



The Voice of Connecticut's Civil Defense Trial Lawyers

Dear Rules Committee,

Thank you for your invitation and this opportunity to discuss the positions of the Connecticut Defense Lawyers Association (CDLA) as a professional association of civil defense attorneys throughout Connecticut. The CDLA sets forth its following positions and recommendations to the Rules Committee proposals 2021-014a/b and 2021-015 as follows:

2021-014a/b

The CDLA has no concerns or objections to the proposal by The Honorable Cesar Noble to add additional interrogatories and requests for production to Forms 203 and 206, except the bracketed language (in bold for your convenience) be added to prevent any confusion or objections as to relevancy and scope in time, and for consistency through the discovery demands, as follows:

Premises Liability Standard Form Discovery Interrogatories

X. State whether a contract existed for snow and ice remediation for the [**date and**] location on which the plaintiff claims to have been injured.

Y. State whether you received or prepared any invoices or records related to snow and/or ice remediation for the location on which the plaintiff claims to have been injured for the 30 days prior to the date on which the plaintiff claims to have been injured.

Request for Production

£. A copy of any contract identified in response to Interrogatory #X.

€. A copy of any documents identified in response to Interrogatory # Y.

2021-015

Thank you for the opportunity to weigh in on the Final Report of the Task Force which contains recommendations for jury reform in Connecticut, and particularly a general rule on jury selection in an effort to prophylactically remove conscious and unconscious bias consistent with issues discussed in *State v. Holmes*, 334 Conn. 2020 (2019).

Our system guarantees all individuals fair access to the judicial system, including judgment by their peers. Jury selection is a critical judicial process to ensure fairness, access to the

courts and trust in the judicial system in general, whether a spectator, party, witness, juror or society at-large. The CDLA is committed to diversity and inclusion in all aspects of the practice of law, including the selection of prospective jurors. Part of the CDLA's commitment as an organization is to be proactively introspective, self-aware, identify and root out all biases, both conscious and unconscious biases, in ourselves and all members of this noble and critical profession and the judicial branch as an organ of the State of Connecticut.

The genesis of the Task Force was based in the *sua sponte* recommendation of the Connecticut Supreme Court in *State v. Holmes, supra*. Notably, the decision in *Holmes* stemmed from a criminal case and the Supreme Court's decision questioning present-day relations between police and many minority and minority communities. This decision and related discussion did not speak to the practice of civil law in Connecticut, but its decision and proposed general rule on jury selection would affect criminal and civil matters alike in application. In this context, and as members of the legal community at-large, the CDLA wishes to briefly provide some observations for consideration by the Rules Committee.

We note that the recommendation for an expeditious adoption of the rules change is "intended to significantly improve the quality of justice *in our state* by eliminating the unfair exclusion of potential jurors through the use of peremptory challenges based on race or ethnicity." [Emphasis added.] However, the Report of the Jury Selection Task Force indicates that it would like to *start* collecting data on jury selection to determine when and how bias may impact the fair and full access to the courts by prospective jurors and parties to have their cases decided by a jury of their peers without undue or unlawful exclusion. There is no indication we know of in Connecticut where data has been collected or relied upon which evidences implicit bias based on race or ethnicity during the jury selection process, especially in the *civil* jury selection process, by the lawyers in our State. We agree data collection is necessary to determine if there is an issue, like this important issue, which needs to be fixed, the scope of that issue and how best to accomplish that noble goal through the analysis of data. We also note that the Task Force adopted the research on implicit bias from the *Holmes* decision, but it does not appear to have assessed the sources or independently determine what, if any, research is applicable to the jury selection process by the members of the Connecticut Bar. The CDLA would be most interested in any data applicable to our jury selection process; and, if an issue is found, then address it quickly and appropriately based on the analysis of the applicable data. A general rule, like the one proposed, of such critical importance should address a data-driven and defined issue applicable to the administration of justice in this State, rather than perceptions which may risk overreach or create collateral issues.

A concern we have in the current proposed General Rule subsection (e) is the presumption that the trial judge is put in the position of an "objective observer" which is defined to include that he or she "is aware that *purposeful* discrimination, and implicit, institutional, and unconscious biases, have historically resulted in the unfair exclusion of potential jurors on the basis of their race, or ethnicity." [Emphasis added.] That language combined with the additional language in subsection (g) which states that "[b]ecause historically the following reasons for peremptory challenges *have been associated with improper*

*discrimination in jury selection in Connecticut* or maybe influenced by implicit or explicit bias ...” [emphasis added], and the contemporary creation and sought application of the proposed General Rule, it may be viewed as stating members admitted to the Bar in Connecticut have to the present improperly and systemically excluded prospective jurors on the basis of racial or ethnic identification. A statement in the proposed General Rule that there has been purposeful discrimination and implicit biases which has influenced attorneys’ decisions without any evidence of the same is a serious and negative commentary on the members of the Connecticut Bar who practice and conduct themselves in a professional and unbiased manner. Again, we are not aware of any data that has been collected that supports this latter statement as it applies to Connecticut, but we would be very interested in the collection of such data and creation of a general rule on jury selection as indicated by the findings from such data.

For these reasons, we would recommend the Rules Committee first obtain and collect its data on jury selection so that it can analyze it and then make an informed and data-based decision before moving forward with the implementation of the proposed rule changes in the absence of such data.

Once again, we appreciate the opportunity to provide some commentary and are available to discuss this extremely important and vital issue.

Respectfully submitted,

/s/ Eric W.F. Niederer, Esq.  
Eric W. F. Niederer, President  
Connecticut Defense Lawyers Association

As approved by the CDLA Board