



May 3, 2021

Honorable Robert Brutinel  
Chief Justice  
Arizona Supreme Court  
1501 W. Washington #411  
Phoenix, AZ 85007

Re: *Objection to Proposed Amendments to Rules 18.4 and 18.5 Ariz. R. Crim. Pro. And Rule 47(e) Ariz. R. Civ. Pro- Petition R-21-0020*

Dear Chief Justice:

The Phoenix Chapter of ABOTA strongly opposes the proposal to eliminate peremptory challenges of prospective jurors. The Petition was circulated to our membership for comments and not surprisingly, opposition to the proposed amendments was nearly unanimous. The Phoenix Chapter of ABOTA does not believe this Petition is in the best interests of the justice.

First, for civil trials, the elimination of peremptory challenges likely will result in unfair prejudice to litigants and impair the public's perception about fairness in the civil system. Society is becoming progressively more polarized and a prospective juror's beliefs make many jurors unpersuadable no matter the facts. As noted by others, identifying those individuals and excluding them for cause can be difficult as many do not think of themselves as unfair and biased and have no problem saying the magic words they could be "fair and impartial" despite indications to the contrary. Experienced attorneys, however, are fairly good at identifying those individuals and using peremptory challenges to insure cases are decided by a jury composed of fair and impartial jurors. Eliminating peremptory challenges would undermine that goal.

Second, while ABOTA respects the authors of the Petition and some of the points being made, the occasional misuse of peremptory challenges cannot justify the prohibition of peremptory challenges all together. *Batson* and its progeny provide a proper, efficient, and effective framework to challenge an opponent's suspected intentional or unintentional use of race or other improper factors in the exercise of a peremptory challenge.

Page Two

For the foregoing reasons, the Phoenix Chapter of ABOTA respectfully requests that the Court reject the proposed amendments to Rules 18.4 and 18.5 of the Arizona Rules of Criminal Procedure and Rule 47(e) of the Arizona Rules of Civil Procedure.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Kent Hammond', with a large, stylized flourish extending to the right.

Kent Hammond

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