

<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 10:07 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-027] MOTION TO ORDER THAT ALL JUROR SERVICE EXCUSALS AND POSTPONEMENTS BE MADE ON THE RECORD, WITH AN OPPORTUNITY FOR COUNSEL TO BE HEARD</p>	

Barry Morphey, by and through undersigned counsel, hereby requests this Court to enter an order requiring all juror service excusals and postponements to be made on the record and granting him the opportunity to be present and be heard on decisions about excusal of prospective jurors.

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

2. This motion does not seek to disturb automatic postponements routinely handled under § 13-71-116, C.R.S. (Trial juror's right to one postponement).

3. This motion does seek to ensure that the Court and the parties are involved in all other postponements or excusals. This procedure is authorized by law and is necessary under the unusual circumstances of this case.

4. 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. The available jurors in the pool who could actually serve on this case is very small.

5. This Court has the discretion to delegate to the jury commissioner the power to make certain excusals:

- § 13-71-116.5 - Postponement for co-employee jury service. This section states that the jury commissioner shall excuse a summoned 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; however, the statute gives no guidance on how the jury commissioner is to choose between the two (or more) employees as far as which one(s) are to be excused. Mr. Morphew wants the Court, not the Commissioner alone, to make that decision, and to make it after notice and opportunity for Mr. Morphew to be heard on that decision;
- §§ 13-71-119 (2) and -119.5 - Deferments and excuses when certain disabilities or impediments exist.¹ These sections provide this Court or the Commissioner may excuse or defer summoned jurors who fall into a list of disabilities or impediments to jury service. Because application of these sections may result in loss of a substantial number of jurors, the pool in Chaffee County of jurors who can serve is already going to be so diminished, in this case these sections will substantially overlap with §13-71-121 excusals (which can be made only by the Court, not the Commissioner), and these types of decisions can require exercise of substantial discretion, Mr. Morphew wants the Court, not the Commissioner alone, to make that decision, and to make it after notice and opportunity for Mr. Morphew to be heard on that decision; and
- §13-71-121 – Extended trials. Under this section, only the Court can excuse or defer a prospective juror based on the length of the trial.

¹ In order to ensure a completely clear record, and because these two issues (person with a disability and caretaker for a person with a disability) are complex, Mr. Morphew has also filed a more narrow motion on each of these two potential grounds for excusal. [D-XX, D-XX]

6. The fact that the court has some discretion to delegate some of its duties to the Commissioner does not mean that this court is at liberty to abuse its discretion. In the extraordinary circumstance of this case, this Court should retain control of the process to ensure a fair and impartial jury, to avoid the risk of mistrial, and to ultimately expedite seating of a jury.

7. In a routine case excusals and postponements may be handled by the Jury Commissioner, and the parties typically do not request judicial supervision, but this is not a routine case. Because the difficulty in seating a fair and impartial jury will undeniably plague jury selection if trial is held in Alamosa County, Mr. Morphew makes the reasonable request that this Court retain control of the process and provide Mr. Morphew the opportunity to have a complete record of such actions, and to have the opportunity to be heard on the same.

8. An unmonitored excusal system can result in certain groups of persons being both unrepresented, and under-represented on the jury panels, which would deprive Mr. Morphew of his right to a jury drawn randomly from a fair cross-section of the community. Often it is poor people and minorities who telephone the jury commissioner and ask to be excused because, for example, of the financial burden and difficulty of obtaining childcare, of finding transportation, of missing work, and so on. While the jury commissioner might feel inclined, out of sympathy and compassion for the prospective juror, to grant such excusals or postponements, those excusals may very well unconstitutionally deprive Mr. Morphew of his rights to a random draw of jurors from a fair cross-section of the community.

9. It can be anticipated that many of the jurors summoned will be from the same place of employment, the same household, the same ranch, etc. The Court, on the record with counsel present, should make the inevitable judgment calls about how to resolve such circumstances. Putting the Jury Commissioner in the middle of this process is quite likely to result in further problems, inconvenience, and friction.

10. It will not be unduly burdensome for this court to schedule a brief on-the-record conference at which the jury commissioner could present requested excusals and postponements for the court's consideration on the record, and at which the parties could be present and state their positions on these requests prior to this Court's decision. These are sometimes accomplished through on-the-record telephone conferences and other convenient means.

11. If this procedure is not followed it may be impossible for Mr. Morphew to reconstruct the actions of the jury commissioner and/or the court in their consideration of off-the-record requests for excusal from jury service.

12. Unless these procedures are followed, Mr. Morphew will be deprived of his right to be heard on these critical issues, and his right to appeal any errors made by the court or jury commissioner. Mr. Morphew seeks to be heard at a time prior to the decision being made in an extra-judicial manner.

13. Mr. Morphey 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, Crim. P. 16, and RPC 3.8. Mr. Morphey 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. Barry Morphey, by and through undersigned counsel, hereby requests this Court to enter an order requiring all juror service excusals and postponements to be made on the record and granting him the opportunity to be present and be heard on decisions about excusal of prospective jurors.

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