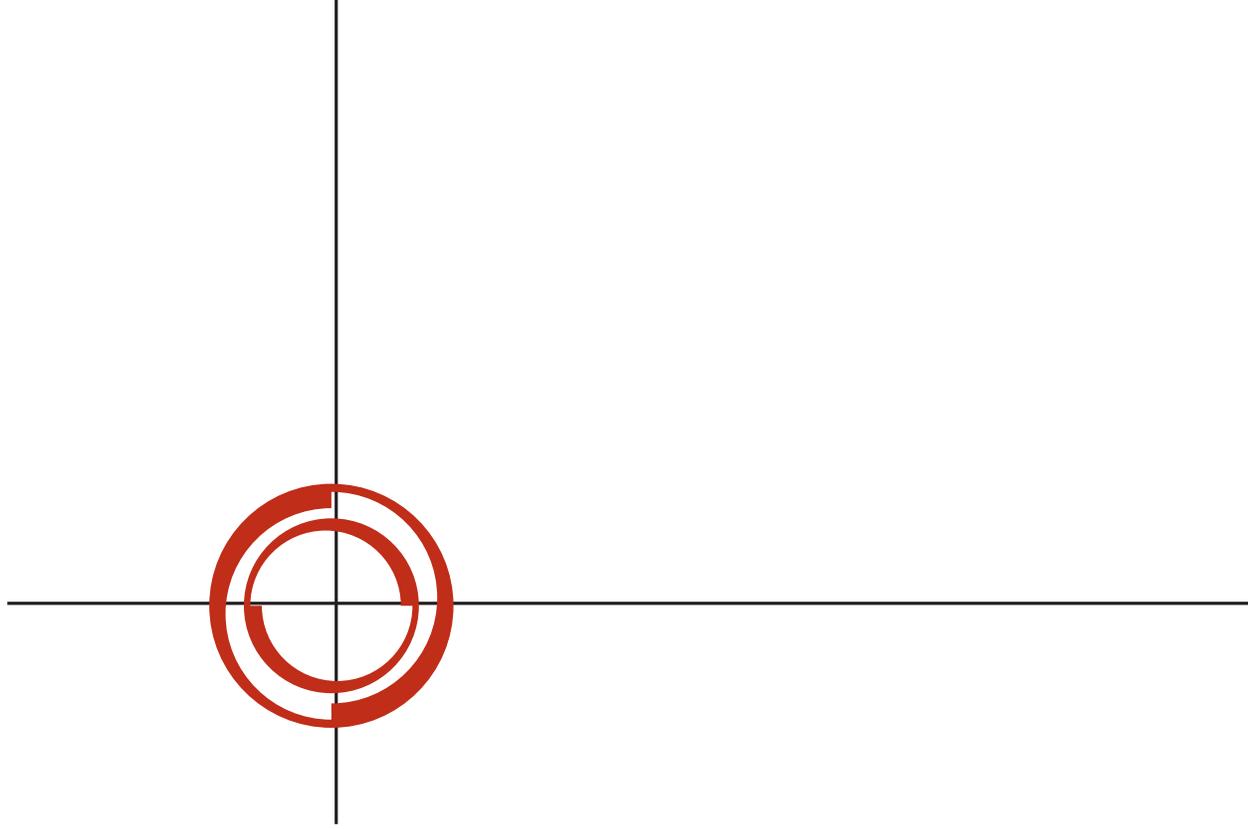




Failure to Appear Toolkit: Increasing Jury Service Participation



ADMINISTRATIVE OFFICE
OF THE COURTS



Failure to Appear Toolkit:
Increasing Jury Service Participation



ADMINISTRATIVE OFFICE
OF THE COURTS

Judicial Council of California
Administrative Office of the Courts
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The right to a trial by jury lies at the heart of our American judicial system. The superior courts of California have made many efforts to improve jury service. This guide suggests two methods that courts can use to handle delinquent jurors, along with advice for establishing a clear and efficient program to address jurors who fail to appear for jury service and suggestions for communicating about the program with the public.

Jurors who fail to appear when summoned for jury service pose a continuing challenge for California's courts. The percentage of jurors failing to appear for jury service in California has been estimated at 24 percent statewide (as of 2008).

Jurisdictions with high failure to appear (FTA) rates should be particularly concerned about how the court and the community may be affected by delinquent jurors. These jurors can place heavy burdens on court administration and on members of the public who regularly answer the call to serve. In addition, following up with jurors who fail to appear on their jury summonses encourages respect for the court's orders and processes.

Experience has shown that many delinquent jurors who initially fail to appear for jury service ultimately make good jurors. Many delinquent jurors simply do not understand how important their service is to the smooth functioning of the judicial system. Sometimes people are apprehensive about serving and about other aspects of the process, or they intend to appear but let life distract them from fulfilling their obligations. In addition, people who respond to follow-up efforts by the court sometimes are not eligible or have legal hardships. Nevertheless, this should not deter courts from actively seeking compliance.

Research indicates that jurisdictions that effectively use follow-up procedures to contact delinquent jurors and compel them to serve have increased summons response rates. ¹ In fact, the single biggest predictor of response to a jury summons is whether prospective jurors believe that failing to appear will result in negative consequences. ²

This guide has been produced to help courts develop a legally sound and efficient process for dealing with jurors who do not appear for service. As noted below, a high level of compliance can be obtained through communication and education, while the court may reserve penalties as options of last resort.

PURPOSE

The Judicial Council of California has identified jury service compliance as one of its strategic plan policies and operational plan objectives. Code of Civil Procedure section 191 states, “The Legislature recognizes that trial by jury is a cherished constitutional right, and that jury service is an obligation of citizenship. It is the policy of the State of California that all persons . . . serve as jurors when summoned for that purpose. . . .” California Rules of Court, rule 2.1008(a) provides, “Jury service, unless excused by law, is a responsibility of citizenship. *The court and its staff must employ all necessary and appropriate means to ensure that citizens fulfill this important civic responsibility.*” (Emphasis added.)

The following are additional goals of the program:

- To increase the number of people appearing for jury duty;
- To provide as fair a cross-section of the community as possible to litigants in jury trials;
- To deter FTAs by others and prevent future FTAs by the same delinquent jurors; and
- To educate delinquent jurors about the importance of jury service and their civic obligation.

Two methods for handling delinquent jurors are presented in this guide, allowing jurisdictions to decide which option to use. This guide includes the following elements for each alternative:

- Step-by-step guidelines for dealing with delinquent jurors;
- Sample correspondence and notices of delinquency;
- Sample forms relating to orders to show cause and contempt or sanctions hearings;
- Sample scripts for judges and court personnel; and
- A sample press release to alert the public about an FTA program.

MODEL FTA PROGRAMS OVERVIEW

Courts can use section 209 of the California Code of Civil Procedure as the basis for creating failure to appear programs for delinquent jurors. Section 209 provides for the following two enforcement alternatives:

- “Contempt” alternative: A court may find a delinquent prospective juror in contempt of court, which is punishable by fine or incarceration. (See Code Civ. Proc., § 209(a).)
- “Sanctions” alternative: After giving a prospective juror at least 12 months to respond to an initial summons, a court may impose reasonable monetary sanctions in lieu of a finding of contempt. (See Code Civ. Proc., § 209(b).)

CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 209

(a) Any prospective trial juror who has been summoned for service, and who fails to attend as directed or to respond to the court or jury commissioner and to be excused from attendance, may be attached and compelled to attend. Following an order to show cause hearing, the court may find the prospective juror in contempt of court, punishable by fine, incarceration, or both, as otherwise provided by law.

(b) In lieu of imposing sanctions for contempt as set forth in subdivision (a), the court may impose reasonable monetary sanctions, as provided in this subdivision, on a prospective juror who has not been excused pursuant to Section 204 after first providing the prospective juror with notice and an opportunity to be heard. If a juror fails to respond to the initial summons, the court may issue a second summons indicating that the person failed to appear in response to a previous summons and ordering the person to appear for jury duty. The second summons may be issued no earlier than 90 days after the initial failure to appear. Upon the failure of the juror to appear in response to the second summons, the court may issue a failure to appear notice informing the person that failure to respond may result in the imposition of money sanctions. If the prospective juror does not attend the court within the time period as directed by the failure to appear notice, the court shall issue an order to show cause. Payment of monetary sanctions imposed pursuant to this subdivision does not relieve the person of his or her obligation to perform jury duty.

(c) (1) The court may give notice of its intent to impose sanctions by either of the following means:

(A) Verbally to a prospective juror appearing in person in open court.

(B) The issuance on its own motion of an order to show cause requiring the prospective juror to demonstrate reasons for not imposing sanctions. The court may serve the order to show cause by certified or first-class mail.

(2) The monetary sanctions imposed pursuant to subdivision (b) may not exceed two hundred fifty dollars (\$250) for the first violation, seven hundred fifty dollars (\$750) for the second violation, and one thousand five hundred dollars (\$1,500) for the third and any subsequent violation. Monetary sanctions may not be imposed on a prospective juror more than once during a single juror pool cycle. The prospective juror may be excused from paying sanctions pursuant to subdivision (b) of Section 204 or in the interests of justice. The full amount of any sanction paid shall be deposited in a bank account established for this purpose by the Administrative Office of the Courts and transmitted from that account monthly to the Controller for deposit in the Trial Court Trust Fund, as provided in Section 68085.1 of the Government Code. It is the intent of the Legislature that the funds derived from the monetary sanctions authorized in this section be allocated, to the extent feasible, to the family courts and the civil courts. The Judicial Council shall, by rule, provide for a procedure by which a prospective juror against whom a sanction has been imposed by default may move to set aside the default.

PROGRAM ALTERNATIVES

The decision to choose one program over the other may be based on a number of factors, including human and financial resources, the annual number of delinquent jurors in a particular jurisdiction, and the organizational culture of the court. The following alternatives reflect step-by-step processes drawn primarily from the Superior Court of San Joaquin County’s FTA program, called the Jury Service Compliance and Education Program, and the Superior Court of Los Angeles County’s FTA program, called the Juror Sanctions Program.

The Superior Court of San Joaquin County runs what could be called a “contempt last” program. Through correspondence and an informal hearing called the “Come See the Judge hearing,” summoned jurors are given multiple opportunities to clear their delinquency. Jurors may avoid a fine at any step during the process before the issuance of an order to show cause (OSC). Jurors must complete their jury service whether or not a fine is imposed.

While incarceration is included as an alternative punishment under Code of Civil Procedure section 209(a), it is strongly discouraged. The Superior Court of San Joaquin County has never incarcerated a delinquent juror for failing to appear for jury duty. When a court suggests jail as a potential punishment or ultimately imposes jail as punishment for a juror’s failure to appear, an attorney must be appointed to represent the delinquent juror at all stages of the proceeding if the juror cannot afford to hire one. If a delinquent juror is ultimately incarcerated, it is likely he or she will be released early because California’s jails are overcrowded and there is insufficient room for people charged with or convicted of violent crimes.

Furthermore, negative publicity and negative public opinion will likely result from media coverage of incarcerated jurors. As previously stated, sending delinquent jurors to jail has not been field-tested by the Superior Court of San Joaquin County or any other California superior court and is not recommended as a method of punishment.

The sanctions alternative used in the Superior Court of Los Angeles County also offers nonresponding jurors many opportunities to respond to the initial summons and complete jury service without imposition of a fine before appearing for an OSC hearing.

The steps that compose each court’s program have been reviewed by the Administrative Office of the Courts’ Office of the General Counsel, are within the guidelines of section 209, and have been field-tested, emerging as beneficial practices.

Section 209(a): The Contempt Alternative

Superior Court of California, County of San Joaquin
Jury Service Compliance and Education Program

Step 1—First Notice of Delinquency: FTA Notice Card or Letter

Step 2—Second Notice of Delinquency: Come See the Judge Letter

Step 3—Come See the Judge Hearing

Step 4—Third Notice of Delinquency: Final Warning Letter

Step 5—Service of Order to Show Cause

Step 6—Order to Show Cause Arraignment Hearing

Step 7—Contempt Hearing

Many of the above steps rely on an effective system of correspondence between the court and the juror. By following these steps, courts can achieve a high rate of compliance without holding contempt hearings or imposing fines. The correspondence discussed below is generated automatically by the court's jury management system (JMS).

■ **Step 1—First Notice of Delinquency: FTA Notice Card or Letter**

An FTA notice (first notice of delinquency) is sent to jurors 10 days after they fail to appear on the initial summons. This mailing serves a dual purpose: it informs jurors that they have failed to respond properly to a summons, and it instructs them to contact the court to schedule a new time to serve. The FTA notice is diplomatic in tone but clearly states the possible penalties for failing to appear as originally instructed. It redirects the juror to the original summons for instructions about reporting, including the option of requesting an excuse or postponing service to a more convenient time. If a juror requests an excuse and is denied, the juror will be notified and directed to contact the jury commissioner's office to schedule a time to serve. (See Appendix A for a sample of the FTA notice card.)

■ **Step 2—Second Notice of Delinquency: Come See the Judge Letter**

If the court receives no response to the FTA notice within 30 days, or if jurors fail to respond to the court's notification that denies their excuse or disqualification from jury service, the court then follows up with a letter by certified or first-class mail ordering the juror to appear before a judge on a certain date, usually within another 30 days. This letter, referred to as the Come See the Judge letter, is stronger in tone, reiterating possible penalties that no-show jurors may face and emphasizing ways to remedy the situation. In order to avoid appearing before the judge, delinquent jurors are urged to contact the jury commissioner's office to schedule a date for completing service or explain why they should not serve. As an option, courts may proceed directly to step 4. The Come See the Judge letter, however, is reported by the Superior Court of San Joaquin County to be the most important component of its program. This letter results in a high rate of response without significant additional effort. (See Appendix B for a sample of the Come See the Judge letter.)

■ **Step 3—Come See the Judge Hearing**

The Come See the Judge hearing is an informal hearing that is distinguishable from an order to show cause hearing because it allows delinquent jurors a non-sanctions-based, in-person opportunity to arrange service or explain why they cannot serve. It also provides the judge or a representative of the jury commissioner's office an opportunity to educate delinquent jurors about the importance of jury service.

Before the Come See the Judge hearing begins, delinquent jurors can be given an informational hand-out that outlines the laws pertaining to jury service, including the law prohibiting employer retaliation. (See Appendix C, Laws Pertaining to Jury Service.) The judge or jury staff then begins with remarks emphasizing the important role jury service plays in our justice system. These remarks are intended to motivate as many people as possible to serve. (See Appendix D for scripts for the judge and jury commissioner staff, including a sample “Civic Duty” speech and an Order and Judgment of Contempt.) The judge may then either meet with jurors or leave the bench while jury commissioner staff proceeds with a more informal, face-to-face meeting. The judge need only return to the bench to deal with the occasional problem juror.

Before leaving the bench, the judge should warn the jurors that a directive given by jury commissioner staff is an order of the court and that failure to comply could result in further grounds for contempt. Next, staff can inform the delinquent jurors about the one-day or one-trial rule of court (Cal. Rules of Court, rule 2.1002(c)) and the potential penalties of continued failure to serve. Staff can then survey the courtroom and immediately order those who wish to complete service to appear for a specific date and time. Thereafter, staff can hear requests for excuse or disqualification. Staff will then release jurors with legally sufficient reasons for why they cannot serve. The proceedings will be reported by the court reporter. This record will be available in case a juror who is given a date to report to jury service fails to do so and a contempt hearing is later held.

■ **Step 4—Third Notice of Delinquency: Final Warning Letter**

If delinquent jurors do not respond to the court’s first four attempts to contact them (this includes the initial summons), the court will send one last mailing 30 days after the Come See the Judge hearing. The court will send a final warning letter by certified or first-class mail that serves as a final notice, accompanied by a blank order to show cause. (See Appendix E for a sample final warning letter and blank OSC.) The final warning letter is less conciliatory than either the FTA notice or the Come See the Judge letter, and it catalogs the steps that have been taken by the court to contact the juror and the subsequent failures by the juror to comply. In large bold letters, it also warns the delinquent juror that failure to comply may result in a fine. The juror is strongly urged to contact the jury commissioner’s office to remedy the situation and avoid the service of an order to show cause by a sheriff’s deputy at the juror’s home or place of business. A blank OSC is included to emphasize the seriousness of the matter but has no legal significance; its inclusion is optional.

■ **Step 5—Service of Order to Show Cause**

Before preparing orders to show cause, staff review each case of delinquency to make sure the court has not erred in summoning these jurors (e.g., the delinquency is not the result of duplicate names on the master list, a failure to note a juror’s already completed service, a deceased juror, etc.). Because of the time and resources involved with handling each case of juror delinquency, courts may choose to serve OSCs on only a limited number of those who have failed to respond to the three previous notices (the FTA notice, the Come See the Judge letter, and the final warning letter), provided that those who are selected are drawn at random (using jury management software, for example). Generally

speaking, only a small number of delinquency cases need result in orders to show cause. The number of OSCs will vary from county to county, depending on the availability of the sheriff's and the court's resources. Based on the experience of the Superior Court of San Joaquin County, a high level of compliance will be achieved before initiating contempt proceedings if steps 2, 3, and 4 are followed.

Sheriff's deputies are given two versions of the OSC for each delinquent juror: one for personal service and an alternative version for "knock and nail" service. A knock and nail OSC is left at the juror's residence when personal service cannot be achieved. The personal service OSC includes a warning that failure to appear will result in the issuance of a warrant of attachment under Code of Civil Procedure sections 1212–1215. Because a warrant of attachment cannot be issued unless the delinquent juror is personally served, this warning is omitted from the knock and nail version of the OSC. However, many people respond to the knock and nail OSC and appear at their contempt arraignment even without the warning pertaining to the warrant of attachment. (See Appendix F for a sample personal service OSC. See Appendix G for a sample knock and nail OSC.)

Courts may also consider developing guidelines for sheriff's deputies so that they do not serve OSCs on people who clearly are not able to serve or who are ineligible to serve because they:

- Do not speak English;
- Are not citizens;
- Are not 18 years of age or older;
- Are obviously severely physically or mentally disabled; or
- Have been convicted of a felony, which has been verified by the deputy.

Deputies who determine any of the above can withhold service and report back their findings on a Proof of Service form that also accommodates reporting of excuses and disqualifications from jury service. (See Appendix H for a sample Proof of Service and Excusal Report Declaration.)

■ Step 6—Order to Show Cause Arraignment Hearing

Delinquent jurors must appear for arraignment on contempt of court at the OSC arraignment hearing. (See Appendix I for judge's OSC arraignment scripts.)

Upon arrival in the courtroom, each delinquent juror should be given a declaration from jury staff stating the facts outlining their noncompliance and identifying counts of contempt—one for the failure to appear on the original jury summons and one for failure to appear at the Come See the Judge hearing as ordered in the Come See the Judge letter. (See Appendix J for sample jury commissioner declarations.) The judge may wish to provide the informational handout that outlines the laws pertaining to jury service and give a short talk about the importance of jury service. (See Appendix C for sample Laws Pertaining to Jury Service and Appendix D for a sample Civic Duty speech.) This discussion usually causes jurors to realize the seriousness of their failure to appear and results in jurors indicating a desire to resolve their cases without a formal hearing. The delinquent jurors are then advised of their rights and given two options: (1) set the matter for a formal contempt hearing or (2) resolve the case by pleading guilty, completing service, and paying a fine.

The judge may issue a warrant of attachment and set bail for those delinquent jurors who were personally served and failed to appear for the OSC hearing. An effective procedure is to call the names of those who have failed to appear for the arraignment before the beginning of the hearing, issue warrants for the absentee jurors, and order bail. This impresses the importance of the matter on those who are in attendance before their arraignments. (See Appendix K for a sample warrant of attachment.)

If the court indicates that jail is a possible sentence, an attorney must be appointed to represent indigent jurors. Therefore, it is recommended that the court inform defendants present at the arraignment hearing that no jail time will be imposed. An attorney need not be appointed if the penalty imposed is only a fine.

Most delinquent jurors who make it to this step agree to resolve their cases without a formal hearing. Some will demonstrate to the court legitimate reasons why they did not respond, hardship reasons why they should not serve, or other reasons why they are not eligible to serve. Many will plead guilty, agree to pay an indicated fine, and complete jury service. The latter outcome is particularly true when the court emphasizes the role of jury service in our democracy during opening remarks to the group.

Delinquent jurors are ordered to report for jury service on a specific date. It is important to emphasize throughout the process that completion of jury service is the ultimate requirement for resolution of the matter and is the primary goal of this FTA program. Even if fines are not imposed because a juror demonstrates good reasons for failing to appear, jury service is still ordered. If a fine is imposed, the court must issue a written judgment of contempt. The amount of the fine should be at least high enough to recoup the cost of personal service by the sheriff's office. (See Appendix L for sample boilerplate judgments and orders to appear for jury service to be used for testimony at the OSC arraignment.)

Delinquent jurors who request a contempt hearing are ordered to return on another day. They are also ordered to appear for jury service before the date of their contempt hearing. If they again fail to report for jury service as ordered, that failure is consolidated with the other contempt counts to be heard at the contempt hearing. A designated jury staff person must be notified of the date set for the contempt hearing and be prepared to testify about the juror's summons history. It is the Superior Court of San Joaquin County's experience that most jurors who request a hearing will return to court on the day set for the hearing, plead guilty, waive the contempt hearing, and pay the previously indicated fine.

■ Step 7—Contempt Hearing

The authority for these procedures is set forth in sections 209 and 1209–1221 of the Code of Civil Procedure. Contempt under section 1218 is punishable by five days in jail or a fine of up to \$1,000. Delinquent jurors who request a formal contempt hearing are ordered to return for a hearing at a date at least three weeks from the date of the arraignment on the OSC. Delinquent jurors possess some of the rights of a criminal defendant, such as the right against self-incrimination, the right to present evidence and summon witnesses, and the right to be represented by an attorney if they can afford to hire one. A court is not required to provide a delinquent juror with court-appointed counsel unless the judge has threatened the juror with incarceration as punishment. As previously stated, incarceration is strongly discouraged.

Failure to appear when summoned for jury service and when ordered to appear at the Come See the Judge hearing in step 3, and failure to report for jury service as ordered in step 6, are treated as indirect contempt. Indirect contempt occurs when the conduct underlying the contempt takes place outside the presence of the judge. Such contempt cannot be dealt with immediately, so the separate contempt hearing is required.

Each respondent in an indirect contempt action is entitled to an evidentiary hearing. At such a hearing, jury staff will testify about the history of summoning and correspondence with the juror, i.e., the conduct that took place outside the presence of the judge. The delinquent juror may present evidence as well. In general, the testimony of the designated jury staff person should track what is set forth in the contempt declaration. (See Appendix M for a contempt hearing checklist script for judges.) If the delinquent juror is found in contempt, the judge should complete the judgment of contempt, ensuring the defendant receives a copy. (See Appendix N for sample contempt judgments after hearing.)

In practice, the need for a formal contempt proceeding should be very rare if the many opportunities to comply with jury service obligations described previously are offered to jurors. Most individuals resolve their cases by completing jury service before the hearing.

Section 209(b): The Sanctions Alternative

Superior Court of California, County of Los Angeles
Juror Sanctions Program

Step 1—First Notice of Delinquency: Sanctions Summons or Postcard

Step 2—Failure to Appear Notice

Step 3—Order to Show Cause

Step 4—Order to Show Cause Hearing

The Superior Court of Los Angeles County’s Juror Sanctions Program targets potential jurors who have failed to respond to their summons when 12 months have passed from the original date of service listed on the juror’s original summons and the juror has not responded to the court. The program is fully automated—all notices and calendars are generated by the court’s Jury Management System (JMS).

■ Step 1—First Notice of Delinquency: Sanctions Summons or Postcard

Once per month, the Superior Court of Los Angeles County randomly selects 10–15 percent of non-responding jurors to receive a “Sanctions Summons.” (See Appendix O for a sample Sanctions Summons.) Jurors who are not selected to receive a Sanctions Summons are selected to receive a strongly worded Failure to Respond Postcard notice instructing them that they must complete jury service immediately. The Failure to Respond Postcard program is a separate and distinct program from the Sanctions Program under section 209(b). (See Appendix P for a sample postcard notice.)

The steps described below pertain to those jurors who receive a Sanctions Summons.

Although this step is not required, Code of Civil Procedure section 209(b) authorizes the court to send a second summons in the form of a Sanctions Summons, informing jurors about their failure to respond no earlier than 90 days after the initial failure to appear. Given the large size and population of Los Angeles County, the court waits until 12 months have passed before sending a Sanctions Summons. This summons resembles the initial summons but states that it is a second notice of the juror's obligation to serve and includes a warning that failure to respond will result in the issuance of an OSC notice. Jurors at this stage of the sanctions process are allowed to postpone their service, request an excuse, or transfer to another district courthouse in Los Angeles County. Transfers are rare and are granted according to local court policy. If jurors fulfill their obligations at this point, no further action is taken. Scheduling accommodations for all prospective jurors is permitted by law under rule 2.1004 of the California Rules of Court.

Jurors who respond to the Sanctions Summons by registering for jury service but ultimately fail to appear, and who have postponed their jury service past the OSC date for the district to which they have been summoned, have their names placed in a holding file and are required to attend an OSC hearing the following year.

Smaller courts may want to issue a Sanctions Summons to all jurors who fail to appear for service instead of to a random subset of these jurors. It is ultimately up to the court to decide how many jurors should be included in the Sanctions Program.

■ **Step 2—Failure to Appear Notice**

Section 209(b) also authorizes, but does not mandate, the court to send a failure to appear notice to jurors who have failed to appear for jury service. The FTA notice serves as a last warning before the OSC notice. If 30 calendar days have passed from the postmark date on the Sanctions Summons and the juror still has not responded or completed jury service, the court sends an FTA notice by first-class mail. The FTA notice informs jurors that monetary sanctions may be imposed and that they should appear personally in the jury commissioner's office within 30 days. A juror who responds to the FTA notice by appearing personally before court staff is given a new jury service date and is required to serve.

At this stage, jurors have the opportunity to request a limited deferment for no more than 30 calendar days from the mailing of the FTA notice, an excuse, or a transfer of their service to a different court location. It is important to explain to jurors that failure to complete jury service on the deferral date will result in an OSC hearing. (See Appendix Q for a sample FTA notice.) If the juror fails to respond to the FTA notice within 30 calendar days of the date of service, an OSC notice is served. If the juror does not respond to the OSC notice and the court receives acknowledgment of service, the juror is placed on the OSC calendar.

■ **Step 3—Order to Show Cause**

Section 209(b) mandates the issuance of an order to show cause notice. If jurors fail to appear on their limited deferment date or fail to respond to the FTA notice, they receive an OSC notice sent

by certified mail, with return receipt requested. If a juror fails to respond to the OSC notice and the court receives a certified mail receipt back from the post office, that juror is placed on the OSC calendar. If a certified mail return receipt is not returned to the court—a possible indication that a juror has not received the notice—the court will proceed no further. (See Appendix R for a sample OSC.)

The OSC notice sets forth the number of times and the dates the court has given the juror notice to appear for jury service and gives the delinquent juror the option of appearing for jury service on a “date certain”—a “last chance” date—or of appearing for an OSC hearing on a different date. Jurors must report in person on the last chance date assigned them by the court. Jurors arriving for jury service on their assigned dates will complete a new qualification questionnaire that is then processed and entered into the court’s JMS. Once the qualification questionnaire has been processed through the court’s JMS, the system deletes that juror from the OSC calendar. Based on his or her responses to the qualifications questionnaire, the court will determine whether the juror is to be excused based on a legal excuse or allowed to postpone service.

■ **Step 4—Order to Show Cause Hearing**

This step resembles the procedure described in step 6 of the San Joaquin contempt program; however, certain procedures are different. For instance, in the Superior Court of San Joaquin County, OSC arraignment hearings are conducted twice a month in the court’s central branch in Stockton. By contrast, the Superior Court of Los Angeles County has 12 judicial districts. Each judicial district conducts OSC hearings during one month per year. Hearings are scheduled for one day each week for a total of four days per month.

Sanctions staff are required to attend and testify at all OSC hearings. Delinquent jurors are required to appear in person. Jurors may elect to retain private counsel but, as these proceedings are civil in nature, jurors are not appointed public counsel. Most jurors choose not to retain private counsel.

All OSC jurors are ordered to appear in the trial department conducting the OSC hearings one hour before the scheduled hearing and to complete new summons/qualification questionnaires. Superior Court of Los Angeles County jury staff have been given the authority to process jurors who personally appear at the hearing and to review their legal qualifications for service. This local delegation of authority is made by judges for policy reasons to expedite OSC calendar calls and more efficiently serve jurors who have responded to FTA notices. Before the court’s calendar call at the OSC hearing, jury staff process jurors who are not legally qualified for service. All people who do not meet the qualifications for service are removed from the OSC calendar and their status is updated in the JMS. All jurors who are qualified to serve and indicate that they are willing to serve before the hearing begins are scheduled for a specific date and removed from the OSC calendar. Jurors who appear before the judge are typically legally qualified to serve but believe that they have a legitimate reason for not serving. These individuals—even those with legally sufficient reasons to be excused—must explain to the court during the OSC hearing why they failed to respond to previous notices.

Once all unqualified jurors are excused, the judge begins the proceeding. The clerk swears in the jurors and the staff. As the judge calls each matter, the jury staff will respond to the judge’s questions and

place on the record the dates when each summons or notice was sent, as well as when the return receipt was received by the court. At the hearing, the judge explains the civic importance of jury service and gives each juror the opportunity to explain why he or she did not respond when summoned to appear for jury service. Based on the information provided by the staff, and the juror's responses to the court's questions, the court will determine whether the juror is to be excused based on a legal excuse, or deferred and ordered to serve, and the amount of money, if any, that the juror will be sanctioned.

All OSC jurors who have no legal excuse for failing to perform jury service are ordered by the court to complete jury service on a particular date. The judge also enters an order to pay sanctions and imposes a monetary sanction. Payment of the sanction may be stayed pending completion of jury service; the sanction will be vacated upon completion. Jurors who have not responded because of incomplete delivery of a summons, an incorrect address, or the presence of mitigating circumstances, etc., are still required to complete jury service and are usually sanctioned pending their service.

For those delinquent jurors who fail to appear for jury service on the last chance date or do not appear for the OSC hearing, the judge will make a finding of the juror's failure to appear and enter an order to pay stating that the signed U.S. Postal Service return receipts constitute proof of service. These delinquent jurors are sanctioned according to Code of Civil Procedure section 209(c)(2). Under section 209(c)

(2), the judge may enter an order to pay and impose \$250 for the first violation, \$750 for the second violation, and \$1,500 for third and subsequent violations.

After the judge makes a finding on the record, the court's order to pay is recorded by staff and processed using the JMS. Each week, the JMS automatically generates a file that is sent to an outside service provider to print and mail an order to pay to each juror who is sanctioned. (See Appendix S for a sample order to pay.) If the juror fails to pay the order within 30 days, the order is forwarded to a collections agency for management. The collections agency attempts to locate the juror and put him or her in contact with the court so that the juror can complete jury service. Sanctions are vacated after service is complete. Compliance with jury service is always required.

In the Superior Court of Los Angeles County, some judges who conduct OSC hearings issue a blanket order to jury staff that allows staff to vacate OSC fines against a nonresponding juror if the juror sends to the court an affidavit indicating that he or she is unqualified to serve, or the juror completes his or her service at a later time—for example, those who finally complete jury service after receiving the order to pay. This type of order is entered at the discretion of the judge and does not require a separate appearance for a juror to request that sanctions be set aside. Some judges, however, prefer that jurors appear in court when seeking to vacate sanctions.

“All OSC jurors who have no legal excuse for failing to perform jury service are ordered by the court to complete jury service on a particular date.”

Motion to Set Aside Sanctions and Order

If a court uses the sanctions alternative, it is important to know that rule 2.1010³ of the California Rules of Court provides that an individual against whom sanctions have been imposed by default under section 209(b) may move to set aside the sanctions. The court must provide notification of this rule to the person against whom sanctions have been imposed. (See Appendix T for a copy of rule 2.1010.) In Los Angeles County, notification of rule 2.1010 is provided on the order to pay and on the court's Web site. The juror is advised that he or she may print the form from the court's Web site.

No such motion is required when a contempt fine has been imposed under section 209(a).

A motion to set aside sanctions imposed by default is made by completing and filing with the court a *Juror's Motion to Set Aside Sanctions and Order* (form MC-070). (See Appendix U for a copy of form MC-070.) The motion must be brought no later than 60 days after sanctions have been imposed. The motion must contain a short and concise statement of the reasons the prospective juror was not able to attend when summoned for jury service and any supporting documentation.

The court may decide the motion with or without a hearing. If the motion demonstrates good cause, a court must set aside sanctions. However, the person remains a prospective juror and must complete jury service; nothing in this rule relieves a prospective juror of the obligation to serve.

OVERCOMING BARRIERS TO JUROR PARTICIPATION

When considering implementing an FTA program, courts should also examine the full range of procedures they use to summon jurors. Courts may find that greater participation is unintentionally limited by court procedures that are confusing or unclear. Factors contributing to a jurisdiction's FTA rate may include: (1) jurors not completing and returning the summonses to inform the court that they are ineligible to serve, (2) summonses never reaching prospective jurors, or (3) jurors unable to reach someone at the court who can assist them when they have questions.

Courts should review all aspects of the summoning process to ensure that jurors are given ample means and support to fulfill their service obligations. Strategies to facilitate juror participation include the following:

- A clear and carefully designed jury summons;
- Maintaining an up-to-date master list that is carefully purged of duplicate names and that has undergone national change-of-address processing;
- Toll-free numbers for jurors to use in contacting the courts;
- Customer-friendly and easy-to-use interactive voice and Web response systems;
- Well-organized and carefully planned Web sites with complete information about answering a summons, as well as answers to frequently asked questions;
- Well-trained, customer-friendly staff who are available to help jurors complete their service satisfactorily; and

- Judges and court staff who apply rules and procedures governing hardship excuses consistently and encourage deferments as a solution to temporary or marginal hardships rather than excusing jurors outright.

OTHER CONSIDERATIONS

Whether a court chooses to implement or has already implemented an FTA program, the court should consider whether procedures and guidelines are clear to staff responsible for administering the FTA program and whether staff understand the purpose and philosophy behind the program.⁴

FIRST IMPRESSIONS ARE CRITICAL

Establishing a program to follow up with delinquent jurors will affect juror compliance no matter which alternative a court uses—contempt or sanctions. It is critical to remember, however, that the initial jury summons plays a vital role in encouraging jurors to serve.

A jury summons is often the public's first point of contact with the court. Thus, it must be designed to establish a positive first impression that fosters compliance. The summons should be easy to read and include information that is easily comprehensible. In order to help courts design more user-friendly jury summonses, the Task Force on Jury System Improvements and the Administrative Office of the Courts have created a model jury summons that has been professionally designed to improve appearance, enhance readability, and establish a positive first impression with jurors. The model summons can be a critical tool in improving service to the public and trust and confidence in the courts. More and more courts are using it to reach jurors effectively.

ROLE OF THE JURY MANAGER

Teamwork among the jury manager and jury staff is crucial in creating a good impression of the courts and encouraging compliance with jury summonses. Jury staff are typically the second point of contact (after the jury summons) that potential jurors have with the courts. By prominently featuring jury staff contact information on local court Web sites and by asking staff to respond efficiently to juror requests or questions, the court can make it more likely that jurors will be encouraged to respond to summonses and appear for jury service.

Under both programs, jury managers are required to appear in court at the OSC hearing or contempt hearing stages and to testify concerning the actions of the jury office and the inaction of the delinquent juror. It is vital that jury managers are trained on the court's procedures and are prepared before the hearing.

The judge is the primary actor in these proceedings; the jury manager serves as a witness only. The judge asks all questions of the jury manager and of the delinquent juror about his or her failure to respond to the summons. In contempt hearings, the juror may ask the jury manager questions.

WORKING WITH THE MEDIA

The court should develop a collegial relationship with local media to promote the business of the court, not only with respect to the management of high-profile cases and local initiatives, but especially to promote jury service within the local community to encourage higher rates of response. If a court chooses to implement an FTA program, media coverage for the inauguration of the program is essential. If media interest is generated, it may continue with future articles that cover the success of the program and any eventual contempt of court hearings. (See Appendix W for a model press release.)

At a minimum, local media contact should include the court's issuing a press release to announce that the court will be establishing or expanding a juror FTA program. Encouraging the media to attend court proceedings is effective. For courts that implement a contempt program, ride-along coverage of sheriff's office personnel serving OSCs also can be very effective. Above all, it is essential to highlight juror-friendly improvements at the courts and the importance of jury service so that the local community will understand that the FTA program is not meant to be punitive but to encourage accountability and service.

ASSESSING PROGRAM IMPACT

It is important to establish procedures to assess the impact of an FTA program, i.e., whether it has affected the behavior of delinquent jurors. At some point, court leaders, members of the public, or the media may inquire about the success or failure of an FTA program—especially if it has been previously featured in local news media. Having data that demonstrate changes in juror behavior will be important to fulfill such requests.

Establishing a mechanism for measuring impact should be planned early in the implementation process. Give careful consideration to the types of data that are needed to measure impact and demonstrate change relating to juror delinquency. This process need not be complex and time-consuming. In fact, most jury data management systems retain information about jurors who fail to appear when summoned. The court's technical support team may be able to create a report template within the jury data management system to automatically track this information. Analyzing basic information about delinquent jurors should be attainable, even with limited resources. Suggested methods of assessment are:

- Determine what data is capable of being tracked.
- Determine a baseline FTA rate by identifying the FTA rate before the establishment of a program.
- Survey delinquent jurors when they come to court to determine why they did not answer their summonses initially.
- Survey jurors periodically to determine why they answered the summonses.
- Use feedback from juror surveys to make periodic adjustments to the FTA program.
- Analyze changes in FTA rates over time, especially after the program has had time to take effect and has been publicized in local media outlets.

CONCLUSION

The information in this guide will help courts increase the number of people who report for and complete jury service and add credibility to courts' efforts to reduce the number of nonresponding potential jurors. Implementing an FTA program will help the public understand that failing to appear for jury service will be dealt with consistently and fairly.

The final report of the Judicial Council's Task Force on Jury System Improvements is a good source for additional information on recommended improvements for jury reform and management. The jury section on the California Courts Web site (www.courtinfo.ca.gov/jury) and the Serranus Web site (<http://serranus.courtinfo.ca.gov>) also provide additional materials that may be helpful.

Endnotes

1. Robert G. Boatright, *Improving Citizen Response to Jury Summonses: A Report With Recommendations* (American Judicature Society, 1998), p. 121.
2. National Center for State Courts, *The State-of-the-State Survey of Jury Improvement Efforts: A Compendium Report* (2007), p. 24.
3. At the time of publication, rule 2.1010 is scheduled to sunset on January 1, 2010. Steps have been taken to extend the sunset date.
4. At the time of publication, 21 superior courts reported that they follow up with delinquent jurors by issuing correspondence and scheduling order to show cause hearings. See Appendix V for a list of those courts and contact information.

LIST OF APPENDIXES ON CD-ROM

All appendixes are available on CD-ROM and for download from the Administrative Office of the Courts' Serranus Web site at <http://serranus.courtinfo.ca.gov/programs/jury/ci.htm>

CONTEMPT PROGRAM

- Appendix A: First Notice of Delinquency Postcard
- Appendix B: Second Notice of Delinquency: Come See the Judge Letter
- Appendix C: Jury Service Handout: Laws Pertaining to Jury Service
- Appendix D: Civic Duty Speech, Come See the Judge Hearing Scripts, and Order and Judgment of Contempt
- Appendix E: Third Notice of Delinquency: Final Warning Letter
- Appendix F: Personal Service OSC
- Appendix G: Knock and Nail Service OSC
- Appendix H: Proof of Service and Excusal Report Declaration
- Appendix I: OSC Arraignment Scripts
- Appendix J: Jury Commissioner Declarations
- Appendix K: Warrant of Attachment
- Appendix L: Contempt Judgments for Admissions at OSC Arraignment
- Appendix M: Contempt Hearing Script
- Appendix N: Contempt Judgments After Hearing

SANCTIONS PROGRAM

- Appendix O: Sanctions Summons
- Appendix P: Postcard Notice
- Appendix Q: FTA Notice/Summons for Jury Service
- Appendix R: Order to Show Cause
- Appendix S: Order to Pay Sanction
- Appendix T: California Rules of Court, rule 2.1010: Juror motion to set aside sanctions imposed by default
- Appendix U: Judicial Council Form MC-070, *Juror's Motion to Set Aside Sanctions and Order*

OTHER INFORMATION

- Appendix V: California Superior Courts: Statewide FTA Programs (as of December 15, 2008)
- Appendix W: Press Release