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Kate Schnake Examines Unlawful Discrimination vs. Legitimate Advocacy in Jury Selection

In an *IDC Quarterly* Legal Ethics Column

In The News | 1 min read
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Hinshaw partner Katherine (Kate) Schnake has authored a Legal Ethics column titled "Drawing the Line in Jury Selection: Unlawful Discrimination vs. Legitimate Advocacy" for the First Quarter 2026 edition of the *IDC Quarterly,* published by the Illinois Defense Counsel.

In the column, Kate examines the legal and ethical considerations surrounding peremptory challenges during jury selection. She discusses the American Bar Association Standing Committee on Ethics and Professional Responsibility's Formal Opinion 517, which addresses when a peremptory strike may constitute unlawful discrimination and where legitimate advocacy remains protected.

Key Takeaways

The Legal Landscape

- ABA Formal Opinion 517 builds on *Batson v. Kentucky*, which prohibits peremptory challenges based solely on race, with later protections extending to other protected characteristics.
- Rule 8.4(g) prohibits discrimination and harassment in conduct related to the practice of law while preserving legitimate advocacy.
- A peremptory strike that is unlawful under governing jury selection law cannot qualify as legitimate advocacy.
- Not every consideration of a juror's characteristics is necessarily unlawful. Certain factors, such as age, marital status, or socioeconomic status, may be permissible in some jurisdictions.

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Ethical Guardrails

- Lawyers must not use strikes they know or reasonably should know are unlawfully discriminatory.
- Attorneys have a duty to investigate red flags, including recommendations from clients, consultants, or AI tools.
- A *Batson* finding does not automatically establish an ethics violation but may lead to disciplinary scrutiny.

Practice Pointers

Litigators should consider these practice pointers:

- **Refine jury selection frameworks and training** to reflect Opinion 517's knowledge standard and duty to investigate potential discrimination.
- **Vet and monitor jury consultants** to ensure their methodologies and recommendations do not rely on unlawful discriminatory criteria.
- **Establish governance for AI and analytics tools**, including understanding potential bias and independently identifying lawful, case-specific reasons for strikes.
- **Document legitimate reasons for peremptory strikes** in real time to support responses to *Batson* challenges or subsequent disciplinary review.
- **Align client expectations with ethical limitations** and reject requests to use impermissible criteria in jury selection.
- **Account for jurisdictional variations**, including state-specific protections and procedures governing peremptory challenges.

Read the full article

- *Illinois Defense Counsel Quarterly:* "Drawing the Line in Jury Selection: Unlawful Discrimination vs. Legitimate Advocacy," Illinois Defense Counsel, *IDC Quarterly*, Volume 36, Number 1, First Quarter 2026

About the *IDC Quarterly*

The *IDC Quarterly*, Illinois Defense Counsel's flagship publication, features columns on current tort topics and issues of interest to the defense bar—reaching over 1,800 readers quarterly.

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