

District Court, Weld County, State of Colorado Court Address: 901 9 <sup>th</sup> Avenue, Greeley, CO 80631 Mailing Address: P.O. Box 2038, Greeley, CO 80632-2038	DATE FILED: December 10, 2020 11:41 AM
<b>ADMINISTRATIVE ORDER NO. 2020-23</b>	
<b>▲ COURT USE ONLY ▲</b>	Case Number: <b>2020 CV 01</b> Division 1
<b>DELEGATION OF AUTHORITY TO A JURY COMMISSIONER TO RESCHEDULE AND EXCUSE JURORS</b>	

Pursuant to the authority granted to chief judges in Chief Justice Directive 95-01 and C.R.S. §13-71-124, I hereby delegate to the jury commissioner for the Nineteenth Judicial District the following authority to reschedule and excuse jurors from jury service, which I deem appropriate for the efficient administration of the Colorado Uniform Jury Selection and Service Act, C.R.S. §13-71-101, *et seq.*

Excusals of prospective jurors under this administrative order 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, C.R.S. §13-71-116.**

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 to a different day. A juror has a right to one postponement for any reason and the jury commissioner has the authority to grant that postponement to any juror requesting a postponement. The jury commissioner is encouraged to handle requests for postponements in the manner most convenient for the juror.

A postponement may be for no longer than six 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 on 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.

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 that 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. C.R.S. §13-71-119(2). 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. Examples may include such events as a medical procedure 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. C.R.S. §13-71-116.5.

## **II. JURORS WHO ARE DISQUALIFIED, C.R.S. §13-71-105.**

**(A) Citizenship.** A juror who is not a United States citizen is disqualified from serving on a jury. If the juror reports to the jury commissioner that he or she is not a United States citizen, that person is not able to serve on a jury and may be excused by the jury commissioner.

**(B) 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 may be excused by the jury commissioner. If a person resides in another county as of the reporting date but lives more than fifty percent of the time in Weld County, the trial judge shall determine whether this juror meets the criteria to serve on a Weld County jury. (For example, a student who lives in one county while attending college, but also lives in another county when not attending classes). A person who resides in the county where summoned to serve as of the reporting date, but either will be moving to another county during the period of jury service or the person resides more than fifty percent of the time in another county, should be excused. Proof of the juror's residential address shall be provided by the juror to be excused by the jury commissioner under this section.

**(C) 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 must provide the jury commissioner with a reliable form of identification proving the juror's true age. If the jury commissioner verifies the juror's age from the identification, the juror should be excused.

**(D) English language:** A juror is disqualified if the juror is unable to read, speak, and understand the English language. If the juror requests a disqualification prior to the date of jury service, the jury commissioner may excuse the juror. If the juror requests a

disqualification on the day of jury service 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 the juror is disqualified. The jury commissioner may excuse the juror from appearing on this summons only. Because the determination whether a juror is unable to read, speak and understand English is a fact question, the jury commissioner must keep a record of the information learned from the juror about the language difficulties. *See People v. Lee*, 93 P.3d 544 (Colo. App. 2004).

**(E) Disability:** A juror is disqualified if the juror is unable to render satisfactory juror service because of a physical or mental disability. A written statement from the juror's medical or psychological provider is required in order to be excused under this section. If a juror provides a letter from his/her medical provider specifying the nature of the disability and that such disability prevents the juror from rendering satisfactory jury service, the jury commissioner may excuse the juror. The statutory medical standard 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.

**(F) 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 for whom the juror is solely responsible. A statement from a medical provider about the disabled person is required 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 may excuse the juror; however, 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.

**(G) Prior jury service:** A juror should be excused if the juror submits a letter or certificate from an appropriate authority verifying that the juror: (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 C.R.S. §13-71-120 within the current calendar year.

### **III. EXCUSAL BASED ON HARDSHIP, C.R.S. §§13-71-119, -119.5.**

#### **(A) Undue or Extreme Physical Hardship:**

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 medical providers, 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 excusal 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 must provide enough information to permit a determination as to the anticipated ending date 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 daycare. The hardship will be more likely to be undue and extreme if the child has special needs—such as health or behavioral needs—or if there are several very young children. In determining whether the circumstances amount 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 daycare and the juror's ability to pay for such services; the extent to which the juror has attempted to find alternative care or can make further efforts in finding daycare; the current health of the child; and any special needs of the child. If childcare is available from an employed spouse who would have to take time off from work, the hardship is not necessarily undue or extreme. However, a nursing mother may suffer undue or extreme physical hardship if, for example, the child is younger than nine months and the child is not receiving nourishment from a bottle.

**(b) 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 may include: 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 chief or trial 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 letter from the juror's medical provider 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 and the impact of that medication on the person's ability to be a juror, as well as the impact on the juror of not taking the medication during the trial; and the impact of the health condition on the ability for the person to process and recall information, such as any impacts on observing, 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 Section II(F), above.

**(c) Age.** There is no statutory authority for excusing jurors who are over the age of eighteen solely because the person has reached a certain age. Qualified jurors may be excused if they have infirmities due to age which alone or in combination with other reasons would cause an undue or extreme physical hardship for the juror. If the juror requests an excusal due to his or her age, the jury commissioner should evaluate the difficulties created by jury service related to the person's age and other factors. If a juror of an advanced 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 undue or extreme physical hardship exists and excuse the juror.

**(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 will be temporarily living away from home at college outside of the county on the day of jury reporting may have jury service advanced or postponed. If a parent or other adult family member calls and requests such another date for the juror to report, 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 serving outside the state for the rest of the year. If the assignment is 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(B) above.

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

A juror with a disability shall serve except as otherwise provided in C.R.S. §13-71-105 (disqualification) or C.R.S. §13-71-119.5 (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 whether reasonable accommodations can be made to enable 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 whether reasonable accommodations can be made for the juror.

If the juror requests to be excused and declines the offer of accommodation, the chief judge or trial judge shall consider whether to excuse a juror in the interests of justice. For example, a juror who declines 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 C.R.S. §§13-71-125-131.

**(4) Extended trial, C.R.S. §§13-71-119, -121.**

For 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 claims of hardship or inconvenience.

If a juror is excused by the judge from a trial longer than three days based on hardship or inconvenience (and not on extreme hardship) and there is another trial scheduled to last less than three days on the date the juror is summoned, the juror will be reassigned to that shorter trial in order to complete the term of juror service. *See* C.R.S. §13-71-121.

**IV. Best Interest of Justice Excusals, C.R.S. §13-71-119(2).**

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 considering an excuse based on the interest of justice, the jury commissioner should first attempt to resolve the situation by a postponement or advancement of the jury service date.

Dismissal of a juror based on the standard of best interest of justice is to be decided by the trial judge after the juror has been assigned to a case. However, C.R.S. §13-71-119 authorizes a juror to be dismissed based on the best interest of justice standard at any time. If the jury commissioner believes that it would 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 must confer with either the chief judge or the judge who will be presiding over the trial to obtain court approval to dismiss the juror under the best interests of justice standard.

**V. Religious Excusal.**

**(A)** No person shall be exempted or excluded from serving as a juror because of religion. C.R.S. §13-71-104(3)(a).

**(B) Holidays.** The jury commissioner may not excuse a juror for a religious holiday. 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; instead,

the juror should be told to advise the judge about the holiday and the judge will then consider whether to recess the trial for that day.

**(C) 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 the jury commissioner. The juror must present the information during jury selection to the trial judge. The trial judge will then determine whether the juror should be excused in the best interest of justice or if the juror should remain. The jury commissioner may request the juror to provide a supporting letter from a presiding official within that religious organization.

## **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 hardship as a result of performing juror service there must be a way to evaluate that hardship in advance when possible, thus sparing the juror the hardship when appropriate.

**(A) 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 delegating the authority to review and excuse jurors to other judges.

### **(B) Form of request.**

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

(2) In the discretion of the jury commissioner, a request for disqualification from jury service must be in writing, e-form, or in person. It is the preferred policy of the district that disqualification requests be in writing. Any written request shall be accompanied by whatever supporting documentation is deemed necessary by the jury commissioner or the court, such as an affidavit, doctor's letter, or other proof.

(3) Jurors requesting to be excused from jury service shall provide a written or e-form request to the jury commissioner asserting the reason(s) for the request for excusal.

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



**(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 pursuant to the provisions of this order.

(2) 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 may 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 based on the decision of the judge reviewing the request.

(3) If the jury commissioner is not satisfied that the appropriate grounds for an excusal exist, 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.

**(D) Records.** All written material and e-mail correspondence submitted for the purposes addressed in this order shall be maintained by the jury commissioner in accordance with the records retention manual guidelines. The jury commissioner must keep an electronic record notes in the jury information system of all granted postponements, deferrals, advancements, disqualifications, and excuses. The jury commissioner shall maintain an electronic 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.

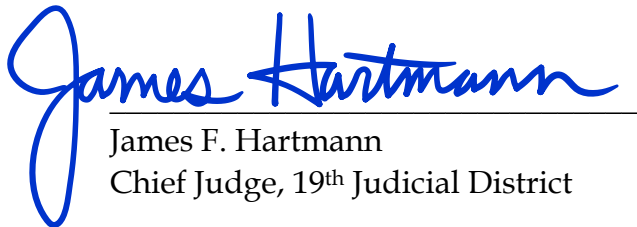
These records shall be retained according to the records retention manual guidelines of the judicial department. C.R.S. §13-71-138.

**(E) Time of excuse.** When a juror may be excused by the jury commissioner under the provisions of this order, the juror may be excused: (1) at any time in advance of reporting to the courthouse on the date required by the jury summons; or (2) 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 excusal.** The juror shall be excused from any further service for the duration of the disqualification or the grounds supporting the excusal. If the reason for the disqualification or excusal is permanent, 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.

Date: December 10, 2020.

BY THE COURT

A handwritten signature in blue ink that reads "James F. Hartmann". The signature is written in a cursive style with a large, looping initial "J".

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James F. Hartmann  
Chief Judge, 19<sup>th</sup> Judicial District