

Jury Managers' Toolbox

Best Practices for Excusal Policies

Overview

All jurisdictions grant discretion to their trial courts to excuse individual from jury service due to hardship. Excusal differs from disqualification in that individuals who do meet the qualification criteria are statutorily prohibited from serving. Likewise, excusal differs from exemption in that the latter provides individuals with a statutory right to decline to serve if summoned. While some statutes are more explicit than others with respect to the degree of the hardship that a juror must demonstrate to be excused from jury service, most jurisdictions recognize three types of hardship: medical hardship, financial hardship, and extreme inconvenience.

Factors that Affect Excusal Rates

Nationally, excusal rates average 9% – roughly one out of every 10 people summonsed for jury service – but individual rates range from virtually 0% to more than 20% in some courts. Although community social and demographic factors obviously play a role in excusal rates, the NCSC has found that jury management policies significantly affect these rates. For example, courts that have reduced the length of the term of service to “one day or one trial” greatly minimize the potential hardship associated with jury service, making it feasible for many individuals to serve who would otherwise be excused for financial hardship. See Table 1. Similarly, states and local jurisdictions that provide comparatively more

generous juror fees and mileage reimbursements, or that require employers to compensate employees who are summonsed to jury service, have lower excusal rates.

Table 1: Average Excusal Rates, by Term of Service and Juror Compensation

Juror Fee	Term of Service		Total
	One Day/ One Trial	Longer than One Day/One Trial	
Exceeds National Average	4.1%	8.3%	6.6%
Less than National Average	8.1%	9.3%	8.9%
Total	6.0%	8.9%	8.0%

Effective Excusal Policies

Excusal policies that minimize the potential hardship that individuals experience as a result of jury service can significantly reduce excusal rates, increase jury yield, and expand the pool of prospective jurors. Such policies likewise reduce the potential for disproportionate impact on lower-income and minority populations, which improves the demographic representation of the jury pool.

A liberal deferral policy is preferable to outright excusal. If a juror’s request to be excused is based on inconvenience rather than true hardship, the court should defer the juror to a more convenient service date. An effective

deferral policy reduces jury yield in the short term, but this temporary reduction is cancelled out as previously deferred jurors are returned to the jury pool in future terms. Moreover, most courts report increased jury yields due to the tendency of deferred jurors to appear for service in higher proportions than jurors responding on the first summons date.

Increasingly courts permit jurors to defer service one time as a general policy, but require court approval for subsequent deferrals. Absent extenuating circumstances, deferrals should be for a limited period of time (e.g., not to exceed 6 months) and under no circumstances should exceed a full calendar year. Because the jury yield is higher for deferred jurors compared to jurors reporting in response to the first summons, it is advisable to limit the number of deferrals into a single term. Some courts also require jurors to defer their jury service to the same day of the week for which they were originally summoned. This prevents the “Monday pool” from consisting primarily of deferred jurors. To prevent the possibility of “stealth jurors” deferring into jury panels for high profile cases, it is also advisable to prohibit deferrals for jury panels in notorious trials.

Establish a written excusal policy that articulates clear, objective criteria that jurors must show to demonstrate financial or medical hardship. Although court policies concerning the length of the term of service and juror compensation can minimize the potential hardship for many jurors, at any given time some measurable portion of the population will always have bona fide reasons to be excused for hardship. This may be the result of the financial burden associated with loss of income;

a lack of transportation or excessive travel to report for jury service; the risk of physical or mental harm to the juror; or the responsibility to care for children or dependent adults.

To be a legitimate hardship, the impact of jury service must involve an unreasonable level of *personal* sacrifice. Unless the juror is self-employed, it is not sufficient that the juror’s employer be adversely affected by the jury service. If the primary impact of the hardship falls on the juror’s employer, rather than on the juror, the juror’s service should be deferred rather than excused outright.

With respect to financial hardship, the following criteria would likely justify a request to be excused for hardship:

- the juror is employed, but the employer does not compensate employees while on jury service;
- the expected loss of income due to the anticipated length of jury service cannot be recovered after the service is complete;
- the juror has no supplemental financial support (e.g., spouse, parents, or children) or savings that would offset the loss of income; and
- the juror is the primary income earner for the household.

Similarly objective criteria should be established to determine hardship with respect to lack of transportation (e.g., distance exceeds x miles, juror does not own a vehicle or is not licensed to drive, juror cannot borrow a vehicle or get a ride to the courthouse with family or friends, public transportation is not available) or excessive distance (e.g., one-way trip to the courthouse exceeds x miles or x number of hours in transit).

A request to be excused due to medical hardship should include supporting details about the nature of the medical condition and a statement from a licensed health care practitioner that the person is unable to serve as a juror. Take note that the Americans with Disabilities Act prohibits courts from routinely excusing persons with disabilities from jury service if the court can provide a reasonable accommodation for the disability (e.g., assisted listening devices or sign language interpreters for hearing-impaired jurors).

Responsibility for reviewing and granting excusal requests court can be delegated to a jury manager, court administrator, or clerk of court, provided that jurors have a right to appeal a denied excusal request to a judicial officer.

Addressing Hardship Factors

A number of social and community factors are often correlated with increased excusal rates including local employment rates, the dominant types of employers in the community (e.g., manufacturing, retail, service, financial, public) and their practices with respect to compensation for employees while on jury service, median per capita income, and others. As a practical matter, there is little that courts can do to change social and community factors. However, there are a number of steps that courts can take to minimize the hardship associated with jury service.

Reduced Term of Jury Service

As illustrated in Table 1 above, reducing the length of the term of service – ideally to one day or one trial – is the approach most likely to have a significant impact on excusal rates. The

average length of a jury trial is two to three days in most states, which is generally a short enough period that most people would be only minimally inconvenienced by having to serve, even if the service entailed some loss of income during that time. Some courts employ a modified one day or one trial approach in which jurors are “on call” for a longer period of time (e.g., one week, one month), but once they are told to report for service and are impaneled as a trial juror or are dismissed after reporting, they have fulfilled their service requirement. If it is not possible to reduce the actual term of service, the court should adopt a policy to excuse jurors for a portion of their term, rather than grant a complete excusal from service.

For most courts, converting to a one day or one trial term of service requires a slight increase in the number of jurors summonsed to compensate for the fact that jurors cannot be recycled to new trials over the longer term of service. The more dramatic the reduction in the term of service (e.g., from two weeks to one day or one trial), the greater the increase in the summoning rate will have to be.

As a practical matter, many courts with longer terms of service tend to have a lower volume of jury trials. For example, in the *State-of-the-States Survey of Jury Improvement Efforts*, the NCSC found that more than half of all courts with a term of service longer than one day or one trial averaged 12 or fewer jury trials per year (one per month). Given these low volumes of jury trials, the modified “on call” term of service is fairly easy to implement with virtually no change in summoning rates.

To obtain an accurate estimate of the new summoning rate, the court should determine: (1) the actual number of jurors needed in an

average term based on the number of jury panels sent to courtrooms and the number of jurors assigned to those panels (as compared to the number of jurors reporting during those terms) and (2) summons jurors with an allowance for yield. After making the transition from the longer term of service to the reduced term of service, the court should reexamine the jury yield to determine if the excusal rate has decreased sufficiently to adjust the summoning rate.

Time and Hardship Screening for Lengthy Trials

Lengthy trials (e.g., trials exceeding 10 days) pose particular difficulties as few individuals are able to clear their calendar for a full two weeks without significant advance notice. A technique that many courts have found useful is to prescreen jurors for time and financial hardship. Jurors who are not available to serve in a longer trial are returned to the jury pool for consideration in more routine trials.

The prescreening process is conducted on the entire pool of jurors, rather than a preselected panel. Typically the trial judge delegates authority to the jury manager to prescreen jurors using objective criteria. Some courts also require that trial counsel consent to the prescreen process. Screening criteria generally includes the following:

- Employer compensates employees while on jury service for at least as long as the anticipated trial length. If employer does not compensate employees on jury service, loss of income for the duration of the trial will not cause financial hardship;
- Juror has no prepaid vacation or business trips planned during the anticipated trial period;

- Juror has no medical procedures and is not a fulltime student.

The jury manager should keep a careful record of the individuals deemed ineligible for the lengthy trial due to time constraints or financial hardship.

After prescreening the jury pool, the jury manager randomly selects a sufficient number of time/hardship eligible jurors to send to the courtroom for jury selection. Because all of the jurors have been prescreened, the jury panel should be large enough to encompass the number of jurors and alternates, the number of jurors excused for cause, and the number of jurors removed by peremptory challenge. As a result of the prescreening process, the trial judge and attorneys are able to immediately focus on substantive issues related to the trial during voir dire.

Increased Juror Fees

In most states, the amount of the juror fee and mileage reimbursement (if any) is established by statute. Although juror fees in most jurisdictions barely reimburse jurors for anticipated out-of-pocket expenses and are not intended to compensate for lost income, the amount of the juror fee is actually a significant predictor of excusal rates. In 12 states, however, the jury statute permits local jurisdictions to supplement the jury fee over and above the mandatory state minimum rate. Excusal rates for courts with higher than average juror fees were 25% lower than those with lower than average juror fees.¹ To the

¹ GREGORY E. MIZE, PAULA L. HANNAFORD-AGOR & NICOLE L. WATERS, STATE-OF-THE-STATES SURVEY OF JURY IMPROVEMENT EFFORTS: A COMPENDIUM REPORT 23-24 (April 2007).

extent that local courts have the discretion to increase juror fees, doing so can help reduce excusal fees.

An approach that several states have adopted with respect to juror compensation is a graduated juror fee program in which jurors are paid a reduced fee or no fee on the first day of service and an increased fee (up to \$50 per day in some jurisdictions) on the second and subsequent days of service. This approach works extremely well in jurisdictions with a one day or one trial term of service insofar that courts incur relatively few costs for juror fees during jury selection when the largest number of jurors report for service. They are then able to substantially increase the fee for jurors who are actually impaneled as trial jurors. The average juror fee for jurisdictions that pay a flat daily rate is \$22 compared to \$32 for

jurisdictions employing a graduated juror fee approach.

Disclaimer: The guidelines discussed in this document have been prepared by the National Center for State Courts and are intended to reflect the best practices used by courts to increase jury yields and expand the pool of prospective jurors to include individuals who would otherwise be excused due to hardship.