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Memorandum

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TO: Interested Persons

FROM: Juliann Jenson, Research Analyst, 303-866-3264

SUBJECT: Jury Duty in Criminal Cases

Summary

This memorandum provides an overview of jury duty for criminal trials in Colorado, including how jurors are summoned, excused, selected, paid, and impaneled. Jury deliberations, instructions, and verdicts are also covered.

Overview

Jury duty is a civic obligation where a citizen is chosen at random and assigned to assist in a legal proceeding. Selected jurors are responsible for determining the disputed facts in a case and deciding whether an individual who has been charged with a crime is guilty or innocent. The U.S.

Constitution and the Colorado Constitution guarantee all people, regardless of race, religion, sex, national origin, or economic status, the right to a criminal trial by an impartial jury. Colorado further grants defendants a right by statute to demand a jury trial in all criminal cases.¹

Jury Pool

Juries are chosen from a list called a venire, or jury pool, that has been compiled by the State Court Administrator's Office (SCAO). The following outlines juror qualifications and the selection process.

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¹Section 18-1-406, C.R.S.

Qualifications. To be qualified for jury service, a person must be at least 18 years old; a U.S. citizen; able to read, write, speak, and understand the English language; and must reside or live more than 50 percent of the time in the county where summoned, whether or not he or she is registered to vote. If these qualifications are met, jurors may also be deemed unfit to serve for the following other reasons:

- inability, by reason or mental or physical disability, to render satisfactory juror service;
- sole responsibility for the daily care of a person with a permanent disability who lives in the same household as the potential juror, to the extent that juror service would cause a substantial risk to the health of the disabled person;
- residence outside of the county with no intent to return within the succeeding 12 months;
- service as an impaneled juror during the previous 12 months in any municipal, tribal, military, state, or federal court;
- being scheduled for juror service in the succeeding 12 months; or
- appearing as a prospective juror in state court within the current calendar year that satisfied the “one day/one trial” form of jury service.²

Master list. Under current law, the SCAO is responsible for annually compiling the master juror list. The list is based on the voter registration list for each county in the state and licensed driver lists matched with the most recent address on individual tax returns, where possible. The SCAO may obtain other lists of residents of the state as it deems necessary to compile the master juror list.³

Master juror wheel. Citizens are selected for jury service randomly by a computer. This selection process creates the court’s “Master Jury Wheel,” a term that originated in the days when names were placed into a large barrel-type wheel and turned to mix them up. The wheel consists of names, addresses, dates of birth, identifying numbers, and jury histories for prospective jurors taken from the master juror list.⁴

Juror selection. The selection of jurors is done at the state level in the Judicial Branch. The chief judge of each judicial district in the state is required to appoint a jury commissioner for each county. It is the jury commissioner’s responsibility to specify to the SCAO the number of trial jurors needed for each day’s juror pool within the county. The SCAO is then required to randomly select the specified number of jurors required from the master juror wheel and issue a summons to each selected prospective juror, either personally or by mail.⁵

Summons. A summons is an official order of the court and commands an individual to show up at a courthouse on a specific day and time for jury duty. The jury summons includes general information about jury service, and a jury group number, which is used by the court to adjust the number of jurors needed. A jury summons is considered a legal document. Failure to respond is punishable by fines and/or jail time.⁶

²Section 13-71-105, C.R.S.

³Section 13-71-107, C.R.S.

⁴Section 13-71-108, C.R.S.

⁵Section 13-71-110, C.R.S.

⁶Section 13-71-111, C.R.S.

Exclusions from Jury Service

Jurors have the right to postpone or be excused from jury duty for specified reasons or circumstances.

Right to postponement. A trial juror has the right to one postponement of the term of juror service. The postponement may not last more than six months, but may extend into the next calendar year. To be eligible for a postponement, the prospective juror must notify the jury commissioner by phone or in writing, requesting an alternate date to which juror service may be postponed. The jury commissioner may set the date to which service is postponed, and must notify the juror of the new date.⁷ Generally, postponements are provided upon request and do not require written evidence of a reason.

Getting excused from jury service. State law permits a temporary excuse from jury service if the jury service would cause undue or extreme physical hardship to the prospective juror, or to another person under the prospective juror's direct care or supervision, or if the prospective juror is breast-feeding a child.

A judge or jury commissioner of the court for which the person was summoned for jury service determines whether jury service would cause the prospective juror, or another person under his or her direct care, undue or extreme physical hardship. Undue or extreme physical hardship is limited to circumstances in which the prospective juror:

- 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.

A person who requests to be excused from jury duty must take the actions necessary to obtain a determination on the request before the date on which he or she is scheduled to appear for jury duty. A prospective juror who is temporarily excused becomes eligible for qualification as a juror when the temporary excuse expires, as determined by the court. 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.⁸

Employment Protection and Compensation

State law provides employment protections and compensation requirements for those summoned to jury duty.

⁷Section 13-71-116, C.R.S.

⁸Section 13-71-119.5, C.R.S.

Job security. State law protects a juror's regular job, and an employer may not fire or withhold benefits because of jury duty. Further, an employer cannot harass, threaten or coerce, or make demands of an employed juror that will substantially interfere with the effective performance of juror service. If a juror is fired due to serving on a jury, the employer may be subject to a wrongful termination suit. Further, it is a class 2 misdemeanor for an employer to willfully harass a juror.⁹

Compensation. Juror compensation is specified in state law and requires employers to pay employees at least \$50 for up to three days of jury service, with the state compensating the same amount thereafter.¹⁰ Employers may pay more than \$50 a day by mutual agreement, but there is no federal or state law requiring an employer to do so.

Length of Service

The term of jury duty varies depending upon the type of jury service for which a person is summoned.

One day/one trial. The one day/one trial system has been in effect since 1990 in Colorado. Under this system, instead of being summoned to serve lengthy jury terms of 30 days or more, jurors not selected to hear a case on the day they are summoned are excused. Those chosen for the jury panel serve only for the duration of that one trial.¹¹

Grand jury service. Jurors selected for criminal grand juries serve a term of 12 months unless discharged earlier. The court may also extend grand jury service for up to 18 months when necessary.¹² Grand juries investigate criminal conduct and decide whether enough evidence exists to bring charges against a suspect. These juries convene as need be over the course of the prescribed time period.

Jury Selection

Jurors fill out a written questionnaire and undergo a verbal line of questioning in order for attorneys to find out more about them and identify potential conflicts of interest.

Questionnaire. State law requires that each juror be given a juror questionnaire on the first day of the term of the trial. The questionnaire requests the following information about the juror: name; sex; date of birth; age; residence; marital status; the number and ages of children; educational level and occupation; employment status; spouse's occupation; previous juror service; present or past involvement in a civil or criminal proceeding; and such other information as the jury commissioner deems appropriate.¹³

⁹Section 13-71-134, C.R.S.

¹⁰Sections 13-71-126 and 129, C.R.S.

¹¹Section 13-71-120, C.R.S.

¹²Section 13-71-120, C.R.S.

¹³Section 13-71-115 (1), C.R.S.

The questionnaire is provided to the trial judge and counsel for use during jury selection. The information on the questionnaire is required to be held in confidence by the court, the parties, trial counsel, and their agents. Copies of completed questionnaires are returned to the court for immediate destruction upon completion of jury selection.

Voir dire. The French term “voir dire” refers to the procedure for selecting a panel of jurors by verbally asking them questions. The voir dire is designed to expose a juror’s possible bias, both conscious and unconscious, that may impair his or her fitness to serve impartially on the jury. The prosecution and defense have the option of introducing evidence to remove a juror for various reasons based upon the voir dire examination.¹⁴

The voir dire process usually begins when the judge or lawyers briefly explain the general nature of the case to be tried, along with the names of the lawyers and parties involved in the case. The prospective jurors are then given an oath to truthfully answer any questions. The judge asks a few general questions, including whether anyone is acquainted with any of the people involved in the case and whether anyone has any knowledge of the criminal charges. The lawyers for the parties then take turns asking questions about the prospective juror’s background, attitudes, and general beliefs.

Juror Challenges

Attorneys have the right to reject or challenge a certain number of potential jurors. There are two types of juror challenges: for cause and peremptory.

Challenges for cause. A challenge for cause aims to disqualify a potential juror for specific reasons. In Colorado, the court sustains a challenge for cause based on a number of factors, including, but not limited to, the fact that the juror:

- has a relationship with a defendant or attorney;
- has been in a civil action against the defendant;
- was a witness in a related matter;
- shows a bias toward the defendant or the state; or
- is unqualified to serve.¹⁵

Peremptory challenges. The attorneys also have a limited number of challenges that do not have to be for cause or have a reason. These are called peremptory challenges. In a death penalty case, the prosecutor and defense attorney each have ten peremptory challenges. In criminal cases where the defendant may face imprisonment, the attorneys have five peremptory challenges. In all other criminal cases, each side has three peremptory challenges.¹⁶

¹⁴Section 16-10-103 (3), C.R.S.

¹⁵Section 16-10-103, C.R.S.

¹⁶Section 16-10-104, C.R.S.

Organization of the Jury

Juries must be impaneled and take an oath before they can perform their legal duties.

Impaneling a jury. Impaneling a jury means officially selecting a particular group of people for a jury from a list agreed upon by the attorneys for the plaintiff and defendant. The size and scope of the jury is designed to represent a cross-section of the public. Twelve jurors are required for felony cases, and six for misdemeanors.¹⁷

Oath. Once impaneled, the jurors take an oath before the trial officially starts. The oath is a sworn statement by a juror and generally addresses faithfully fulfilling duties and promising to render verdicts according to the law and the evidence.

Jury Instructions, Deliberations, and Verdict

The final step in jury duty is to receive instructions and make a decision about the final outcome of the case.

Instructions. Before jurors deliberate, they are given jury instructions, which is a written document by the judge, with input from both prosecutors and defense attorneys, that identifies the issues to be determined and the applicable laws in the case. The details of these instructions differ from case to case, but generally include a series of questions that the jury must answer after considering all of the evidence admitted during the trial. While the judge determines issues of law, the jury must decide issues of fact and apply those facts to the law. These instructions also commonly restrict communication by the jury with anyone outside of the trial and do not allow for the use of outside evidence.

A sample of jury instructions from the Denver District Court can be found here: [https://www.courts.state.co.us/userfiles/file/Court_Probation/02nd_Judicial_District/Denver_District_Court/example%20criminal%20instructions%20new%20pattern\(1\).doc](https://www.courts.state.co.us/userfiles/file/Court_Probation/02nd_Judicial_District/Denver_District_Court/example%20criminal%20instructions%20new%20pattern(1).doc)

Jury foreperson. The jury foreperson is selected at the beginning of jury deliberations. This person serves as a chair or head juror and is selected by the vote of the jurors. The foreperson has a number of responsibilities, including but not limited to: ensuring all jurors are present; facilitating the discussion; communicating with, or asking questions of, the judge on behalf of the jury; counting votes; filling out the verdict forms; and, informing the bailiff when the jury is ready to announce a verdict.

Deliberations. Deliberation is the phase of a trial in which the jury meets in private, usually in a jury room set aside for this purpose, to discuss the evidence presented in court and decide whether the defendant is guilty or not.

¹⁷Section 18-1-406 (1), C.R.S.

Verdict. In Colorado, the jury must come to a unanimous decision.¹⁸ The entire jury re-enters the courtroom to announce the verdict. The jury foreperson or judge delivers the verdict in open court, and each individual juror may be polled to confirm his or her vote for the record. Jurors may discuss the case after the trial has concluded.

If the jury is unable to reach an agreement, the foreperson must notify the court and the judge decides whether to send the jury back into deliberations, dismiss the jury, or take other action. If the judge dismisses the jury, the case is declared a mistrial. Cases that result in a mistrial may be tried again with a different jury.

¹⁸Section 16-10-108, C.R.S.