

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

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Report

TO: Members of the Judicial Council

FROM: Court Executives Advisory Committee
Tressa S. Kentner, Chair
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DATE: September 13, 2004

SUBJECT: Trial Court Rules: Scheduling Accommodations for Jurors (adopt Cal. Rules of Court, rule 858) (Action Required)

Issue Statement

Code of Civil Procedure section 219.5 requires the Judicial Council to adopt a rule of court, on or before January 1, 2005, to accommodate the special jury service scheduling needs of peace officers as defined by section 830.5 of the Penal Code (corrections officers, parole, and probation officers).

Recommendation

The Court Executives Advisory Committee recommends that the Judicial Council, effective January 1, 2005, adopt rule 858 of the California Rules of Court to require that jury commissioners make scheduling accommodations for peace officers as mandated by Code of Civil Procedure section 219.5. The rule would also recommend that jury commissioners accommodate, where practicable, the schedules of all prospective jurors by granting a one-time deferral of jury service upon request.

The text of new rule 858 is attached at page 4.

Rationale for Recommendation

Section 219.5¹ requires the Judicial Council to adopt a rule that requires “the trial courts to establish procedures for jury service that gives peace officers, as defined by section 830.5 of the Penal Code, scheduling accommodations when necessary.” Rule 858 would comply with section 219.5 by requiring jury commissioners to make scheduling accommodations when necessary for peace officers as defined by section 830.5 of the Penal Code. Under the new rule, the jury commissioners must establish procedures for the form and timing of the application for these scheduling

¹ Attached for reference at page 5.

accommodations. The procedures would be at the discretion of each court although peace officers must not be required to appear in person at court to make the request.

The advisory committee recommended rule language pertaining to peace officers that closely reflects the legislation, requiring courts to grant peace officers scheduling accommodations when the peace officer states the accommodation is necessary. At the same time, rule 858 would give flexibility to the courts to determine the local procedure for requesting special accommodations and what specific accommodations to provide to peace officers.

In addition, rule 858 would recommend that jury commissioners accommodate, where practicable, any prospective juror's request for a one-time deferral of jury service. The provision would also recommend that the prospective juror not be required to appear in person at court to make the request.

Granting prospective jurors one-time deferrals from jury service is good public policy. Granting deferrals allows courts to retain eligible jurors for future trials, rather than excusing them from jury service. Allowing jurors to defer service to another date is advantageous to the juror, and courts find that jurors who are allowed to defer are much more committed and likely to appear at the later date. A majority of courts currently follow the practice of granting at least one deferral.

As further explained in the discussion of comments below, representatives of smaller court systems expressed concern that granting prospective jurors the *right* to a one-time deferral of jury service would adversely impact their abilities to impanel sufficient jurors, especially in high-profile cases, where many prospective jurors might defer rather than risk serving. Therefore, the advisory committee approved a recommendation in rule 858 that jury commissioners grant prospective jurors' requests for a one-time deferral rather than making the practice mandatory.

Alternative Actions Considered

Because legislation requires the adoption of a rule of court, no other alternatives were considered for accommodating peace officers.

Comments From Interested Parties

The rule was circulated for comment to superior court judges, court executives, and professional organizations from July 30 through August 20, 2004. Ten comments were submitted concerning the rule proposal. Six agreed with the proposal, two agreed only if modified, and two did not agree. The comments and committee recommendations are summarized in the chart attached at pages 6–8.

In its invitation to comment, the advisory committee specifically requested feedback on whether the rule that was circulated for comment would be burdensome to

smaller courts that have more infrequent trial calendars. The rule as circulated would have required that courts grant one-time deferrals to all prospective jurors. The presiding judges of several smaller courts objected to the mandatory nature of the one-time deferral of all prospective jurors.

One presiding judge explained that the practices of summoning jurors in smaller courts are far different than in larger courts. For example, in high-profile cases, a substantial number of potential jurors may be able to determine that they are being summoned for a specific case and seek the one-time deferral, leaving the court short of jurors. It is also difficult for smaller courts to summon greater numbers of people to yield the required number of jurors because many small courts lack jury assembly rooms and, therefore, summon directly to courtrooms that cannot accommodate large groups. Thus, the committee revised the rule to recommend rather than require jury commissioners to grant one-time deferrals to all prospective jurors.

A representative of the California Peace Officers Association expressed concern that the wording of the proposed rule did not make it clear that the appearance of peace officers at court is not required when they are requesting special accommodations. The committee revised rule 858 to clarify the procedures applying to prospective jurors in general and peace officers as defined by section 830.5 of the Penal Code in particular.

Another judge commented that use of the words “trial court” in the rule could be read to mean a judicial officer in the trial court and recommended substituting the words “jury commissioner” where “trial court” appears. Placing the duty to grant deferrals or special accommodations on a judicial officer is not consistent with existing practices around the state, where the jury commissioner typically receives the request before the date of appearance. The advisory committee agreed and revised the rule accordingly.

Implementation Requirements and Costs

Jury commissioners will be required to establish procedures for peace officers as defined by Penal Code section 830.5 to request special accommodations for jury service. This could require changes to summonses or development and printing of local court forms. It could result in some additional court costs, although they are not anticipated to be great.

Attachments

Rule 858 of the California Rules of Court is adopted, effective January 1, 2005, to read:

1 **Rule 858. Scheduling accommodations for jurors**

2
3 **(a) [Accommodations for all jurors]** The jury commissioner should
4 accommodate, where practicable, a prospective juror's schedule by
5 granting a prospective juror's request for a one-time deferral of jury
6 service. If the request for a deferral is made under penalty of perjury in
7 writing or through the court's established electronic means, and in
8 accordance with the court's local procedure, the jury commissioner
9 should not require the prospective juror to appear at court to make the
10 request in person.

11
12 **(b) [Scheduling accommodations for peace officers]** If a prospective juror
13 is a peace officer as defined by Section 830.5 of the Penal Code, the
14 jury commissioner must make scheduling accommodations upon
15 application of the peace officer setting forth the reason a scheduling
16 accommodation is necessary. The jury commissioner must establish
17 procedures for the form and timing of the application. If the request for
18 special accommodations is made under penalty of perjury in writing or
19 through the court's established electronic means, and in accordance
20 with the court's local procedure, the jury commissioner must not require
21 the prospective juror to appear at court to make the request in person.

California Code of Civil Procedure section 219.5

- 219.5.** The Judicial Council shall adopt a rule of court, on or before January 1, 2005, requiring the trial courts to establish procedures for jury service that gives peace officers, as defined by Section 830.5 of the Penal Code, scheduling accommodations when necessary.

Scheduling Accommodations for Jurors (adopt rule 858 of the California Rules of Court)

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
1.	Mr. Todd Barton Chief Executive Officer Superior Court of California, County of Kings Hanford	A	N	Would broaden the number of jurors qualified to serve, reduce the number of times others would be summoned. Passing of rule would finally eliminate having to rebut the yearly proposal introduced by correctional officers requesting to be exempt.	No response necessary.
2.	Ms. Denise Cannon Court Services Coordinator Superior Court of California, County of Contra Costa Martinez	A	N	Most of proposed changed already in place in Contra Costa.	No response necessary.
3.	Ms. Gaudalupe Castaneda Deputy Court Manager Superior Court of California, County of Santa Clara San Jose	A	N	No additional comments submitted.	No response necessary.
4.	Mr. Gavin McHugh McHugh & Associates Sacramento	AM	Y	Representing California Peace Officers Association. Agrees with proposal except for language in subpart (c). Feels that phrase “may not require . . .” when discussing whether the prospective juror is required to appear in person does make it clear that an appearance is not required. Prefers that “may” be changed to “shall.”	Agree. Wording of relevant portion of subpart (b) of revised rule changed to “must” to clarify. Council policy to not use “shall” in rulemaking owing to ambiguous nature of the word.
5.	Hon. Jamoa Moberly Judge Superior Court of California, County of Orange Newport Beach	A	N	No additional comments submitted.	No response necessary.
6.	Hon. Dennis Murray Presiding Judge Superior Court of	N	N	Objects to proposed rule. 1. There is no real justification for making a rule of court to grant all prospective trial jurors an	1. Portion of rule addressing prospective jurors in general

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	California, County of Tehama Red Bluff			<p>automatic one-time deferral of jury service, as opposed to recommending it as a policy;</p> <p>2. It is bad public policy to allow a person to choose not to comply with a court order (i.e., the jury summons) and, more specifically, the validity of an administrative rule is questionable when its effect is to tell the court when it can and cannot enforce its own orders; and</p> <p>3. The rule may materially affect the ability of smaller courts to convene sufficient jurors for a particular trial.</p>	<p>changed to recommendation rather than requirement.</p> <p>2. Disagree with comment. Judicial council rulemaking is already established related to the process of summoning, deferring, and excusing jurors.</p> <p>3. Portion of rule addressing prospective jurors in general changed to recommendation rather than requirement.</p>
7.	Hon. William Murray, Jr. Judge Superior Court of California, County of San Joaquin Stockton	AM	N	<p>Recommends modifying the rule to delete the words “trial court” where they appear and substituting “jury commissioner.” In the context of conferring a duty, the term “trial court” may be read to mean a judicial officer in the trial court. Placing this duty upon a judicial officer is not consistent with existing practices around the state, where the jury commissioner typically receives the request before the date for appearance. Avoids the potential for disgruntled prospective jurors from making CJP complaint if special accommodations or deferrals are not granted. Consistent with rule 860(b)–(d) language. Although CCP 219.5 requires “trial courts” to establish procedures to accommodate peace officers, will be in compliance if duty to receive and act on requests placed on jury commissioners—CCP 204(b) required Judicial Council to define “undue hardship” and only jury commissioners included in rule 860(b)–(d).</p>	<p>Agree. The rule has been revised to incorporate this suggestion.</p>

Scheduling Accommodations for Jurors (adopt rule 858 of the California Rules of Court)

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8.	Ms. Sharon Prentiss Court Administrative Services Manager Superior Court of California, County of San Bernardino San Bernardino	A	N	Already grant one-time deferrals to prospective jurors. Doing deferrals is better than excusals—we can now keep those prospective jurors.	No response necessary
9.	Ms. Robyn Weaver Jury Commissioner Superior Court of California, County of Yolo Woodland	N	N	<ol style="list-style-type: none"> 1. Eliminate subpart (a). Rule should only address peace officers under section 830.5 of the Penal Code and not be broadened to include granting an automatic postponement upon request for all jurors. If courts are currently deferring jurors, any potential benefits from the practice are already being realized and therefore a rule is unnecessary. 2. Separate rule not necessary. Subparts (b)–(d) could be added as a new subpart (5)(i–iii) to existing rule 860(b). 	<ol style="list-style-type: none"> 1. Portion of rule addressing prospective jurors in general changed to recommendation rather than requirement. 2. Disagree. Rule 860(b) states the principles that govern excuses from jury service; proposed rule 858 would not be an appropriate location for a substantive rule pertaining to granting deferrals.
10.	Mr. Joe Yniquez Superior Court of California, County of Stanislaus Modesto	A	N	No additional comments submitted.	No response necessary.