, or demeanor; or provided unintelligent or confused answers.” Wash. Gen. R. 37(i).

(4) In making its determination as to a contested peremptory challenge pursuant to paragraph (d)(2), the court should consider circumstances that include, but are not limited to: (i) “the number and types of questions posed to the prospective juror,” including whether and how “the party exercising the peremptory challenge[] questioned the prospective juror about the alleged concern; (ii) whether the party exercising the peremptory challenge asked significantly more questions or different questions of the” challenged juror in comparison to other jurors; (iii) whether other prospective jurors gave similar answers but were not challenged by that party; (iv) whether a reason might be disproportionately associated with a protected group identified in paragraph (a); and (v) “whether the party has used peremptory challenges disproportionately against” members of a protected group as defined in paragraph (a). See Wash. Gen. R. 37(g).

(5) Paragraph (f) calls upon the court to impose an appropriate remedy for a violation of paragraph (a). The following remedies may be applied in response to a court determination that a party has impermissibly exercised a peremptory challenge: (i) reseal impermissibly challenged juror(s); (ii) reseal impermissibly challenged juror(s) and order forfeiture of challenges; (iii) require subsequent peremptory challenges to be exercised at sidebar; (iv) grant additional peremptory challenges to non-offending party or parties; (v) dismiss empaneled jurors and start voir dire over; and (vi) combine multiple remedies. State v. Andrews, 216 N.J. 271 (2013).

Note: Adopted July 12, 2022 to be effective January 1, 2023.