



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: December 12, 2014

Title	Agenda Item Type
Judicial Council–Sponsored Legislation: Monetary Sanctions Against Jurors	Action Required
Rules, Forms, Standards, or Statutes Affected Amend Code Civ. Proc., § 177.5	Effective Date December 12, 2014
Recommended by Policy Coordination and Liaison Committee Hon. Kenneth K. So, Chair Criminal Law Advisory Committee Hon. Tricia A. Bigelow, Chair	Date of Report October 29, 2014
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Executive Summary

The Policy Coordination and Liaison Committee and Criminal Law Advisory Committee propose amending Code of Civil Procedure section 177.5 to expressly include jurors in the category of persons subject to sanctions for violating a lawful court order under that section. The proposal was developed at the request of judges to eliminate any ambiguity about whether courts are authorized to sanction jurors.

Recommendation

The Policy Coordination and Liaison Committee and Criminal Law Advisory Committee recommend that the Judicial Council sponsor legislation to amend section 177.5 to add jurors to the list of persons subject to sanctions under that section.

The text of the proposed amendment to section 177.5 is attached at page 4.

Previous Council Action

None.

Rationale for Recommendation

Section 177.5 authorizes courts to impose monetary sanctions upon persons for violations of lawful court orders “done without good cause or substantial justification” in both criminal and civil cases. (*People v. Tabb* (1991) 228 Cal.App.3d 1300, 1310.) Section 177.5 states “the term ‘person’ includes a witness, a party, a party’s attorney, or both.” As such, the section does not expressly apply to jurors.

Sanctions under this section may be made on the court’s own motion after notice and opportunity to be heard. An order imposing sanctions must be made in writing and recite in detail the conduct or circumstances justifying the order.

Expressly adding jurors to the list of persons subject to monetary sanctions under section 177.5 will remove any ambiguity about whether courts have the discretion to impose these sanctions against jurors under that section. This authority will provide courts with a less burdensome alternative to formal contempt proceedings for purposes of controlling the proceedings. Ensuring that courts are vested with this discretion will facilitate the orderly and efficient administration of justice by empowering courts with a less disruptive and time-consuming alternative for preserving the integrity of the proceedings.

On October 2, 2014, the Trial Court Presiding Judges Advisory Committee/Court Executives Advisory Committee’s Joint Legislation Working Group voted to recommend sponsorship of this proposal.

Comments, Alternatives Considered, and Policy Implications

The proposal was circulated for comment during the spring 2014 cycle, yielding a total of six comments. Of those, four agreed with the proposal, including the Superior Courts of Los Angeles and San Diego Counties, one made “no comment,” and one did not agree with the proposal. A chart with all comments received and committee responses is attached at pages 5–7.

In addition, in March 2014, before the proposal circulated for public comment, the Joint Legislation Working Group of the Trial Court Presiding Judges and Court Executives Advisory Committees reviewed the proposal and voted unanimously to support it. The Civil and Small Claims Advisory Committee also reviewed the proposal and provided informal feedback, but did not take a formal position. Some members of that committee said that the proposal could have the positive effect of deterring misconduct. Other members expressed concerns that the proposal could create further disincentives for jury service and questioned the policy of encouraging courts to sanction jurors. Some members were of the opinion that this provision would rarely be invoked by judges.

Notable alternatives considered

The Criminal Law Advisory Committee considered the following notable objections to the proposal:

- ***General concerns about sanctioning jurors, potential for improper judicial use, and distinguishing jurors from other “persons” in the system.*** A commentator opposed the proposal on several grounds, including that jurors should receive the highest level of protection in the judicial system; judges do not always properly perform their duties; judges could easily abuse their authority; and jurors do not fit within the definition of “persons” in the same manner as do parties or witnesses. The commentator also suggested that jurors should be entitled to separate jury trials, with judges subject to cross-examination, before sanctions may be imposed.

The committee declined to modify the proposal as suggested by this commentator. The committee believes that the proposal will sufficiently ensure due process and not invite abuse of discretion.

Implementation Requirements, Costs, and Operational Impacts

No implementation requirements, costs, or operational impacts are expected. As described above, the proposal is designed to vest courts with broader authority to address juror misconduct during trials by providing a less burdensome alternative to formal contempt proceedings for purposes of controlling the proceedings.

Attachments

1. Proposed amendments to Code of Civil Procedure section 177.5, at page 4
2. Chart of comments, LEG 14-04, at pages 5–7

Code of Civil Procedure section 177.5 would be amended, effective January 1, 2016, to read:

1 A judicial officer shall have the power to impose reasonable money sanctions, not to exceed
2 fifteen hundred dollars (\$1,500), notwithstanding any other provision of law, payable to the
3 court, for any violation of a lawful court order by a person, done without good cause or
4 substantial justification. This power shall not apply to advocacy of counsel before the court. For
5 the purposes of this section, the term “person” includes a witness, a juror, a party, a party’s
6 attorney, or both.
7
8 Sanctions pursuant to this section shall not be imposed except on notice contained in a party’s
9 moving or responding papers; or on the court’s own motion, after notice and opportunity to be
10 heard. An order imposing sanctions shall be in writing and shall recite in detail the conduct or
11 circumstances justifying the order.

LEG14-04**Proposed Legislation: Jurors: Monetary Sanctions under Code of Civil Procedure section 177.5 (amend Code of Civil Procedure section 177.5)**

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

	Commentator	Position	Comment	Committee Response
1.	Orange County Bar Association by Thomas Bienert, Jr., President	A	The proposed change would achieve the purpose of deterring juror misconduct. No special training would be required and twelve months would be a sufficient amount of time for its implementation.	None needed.
2.	Mr. Ronald L. Porter	N	<p>The need to keep a court operating in a orderly fashion is not in question, however, any sanctions against a juror, should receive the highest scrutiny before imposition. Under our system of law and the function of juries, jurors should receive the highest protection. The system should protect them against any possibility of abuse. As we all know, even judges do not perform their duties in a proper manner at all times, and our jury system demands a juror receive the highest protect from any possibility of abuse. These are citizens, most of which have no idea of how the judicial system works and are there seeking truth and justice. A juror may ask questions that may irritate a judge or make demands they believe as a juror entitled to or should receive.</p> <p>This change could also provide judges an excuse and/or justification not to answer proper questions presented to them by a juror or jurors. This proposed change is very dangerous and could easily be abused to improperly influence a jury decision, discourage jurors from performing their proper duties or to serve properly as a juror in the future.</p> <p>I would suggest that if a judge believes a juror</p>	Disagree. The committee believes that the proposal sufficiently ensures due process, that the reasoning behind and goals of the proposal are sound, and that judicial officers are presumed to fairly apply the law and execute their duties under the law.

LEG14-04

Proposed Legislation: Jurors: Monetary Sanctions under Code of Civil Procedure section 177.5 (amend Code of Civil Procedure section 177.5)

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	Commentator	Position	Comment	Committee Response
			<p>should be sanctioned, he should put it before the same jury that witnessed the incident for a decision at the end of the trial, with the judge presenting his case with cross examination and the juror being given the opportunity to present his position. Along with a universal statewide instruction to be given to the jury prior to the judge presenting his case. After a . . . jury decision, if rendered guilty, it should also be reviewed an independent judge with the primary purpose of ensure the decision protects the jury system from improper influence. The only other possible way to properly protect the jury function would be to hold a separate jury trial on the issue, with a universal state wide instruction to given to the jury with the judge as a witness.</p> <p>The text of the statue was clearly misinterpreted beyond the intent in People v. Kwee (1995) 39 Cal.App.4th 1, 5, note: “the term ‘person’ includes a witness, a party, a party’s attorney, or both.” The appellate court clearly went beyond the statue. It should have ruled within the narrow bounds of the statue and left it to the legislature to make any necessary changes to the law. The jury is not a party or a witness, they are the decision makers. To some degree the judge is there to serve [] the jury. The jury can not reasonably be placed into the definition of the word person in the statute. The appellate court should have narrowly interpreted the statue with the obvious fact that a juror did not</p>	

LEG14-04

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	Commentator	Position	Comment	Committee Response
			fit into the scope of the statute, with a finding if the legislator wanted to include jurors it would have specifically included them.	
3.	Superior Court of Los Angeles County	A		None needed.
4.	Superior Court of Riverside County by Daniel Wolfe, Managing Attorney	NI	No comment.	None needed.
5.	Superior Court of San Diego County by Mike Roddy, Executive Officer	A	No additional comments.	None needed.
6.	Hon. Peter B. Twede Superior Court of Glenn County	A	Leg 14-04, 05, 06 and 07 appear to be appropriate changes that are necessitated by the circumstances outlined in those proposals.	None needed.