

# *Boyd Trial Consulting*

## **MORNING-OF-TRIAL GUIDE TO THE LAW OF JURY SELECTION *in the State of Washington***

**R.C.W. reproduced in black font**

***Relevant case law in blue, arial, italic font***

### **Impanelling jury - - Voir dire, challenge for cause—Number**

***R.C.W. 4.44.120***

When the action is called for trial, a panel of potential jurors shall be selected at random from the citizens summoned for jury service who have appeared and have not been excused. A voir dire examination of the panel shall be conducted for the purpose of discovering any basis for challenge for cause and to permit the intelligent exercise of peremptory challenges. Any necessary additions to the panel shall be selected at random from the list of qualified jurors. The jury shall consist of six persons, unless the parties in their written demand for jury demand that the jury be twelve in number or consent to a less number. The parties may consent to a jury less than six in number but not less than three, and such consent shall be entered in the record.

### **Challenges--Kind and number**

***R.C.W. 4.44.130***

Either party may challenge the jurors. The challenge shall be to individual jurors, and be peremptory or for cause. Each party shall be entitled to three peremptory challenges. When there is more than one party on either side, the parties need not join in a challenge for cause; but, they shall join in a peremptory challenge before it can be made. If the court finds that there is a conflict of interests between parties on the same side, the court may allow each conflicting party up to three peremptory challenges.

### **Peremptory challenges defined**

***R.C.W. 4.44.140***

A peremptory challenge is an objection to a juror for which no reason need be given, but upon which the court shall exclude the juror.

## **Challenges for cause defined**

***R.C.W. 4.44.150***

A challenge for cause is an objection to a juror, and may be either:

- (1) General; that the juror is disqualified from serving in any action; or
- (2) Particular; that the juror is disqualified from serving in the action on trial.

## **General causes of challenge**

***R.C.W. 4.44.160***

General causes of challenge are:

- (1) A want of any of the qualifications prescribed for a juror, as set out in RCW 2.36.070.
- (2) Unsoundness of mind, or such defect in the faculties of the mind, or organs of the body, as renders him or her incapable of performing the duties of a juror in any action.

## **Particular causes of challenge**

***R.C.W. 4.44.170***

Particular causes of challenge are of three kinds:

- (1) For such a bias as when the existence of the facts is ascertained, in judgment of law disqualifies the juror, and which is known in this code as implied bias.
- (2) For the existence of a state of mind on the part of the juror in reference to the action, or to either party, which satisfies the court that the challenged person cannot try the issue impartially and without prejudice to the substantial rights of the party challenging, and which is known in this code as actual bias.
- (3) For the existence of a defect in the functions or organs of the body which satisfies the court that the challenged person is incapable of performing the duties of a juror in the particular action without prejudice to the substantial rights of the party challenging.

*The appropriate question in determining whether a juror should be excused for cause is whether a juror with preconceived ideas can set them aside and decide the case on an impartial basis; the trial court is in the best position to address this question because it has the ability to evaluate factors outside the written record such as a juror's demeanor and conduct. State v. Grenning (2008) 142 Wash.App. 518, 174 P.3d 706, review granted in part, denied in part 164 Wash.2d 1026, 196 P.3d 137, affirmed 169 Wash.2d 47, 234 P.3d 169.*

*The question for the judge on a motion to dismiss juror for bias is whether the challenged juror can set aside preconceived ideas and try the case fairly and impartially. Hough v. Stockbridge (2009) 152 Wash.App. 328, 216 P.3d 1077, review denied 168 Wash.2d 1043, 234 P.3d 1173.*

*A judge considering a motion to dismiss a juror for bias weighs the credibility of the challenged juror based on her observations. Hough v. Stockbridge (2009) 152 Wash.App. 328, 216 P.3d 1077, review denied 168 Wash.2d 1043, 234 P.3d 1173.*

*A trial court must excuse a juror for cause if actual bias is shown. State v. Grenning (2008) 142 Wash.App. 518, 174 P.3d 706, review granted in part, denied in part 164 Wash.2d 1026, 196 P.3d 137, affirmed 169 Wash.2d 47, 234 P.3d 169.*

*Although granting or denying a particular challenge for cause is a matter addressed to discretion of the trial judge, on a challenge for actual bias, the trial judge's discretion will ordinarily be exhausted once he or she has resolved a preliminary fact question concerning prospective juror's state of mind; the challenge must be granted if trial judge finds by a preponderance of the evidence that a prospective juror's state of mind is such that he or she cannot try the case fairly and impartially. Ottis v. Stevenson-Carson School Dist. No. 303 (1991) 61 Wash.App. 747, 812 P.2d 133.*

*When resolving a preliminary fact question as to whether a particular juror is actually biased within the meaning of the relevant statutes, the trial judge uses fact-finding discretion, including power to weigh the credibility of a prospective juror and any other persons involved, and to choose among reasonable but competing inferences; moreover, such discretion must be exercised on the basis of probabilities, not possibilities. Ottis v. Stevenson-Carson School Dist. No. 303 (1991) 61 Wash.App. 747, 812 P.2d 133.*

### **Implied bias defined**

#### ***R.C.W. 4.44.180***

A challenge for implied bias may be taken for any or all of the following causes, and not otherwise:

- (1) Consanguinity or affinity within the fourth degree to either party.
- (2) Standing in the relation of guardian and ward, attorney and client, master and servant or landlord and tenant, to a party; or being a member of the family of, or a partner in business with, or in the employment for wages, of a party, or being surety or bail in the action called for trial, or otherwise, for a party.
- (3) Having served as a juror on a previous trial in the same action, or in another action between the same parties for the same cause of action, or in a criminal action by the state against either party, upon substantially the same facts or transaction.
- (4) Interest on the part of the juror in the event of the action, or the principal question involved therein, excepting always, the interest of the juror as a member or citizen of the county or municipal corporation.

## **Challenge for actual bias**

***R.C.W. 4.44.190***

A challenge for actual bias may be taken for the cause mentioned in RCW 4.44.170(2). But on the trial of such challenge, although it should appear that the juror challenged has formed or expressed an opinion upon what he or she may have heard or read, such opinion shall not of itself be sufficient to sustain the challenge, but the court must be satisfied, from all the circumstances, that the juror cannot disregard such opinion and try the issue impartially.

## **Peremptory challenges, how taken**

***R.C.W. 4.44.210***

The jurors having been examined as to their qualifications, first by the plaintiff and then by the defendant, and passed for cause, the peremptory challenges shall be conducted as follows, to wit:

The plaintiff may challenge one, and then the defendant may challenge one, and so alternately until the peremptory challenges shall be exhausted. During this alternating process, if one of the parties declines to exercise a peremptory challenge, then that party may no longer peremptorily challenge any of the jurors in the group for which challenges are then being considered and may only peremptorily challenge any jurors later added to that group. A refusal to challenge by either party in the said order of alternation shall not prevent the adverse party from using the full number of challenges.

## **Order of taking challenges**

***R.C.W. 4.44.220***

The challenges of either party shall be taken separately in the following order, including in each challenge all the causes of challenge belonging to the same class:

- (1) Challenges for cause.
- (2) Peremptory challenges.

## **Exceptions to challenges—Determination**

***R.C.W. 4.44.230***

The challenge may be excepted to by the adverse party for insufficiency, and if so, the court shall determine the sufficiency thereof, assuming the facts alleged therein to be true. The challenge may be denied by the adverse party, and if so, the court shall determine the facts and decide the issue.

## **Challenge determination**

***R.C.W. 4.44.240***

When facts are determined under RCW 4.44.230, the rules of evidence applicable to testimony offered upon the trial of an ordinary issue of fact shall govern. The juror challenged, or any other person otherwise competent may be examined as a witness by either party. If the challenge is sustained, the juror shall be dismissed from the case; otherwise, the juror shall be retained.

## **Challenge, exception, denial may be oral**

***R.C.W. 4.44.250***

The challenge, the exception, and the denial may be made orally. The judge shall enter the same upon the record, along with the substance of the testimony on either side.

## **View of premises by jury**

***R.C.W. 4.44.270***

Whenever in the opinion of the court it is proper that the jury should have a view of real property which is the subject of litigation, or of the place in which any material fact occurred, it may order the jury to be conducted in a body, in the custody of a proper officer, to the place which shall be shown to them by the judge or by a person appointed by the court for that purpose. While the jury are thus absent no person other than the judge, or person so appointed, shall speak to them on any subject connected with the trial.

## **Judge must excuse unfit person**

***R.C.W. 2.36.110***

It shall be the duty of a judge to excuse from further jury service any juror, who in the opinion of the judge, has manifested unfitness as a juror by reason of bias, prejudice, indifference, inattention or any physical or mental defect or by reason of conduct or practices incompatible with proper and efficient jury service.

*The question for the judge on a motion to dismiss a juror for bias is whether the challenged juror can set aside preconceived ideas and try the case fairly and impartially. Hough v. Stockbridge (2009) 152 Wash.App. 328, 216 P.3d 1077, review denied 168 Wash.2d 1043, 234 P.3d 1173.*

## **Qualification of juror**

### ***R.C.W. 2.36.070***

A person shall be competent to serve as a juror in the state of Washington unless that person:

- (1) Is less than eighteen years of age;
- (2) Is not a citizen of the United States;
- (3) Is not a resident of the county in which he or she has been summoned to serve;
- (4) Is not able to communicate in the English language; or
- (5) Has been convicted of a felony and has not had his or her civil rights restored.

## **Assignment to another term--Summons for additional service-- Certification of prior service**

### ***R.C.W. 2.36.100***

(1) Except for a person who is not qualified for jury service under RCW 2.36.070, no person may be excused from jury service by the court except upon a showing of undue hardship, extreme inconvenience, public necessity, or any reason deemed sufficient by the court for a period of time the court deems necessary.

(2) At the discretion of the court's designee, after a request by a prospective juror to be excused, a prospective juror excused from juror service for a particular time may be assigned to another jury term within the twelve-month period. If the assignment to another jury term is made at the time a juror is excused from the jury term for which he or she was summoned, a second summons under RCW 2.36.095 need not be issued.

(3) When the jury source list has been fully summoned within a consecutive twelve-month period and additional jurors are needed, jurors who have already served during the consecutive twelve-month period may be summoned again for service. A juror who has previously served may only be excused if he or she served at least two weeks of juror service within the preceding twelve months. An excuse for prior service shall be granted only upon the written request of the prospective juror, which request shall certify the terms of prior service. Prior jury service may include service in superior court, in a court of limited jurisdiction, in the United States District Court, or on a jury of inquest.

**Leave of absence from employment to be provided--Denial of promotional opportunities prohibited--Penalty--Civil action**

***R.C.W. 2.36.165***

- (1) An employer shall provide an employee with a sufficient leave of absence from employment to serve as a juror when that employee is summoned pursuant to chapter 2.36 RCW.
- (2) An employer shall not deprive an employee of employment or threaten, coerce, or harass an employee, or deny an employee promotional opportunities because the employee receives a summons, responds to the summons, serves as a juror, or attends court for prospective jury service.
- (3) An employer who intentionally violates subsection (1) or (2) of this section shall be guilty of a misdemeanor.
- (4) If an employer commits an act in violation of subsection (2) of this section the employee may bring a civil action for damages as a result of the violation and for an order requiring the reinstatement of the employee. If the employee prevails, the employee shall be allowed a reasonable attorney's fee as determined by the court.
- (5) For purposes of this section employer means any person, association, partnership, or private or public corporation who employs or exercises control over wages, hours, or working conditions of one or more employees.