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March 6, 2009

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Mr. Gregory P. Schmidt
Secretary of the Senate
State Capitol, Room 400
Sacramento, California 95814

Mr. E. Dotson Wilson
Chief Clerk of the Assembly
State Capitol, Room 3196
Sacramento, California 95814

Re: California Code of Civil Procedure Section 209 Sanctions Procedure

Dear Ms. Boyer-Vine, Mr. Schmidt, and Mr. Wilson:

Attached is the Judicial Council report required under California Code of Civil Procedure (CCP) section 209. CCP, § 209 was amended in 2003 by Assembly Bill 1180 (Harman); Stats. 2003, ch. 359, which authorized courts, upon providing notice and an opportunity to be heard, to impose monetary sanctions—in lieu of imposing fines following a criminal contempt proceeding—on jurors who fail to appear as required by a juror summons. The goals of CCP, § 209(b) are to provide courts with a less onerous juror summons enforcement mechanism than criminal contempt proceedings and to ensure that prospective jurors fulfill their jury service obligations. By allowing the imposition of graduated monetary sanctions, after notice and an opportunity to be heard, section 209(b) generally assists judges and jury managers in the processes of jury

administration and management so that the court may more efficiently facilitate jury service, serve judges seeking jury panels, and improve the juror experience.

By the terms of CCP, § 209(e), the sanctions provisions of section 209(b), et seq. will be repealed, or sunset, on January 1, 2010, unless a statute is enacted before January 1, 2010, to delete or extend that date. CCP, § 209(d) requires the Judicial Council to report "how, if at all, the Legislature may wish to alter this chapter to further attainment of its objectives." The Judicial Council requests modifications to CCP, § 209(b), including the repeal of the sunset provision. By focusing the policy goals of sanctions programs on *compliance* and completion of jury service, not *punishment* through monetary sanctions, CCP, § 209 has proven to be a useful tool for the courts in educating and encouraging jurors about jury service. Monetary sanctions are indeed used sparingly and are just one option courts use to encourage compliance with jury service requirements.

If you have any questions related to this report, please contact Kenneth L. Kann, Director, Executive Office Programs Division, at 415-865-7661, or John Larson, Manager, at 415-865-7589.

Sincerely,

William C. Vickrey
Administrative Director of the Courts

WCV/JL/ac
Attachments
cc: Members of the Judicial Council
Curtis L. Child, Director, AOC Office of Governmental Affairs
Kenneth L. Kann, Director, AOC Executive Office Programs Division
Dianne Bolotte, Assistant Director, AOC Executive Office Programs Division
Judicial Administration Library (2 copies)

Jury Sanctions: 2008 Report to the Legislature

CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 209

Dated February 19, 2009

JUDICIAL COUNCIL OF CALIFORNIA

ADMINISTRATIVE OFFICE OF THE COURTS

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Introduction

The Judicial Council submits this report to the Legislature on the impact of the California superior courts' use of the sanctions procedures authorized under California Code of Civil Procedure (CCP), § 209(b). CCP, § 209(b) permits the imposition of sanctions on jurors who fail to appear after being summoned for jury service.

CCP, § 209 was amended in 2003 by Assembly Bill 1180 (Harman); Stats. 2003, ch. 359, which authorized courts, upon providing notice and an opportunity to be heard, to impose monetary sanctions—in lieu of imposing fines following a criminal contempt proceeding—on jurors who fail to appear as required by a juror summons. AB 1180 also required the Judicial Council to develop a procedure by which a prospective juror against whom a sanction has been imposed by default may move to set aside the default. (The text of CCP, § 209 is attached as Appendix 1.) Through California Rules of Court, rule 2.1010 ("Juror motion to set aside sanctions imposed by default"), the Judicial Council has provided a procedure for prospective jurors to set aside sanctions imposed by default by completing and filing Judicial Council form MC-070. The statute also directs the Judicial Council to submit findings and recommendations to the Legislature. (See CCP, § 209(d).)

In response to the requirements of CCP, § 209(d), this report addresses the following:

- Changes in rates of response to juror summonses
    - How have rates of response to juror summonses changed after implementation of CCP, § 209(b) sanctions programs?

- Sanctions
    - How many times has the court ordered sanctions?
    - How much money has been imposed by the court in sanctions, and how much money has been paid to the court in sanctions under CCP, § 209(c)?
    - After the money is paid to the court, is the money transferred to the Trial Court Trust Fund, and then, to the extent feasible, to family and civil courts?

- Vacating sanctions by default
    - How efficacious are default procedures established in California Rules of Court, rule 2.1010?
    - Do jurors who have failed to respond to a juror summons use Judicial Council form MC-070 in response to sanctions imposed by default?

- Recommendations for amendments to CCP, § 209 to further attain the objectives of the section.

Code of Civil Procedure, § 209(b)

CCP, § 209(b) provides that if a juror does not respond to an initial summons within 12 months and then fails to appear following receipt of a second summons and/or subsequent notice, the juror may be sanctioned. The goals of CCP, § 209(b) are to provide courts with a less onerous juror summons enforcement mechanism than criminal contempt proceedings and to ensure that prospective jurors fulfill their jury service obligations. By allowing the imposition of graduated monetary sanctions, after notice and an opportunity to be heard, section 209(b) generally assists judges and jury managers in the processes of jury administration and management so that the court may more efficiently facilitate jury service, serve judges seeking jury panels, and improve the juror experience.

CCP, § 209(c)(2) sets forth a range of monetary sanctions within which the courts may fine prospective jurors who have failed to appear in response to a juror summons. The maximum sanction allowed for a first violation is $250, for a second violation is $750, and for a third violation is $1,500. Fines may be reduced or waived by the judge in the interests of justice. Section 209(c) sets forth the legislative intent that funds derived from the monetary sanctions authorized in this section be allocated, to the extent feasible, from the Trial Court Trust Fund to family courts and civil courts.

Through rule 2.1010, the Judicial Council has provided a procedure for prospective jurors to set aside sanctions imposed by default by completing and filing Judicial Council form MC-070. (Copies of Cal. Rules of Court, rule 2.1010 and form MC-070 are attached as Appendixes 2 and 3, respectively.)

Findings: CCP, § 209(b) Sanctions Programs

To comply with the reporting requirements of CCP, § 209(d), the Administrative Office of the Courts surveyed each of California's 58 superior courts by e-mail. **Only one court, the Superior Court of Los Angeles County, reported that it employs the CCP, § 209(b) sanctions program.** Twenty-seven courts reported using a notice procedure or program to follow up with jurors who fail to appear on the initial juror summons. Nine of those courts have based their programs on the notice tools provided in CCP, § 209(b), but have declined to impose the monetary sanctions authorized by the statute because the statute mandates that a court wait 12 months before contacting the non-responding juror and initiating the sanctions procedures under CCP, § 209(b). Twenty-three courts do not use a failure to appear (FTA) program. As of December 15, 2008, eight courts had not responded to the survey request. Because of their smaller sizes, it is assumed that these courts do not employ a program based on CCP, § 209(b). Attached as Appendix 4 is a spreadsheet showing the survey responses from all superior courts along with a description of their FTA programs.

Many of the reported FTA programs are informal. For example, the Superior Court of Colusa County issues a letter to all jurors who failed to appear that directs appearance before the court. If a potential juror does not respond to the letter, an order to show cause

notice for failure to appear for jury service is issued to the juror. No sanctions are imposed for a failure to appear or respond. The Superior Court of Sierra County holds few jury trials annually. When a jury is required, the sheriff personally serves each summons to each juror's physical address. If a juror fails to appear for jury service, an order to show cause notice is issued, which is also personally served by the sheriff. No sanctions are imposed for a failure to appear or respond. It is unknown whether more courts would implement CCP, § 209(b) sanctions programs if the 12-month waiting period were relaxed, but the framework provided by CCP, § 209(b) has proven to be one of many useful tools courts use to increase the pool of potential jurors.

Please note that statewide, courts employ different methods of data capture, record-keeping, and extraction. These differences are the result of varied case management systems in use around the state. Furthermore, the courts did not gather baseline data before implementing FTA programs, so we are unable to assess rates of compliance before and after the program was implemented. As a result, data presented in this report may contain gaps that cannot be reconciled.

Superior Court of Los Angeles County's CCP, § 209(b) FTA program

Overview

One superior court, the Superior Court of Los Angeles County, reported conducting an FTA program that follows all provisions set forth in CCP, § 209(b).

The court summons an average of 55,000 individuals per week for jury service. The Superior Court of Los Angeles County randomly divides jurors who failed to appear into two programs. Once per month, 10–15 percent of delinquent jurors are randomly selected into the CCP, § 209(b) FTA program on which the statute is based.[1] The balance is directed into a Failure to Respond Postcard Program under which jurors receive a strongly worded FTA postcard notice instructing them that they must complete jury service immediately. The program was instituted in 2006 to ensure that the court followed up on each delinquent juror, including those who were not selected into the CCP, § 209(b) sanctions program. It is a separate and distinct program from the FTA sanctions program. The court annually tracks numbers of jurors who comply under each program. (Responses to each program are included on pages 7-8, *infra*.)

Description of CCP, § 209(b) Sanctions Program

In the Superior Court of Los Angeles County, and pursuant to judicial policy, a juror is considered non-responding or failed to appear when 12 months have passed from the original date of service listed on his or her original summons and the juror has not

[1] The court has limited the number of jurors who are selected into the sanctions program to approximately 10 percent of jurors who fail to appear on the initial summons based on considerations of financial and staff resources and the number of jurors that the court summons for service annually. The Superior Court of Los Angeles County summons an average of 55,000 jurors per week. It would be cost-prohibitive, as well as would overtax the jury staff, to include more than 10 percent of delinquent jurors in the sanctions program. Courts with different resources and smaller jury pools may be able to include a greater percentage of jurors in their sanctions programs.

responded to the court. Thereafter, the juror is provided with many opportunities to respond and appear for jury service before the court takes action and imposes sanctions under CCP, § 209(c).

Twelve months after a juror fails to respond or appear for jury service on the initial summons, the court sends a second summons called a Sanctions Summons. This summons resembles the initial summons but states that it is a second notice of the juror's obligation to serve and includes a warning that failure to respond will result in the issuance of an Order to Show Cause (OSC) Notice. Jurors at this stage of the sanctions process are allowed to postpone their service, as well as request an excuse. If jurors fulfill their obligations at this point, no further action is taken.

If a juror, 30 calendar days from the date of service of the Sanctions Summons, fails to respond to the Sanctions Summons and has not appeared to complete jury service, he or she is served with a Failure to Appear Notice. The notice informs the juror that monetary sanctions may be imposed and he or she should appear personally in the jury commissioner's office within 30 days. A juror who responds to the FTA Notice by appearing personally before court staff is given a new jury service date and is required to serve.

If the juror fails to respond to the FTA Notice and has not personally appeared for jury service within 30 calendar days of the date of service of the notice, an OSC Notice is served. If the juror does not respond and the court receives acknowledgment of service, the juror is placed on the OSC calendar. OSC hearings are held one day per week. Jury department staff are required to participate in all OSC hearings and offer testimony concerning the actions the court took to summon and contact the juror. The juror must explain to the court during the OSC hearing why he or she failed to respond to previous notices.

Superior Court of Los Angeles County jury staff have been given the authority to process jurors who personally appear at the hearing and to review their legal qualifications for service. This local delegation of authority is made by judges for policy reasons to expedite OSC calendar calls and more efficiently serve jurors who have responded to notices of failures to appear. Prior to the court's calendar call at the OSC hearing, jury staff process jurors who are not legally qualified for service. All people who do not meet the qualifications for service are removed from the OSC calendar and their status is updated in the jury management system. All jurors who are qualified to serve and indicate that they are willing to serve before the hearing begins are scheduled for a specific date and removed from the OSC calendar. Jurors who appear before the judge are typically legally qualified to serve but believe that they have a legitimate reason for not serving.

During the OSC hearing, the judge explains the civic importance of jury service and gives each juror the opportunity to explain why they did not respond when summoned to appear for jury service. Based on the information provided by the jury staff and the juror's responses to the court's questions, the court will determine whether the juror is to

be excused, deferred, or ordered to serve, and the amount of money, if any, that the juror will be sanctioned. All OSC jurors who do not have a legal excuse from jury service are ordered by the court to complete jury service on a specific date. The judge also enters an Order to Pay Sanctions and imposes a monetary sanction. Payment of the sanction may be stayed pending completion of jury service; the sanction will be vacated on completion of service.

For jurors who fail to appear for jury service or do not appear for the OSC hearing, the judge will make a finding on the record of the juror's failure to appear. These jurors are sanctioned according to CCP, § 209(c)(2). The court will enter an Order to Pay. If the juror fails to pay the Order within 30 days, the Order is sent to a collections agency for processing. The collections agency attempts to locate the juror and put him or her in contact with the court so that the juror can complete jury service. Sanctions are vacated after service is complete and compliance with jury service is always required.

In Los Angeles County, almost all judges that conduct OSC hearings issue blanket orders to jury staff that allow staff to vacate OSC fines against non-responding jurors if the jurors send to the court an affidavit indicating that they are unqualified to serve, or if they complete their service at a later time. This type of order is entered at the discretion of the judge and does not require a separate appearance for a juror to request that sanctions be set aside. Other judges prefer that jurors appear in court when seeking to vacate sanctions.

Response to Legislative Inquiries

CCP, § 209(d) requires the Judicial Council to report on the overall efficacy of programs implemented pursuant to CCP, § 209. Under the Superior Court of Los Angeles County's failure to appear program, the court imposes sanctions and collects monies. Since 2004, the court has imposed $8,470,951 in sanctions and has collected $586,335. In order to track the success of the CCP, § 209(b) sanctions program, as well as the Postcard Program, the court has created an internal system of metrics that captures and measures response rates, etc. A discussion of response rates is included beginning on page 7, *infra*. The implementation of CCP, § 209 subsections (b) and (c) has provided the court with effective tools for pursuing non-responding jurors.

No actions to vacate sanctions entered by default using Judicial Council form MC-070 have been recorded. However, the court provides notification of the juror's options under California Rules of Court, rule 2.1010 to the juror in the Order to Pay and advises the juror that he or she may print form MC-070 from the court's Web site. The court reports that most jurors contact the jury office for information about their Order to Pay and to schedule jury service. Regardless, as previously stated, once a juror completes service, sanctions entered against the juror are typically vacated by a judicial officer or the jury manager. A formal motion is not always required.

Review of Findings From 2006 Jury Sanctions Report to the Legislature

In 2006, the Judicial Council submitted a report to the Legislature on the effects of

CCP, § 209(b). Two courts, the Superior Courts of San Bernardino and Sacramento Counties were included along with the Superior Court of Los Angeles County as courts that operated CCP, § 209(b) sanctions programs. In 2008, the Superior Courts of San Bernardino and Sacramento Counties reported that they no longer follow the provisions of CCP, § 209(b).

The Superior Court of San Bernardino County reported that the court now bases its program on the notice tools provided in CCP, § 209(b) but does not follow all terms of CCP, § 209(b). When a juror fails to respond to the initial summons, the court serves an FTA letter via certified mail. The letter provides an alternate date for jury service or requires that the juror contact the court to reschedule jury service, and references the potential for a hearing before a judicial officer if the juror fails to comply. The court does not wait 12 months to send the FTA letter. In 2008, the court began sending a second FTA letter to jurors who did not appear for jury service but acknowledged receipt of the first certified FTA letter. If a juror fails to respond to either letter and fails to appear on the assigned jury service date set forth therein, the court then serves, by deputy sheriff—on a randomly selected subset of those jurors who failed to appear—an order to show cause why sanctions should not be imposed. At the order to show cause hearing, jury service is rescheduled and the full amount of the sanction—except $30 to recoup the service cost by the sheriff—is waived.

In 2006, the Superior Court of Sacramento County reported that they operated a failure to appear program based on CCP, § 209(b). In 2008, the court reported that they no longer operate any type of failure to appear program.

Changes in Rates of Response to Juror Summonses

CCP, § 209(d) requires the Judicial Council to report changes in rates of response to juror summonses related to the implementation of CCP, § 209(b) FTA programs. The information provided below related to rates of response reflect changes over two years, from 2006 to 2008. The court can measure the efficiency of its program by comparing data from year to year and determining whether the numbers of jurors who fail to appear has increased or decreased.

Superior Court of Los Angeles County	
Changes in Rates of Response to Juror Summons Under CCP, § 209(b) Sanctions Program	In 2006, the court summoned 2,853,226 people for service. 1,329,103 respond to the initial summons. Under the juror sanctions program, an additional 137,445 jurors responded to various notices of delinquency (representing an additional 10% gain in jurors over those responding to the initial summons). In 2007, the court summoned 3,130,866 people for service. 1,526,926 respond to the initial summons. Under the juror sanctions program, an additional 136,769 jurors responded to various notices of

Superior Court of Los Angeles County	
	delinquency (representing an additional 9% gain in jurors over those responding to the initial summons).
Responses to FTA Postcard Program	Note: This program captures jurors not selected into the Sanctions Program and is not part of the court's CCP, § 209(b) program: From November 2006 to December 31, 2008, 1,026,104 FTA postcards were mailed. 215,382 jurors responded to the postcards by contacting the court. Of those jurors who responded, 117,982 were qualified to serve. 97,400 were not legally qualified to serve. 61,630 completed jury service and 9,028 still failed to appear for service.

Sanctions and Use of Funds

CCP, § 209(c)(2) reads in part as follows:

> The monetary sanctions imposed pursuant to subdivision (b) may not exceed two hundred fifty dollars ($250) for the first violation, seven hundred fifty dollars ($750) for the second violation, and one thousand five hundred dollars ($1,500) for the third and any subsequent violation. Monetary sanctions may not be imposed on a prospective juror more than once during a single juror pool cycle. The prospective juror may be excused from paying sanctions pursuant to subdivision (b) of Section 204 or in the interests of justice. The full amount of any sanction paid shall be deposited in a bank account established for this purpose by the Administrative Office of the Courts and transmitted from that account monthly to the Controller for deposit in the Trial Court Trust Fund, as provided in Section 68085.1 of the Government Code. It is the intent of the Legislature that the funds derived from the monetary sanctions authorized in this section be allocated, to the extent feasible, to the family courts and the civil courts. The Judicial Council shall, by rule, provide for a procedure by which a prospective juror against whom a sanction has been imposed by default may move to set aside the default.

CCP, § 209(d) requires the Judicial Council to report on the total amount of sanctions collected by the courts under this provision. The statutory provision relating to the imposition of monetary sanctions is permissive and allows courts to dismiss sanctions after compliance or in the interests of justice. Courts that operate failure to appear programs focus the policy goals of their programs on *compliance* and completion of jury service, not *punishment* through monetary sanctions.

Sanctions Data

The following table shows the amount of sanctions paid to the Superior Court of Los Angeles County through October 31, 2008, the average sanction imposed, and the allocation of the funds received.

Superior Court of Los Angeles County	
Total Amount of Sanctions Paid	From January 2004 to October 31, 2008, $8,470,951 sanctions were imposed and $586,335 were paid to the court.
Average Sanction Imposed	$250
Transmitted to State Trial Court Trust Fund	Yes
Allocated to Family Courts and Civil Courts	Unable to track

Vacating Sanctions by Default

When a juror fails to appear for his or her order to show cause hearing, sanctions may be entered against him or her by default. Under statute, the Judicial Council has established a procedure for jurors against whom sanctions have been entered by default. California Rules of Court, rule 2.1010 allows jurors to complete and file Judicial Council form MC-070, a motion to set aside sanctions imposed by default. In the Superior Court of Los Angeles County, no jurors have filed motions to set aside sanctions given that the court provides other opportunities to vacate sanctions. However, jurors are informed of the option to file such motions in the Order to Pay and are provided with an electronic link to the Judicial Council form on the court's Web site.

Superior Court of Los Angeles County	
Total Sanctions Imposed by Default	From 2004 to October 31, 2008, an average of 55,000 jurors per week were summoned to the court for jury service. For the four-year period from 2004 to October 31, 2008, 38,158 jurors were sanctioned at OSC hearings by default for failing to appear for jury service. In that same period, sanctions entered by default were set aside for 5,446 jurors who contacted the court in writing or by telephone and completed jury service or were determined to be unqualified to serve. 2,280 of the jurors sanctioned by default paid their sanctions in full.

Superior Court of Los Angeles County	
Sanctions Set Aside Under rule 2.1010	None; no jurors have filed motions under rule 2.1010

Recommendations to Enhance Legislative Objectives

CCP, § 209(d) requires the Judicial Council to report "how, if at all, the Legislature may wish to alter this chapter to further attainment of its objectives." CCP, § 209(d). The Judicial Council recommends the following modifications to CCP, § 209(b):

Recommendation One

Decrease the amount of time that must lapse before a compliance action can be initiated, but provide courts the discretion to initiate the process at some point beyond the new minimum time period. It is recommended that the mandatory minimum period be reduced to authorize courts to begin the CCP, § 209(b) failure to appear process no sooner than 90 days instead of no sooner than 12 months. With this change, courts that want to continue using a 12-month period may do so. Also, courts that desire to set up a procedure that allows more than 90 days but less than 12 months would have the discretion to do so.

Proposed amendments to CCP, § 209(b) read as follows: "… If a juror fails to respond to the initial summons ~~**within 12 months**~~ , the court may issue a second summons indicating that the person failed to appear in response to a previous summons and ordering the person to appear for jury duty. **The second summons may be issued no earlier than 90 days after the initial failure to appear**."

Rationale

The 12-month minimum time for initiation of the CCP, § 209(b) sanction process is necessary and effective in the Superior Court of Los Angeles County's compliance process because that court has a much larger pool of jurors than any other court in the state and because of the size, demographic, and transient nature of their jury pool; the associated complexities of their summoning process; and the costs and judicial time needed to administer such a large program. However, courts with smaller jury pools should not have to wait 12 months to initiate the compliance process.

While legislative concern was expressed prior to enactment of CCP, § 209(b) about courts giving jurors ample time to respond to jury summonses and complete jury service without imposing sanctions, a minimum period of 90 days is reasonable and would address this concern. The current statutory mandate allowing delinquent jurors a 12-month period in which to respond is not fair in smaller courts to those who do appear on the initial summons and who are thereafter exempt from service for a period of 12 months pursuant to California Rule of Court 2.1008(e). In other words, the statute as currently written prohibits *all* courts from starting a compliance action until the same period of time lapses for which we exempt jurors who actually appear for service. During the 12-month period that is part of its program, the Superior Court of Los Angeles

County keeps non-responding jurors in the pool of available jurors while simultaneously tracking them under the sanctions programs (i.e. CCP, § 209(b) Sanctions Program or Postcard Program). However, there should not be a legislative mandate requiring all courts to wait this long when 90 days is a reasonable minimum period.

We live in a very mobile society. People may move more frequently. For courts that do not update their master lists or sanctions lists more than twice per year, decreasing the waiting period to 90 days increases the likelihood that the juror will be located at his or her last known place of residence.

Further, the 12-month period appears to have had the effect of deterring some courts from using CCP, § 209(b). Allowing a shorter period of time to lapse before the court can initiate a compliance action will make it worthwhile for more courts to do so, especially those with jury pools that are substantially smaller than the pool in larger counties. Nine courts, the Superior Courts of El Dorado, Humboldt, Inyo, Lassen, Modoc, Mono, Napa, San Bernardino, and San Mateo Counties, reported that they based their sanctions programs on the notice elements of CCP, § 209(b) but are unable to implement such a program because of the 12-month waiting period. Each of these courts begins following up with jurors who failed to appear within 14–90 days and does not levy sanctions.

Recommendation Two

Deposit sanctions paid into the Trial Court Trust Fund without designation for a specific purpose.

Rationale

Current case management and information systems and financial management systems do not provide the courts and the Administrative Office of the Courts with tracking mechanisms by which to designate funds for future use once deposited into the Trial Court Trust Fund, nor do they provide a way to track those funds once deposited for narrowly defined, specific uses such as civil and family courts. Case management systems are disparate and vary from county to county; therefore, there is no practical way to collect, allocate, track and accurately compare system outputs across counties. In its 2006 report to the Legislature, the Judicial Council and the courts reported on this continuing problem.

Additionally, designating these funds for any court program—family, civil, juvenile, probate, or jury—would promote an appearance of impropriety, generate negative public opinion, and decrease the public's trust and confidence in the courts. If a sanctions program is directly tied to the day-to-day administration of the court, the public may interpret the implementation of a court's sanctions program as a technique for the court to generate revenue. In other words, the public may believe the court is motivated to sanction as many jurors as possible under the program for failing to appear for service in order to increase funding for the designated court programming. The public's confidence in the validity and impartiality of the sanctions program would be tested, if not eroded. The courts must avoid even the appearance of bias.

Recommendation Three

Eliminate the January 1, 2010, sunset provision of CCP, § 209(e).

Rationale

The results of the survey conducted under this statute indicate that the failure to appear provisions set forth in CCP, § 209 have afforded the courts a useful option for enforcing juror summonses. The sunset date and reporting requirement were, in part, intended to allow the Judicial Council to demonstrate to the Legislature's satisfaction that the monetary sanctions would not unfairly or inappropriately burden low-income Californians who may have legitimate reasons for failing to appear or to respond to the juror summons. This report demonstrates that monetary sanctions indeed are used sparingly.

Recommendation Four

Delete the reporting requirement set forth in CCP, § 209(d).

Rationale

The Judicial Council, as requested by statute, has transmitted two reports to the Legislature on this provision since its enactment in 2003. The report results demonstrate the diversity of the courts' approaches to jury administration, and that the failure to appear provisions set forth in CCP, § 209 have afforded the courts a useful option for enforcing juror summonses. In addition, the sunset date and reporting requirement were in part intended to allow the Judicial Council to demonstrate to the Legislature's satisfaction that the monetary sanctions would not unfairly or inappropriately burden low-income Californians who may have legitimate reasons for failing to appear or to respond to the juror summons. This report demonstrates that monetary sanctions are indeed used sparingly and are just one option courts choose to employ to encourage compliance with jury service requirements.

Conclusion

CCP, § 209(b) has proven to be a useful method of pursuing jurors who fail to appear in response to a juror summons. While only one of the 58 superior courts has implemented this provision, others use a form of it, and it has been a beneficial tool for jury administration and management. It is clear that the implementation of such programs does not generate revenue for the courts. Statewide, these programs promote compliance with the jury system and greater respect for the judicial system.

Appendixes

1 — Code of Civil Procedure, section 209

2 — California Rules of Court, rule 2.1010

3 — Juror's Motion to Set Aside Sanctions and Order (form MC-070)

4 — Superior Courts of California: Statewide Failure to Appear Programs

Appendix One
Code of Civil Procedure section 209

CALIFORNIA CODE OF CIVIL PROCEDURE

209.

(a) Any prospective trial juror who has been summoned for service, and who fails to attend as directed or to respond to the court or jury commissioner and to be excused from attendance, may be attached and compelled to attend. Following an order to show cause hearing, the court may find the prospective juror in contempt of court, punishable by fine, incarceration, or both, as otherwise provided by law.

(b) In lieu of imposing sanctions for contempt as set forth in subdivision (a), the court may impose reasonable monetary sanctions, as provided in this subdivision, on a prospective juror who has not been excused pursuant to Section 204 after first providing the prospective juror with notice and an opportunity to be heard. If a juror fails to respond to the initial summons within 12 months, the court may issue a second summons indicating that the person failed to appear in response to a previous summons and ordering the person to appear for jury duty. Upon the failure of the juror to appear in response to the second summons, the court may issue a failure to appear notice informing the person that failure to respond may result in the imposition of money sanctions. If the prospective juror does not attend the court within the time period as directed by the failure to appear notice, the court shall issue an order to show cause. Payment of monetary sanctions imposed pursuant to this subdivision does not relieve the person of his or her obligation to perform jury duty.

(c) (1) The court may give notice of its intent to impose sanctions by either of the following means:

(A) Verbally to a prospective juror appearing in person in open court.

(B) The issuance on its own motion of an order to show cause requiring the prospective juror to demonstrate reasons for not imposing sanctions. The court may serve the order to show cause by certified or first-class mail.

(2) The monetary sanctions imposed pursuant to subdivision (b) may not exceed two hundred fifty dollars ($250) for the first violation, seven hundred fifty dollars ($750) for the second violation, and one thousand five hundred dollars ($1,500) for the third and any subsequent violation. Monetary sanctions may not be imposed on a prospective juror more than once during a single juror pool cycle. The prospective juror may be excused from paying sanctions pursuant to subdivision (b) of Section 204 or in the interests of justice. The full amount of any sanction paid shall be deposited in a bank account established for this purpose by the Administrative Office of the Courts and transmitted from that account monthly to the Controller for deposit in the Trial Court Trust Fund, as provided in section 68085.1 of the Government Code. It is the intent of the Legislature that the funds derived from the monetary sanctions authorized in this section be allocated, to the extent feasible, to the family courts and the **civil** courts. The Judicial Council shall, by rule, provide for a **procedure** by which a prospective juror against whom a sanction has been imposed by default may move to set aside the default.

(d) On or before December 31, 2008, the Judicial Council shall report to the Legislature regarding the effects of the implementation of subdivisions (b) and (c). The report shall include, but not be limited to, information regarding any change in rates of response to juror summons, the amount of moneys collected pursuant to subdivision (c),

the efficacy of the default procedures adopted in rules of court, and how, if at all, the Legislature may wish to alter this chapter to further attainment of its objectives.

(e) This section shall remain in effect only until January 1, 2010, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2010, deletes or extends that date.

209. Any prospective trial juror who has been summoned for service, and who fails to attend the court as directed or to respond to the court or jury commissioner and to be excused from attendance, may be attached and compelled to attend. Following an order to show cause hearing, the court may find the prospective juror in contempt of court, punishable by fine, incarceration, or both, as otherwise provided by law.

This section shall become operative on January 1, 2010.

Appendix Two
California Rules of Court, rule 2.1010

2008 CALIFORNIA RULES OF COURT
Rule 2.1010, Juror motion to set aside sanctions imposed by default

(a) Motion
A prospective juror against whom sanctions have been imposed by default under Code of Civil Procedure section 209 may move to set aside the default. The motion must be brought no later than 60 days after sanctions have been imposed.

(b) Contents of motion
A motion to set aside sanctions imposed by default must contain a short and concise statement of the reasons the prospective juror was not able to attend when summoned for jury duty and any supporting documentation.

(c) Judicial Council form may be used
A motion to set aside sanctions imposed by default may be made by completing and filing *Juror's Motion to Set Aside Sanctions and Order* (form MC-070).
(Subd (c) amended effective January 1, 2007.)

(d) Hearing
The court may decide the motion with or without a hearing.
(Subd (d) amended effective January 1, 2007.)

(e) Good cause required
If the motion demonstrates good cause, a court must set aside sanctions imposed against a prospective juror.

(f) Continuing obligation to serve
Nothing in this rule relieves a prospective juror of the obligation of jury service.

(g) Notice to juror
The court must provide a copy of this rule to the prospective juror against whom sanctions have been imposed.

(h) Sunset date
This rule is effective until January 1, 2010.
(Subd (h) amended effective January 1, 2007.)

Rule 2.1010 amended effective January 1, 2007; adopted as rule 862 effective January 1, 2005.

Appendix Three
Juror's Motion to Set Aside
Sanctions and Order (form MC-070)

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address):*	*FOR COURT USE ONLY*
TELEPHONE NO.: FAX NO. *(Optional):* E-MAIL ADDRESS *(Optional):* ATTORNEY FOR *(Name):*	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
IN RE *(Name):*	
JUROR'S MOTION TO SET ASIDE SANCTIONS AND ORDER	CASE NUMBER:

Notice: If you wish to contest sanctions imposed against you under Code of Civil Procedure section 209, a motion to set aside sanctions must be filed no later than 60 days after sanctions have been imposed. Provide a separate explanation for each time you were unable to appear for jury duty, unless the reason you were unable to appear for jury duty was the same each time. If the reason was the same each time, state that it was the same. If a court grants the motion and sets aside sanctions, it does not relieve you of the obligation of jury service. Do not use this form if you have been found in contempt of court for failure to appear when summoned for jury duty.

1. a. Prospective juror *(name):*
   b. Prospective juror's identification number *(specify):*

2. Dates prospective juror was summoned to appear *(specify):*
   Date of order-to-show-cause hearing *(specify):*

3. Prospective juror was unable to attend when summoned for jury duty for the following reasons *(specify):*

   ☐ Continued on Attachment 3.

4. ☐ Attachment 4 contains copies of the following documents in support of motion *(list):*

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME) ▶ (SIGNATURE OF PROSPECTIVE JUROR)

ORDER ON MOTION TO SET ASIDE SANCTIONS

The motion to set aside sanctions is ☐ denied ☐ granted ☐ set for hearing on *(date):*

(JUDICIAL OFFICER)

☐ Signature follows last attachment.

Form Approved for Optional Use
Judicial Council of California
MC-070 [Rev. January 1, 2007]

JUROR'S MOTION TO SET ASIDE SANCTIONS AND ORDER

Code of Civil Procedure, § 209;
Cal. Rules of Court, Rule 2.1010
www.courtinfo.ca.gov

American LegalNet, Inc.
www.FormsWorkflow.com

Appendix Four
Superior Courts of California:
Statewide Failure to Appear Programs

Superior Court of California
Statewide Failure to Appear Programs

County Name	FTA: Y/N	FTA Program
County of Alameda	N	Forthcoming
County of Alpine		No response provided
County of Amador		No response provided
County of Butte		No response provided
County of Calaveras	Y	FTA jurors are sent post card reminders. No further action is taken.
County of Colusa	Y	FTA jurors are sent a letter to appear before the court. If the juror fails to appear in response to the letter then an OSC is issued
County of Contra Costa		No response provided
County of Del Norte		No response provided
County of El Dorado	Y	Program has existed since approximately the year 2000. Jurors are allotted 1-2 weeks to respond following an FTA before an FTA notice is served via U.S. Mail; 30 days thereafter, a second FTA notice is served; 45 days thereafter, an OSC notice is served by a sheriff's officer for a fee of $30. Delinquent jurors are fined $50-$100 for the first offense and $100-$200 for a second offense. Since May 2008 the court has implemented monthly OSC hearings.
County of Fresno	Y	From a list of jurors who have failed to appear, Fresno randomly selects 50 jurors per week (the maximum number the sheriff will serve) and schedules OSC re: contempt hearings. Most cases are resolved and taken off calendar.
County of Glenn		No response provided
County of Humboldt	Y	Follow-up letters are sent to those jurors who fail to appear
County of Imperial	N	
County of Inyo	Y	FTA program has existed for more than 6 years. No sanctions or OSCs are conducted. FTA notices are sent to delinquent jurors and most people respond.
County of Kern	N	
County of Kings	N	Follow-up letters are sent to those jurors who fail to appear and jurors who contact the court are rescheduled for jury service
County of Lake		
County of Lassen	Y	The court began implementing the FTA program in 2006. Jurors are summoned to the court for specific trials. If delinquent jurors respond, they are told to report for the next scheduled trial. The sheriff delivers a letter generated through the JSI jury management system. The number of delinquent jurors have declined to nearly 0 percent. The court has conducted only one OSC and it was at the beginning of the program almost 2 years ago. No sanctions have been imposed. The percentage of FTAs have decreased to 10 percent.

Superior Court of California
Statewide Failure to Appear Programs

County Name	FTA: Y/N	FTA Program
County of Los Angeles	Y	
County of Madera	N	
County of Marin	Y	Program was created in 2007. No sanctions are imposed. The court issues warrants of attachment for arrest of delinquent jurors.
County of Mariposa		
County of Mendocino	Y	Sixty days after a juror fails to appear, a second summons is sent. If the juror again fails to appear, a postcard notice is sent. If there is still no response, the court has the option of serving an OSC and levying sanctions. No orders to show cause have been issued and no sanctions have been levied.
County of Merced	N	
County of Modoc	Y	Delinquent jurors receive a letter upon default instructing them to respond. If they fail to respond, the court issues letters and orders to show cause for delinquency.
County of Mono	Y	The program is based on CCP 209(b). In 2006, 1722 summonses were mailed and 89 jurors failed to appear. In 2007, 3,135 summonses were mailed and 273 failed to appear. In 2008 (through 10/31/08), 2,896 summonses were mailed and 79 jurors failed to appear.
County of Monterey	N	The court notifies delinquent jurors that they must appear on subsequent date but has implemented no formal failure to appear program.
County of Napa	Y	The court mails a post card reminder that includes three possible appearance dates that the juror may select. If they respond requesting a new date, and don't appear for that new date, they will be issued a final summons, which has a specific date. If a juror does not respond to the post card, 45 days from initial summons, they will be mailed a final summons and assigned a specific date. In both instances, if they appear their service is complete. If a juror fails to respond to the final summons, an OSC is issued. If they appear for the OSC date, they are ordered to pay a fine which is stayed upon completion of the jury service; if the jury service is completed, the fine is vacated. If they do not appear on the OSC date, a fine is imposed of $1,000 and a referral is sent to the CSB organization for collection.

Superior Court of California
Statewide Failure to Appear Programs

County Name	FTA: Y/N	FTA Program
County of Nevada	N	When a juror fails to appear, the court mails a follow-up postcard which reads “OFFICIAL COURT BUSINESS*FAILURE TO APPEAR” that notifies those who failed to appear that they neglected their jury service date and asks that they contact the court office regarding their non-appearance within ten days and provide a reason for failing to appear. No further action is taken.
County of Orange	Y	The court has established two programs. The first notifies jurors who fail to appear by postcard and directs them to contact the jury office immediately. The court reports a 39 percent response rate with this program. The second program is directed toward jurors who have failed to appear twice within the past 12 months. Jurors receive a letter which sets forth the two dates on which they failed to appear and tells them to contact the jury office immediately. For those jurors who do not respond to the letter, the court contacts these jurors by telephone to either schedule them for jury service or, if applicable, advise them to submit a request for excuse or disqualification. The court reports a 58 percent response rate with this program.
County of Placer	N	
County of Plumas	N	
County of Riverside	Y	When a juror fails to appear, the court either mails a failure to appear post card notice instructing the juror to report for jury service on the following Monday or randomly selects a group of names (no more than 60 for the desert portion of the county; no more than 270 for the city of Riverside) for personal service by the sheriff. If the juror fails to report for duty, a second notice is created. If personal service was effected and the juror fails to appear on the new date, the jury clerk will schedule an order to show cause hearing (approximately on a quarterly basis). If personal service is not made, the hearing is vacated.
County of Sacramento	N	
County of San Benito	N	The court sends a FTA notice and takes no further action.

Superior Court of California
Statewide Failure to Appear Programs

County Name	FTA: Y/N	FTA Program
County of San Bernardino	Y	The court sends two FTA notices. After the second notice, if the juror still fails to appear then they are served an order to show cause notice re contempt. Delinquent jurors are allowed to schedule a date to appear and if they appear then they are done. Those jurors who do appear are fined by the judge, usually only $30.00 to cover the costs of service, and ordered to appear for service. If a juror does not appear at the OSC hearing then the judge will orders a bench warrant for the juror's arrest.
County of San Diego	N	
County of San Francisco	N	
County of San Joaquin	Y	The court follows the procedures set forth in CCP section 209(a). No jurors are incarcerated for failing to appear for jury service. Sanctions are levied against delinquent jurors but are usually waived upon completion of jury service.
County of San Luis Obispo	N	The court sends delinquent jurors a follow-up postcard but takes no further action.
County of San Mateo	Y	Upon a failure to appear, the court issues a first notice stating that the juror has failed to appear and must respond. If the juror does not respond, the court issues a second notice that is more strongly worded than the first. The court takes no further action after issuing a second notice. No sanctions are imposed.
County of Santa Barbara	Y	The court follows the procedures set forth in CCP section 209(a). No jurors are incarcerated for failing to appear for jury service. Sanctions are levied against delinquent jurors but are usually waived upon completion of jury service.
County of Santa Clara	N	
County of Santa Cruz	N	The court sends a FTA card out two weeks after a juror is required to report for jury duty and fails to appear. The juror sends the FTA card back to the court explaining why they did not appear. No further action is taken by the court.
County of Shasta	N	The court has not implemented a formal FTA program, but continuously mail summonses to delinquent jurors. Lists are carried over from year to year until summonses are old and placed in a holding file for future action.
County of Sierra	Y	The court rarely conducts jury trials (ex: no trials from 2003-2008). When the court summons a jury, the sheriff--at no cost--hand delivers jury summonses to each juror's physical address. If a juror does not respond, they receive an OSC that is also personally served.

Superior Court of California
Statewide Failure to Appear Programs

County Name	FTA: Y/N	FTA Program
County of Siskiyou	N	
County of Solano	Y	The court randomly selects jurors for follow-up. Jurors are given many opportunities to appear and complete service prior to assignment of an OSC hearing date. If a delinquent juror does not appear at an OSC hearing, cite and release bench warrants are issued. No sanctions have been levied.
County of Sonoma	Y	Upon a juror's first FTA, a letter is sent that assigns a new week of service 30 days out, followed by a new summons for that week. Upon the second FTA, a delinquent juror is served with an OSC letter to appear at a court hearing before the presiding judge. At the OSC hearing, fines are imposed and jurors are rescheduled for jury duty. If the juror fails to appear at the OSC hearing, a bench warrant is issued.
County of Stanislaus	Y	The court's program is based on the Superior Court of San Joaquin County's program. A Failure to Appear Notice is mailed within two weeks of the delinquency. The juror has 10 days to respond. If the juror fails to respond, an order to show cause is issued. If the juror fails to appear at the scheduled OSC hearing, a bench warrant is issued and the juror is fined $1,500. If the juror appears, they will be ordered to serve on a specific date.
County of Sutter	N	
County of Tehama	Y	The court uses the JSI system to generate automated notices of failures to appear. Five days after the first FTA the court verifies the juror's address and a letter is sent to the delinquent juror. If the juror fails to appear, a second FTA letter is personally served on the juror. The court has found that because of the current economy and the dynamic population, about 16 of 20 FTAs are non-residents; the balance claim to have forgotten to serve or are not qualified. Only one fine was imposed in 2008 for $370. The court does not currently conduct OSC hearings, but has in the past.
County of Trinity	Y	The court sends FTA notices that the court reports get most of the potential juror’s attention. Jurors call back and are rescheduled for the nearest possible date to serve. The court has never imposed sanctions.
County of Tulare	Y	Delinquent jurors receive a FTA letter one week after the juror fails to appear. A second FTA letter is sent 30 days after the second delinquency. The second letter includes a copy of a blank OSC and explains if the juror does not contact the office within 30 days, an OSC will be issued by the sheriff's office.

Superior Court of California
Statewide Failure to Appear Programs

County Name	FTA: Y/N	FTA Program
County of Tuolumne	N	Forthcoming
County of Ventura	Y	The court sends two types of FTA Notices, but does not impose fines or issue OSCs.
County of Yolo	N	The court sends follow-up letters automatically generated through the jury management Jury+ (JSI) system.
County of Yuba	Y	The court sends follow-up notices but no sanctions are given and no OSC hearings are held.