

CCP 231.7 Action Guide

Step One: OBJECTION

Can be made by the opponent of the peremptory challenge OR the Judge.

Step Two: DUTY OF THE PROPONENT

Proponent of the Strike must respond with the reason(s) for exercising the peremptory Challenge.

Step 3: DUTY OF THE JUDGE

- a. Evaluate the reasons given to justify the peremptory in light of the totality of the circumstances.
- b. May consider only the reasons actually given. Court cannot add reasons or speculate.
- c. Determine whether there is a substantial likelihood that an objectively reasonable person would view race, ethnicity, gender, gender identity, sexual orientation, national origin, or religious affiliation, or perceived membership in any of those groups, **as a factor**.
- d. Need not find purposeful discrimination;
- e. The Court must be aware:
 - a. an objectively reasonable person is aware that unconscious bias, in addition to purposeful discrimination, have resulted in the unfair exclusion of jurors in the State of California.
 - b. a “substantial likelihood” means more than a mere possibility but less than a standard of more likely than not.
 - c. “unconscious bias” includes implicit and institutional biases.
- f. Factors to consider include:
 - A) Whether any of the following circumstances exist:
 - a. Objecting party is of the same perceived cognizable group as the challenged juror.
 - b. The alleged victim is not a member of that perceived cognizable group.
 - c. Witnesses or the parties are not members of that perceived cognizable group.
 - (B) Whether race, ethnicity, gender, gender identity, sexual orientation, national origin, or religious affiliation, or perceived membership in any of those groups, bear on the facts of the case to be tried.
 - (C) The number and types of questions posed to the prospective juror, including, but not limited to, any the following:
 - (i) Consideration of whether the party exercising the peremptory challenge failed to question the prospective juror about the concerns later stated by the party as the reason for the peremptory challenge pursuant to subdivision (c).
 - (ii) Whether the party exercising the peremptory challenge engaged in cursory questioning of the challenged potential juror.
 - (iii) Whether the party exercising the peremptory challenge asked different questions of the potential juror against whom the peremptory challenge was used in contrast to questions asked of other jurors from different perceived cognizable groups about the same topic or whether the party phrased those questions differently.



(D) Whether other prospective jurors, who are not members of the same cognizable group as the challenged prospective juror, provided similar, but not necessarily identical, answers but were not the subject of a peremptory challenge by that party.

(E) Whether a reason might be disproportionately associated with a race, ethnicity, gender, gender identity, sexual orientation, national origin, or religious affiliation, or perceived membership in any of those groups.

(F) Whether the reason given by the party exercising the peremptory challenge was contrary to or unsupported by the record.

(G) Whether the counsel or counsel's office exercising the challenge has used peremptory challenges disproportionately against a given race, ethnicity, gender, gender identity, sexual orientation, national origin, or religious affiliation, or perceived membership in any of those groups, in the present case or in past cases, including whether the counsel or counsel's office who made the challenge has a history of prior violations under Batson/Wheeler, 231.5 or 231.7.

h. Is there a **cognizable group**?

i. **PRESUMPTIVELY INVALID REASONS**

(A) The prospective juror was inattentive, or staring or failing to make eye contact.

(B) The prospective juror exhibited either a lack of rapport or problematic attitude, body language, or demeanor.

(C) The prospective juror provided unintelligent or confused answers.

(D) Lack of Life Experience? (Uriostegui)

j. **OVERRULING AN OBJECTION – STATE REASONS ON THE RECORD**

a. The trial court “shall” also find that presumptively invalid reasons “bear on [the] juror’s ability to be fair and impartial in the case.” (§ 231.7, subd. (f).)

b. A trial court may overrule an objection based on presumptively invalid reasons only if it explicitly makes specific findings. (P vs Uriostegui)

c. The Court should state: “I find by clear and convincing evidence an objectively reasonable person would view the reasons articulated for the peremptory challenge as unrelated to 231.7 and bear on the prospective juror’s ability to be fair and impartial in this case.” (Subd. (e))

K. **SUSTAINING AN OBJECTION - STATE REASONS ON THE RECORD**

THE TRIAL COURT SHALL DO ONE OR MORE OF THE FOLLOWING:

- Quash the venire and start anew. (This shall be granted if requested by objecting party.)
- If jury is seated, declare a mistrial and select a new jury if requested by defendant.
- Seat the challenged juror.
- Give additional peremptory to challenging party.
- Provide another remedy the Court deems appropriate.

Recognized Cognizable Groups

- Race
- Ethnicity
- Ethnic Group
- Ethnic Origin
- Blacks and African Americans
 - African-American Women
 - African-American Men
- Latinos, Hispanics
 - Spanish or Hispanic Surnames
 - Hispanic women or Hispanic-surnamed women
- Native Americans
- Filipino-Americans
- Vietnamese-Americans
- Chinese-Americans
- Gender (Men or Women)
- Sexual Orientation:
 - Lesbians and gay men
 - White males
- Religious groups or affiliation
 - Jewish jurors
 - Catholic jurors



Non-Cognizable Groups

- Resident Aliens
- Non-English speakers
- Low income
- Less educated people or blue-collar workers
- Minority jurors or generic racial groups
 - People of color
 - Non-whites
 - Asian Americans
- Age
 - Youth; young adults
- Disabled or hearing impaired
- Group associations
- Obese persons
- Victims of crime, including battered women
- Ex-felons or persons previously arrested
- Believers in law and order
- Persons automatically opposed to or having reservations about the death penalty