

# Judicial Council of California • Administrative Office of the Courts

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## INVITATION TO COMMENT

### LEG14-04

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Title	Action Requested
Proposed Legislation (Jurors): Monetary Sanctions under Code of Civil Procedure section 177.5	Review and submit comments by June 18, 2014
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Code of Civil Procedure Section 177.5	January 1, 2016
Proposed by	Contact
Criminal Law Advisory Committee	Arturo Castro, 415-865-7702
Hon. Tricia A. Bigelow, Chair	<a href="mailto:arturo.castro@jud.ca.gov">arturo.castro@jud.ca.gov</a>

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### Executive Summary and Origin

The Criminal Law Advisory Committee proposes 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 under this section.

### Background

Code of Civil Procedure section 177.5 authorizes courts to impose monetary sanctions upon persons for violations of lawful court orders “done without good cause or substantial justification.” Section 177.5 applies 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 current 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 and an order imposing sanctions must be in writing and recite in detail the conduct or circumstances justifying the order. (Code Civ. Proc. § 177.5.)

*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 These proposals are circulated for comment purposes only.*

## **The Proposal**

Although section 177.5 *may* be interpreted to include jurors because the list of persons subject to sanctions is not exhaustive,<sup>1</sup> the committee proposes amending section 177.5 to add jurors to the list of persons subject to sanctions under that section.

Expressly including jurors in the list of persons covered by section 177.5 will remove any ambiguity about whether courts have the discretion to impose monetary sanctions against jurors under this section. Ensuring that courts are vested with this discretion would provide broader authority to address juror misconduct during trials by empowering courts with an additional method of preserving the integrity of the proceedings. In addition, the authority to sanction jurors under this section would provide courts with a less burdensome alternative to formal contempt proceedings for purposes of controlling the proceedings.

This proposal is designed to facilitate the orderly and efficient administration of justice during courtroom proceedings by empowering courts with a less disruptive and time consuming alternative for preserving the integrity of the proceedings.

## **Prior Circulation**

This proposal has not been circulated previously.

## **Alternatives Considered**

None

## **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, relieving courts of the burdens associated with more formal contempt proceedings.

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<sup>1</sup> See, e.g., *People v. Kwee* (1995) 39 Cal.App.4th 1, 5 (a juror is a “person” connected with a judicial proceeding within the meaning of Code of Civil Procedure section 128, which grants courts authority to control the conduct of all “persons” connected with judicial proceedings, and thus subject to court orders issued to control the proceedings).

## **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?

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 12 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?

### **Attachment**

1. The text of the proposed legislation is attached at page 4.

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

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.

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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.

12