

Delegation of authority to a jury commissioner to reschedule and excuse jurors.

Pursuant to Section 13-71-124, C.R.S., the chief judge hereby delegates to the jury commissioner for each county within the district the authority to reschedule and excuse jurors from jury service in the manner set forth in this policy.

Juror excuses under this policy are divided into six categories: I) Postponements or advancements; II) Disqualified Jurors; III) Extreme Hardship; IV) Hardship; V) Inconvenience; and VI) The Best Interest of Justice.

I. Postponements or advancements. See Section 13-71-116, C.R.S.

A juror who is unable to serve on a particular day often does not need to be excused. Before excusing a juror the jury commissioner should attempt to postpone or advance the juror's service. A juror has a right to a postponement, and the jury commissioner has the authority to grant that postponement to any juror requesting it. The jury commissioner is encouraged to handle requests for postponements in the manner which will be most convenient for the juror.

A postponement may be for no longer than six months. Section 13-71-116. Based on the current jury management software, the postponement must be to a date in the same calendar year. When both statutes and software have been changed, the postponement may be into the next calendar year.

A juror has a right to one postponement for any reason. If a juror has received one postponement, the jury commissioner is authorized to grant a second postponement, or to defer that juror's service, if the juror will suffer hardship or inconvenience which was not anticipated when the date was rescheduled. (See Section 13-71-119, C.R.S., on deferring juror service based on hardship or inconvenience.)

The jury commissioner is authorized to advance the term of service for a juror who will suffer hardship or inconvenience by serving on the originally scheduled date. See Section 13-71-119. This will most commonly be done when the juror has a scheduled event during the time of jury service which cannot be postponed without hardship. An example is scheduled surgery, or an out-of-state trip. The juror can be rescheduled into an earlier reporting date.

II. Jurors who are disqualified. See Section 13-71-105, C.R.S.

(1) **Age:** Under the age of eighteen. This will normally be apparent from the birth date information on the master wheel. If there is some dispute, the juror needs to provide to the jury commissioner a reliable form of identification which shows the juror's age. If the jury commissioner verifies the juror's age from the identification, the juror should be excused.

(2) **English language:** Unable to read, speak, and understand the English language. If the juror states or submits an affidavit to the effect that the juror is not able to read, speak, and

understand the English language, the jury commissioner may excuse the juror. As to each juror, the jury commissioner shall determine whether to require an affidavit from the juror or another credible adult. In making a determination about this type of request, the jury commissioner should question the juror about the juror's job and the need to use English in the course of everyday activities. The jury commissioner may use an available interpreter if necessary. This will help in evaluating the juror's actual capabilities in the English language. Since the determination whether a juror is unable to read, speak and understand English is a fact question (People v. Rodriguez, 638 P.2d 802, 803 (Colo. App. 1981)), the jury commissioner must keep a record of the information learned from the juror about the language difficulties.

(3) Disability: Unable to render satisfactory juror service because of a physical or mental disability. The jury commissioner should require a doctor's letter to support the request. If a juror brings in or mails in a doctor's letter which states the nature of the disability and states the opinion that such disability prevents the juror from rendering satisfactory jury service, the jury commissioner may excuse the juror. The statutory medical standard for being able to render satisfactory jury service is that the juror

shall be capable of rendering satisfactory jury service if the person is able to perform a *sedentary job requiring close attention* for three consecutive business days for six hours per day, with short breaks in the morning and afternoon sessions.

Section 13-71-105(2)(c), C.R.S.

(4) Care for another: *Absence from the home creating a substantial risk of injury to the health of a permanently disabled person for whom the juror is solely responsible.* The jury commissioner should request a doctor's letter about the disabled person. If that letter states the name, address, and age of the disabled person, the nature of care provided by the juror, and an opinion that the performance of juror service would cause substantial risk of injury to the disabled person, the jury commissioner may excuse the juror. If the juror is regularly employed at a location other than that juror's household, the juror shall not be disqualified based on providing care for a disabled person.

(5) Residence. Eligibility is determined as of the reporting date. A person who resides outside the county and has no intention of returning at any time within the next twelve months should be excused. Proof of residence address should be provided. A person who resides in another county at that time but lives more than fifty percent of the time in the county where summoned for jury service should not be excused. A person who resides in the county where summoned to serve at that time but either plans to move or lives more than fifty percent of the time in another county should also not be excused.

(6) Prior jury service. A juror should be excused if the juror submits a letter or certificate from an appropriate state or federal court authority verifying that the juror either 1) has served for five days or more as a trial or grand juror in a state or federal court within the preceding twelve months (Section 13-71-105(2)(f)), 2) is scheduled for juror service in such court(s) within the next twelve months (Id.), 3) has served on a state court jury trial within that

current calendar year (13-71-105(2)(g)), or 4) has reported to the courthouse for service on a state court jury in each of the preceding two consecutive calendar years (13-71-105(2)(h)). A disqualification based on this subsection (4) within this subsection may be granted only in class A or B counties.

(7) **Citizenship.** A juror is excused who is not a United States citizen. If the juror states that he or she is not a United States citizen, the jury commissioner should request appropriate documentation from the juror before excusing the juror.

III. Excuses based on extreme hardship. See Section 13-71-119, C.R.S.

If jury service will result in **extreme hardship** for the juror, the jury commissioner may excuse a juror from trial jury service for a trial of any length. (Note that for a three day or less trial, "**extreme hardship**" is the only statutory basis for excuse.)

1. **Duration of excuse.** The juror shall be excused from any further service only for the period in which jury service would cause an extreme hardship. The juror will need to provide enough information to permit a determination of the ending of the hardship. If the information reasonably supports a conclusion that the extreme hardship will last to the end of the calendar year, the juror will be excused for the remainder of the year. The juror will not be excused for the following year except for age-related extreme hardship. For all other excuses, the juror's name should be replaced in the master juror wheel for the remainder of the calendar year after the hardship period.

2. **Grounds for excuse.** The following areas may constitute extreme hardship grounds for excusing a juror.

(a) **Child care.** An "extreme hardship" may be present when there are no practicable arrangements available for day care. The hardship will be more likely to be "extreme" if the child has special needs, such as health needs, or behavioral needs, or if there are several very young children.

A nursing mother, or a parent with a pre-schooler and no readily available child care will meet the "inconvenience" standard. In determining whether these amount to "extreme hardship," or "hardship," the jury commissioner or judge should consider: the availability of alternative care arrangements, especially by other family members; the availability of commercial day care and the juror's ability to pay for it; the extent to which the juror has attempted to find alternative care or can make further efforts; the current health of the child; any special needs of the child. If child care is available from an employed spouse who would have to take time off from work, the hardship is not extreme. However, a nursing mother will suffer "extreme hardship" if, for example, the child is younger than nine months and has not yet been bottle-fed.

(b) **Disability.** A juror suffering from a handicap that affects juror service, such as impaired hearing or vision, will normally **not** be excused from juror service unless the juror requests such excuse. The court has an obligation to make reasonable accommodation for the disability and permit the juror to serve.

If the juror requests to be excused, the jury commissioner shall advise the juror that the court will try to make a reasonable accommodation. If the juror still requests to be excused, the jury commissioner should obtain as much information as possible about the handicap. Areas of concern are: the extent of the disability; the extent of any recent medical care related to the disability; how well the juror functions in ordinary life with the disability; the extent of the accommodation needed; the extent of any hardship or inconvenience suffered by the juror if forced to serve; the difficulty involved in obtaining a doctor's letter to establish a disqualifying disability.

If the disability is so severe that it renders the juror unable to render satisfactory jury service, the juror is disqualified under Section 13-71-105(2)(c), and the procedures for dealing with a disqualified juror should be followed. (See paragraph II(3), above.)

If the juror requests to be excused after the offer of reasonable accommodation, the hardship to the juror will be considered "extreme" if the disability prevents the person from performing the duties and responsibilities of a juror. See Section 13-71-104(3)(b), C.R.S. Examples of this would be if the juror is homebound as a result of the disability, or practically unable to function in ordinary life without assistance from another person or animal, or if jury service would create serious physical or mental disabilities, and if it would be a further hardship for the juror to attempt to obtain a doctor's letter.

If the accommodation needed is relatively easy to provide and the juror will not personally suffer a hardship, it is not appropriate for the jury commissioner to excuse the juror for "extreme hardship." If the juror requests to be excused and refuses the offer of accommodation, a reviewing judge shall consider both the statutory directive that "A person with a disability shall serve," and the statutory authority to excuse a juror in the "best interest of justice." For example, a juror who refuses an accommodation and requests to be excused might qualify for a "best interest of justice" excuse if the juror is likely to be unable to hear or see well enough to be an effective juror.

(c) Health. Most health related reasons for not serving as a juror are temporary and should be considered as the basis for a deferral of jury service (or advancement in the case of scheduled surgery) based on hardship or inconvenience. Examples are: a bad cold; flu; any communicable disease; recuperation from a recent illness, injury, or surgery; current medication that makes the juror drowsy or inattentive; significant pain from an injury or other health problem. The jury commissioner may grant a deferral or advancement without review by a judge, and may do so for jurors who have previously received a postponement. The jury commissioner may also refer the matter to the reviewing judge for consideration of an excuse.

If the health problem is chronic and not likely to be resolved within the remainder of the calendar year, and the jury commissioner determines that it would be an "extreme hardship" for the juror to serve, the jury commissioner may excuse the juror. An extreme hardship is one which will have a substantially negative impact on the juror or on the other jurors. The jury commissioner should require the juror to provide a doctor's letter substantiating the health problem. In determining whether the hardship is extreme, the jury commissioner should consider: the physical hardships created by sitting in a jury box; the types of medication taken by the juror on a regular basis, the impact of that medication on the person's ability to be a juror, and the impact on the juror of not taking the medication during the trial; and the impact of the health condition on the normal activities of a juror, such as seeing, listening, talking, concentrating, and remembering.

(d) **Age.** Qualified jurors will not be excused solely because of age. If the juror requests an excuse and the juror is 72 or older, the jury commissioner should evaluate the difficulties created by jury service. If a juror of that age has transportation difficulties in completing jury service and would otherwise find that it is a significant burden to fulfill the obligations of jury service, the jury commissioner may find that "extreme hardship" exists and excuse the juror. For a person 72 or older, the jury commissioner may also consider the hardship on the spouse or other family member for whom the juror provides care, even though such care-giver responsibilities are less than would disqualify the juror under 13-71-105(2)(d). See II(4), above.

(e) **College or military service.** A college student who is still a county resident but who will be temporarily living away from home at college outside of the county on the day of jury reporting may be excused for "extreme hardship." If a parent or other adult family member calls and requests such excuse for the juror, the jury commissioner should simply check the date of birth of the juror. If the juror is of probable college age, the juror should be excused. Documentation should be requested as deemed appropriate by the jury commissioner.

Similar procedures should be followed for a person in military service who will be in an out-of-state assignment for the rest of the year. If the assignment is temporary duty of short duration, the juror should not be excused but should be postponed.

3. Judge review needed. Although "extreme hardship" might exist, the following areas will not support an advance excuse of a juror by the jury commissioner. The jury commissioner must refer these requested excuses to a judge.

(a) **Financial burden.**

The jury commissioner may not excuse a juror based on financial hardship unless that excuse has been approved by a judge. Suggested factors to evaluate are: the significance to the juror of any prospective financial loss; the ability of the juror to recover the loss; any other people who would be directly affected by the financial burden suffered by the juror. An "extreme hardship" would result from a financial burden which could not be readily recovered by the juror and which would be of significant magnitude to the juror. An example might be a parent with child care obligations who has been unemployed, has recently become re-employed, and who will lose a great deal of income by jury service.

In People v. Reese, 670 P.2d 11, 14 (Colo. App. 1983), the court found that the standard of "undue hardship" (which existed under an earlier version of the statutes governing juror service) included an undue financial burden imposed by jury service. In that case the juror's salary would not be paid while she served as a juror. The court said that the "undue hardship" sufficient to justify excusing a juror lies within the discretion of the court. Under the terms used in the current Jury Act, the financial burden would need to amount to "hardship" or "extreme hardship."

(b) **Occupation.** The Jury Act prohibits excusing a juror based on the juror's occupation. (Section 13-71-104(3)(a), C.R.S.) The jury commissioner may not excuse a juror for extreme

hardship based on occupation, unless that excuse has been approved by a judge. If the circumstances of working at that occupation mean that the juror would suffer hardship by serving as a juror, the jury commissioner may grant a deferral or should bring the issues for that juror to the reviewing judge for consideration of a hardship excuse. The jury commissioner should learn details of the impact of jury service on the juror's job. Possible examples are: a person working the first month or two on a new job; a farmer or agricultural laborer during harvest season; a cattle rancher during calving season; an accountant in the first two weeks of April; a student during final exams or missing significant classes; a person who is unemployed and will miss a significant opportunity to obtain a job by jury service; a sole proprietor with no other employees to keep the business open while serving as a juror.

As a general rule, the impact on the job of the juror's absence from work is not a hardship or inconvenience to the juror. A significantly deleterious effect on others resulting from the juror's absence may support a "best interests of justice" dismissal by the reviewing judge.

IV. Hardship excuses. See Sections 13-71-119 and -121, C.R.S.

1. Excuse. In a trial lasting **more than three** trial days, the trial judge may excuse a juror from performing juror service in that trial for **hardship**. The jury commissioner is not authorized to excuse a juror based on hardship. A request from a juror to be excused which does not meet the criteria of "extreme hardship," but which does demonstrate that the juror would suffer "hardship," may be presented to the trial judge, the chief judge, or a judge designated by the chief judge. In determining whether the juror suffers hardship, the judge considering the request for excuse must take into account the expected length of the trial.

If the assigned trial, or the only trial, or all the trials on which the juror might serve on the scheduled date will be longer than three days, the excuse may be granted in advance of the reporting date. If the juror might be assigned to a trial lasting three days or less, the excuse may not be granted prior to the juror reporting to the courthouse for trial.

If a juror is excused from a trial longer than three days based on hardship (and not on extreme hardship) and there is another trial to which the juror could be assigned on that date which will last three days or less, the juror must be reassigned to that shorter trial in order to complete the term of juror service. (See 13-71-121.)

2. Deferral or advancement. A juror who will suffer hardship may have juror service rescheduled to an earlier date ("advanced") or to a later date ("deferred"). This deferral or advancement may be made by the jury commissioner.

V. Inconvenience. See Sections 13-71-119 and -121, C.R.S.

A juror who will suffer inconvenience as a result of jury service is to be scheduled or excused under the same procedures as a juror who will suffer hardship.

As a general rule, a juror who will suffer inconvenience, but will not suffer "hardship" or "extreme hardship," should report to the courthouse on the scheduled date and will be excused

only by the trial judge. Nonetheless, when the length of the trial is taken into account, the trial judge or reviewing judge may excuse a juror in advance of reporting based on "inconvenience."

VI. Best interest of justice excuses. See 13-71-119, C.R.S.

1. Excuse procedure. The court may dismiss a trial juror at any time in the best interest of justice. The jury commissioner is not authorized to excuse a juror based on the best interest of justice. Before pursuing a juror excuse based on the best interest of justice the jury commissioner should attempt to resolve the situation by a postponement or advancement of the jury service date.

It is the preferred policy of this district that any dismissal of a juror based on the standard of "best interest of justice" be done by the trial judge after the juror has been assigned to a particular case. However, section 13-71-119 authorizes a juror to be dismissed based on the "best interest of justice" standard either "before or during" a juror's term of service. If the jury commissioner concludes that it is appropriate to dismiss a juror based on the best interest of justice before that juror has reported on the date required by the jury summons, the jury commissioner shall refer the matter to the trial judge, the chief judge, or other judge designated by the chief judge and that judge may excuse the juror if appropriate.

Some examples of a "best interest of justice" excuse which could be considered by the judge are: 1) a lawyer or judge whose jury service would cause postponement of significant litigation that could not readily be rescheduled; 2) a doctor whose jury service would cause significantly deleterious effects on patients, such as the sole-practice physician with no back-up, or a pediatrician during flu season, or a cardiac surgeon with scheduled surgeries; 3) a person with scheduled out-of-town travel for significant personal or business reasons, especially if the travel could not be readily rescheduled or will be by non-refundable tickets; 4) a person with a scheduled doctor's appointment which will be hard to reschedule or will pose significant health problems if the appointment is missed; 5) a person with a scheduled event which could not be rescheduled without significant impact on others, such as a funeral of a family member, a school staffing for a difficult child, or a presentation by the juror at a seminar or corporate event.

2. Religious excuse. No person shall be exempted or excluded from serving as a juror because of religion. Section 13-71-104(3)(a), C.R.S.

(a) Holidays. The jury commissioner may not excuse a juror for a religious holiday reason. The jury commissioner may postpone, advance, or defer jury service for a person who will be celebrating a religious holiday during the trial and who requests to be excused. If the trial is anticipated to last longer than two weeks and the holiday occurs later than the second week of trial, the jury commissioner should not postpone or defer the juror's service; the juror should be told to advise the judge about the holiday and the judge will then consider whether to interrupt the trial for that day.

(b) Religious beliefs. Generally, a juror who asserts an inability to serve because of a proscription against jury service in his or her religious beliefs will not be excused in advance by a reviewing judge. The juror will need to present the information in open court before the trial judge. The trial judge can then determine if the juror should be excused for "cause" or in the

“best interest of justice,” or if the juror should remain. If the jury commissioner knows that the juror has been excused by a trial judge in the past based on the juror’s religious beliefs, or knows that other members of that religious faith have been excused by a trial judge in the past, the jury commissioner may bring the request for an excuse to a reviewing judge who will consider whether to excuse the juror in advance. Such advance excuse should generally not occur in any case where the death penalty is an issue.

The jury commissioner may request the juror to provide a supporting letter from a presiding official within that religious organization.

VII. Procedures.

These policies are based on recognition that selection of an appropriate jury for a case is ultimately the responsibility of the judge presiding over the trial. However, if a juror will experience any hardship as a result of performing juror service, there needs to be a way to evaluate that hardship in advance when possible and to spare the juror the hardship when appropriate.

1. **Authorized judge.** All requests for juror excuses may be taken to the trial judge or to the chief judge. In the discretion of the chief judge, a duty roster of judges may be established which delegates to other judges the authority to review and excuse jurors.

2. Form of request.

(a) A request for postponement, deferral, or advancement of jury service may be either by telephone, e-mail, in writing, or in person.

(b) In the discretion of the jury commissioner, a request for disqualification from jury service may be in writing, in e-mail, in person, or over the telephone. It is the preferred policy of the district that disqualification requests be in writing. However, there may be circumstances (such as a subsequent request for disqualification based on the same reasons as presented in an earlier written request for disqualification) which will justify excusing a disqualified juror based on oral information. Any written request shall be accompanied by whatever supporting documentation is deemed necessary by the jury commissioner or the judge reviewing the request, such as an affidavit, doctor’s letter, or other proof. The jury commissioner will have available for juror use a form of request and/or affidavit which will permit a juror to specify the facts which support the juror’s request for disqualification.

(c) Any juror who asserts a reason for an excuse from jury service shall provide a written or e-mail request for being excused. If required by the jury commissioner, the reviewing judge, or the trial judge, that written request shall be accompanied by an affidavit, supporting documentation, or other proof. The jury commissioner will have available for juror use a form of request and/or affidavit which will permit a juror to specify the facts which support the juror’s request for an excuse.

(d) The jury commissioner shall be authorized to act as a clerk or deputy clerk of court for purposes of administering an oath under Section 24-12-103, C.R.S.

3. Action by the jury commissioner.

(a) If the jury commissioner is satisfied that the request and any affidavit or supporting documentation establish grounds for disqualification or a valid "extreme hardship" excuse, the jury commissioner may excuse the juror.

(b) If the jury commissioner is satisfied that the request and any affidavit or supporting documentation establish a valid "hardship", "inconvenience", or "best interest of justice" excuse, the jury commissioner must consult with the trial judge, the chief judge, or the chief judge's designated reviewing judge concerning the particular juror and then excuse or deny the excuse for the juror consistent with the decision received from the judge reviewing the request.

(c) If the jury commissioner has any reservation whether, or is not satisfied that the appropriate grounds for an excuse are present, the jury commissioner should advise the juror that the jury commissioner does not have authority to excuse the juror for that reason. The juror should be included in the venire sent to the courtroom and all documentation submitted by the juror should be provided to the trial judge.

4. Records. All written material and e-mail submitted for the purposes covered in this order shall be maintained in a file by the jury commissioner. The jury commissioner must keep a record of all granted postponements, deferrals, advancements, disqualifications, and excuses, the reasons for the request, and the action taken by the jury commissioner or a reviewing judge. The computer notes in the jury information system (in the "Memo" column or other location) may suffice for the record needed. The jury commissioner shall maintain a record of all jurors disqualified or excused in advance of being taken to a courtroom.

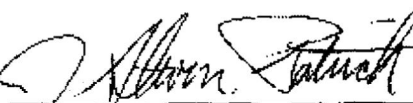
These records may be purged only after a decision is final and any necessary time for an appeal has run.

5. Time of excuse. The juror may be excused by the jury commissioner a) at any time in advance of reporting to the courthouse on the date required by the jury summons, or b) after reporting on the date required by the jury summons at any time prior to the juror reporting to the courtroom with the other prospective jurors.

6. Duration of excuse. The juror shall be excused from any further service for the duration of the disqualification or the grounds supporting the decision to grant the excuse, but no longer than the remainder of the calendar year. If the reason for the disqualification or excuse is a permanent extreme hardship, a permanent disability, or a permanent change of residence and if the jury management software permits, the juror's name will be stricken from the source list of jurors and will not be summoned for that court in the future.

Done this date: June 19, 2000

BY THE COURT:



Chief Judge

SUPREME COURT OF COLORADO

STATE JUDICIAL BUILDING
2 EAST 14TH AVENUE
DENVER, COLORADO 80203-2116

MARY J. MULLARKEY
CHIEF JUSTICE

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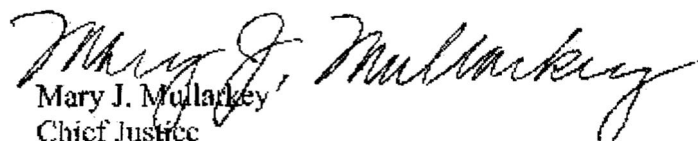
Dear Chief Judge:

The Standing Committee on Jury Reform has developed the enclosed Jury Commissioner Excuse Policy. The Committee recommends this policy for state-wide implementation in order to minimize juror inconvenience while still preserving the integrity of the juror pool.

I have read the policy carefully and am in favor of it. I request that you implement this policy or some version of it in your district.

Thank you for your continuing contributions to the improvement of the judicial branch.

Sincerely,


Mary J. Mullarkey
Chief Justice

Enclosure