

**PRESERVATION OF ERROR
IN CHALLENGES FOR CAUSE
DURING VOIR DIRE**

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State's Challenge for Cause Sustained:

Defendant must:

- a. **Object to excusal of prospective juror - - state reasons;**
 1. Such as satisfies qualifications
 2. Juror is qualified - - based upon answers
 3. Juror has been rehabilitated based upon answers
 4. Juror is not biased or prejudiced as a matter of law (Molina vs. State, 754 2nd 468)
 5. Court will examine record as a whole - - make record (Satterwhite vs. State, 858 2nd 412)
- b. **Specifically identify prospective juror**
 1. By juror number from jury list (Green vs. State, 764 2nd 242)
 2. By name from jury list (Zimmerman vs. State, 860 2nd 89)
 3. Include nonverbal body language by description (Perillo vs. State, 758 2nd 567)
(Zimmerman vs. State, 860 2nd 89) (Nichols vs. State, 754 2nd 185)
- c. **Object to the jury as a whole at the end of voir dire;**
 1. State that you were required to take another juror that was objectionable because of improper excusal by the Court
 2. That composition of jury would have been composed differently with that juror - - show how jury would have been composed
- d. **Show harm- -but for excusal by court juror would have served**
 1. State that you were required to take another juror that was objectionable because of improper excusal by the Court
 2. Show a clear abuse of discretion by court (Williams vs. State, 772 2nd 525)
(Kemp vs. State, 846 2nd 280)(Montgomery vs. State, 810 2nd 372)(Ransome vs. State, 789 2nd 512)

Defense's Challenge for Cause Overruled:

Defendant must:

- a. **Object to Court's refusal to grant Challenge for Cause** (Demouchette vs. State, 731 2nd 75)
 1. Juror does not meet qualifications; **or**
 2. Juror has displayed bias or prejudice against Defendant, have reporter read into record his responses; (Hernandez vs. State, 563 2nd 947);**or**
 3. Juror has not been rehabilitated by answers.
- b. **Specifically identify prospective juror** (Demouchette vs. State, 731 2nd 75)
 1. By juror number from jury list
 2. By name from jury list
- c. **Use a peremptory challenge on that juror**
 1. If out of peremptory challenges, request additional peremptory challenge on each juror challenge which is overruled by the court.
- d. **Exhaust all peremptory challenges!** (Fearance vs. State, 771 2nd 486)
- e. **Request additional peremptory challenge and show court's refusal** (Burks vs. State 576 2nd 877)
- d. **Object to the jury as a whole at end of voir dire**
 1. State that you were required to use peremptory challenge on the particular juror and that you had to take that juror because you ran out of challenges. (Felder vs. State, 758 2nd 760)
 - a. Specifically identify juror you had to take by name and juror list number and that you would have struck juror no. ____ (Allridge v. State 762 2nd 146) (Demouchette vs. State, 731 2nd 75)
 2. That your client has been harmed by being required to take a juror who should not have been allowed to serve on the jury (**SHOW HARM**)
 - a. Show harm - - but for court's action had to exhaust all peremptory challenges **AND** you were required to accept an objectionable juror (Jackson vs. State, 745 2nd 4).
- e. **ALWAYS Request additional peremptory challenges!**

Sua Sponte Challenges by the Court:

Defendant must:

- a. **Object to court excusal by the court - - state reasons;**
 1. Only an absolutely disqualified juror may be excused by the trial court sua sponte (Dickerson vs. State, 759 2nd 741)
 2. "Onerous burden to juror", must show clear abuse of discretion for excusing (Kemp vs. State, 846 2nd 289)
 3. "Exigent circumstances of juror" (Harris vs. State, 784 2nd 5)
 4. Court can excuse only on grounds of absolute disqualification (Moore vs. State 542 2nd 668)
 5. Show a clear abuse of discretion (Butler vs. State, 830 2nd 125)
 6. State that the granting of excusal tantamount to giving State an

- additional peremptory challenge. **REQUEST AN ADDITIONAL ONE FOR YOURSELF.**
7. Show that juror would not be prevented nor substantially impaired from obeying his oath and following the court's instructions.
- b. **Specifically identify juror** (Green vs. State, 764 2nd 242)
1. By juror number from jury list
 2. By name from jury list
- c. **Object to jury as a whole at end of voir dire**
1. Jury consists of an objectionable juror (Green vs. State 764 2nd 242)
- d. **Exhaust all peremptory challenges** (Green vs. State, 764 2nd 242)
- e. **Request additional peremptory challenges** (Green vs. State, 764 2nd 242)
- f. **Show harm that but for the court's action the juror would have served**
1. Show that the State's peremptory strikes were exhausted and but for the action of the Court, the juror would have served (Nichols vs State(754 2nd 185)
 2. Restate objection to excusing the juror
 3. Show a legitimate objection to being tried by this jury (Warren vs. State, 768 2nd 300)
 4. Show that juror would not be prevented nor substantially impaired from obeying his oath and following the court's instructions.