

To: Members of the Superior Court Rules Committee

From: Judge David P. Gold, Chief Administrative Judge for Criminal Matters

Date: November 15, 2021

I am writing with regard to Rule ID # 2021-015, a proposal offered by Chief Justice Robinson at the Rule Committee's September meeting, and then referred to me by the Committee for comment in my capacity as Chief Administrative Judge for Criminal Matters. As Committee members are aware, Rule 2021-015 essentially mirrors the language of a proposal recommended by the Chief Justice's Jury Selection Task Force – a panel the Chief Justice assembled to address issues that he and his Supreme Court colleagues raised in *State v. Holmes*, 334 Conn. 202 (2019). I was appointed by the Chief Justice to serve on that Task Force, and was named as co-chair of the subcommittee charged with considering whether, and if so by what means, the *Batson v. Kentucky* framework currently applied under Connecticut law warranted strengthening in order better to guard against the possible misuse of peremptory challenges during the jury selection process. The final report of the Task Force, which includes the subcommittee recommendation that provided the template for the proposed rule now before the Committee, is available here: [ReportJurySelectionTaskForce.pdf](#)

Having overseen, as co-chair, the deliberations that resulted in the subcommittee's recommendation and thereby being aware of the divergent views occasionally expressed by subcommittee members during the months-long period of those discussions, I am hesitant now to "change hats" and, as Chief Administrative Judge for Criminal Matters, offer the Rules Committee my individual opinion of the rule under consideration. For me to voice either positive or negative comment could be seen as an effort to elevate my personal assessment of the costs and benefits of the proposed rule above the views held by other subcommittee members, particularly those whose opinions may have differed from my own. As a result, I will make only the following (hopefully) nonpartisan observations. The proposed rule unquestionably seeks to achieve an extremely important and laudable goal, and therefore in my view is richly deserving of the Rule Committee's careful consideration. At the same time, however, it is appropriate to recognize that the presumptions and method of analysis established by the proposed rule may require courts in some cases to disallow a party's peremptory challenge and to seat a juror who has disclosed past experiences and/or personal opinions that, while falling short of supporting excusal for cause, legitimately may cause the striking party to harbor question about the juror's ability to serve impartially. This practical effect of the proposed rule, and in particular its potential to influence a litigant's perception of the fairness of the jury trial process and his or her level of confidence in the jury's ultimate decision, are matters that I respectfully submit are similarly deserving of the Rules Committee's careful attention.

I thank the Rules Committee for extending me this opportunity to comment.