

“Batson Toolkit” Index

Below you will find a list of six motions we urge all defenders to file in support of *Batson* objections made at trial. A brief description of each motion is included. Also, whether the motion is “essential” or “discretionary,” is also designated beside each motion. “Essential motions” are motions that must be filed in order to effectively litigate and preserve any *Batson* motions made at trial. “Discretionary” motions are motions that are encouraged and helpful, but should not be given priority over “essential” motions.

1. Defendant’s Motion for Complete Recordation of All Pretrial and Trial Proceedings. **Essential Motion**
 - The judge **must** grant this motion if filed, so it is an easy motion to win! Having all proceedings recorded, including jury selection, is necessary in order for *Batson* objections to be fully litigated on appeal. In fact, the appellate courts have found it impossible to reach *Batson* issues on their merits without a transcript of jury selection. *See North Carolina v. Campbell*, No. COA18-998 (Jan. 21, 2020) (“[If] a defendant anticipates making a *Batson* discrimination argument, it is extremely difficult to prevail on such grounds without a transcript of jury selection.”)(“Without such information, it is highly improbable that such a challenge will succeed.”).

2. Defendant’s Motion to Distribute Juror Questionnaire and to Note Race and Gender of Every Potential Juror Examined in this Case. **Essential Motion**
 - a. Exhibit A
 - b. Exhibit B
 - It is imperative that a juror’s race and gender is recorded in order for *Batson* objections to be fully addressed on appeal. The cases cited in the motion explain that the jurors self-identified race (and gender) is the best source of their race (and gender). We encourage you to request that the Court distribute some version of the questionnaire in “Exhibit A” because having these questionnaires as part of the record on appeal is helpful for *Batson* litigation, especially when it comes to comparative juror analysis. However, if the Court is reluctant to distribute the long-form questionnaire, ask that “Exhibit B” be distributed instead.

3. Defendant’s Motion to Prohibit Impermissibly-Motivated Peremptory Strikes and for the Court to Take Consider Historical Evidence of Jury Discrimination (3 exhibits attached). **Essential Motion**
 - In *State v. Hobbs* (2020), the NC Supreme Court held that the history of peremptory strikes in a jurisdiction is relevant to the question of whether jury discrimination has occurred in a particular case. This motion is your opportunity to present that history to

the court. The sample motion includes statewide data showing that, for decades, North Carolina prosecutors have consistently struck Black jurors at much higher rates than white jurors. For data specific to your jurisdiction, please contact the Center for Death Penalty Litigation.

- This motion also lays out all of the relevant *Batson* law that the court should consider when ruling on any *Batson* objections. This motion helps the attorney become familiar with *Batson* law, educates the Court and prosecutor, and puts the prosecutor on notice that the attorney intends to make proper *Batson* objections, which may consciously or subconsciously dissuade the prosecutor from making disproportionate strikes based on race and gender, thereby leading to a more diverse jury. Filing this motion prior to trial also takes out the potential uncomfortableness of making the objection. *Batson* objections can be uncomfortable, but making this motion a regular part of your practice will make *Batson* objections more routine, and perhaps more comfortable for all involved.

4. Defendant's Motion for Discovery of Information Pertaining to Batson Litigation

Discretionary Motion

- This motion seeks to identify any training the prosecution has attended related to *Batson*, as well as if the prosecutor has ever been found to have struck a juror based on race or gender during a *Batson* hearing. This information, as explained in the motion, is relevant for the Court's *Batson* analysis, so you should seek it ahead of time as part of discovery.

5. Defendant's Motion to Apply Objective Observer Standard When Ruling on Objections to Peremptory Strikes

Discretionary Motion

- This motion seeks to ask the Court to apply a new standard when ruling on *Batson* objections. It is a preservation motion.

6. Defendant's Motion to Preserve All Notes, Questionnaires and Other Documents from Jury Selection

Discretionary Motion

- While discretionary, we highly encourage the filing of this motion. Prosecutor's notes regarding jury selection have led to helpful findings of *Batson* violations and reversals of convictions (see discussion in Motion). As a matter of strategy, it is suggested that this motion is filed in Court immediately after jury selection ends.