

**Preemptory Challenges & Batson: Proceedings**

JUDGE: Now, we are going to take that recess I told you about earlier to allow the attorneys to exercise their preemptory challenges. I am asking each of you to remain at this point until a final jury is seated in this matter. The jurors in the box have all been passed for cause, however, an unexpected situation may arise requiring additional juror qualification. The attorney's will have a chance to reduce the total jurors to 6 and the alternates to (1,2, etc.) so you may still be excused.

We are going to take a \_\_\_\_ minute recess. Please be back in the courtroom at \_\_\_\_\_. When you return to the courtroom, please be seated outside the bar rail. When the Court reconvenes, we will call those jurors forward who will be trying the case. I have to ask you to wait outside of the courtroom for that time.

In the meantime, I would admonish you: (READ ADMONISHMENT).

[Once admonishment is read and jurors are excused make a clear record of the following: where will preemptory challenges take place (in chambers or in court), who will be present (Prosecution, Defense, Defendant and police officers if Defendant is in custody (unless Defendant waives his presence), Court Clerk, and Stenographer).]

Please take ten minutes or so to review the jury list and figure out where you want to go meet. The Defendant has a constitutional right to be present at any and all points in the trial. However, the Defendant may waive that right. Does the Defendant want to be present for the preemptory challenges?

Please take about ten minutes and then meet me in chambers/courtroom for preemptory challenges. Pursuant to NRS 175.051(2), each side is entitled to four preemptory challenges, and 1 challenge each for two alternates. In the event the State or Defendant does not exercise their challenges alternately in that order, challenges not exercised in its proper order are waived.

[Once seated for preemptory challenges]

We are back on the record in case number XX-CR-XXXXX to exercise preemptory challenges. Beginning with the state's preemptory challenge one then alternating from state to defense, each side will be able to make individual challenges to jurors. State's 1, Defense 1, State's 2, Defense's 2, etc.

[If at any time there is an objection to a preemptory challenge, please go through the following checklist]

**Batson Challenge Checklist**

[Make a record]

A peremptory challenge has been made to juror #X by \_\_\_\_\_ (opposing party). \_\_\_\_\_ (objecting party) objects to the peremptory challenge on the basis of violating the equal protection clause of the United States Constitution As such, the challenge must be reviewed under *Batson v. Kentucky*, 106 S.Ct.1712.

**Make sure to go through each step. If the objecting party does not properly make a prima facie showing required by *Batson*, proceed to step two and ask the opposing party for the race/discrimination-neutral reasons to ensure there is a complete record for appellate review.**

**Step One**

First, the burden rests on the objecting party to make a prima facie case of the discrimination. Here, the objecting party is \_\_\_\_\_ (State or Defense). Please make your prima facie case of discrimination.

[Step one becomes moot if the Opposing Party skips to Step two and gives a reason for the strike at the strike's onset. Nevertheless, a complete record of the strike is important.]

**Step Two**

Now, the opposing party, has the burden of asserting a neutral explanation for the challenge. Opposing party, what is your explanation for the challenge?

**Step Three**

[The trial court must make a determination of whether the opponent of the challenge has proved purposeful discrimination. Here, the Court must make a very clear record. A suggested format for the record is below.]

A peremptory challenge has been made to juror #X by \_\_\_\_\_ (opposing party). \_\_\_\_\_ (objecting party) objects to the peremptory challenge, utilizing *Batson*, the objecting party's prima facie case of discrimination was argued as [overview of argument]. Opposing party's discrimination neutral explanation was \_\_\_\_ [overview]. This Court having the duty to review the persuasiveness of the justification proffered by the opposing party. [Make findings of fact on record]. The challenge is sustained/dismissed.

*\* Note: The final step involves evaluating the persuasiveness of the justification proffered by the opposing party, but the ultimate burden of persuasion regarding racial motivation rests with, and never shifts from, the opponent of the strike (objecting party).*