

<p>DISTRICT COURT, ALAMOSA COUNTY, COLORADO, 8955 Independence Way Alamosa, CO 81101</p> <hr/> <p>THE PEOPLE OF THE STATE OF COLORADO Plaintiff,</p> <p>v.</p> <p>BARRY LEE MORPHEW, Defendant.</p>	<p>DATE FILED April 13, 2026 9:44 PM</p> <p>▲ COURT USE ONLY ▲</p>
<p>JANE FISHER-BYRIALSEN, #49133 FISHER & BYRIALSEN, PLLC 4600 S. Syracuse Street, 9th Floor Denver, CO 80237 (202)256-5664 Jane@fblaw.org</p> <p>DAVID BELLER, #35767 RECHT KORNFELD, P.C. 1600 Stout Street, Suite 1400 Denver, CO 80202 (303)573-1900 Fax: (303) 446-9400 david@rklawpc.com</p>	<p>Case Number: 25 CR 128</p>
<p>[D-024] MOTION THAT THE COURT (NOT THE JURY COMMISSIONER) HEAR AND DECIDE ANY PROSPECTIVE JUROR’S REQUEST TO BE EXCUSED WHEN THE JUROR CLAIMS TO BE A CARETAKER FOR AN INDIVIDUAL WITH A PERMANENT DISABILITY</p>	

Barry Morphey, by and through undersigned counsel, hereby requests this Court Order that the Court, not the Jury Commissioner, rule on any prospective juror’s request to be excused on the grounds that the prospective juror is a caretaker for another. As grounds, Mr. Morphey states:

1. The Colorado statute provides that “[t]he court or the jury commissioner may defer or advance the term of service of the trial or grand juror upon a finding as provided in [C.R.S. §§’s] 13-71-104, 13-71-105, or 13-71-119.5.”

2. One of those cross-referenced sections (§ 13-71-105) provides for excusal for some caretakers:

(2) A prospective trial or grand juror shall be disqualified, based on the following grounds:

(d) Sole responsibility for the daily care of an individual with a permanent disability living in the same household to the extent that the performance of juror service would cause a substantial risk of injury to the health of the individual with a disability. Jurors who are regularly employed at a location other than their households may not be disqualified for this reason. Any person claiming this disqualification shall, if the jury commissioner requests it, submit a letter from a licensed physician, licensed physician assistant authorized under section 12-36-106(5), C.R.S., licensed advanced practice nurse, or authorized Christian science practitioner stating the name, address, and age of the individual with a disability, the nature of care provided by the prospective juror, and an opinion that the performance of juror service would cause a substantial risk of injury to the individual with a disability.

§ 13-71-105(d), C.R.S.

3. The statutes provide that some Section -105 (“caretaker”) excusals are determined by the court, not the jury commissioner: See § 16-10-103 (1): “The court shall sustain a challenge for cause on one or more of the following grounds: (a) Absence of any qualification prescribed by statute [§ 13-71-105] to render a person competent as a juror.”

4. Elsewhere, though, the statutes state that “(2) The court or the jury commissioner may defer or advance the term of service of the trial or grand juror upon a finding as provided in section 13-71-104, 13-71-105, or 13-71-119.5.” § 13-71-119 (2), C.R.S.

5. Section 13-71-119.5 also provides for excusal if the prospective juror is providing direct care or supervision of a person who would suffer “undue or extreme physical hardship” if the prospective juror were to serve. § 13-71-119.5 (2)(a)(1), C.R.S.¹ “Undue or extreme physical hardship shall be limited to circumstances in which a person:

¹ “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.”

(I) 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

(II) Would suffer physical hardship possibly resulting in illness or disease.

§ 13-71-119.5 (2)(d), C.R.S.

6. The Statute provides that the Section -119.5 (2) excusal is determined by “a judge or jury commissioner of the court.” § 13-71-119.5 (2)(b), C.R.S.

7. These terms – court, judge, and jury commissioner – have specific meanings within the statutes.

8. When the statute uses the term “court,” it means the judge and does not mean the jury commissioner:

(1) “Clerk” and “clerk of the court” include any deputy clerk or the jury commissioner.

(2) “Court” means a district or county court of this state and includes any judge of the court.

§ 13-71-102 (1) and (2), C.R.S.

9. When the language is stated in the alternative (“judge or jury commissioner”), this Court has the authority and obligation to decide how much of the statutory power will be exercised by the Commissioner and how much by the Court.

10. Whenever the Jury Commissioner exercises power, this Court has the obligation to set forth procedures to permit Mr. Morphew to discover information about what happened and then to challenge the Commissioner’s action, either in this Court or on appeal, or both. The issue would land on this Court’s desk either way.

11. Any deficiencies in the jury selection process must be examined with great scrutiny, as Mr. Morphew is entitled to a jury drawn from a fair cross-section of the community under both the federal and state constitutions.

13. This Court should exercise its discretion to provide that the court will be involved in determining whether a caretaker’s jury service would “cause a substantial risk of injury to the health of the individual with a disability.” § 13-71-105(d), C.R.S. Application of these statutory

criteria requires exercise of judicial discretion, with support in the record. *People v. Coughlin*, 304 P.3d at 580.²

14. Involving the court in the decision whether to excuse a caretaker claiming a right to excusal would ensure greater consistency in the procedures that apply to a prospective juror's request to be excused based on his or her own disability. See § 13-71-104(3)(c), C.R.S. "Before dismissing a person with a disability pursuant to paragraph (b) of this subsection (3), the court shall interview the person to determine the reasonable accommodations, if any, consistent with federal and state law, that the court may make available to permit the person to perform the duties of a juror." (emphasis added).

15. This request is to be read in conjunction with all of Mr. Morpew's motions regarding the jury selection process [D-XX-XX] and may be adjusted based upon the information learned at the requested conference with the Jury Commissioner/Clerk/Court and parties.

16. Mr. Morpew makes this motion, and all other motions and objections in this case, whether or not specifically noted at the time of making the motion or objection, as a continuing objection based upon (in addition to the above authority) the following grounds and authorities: the due process, trial by jury, right to counsel, equal protection, equal access to and administration of justice, right to defend life, cruel and unusual punishment, confrontation, compulsory process, right to remain silent, and right to appeal clauses of the federal and Colorado Constitutions, and the first, fourth, sixth, eighth, ninth, tenth, and fourteenth amendments to the United States Constitution, and article II, sections 3, 6, 7, 10, 11, 16, 18, 20, 23, 25, and 28 of the Colorado Constitution. Mr. Morpew cross-references and incorporates by reference all pleadings filed or to be filed in this case, and caselaw cited therein and at oral argument.

WHEREFORE, Mr. Morpew requests that the Court, not the Jury Commissioner, rule on any prospective juror's request to be excused on the grounds that the prospective juror is a caretaker for another.

² In *People v. Coughlin*, the juror claimed a physical disability. The district court rejected the claim, and the defendant appealed. The Court of Appeals affirmed the district court. This case is an example, then, of such proceedings being on the record and not simply handled by the Jury Commissioner in an extra-judicial manner.

Respectfully submitted this 13th day of April, 2026.

RECHT & KORNFELD, P.C.

/s/ David Beller
David Beller, #35767

FISHER & BYRIALSEN, LLC

/s/ Jane Fisher-Byrialsen
Jane Fisher-Byrialsen, #49133

Certificate of Service

I hereby certify that on April 13, 2026, I caused the foregoing to be filed with the Alamosa County District Court and a copy of the same to be served on the Alamosa County District Attorney's office via CCE-File Service.

/s/ Abby Clement
Paralegal at Fisher & Byrialsen PLLC