

Chief Judge Directive 24-02

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

Pursuant to § 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 five categories: I) Postponements or advancements; II) Jurors who are Disqualified; III) Excuse based on Hardship; IV) The Best Interest of Justice Excuse; and V) Religious Excuse.

I. Postponements or advancements. See § 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 must not be longer than six months but may extend into the next calendar year. The only exception being if the trial juror is a Colorado resident and a student enrolled in an institution of higher education outside the state of Colorado and attends classes at the institution in person, then the postponement must not last more than twelve months but may extend into the next calendar year. The juror shall notify the jury commissioner by telephone or in writing requesting an alternate date to which juror service may be postponed. Jury commissioners, in their discretion, may set the date to which the juror's service is postponed, and the juror shall receive a new summons designating the new date.

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. A juror who will suffer hardship may have juror service rescheduled to an earlier date or to a later date in the discretion of the jury commissioner. § 13-71-119(2), C.R.S. 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 jury commissioner shall postpone and reschedule the service of a juror who is regularly employed by an employer with five or fewer full-time employees or their equivalent if, during the same period, another employee of the employer has been summoned for jury service. § 13-71-116.5, C.R.S.

II. Jurors who are Disqualified. See § 13-71-105, C.R.S.

(1) Citizenship. Eligibility is determined as of the reporting date. A juror who is not a United States citizen is disqualified from serving on a jury. 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.

(2) 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 must be excused. A person who resides in another county as of the reporting date, but lives more than fifty percent of the time in the county where summoned for jury service must not be excused. A person who resides in the county where summoned to serve as of the reporting date, but either plans to move or lives more than fifty percent of the time in another county must also not be excused. Proof of residence address shall be provided by the juror.

(3) Age: A person is disqualified to serve on a jury if he or she is under the age of eighteen. Normally, this will 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 is under the age of eighteen, the juror must be excused.

(4) English language: A juror is disqualified if the juror has an inability to read, speak, and understand the English language. If the juror requests a disqualification because 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 an affidavit from the juror is sufficient to determine whether the juror is disqualified. If the juror submits an affidavit and the jury commissioner determines the affidavit is sufficient evidence on this issue, the jury commissioner must excuse the juror from appearing on this summons only.

(5) Disability: A juror is disqualified if the juror is unable to render satisfactory juror service because of a physical or mental disability. A letter from a licensed physician, licensed physician assistant authorized under § 12-240-107(6), C.R.S., licensed advanced practice registered nurse, or authorized Christian science practitioner is required in order to be excused. If a juror brings in or mails in such a 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 must excuse the juror. The statutory medical guideline that must be applied by the authorized medical professional 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.

(6) Care for another: A juror is disqualified if the juror's absence from the home creates a substantial risk of injury to the health of a permanently disabled person living in the same household for whom the juror is solely responsible for the daily care of such person. A letter from a licensed physician, licensed physician assistant authorized under § 12-240-107(6), C.R.S., licensed advanced practice registered nurse, or authorized Christian science practitioner about the disabled person if the jury commissioner requests it in order to be excused. 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 must 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.

(7) Prior or prospective jury service: A juror must be excused if the juror submits a letter or certificate from an appropriate authority verifying that the juror either: 1) has been selected and served as an impaneled trial or grand juror in any municipal, tribal, military, state or federal court within the preceding twelve months or is scheduled for juror service in such court(s) within the next twelve months; or 2) has made an appearance as a prospective juror in a state court in accordance with the provisions of § 13-71-120, C.R.S. within the current calendar year that was not for the purpose of meeting emergency needs of the court, the state court administrator, or a jury commissioner.

III. Excuse based on Hardship. §§ 13-71-119 and 119.5, C.R.S.

(A) Undue or Extreme Physical Hardship. § 13-71-119.5(2)(a), (2)(d), C.R.S.

A person shall be excused temporarily from service as a juror if his or her jury service would cause undue or extreme physical hardship to him or her or to another person under his or her direct care or supervision. This excuse may be granted notwithstanding the fact that the person does not have sole responsibility for the care of another person.

Undue or extreme physical hardship shall be limited to circumstances in which a person:

- would be required to abandon a person under his or her direct care or supervision because of the inability to obtain an appropriate substitute care provider during the period of jury service; or
- would suffer physical hardship possibly resulting in illness or disease.

(1) Proof required. The judge or jury commissioner may excuse a person if the documentation clearly supports the request to be excused. A person who requests to be excused may provide the judge or jury commissioner documentation that supports the request to be excused, including but not limited to medical statements from licensed physicians, proof of dependency or guardianship, or other similar documents. The documentation required will depend in part on the undue or extreme physical hardship at issue.

(2) Duration of excuse. A person who is temporarily excused for this reason shall become eligible for qualification as a juror when the temporary excuse expires, as determined by the court. The juror shall be excused from any further service only for the period in which jury service would cause an undue or extreme physical 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 hardship will last to the end of the calendar year, the juror will be excused for the remainder of the year. A person may be permanently excused only if the judge or jury commissioner determines that the grounds for being excused from jury service are permanent in nature. See section VI (E) of this order.

(3) Examples of Undue or Extreme Physical Hardship.

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

In determining whether this amounts to undue or extreme physical 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 undue or extreme.

(b) Nursing. A person who is breast-feeding a child and is temporarily unable to or chooses not to leave the child in order to serve on a jury must be excused temporarily from service for up to two consecutive 12-month postponements (total of 24 months). The judge or jury commissioner may request a medical statement in support of postponement.

(c) Health of Juror or Another. 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). 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 undue or extreme physical hardship for the juror to serve, the jury commissioner may excuse the juror. The jury commissioner should require the juror to provide a doctor's letter substantiating the health problem. In determining whether the hardship is undue or 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.

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 II (6), above.

(B) Examples of When an Excuse Does Not Meet the Standard for Undue or Extreme Physical Hardship.

(1) 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 but still within the State of Colorado on the day of jury reporting may have jury service advanced or postponed. Regardless of whether it is the juror or a parent or other adult family member of the juror is seeking to advance or postpone their jury service, the jury commissioner should request appropriate documentation to support excusal.

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.

In the event the juror is not intending to return to the county at any time in the next 12 months due to college or military obligations out of state, the jury commissioner should consider whether the juror is disqualified under section II (2) above.

(2) Disability. § 13-71-104, C.R.S. and § 13-71-137, C.R.S.

A juror with a disability shall serve except as otherwise provided in § 13-71-105, C.R.S. (disqualification) or § 13-71-119.5, C.R.S. (undue or extreme physical hardship). A person with a disability shall serve except where the court finds such person's disability prevents the person from performing the duties and responsibilities of a juror.

Before a person with a disability is dismissed as a juror, the jury commissioner or judge shall interview the person to determine the reasonable accommodations, if any, that the court may make available to permit the person to perform the duties of a juror. The jury commissioner should contact the ADA coordinator in the district for assistance in engaging in an interactive process with the juror to determine reasonable accommodations for the juror.

If the juror requests to be excused and refuses the offer of accommodation, a reviewing judge shall consider whether 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.

(3) Financial burden. The jury commissioner may not excuse a juror based on financial hardship. If a juror serves on a jury and claims that service constituted extreme financial hardship, the court should consider a request under §§ 13-71-119, and 13-71-125 to 131, C.R.S.

(4) Extended trial. See § 13-71-121, C.R.S.

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 or inconvenience**. The jury commissioner is not authorized to excuse a juror based on hardship or inconvenience.

If a juror is excused by the judge from a trial longer than three days based on hardship and inconvenience (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.

IV. Best Interest of Justice Excuse. See § 13-71-119, C.R.S.

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 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, § 13-71-119, C.R.S. authorizes a juror to be dismissed based on the best interest of justice standard at any time. If the jury commissioner is unable to resolve the situation by means of a postponement or advance and believe that it may be 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.

V. Religious Excuse.

No person shall be exempted or excluded from serving as a juror because of religion. § 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 is requesting to be excused because they will be celebrating a religious holiday on the designated reporting date or within three consecutive days of said reporting date. If the religious holiday will occur shortly after the third consecutive day after the reporting date, the jury commissioner should not postpone or defer the juror's service and the juror should be told to advise the judge about the holiday and the judge will then consider whether excusal is appropriate or whether to interrupt the trial to accommodate the observance of said holiday.

(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 and the parties to the case so that the trial judge can determine whether or not there is a legal basis to excuse the juror.

VI. 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.

(A) Authorized judge. All requests for juror excuses may be taken to the trial judge presiding over the trial 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.

(B) Form of request.

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

(2) 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 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 make available a request form and/or affidavit to be used by prospective jurors that will allow the juror to specify the facts that support the request for disqualification.

(3) 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 make available a request form and/or affidavit to be used by prospective jurors that will allow the juror to specify the facts that support the request for excusal.

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

(C) Action by the jury commissioner.

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

(2) If the jury commissioner is presented a request and any affidavit or supporting documentation concerning 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.

(3) If the jury commissioner has any reservation whether appropriate grounds for a disqualification or excusal are present and/or if they have been satisfied, the jury commissioner should advise the juror that the jury commissioner does not have authority to disqualify/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.

(D) **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. Records kept pursuant to this order are not public records.

These records shall be retained according to the records retention manual guidelines of the judicial department. § 13-71-138, C.R.S.

(E) **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) on the reporting date required by the jury summons at any time prior to the juror reporting to the courtroom with the other prospective jurors.

(F) **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. If the reason for the disqualification or excuse is permanent in nature, the juror may be permanently excused. However, jurors disqualified or excused for disabilities that could not be accommodated at the present time may be able to serve in the future and should not be prevented from performing the duties and responsibilities of a juror in the future.

Chief Judge Directive 18-01 is repealed and replaced by this order.

Done in Salida, Colorado: ____10/9/24____

BY THE COURT:

 /s/ Patrick W. Murphy
Chief Judge