

Judicial Council of California

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INVITATION TO COMMENT SPR18-40

Title	Action Requested
Jury Service: Permanent Medical Excuse	Review and submit comments by June 8, 2018
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Adopt Cal. Rules of Court, rule 2.1009	January 1, 2019
Proposed by	Contact
Advisory Committee on Providing Access and Fairness Hon. Kathleen E. O’Leary, Cochair Hon. Laurie D. Zelon, Cochair	Daniel Pone, 916-323-3121 daniel.pone@jud.ca.gov Kyanna Williams, 415-865-7911 kyanna.williams@jud.ca.com

Executive Summary and Origin

The Advisory Committee on Providing Access and Fairness proposes new rule 2.1009 to establish a process for a person with a disability to request a permanent medical excuse from jury service in cases where the individual, with or without accommodations, including the provision of auxiliary aides or services, is incapable of performing jury service. Senator Jerry Hill (D-San Mateo) considered authoring a bill in this area last year but deferred introducing the legislation in order to give the Judicial Council the opportunity to address the issue through the adoption of a uniform rule of court.

Background

Current law does not explicitly provide for a permanent medical excuse from jury service. Adult persons are generally considered eligible to serve as jurors, subject to specified exceptions. (Code Civ. Proc., § 203.) Existing law also provides that an eligible person may be excused from jury service only for undue hardship, upon themselves or upon the public, as defined by the Judicial Council. (Code Civ. Proc., § 204.) In addition, “[a]ll requests to be excused from jury service that are granted for undue hardship must be put in writing by the prospective juror, reduced to writing, or placed on the court’s record. The prospective juror must support the request with facts specifying the hardship and a statement why the circumstances constituting the undue hardship cannot be avoided by deferring the prospective juror’s service.” (Cal. Rules of Court, rule 2.1008(c).)

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

Rule 2.1008 specifies the reasons for excusing a juror because of undue hardship. These include, among other things, that “[t]he prospective juror has a physical or mental disability or impairment, not affecting that person’s competence to act as a juror, that would expose the potential juror to undue risk of mental or physical harm.” (Cal. Rules of Court, rule 2.1008(d)(5).) Rule 2.1008 also provides that, unless the person is aged 70 years or older, the prospective juror in any individual case “may be required to furnish verification or a method of verification of the disability or impairment, its probable duration, and the particular reasons for the person’s inability to serve as a juror.” (*Ibid.*)

Senator Hill considered introducing legislation in 2017 that would have required the court to permanently excuse from jury service an otherwise eligible person with a documented permanent disability that prevents the person from accessing the court, and to remove that person from the rolls of potential jurors upon receipt of confirmation of the permanent disability. According to Senator Hill’s staff, the idea for the legislation came from two of his constituents. Both of these constituents had family members with permanent disabilities who had received jury summonses from one of the superior courts in his district on multiple occasions after having previously provided documentation in support of their requests to be permanently excused from jury service based on their medical conditions.

There are varying practices among the courts for handling requests for permanent medical excuses from jury service. Some courts do grant permanent medical excuses, though what is required as evidence of permanent disability seems to vary from court to court. Other courts do not appear to provide for such excuses.

Senator Hill agreed to hold off on introducing legislation in order to give the Judicial Council time to study and address this issue through a uniform rule of court. The chairs of the council’s Policy Coordination and Liaison Committee and Rules and Projects Committee approved the formation of a workgroup to pursue this effort and its members include a representative from Disability Rights California and representatives from the council’s Advisory Committee on Providing Access and Fairness, Court Executive Officers Advisory Committee, and Trial Court Presiding Judges Advisory Committee.

The Proposal

Rule 2.1009

The proposal recommends adopting a new rule of court, rule 2.1009, that is designed to address the narrow subset of people with disabilities who, even with accommodations, are incapable of performing jury service. The purpose of the rule is to minimize the burden on these individuals and the courts by allowing a person with a disability whose condition is unlikely to resolve and who is unable for the foreseeable future to serve as a juror to seek a permanent medical excuse from jury service. The application of the new rule would relieve such individuals and their family members from the continuing obligation under existing law to provide medical documentation in support of an undue hardship excuse each time they receive a summons for

jury service. It would also improve the efficiency of the courts' jury management system by reducing the staff time and paperwork associated with processing repeated undue hardship excuse requests.

Policy

The underlying policy of the rule seeks "to ensure people with disabilities have equal and full access to the judicial system, including the opportunity to serve as jurors." (Subd. (b)(2).) Consistent with this important policy, the rule emphasizes that "no eligible juror who can perform jury service, with or without disability-related accommodations, including auxiliary aids or services, may be excused from jury service due solely to his or her disability." (*Ibid.*)

Process for requesting permanent medical excuse from jury service

The new rule would allow a person with a disability or the person's authorized representative (the applicant) to request a permanent medical excuse from jury service. (Subd. (c).) The applicant's request must be submitted in writing, together with a supporting letter, memo, or note from the treating healthcare provider. (Subd. (c)(1).) The supporting letter, memo, or note must be on the treating healthcare provider's letterhead, state that the person has a permanent disability that makes the person incapable of performing jury service, and be signed by the provider. (Subd. (c)(1)(A).)

The rule would require the applicant to submit the request and supporting letter, memo, or note to the court's jury management office on or before the date the person is to appear for jury service. (Subd. (c)(2).) In the event of an incomplete application, the rule would allow the court to require the applicant to furnish additional information in support of the request for permanent medical excuse. (Subd. (c)(3).)

The rule defines "permanent medical excuse" as "a release from jury service granted by the court to a person with a disability whose condition is unlikely to resolve and who, with or without disability-related accommodations, including auxiliary aids or services, is not capable of performing jury service." (Subd. (a)(5).) For purposes of this rule, "capable of performing jury service" means "a person can pay attention to evidence, testimony, and other court proceedings for up to six hours per day, with a lunch break and short breaks in the morning and afternoon, with or without disability-related accommodations, including auxiliary aids and services." (Subd. (a)(3).)

Response to request

The new rule would require the court to promptly inform the applicant in writing of its determination to grant or deny the request. (Subd. (e)(1).) If the court grants the request, it would be required to remove the person from the rolls of potential jurors as soon as it is practicable to do so. (Subd. (e)(2).) If the permanent medical excuse request is denied, the court would be required to provide the applicant a written response with the reason for the denial. (Subd. (e)(3).) The rule further specifies that the court may deny the request only when the court determines that the applicant has failed to satisfy the requirements of the rule. (Subd. (d).)

Right to reapply

The rule would allow a person whose request is denied to reapply at any time following receipt of the court's denial. (Subd. (f).)

Right to seek reinstatement

The advisory committee recognizes that a person with a disability who has been granted a permanent medical excuse may regain the ability to perform jury service in the future through advances in medical technology or by other means. Accordingly, the rule would allow a person who has received a permanent medical excuse from jury service to be reinstated to the rolls of potential jurors at any time by filing a signed, written request with the court. (Subd. (g).)

Confidentiality requirements

The new rule would require the court to “keep confidential all information concerning the request for permanent medical excuse, including any accompanying request for disability-related accommodation, including auxiliary aids or services, unless the applicant waives confidentiality in writing or the law requires disclosure.” (Subd. (c)(4).) The rule also specifies that the applicant's identity and confidential information may not be disclosed to the public, but it may be disclosed to court officials and other personnel involved in administering the permanent medical excuse process. (*Ibid.*)

Alternatives Considered

The advisory committee considered not proposing a new rule of court since some courts already have local policies and practices that provide for a permanent excuse from jury service for individuals with permanent disabilities. However, as discussed above, not all courts provide for a permanent medical excuse, and the courts that do have policies or practices appear to vary significantly in the type of supporting medical documentation required and whether potential accommodations are being considered that might allow the person with a disability to perform jury service. The advisory committee decided that a rule of court would be preferable in order to ensure both uniformity and consistency with the important underlying policy that eligible jurors who *can* perform jury service—with or without disability-related accommodations, including auxiliary aids or services—not be excused due solely to their disability. The advisory committee also favored the rule of court approach rather than be subject to legislative direction in this area as it would provide the council increased flexibility by allowing for the possibility of amendments to the rule in the future for any needed refinements.

Implementation Requirements, Costs, and Operational Impacts

The proposed rule would result in one-time costs for education and training for jury management staff regarding implementation of the new process. However, these costs should not be substantial and would be outweighed by increased efficiencies in the courts' jury management system by reducing the staff time and paperwork associated with issuing repeated summonses for individuals who are incapable of performing jury service and processing their resulting undue hardship excuse requests.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- Should the Judicial Council create any optional or mandatory forms to assist in implementation of the proposed rule?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so please quantify.
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Cal. Rules of Court, rule 2.1009, at pages 6–8

Rule 2.1009 of the California Rules of Court would be adopted, effective January 1, 2019, to read:

Rule 2.1009. Permanent medical excuse from jury service

(a) Definitions

As used in this rule:

- (1) “Applicant” means a person with a disability or his or her authorized representative.
- (2) “Authorized representative” means a conservator, agent under a power of attorney (attorney-in-fact), or any other individual designated by the person with a disability.
- (3) “Capable of performing jury service” means a person can pay attention to evidence, testimony, and other court proceedings for up to six hours per day, with a lunch break and short breaks in the morning and afternoon, with or without disability-related accommodations, including auxiliary aids and services.
- (4) “Health care provider” means a doctor of medicine or osteopathy, podiatrist, dentist, chiropractor, clinical psychologist, optometrist, nurse practitioner, nurse-midwife, clinical social worker, or physician’s assistant authorized to practice by the state and performing within the scope of the practice as defined by state law, or a Christian Science practitioner.
- (5) “Permanent medical excuse” means a release from jury service granted by the court to a person with a disability whose condition is unlikely to resolve and who, with or without disability-related accommodations, including auxiliary aids or services, is not capable of performing jury service.
- (6) “Persons with disabilities” means individuals covered by Civil Code section 51 et seq., the Americans With Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), or other applicable state and federal laws. This definition includes persons who have a physical or mental medical condition that limits one or more of the major life activities, have a record of such a condition, or are regarded as having such a condition.

(b) Policy

- (1) This rule is intended to allow a person with a disability whose condition is unlikely to resolve and who is unable for the foreseeable future to serve as a juror to seek a permanent medical excuse from jury service. This rule does not impose limitations on or invalidate the remedies, rights, and procedures accorded to persons with disabilities under state or federal law.

(2) It is the policy of the courts of this state to ensure that people with disabilities have equal and full access to the judicial system, including the opportunity to serve as jurors. No eligible juror who can perform jury service, with or without disability-related accommodations, including auxiliary aids or services, may be excused from jury service due solely to his or her disability.

(c) Process for requesting permanent medical excuse

The process for requesting a permanent medical excuse from jury service is as follows:

- (1) An applicant must submit to the court a written request for permanent medical excuse with a supporting letter, memo, or note from a treating health care provider. The supporting letter, memo, or note must be on the treating health care provider's letterhead, state that the person has a permanent disability that makes the person incapable of performing jury service, and be signed by the provider.
- (2) The applicant must submit the request and supporting letter, memo, or note to the court's jury management office on or before the date the person is to appear for jury service.
- (3) In the case of an incomplete application, the court may require the applicant to furnish additional information in support of the request for permanent medical excuse.
- (4) The court must keep confidential all information concerning the request for permanent medical excuse, including any accompanying request for disability-related accommodation, including auxiliary aids or services, unless the applicant waives confidentiality in writing or the law requires disclosure. The applicant's identity and confidential information may not be disclosed to the public but may be disclosed to court officials and personnel involved in the permanent medical excuse process. Confidential information includes all medical information pertaining to the applicant, and all oral or written communication from the applicant concerning the request for permanent medical excuse.

(d) Response to request

The court must respond to a request for a permanent medical excuse from jury service as follows:

- (1) The court must promptly inform the applicant in writing of the determination to grant or deny a permanent medical excuse request.

- (2) If the request is granted, the court must remove the person from the rolls of potential jurors as soon as it is practicable to do so.
- (3) If the request is denied, the court must provide the applicant a written response with the reason for the denial.

(e) Denial of request

Only if the court determines the applicant failed to satisfy the requirements of this rule may the court deny the permanent medical excuse request.

(f) Right to reapply

A person whose request for permanent medical excuse is denied may reapply at any time after receipt of the court's denial by following the process in (c).

(g) Reinstatement

A person who has received a permanent medical excuse from jury service under this rule may be reinstated to the rolls of potential jurors at any time by filing a signed, written request with the court that the permanent medical excuse be withdrawn.