

Status of Prospective Jurors Age 65 or Older: State v. Rogers

by Thomas L. Fowler*

Does G.S. 9-6.1 allow a person age 65 or older, if summoned and otherwise qualified, to choose whether or not to serve on a jury? This statute has sometimes been interpreted to establish an automatic exemption from jury duty for persons age 65 or older if such person decides to exercise such exemption--for instance the N.C. Bar Association's pamphlet, "*Serving on a North Carolina Jury*," (1983, revised in 1994 and in 2001), states that "[q]ualified persons age 65 or older may elect not to serve." An analysis of the statute, however, indicates that G.S. 9-6.1 does not create such an automatic exemption but that the court retains discretion to excuse or not to excuse the person age 65 or older from jury duty.

G.S. 9-6.1 does not expressly create any new basis for either disqualification or excusal from jury duty--thus leaving disqualification defined entirely by G.S. 9-3, and excusal defined entirely by G.S. 9-6(a). What G.S. 9-6.1 does is to specially modify the procedure for the G.S. 9-6(b) hearing (at which a judge can hear and determine requests for excusal) for those summoned who are 65 or older. Unlike others (who may be required to present their excusal requests in person), those 65 or older may request exemption from jury duty without appearing in person by filing a signed statement of the ground for excusal at least five days before the date he or she is summoned to appear. If the judge grants this written request for exemption, the juror has established his or her exemption without the need to appear in person. This special procedure represents a reasonable approach by the legislature to accommodate the unique situation and needs experienced by many of our citizens who are 65 or older.

The history of G.S. 9-6(a) may explain the initial confusion as to this issue. At the same time that G.S. 9-6.1 was approved in 1979, the General Assembly also amended G.S. 9-6 to add the phrase "or as provided in G.S. 9-6.1" at the end of subsection (a). Because subsection (a) lists the allowable excuses, this additional phrase suggested that G.S. 9-6.1 created a new excuse. This phrase was, however, deleted from subsection (a) in 1985, arguably clarifying the legislative intent that G.S. 9-6.1 does not add new grounds for the excuses listed in G.S. 9-6(a).

A recent North Carolina Supreme Court case confirms this interpretation of G.S. 9-6.1. In *State v. Rogers*, __ N.C. __ (filed May 10, 2002), the defendant contended that the trial court erred in excusing two prospective jurors solely on account of their age. The record revealed the following exchange with one of these prospective jurors, Warren Braswell, during *voir dire*:

THE COURT: Good morning, Mr. Braswell.

MR. BRASWELL: Sir, due to my age I would like to be dismissed if possible.

THE COURT: And how old are you Mr. Braswell?

MR. BRASWELL: Sixty-nine.

THE COURT: Yes, sir. ... Mr. Braswell in light of your age you're *entitled* to that, to be released and I will release you.

(emphasis added)

The *Rogers* Court stated: "By statute, citizens over the age of sixty-five are qualified to serve on juries. N.C.G.S. § 9-3 (2001). However, a prospective juror over that age may, when summoned, request an exemption. N.C.G.S. § 9-6.1 (2001). The judge has the option of allowing or denying the request. *Id.* Once the venire is in the courtroom, any juror, though qualified, nevertheless may ask to be excused. The General Assembly has 'declare[d] the public policy of this State to be that jury service is the solemn obligation of all qualified citizens, and that excuses from the discharge of this responsibility should be granted only for reasons of compelling personal hardship or because requiring service would be contrary to the public welfare, health, or safety.' N.C.G.S. § 9-6(a) (2001). This language gives trial courts considerable latitude to deal with the particular problems that appear with every trial, and we have recognized that the decision to excuse a prospective juror lies in the trial court's discretion. [cites omitted] Accordingly, we discern no abuse of discretion in the trial court's decision to grant the jurors' requests to be excused. Nevertheless, in light of the statutory admonition contained in N.C.G.S. § 9-6(a), *we remind the trial courts that excusing prospective jurors present in the courtroom who are over the age of sixty-five must reflect a genuine exercise of judicial discretion.* Defendant correctly points out that such jurors often bring to the jury pool both a wealth of experience and a willingness to serve."

(emphasis added).

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