



Judicial Council of California
ADMINISTRATIVE OFFICE OF THE COURTS

OFFICE OF GOVERNMENTAL AFFAIRS
770 L Street, Suite 1240 • Sacramento, California 95814-3368
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TANI G. CANTIL-SAKAUYE
Chief Justice of California
Chair of the Judicial Council

STEVEN JAHR
Administrative Director of the Courts

CORY T. JASPERSON
Director, Office of Governmental Affairs

March 21, 2014

Hon. Bob Wieckowski, Chair
Assembly Judiciary Committee
State Capitol, Room 4016
Sacramento, California 95814

Subject: AB 2683 (Cooley), as introduced – Support/Sponsor

Dear Assembly Member Wieckowski:

The Judicial Council supports and is sponsoring AB 2683, which deletes a category of juror misconduct that constitutes misdemeanor contempt—the willful disobedience by a juror of a court admonishment against any communication or research about a pending trial, including electronic or wireless communications.

Penal Code section 166 generally proscribes specific conduct that may constitute misdemeanor contempt of court, including subdivision (a)(6), which prohibits the following: “Willful disobedience by a juror of a court admonishment related to the prohibition on any form of communication or research about the case, including all forms of electronic or wireless communication or research.”

Courts are required to investigate allegations of misconduct by jurors during trials to ensure the integrity of the proceedings. To determine whether misconduct involving the use of an electronic device has occurred, courts must often question jurors because, in many instances, only jurors can explain the subject and purpose of the electronic communication.

However, by making electronic communication about the trial a crime, subdivision (a)(6) inadvertently impairs the ability of the court to determine if misconduct occurred. Because a prosecutor may charge the juror with a misdemeanor, questions posed by the court may implicate the juror's constitutional rights against compelled testimony and self-incrimination. The implication of the juror's constitutional rights could thwart the court's ability to conduct an informal inquiry into the juror's alleged use of electronic communications during the trial.

The Judicial Council believes the proper remedy for this category of juror misconduct is civil, as opposed to criminal, contempt of court. Although civil contempt proceedings raise similar constitutional implications, the authority to initiate civil contempt proceedings lies exclusively with the court. Thus, if the court believes that questioning the juror is necessary to preserve the integrity of a trial, the court could first offer the juror immunity from civil contempt sanctions in exchange for a formal inquiry on the record. This process would ensure the conduct of the trial, including any inquiry of a juror into the use of electronic communications during the trial, remains squarely within the province of the court.

Courts need to have the ability to inquire into juror activities that may bear on the outcome of the trial without implicating the juror's constitutional rights associated with the possibility of criminal contempt of court sanctions. Some ability to question jurors is critical, allowing the court to determine if misconduct occurred. The flexibility to question a juror without implicating his/her constitutional rights is essential and will avoid jeopardizing the integrity of the proceedings and increasing the risk of mistrial and reversal on appeal. AB 2683 eliminates the unforeseen consequence of implicating a juror's constitutional rights by deleting the recently added subdivision (a)(6) from Penal Code section 166.

For these reasons, the Judicial Council is sponsoring and supporting AB 2683.

Sincerely,



Sharon Reilly
Senior Attorney

SR/yc-s

cc: Members, Assembly Judiciary Committee
Hon. Ken Cooley, Member of the Assembly
Mr. Drew Liebert, Chief Counsel, Assembly Judiciary Committee
Ms. June Clark, Deputy Legislative Secretary, Office of the Governor
Mr. Paul Dress, Consultant, Assembly Republican Office of Policy



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May 20, 2014

Hon. Loni Hancock, Chair
Senate Public Safety Committee
State Capitol, Room 2082
Sacramento, California 95814

Subject: AB 2683 (Cooley), as introduced – Support/Sponsor
Hearing: Senate Public Safety Committee – June 10, 2014

Dear Senator Hancock:

The Judicial Council is pleased to support and sponsor AB 2683, which deletes a category of juror misconduct that constitutes misdemeanor contempt—the willful disobedience by a juror of a court admonishment against any communication or research about a pending trial, including electronic or wireless communications.

Penal Code section 166 generally proscribes specific conduct that may constitute misdemeanor contempt of court, including subdivision (a)(6), which prohibits the following: “Willful disobedience by a juror of a court admonishment related to the prohibition on any form of communication or research about the case, including all forms of electronic or wireless communication or research.”

Courts are required to investigate allegations of misconduct by jurors during trials to ensure the integrity of the proceedings. To determine whether misconduct involving the use of an electronic device has occurred, courts must often question jurors because, in many instances, only jurors can explain the subject and purpose of the electronic communication.

However, by making electronic communication about the trial a crime, subdivision (a)(6) inadvertently impairs the ability of the court to determine if misconduct occurred. Because a prosecutor may charge the juror with a misdemeanor, questions posed by the court may implicate the juror's constitutional rights against compelled testimony and self-incrimination. The implication of the juror's constitutional rights could thwart the court's ability to conduct an informal inquiry into the juror's alleged use of electronic communications during the trial.

The Judicial Council believes the proper remedy for this category of juror misconduct is civil, as opposed to criminal, contempt of court. Although civil contempt proceedings raise similar constitutional implications, the authority to initiate civil contempt proceedings lies exclusively with the court. Thus, if the court believes that questioning the juror is necessary to preserve the integrity of a trial, the court could first offer the juror immunity from civil contempt sanctions in exchange for a formal inquiry on the record. This process would ensure the conduct of the trial, including any inquiry of a juror into the use of electronic communications during the trial, remains squarely within the province of the court.

Courts need to have the ability to inquire into juror activities that may bear on the outcome of the trial without implicating the juror's constitutional rights associated with the possibility of criminal contempt of court sanctions. Some ability to question jurors is critical, allowing the court to determine if misconduct occurred. The flexibility to question a juror without implicating his/her constitutional rights is essential and will avoid jeopardizing the integrity of the proceedings and increasing the risk of mistrial and reversal on appeal. AB 2683 eliminates the unforeseen consequence of implicating a juror's constitutional rights by deleting the recently added subdivision (a)(6) from Penal Code section 166.

For these reasons, the Judicial Council is pleased to sponsor and support AB 2683.

Sincerely,



Sharon Reilly
Senior Attorney

SR/yc-s

cc: Members, Senate Public Safety Committee
Hon. Ken Cooley, Member of the Assembly
Ms. Mary Kennedy, Counsel, Senate Public Safety Committee
Ms. June Clark, Deputy Legislative Secretary, Office of the Governor
Mr. Eric Cszimar, Consultant, Senate Republican Office of Policy



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Administrative Director of the Courts

CORY T. JASPERSON
Director, Office of Governmental Affairs

June 30, 2014

Hon. Edmund G. Brown, Jr.
Governor of California
State Capitol, First Floor
Sacramento, California 95814

Subject: AB 2683 (Cooley), as introduced – Request for Signature

Dear Governor Brown:

The Judicial Council is pleased to support and sponsor AB 2683, which deletes a category of juror misconduct that constitutes misdemeanor contempt—the willful disobedience by a juror of a court admonishment against any communication or research about a pending trial, including electronic or wireless communications.

Penal Code section 166 generally proscribes specific conduct that may constitute misdemeanor contempt of court, including subdivision (a)(6), which prohibits the following: “Willful disobedience by a juror of a court admonishment related to the prohibition on any form of communication or research about the case, including all forms of electronic or wireless communication or research.”

Courts are required to investigate allegations of misconduct by jurors during trials to ensure the integrity of the proceedings. To determine whether misconduct involving the use of an electronic device has occurred, courts must often question jurors because, in many instances, only jurors can explain the subject and purpose of the electronic communication. However, by making electronic communication about the trial a crime, subdivision (a)(6) inadvertently

impairs the ability of the court to determine if misconduct occurred. Because a prosecutor may charge the juror with a misdemeanor, questions posed by the court may implicate the juror's constitutional rights against compelled testimony and self-incrimination. The implication of the juror's constitutional rights could thwart the court's ability to conduct an informal inquiry into the juror's alleged use of electronic communications during the trial.

The Judicial Council believes the proper remedy for this category of juror misconduct is civil, as opposed to criminal, contempt of court. Unlike criminal prosecutions, which lie within the jurisdiction of District Attorneys, the authority to initiate civil contempt proceedings lies exclusively with the court. Thus, if the court believes that questioning the juror is necessary to preserve the integrity of a trial, the court could first offer the juror immunity from civil contempt sanctions in exchange for a formal inquiry on the record. This process would ensure the conduct of the trial, including any inquiry of a juror into the use of electronic communications during the trial, remains squarely within the province of the court.

Courts need to have the ability to inquire into juror activities that may bear on the outcome of the trial without implicating the juror's constitutional rights associated with the possibility of criminal contempt of court sanctions. Some ability to question jurors is critical, allowing the court to determine if misconduct occurred. The flexibility to question a juror without implicating his/her constitutional rights is essential and will avoid jeopardizing the integrity of the proceedings and increasing the risk of mistrial and reversal on appeal. AB 2683 eliminates the unforeseen consequence of implicating a juror's constitutional rights by deleting the recently added subdivision (a)(6) from Penal Code section 166.

For these reasons, the Judicial Council requests your signature on AB 2683.

Sincerely,

A handwritten signature in black ink, reading "Sharon Reilly". The signature is fluid and cursive, with the first name "Sharon" and last name "Reilly" clearly distinguishable.

Sharon Reilly
Senior Attorney

SR/yc-s

cc: Hon. Ken Cooley, Member of the Assembly
Ms. June Clark, Deputy Legislative Affairs Secretary, Office of the Governor