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## RULES

### *Administrative Rules of the Unified Court System & Uniform Rules of the Trial Courts*

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#### Rules of the Chief Administrative Judge

#### PART 128. Uniform Rules For The Jury System

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#### **Section 128.0 Applicability and definitions.**

(a) This Part applies, as the context requires, to the jury system with respect to all courts in the Unified Court System in which juries are empanelled.

(b) The term "commissioner of jurors" in this Part also includes the county clerk of each county within the City of New York and the county clerk or other officer or employee appointed to serve as commissioner of jurors in any county outside the City of New York.

(c) The term "Chief Administrator of the Courts", when used in this Part, is deemed to include a designee of the Chief Administrator.

#### Historical Note

Sec. filed June 29, 1987 eff. Sept. 1, 1987.



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Section 128.1 Jury districts

There may be no jury districts from which prospective jurors may be drawn consisting of less than the whole of the governmental subdivision wherein the court convenes.

Historical Note

Sec. filed Nov. 21, 1985; repealed, new filed June 29, 1987 eff. Sept. 1, 1987.



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**Section 128.2 Annual meeting of county jury board.**

The county jury board shall meet at least annually.

Historical Note

Sec. filed June 29, 1987 eff. Sept. 1, 1987.



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**Section 128.3 Source of names.**

The sources of prospective jurors shall be: (a) the names contained on voter registration lists, lists of licensed motor vehicle operators and lists of persons to whom State income tax forms have been mailed; (b) the names of persons who have volunteered to serve in accordance with section 506 of the Judiciary Law; and (c) the names from such other sources as authorized by the Chief Administrator of the Courts.

Historical Note

Sec. filed June 29, 1987 eff. Sept. 1, 1987.



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**Section 128.4 Residence.**

For purposes of article 16 of the Judiciary Law and this Part, a resident of a county or municipality shall mean a person who maintains a fixed permanent and principal home within that county or municipality to which such person, wherever temporarily located, always intends to return. Among the factors that may be considered in determining the principal home is the relative proportion of time in the year that the person customarily resides in the county or municipality.

Historical Note

Sec. filed June 29, 1987 eff. Sept. 1, 1987.



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**Section 128.5 Qualification of trial jurors and grand jurors.**

(a) Prospective jurors shall be selected at random pursuant to a methodology approved by the Chief Administrator of the Courts.

(b) A juror qualification questionnaire shall be sent to prospective jurors by first class mail unless the commissioner of jurors determines that a personal interview is required, in which case the questionnaire shall be completed at the interview. Where a completed questionnaire is returned by mail, the commissioner may require a subsequent personal interview. The qualification questionnaire may be sent with the juror summons during the summoning process as set forth in section 128.6 of this Part.

(c) The commissioner of jurors may require prospective grand jurors to appear before the commissioner of jurors to be fingerprinted and interviewed as to their availability to serve as grand jurors.

qualified, the juror's name, and fingerprint record in the case of a prospective grand juror, may be forwarded by the commissioner of jurors to an appropriate agency for checking for conviction of a criminal offense.

(e) Upon the basis of the completed questionnaire, the personal interview, if any, and the check for a criminal conviction, where such check was requested, or after at least 30 days without receipt of any report concerning the check for a criminal conviction, the commissioner of jurors shall note upon each questionnaire whether the person has been found qualified or not qualified for jury service. If excluded from jury service, the reasons shall be noted on the questionnaire.

(f) The commissioner of jurors shall maintain a record of persons who are found not qualified for jury service, including the reasons therefor.

Historical Note

Sec. filed June 29, 1987; amd. filed Dec. 7, 1995 eff. Jan. 1, 1996. Amended (e), (f).

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**Section 128.6 Summoning of trial jurors and grand jurors.**

(a) Trial jurors and grand jurors shall be selected for summoning at random from prospective jurors previously qualified for service. In the alternative, the Chief Administrator of the Courts may direct that in any county trial jurors and grand jurors be selected for summoning at random from the juror source lists and that their qualifications for service be determined during the summoning process in accordance with the procedures set forth in section 128.5 of this Part.

(b) The commissioner of jurors shall determine the number of jurors to be selected for summoning and shall summon such jurors, unless such number otherwise is specified by the Chief Administrator of the Courts. At any time during a term of court in a county, the court may direct an additional specified number of jurors to be drawn, set the time of the drawing, and require the commissioner to summon the additional jurors, giving such notice as the court shall direct. The drawing shall be conducted in the same manner as a regular drawing.

(c) Whenever practicable, the summons shall be served by first class mail at least 14 days before the day the juror is required to appear, unless a shorter period is necessary to satisfy court requirements for sufficient jurors. The commissioner of jurors shall maintain for one year a record of the date and reason when the mailing of the summons occurred less than 14 days before the return date of the summons. If service by first class mail cannot be made or is impracticable, the summons may be served personally upon the juror by personal delivery to the juror at the juror's residence or place of business.

(d) Jurors who appear for the sole purpose of requesting an excuse, deferment or postponement from jury service shall not be entitled to any per diem fee or mileage allowance.

Historical Note

Sec. filed June 29, 1987 eff. Sept. 1, 1987.

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**Section 128.6-a Postponement and excusal from jury service.**

(a) Postponement.

(1) A prospective juror who has received the initial jury summons is entitled, upon notifying the commissioner of jurors, to a postponement of jury service to a specific jury term date that is not more

juror may notify the commissioner by telephone that he or she is seeking such postponement and shall select an appropriate date to which service is to be postponed. A request for postponement shall be made at such time as the commissioner shall require. The commissioner, in his or her discretion, may grant a postponement of jury service for greater than six months, but only upon good cause shown.

(2) The commissioner may grant a prospective juror's subsequent request for a postponement of jury service, but only upon a written application, containing documentation acceptable to the commissioner, showing that an inability to obtain a postponement would result in a hardship that was unanticipated at the time of the prior postponement. Absent extraordinary circumstances, the commissioner shall not grant a prospective juror more than three postponements of jury service, nor shall the aggregate period of postponements granted to a prospective juror exceed 18 months.

(b) Excusal.

(1) A prospective juror who has received a jury summons may apply to be excused from jury service by submitting a written application for excusal to the commissioner, at such time as the commissioner shall require. Such application for excusal may be granted only if the prospective juror has demonstrated satisfactorily the

(i) he or she has a mental or physical condition that renders him or her incapable of performing jury service, or that jury service would cause undue hardship or extreme inconvenience to the prospective juror, a person under his or her care or supervision, or the public, and

(ii) he or she will be unable to serve as a juror on a date certain within the time restrictions applicable to postponements set forth in subdivision (a) of this section. The application shall contain documentation, satisfactory to the commissioner, supporting the ground for excusal. The commissioner may, in his or her discretion, consider an application for excusal by a prospective juror before the juror has received a jury summons if the juror has returned the juror qualification questionnaire.

(2) If the application for excusal is granted and the facts underlying the ground for the excusal are not of a permanent nature, the excusal shall be for a specific period of time not to exceed 24 months or, in extraordinary cases, beyond 24 months, after which the prospective juror shall become eligible for re-qualification as a juror. If the facts underlying the ground for excusal are of a permanent nature, the excusal shall be permanent.

(c) Recordkeeping. The commissioner of jurors shall maintain a list of the names of persons excused or postponed from service as a trial juror, with an indication of the reasons therefor insofar as practicable, and which shall include the time periods for which the persons have been postponed or excused. A judge hearing an application for postponement or excusal shall provide notice of his or her determination expeditiously to the commissioner of jurors for inclusion in such records.

(d) Guidelines. The commissioner or jurors shall conform to such guidelines as may be promulgated by the Chief Administrator of the Courts in determining whether to grant postponements and excusals from jury service.

Amended (b) on Nov. 18, 2008 (old version)



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### **Section 128.7 Support of town and village courts.**

(a)<sup>1</sup> The commissioner of jurors shall qualify and maintain source lists or qualified lists of jurors for each town and village court outside the City of New York. The commissioner shall summon jurors to serve in these courts, or if not practicable for the commissioner so to summon jurors, the commissioner shall

court, or within such geographical area from which the court is authorized by law to summon jurors, to be summoned at random by the court for service in that court. Such lists may be furnished to town courts, which then shall furnish lists to village courts within each town. The notification and summoning of jurors by each such court shall be in the same manner as prescribed for the commissioner in section 516 of the Judiciary Law and this Part. Within 30 days of the completion of service by a juror in a town or village court, the court shall notify the commissioner of the identity of a juror who has so served.

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No subsec. (b) has been enacted.

**Historical Note**

Sec. filed June 29, 1987 eff. Sept. 1, 1987.

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**Section 128.8 Duration of service.**

(a) Trial jurors. Unless otherwise specified in the manner provided by subdivision (d) of section 525 of the Judiciary Law, a trial juror shall serve in the court for no more than five consecutive court days, except that service shall continue beyond any time limit fixed pursuant to this section until the conclusion of any trial for which a juror may be empanelled. For the purposes of this section, the duration of a juror's service shall be computed by counting the first day on which the juror is required to appear and each consecutive court day thereafter, excluding days in which the court is not in session, until the juror is released from service. The commissioner of jurors may release a trial juror from service at any time, except that a trial juror who has been sworn or selected to sit on a panel in a proceeding may be released before the proceeding is terminated only by a judge or justice unless trial of the proceeding has not been commenced within five court days from the date the juror was sworn, in which case, subject to the discretion of the appropriate administrative judge, the juror shall be released. Service as set forth in this section shall constitute service for purposes of section 128.9(b).

(b) Telephone standby system. The Chief Administrator may direct the establishment in any county of a telephone standby system for the summoning or service of trial jurors. Service of a trial juror as provided by subdivision (a) of this section shall include service pursuant to a telephone standby system, and the computation of the duration of a trial juror's service as provided by subdivision (a) shall include any day on which the juror is on telephone standby service.

(c) Grand jurors. A grand juror shall serve for the duration of the term for which the grand juror has been selected and for any period during which the grand jury panel on which the grand juror has been serving is extended, unless sooner discharged.

**Historical Note**

Sec. filed June 29, 1987; ams. filed: Feb. 13, 1989; Oct. 31, 1994 eff. Oct. 19, 1994. Amended (a).

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**Section 128.9 Frequency of service.**

(a) When a juror completes service, the juror's name may be restored to the general list of qualified jurors. In the alternative, the Chief Administrator may direct that in any county, when a juror completes service, the commissioner of jurors may summon the juror only if he or she again is selected at random for qualification from the juror source lists and subsequently qualified.

(b) A person who has served on a trial jury or grand jury in any court of record within the State, including

jury service, pursuant to section 524 of the Judiciary Law, for six years following the completion of jury service, and shall not be summoned for such service within that period, except that where, as provided in subdivision (c) of section 524, the commissioner of jurors has determined that compliance with the six-year period would be impracticable, such period of disqualification may be reduced to not less than two years for persons whose service consisted of fewer than three days, and such person shall not be summoned for jury service within such reduced period. Where a person serves on a trial jury or grand jury for more than 10 days, that person is disqualified from further jury service for eight years. For purposes of this subdivision, jury service shall include service in the court and telephone standby service.

(c) The commissioner of jurors may extend the period of disqualification for all jurors in excess of the time periods set forth in subdivision (b) of this section where the extension would not interfere with the commissioner's ability to comply with section 508 of the Judiciary Law.

Historical Note

Sec. filed June 29, 1987; amds. filed: Feb. 13, 1989; Jan. 6, 1999 eff. Aug. 1, 1998. Amended (b), added (c).

Amended (b) on August 12, 2005.

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### **Section 128.10 [Repealed]**

Historical Note

Sec. filed June 29, 1987; repealed, filed Oct. 30, 1995 eff. Jan. 1, 1996.

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### **Section 128.11 Judge to greet jurors.**

Wherever a central juror assembly room is provided for the courts in a county, the administrative judge, where practicable, shall designate a judge in each county in the district to greet newly summoned jurors and generally explain their responsibilities while serving as jurors. In courts not using a central juror assembly room, a judge or justice of the court in which the jurors are serving, where practicable, shall greet newly summoned jurors. A filmed or videotaped greeting from a judge may be used.

Historical Note

Sec. filed June 29, 1987 eff. Sept. 1, 1987.

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### **Section 128.12 Failure to respond to questionnaire or summons; procedure for noncompliance.**

(a) Inquiry. In exercising the powers set forth in section 502(d) of the Judiciary Law, the commissioner of jurors shall make inquiry of persons who do not respond to the juror qualification questionnaire or jury service summons to determine the reason for nonresponse and shall make reference to the power of a court to cite for contempt, or the power of the commissioner of jurors to bring a proceeding for noncompliance, pursuant to section 527 of the Judiciary Law.

(b) Commencement of noncompliance proceeding. The commissioner of jurors may bring a noncompliance proceeding against a person who fails to respond to the juror qualification questionnaire or summons to appear for jury service by serving upon such person, either personally or by first-class mail, a notice of noncompliance in a form prescribed by the Chief Administrator of the Courts. The form shall provide that a response to the commissioner of jurors shall be made within 20 days after the date of service of the notice of noncompliance and that the respondent must either admit noncompliance or

file with the Supreme Court a copy of the notice of noncompliance with proof of service and any response thereto. The court, or a judicial hearing officer designated pursuant to Part 122, shall review the material submitted and, where the person has failed to respond, or has admitted noncompliance, or has been found not in compliance after a hearing held pursuant to this section, may impose a penalty in accordance with section 527 of the Judiciary Law and shall issue an order fixing a date certain for jury service.

(c)

(1) Notwithstanding the provisions of subdivision (b) of this section, where a person has failed to respond and a default judgment is sought, an affidavit shall be submitted that additional notice has been given, at least 20 days before the entry of judgment, to the person who has failed to respond, by mailing a copy of the notice of noncompliance by first class mail to such person at his or her place of residence in an envelope bearing the legend "personal and confidential" and not indicating on the outside of the envelope that the communication is from a court, the commissioner of jurors or any other public officer or official. In the event such mailing is returned as undeliverable by the post office before entry of the default judgment, a copy of the notice of noncompliance then shall be mailed in the same manner to the person who has failed to respond at his or her place of employment, if known.

(2) The additional notice shall be mailed not less than 20 days after service of the notice of noncompliance pursuant to subdivision (b) of this section. An affidavit of mailing pursuant to this paragraph shall be executed by a person mailing the notice and shall be filed with the judgment.

(d) Hearing. Whenever a respondent served with a notice of noncompliance requests a hearing, the court or judicial hearing officer shall schedule such hearing and shall notify the respondent by mail at least 30 days in advance of the hearing date. The hearing shall be held before the court or the judicial hearing officer assigned to conduct the hearing, and the respondent may be represented by counsel. A finding of noncompliance shall be based upon a preponderance of the credible evidence presented. The charge of noncompliance may not be sustained if there is a finding of undue hardship or extreme inconvenience as set forth in section 517(c) of the Judiciary Law or for any other excuse based upon a good and sufficient cause. Rules of evidence shall not apply except those relating to privileged communications. Oral testimony shall be presented under oath. The court or judicial hearing officer may issue subpoenas to require the attendance at the hearing of persons to give testimony or to produce books, papers or other things relevant to the hearing. The court or judicial hearing officer shall cause a verbatim record of the hearing to be made by stenographic or mechanical means. If the charge is not sustained, the court or judicial hearing officer shall issue an order dismissing the charge, and shall fix a date certain for jury service by the respondent unless the respondent files an affidavit with the commissioner requesting postponement of or excusal from jury service in which case capacity for service then shall be determined by the commissioner pursuant to section 128.6-a of this Part.

(e) Penalty. All penalties imposed pursuant to this section shall be payable to the appropriate commissioner of jurors, who shall transmit such payments to the county clerk for transmittal to the State Commissioner of Taxation and Finance on a monthly basis no later than ten days after the last day of each month.

Historical Note

Sec. filed June 29, 1987; amds. filed: Oct. 31, 1988; May 4, 1992; Dec. 7, 1995 eff. Jan. 1, 1996. Amended (d).



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**Section 128.13 Records to be maintained; retention and disposition.**

administration of the county's jury system and as required by the Chief Administrator of the Courts, including, but not limited to, the records required by sections 509 and 514 of the Judiciary Law, qualification questionnaires, notices and summons, records of postponement and excuse, juror attendance records, statistical records of the utilization of jurors, and the minutes of jury empanellings and meetings of the county jury board.

Historical Note

Sec. filed June 29, 1987 eff. Sept. 1, 1987.

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#### **Section 128.14 Confidentiality and security of records.**

(a) Juror qualification questionnaires and other juror records shall not be disclosed except as permitted by section 509 of the Judiciary Law.

(b) The commissioner of jurors and the Office of Court Administration shall take the necessary precautions to ensure that the records and materials in their respective possession used for the selection, procurement and utilization of jurors are stored securely and in such a manner as to prevent their unauthorized use, modification or disclosure.

Historical Note

Sec. filed June 29, 1987 eff. Sept. 1, 1987.

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#### **Section 128.15 Duties of sheriff.**

The sheriff of each county may be requested to assist the commissioner of jurors in implementing the provisions of article 16 of the Judiciary Law as provided by law.

Historical Note

Sec. filed June 29, 1987 eff. Sept. 1, 1987.

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#### **Section 128.16 Selection of sheriff's jurors.**

The commissioner of jurors shall select, at random and in the same manner as regular trial jurors, from the persons qualified to act as regular trial jurors, such number of persons, if any, as may be necessary to constitute the sheriff's jurors.

Historical Note

Sec. filed June 29, 1987 eff. Sept. 1, 1987.

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#### **Section 128.17 Grand juries; number; terms.**

The Chief Administrator of the Courts, in consultation and agreement with the presiding justice of the appropriate Appellate Division, shall designate:

(a) the number of grand juries to be drawn and empanelled for each term of the Supreme Court or county court established within the judicial department; and

(b) such additional grand juries as may be required.



Sec. filed June 29, 1987 eff. Sept. 1, 1987.

## **APPENDIX A. Guidelines for Postponements and Excusals**

Judges and Commissioners of Jurors shall utilize the following guidelines in determining whether to grant postponements and excusals from jury service pursuant to section 517 of the Judiciary Law.

### **I. Definitions**

1. "Postponement" - A "postponement" of jury service is an adjournment of the date of jury service to a subsequent fixed date. These guidelines shall apply only to postponements of between six and 18 months from the date set forth in the initial juror summons. Postponements of up to six months from the initial summons are not covered by these guidelines, because those postponements must be granted at the request of the person summoned; postponements of greater than 18 months are not permitted by court rules.

2. "Excusal" - An "excusal" from jury service is the cancelling of a juror summons for a period not to exceed 24 months, after which the person so summoned again shall become eligible for requalification as a juror. An excusal may be granted only where jury service cannot be postponed. A person may receive a permanent excusal, and be excluded from selection from any list of prospective jurors, where the judge or Commissioner of Jurors determines that the underlying ground for the excusal is of a permanent nature.

### **II. Standards**

Judges and Commissioners of Jurors shall be guided by the following standards in determining whether a person shall receive a postponement of or excusal from jury service. Nothing in these guidelines shall be deemed to limit the documentation that a judge or Commissioner of Jurors may require based upon the facts underlying any individual application for postponement or excusal. A judge or Commissioner of Jurors, in appropriate cases, also may require that any statement submitted be sworn to under oath.

#### **A. Mental or Physical Capacity**

An application for postponement or excusal may be granted if the applicant has a mental or physical condition that causes him or her to be incapable of performing jury service. The judge or Commissioner of Jurors may require the following documentation in support of the application:

1. A statement signed by an appropriately licensed health care provider, setting forth (i) a diagnosis of the mental or physical condition of the applicant, (ii) a prognosis of the length of time the mental or physical condition is expected to continue to exist, and (iii) a conclusion that the applicant is not capable of performing jury service.

2. A statement from the applicant describing the physical or mental condition and setting forth why the applicant believes the condition prevents his or her service as a juror and when the applicant believes that he or she will become capable to serve as a juror. The applicant may be required to provide documentation concerning his or her employment status. If the applicant describes a condition associated with advanced age, he or she may be required to provide documentation of his or her age.

#### **B. Undue hardship or extreme inconvenience**

An application for postponement or excusal may be granted if service as a juror would cause undue hardship or extreme inconvenience to the applicant, a person under his or her care or supervision, or the public. A determination of undue hardship or extreme inconvenience shall be based upon service as a juror for a period of five consecutive court days.

An applicant may obtain a postponement or excusal if the applicant (i) has a personal obligation to care for another, including a sick, aged, infirm or disabled dependent or a minor child, who requires the prospective juror's personal care and attention during the time the person will be required to serve as a juror, and (ii) no alternative care is available without severe financial hardship to the applicant or the person requiring care, or because special needs of the person receiving care foreclose the temporary substitution of another caregiver. In determining whether the applicant's personal care and attention are required, the judge or Commissioner of Jurors may require the following documentation in support of the application:

- a. A copy of a birth certificate of a minor child;
- b. A statement signed by an appropriately licensed health care provider describing the medical condition of an aged, sick, infirm or disabled person;
- c. A statement by the applicant that he or she is the primary caregiver and setting forth (i) the circumstances necessitating the caregiving services of the applicant, (ii) the hours that the applicant provides such care and (iii) the reasons why the applicant cannot make arrangements for care to be provided by another during the period of jury service; and
- d. Documentation verifying any employment of the applicant, including hours worked and salary earned.

## 2. Financial hardship

An applicant may obtain a postponement or excusal if the applicant will suffer a financial hardship that will significantly compromise the applicant's ability to support himself, herself or dependents. In determining whether the applicant's ability to provide such support is significantly compromised, the court or Commissioner of Jurors may require the following documentation:

- a. A statement from the applicant setting forth (i) the applicant's sources of income, (ii) the applicant's hours of work, (iii) the amount of money that would be lost as a result of jury service, and (iv) the impact that this loss will have on (A) the applicant's ability to provide support to the applicant and his or her dependents and (B) where appropriate, the ability of the applicant to maintain his or her business.
- b. Forms filed with governmental taxing authorities showing the financial status of the applicant and, where relevant, of his or her business.

## 3. Needs of the public

An applicant may obtain a postponement or excusal if his or her absence to serve as a juror would jeopardize to a significant degree the health, welfare or safety of the public. In determining whether the health, welfare or safety of the public would be significantly jeopardized, the judge or Commissioner of Jurors may require a statement by the applicant setting forth (i) the nature and duties of his or her service to the public, (ii) the hours when such service is performed, and (iii) the availability of others to perform such service in his or her absence. The performance of duties that affect the public shall not by itself serve as a ground for postponement or excusal without a showing that the specific individual services performed by the applicant meet the criteria contained in these guidelines.

## 4. Lack of transportation

An applicant may obtain a postponement or excusal if (i) the applicant does not have access to a private vehicle, (ii) there is no available public transportation that will permit the applicant to travel to the court in a reasonable time, and (iii) use of other alternate means of transportation to the court would create a severe financial burden. In determining whether an applicant lacks transportation to appear in court to

forth (i) the reasons the applicant cannot obtain transportation to the court, (ii) the applicant's current employment status and transportation arrangements to his or her place of employment, and (iii) the anticipated duration of the applicant's inability to obtain the necessary transportation.

**C. Matters of conscience**

Applications for excusal from jury service based upon matters of conscience should be handled during jury selection or determined by the trial judge.

Members of the clergy who request excusal for matters of conscience shall be excused by the Commissioner of Jurors, unless determined otherwise by the court, and removed from the current list of qualified jurors. In support of each request, the following documentation shall be submitted to the Commissioner of Jurors: (1) a written statement by the applicant identifying the religious beliefs on which the request is based; and (2) a written statement by the head of the religious organization or authorized designee supporting the request.

**Historical Note**

Sec. filed Oct. 30, 1995; amds. filed: March 4, 1996; June 18, 2001 eff. June 14, 2001.

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