



## Judicial Council of California · Administrative Office of the Courts

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 29, 2010

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Title	Agenda Item Type
Criminal Procedure: Application of Penal Code Section 654	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Cal. Rules of Court, rule 4.424	January 1, 2011
Recommended by	Date of Report
Criminal Law Advisory Committee Hon. Steven Z. Perren, Chair	August 4, 2010
	Contact
	Arturo Castro, 415-865-7702 <a href="mailto:arturo.castro@jud.ca.gov">arturo.castro@jud.ca.gov</a>

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### **Executive Summary**

The Criminal Law Advisory Committee recommends that the Judicial Council amend rule 4.424 of the California Rules of Court to clarify that trial courts must apply Penal Code section 654 by imposing sentence on all counts and staying execution of sentence as necessary to prevent multiple punishments. The amendment is required by recent case law that invalidated the rule.

### **Recommendation**

The Criminal Law Advisory Committee recommends that the Judicial Council, effective January 1, 2011, amend rule 4.424 of the California Rules of Court to clarify that trial courts must apply Penal Code section 654 by imposing sentence on all counts and staying execution of sentence as necessary to prevent multiple punishments.

The text of the proposed rule is attached at page 3.

## **Previous Council Action**

The Judicial Council adopted rule 4.424 in 1991. The rule has remained substantively unchanged since adoption. There is no other relevant Judicial Council action to report.

## **Rationale for Recommendation**

Penal Code section 654 generally proscribes multiple punishments for a single act, omission, or indivisible course of conduct. Rule 4.424 is designed to instruct courts regarding how to stay sentences under Penal Code section 654. Currently, the rule states that courts must determine whether Penal Code section 654 “requires a *stay of imposition of sentence* on some of the counts.” (Emphasis added.)

Recent case law clarified that instead of staying *imposition* of the sentence on some of the counts, trial courts must apply Penal Code section 654 by imposing sentence on all counts and staying *execution* of the sentence as necessary to prevent multiple punishments. (*People v. Alford* (2010) 180 Cal.App.4th 1463.) Imposing a sentence on each count ensures that a valid sentence is extant if an unstayed sentence is later vacated. (*Id.* at 1469.) Because the current rule instructs trial courts to apply Penal Code section 654 by staying imposition of sentence—as opposed to staying execution of sentence—the rule is “invalid and must be revised.” (*Id.* at 1473.)

## **Comments, Alternatives Considered, and Policy Implications**

The proposed amendment was circulated for public comment during the spring 2010 cycle. A total of six comments were received. Of those, four agreed with the proposal, one agreed with the proposal if modified, and one disagreed. A chart providing all of the comments received and the committee responses is attached at pages 4–7.

One commentator suggested deleting as irrelevant a separate phrase in the rule that instructs courts to decide whether section 654 applies *before* determining whether to impose concurrent or consecutive sentences. The committee declined to delete the phrase as suggested because it exceeds the scope of the proposal, but the committee will reconsider the suggestion at a future meeting. Another commentator suggested that the proposed amendment is inconsistent with other authority but did not identify any inconsistent authority in the comment or when contacted by staff.

## **Implementation Requirements, Costs, and Operational Impacts**

Expected costs and operational impacts would be limited to revising the California Rules of Court to reflect the proposed amendments and associated training of court staff and judicial officers.

## **Attachments**

1. Cal. Rules of Court, rule 4.424, at page 3
2. Chart of comments, at pages 4–7

Rule 4.424 of the California Rules of Court is amended, effective January 1, 2011, to read:

1 Rule 4.424. Consideration of applicability of section 654  
2  
3 Before determining whether to impose either concurrent or consecutive sentences  
4 on all counts on which the defendant was convicted, the court must determine  
5 whether the proscription in section 654 against multiple punishments for the same  
6 act or omission requires a stay of ~~imposition~~ execution of the sentence imposed on  
7 some of the counts.



**SPR10-25****Criminal Procedure: Application of Penal Code Section 654** (amend Cal. Rules of Court, rule 4.424)

All comments are verbatim unless indicated by an asterisk (\*).

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
1.	California Judges Association Jordan Posamentier Legislative Counsel	A	We support the proposed amendment to [r]ule 4.424 because it provides a useful clarification that courts must apply Penal Code section 654 by imposing a sentence on all counts and by staying execution of the sentence, as necessary to prevent multiple punishments. The amendments also conform to <i>People v. Alford</i> (2010) 180 Cal.App.4th 1463, as needed.	No response required.
2.	Court of Appeal, Second Appellate District Katherine Lynn Managing Attorney	AM	I agree with the proposed changes if modified.  (1) The proposed modification of rule 4.424 is too subtle and does not clearly impart the intended change, the requirement that a sentence must first be <i>imposed</i> on every count and enhancement even if the determination is then made to stay its execution pursuant to section 654. The rule may be modified as follows to more clearly state the requirement that the trial court must first impose a sentence on each count:  “Before determining whether to impose either concurrent or consecutive sentences on all counts on which the defendant was convicted, the court must <u>impose a sentence for each crime and applicable enhancement and then must</u> determine whether the proscription in section 654 against multiple punishments for the same act or omission requires a stay of <del>imposition</del> <u>execution</u> of <u>the</u> sentence <u>imposed</u> on <del>some</del> <u>any</u> of the counts.”	(1) The committee declined the suggested revisions as unnecessary. The committee believes that the proposed amendments adequately clarify that trial courts must apply Penal Code section 654 by imposing sentence on all counts and staying execution of sentence as necessary to avoid multiple punishments.

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	Commentator	Position	Comment	Committee Response
			<p>(2) In addition, although not addressed by this proposed change, the current (and amended) rule begins with a phrase that is irrelevant and potentially misleading as to the section 654 determination: <i>“Before determining whether to impose either concurrent or consecutive sentences on all counts on which the defendant was convicted, the court must determine whether the proscription in section 654 against multiple punishments . . . requires a stay . . .”</i> (Italics added.)</p> <p>The trial court’s choice of consecutive or concurrent sentencing has nothing to do with the determination as to whether section 654 applies, since even concurrent sentencing “is treated as an implied finding that the defendant bore multiple intents or objectives, that is, as a rejection of the applicability of section 654.” (<i>People v. Alford</i> (2010) 180 Cal.App.4th 1463, 1468; accord, <i>People v. Dominguez</i> (1995) 38 Cal.App.4th 410, 420.) The phrase <i>“Before determining whether to impose either concurrent or consecutive sentences”</i> may be improperly read to suggest that the trial court’s section 654 determination should influence whether to impose consecutive or concurrent terms, which is not the case. In any event, the phrase is surplusage, since the order of the determinations (concurrent versus consecutive sentences, and the applicability of section 654) is irrelevant.</p>	<p>(2) The committee considered but declined the suggested revisions. The issue of when a trial court must decide to impose concurrent or consecutive sentences exceeds the scope of the proposal, but the committee will reconsider the suggested revisions at a future meeting.</p>

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p>It is suggested that the rule be modified as follows:</p> <p><del>“Before determining whether to impose either concurrent or consecutive sentences on all counts on which the defendant was convicted, In sentencing a defendant convicted on more than one count, the court must impose a sentence for each crime and applicable enhancement and then must determine whether the proscription in section 654 against multiple punishments for the same act or omission requires a stay of imposition execution of the sentence imposed on some any of the counts.”</del></p>	
3.	Debra Meyers Deputy Court Executive Officer/General Counsel Superior Court of San Bernardino County	A	No specific comment.	No response required.
4.	Orange County Bar Association Lei Lei Wang Ekvall President	N	This proposed [r]ule is not consistent with many courts’ practice[s] based on legitimate authority. There is a split in authority [on] this topic.	The committee believes that the proposed amendments properly clarify how trial courts must apply stays under Penal Code section 654. The proposed amendments are in direct response to <i>People v. Alford</i> (2009) 180 Cal.App.4th 1463, which held that the rule is “invalid and must be revised.”
5.	Superior Court of Los Angeles County	A	No specific comment.	No response required.

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
6.	Superior Court of San Diego County Michael M. Roddy Court Executive Officer	A	No specific comment.	No response required.