

<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 9:52 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 align="center">[D-025] MOTION THAT THE COURT (NOT THE JURY COMMISSIONER) HEAR AND DECIDE ANY PROSPECTIVE JUROR'S CLAIM OF EXCUSAL BASED UPON A DISABILITY</p>	

Barry Morphew, by and through undersigned counsel, hereby requests this Court ensure that the Court, not the Jury Commissioner, rule on any prospective juror's request to be excused because of a disability and as grounds, states as follows:

1. A prospective juror does not have a right to automatic dismissal simply because the juror claims an exemption based upon a disability. "A person with a disability shall serve except: (I) As otherwise provided in section [C.R.S. §§'s] 13-71-105 or 13-71-119.5; or (II) Where the court finds that such person's disability prevents the person from performing the duties and responsibilities of a juror." §13-71-104(3)(b), C.R.S.

2. “A person with a physical disability is obligated to serve as a juror subject to three limited statutory exceptions.” *People v. Coughlin*, 304 P.3d 575, 580 (Colo. App. 2011). Those three limited exceptions are:

- “[i]nability, by reason of a physical or mental disability, to render satisfactory juror service.” § 13–71–105(2)(c),
- “undue or extreme physical hardship.” § 13–71–119.5(2),
- if “the court finds that such person's disability prevents the person from performing the duties and responsibilities of a juror.” § 13–71–104(3)(b)(II).

3. The statutes and caselaw contain legal language defining and applying each of these criteria. For example, for the first criteria (physical or mental disability), the statute provides a guideline that “[a] person shall be capable of rendering satisfactory juror 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.” C.R.S. §13–71–105(2)(c). The second criteria (undue or extreme physical hardship) is limited to “undue or extreme physical hardship” to circumstances in which the juror would suffer physical hardship possibly resulting in illness or disease. C.R.S. §13–71–119.5(2).

4. Application of these criteria requires exercise of judicial discretion, and there must be support in the record. *People v. Coughlin*, 304 P.3d 575, 580 (Colo. App. 2011).¹

5. “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.” § 13-71-104(3)(c), C.R.S. (emphasis added).

6. 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.

¹ 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.

(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.

7. *See also* § 13-71-115 (3), which again uses the term “court” in connection with decisions about excusals based on physical disability:

(3) If a person's answers to a questionnaire indicate that the person is disqualified or disabled from performing jury service pursuant to section 13-71-104(3)[person with a disability], 13-71-105, [*see list, supra*] or 13-71-119.5 [physical hardship] or, in the opinion of the court, state grounds sufficient to be excused from jury service pursuant to section 13-71-119.5, [physical hardship] the person's name shall not be included in the juror pool and the court shall notify the person that he or she is excused from jury service.

(emphasis added). This subsection clearly contemplates a role for the court and by extension, a role for counsel to have notice and an opportunity to be heard.

8. One concern is that a juror will be excused rather than accommodated. A juror with a disability should not be denied the opportunity to serve when a reasonable accommodation could enable the juror to serve. Mr. Morpew seeks to be heard on such excusals and therefore requests that the Jury Commissioner bring any such requests to the court and that the court seek the parties’ input prior to excusing the juror.

9. This request is to be read in conjunction with all of Mr. Morpew’s motions regarding the jury selection process [D-020-030] and may be adjusted based upon the information learned at the requested conference with the Jury Commissioner/Clerk/Court and parties.

10. 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. Morphew 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. Morphew requests that this Court ensure that the Court, not the Jury Commissioner, rule on any prospective juror's request to be excused because of a disability.

Respectfully submitted this 13th day of April, 2026.

RECHT KORNFELD, P.C.

/s/ David Beller

David Beller, #35767

FISHER & BYRIALSEN, PLLC

/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