IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF [COUNTY]

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| STATE OF WASHINGTON,  Plaintiff,  v.  [Client],  Defendant. | No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Defendant’s Motions in Limine  Related to Jury Selection |

The defendant, [Client] by and through counsel of record, [attorney], makes the following motions *in limine* for trial in the above-captioned matter:

1. Both parties should be ordered to exercise peremptory challenges consistent with the constraints of General Rule 37, as well as *Batson v. Kennedy*, 476 U.S. 79 (1986) and *State v. Jefferson*, 192 Wash. 2d 225, 251, 429 P.3d 467, 481 (2018).
2. In determining whether a party has exercised a peremptory challenge in violation of GR37, this Court should find the following reasons for the strike to be presumptively invalid:
   1. Having prior contact with law enforcement officers;
   2. Expressing a distrust of law enforcement or a belief that law enforcement officers engage in racial profiling;
   3. Having a close relationship with people who have been stopped, arrested, or convicted of a crime;
   4. Living in a high-crime neighborhood;
   5. Having a child outside of marriage;
   6. Receiving state benefits; and
   7. Not being a native English speaker

GR 37(h)

1. Any party wishing to exercise a peremptory challenge on the grounds that a potential juror was sleeping, inattentive, staring or failing to make eye contact, exhibiting a problematic attitude, body language, or demeanor, or provided unintelligent or confused answers, must provide reasonable notice to the court and the opposing party in a timely manner at the time of the observed behavior, in order to allow corroboration of the behavior for the record, and failing to do so should be considered a waiver of the right to exercise a peremptory challenge for that stated reason. GR37(i)
2. For the sake of making a clear record regarding any potential GR37 objections, this Court should include in its jury questionnaire an inquiry into each individual jury panel member’s ethnicity and race. As the Washington Court of Appeals has recognized, any attempt by the parties or court to make a visual determination of the perceived race or ethnicity of potential jurors runs the risk of misidentification and creates an appellate record that is difficult to assess.[[1]](#footnote-1) Defense proposes the following language:
3. Are you of Hispanic, Latino, or of Spanish origin? (Yes / No)
4. How would you describe yourself?
   1. American Indian or Alaska Native
   2. Asian
   3. Black or African American
   4. Native Hawaiian or Other Pacific Islander
   5. White
   6. More than one race or ethnicity (please specify)
5. If either party attempts to exercise a peremptory strike and a GR 37 objection is raised and sustained, the striking party should be penalized by losing a peremptory challenge. GR 37 does not contemplate a striking party keeping the peremptory challenge. See GR 37. Conversely, it appears that the Washington Supreme Court, in promulgating GR 37, specifically rejected proposed language that would have allowed the striking party to retain the peremptory. See “Proposed New GR 37—Jury Selection Workgroup FINAL REPORT” [[2]](#footnote-2) at P. 13. This section, if adopted, would have specifically allowed a challenged party to retain the peremptory challenge after a loss, but the Supreme Court excluded the proposed subsection when it adopted the rule. This Court should find that the omission of the proposed GR 37(j) was intentional, which can only mean one thing: the party exercising a proscribed strike should lose that strike. To do otherwise would render meaningless the intent behind GR 37 and allow for racially biased strikes to continue.

DATED this \_\_\_ day of \_\_\_\_\_\_\_\_\_, 2022.

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[Attorney], WSBA#

Attorney for Defendant

1. *State v. Listoe*, 15 Wash. App. 308, 332, 475 P.3d 534, 546 (2020) (Melnick, J. concurring) (“I underscore that viewing and determining the racial and ethnic composition of the jury is a problem in and of itself,” and “[t]he test for whether a person is of a particular race or ethnicity seems to be based on the visual observations of the court and the parties. It is not based on self-identification. I find the application of GR 37 in this matter to be challenging. I find it hard to imagine that any judge or lawyer would be able to determine every potential juror's race solely through visual observation. A de novo review of the record on appellate review poses many problems. Although we are supposed to put ourselves in the position of the trial court, we are unable to view the jury panel. We are unable to determine the racial and ethnic makeup of the potential jurors de novo. Therefore, we do not stand in the same place as the trial court.”) [↑](#footnote-ref-1)
2. <https://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20Orders/OrderNo25700-A-1221Workgroup.pdf> [↑](#footnote-ref-2)