

# OFFICE OF THE DISTRICT ATTORNEY COUNTY OF VENTURA

## LEGAL POLICIES MANUAL

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*GREGORY D. TOTTON*

*District Attorney*

*Revised December 14, 2018*

## **D. EXERCISE OF PEREMPTORY JUROR CHALLENGES**

Deputy district attorneys shall not exercise a peremptory challenge against a juror based upon race, ethnicity, gender, or membership in another constitutionally protected cognizable group. (*People v. Wheeler* (1978) 22 Cal.3d 258; *Batson v. Kentucky* (1986) 476 U.S. 79; Code Civ. Proc. 231.5.) When a *Wheeler/Batson* motion is made, before the court makes a determination as to whether a prima facie case has been made of group bias, the deputy district attorney should state the reasons why the jurors were excluded on the record. (*Williams v. Runnels* (9th Cir. 2006) 432 F.3d 1102; *People v. Gray* (2001) 87 Cal.App.4th 781, 788.) If the court finds no prima facie case has been made without first obtaining input from the deputy district attorney, the deputy district attorney shall state for the record the reasons why the jurors were excused for purposes of appellate review. When a *Wheeler/Batson* motion has been made, the deputy district attorney shall preserve the notes from jury selection for later appellate review.

## **E. COMMUNICATIONS WITH JURORS AFTER VERDICT**

A deputy district attorney or other district attorney employee may communicate with jurors after a trial so long as the jurors have been excused from further jury service and the deputy refrains from asking questions or making comments that might tend to harass or embarrass a juror or are intended to influence the actions of a juror in future jury service.

To improve future trial performance and law enforcement questions, a deputy district attorney shall make reasonable efforts to debrief the jury foreman upon conclusion of a case. Information should be sought about issues or evidence which were of concern to the panel, and what might be done in future cases to enhance prosecution efforts. This information shall be included in the jury trial report.

### ***Commentary***

State Bar Rule 5-320(D) reads as follows: “After discharge of the jury from further consideration of a case, a member shall not ask questions of or make comments to a member of that jury that are intended to harass or embarrass the juror or to influence the juror’s actions in future jury service.”

An October 1986 informal opinion of the Attorney General in response to a request from this office concludes as follows:

A prosecutor may engage in reasonable post-trial discussion with a consenting juror. In the absence of a specific prohibitory rule or other binding provision, the prosecutor is not forbidden from providing trial jurors who have completed current jury service with information, not otherwise privileged, which was not admitted at trial, where the intent of the prosecutor is not to influence subsequent jury service or to harass or embarrass jurors. However, the prosecutor should ensure that the manner in which he goes about

## **C. TRIAL**

### **1. DISQUALIFICATION OF A JUDGE**

(Policy is the same as stated previously. Refer to Article III, Section 3.03A.)

### **2. PRO TEMPORE (“PRO TEM”) JUDGES**

A deputy shall not stipulate to a judge pro tem in felony trials.

### **3. WAIVER OF A JURY**

A deputy shall not waive jury without prior supervisorial approval.

### **4. EXERCISE OF PEREMPTORY JUROR CHALLENGES**

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