

**JUDICIAL COUNCIL OF CALIFORNIA  
ADMINISTRATIVE OFFICE OF THE COURTS**

455 Golden Gate Avenue  
San Francisco, California 94102-3688

**Report**

TO: Members of the Judicial Council

FROM: Joint Rules Subcommittee of the Trial Court Presiding Judges  
Advisory Committee and the Court Executives Advisory Committee  
Hon. Suzanne N. Kingsbury and Ms. Tania Ugrin-Capobianco,  
Subcommittee Co-chairs  
Susan R. Goins, Senior Attorney, 415-865-7990, susan.goins@jud.ca.gov

DATE: September 23, 2004

SUBJECT: Juror Motion to Set Aside Sanctions Imposed by Default (adopt Cal.  
Rules of Court, rule 862 and approve form MC-070) (Action  
Required)

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Issue Statement

Code of Civil Procedure section 209 was recently amended to permit a court to impose “reasonable monetary sanctions” on a prospective juror who fails to respond to two summonses and to a failure-to-appear notice. (AB 1180; Stats. 2003, ch. 359, § 1.) The amended statute requires the Judicial Council to adopt a rule containing procedures for a prospective juror against whom a sanction has been imposed by default to move to set aside the default. (Code Civ. Proc., § 209(c)(2), attached at pages 8 and 9.)

Recommendation

The Joint Rules Subcommittee of the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee, on behalf of those advisory committees, recommends that the Judicial Council, effective January 1, 2005:

1. Adopt rule 862 of the California Rules of Court (Juror motion to set aside sanctions imposed by default) to establish a procedure by which a prospective juror may bring a motion to set aside sanctions; and
2. Approve form MC-070, to allow a prospective juror to bring a motion to set aside sanctions.

The texts of the proposed rule and form are attached at pages 4 and 5.

### Rationale for Recommendation

Amended Code of Civil Procedure section 209 requires the council to adopt a rule setting out procedures by which a juror may move to set aside sanctions imposed by default when the prospective juror fails to respond to two summonses and to a failure-to-appear notice. Currently there is no such rule.

Prior to the amendment, the only penalty that a court could impose for a prospective juror's failure to respond to a jury summons was contempt of court, following an order-to-show-cause hearing and the court's compliance with contempt procedures (see Code Civ. Proc., §§ 1212–1222), including the privilege against self-incrimination (*Ex Parte Gould* (1893) 99 Cal. 360, 362–363) and proof of guilt beyond a reasonable doubt (*Hotaling v. Superior Court* (1923) 191 Cal. 501, 505, citing *In re Buckley*, (1881) 60 Cal. 1). The statutory amendment allows a court to impose monetary sanctions through procedures that do not require a contempt hearing and finding.

In the past, instead of seeking to impose sanctions through contempt procedures, some courts faced with prospective jurors' failing to respond to juror summonses issued orders to show cause under Code of Civil Procedure section 177.5. Section 177.5 authorizes sanctions for any violation of a lawful court order by a witness, a party, or a party's attorney that was committed without good cause or substantial justification. An order to show cause issued under section 177.5 may be served by certified mail rather than personal service. Section 177.5, however, most likely does not authorize the sanctioning of prospective jurors who fail to appear because they are not "parties" under that statute. For this reason, and because the procedures associated with a contempt hearing are costly and cumbersome, the Judicial Council sought a statutory amendment to section 209 to authorize another procedure to sanction prospective jurors who fail to appear. Amended section 209 provides authority to sanction a prospective juror without using the contempt procedure.

The proposed rule, in compliance with amended section 209, provides a procedure by which a prospective juror may move to set aside sanctions. It allows a prospective juror to bring a motion to set aside sanctions, describes what the motion should 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"), and provides that a court must set aside sanctions if a prospective juror demonstrates good cause. The proposed rule requires a prospective juror to bring the motion no later than 60 days after sanctions have been imposed and provides that the court may consider the motion with or without a hearing. It also requires the court to provide a copy of the rule to prospective jurors against whom sanctions have been imposed.

The proposed optional form would allow a prospective juror to bring a motion to set aside sanctions by following simple instructions on the form and filing the

motion along with any supporting documentation. The purpose of recommending the approval of a form for prospective jurors subject to sanctions is assist them in properly bringing motions containing the necessary information.

#### Alternative Actions Considered

No alternatives were considered because the rule is required by legislation. The proposed rule meets the mandate of Code of Civil Procedure section 209(c)(2), sets a deadline for a prospective juror to bring a motion to set aside the default, and provides guidance to the court in hearing and determining the motion.

#### Comments From Interested Parties

The proposed rule and form were circulated for public comment between April 5 and June 4, 2004. Eight individuals or organizations, including judges, court executive officers, a jury commissioner, a court program manager, and an attorney, submitted comments. All but one agreed with the proposed rule and form. A chart summarizing the comments is attached at pages 6 and 7. The jury commissioner for the Superior Court of California, County of Los Angeles described the process used there, in which the sanction is vacated if a sanctioned juror provides information demonstrating good cause for not responding to a summons. She commented that the proposed rule would not prohibit this process but would provide an alternative to it, and she therefore agrees with the proposal.

A presiding judge commented that the reviewing judge should have discretion to order a hearing, as the rule provides. A commentator on behalf of the Orange County Bar Association believes that the rule should state that it expires or will be repealed if the authorizing statute is not extended beyond January 1, 2007. This provision has been added as subdivision (h).

Another presiding judge commented that the statute authorizing this proposed rule and form was a good idea but that unfortunately it creates a procedurally cumbersome process involving four separate steps to impose sanctions against a prospective juror. He therefore believes that the statute will be little used.

#### Implementation Requirements and Costs

The costs of following the procedures in rule 862 will depend on the number of prospective jurors who move to set aside sanctions under the rule. The costs therefore cannot be ascertained in advance, but it is likely that, on an individual basis, they will be less than the costs associated with contempt-of-court procedures against a juror who fails to respond to a summons. Until the recent amendment of Code of Civil Procedure section 209, contempt of court procedures were the only statutorily authorized means of punishing a prospective juror who failed to respond to a summons. Under the amendment, a court may follow either procedure.

Rule 862 of the California Rules of Court is adopted, effective January 1, 2005, to read:

1 **Rule 862. Juror motion to set aside sanctions imposed by default**  
2

3 **(a) [Motion]** A prospective juror against whom sanctions have been imposed by  
4 default under Code of Civil Procedure section 209 may move to set aside the  
5 default. The motion must be brought no later than 60 days after sanctions have  
6 been imposed.  
7

8 **(b) [Contents of motion]** A motion to set aside sanctions imposed by default must  
9 contain a short and concise statement of the reasons the prospective juror was  
10 not able to attend when summoned for jury duty and any supporting  
11 documentation.  
12

13 **(c) [Judicial Council form may be used]** A motion to set aside sanctions  
14 imposed by default may be made by completing and filing Judicial Council  
15 form MC-070.  
16

17 **(d) [Hearing]** A court may decide the motion with or without a hearing.  
18

19 **(e) [Good cause required]** If the motion demonstrates good cause, a court must  
20 set aside sanctions imposed against a prospective juror.  
21

22 **(f) [Continuing obligation to serve]** Nothing in this rule relieves a prospective  
23 juror of the obligation of jury service.  
24

25 **(g) [Notice to juror]** The court must provide a copy of this rule to the prospective  
26 juror against whom sanctions have been imposed.  
27

28 **(h) [Sunset date]** This rule is effective until January 1, 2007.

ATTORNEY OR PARTY WITHOUT ATTORNEY <i>(Name, State Bar number, and address):</i>  <hr/> <p style="text-align: center;">TELEPHONE NO.: <span style="margin-left: 200px;">FAX NO. <i>(Optional):</i></span></p> <p>E-MAIL ADDRESS <i>(Optional):</i></p> <p>ATTORNEY FOR <i>(Name):</i></p>	<b>FOR COURT USE ONLY</b>  <h1 style="margin: 0;">Version 4 081204</h1>  <small>G:\LGL_SVCS\SHARED.GRP\ JC Forms\Jan. 05\ MC-070.081204.ofm</small>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b>  STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
IN RE <i>(Name):</i>	
<b>JUROR'S MOTION TO SET ASIDE SANCTIONS AND ORDER</b>	CASE NUMBER:
<p>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.</p>	

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:

_____ <small>(TYPE OR PRINT NAME)</small>	<small>(SIGNATURE OF PROSPECTIVE JUROR)</small>
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**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.

**SPR04-33**  
**Juror Motion to Set Aside Sanctions Imposed by Default**  
**(adopt rule 862; approve form MC-070)**

	<b>Commentator</b>	<b>Position</b>	<b>Comment on behalf of group?</b>	<b>Comment</b>	<b>Committee Response</b>
1.	Ms. Mary Majich Davis Chief Deputy Executive Officer Superior Court of California, County of San Bernardino	A	N	None.	None needed.
2.	Ms. Linda Finn Deputy Executive Officer Superior Court of California, County of Ventura Ventura	A	N	None.	None needed.
3.	Ms. Gloria M. Gomez Superior Court of California, County of Los Angeles Los Angeles	A	N	<p>We currently follow a fairly formal process wherein the juror calls or writes Juror Services or the court in which the OSC sanction hearing was held and indicates that he or she had good cause for not responding to the summonses. If we are contacted, we forward the new information provided by the juror to the court. If the court is contacted, we receive detailed information with the order to vacate. Once we receive directions from the court to vacate the sanction, we will do so.</p> <p>The proposed rule would not prohibit the above process but would offer an alternative to the established procedures. As such, we do not have any issue with this proposal.</p>	None needed.
4.	Hon. Thomas P. Hansen Presiding Judge Superior Court of California, County of Santa Clara San Jose	A	N	Hearings should be within the discretion of the reviewing judge as the proposed rule contemplates.	None needed.

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	<b>Commentator</b>	<b>Position</b>	<b>Comment on behalf of group?</b>	<b>Comment</b>	<b>Committee Response</b>
5.	Ms. Kim Hubbard President Orange County Bar Association Irvine	AM	Y	The rule should be modified so that if Code of Civil Procedure section 209 is not extended beyond January 1, 2007, the rule will be repealed then as well.	Agree. This change has been made.
6.	Hon. Dennis E. Murray Presiding Judge Superior Court of California, County of Tehama Red Bluff	N	N	This statute was a great idea. Unfortunately the process for ordering sanctions is so procedurally cumbersome (four separate steps) that it is more trouble than it's worth. I think the statute will fall into disuse. I don't oppose the form but wonder why bother?	None needed.
7.	Mr. Leonard Sacks Attorney at Law Granada Hills	A	N	None.	None needed.
8.	Ms. Peggy Yost Court Program Manager Superior Court of California, County of Ventura Ventura	A	N	None.	None needed.

Code of Civil Procedure section 209 (2004)

§ 209. (Repealed January 1, 2007) Enforcement of summons

(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. Notwithstanding any other provision of law, the full amount of any sanction paid shall be deposited in a

special account in the county treasury and transmitted from that account monthly to the Controller for deposit in the Trial Court Trust Fund. 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, 2005, 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, 2007, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2007, deletes or extends that date.

**HISTORY:** Added Stats 1988 ch 1245 § 2.

Amended Stats 2003 ch 359 § 1 (AB 1180), repealed January 1, 2007.