

DISTRICT COURT SEVENTH JUDICIAL DISTRICT
ADMINISTRATIVE ORDER 95-4

STANDARD PROCEDURE
When Juror Fails to Appear as Summoned

WHEREAS, difficulty has been experienced by the courts in this district because some citizens summoned for jury service are failing to appear, with the result that they are not fulfilling their civic duty to serve as jurors, and in some cases trials have to be continued at great cost and inconvenience to the parties and to the judicial system.

AND WHEREAS, while most citizens summoned for jury service do appear, it is unfair to them and to the system, to allow others to disregard the summons with impunity. As a result it is desirable to establish a uniform policy throughout the district which through consistent application will assure that the courts in the district apply equitable and compatible procedures to those citizens who fail to appear for jury service, and still permit appropriate discretion to implement said procedures.

WHEREFORE, The following Administrative Order is adopted to provide guidelines to the jury commissioners in the Seventh Judicial District in dealing with citizens who fail to appear for jury service:

THE FIRST JURY SUMMONS

1. Procedure for the first time a citizen summoned for jury service fails to appear:

a. FIRST TIME FAILURE TO APPEAR: The failure to appear should be noted on the Jury Call Worksheet by the Jury Commissioner by showing the **Code "04"*** which instructs the State to mail to the citizen a Failure to Appear Notice directing him/her to telephone the Jury Commissioner to explain why he/she did not appear. (*See Note 1 at the end of this Administrative Order.) Once the State sends the FTA Notice, the "04" Code automatically changes to read Code "44" on the juror's BIJA screen.

b. THE CITIZEN CALLS IN: When a citizen calls the jury commissioner in response to the State's Failure To Appear Notice as he/she is supposed to, then the Jury Commissioner shall evaluate the excuse given for failing to appear, and shall determine if the excuse is justified or unjustified.

1) IF THE EXCUSE IS JUSTIFIED AS A DISQUALIFICATION, the jury commissioner shall excuse the citizen **permanently** based upon reasons for "Disqualification" on the Jury Disposition Codes:

01 [deceased], 03 [extreme hardship], 06 [language barrier],
07 [non-resident moved], 08 [non-resident/zip code problem],
09 [not a citizen], 12 [permanent physical/mental disability] or
13 [prior service]. [**"Permanent" disqualification will probably be effective only for the balance of the present calendar year.**]

2) IF THE EXCUSE IS JUSTIFIED AS A POSTPONEMENT, the jury commissioner may excuse the citizen **temporarily** based upon reasons for "Postponement" on the Jury Disposition Codes:

50 [business], 52 [hardship], 53 [care of infant], 54 [temporary medical], 57 [temporarily out of state/county], 58 [pregnancy], 59 [seasonal worker], 60 [student], 61 [pre-planned vacation].

§13-71-116 contemplates that a citizen has a right to request a "postponement" and as a result, the jury commissioner is authorized in his/her discretion to simply reschedule the citizen for jury service based upon use of one of the foregoing codes rather than coding the citizen under "51" [failed to appear].

3) When re-coding the juror's BIJA screen, the commissioner will find the code "44" (FTA Notice sent), and said code must be replaced by the current date the new code is being entered and the code "71" (which overrides "44"). Then the commissioner makes another new entry which is the date, on or after which, the juror's postponement expires and the juror is available for jury service, and said date is followed by the postponement code which the commissioner found to be appropriate under the procedure in ¶1.b.2 above.

4) IF THE EXCUSE IS THAT THE JUROR FORGOT OR IS NOT JUSTIFIED AT ALL OR IF THE JURY COMMISSIONER DESIRES A "FAILAP" CODING TO APPEAR ON THE WORKSHEET THE NEXT TIME THE CITIZEN IS CALLED, then the jury commissioner shall arrange for the citizen to report for jury service at a future jury trial, either by directing him/her to report on a specific date for a specific trial (to be arranged manually by the jury commissioner) or by coding the citizen under "51" on his BIJA screen so that he/she will receive a new summons to appear for jury service at the trial the next time the commissioner calls the State for a jury panel.

a) The "51" coding will also result in the citizen being designated as a "FAILAP" on the Jury Call Worksheet for the next panel call thus assisting the jury commissioner to readily identify a citizen who has previously failed to appear for jury service.

b) Having followed the procedure in ¶1.b.3 above, the commissioner (instead of entering a specific postponement code) should enter code "51" and a date on or after which the juror will be expected to appear.

5) REFER CITIZEN TO THE JUDGE: Neither the jury commissioner nor any clerk is expected to put up with rudeness or other abuse by any citizen who calls regarding jury service. Any such person should be referred to the judge responsible for the jury trial in question if the commissioner or clerk finds it necessary to do so.

c. IF THE CITIZEN DOES NOT CALL IN RESPONSE TO THE FTA NOTICE, (within 10 days after the jury commissioner receives notice that the FTA notices have been mailed out), then the jury commissioner (after overriding the juror's "44" code with code "71" and the date said overriding is done) shall recode the citizen with the postponement code "51" and shall use a date coinciding with the next business day following the date on which the entry is made to assure that the citizen is recalled for jury service at the earliest opportunity (although in reality he/she will not actually receive notice for another jury trial until the commissioner makes a new jury panel call). [See **Note 2** at the end of this Administrative Order.]

THE SECOND JURY SUMMONS

2. Procedure for the second time a citizen is summoned for jury service and fails to appear:

a. SECOND TIME FAILURE TO APPEAR: If a citizen fails a second time to appear for jury service after being properly summoned, then the Jury Commissioner should use a Delinquency Notice (as authorized by CRS §13-71-122) in the form of the attached SUMMONS AND ORDER TO SHOW CAUSE issued by the Judge, directing the citizen to appear on a date and time certain to show cause why he/she should not be found to be in contempt of court for failing to appear for jury service in response to the second notice. The show cause hearing may be held by the judge who presided over the second trial, or at the request of said judge through the District Administrator, the Chief Judge may assign another judge to conduct said contempt hearing.

b. The Summons and Order to Show Cause shall be served upon the delinquent citizen by registered or certified mail, return receipt requested [as contemplated by C.R.S. §13-71-122] or in the discretion of the Judge to assure actual notice, the same may be served by the Sheriff of the County in which the citizen resides.

c. PROCEDURES BASED UPON WHETHER GOOD CAUSE IS SHOWN OR NOT:

1) Citizen shows good cause: If the Judge finds the citizen to have shown good cause for his/her failure to appear at the second trial, then the Judge shall exonerate the citizen and, in the Judge's discretion, after taking into account the citizen's reasons for failing to appear for the first trial also, the Judge shall make such order as is appropriate to either require or not require jury service of the citizen.

2) Citizen fails to show good cause: If the Judge finds the citizen to have failed to show good cause for his/her failure to appear at the second trial, then the Judge may act as follows:

a) Refer the matter to the Office of the District Attorney for the Seventh Judicial District for prosecution as a crime under the provisions of §18-8-612 (M-3) which could result in a sentence of up to six months in jail or a fine up to \$750 or both.

b) impose contempt sanctions including either

(1) punitive relief in terms of a fine up to \$500 or a jail sentence up to six months or both, or useful public service in lieu of a suspended jail sentence with the number of hours to approximate the length of time devoted by those jurors who actually served in the jury trials for which the offending citizen failed to appear, or

(2) remedial relief in terms of requiring the performance of jury service by the offending citizen for one or more future jury trials on specific dates to be arranged by the jury commissioner. In this regard a citizen who twice fails to appear for jury service shall be deemed to have waived any privilege he/she may otherwise have to enjoy the benefits of the One Day/One Trial jury service requirements contemplated in the Uniform Jury Selection and Service Act. Said waiver thus authorizes the court to require the citizen to appear for jury selection for more than one trial in a calendar year).

_____ COURT, _____ COUNTY, COLORADO
Case No. _____

SUMMONS AND ORDER TO SHOW CAUSE

PEOPLE OF THE STATE OF COLORADO,
vs.

_____, Delinquent Juror.

TO: _____ a summoned juror who failed to appear.

Please take notice that according to the records of this Court, you were summoned to appear for jury service in this County and you failed to appear for a jury trial scheduled to begin on _____, 199____, at _____ M. in _____, Colorado, and according to our records, this constitutes your second failure to appear for jury service.

Based upon said failures to appear, you are hereby Ordered by this Court to appear before Judge _____ in the _____ Court in _____, Colorado, at _____ M. on _____, 199____, to show cause, if any you have, why you should not be found to be in contempt of court for failing to appear to perform jury service as your civic duty. If you are found to be in contempt of court, the Court then has authority to require you to perform such jury service as the judge may order, or you may be sentenced to pay a fine up to \$500 or sentenced to a jail term up to six months, or in lieu of a jail term, you may be required to perform useful public service as directed by the judge.

If you fail to timely appear as required by this summons, then the court may order the issuance of a bench warrant for your arrest, so that you can be brought before the court to answer this summons. [If you fail to appear for the above hearing, the matter may be referred to the District Attorney's office for prosecution as a crime under CRS §18-8-612. If convicted you could be sentenced to pay a fine of \$750 or to serve up to 6 months in jail.]

ISSUED THIS _____ day of _____, 199____.

Judge of the County/District Court

RETURN OF SERVICE Upon the Delinquent Juror by:

[] certified mail, return receipt requested, mailed by the clerk to the delinquent juror on _____, 199____.

Clerk of the Court

[] the Sheriff of _____ County, Colorado, upon _____
at _____, Colorado, on _____, 199____.

(Deputy) Sheriff of _____ County

d. IF THE CITIZEN FAILS TO APPEAR IN RESPONSE TO THE SUMMONS (In ¶2(a) above), then the Judge may either refer the matter to the District Attorney for prosecution as a crime under §18-8-612 or the Judge may order that a bench warrant issue for the arrest of the citizen to appear forthwith to show cause why he/she failed to comply with the summons; and if good cause is not shown for said noncompliance, then the Judge may find the citizen to be guilty of contempt of court, and upon conviction shall impose any of those contempt sanctions which are contemplated under ¶2.c.2.b above. [§13-71-123]

GUIDELINES IN EXCUSING JURORS FOR HARDSHIP

3. As a general rule in excusing citizens from jury service, the jury commissioner may permanently excuse a citizen whom the commissioner knows or reasonably believes to be unable to serve due to age, disability or other infirmity; and in this regard the jury commissioner may use his/her discretion as to whether or not to require the filing of a medical excuse or other written proof of disability.

WHEREFORE, THIS ADMINISTRATIVE ORDER 95-4 is adopted this 18th day of April, 1995.



Robert A. Brown, Chief Judge

EXPLANATORY NOTES

NOTE 1: *"04" is used instead of "51" because "04" triggers the sending of an official State FTA Notice to get the citizen's attention concerning his/her failure to appear, rather than using "51" which simply puts the citizen's name back on the jury list for the next trial without any formal recognition of the failure to appear. Use of the "04" code generates a Failure to Appear Notice from the State to the Jury Commissioner, so that the commissioner can monitor which citizens call in response to the FTA Notice, and it provides the citizen's juror ID number which is helpful in locating and updating their BIJA screen.

NOTE 2: This may not seem to be a sufficient sanction for failing to answer the FTA Notice at all, but experience to date demonstrates that there are very few who fail to call in after receiving the Notice. Further, as a practical matter the citizen is actually entitled to one postponement, so the imposition of a sanction can wait to determine if the citizen appears upon receipt of a second summons. Further, past experience utilizing the foregoing procedures indicates that the FTA Notice has a very salutary effect with most citizens who simply forgot on the first notice and it reinforces their determination not to forget when they get the second notice. (In other words, the "good" achieved with respect to those who get the Notice and call in, is outweighed by any perceived "bad" in not immediately seeking sanctions against those who do not call in.)