



Judicial Council of California

ADMINISTRATIVE OFFICE OF THE COURTS

OFFICE OF GOVERNMENTAL AFFAIRS

770 "L" Street, Suite 700 • Sacramento, California 95814-3393

Telephone 916-323-3121 • Fax 916-323-4347 • TDD 800-735-2929

RONALD M. GEORGE
Chief Justice of California
Chair of the Judicial Council

WILLIAM C. VICKREY
Administrative Director of the Courts

RONALD G. OVERHOLT
Chief Deputy Director

CURTIS L. CHILD
Director, Office of Governmental Affairs

July 2, 2009

Hon. Arnold Schwarzenegger
Governor of California
State Capitol, First Floor
Sacramento, California 95814

Subject: SB 319 (Harman) – Request for Signature

Dear Governor Schwarzenegger:

The Judicial Council is sponsoring SB 319, which carries out the recommendations in the Judicial Council's report to the Legislature (Jury Sanctions: 2008 Report to the Legislature, California Code of Civil Procedure section 209; February 19, 2009).

Background

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. 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. The statute also directs the Judicial Council to submit findings and recommendations to the Legislature. The Judicial Council submitted its report to the Legislature in February 2009.

In response to the requirements of CCP § 209(d), the report addressed 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.

Please note that statewide, courts employ different methods of data capture, recordkeeping, 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.

Report Results

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. 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.

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. 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.

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.

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 delinquency (representing an additional 9% gain in jurors over those responding to the initial summons).

Proposal

The report recommends reducing the amount of time that must lapse before a compliance action can be initiated, while providing courts the discretion to initiate the process at some point beyond the new minimum time period. SB 319 would 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.

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.

A minimum period of 90 days is reasonable and gives jurors ample time to respond to jury summonses and complete jury service. The current statutory mandate allowing delinquent jurors a twelve 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 twelve 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, it is not necessary to require all courts to wait this long when 90 days is a reasonable minimum period.

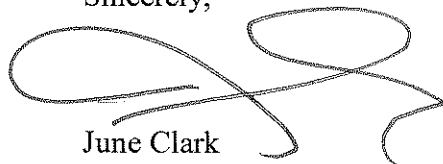
We live in a very mobile society. People may move more frequently. For courts that do not update their master lists or sanctions lists more than twice per year, decreasing the waiting period to 90 days increases the likelihood that the juror will be located at his or her last known place of residence.

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 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.

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.

For these reasons, the Judicial Council requests your signature on SB 319.

Sincerely,



June Clark
Senior Attorney

JC/yt

cc: Hon. Tom Harman, Member of the Senate

Mr. Michael Prosio, Legislative Affairs Secretary, Office of the Governor

Ms. Kirsten Kolpitzke, Deputy Director of Legislation, Governor's Office of Planning and Research