

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

455 Golden Gate Avenue
San Francisco, California 94102-3688

Report Summary

TO: Members of the Judicial Council

FROM: Access and Fairness Advisory Committee
Hon. James R. Lambden, Chair
Donna P. Clay-Conti, Senior Attorney, 415-865-7911, donna.clay-conti@jud.ca.gov

DATE: October 2, 2006

SUBJECT: Grand Juries: Certain Demographic Data Relating to Regular Grand Jurors (adopt Cal. Rules of Court, rule 10.625) (Action Required)¹

Issue Statement

In 1997, the Judicial Council adopted the recommendations of the report, *Final Report of the Judicial Council Advisory Committee on Racial and Ethnic Bias in the Courts*. Two recommendations focused on improving the racial composition of California's criminal and civil (regular) grand juries in California. The Access and Fairness Advisory Committee included in its 2002–2003 work plan a project directed toward implementing these recommendations for civil grand juries. During the work plan review, the council's Rules and Projects Committee (RUPRO) also expressed concern about the reflection of the state's racial, ethnic and gender diversity on civil grand juries in California, thus affirming the advisory committee's conclusion that the issue needed examination. RUPRO directed the Access and Fairness Advisory Committee (the committee) to investigate the apparent lack of representative regular grand juries as a number one priority and to develop recommendations for the council's consideration. In the course of its investigation, the committee discovered that insufficient data was available from the trial courts to determine whether grand juries are, in general, representative of the communities they serve. The committee is proposing a rule of court that would require the trial courts annually to collect and maintain specified demographic information about prospective and seated grand jurors.

¹ At the June 30, 2006, meeting, the Judicial Council approved the reorganization and renumbering of the California Rules of Court and Standards of Judicial Administration, effective January 1, 2007. Under the reorganization, this proposed rule, which was circulated as rule 876, has been renumbered as rule 10.625, and new format conventions have been adopted. Hence, the proposed rule 876 is shown throughout this proposal as rule 10.625.

Recommendation

The Access and Fairness Advisory Committee recommends that the Judicial Council, effective January 1, 2007, adopt rule 10.625 of the California Rules of Court, which would require that trial courts:

1. Collect certain demographic information about prospective and seated regular grand jurors;
2. Maintain a database containing that information; and
3. Make that information available to the public annually.

This information will allow the advisory committee to continue its examination of the issue, with the goal of assisting the trial courts in eliminating potential barriers to grand jury service and in seating regular grand juries that are broadly representative of the communities they serve.

The text of proposed rule 10.625 is attached at pages 14–16.

Rationale for Recommendation

The appointment of representative grand juries has long been a goal of the Judicial Council. In 1992, the council adopted section 17² of the Standards of Judicial Administration, which suggests methods for nominating prospective regular (civil) grand jurors that would produce a broad-based representation of the community. In 1997, the council adopted a recommendation contained in the 1997 *Final Report of the Judicial Council Advisory Committee on Racial and Ethnic Bias in the Courts*, calling for grand juries that are more representative with respect to race, ethnicity, and gender (see discussion in the full report). The proposed rule, if adopted, will also facilitate the courts' ability to self-monitor and compare specific demographics of their regular (civil) grand juries with the county's population demographics. At the same time, it will assist the Access and Fairness Advisory Committee in obtaining accurate information from which it can develop strategies and programs to assist those courts that continue to face challenges in attracting competent jurors who reasonably reflect the racial, ethnic, and gender demographics of the courts' communities. The committee believes that the collection of this demographic data is critical to its ability to address the council's concern, to monitor progress in this area, and to determine whether and how to implement the recommendation from the 1997 final report.

² The reorganization of the rules and standards that goes into effect January 1, 2007, also established a new nomenclature for referring to individual standards. Effective January 1, 2007, section 17 will be referred to and numbered as standard 10.50.

Alternative Actions Considered

The committee considered the effectiveness of a standard of judicial administration rather than a rule of court. It also discussed reliance on jury commissioners or managers to informally report the demographic information specified in the rule proposal. The committee felt that neither alternative was sufficient. Section 17, which was adopted more than a decade ago, apparently has not produced representative grand juries for many courts. The adoption of a rule will ensure compliance with collection of data, which can be used to assist those courts that continue to face this challenge. Further, the committee discussed and abandoned the concept of placing responsibility for identifying a prospective juror's race, ethnicity, age, or gender on court administrators. The committee believes jurors must self-identify to obtain accurate reporting.

Comments From Interested Parties

The proposal was circulated for public comment during the spring 2006 comment cycle. The advisory committee received 15 comments, which are detailed in the attached comment chart. Seven commentators fully support proposed rule 10.625 (circulated as rule 876). One commentator did not express an overall position. Four commentators supported the rule proposal, offering modifications, the most significant of which were suggested by the Trial Court Presiding Judges and Court Executives Joint Rules Subcommittee (the subcommittee). The subcommittee suggested redefining "prospective grand jurors" to exclude those courts that use only the blind random-draw method of selecting prospective jurors from their petit jury rolls. The advisory committee agreed, in part, with the subcommittee's comments and modified the proposed rule to add a definition of "prospective regular grand juror" at subdivision (a)(3). In response to a recommendation from RUPRO, the committee also added a definition of "eligible to serve" at (a)(4), which clarifies certain terminology in the proposed rule. To respond to the concerns of those courts using the petit juror rolls for their source lists to summon regular grand jurors, the rule also specifies that the courts should collect the data after prospective jurors indicate their interests in grand jury service and are deemed to have met the eligibility requirements for service. The committee believes that those courts should not be excluded from compliance with the proposed rule, for reasons detailed in the full report.

Three commentators disagreed with the rule proposal, one without explanation. One felt that only qualifications and willingness to serve should be the criteria for selection. The committee believes those criteria, as well as broad-based representation, are neither incompatible nor unachievable. The executive officer of the Superior Court of Imperial County expressed the most significant disagreement with the rule proposal, although his court supports the gathering of demographic data. He advocates an in-depth analysis of the civil grand jury system in California and the adoption of a standard, rather than a rule. Three in-depth studies of California grand juries have been conducted during the last decade. Moreover, the committee's ongoing exploration of this issue will lack credibility if it has no baseline data about the current status of grand juries in the state on which to

base any recommendations. The information is needed to conduct the type of study suggested. Also, based on the apparent ineffectiveness of section 17, a rule is necessary to obtain full compliance with data collection.

Implementation Requirements and Costs

If rule 10.625 is adopted, those trial courts that have not already done so must (1) develop or modify an existing form, application, or questionnaire for regular grand jurors to request the demographic information outlined in the rule; (2) collect the information from prospective regular grand jurors, as defined; (3) create a spreadsheet or other document on which to record the demographic data as outlined; and (4) examine the information annually and make it available to the public, preferably after the grand jury is seated. Implementation will require a minimal yearly amount of staff resources for most courts (to record the data, or otherwise make it available to the public). In most cases, existing technology will be sufficient to create and maintain a database.

Attachments

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Report

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FROM: Access and Fairness Advisory Committee
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SUBJECT: Grand Juries: Certain Demographic Data Relating to Regular Grand Jurors (adopt Cal. Rules of Court, rule 10.625) (Action Required)³

Issue Statement

The civil grand jury is one of the few institutions that gives citizens official oversight of public entities and government agencies. While several areas of debate surround the grand jury process, issues of racial and ethnic representation have generated substantial controversy and present one of the greatest challenges. The Access and Fairness Advisory Committee's 1997 study of racial and ethnic fairness in the courts and the results of the Judicial Council's recent public trust and confidence survey demonstrate a substantial correlation between the public's view of the courts and its perception of whether court proceedings are procedurally fair.

In 1997, the Judicial Council adopted the recommendations of the report, *Final Report of the Judicial Council Advisory Committee on Racial and Ethnic Bias in the Courts*. Two recommendations focused on improving the racial composition of California's criminal and civil (regular) grand juries in California. The Access and Fairness Advisory Committee included in its 2002–2003 work plan a project directed toward implementing these recommendations for civil grand juries. During the work plan review, the council's Rules and Projects Committee (RUPRO) also expressed concern about the reflection of the state's racial, ethnic and gender diversity on civil grand juries in California, thus

³ At the June 30, 2006, meeting, the Judicial Council approved the reorganization and renumbering of the California Rules of Court and Standards of Judicial Administration, effective January 1, 2007. Under the reorganization, this proposed rule, which was circulated as rule 876, has been renumbered as rule 10.625, and new format conventions have been adopted. Hence, the proposed rule 876 is shown throughout this proposal as rule 10.625.

affirming the advisory committee's conclusion that the issue needed examination. RUPRO directed the Access and Fairness Advisory Committee (the committee) to investigate the apparent lack of representative regular grand juries as a number one priority and to develop recommendations for the council's consideration. In the course of its investigation, the committee discovered that insufficient data was available from the trial courts to determine whether grand juries are, in general, representative of the communities they serve. The committee is proposing a rule of court that would require the trial courts annually to collect and maintain specified demographic information about prospective and seated grand jurors.

Rationale for Recommendation

The committee formed a working group to (1) investigate the reasons for the apparent lack of a representative cross-section of the counties' competent population base in California's regular grand juries and (2) develop strategies or recommendations to present to the council, as appropriate, that might effectively address the issue.

The committee's investigation initially focused on two areas: (1) identifying the barriers, if any, to diversifying regular grand juries and (2) gathering current grand jury demographics statewide. The latter information would establish a baseline and confirm or disprove the perception that the overall composition of civil grand juries in California is not representative of the populations they serve. The working group solicited the assistance of the two grand jury associations in the state—the Jury Education and Management Forum and the California Grand Jurors' Association. Both groups participated in focus groups in 2002 designed to elicit possible reasons, based on their experiences, for the apparent lack of racial, ethnic, and gender diversity among regular grand jury members and to compile suggestions on how to effectively promote change in this area.

In 2004, the committee conducted a survey of the trial courts to which 74 percent of the courts responded. The survey revealed that of the responding courts, only six maintained age, gender, and occupation demographics for individual regular grand jurors. Of those six, three maintained race and ethnicity demographic information. The majority of the courts collected no demographic data. This lack of data precludes the drawing of any reliable conclusions about whether California's grand juries are reasonably representative of their communities in terms of their racial, ethnic, and gender composition. The committee believes this information is critical to its ability to address the council's concern, to monitor progress in this area, and to determine whether and how to implement the recommendation related to grand juries contained in the 1997 *Final Report of the Judicial Council Advisory Committee on Racial and Ethnic Bias in the Courts* (see discussion below).

The appointment of representative grand juries has long been a goal of the Judicial Council. On July 1, 1992, the council adopted section 17⁴ of the Standards of Judicial Administration, which suggests procedures for nominating “regular” (civil) grand jurors that would ensure broad-based community representation.⁵ The history of standard 17 reflects that it was created in response to a council directive to draft appropriate legislation, rules of court, and standards of judicial administration that “fulfill the dual functions of providing *fairness in jury selection and minimizing challenges*.” (Emphasis added.) (Invitation to Comment Summary, “Proposals Regarding Grand Juries,” dated November 1991.) Previous to this, the Legislature amended Penal Code section 904.6, which was enacted as urgency legislation in September 1991 and was council-supported. Subdivision (e) of that statute provides:

It is the intent of the Legislature that all persons qualified for jury service shall have an equal opportunity to be considered for service as criminal grand jurors in the county in which they reside, and that they have an obligation to serve, when summoned for that purpose. All persons selected for the additional criminal grand jury shall be selected at random from a source or sources reasonably representative of a cross section of the population which is competent for jury service in the county.

While section 904.6 is specific to *criminal* grand juries, the council was attempting to “parallel the selection procedures in [section 904.6]” with civil grand juries.⁶ Also, in 1992 the Judicial Council, through its Advisory Committee on Racial and Ethnic Bias in the Courts, conducted a series of studies designed to capture public perceptions of fairness in the courts and to examine the courts’ treatment of minorities. These studies culminated in a 1997 report to the council, which contained this finding:

[R]acial and ethnic minorities are usually unrepresented or underrepresented on grand juries because of the way these juries are selected. This lack of representation is likely to persist unless conscious, vigorous efforts are made to make grand juries more representative.

⁴ Effective January 1, 2007, this will be standard 10.50.

⁵ Section 17 outlines three methods that jury commissioners can use for nominating qualified grand jurors—by (1) randomly obtaining the names of members of the public in the same manner as for trial jurors; (2) soliciting recommendations from a broad representation of community-based organizations, civic leaders, and judicial officers; and (3) soliciting (through media or mass mailing) applications from interested citizens. The jury commissioner can use one or more of these methods. Section 17 also encourages judges to consider carry-over jurors to ensure broad-based representation on grand juries (subdivision (c)) and encourages judges who nominate persons for the grand jury to “select candidates from the list returned by the jury commissioner” or to use “a nomination procedure to ensure broad-based representation from the community” (Cal. Stds. Jud. Admin., § 17(d)).

⁶ January 27, 1992, report to Members of Superior Court Committee (of the Judicial Council), re Proposed Grand Jury Standard, from John A. Toker, Attorney.

(*Final Report of the Judicial Council Advisory Committee on Racial and Ethnic Bias in the Courts*, ch. 11, p. 201.) The report recommended that “the Judicial Council direct staff to amend section 17 to state that grand jury selection lists should also include reasonable representation of the county’s racial and ethnic minorities, and that if more representative grand juries cannot be achieved under existing statutes, the Judicial Council should support legislation that would produce representative grand juries.” (*Id.* at pp. 201–202.) The council directed the committee to implement both recommendations. This rule proposal is intended to facilitate the exploration of the necessity of implementing these recommendations.

Based on its discussions with courts that have undertaken grand juror recruitment programs or strategies, the committee also believes it is important that the selection process be transparent to the public. In other words, courts should publicize the selection process and promulgate the results, so that the public is informed and so that challenges to grand juries, based on lack of racial, ethnic, and gender representation, are reduced or eliminated.

Therefore, the committee proposes that the Judicial Council adopt a rule of court (rule 10.625) that would require trial courts to collect and maintain certain demographic information regarding prospective and seated regular grand jurors; and to make the information available to the public.

Alternative Actions Considered

The advisory committee considered the effectiveness of a standard of judicial administration rather than a rule of court. It also discussed reliance on jury commissioners or managers to informally report the demographic information. The committee rejected both alternatives. A standard is considered a goal to which courts or judicial administrators should aspire. The advisory committee believes that a rule is imperative to achieve full compliance. The committee also rejected informal reporting by jury managers or commissioners. The committee believes it is critical that jurors self-identify by race and ethnicity, age, and gender to obtain accurate reporting.

Comments From Interested Parties⁷

The proposed rule and the summary of the invitation to comment on it were circulated for public comment during the spring 2006 comment cycle.

The advisory committee received 15 comments in response. One commentator did not indicate an overall position on the proposal.

Seven commentators fully agree with the proposed rule without modification: Judge Bruce A. Clark, Superior Court of Ventura County; Presiding Judge David Edwin Power,

⁷ See comprehensive chart of the comments received and the committee’s response at pages 17–27.

Superior Court of Solano County; Michael M. Roddy, Executive Officer, Superior Court of San Diego County; Julie M. McCoy, president of the Orange County Bar Association; Nelson Lu, San Joaquin County Deputy Public Defender; Tina Rasnow, senior attorney/coordinator, Superior Court of Ventura County; and Ms. Janet Garcia, manager of the Planning and Research Unit of the Superior Court of Los Angeles County.⁸ One commentator, representing the State Bar Standing Committee on the Delivery of Legal Services, marked “agree, if modified”; however, while her comments support the proposed rule, they do not offer a specific modification.

Four commentators support the proposed rule with modifications. The Bar Association of San Francisco supports the objective of the proposed rule, but promotes the inclusion of more than the three demographic categories in rule 10.625(b)(1)(C). It proposes including educational level, sexual orientation, socioeconomic data, and occupational backgrounds. The committee did not accept this proposed modification because the committee wishes to strike a balance between obtaining the information that provided the primary impetus for the rule (race, ethnicity, and gender demographics) and overburdening the courts, which will be required to collect and maintain the information.

The most significant modification to the rule proposal was suggested by the Trial Court Presiding Judges and Court Executives Joint Rules Subcommittee (“the TCPJAC/CEAC Joint Rules Subcommittee”). The TCPJAC/CEAC Joint Rules Subcommittee agrees that the proposal would increase the kinds of demographics currently collected by the courts. However, it believes the rule proposal, as circulated, would place an undue burden on those courts that select their grand juries using a blind random draw from their petit (trial) jury rolls to solicit regular grand juror applications. Those courts are limited by their existing trial jury pools. It therefore recommends redefining “prospective grand jurors” to include only those jurors solicited by the methods described in section 17(b)(2) of the Standards of Judicial Administration.⁹ The advisory committee discussed this proposed modification at length and agreed, in part, with the subcommittee’s comments. The committee modified the proposed rule to add a definition of “prospective regular grand juror” at subdivision (a)(3), which includes only those citizens who return grand jury summonses or questionnaires and are competent to serve as grand jurors under Penal Code section 893. However, the advisory committee believes that those courts that use their petit jury rolls as their exclusive source for identifying potential regular grand jurors should not be excluded from compliance with the proposed rule. The committee believes that if that process consistently yields a nondiverse grand jury, taking into consideration the county’s race, ethnicity, and gender demographics, the court can consider using

⁸ Ms. Garcia supports the rule proposal without modification, but submitted comments, which are included in the comment chart.

⁹ Section 17(b)(2) provides that prospective grand jurors can be obtained from recommendations “that encompass a cross-section of the county’s population base, solicited from a broad representation of community-based organizations, civic leaders, and superior court, municipal and justice court judges, referees, and commissioners.”

another method of selecting its grand jury as stated in section 17(b)(2) and (b)(3),¹⁰ either in addition to, or instead of, the current procedure.

Ms. Andrea Nelson, the operations director of the Superior Court of Butte County, requested that the committee clarify the definition of “qualified” candidates, considering the fact that some jurors are qualified but not willing to serve. The committee believes that its modification of the rule proposal in response to the comments from the TCPJAC/CEAC Joint Rules Subcommittee responds to Ms. Nelson’s concerns. The modification should alleviate any burden on the courts, because the rule proposal focuses on collecting data only from those citizens who are willing and deemed statutorily competent to serve on the grand jury. One commentator, the Sacramento County Grand Jury, also agreed with the proposal, if modified, but did not suggest a specific modification to the rule. It expressed concern that the collection of data will be difficult for the courts. It recommends that “the AOC look into a one-time funding for development and expansion of existing database applications.” The Sacramento Grand Jury’s suggestion regarding funding for expansion of existing databases cannot be addressed in the context of this rule proposal.

Three commentators disagreed with the rule proposal.

One commentator, Joann Landi, a former grand juror from San Mateo County, disagreed, but did not explain why. Robert Geiss, a member of the Grand Jurors Association of Orange County, believes the committee is proposing a quota system for selecting grand jurors and stated that grand jurors should only be selected based on “capability and willingness to serve for the annual term.” The committee agrees that these two factors should be foremost in the selection process. It also believes, however, that this concept is not inconsistent with achieving representative regular grand juries. The purpose of collecting data is not to move toward establishing quotas or proportional representation, but rather to provide information that supports dialogue and development of ameliorative strategies. In another context, Professor Clark Kelso responded to this same concern, which was expressed by some participants in a discussion conducted by McGeorge School of Law’s Institute for Legislative Practice. Professor Kelso states that “increasing the pool of competent grand jurors is not inconsistent with increasing the available pool of underrepresented groups.”¹¹

José Guillén, Executive Officer of the Superior Court of Imperial County, commented on behalf of the court and expressed the most significant disagreement with the rule proposal.¹² Mr. Guillen stated that although the Superior Court of Imperial County

¹⁰ Subdivision (b)(3) provides that prospective grand jurors can be obtained by “[a]pplications from interested citizens solicited through the media or a mass mailing.”

¹¹ Michale Vitello and J. Clark Kelso, *Reform of California’s Grand Jury System* (2002) 35 Loy. L.A. L. Rev.513, 584.

¹² The court’s comments are included verbatim on the attached comment chart.

believes the gathering of the proposed demographic data is appropriate, it believes the committee staff has not presented a convincing need to justify adoption of a rule of court. The Imperial County court promotes an in-depth analysis of the civil grand jury system in California and the adoption of a standard, rather than a rule. It believes that a study would reveal both that many courts are already using effective practices to ensure that their grand juries are representative and that barriers to recruiting representative grand jurors include time commitment, inadequate facilities, and more. The court also believes that the rule proposal is a response to lobbying pressure from the California Grand Jurors' Association.

The committee considered the court's concerns, but believes sufficient research has been conducted to support a rule aimed at gathering certain demographic information about grand jurors. At least three in-depth studies of the civil grand juror system in California have been conducted during the last decade.¹³ The studies concluded that California grand juries are not representative of the populations they serve. Further, the committee's investigation of this issue was not in response to external pressure from any organization or group, but from a council-adopted recommendation from the 1992 Advisory Committee on Race and Ethnic Bias in the Courts. The committee's examination of representative civil grand juries was also reflected in its 2002–2003 work plan. RUPRO supported the project at that time.¹⁴

During its final review of this proposal, RUPRO offered two recommendations. First, it recommended clarification of the terms “eligible” and “qualified,” as used in subdivisions (a)(3), (b)(2), and in the advisory committee comment, to eliminate any confusion those terms might cause. The committee agreed and incorporated those changes. The committee clarified the terms “eligible to serve” and “qualified” by adding a definition of “eligible to serve” that references the requirements for regular grand jury service set forth in Penal Code section 893. The added definition also clarifies that courts are to collect the data after prospective jurors indicate their interest in regular grand jury service and are determined by the court to meet the eligibility requirements.

Second, RUPRO recommended that the committee consider whether “demographic” as used in the title is too broad a term, in view of the specific data to be collected. It also

¹³ See Vitello and Kelso, *supra*, at p.584; Ian F. Haney López, *Institutional Racism: Judicial Conduct and a New Theory of Racial Discrimination*, 109 Yale L.J. 1717, at 1721–1884 (which focuses on California); Hiroshi Fukurai, *Where Did Hispanic Jurors Go? Racial and Ethnic Disenfranchisement in the Grand Jury and the Search for Justice* (2000) 2(2) W. Crim. L. Rev. [online]. A number of cases have also examined the issue of nondiverse civil grand jurors from a constitutional perspective. See e.g., *Quadra v. Superior Court of City and County of San Francisco*, 403 F.Supp. 486 (N.D. Cal. 1975).

¹⁴ During the focus groups conducted with the Jury Education Management Association and the California Grand Jurors, Association, participants, in fact, pointed to some of the same barriers to grand jury service that Mr. Guillén lists in his comment. However, both groups believe that more could be done to attract competent citizens of underrepresented communities to serve on grand juries. Further, the committee's 2004 trial court survey revealed that, at that time, few courts had grand jury recruitment programs that enabled them to attract diverse pools of eligible jurors.

initially recommended that the committee consider adding two demographic categories to subdivision (b)(1), specifically, “range of household income” and “highest level of educational attainment.” RUPRO suggested that collecting this data, as well as the data currently outlined in the proposed rule, would assist the courts in obtaining a more complete view of the demographic composition of the prospective and seated jurors, to compare with county demographics. The committee considered RUPRO’s suggestions and reported back to RUPRO.¹⁵ After hearing the committee’s concerns, RUPRO recommended that the committee instead clarify that the rule is limited to the collection of certain demographic data; that the advisory committee report back to RUPRO with an analysis of the data collected within one to two years after the rule is implemented; and that the committee submit its recommendations regarding additional demographic categories at that time. The committee agreed with RUPRO’s recommendations. It inserted “certain” before “demographic” in the title of the rule to clarify that limited data will be collected, and the committee will consider adding other demographic categories to the rule and report back to RUPRO with its recommendations and analysis within two years of implementation.

Implementation Requirements and Costs

If rule 10.625 is adopted, those trial courts that are not already doing so must (1) develop or modify an existing grand juror form, application, or questionnaire that requests the demographic information outlined in the rule; (2) collect the information from prospective regular grand jurors, as defined; (3) record the demographic data as outlined; and (4) examine the information annually and make it available to the public, preferably after the grand jury is seated. Implementation will require a minimal yearly amount of both staff resources for most courts (to record the data, publicize it, or otherwise make it available to the public) and, in most cases, use of computer technology. Existing technology should be sufficient to create a database containing this information.

Recommendation

The Access and Fairness Advisory Committee recommends that the Judicial Council, effective January 1, 2007, adopt rule 10.625 of the California Rules of Court, which would require that trial courts:

1. Collect certain demographic information about prospective and seated regular grand jurors;

¹⁵ The committee was concerned that adding new categories would result in a substantive change to the rule that would require it to be circulated for public comment again. This would delay adoption and implementation of the rule for another year, which the committee disfavors. The committee preferred that the Judicial Council consider the proposed rule for adoption in its current form, as it contains the demographic categories that provided the impetus for this project, with the understanding that the committee will consider additional demographic categories at a later time. The committee also felt that additional categories should be added only after it has an opportunity to study how the collection of these and perhaps other categories of demographic data would benefit the courts, and the extent to which broadening the categories might impose an additional burden on the courts.

2. Maintain a database containing that information; and
3. Make that information available to the public annually.

This information will allow the committee to continue its examination of the issue, with the goal of assisting the trial courts in eliminating potential barriers to grand jury service and in seating regular grand juries that are broadly representative of the communities they serve.

The text of proposed rule 10.625 is attached at pages 14–16.

Attachments

Rule 10.625 of the California Rules of Court would be adopted, effective January 1, 2007, to read¹⁷:

1 **Rule 10.625. Certain demographic data relating to regular grand jurors**

2
3 **(a) Definitions**

4
5 The following definitions apply under this rule:

- 6
7 (1) “Regular grand jury” means a body of citizens of a county selected by the
8 court to investigate matters of civil concern in the county, whether or not
9 that body has jurisdiction to return indictments.
- 10
11 (2) “Race or ethnicity” reflects the concept of race used by the United States
12 Census Bureau and reflects self-identification by people according to the
13 race or races with which they most closely identify. These categories are
14 sociopolitical constructs and should not be interpreted as being scientific
15 or anthropological in nature. The categories include both racial and
16 national-origin groups.
- 17
18 (3) “Prospective regular grand juror” means those citizens who (a) respond in
19 person to the jury summonses or questionnaires from the court for the
20 purposes of grand jury service and are eligible to serve as regular grand
21 jurors, or (b) either submit applications, are recruited, or are nominated by
22 judicial officers and are eligible to serve as regular grand jurors.
- 23
24 (4) “Eligible to serve” means that the prospective regular grand juror meets
25 each of the criteria set forth in Penal Code section 893(a) and is not
26 disqualified by any factor set forth in section 893(b).

27
28 **(b) Jury Commissioner Duties and Responsibilities**

- 29
30 (1) The jury commissioner or designee must create a method to
31 capture the following data from prospective regular grand jurors:
32

¹⁷ These recommended amendments have been made to the version of this rule approved by the Judicial Council at its June 30, 2006, business meeting and reflect the text that will be in effect on January 1, 2007. Any amendments approved as part of this proposal will be incorporated into the text of the rule that goes into effect on January 1, 2007. This rule was numbered as proposed rule 876 when it circulated for comment. However, at the June 30, 2006, meeting the Judicial Council approved the reorganization and renumbering of the California Rules of Court and Standards of Judicial Administration. For the proposed rule to be consistent with the newly reorganized California Rules of Court, it is now numbered as rule 10.625.

1 (A) Age range, specifically:

2 (i) 18–25

3 (ii) 26–34

4 (iii) 35–44

5 (iv) 45–54

6 (v) 55–64

7 (vi) 65–74

8 (vii) 75 and over

9
10 (B) Gender; and

11
12 (C) Race or ethnicity from the following categories (candidates may
13 select more than one category):

14 (i) American Indian or Alaska Native

15 (ii) Asian

16 (iii) Black or African American

17 (iv) Hispanic/Latino

18 (v) Native Hawaiian or other Pacific Islander

19 (vi) White

20 (vii) Other race or ethnicity (please state: _____)

21 (viii) Decline to answer

22
23
24 (2) Develop and maintain a database containing the following information
25 regarding prospective regular grand jurors, the candidates who are
26 ultimately selected by the court to serve as grand jurors, and any carry-
27 over grand jurors: name, age range, occupation, gender, race or ethnicity,
28 and the year(s) served on the regular grand jury. The database should
29 indicate how the juror initially became a candidate (by random draw,
30 application, or nomination).

31
32 (c) **Annual Summary**

33
34 (1) The court must develop and maintain an annual summary of the
35 information in the database maintained under (b)(2). The summary must
36 not include the names of the candidates and must be made available to the
37 public.

38 **Advisory Committee Comment**

39
40 This rule is intended to facilitate the courts' continued efforts to achieve the goals stated in standard
41 10.50 [formerly section 17] of the Standards of Judicial Administration, which encourages courts to
42 employ various methods of soliciting prospective candidates to serve on regular grand juries that

1 reflect a representative cross-section of the community they serve. Those methods include obtaining
2 recommendations for grand jurors who encompass a cross-section of the county’s population base,
3 solicited from a broad representation of community-based organizations, civic leaders, and superior
4 court judges, referees, and commissioners subdivision (b)(2)); having the court consider carry-over
5 grand jury selections under Penal Code section 901(b) to ensure broad-based representation (subd.
6 (c)); and encouraging judges who nominate persons for grand jury service under Penal Code section
7 903.4 to select candidates from the list returned by the jury commissioner or otherwise employing a
8 nomination procedure to ensure broad-based representation from the community.

9
10 This rule is also intended to assist the courts in establishing a formal mechanism whereby they can
11 monitor the extent to which they achieve the goal of seating representative regular grand juries
12 through a process comparable to that stated in Penal Code section 904.6(e), which requires that
13 persons selected for the “criminal grand jury shall be selected at random from a source or sources
14 reasonably representative of a cross section of the population which is eligible for jury service in
15 the county.”

SPR06-35
Grand Juries: Demographic Data Relating to Regular Grand Jurors
Adopt Cal. Rules of Court, rule 10.625 [circulated as proposed rule 876]¹⁸

	Commentator	Position	Comment on behalf of group?	Comment (Summarized)	Committee Response
1.	Mr. Nelson Lu Deputy Public Defender San Joaquin County Public Defender's Office Stockton	A	N		
2.	Ms. Tina Rasnow Senior Attorney/Coordinator Superior Court of Ventura County	A	N		
3.	Ms. Sharon Ngim Staff Liaison to the Standing Committee on the Delivery of Legal Services	AM	Y	Collection of such data is critical to understanding who is participating in this important process and it assists counties in ensuring that their grand juries reflect the demographics (including but not limited to, race and ethnicity) of their local community.	This comment appears to support the rule proposal. The commentator did not suggest any modifications.
4.	Ms. Julie M. McCoy President Orange County Bar Association	A	N		

¹⁸ At the June 30, 2006, meeting, the Judicial Council approved reorganization and renumbering of the California Rules of Court and Standards of Judicial Administration. For this proposal to be consistent with the reorganization of the rules as of January 1, 2007, this rule, which was numbered rule 876 when circulated for comment, has been renumbered rule 10.625, effective January 1, 2007. Throughout this chart, references to current rule numbers appear in parenthesis following each new rule number.

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Adopt Cal. Rules of Court, rule 10.625 [circulated as proposed rule 876]¹⁸**

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5.	Mr. Robert C. Geiss Grand Jurors Association of Orange County	N	N	The notion of proportional representation on grand juries based on ethnicity, race, or religion is [abhorrent (could not decipher handwriting)]. Grand juries should be selected on capability and willingness to commit to serve for the annual term.	The advisory committee agrees that capability and willingness to serve should be foremost in the selection of grand jurors. However, it also believes that within that context, representative grand juries are needed. Broadening the pool from which to select grand jurors is needed to ensure a strong grand jury system. The purpose of gathering the statistics is not, therefore, to move toward establishing quotas or proportional representation. It is to provide information and promote informed dialogue.
6.	Ms. Joann Landi San Mateo County Grand Juror 2000-1 and 2001-02 San Mateo County Grand Jury Association California Grand Juror's Association	N	N		The commentator did not explain why she disagrees with the rule proposal.
7.	Trial Court Presiding Judges and Court Executives Advisory Committees' Joint Rules Subcommittee	AM	Y	[<i>Verbatim comments</i>] The subcommittee agreed that the proposal would increase the kinds of demographic information currently collected by most courts, but also place an undue burden on courts that use a blind random draw to solicit grand juror applications. As the blind random	The advisory committee agrees that the rule, as currently drafted, may place an undue burden on those courts that randomly draw names from their petit juror rolls as their exclusive method for soliciting

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				<p>draw courts typically send out 700–800 solicitations, this proposal would significantly increase the workload for those courts. Courts soliciting grand jurors from community and other organizations and from judicial nominations would not be similarly burdened. Since one of the purposes of the new [rule] would be to help courts recognize the potential diversity patterns in grand jury recruitment, this purpose would only be served in counties that have control over their initial grand juror pool, through recruitment, etc. This is not the case with counties that merely summon from their existing petit jury pools.</p> <p>Therefore, the term “prospective grand jurors” must be redefined to include only those grand jurors solicited by the method described in Standards of Judicial Administration § 17(b)(2). This would alleviate the burden for courts using the blind random draw method described in Standards of Judicial Administration § 17(b)(1). Such courts would only be required to collect and maintain information on the grand jurors selected.</p>	<p>grand jurors. However, the advisory committee believes that these courts would not be unduly burdened if they only record demographic data for those persons who return the questionnaires and are qualified for service. Therefore, the advisory committee amended the proposed rule by adding a definition of “prospective regular grand juror” to include:</p> <p>(a) citizens who respond to the grand juror questionnaires from the court and are eligible to serve as regular grand jurors; or (b) citizens who either submit applications, are recruited, or are nominated by judicial officers for grand jury service and are competent to serve. The committee disagrees that the courts that employ only the random draw method for soliciting grand jurors should be excluded from with this process. If the random draw consistently yields a nondiverse grand jury, taking into consideration the county’s population demographics, the court</p>

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					should then consider using another method of selecting its grand jurors—either in addition to, or instead of, the blind random draw.
8.	Mr. José Guillén Executive Officer Superior Court of Imperial County	N	Y	[<i>Verbatim comments</i>] Staff has not established a clear and convincing need for gathering this information, other than responding to California State Grand Jurors Association’s strong lobbying for what they perceive to be a problem. I have not seen any in-depth analysis of the civil grand jury system in California to conclude the trial courts are excluding or not including a particular group of their citizenry that are otherwise willing and able to volunteer for this year-long civic duty. I have worked with many judges throughout the State and have found that they support the principles of diversity, inclusiveness, and representation of their local community when recruiting for civil grand juries. In fact, many courts like Orange County have effective recruiting and outreach strategies to obtain qualified and open-minded citizens. A study on this issue would clearly demonstrate that many trial courts are engaging in effective practices to ensure their civil grand juries are representative of their community; are citizens that can be fair and approach this responsibility with an open-mind; and are able	The advisory committee began examining the issue of representative grand jurors in 2002, continuing through 2005. The advisory committee’s 2002–2003 workplan contained an initiative regarding representative grand juries. It was based on the council’s 1997 directive to implement a recommendation of the Advisory Committee on Racial and Ethnic Bias in the Courts regarding representative grand juries. It was not in response to external pressure from any organization. The committee researched California’s regular grand jury system through a series of articles written on the topic by noted experts, including Professor Clark Kelso. It met with members of the Jury Education Management Forum and the Grand Jurors’ Association to learn about their experiences and obtain their

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				<p>and willing to make a year-long commitment and to this worthwhile endeavor.</p> <p>The study would also identify other factors that make recruiting for civil grand jurors a challenge for many courts, such as: inadequate facilities assigned to civil grand jury, inadequate county budgets to administer the work of the grand jury, inadequate per-diem and mileage reimbursement rates (most counties are still paying \$15 per day) and not to mention a legal advisory process that raises issues of conflict of interest.</p> <p>I could just see an accusation from lobbying Grand Juror Association or other anti-establishment organization that the problem with a particular county's grand jury system is the lack of the right amount of stakeholders from a special group, thus using demographic information for an unintended purpose.</p> <p>Our court supports the gathering of the proposed demographical information because it is the proper thing to do, but not because some advocacy group decided it is necessary. Our</p>	<p>opinions on the barriers to grand jury service. The 2004 advisory committee survey of the courts revealed that the data needed to conduct the type of analysis the commentator suggests is not maintained by a majority of the courts. Information it received at that time indicated that only a few trial courts had developed grand juror recruitment programs that have enabled them to attract diverse pools of eligible jurors. Some of them had recruitment materials they were willing to share with other courts.</p> <p>The current § 17 of the standards of Judicial Administration [std.10.50, effective Jan.1, 2007] encourages the courts to utilize methods of selection to ensure broad-based representation on grand juries. The proposed rule merely mandates that the courts maintain demographic information regarding its grand jurors, which the committee believes may assist the courts in</p>

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				<p>court would have less objection to a standard of judicial administration, but we strongly object to the promulgation of Rules to address perceived or isolated problems. The independence of our judiciary is threatened when we acquiesce to advocacy groups' demands without identifying the true problem and the optimum solution in the best interest of justice. As an aside, our court has been collecting this data already. See attached grand juror application. [note: not attached]</p>	<p>determining whether the civil grand jury is a broad-based representation of the community, and if not, why not.</p> <p>While it is true that statistics and data can be used for more than their intended purpose, the committee believes, on balance, it is important for the courts to maintain this information and evaluate it on an annual basis. The advisory committee also believes that the proposed requirement that the court make the grand juror demographics available to the public annually will create a more transparent process and eventually reduce the number and viability of grand jury challenges based on racial or ethnic composition.</p> <p>The advisory committee is pleased that the court supports the gathering of demographic data and has developed a grand juror questionnaire that meets the requirements of the proposed rule.</p>

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					The committee believes the AOC will be committed to working with the courts to address this issue.
9.	Ms. Janet Garcia Manager Planning and Research Unit Superior Court of Los Angeles County	A	N	<p>The commentator indicates that the Los Angeles County Superior Court has collected demographic data for the civil grand jury for many years and supports the rule proposal.</p> <p>However, she expressed concern that the rule, alone, will not result in more diversified grand juries. She indicated that because of the length of service (a full year) and the time commitment, many residents would not be able to serve because of job responsibilities or other obligations; and that this would even be so if a random selection from the petit jury pool was employed. She stated that shortening the term of service is not a viable option because of the necessary training, the need to develop relationships, establishing its operational protocols and writing its final report.</p>	<p>The advisory committee acknowledges the commentator's support of its rule proposal.</p> <p>The advisory committee agrees that the proposed rule, <i>alone</i>, will not result in representative grand juries. It is aware of the substantive barriers identified by the commentator that prevent many otherwise eligible citizens to participate in grand jury service and is examining these issues as well. However, the committee believes it is important for courts to have baseline data from which they can determine if progress is being made in seating representative grand juries.</p>
10.	Ms. Becky Castaneda Executive Secretary Sacramento County Grand Jury	AM	Y	Recruitment of the Grand Jury takes place in several arena's [sic], i.e.advertisements, DMV mail outs, and attending community events. Tracking demographics will be difficult. We suggest that the AOC look into a	The advisory committee disagrees. If the focus of the collection of demographic data is on eligible applicants and seated jurors, the process should not be unduly

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				one-time funding for development and expansion of existing database applications.	burdensome. The committee's examination of this issue indicates that the number of eligible applicants for most courts is a manageable number, and the seated jurors will be part of that pool. Existing database applications should be sufficient for the majority, if not all, of the trial courts.
11.	Hon. Bruce A. Clark Judge Superior Court of Ventura County	A	Y	No comments provided.	No response necessary.
12.	Mr. Michael M. Roddy Executive Officer Superior Court of San Diego County	A	Y	No comments provided.	No response necessary.
13.	Hon. David Edwin Power Presiding Judge Superior Court of Solano County	A	N	No comments provided.	No response necessary.
14.	Ms. Andrea Nelson Court Operations Director Superior Court of Butte County	Did not indicate	N	The commentator requests that the definition of "qualified" candidates who constitute the grand jury pool be clarified; and that the definition include those persons who are qualified <i>and</i> express a willingness to serve.	The advisory committee agrees that the definition of "prospective regular grand juror" should include those persons who are eligible or "qualified" to serve. However, the committee disagrees with the commentator's suggestion that "willing to serve" be included in the

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					definition. Because serving on a grand jury is a voluntary commitment, the committee assumes that persons returning the grand juror questionnaires are, by doing so, indicating a willingness to serve. Therefore, adding “willing to serve” to the definition is unnecessary. The result the commentator is promoting would still be met.
15.	Ms. Joan Mei Haratani President Bar Association of San Francisco (BASF)	AM	Y	[<i>Verbatim comment</i>] Proposed Rule [10.625] (876) would require jury commissioners to collect basic demographic data about potential and seated grand jurors in each county. The information would be used to satisfy the directive of [std. 10.50(d)] (section 17(d)) of the Standards of Judicial Administration, which since 1992 has encouraged the composition of grand juries that are more reflective of the population of their particular counties. Penal Code section 904.6, subdivision (e) implements that standard, requiring that grand juries must be drawn from sources that are “reasonably representative of a cross section of the population” in their counties.	The advisory committee acknowledges the commentator’s concerns regarding the omission of other demographic categories from the proposed rule. However, the committee is endeavoring to strike a balance between obtaining the information that provided the primary impetus for the rule proposal (that is race, ethnic, age and gender demographics), and overburdening the courts, which will be required to collect and maintain a database containing this information.

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				<p>BASF agrees wholeheartedly with the objective of the proposed rule and of the Standards of Judicial Administration. However, BASF believes that proposed Rule [10.625] (876) should be modified to broaden the types of information to be collected from potential grand jurors. Standard [10.50(d)] (17(d)) of the Standards and Penal Code section 904.6, subdivision (e) are purposely broad and do not limit the ways in which a grand jury venire might be analyzed to see if the grand jurors are “reasonably representative” of the county. Proposed Rule [10.625] (876), however, would require the collection of only age, ethnicity, and gender information. The rule should not be so restricted, as counties’ populations differ in many more basic ways than just these three characteristics.</p> <p>To ensure more accurate reporting of demographics and resulting improvement in diversity, surveys of grand juries should include such additional factors as education level, sexual orientation, socioeconomic data, occupational backgrounds, and other such categories. Although there are reasonable and necessary limits on how detailed data collection can be, there is room for more in-depth</p>	<p>This rule proposal is intended as the first phase of the advisory committee’s examination of broadening the representation on California’s grand juries. The additional demographic categories suggested by the commentator will be considered as the committee continues its examination of representative grand juries.</p>

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				<p>reporting of information about these other basic aspects of the population.</p> <p>The proposed rule's limitation to the three categories presently mentioned appears to have been caused by a comment in the legislative history of section 904.6(e) which listed only those categories as factors to be considered in the composition of grand juries. However, the Standards and the Penal Code were not so restricted in their final form. Accordingly, BASF believes that the proposed rule should take other demographic factors into consideration, in order to implement the broad goals of those provisions.</p>	