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VIRTUAL VOIR DIRE

Understand the Statutes authorizing Voir Dire

Actual Bias:

RCW 4.44.190 allows a party to challenge jurors for cause based on actual bias, which is defined in RCW 4.44.170(2) as “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.” A challenge must be sustained where a juror clearly shows prejudice against the accused on *voir dire*. *State v. Moser*, 37 Wn.2d 911, 226 P.2d 867 (1951)

Method of Challenge/ No authority to “Rehabilitate” Jurors:

4.44.230 provides:

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.

RCW 4.44.240 provides:

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.

Examples of Actual Bias:

State v. Swafford, 88 Wash. 659, 153 P. 1056 (1915),

State v. James, 63 Wn.2d 71, 385 P.2d 558 (1963);

Beach v. City of Seattle, 85 Wash. 379, 148 P. 39 (1915),

State v. Moody, 18 Wash. 165, 51 P. 356 (1897);

State v. Rutten, 13 Wash. 203, 43 P. 30 (1895).

State v. Wilcox, 11 Wash. 215, 221, 39 P. 368 (1895),

State v. Fire, 100 Wn. App. 722, 998 P.2d 362 (2000), *rev'd on other grounds*, 145 Wn.2d

152, 34 P.3d 1218 (2001),

Quincy v. Joint School Dist. No. 41, 640 P.2d 304 (Idaho 1981). Court should not be the champion of a challenged juror

Ottis v. Stevenson-Carson School Dist. No. 303, 61 Wn. App. 747, 812 P.2d 133 (1991). Actual bias must be established by proof by a preponderance of the evidence.

State v. James, 63 Wn.2d 71, 78, 385 P.2d 558, 563 (1963) *citing State v. Coella*, 3 Wash. 99, 28 P. 28 (1891) Requirement of evidence to change mind satisfies challenge for cause.

State v. Cho, 108 Wn. App 315, 330, 30 P.3d 496 (2001); *State v. Witherspoon* 82 Wn. App. 634, 635, 919 P.2d 99 (1996) Any doubts regarding bias must be resolved against the Juror.