



## JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue · San Francisco, California 94102-3688  
www.courts.ca.gov

---

# REPORT TO THE JUDICIAL COUNCIL

For business meeting on: September 21, 2018

---

**Title**

Jury Service: Permanent Medical Excuse

**Agenda Item Type**

Action Required

**Rules, Forms, Standards, or Statutes Affected**

Adopt Cal. Rules of Court, rule 2.1009

**Effective Date**

January 1, 2019

**Recommended by**

Advisory Committee on Providing Access  
and Fairness

Hon. Kathleen E. O’Leary, Cochair

Hon. Laurie D. Zelon, Cochair

**Date of Report**

August 30, 2018

**Contact**

Daniel Pone, 916-323-3121

[daniel.pone@jud.ca.gov](mailto:daniel.pone@jud.ca.gov)

Kyanna Williams, 415-865-7911

[kyanna.williams@jud.ca.gov](mailto:kyanna.williams@jud.ca.gov)

---

### Executive Summary

The Advisory Committee on Providing Access and Fairness recommends adoption of rule 2.1009 of the California Rules of Court 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 aids or services, is incapable of performing jury service.

### Recommendation

The Advisory Committee on Providing Access and Fairness recommends that the Judicial Council, effective January 1, 2019, adopt rule 2.1009 of the California Rules of Court: Permanent medical excuse from jury service.

The proposed rule is attached at pages 10–12.

### Relevant Previous Council Action

There is no previous council action relevant to this report.

## Analysis/Rationale

### 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).)

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 Jerry Hill (D-San Mateo) 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: 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.<sup>1</sup>

## **Rule 2.1009**

The committee 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.

### **Purpose**

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 implications**

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 their 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 health care provider. (Subd. (c)(1).) 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. (Subd. (c)(1).)

The rule would require the applicant to submit the request and supporting letter, memo, or note to the court's jury commissioner on or before the date the person is required to appear for jury service. (Subd. (c)(2).) In the event of an incomplete application, the rule would allow the jury

---

<sup>1</sup> The members of the workgroup are: Ms. Margaret Johnson, Advocacy Director, Disability Rights California; Judge Ginger E. Garrett, Superior Court of San Luis Obispo County; Judge Lia R. Martin, Superior Court of Los Angeles County; Associate Justice William J. Murray, Jr., Court of Appeal, Third Appellate District; Mr. Bruce A. Soublet, Senior Assistant City Attorney/ADA Coordinator, City of Richmond; Mr. Sean G. Metroka, Court Executive Officer, Superior Court of Nevada County; Ms. Melissa Fowler-Bradley, Court Executive Officer, Superior Court of Shasta County; and Presiding Judge Janet Gaard, Superior Court of Yolo County.

commissioner to require the applicant to furnish additional information in support of the request for permanent medical excuse. (Subd. (c)(3).)

### **Definitions**

The rule defines “applicant” as “a ‘person with a disability’ or their authorized representative.” (Subd. (a)(1).) “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.” (Subd. (a)(2).) “Person with a disability” is defined as “an individual 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 a person who has a physical or mental medical condition that limits one or more of the major life activities, has a record of such a condition, or is regarded as having such a condition.” (Subd. (a)(6).)

The rule defines “permanent medical excuse” as “a release from jury service granted by the jury commissioner 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).) “Health care provider” is defined to mean “a doctor of medicine or osteopathy, podiatrist, dentist, chiropractor, clinical psychologist, optometrist, nurse practitioner, nurse-midwife, clinical social worker, therapist, physician’s assistant, Christian Science practitioner, or any other medical provider, facility, or organization that is authorized and performing within the scope of the practice of their profession in accordance with relevant state or federal laws and regulations.” (Subd. (a)(4).)

### **Response to request**

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

### **Right to reapply**

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

### **Right to seek reinstatement**

The 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's jury commissioner. (Subd. (g).)

### **Confidentiality requirements**

The new rule would require the jury commissioner 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.*)

### **Comments**

This proposal was circulated for comments from April 9, 2018, through June 8, 2018. Six comments were received from: the Orange County Bar Association; four courts (the Superior Courts of Los Angeles, Placer, San Diego, and Ventura Counties); and one individual. Two of the courts—San Diego and Ventura—and the individual commentator supported the proposal as written. The Placer court supported the proposal with two suggested changes: expanding the definition of health care provider, and placing the authority for handling requests for permanent medical excuse with the jury commissioner. The Orange County Bar Association also supported the proposal with several suggested modifications, including the Placer court's two suggestions above, which the advisory committee accepted.

The Los Angeles court and the Orange County Bar Association both made suggestions to add more specifications for the health care providers' documentation in order to substantiate the need for a permanent medical excuse or demonstrate that the applicant's inability to perform jury service is “substantially supported.” As discussed below, the advisory committee elected not to make these changes.

A chart with the full text of the comments and the committee's responses is attached beginning at page 13.

The principal comments are discussed here.

***Proposals to expand definition of health care provider.*** The Placer court noted that the most common type of permanent disability notification provided by jurors to its jury commissioner's office is from the U.S. Department of Veterans Affairs (VA), and that the initial definition of health care provider as circulated for comment did not appear to cover certain VA documents that may be provided in support of a person's request for permanent medical excuse. Similarly,

the Orange County Bar Association suggested amending the definition of health care provider to reference medical professionals authorized to practice their profession by relevant state or federal laws and regulations to cover a broader group of military and veterans providers. The advisory committee agreed with these concerns and expanded the definition of health care provider in subdivision (a)(4), to read as follows:

(4) “Health care provider” means a doctor of medicine or osteopathy, podiatrist, dentist, chiropractor, clinical psychologist, optometrist, nurse practitioner, nurse-midwife, clinical social worker, therapist, physician’s assistant, Christian Science Practitioner, or any other medical provider, facility, or organization that is authorized and performing within the scope of the practice of their profession in accordance with relevant state or federal laws and regulations.

***Proposals to clarify responsibility of jury commissioner.*** The Placer court and the Orange County Bar Association both expressed concerns with the initial version of the proposal that referenced the court (versus the court’s jury commissioner) as the entity that would receive and decide requests for permanent medical excuse, including requests for reconsideration and reinstatement. Both commentators correctly noted that the court’s jury commissioner is the responsible entity under existing statutes and rules governing jury service, and that the use of “court” instead of “jury commissioner” in the proposal made it unclear whether the intent of the rule was to require some type of judicial review of the request. The advisory committee did not intend for judicial officer review of, or involvement with processing, requests for permanent medical excuse. The committee agrees that the court’s jury commissioner or their designee should perform this function, and the references in the rule to the court were replaced with the jury commissioner.

***Proposals to add greater specificity and substantiation requirements.*** The Orange County Bar Association recommended “add[ing] more specification as to what is required for substantiation from health care provider letters, notes, and records in order to protect against fraud[.]” Similarly, the Los Angeles court made several suggestions to add new language to the rule “to avoid confusion about the applicable standard the court will apply[.]” In particular, the Los Angeles court recommended adding new policy and standard language that would require a request for permanent medical excuse to be “substantially supported by a qualified health care provider[.]” and that the provider’s written submission “should not be conclusory, but rather must contain sufficient information demonstrating that the conclusion is well supported.”

The advisory committee carefully considered these comments and decided not to recommend making these changes. The committee strongly believes that jury commissioners do not have the necessary expertise and should not be put in the position of evaluating the legitimacy of a prospective juror’s underlying medical situation, which can include highly sensitive and very personal information regarding the individual’s physical or mental condition. The committee notes that its position is consistent with what it understands to be existing practice among the bulk of the courts that currently provide for a permanent medical excuse from jury service. For

example, the Ventura court noted in its comments that “[w]e currently ask the medical provider to simply state the juror is permanently excused from jury duty due to their medical condition (without reference to a specific condition).” The committee also notes that this position is consistent with how applicants over the age of 70 are treated when seeking an undue hardship excuse from jury service (i.e., no further verification or documentation is required for those individuals under rule 2.1008).

***Proposals to adopt implementing forms.*** The invitation to comment specifically asked whether the Judicial Council should create any optional or mandatory forms to assist in the implementation of the proposed rule. The Ventura court’s response stated that “[a]dditional forms are not necessary, but could be helpful to reduce transmission of confidential HIPAA information.” The Los Angeles court recommended that forms be created for optional use that could include a request/application form, a health care provider certification form, a notice of incomplete request, and a determination on request for permanent excuse. The Orange County Bar Association recommended that the council create optional or mandatory forms to assist the various courts in implementation of the rule to ensure uniformity and consistency.

The advisory committee discussed these comments and ultimately decided not to recommend the adoption of optional or mandatory forms at the present time. Some of the workgroup members initially expressed support for the creation of optional or mandatory forms to assist prospective jurors, health care providers, and the courts in implementation of the new rule. However, the workgroup members were mindful of the fact that the courts that currently provide for a permanent medical excuse from jury service appear to be doing so without the need for any additional forms. As noted above, the Ventura court (which self-identified as “a medium-sized court”) acknowledges that additional forms are not necessary. The Ventura court also noted that “[t]he proposal should be easily implemented by courts of all sizes” and that “no implementation changes [would be] necessary” as “[o]ur current process follows the guidelines.”

In addition, the committee was concerned about the potential for adverse financial impacts or other undue burdens on applicants that could result from requiring treating health care providers to use specific forms in support of an applicant’s request for permanent medical excuse. Some health care providers reportedly charge their patients for filling out special forms (up to \$75 dollars per form according to one of the committee members), which can cause a financial hardship on prospective jurors of limited means. Another committee member noted that one of the state’s large HMO providers reportedly utilizes a multilevel process that its patients must navigate when attempting to secure special forms that are not included in that HMO’s own proprietary case management system.

Moreover, some of the workgroup members expressed concerns that the easy availability of forms could have the unintended consequence of facilitating abuse by individuals improperly seeking to avoid jury service. Committee members also noted that the proposed rule would not preclude individual courts from adopting their own implementing forms should they choose to do so. On balance, the committee decided the most prudent course would be to hold off on

recommending the creation of any optional or mandatory forms at the present time, but it is open to reconsidering this issue at a later date if experience with the rule demonstrates the utility of doing so.

***Other comments.*** Other comments received by the committee include the following:

- The Orange County Bar Association suggested adding language to the definition of “capable of performing jury service” as meaning “a person not disqualified under CCP §203 who...” The committee did not agree with this proposed change, which seemed to be unnecessary and superfluous, since a person already disqualified from jury service would not appear to have a reason to seek such an excuse.
- The Orange County Bar Association also suggested amending the definition of “permanent medical excuse” to reference “a release under CCP §204 and CCP §218 from jury service by the county jury commissioner” and at the end add “as documented herein by a health care provider.” The advisory committee does not recommend making these suggested changes. The committee believes the addition of references to Code of Civil Procedure sections 204 and 218 is not helpful and may result in unnecessary confusion. The committee also disagrees with the suggestion to add any further supporting documentation requirements, as explained above.
- The Superior Court of Los Angeles County recommended some technical, clarifying changes to the definitions of “applicant” and “person with a disability.” The committee agreed and made the requested modifications to those items.
- The Los Angeles court also suggested modifying the definition of “capable of performing jury service” to mean “a person can pay attention to and/or mentally process evidence, testimony...” The committee disagrees with this suggestion and believes the proposed additional language would add unnecessary confusion.
- The Los Angeles court suggested modifying the definition of health care provider by adding at the end “mental health professional and any other medical professional competent to evaluate the disability and the potential juror’s capacity to perform jury service.” The committee considered this suggestion and believes the proposed additional language is unnecessary. The committee notes that the current definition of a person with a disability already includes people with both physical and mental disabilities, and the definition of health care provider includes psychologists and other medical professionals who are competent to evaluate persons with mental as well as physical conditions.
- The Los Angeles court also suggested adding to the right-to-reapply provision a requirement that the applicant must “present[ ] information showing that the circumstances have changed, or new information has been obtained, since the last application.” The committee considered this suggestion but recommends not making this



change. The committee is mindful of the fact that people with disabilities have conditions that may change rapidly and over time. In light of this fact, the committee does not support imposing additional hurdles on an applicant's ability to reapply.

### **Alternatives considered**

The 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.

### **Fiscal 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.

### **Attachments and Links**

1. Cal. Rules of Court, rule 2.1009, at pages 10–12.
2. Chart of comments, at pages 13–26.

Rule 2.1009 of the California Rules of Court is 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 their 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, therapist, physician’s assistant, Christian Science Practitioner, or any other medical provider, facility, or organization that is authorized and performing within the scope of the practice of their profession in accordance with state or federal law and regulations.
- (5) “Permanent medical excuse” means a release from jury service granted by the jury commissioner 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) “Person with a disability” means an individual 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 a person who has a physical or mental medical condition that limits one or more of the major life activities, has a record of such a condition, or is 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 persons with disabilities have equal and full access to the judicial system, including the opportunity to serve as jurors. No eligible jurors 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 their 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 jury commissioner 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 jury commissioner on or before the date the person is required to appear for jury service.
- (3) In the case of an incomplete application, the jury commissioner may require the applicant to furnish additional information in support of the request for permanent medical excuse.
- (4) The jury commissioner 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 jury commissioner must respond to a request for a permanent medical excuse from jury service as follows:

- (1) The jury commissioner 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 jury commissioner 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 jury commissioner must provide the applicant a written response with the reason for the denial.

**(e) Denial of request**

Only when the jury commissioner determines the applicant failed to satisfy the requirements of this rule may the jury commissioner 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 jury commissioner'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 jury commissioner that the permanent medical excuse be withdrawn.

## SP18-40

### Jury Service: Permanent Medical Excuse (adopt Cal. Rules of Court, rule 2.1009)

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

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

	Commenter	Position	Comment	Committee Response
1.	Kristie Karkanen	A	<p>I am writing in support of rule 2.1009. I believe it is fair and provides for disabled people with health conditions that might impair their ability to reasonably perform jury service a reasonable way to "opt-out". I believe that jury duty offers citizens an opportunity to perform acts of service for the community. I have personally attended jury service at all opportunities when I was able (though I had not yet been selected as a juror). I enjoyed performing jury service and I would not ordinarily seek to avoid this civic duty, unless health conditions prevented me from performing it.</p> <p>This rule would protect and aid those members of the community whose health is not good. I request that this rule be implemented.</p>	The committee appreciates the commenter's support. No further response is required.
2.	Superior Court of Placer County by Jake Chatters, Court Executive Officer	AM	<p>The Placer Superior court appreciates the opportunity to comment on the proposed California Rules of Court 2.1009 addressing Permanent Medical Excuse from Jury Service. The court supports the proposed rule, if amended.</p>	<p>The committee agrees with the recommendation to expand the definition of "Health Care Provider" to include other medical providers or organizations that provide services to military veterans. The revised definition will read as follows:</p> <p><b>Rule 2.1009. Permanent medical excuse from jury service</b></p>

## SP18-40

### Jury Service: Permanent Medical Excuse (adopt Cal. Rules of Court, rule 2.1009)

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

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

Commenter	Position	Comment	Committee Response
		<p>The most common type of permanent disability notification provided by jurors to our Jury Commissioner’s Office is from the Department of Veterans Affairs (VA). As the rule is written, it is unclear if VA documents stating disability will be sufficient to excuse jurors from service as it is not from a specific medical professional. Obtaining a letter from a VA doctor can be a burdensome process for potential jurors who may already have other documentation to support their request. To address this, we recommend that the rule be amended, or an advisory committee comment be included, to allow a juror to submit records of their VA disability entitlement benefits in support of their request.</p> <p>Secondly, the rule references the “court” as the approving entity. It is unclear whether the intent of the rule is to require judicial review of the request. This function can be most efficiently handled through the Jury Commissioner’s Office, under the authority granted in Code of Civil Procedure, Section 204 and 218. As such, we recommend that the rule reference the “Jury Commissioner” instead of “the court” for clarity.</p>	<p><b>(a) Definitions</b> As used in this rule: (1) – (3) *** (4) “Health care provider” means a doctor of medicine or osteopathy, podiatrist, dentist, chiropractor, clinical psychologist, optometrist, nurse practitioner, nurse-midwife, clinical social worker, <u>therapist, or physician’s assistant, Christian Science Practitioner, or any other medical provider, facility, or organization that is authorized to practice by the state and performing within the scope of the practice of their profession as defined by in accordance with relevant state or federal laws and regulations, or a Christian Science practitioner.</u></p> <p>The committee does not intend for judicial review of the request and agrees with the suggestion that this function should be handled by the court’s jury commissioner or their designee.</p> <p>The committee also agrees with the suggestion to replace the references to “the court” with “jury commissioner” throughout the rule.</p>

## SP18-40

### Jury Service: Permanent Medical Excuse (adopt Cal. Rules of Court, rule 2.1009)

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

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

	Commenter	Position	Comment	Committee Response
3.	Superior Court of Ventura County by Nan Richardson, Court Program Manager	A	<p>Ventura Superior Court currently follows a similar process to excuse jurors with a permanent medical disability.</p> <p><b>Does the proposal appropriately address the stated purpose?</b></p> <p>Yes.</p> <p><b>Should the Judicial Council create any optional or mandatory forms to assist in implementation of the proposed rule?</b></p> <p>Additional forms are not necessary, but could be helpful to reduce transmission of confidential HIPAA information. We currently ask the medical provider to simply state the juror is permanently excused from jury duty due to their medical condition (without reference to a specific condition).</p> <p><b>Would the proposal provide cost savings?</b></p> <p>No. We already follow a similar process for jurors with disabilities that would qualify under this new guideline.</p>	<p>No response required.</p> <p>The committee appreciates the commenter's overall support for the proposal.</p> <p>The committee believes that additional forms are not currently necessary. However, the committee may elect to reconsider this issue at a later date based on the experiences of court users and jury commissioners with implementation of the rule.</p> <p>No response required.</p>

**SP18-40****Jury Service: Permanent Medical Excuse** (adopt Cal. Rules of Court, rule 2.1009)

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

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

	Commenter	Position	Comment	Committee Response
			<p><b>What would the implementation requirements be for courts?</b></p> <p>For Ventura Superior Court, no implementation changes necessary. Our current process follows the guidelines.</p> <p><b>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</b></p> <p>Yes</p> <p><b>How well would this proposal work in courts of different sizes?</b></p> <p>The proposal should be easily implemented by courts of all sizes. We are a medium-sized court.</p>	<p>No response required.</p> <p>No response required.</p> <p>The committee appreciates the commenter's support for the overall workability of the proposed rule.</p>
4.	Orange County Bar Association by Nikki P. Milliband, President	AM	In response to the Requests for Specific Comments, the OCBA agrees that (1) the proposal appropriately addresses the stated purpose if modified, and (2) the Judicial Council should create optional or mandatory forms to assist the various courts in	As discussed above, the committee does not believe that optional or mandatory Judicial Council forms are necessary at the present time for implementation purposes.



## SP18-40

### Jury Service: Permanent Medical Excuse (adopt Cal. Rules of Court, rule 2.1009)

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

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

	Commenter	Position	Comment	Committee Response
			<p>implementation of the Rule to ensure uniformity and consistency.</p> <p>The general recommendations of the OCBA are as follows:</p> <p>(a) add more specification as to what is required for substantiation from health care provider letters, notes, and records in order to protect against fraud;</p> <p>(b) provide more examples or guidance as to what constitutes a “permanent medical excuse” so as to educate the applicants, health care providers, and jury commissioners;</p>	<p>The committee discussed this suggestion but does not recommend adding more specifications to, or substantiation requirements for, the supporting documentation by health care providers. The committee believes that jury commissioners neither have the necessary expertise nor should they be put in the position of evaluating the legitimacy of an applicant’s underlying medical condition. The committee notes that its position is consistent with what it understands to be existing practice among the courts that currently provide for a permanent medical excuse from jury service. The committee also notes that its position is consistent with how applicants over the age of 70 are treated when seeking an undue hardship excuse from jury service (i.e., no further verification or documentation is required for those individuals under rule 2.1008).</p> <p>The committee discussed this suggestion but does not recommend adding examples or providing further guidance at the present time to what constitutes a “permanent medical excuse.” The committee believes that the proposed rule, when taken as a whole, provides sufficient guidance to applicants, health care providers, and jury commissioners on the process and handling of a request for a permanent medical excuse from jury service.</p>

## SP18-40

### Jury Service: Permanent Medical Excuse (adopt Cal. Rules of Court, rule 2.1009)

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

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

	Commenter	Position	Comment	Committee Response
			(c) add language to the definition of “capable of performing jury service” as meaning “a person not disqualified under CCP §203 who...”	The committee does not agree with the proposed additional language, which it believed to be unnecessary and superfluous.
			(d) add a definition and citation references for “the court” to mean only the “jury commissioner” or change the language to only reference “the jury commissioner” (rather than “the court”) since by statute only the jury commissioner is authorized under CCP §218 and Rule 2.1008 to hear and grant excuses;	As noted above, the committee agrees with this suggestion and the rule has been amended to replace the references to “the court” with “the jury commissioner” where appropriate.
			(e) amend the definition of “health care provider” to reference medical professionals “authorized to practice their profession by relevant state or federal laws and regulations” since military and veterans’ providers and other out-of-state providers should be so empowered;	As noted above, the committee agrees with this suggestion and the definition of health care provider has been amended to include other medical providers or organizations that provide services to military veterans.
			(f) the OCBA is unsure and takes no position regarding whether “chiropractors, nurse practitioners, nurse mid-wives, physician’s assistants,	No response is required.

## SP18-40

### Jury Service: Permanent Medical Excuse (adopt Cal. Rules of Court, rule 2.1009)

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

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

	Commenter	Position	Comment	Committee Response
			<p>or Christian Science practitioners” should be included in the definition of “health care provider” and recommends further comments;</p> <p>(g) amend the definition of “permanent medical excuse” to reference “a release under CCP §204 and CCP §218 from jury service by the county jury commissioner” and at the end add “as documented herein by a health care provider”;</p> <p>(h) amend the “policy” to require that applicants or their authorized representatives may “seek a permanent medical excuse from jury service based on medical information substantiated by a qualified health care provider.”</p> <p>(i) throughout the proposed rule substitute the term “jury commissioner” in place of “the court” in order to comply with CCP §208 and Rule 2.1008 so as to ensure that judicial hearings and fact determinations are not the unintended consequences.</p>	<p>The committee does not recommend making these suggested changes. The committee believes the proposed addition of references to sections 204 and 218 of the Code of Civil Procedure is not helpful and would result in unnecessary confusion. The committee also disagrees with the suggestion to add any further documentation requirements for the reasons discussed above.</p> <p>The committee considered this suggestion but does not recommend making this change. As discussed in more detail above, the committee does not feel it would be appropriate at this time to impose on health care providers any further documentation or substantiation requirements beyond what is contained in the proposed rule.</p> <p>As noted above, the committee agrees with this suggestion and has incorporated these changes.</p>

## SP18-40

### Jury Service: Permanent Medical Excuse (adopt Cal. Rules of Court, rule 2.1009)

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

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

	Commenter	Position	Comment	Committee Response
5.	Superior Court of San Diego by Mike Roddy, Executive Officer	A	*The commentator indicates agreement.	No response required.
6.	Superior Court of Los Angeles County (no name provided)	AM	<b>Suggested Modifications:</b> <b>Rule 2.1009 (a)</b> (1) Add quotes to “person with a disability” to denote a defined phrase.  (3) Add text: “Capable of performing jury service” means a person can pay attention to <b><u>and/or mentally process</u></b> evidence, testimony...”  (4) Add text: “...as defined by state law, or a Christian Science practitioner, <b><u>mental health professional and any other medical professional competent to evaluate the disability and the potential juror’s capacity to perform jury service.</u></b>  (6) Change to singular to match the reference in the “Applicant” definition to read: “ <b><u>Person</u></b> with a <b><u>disability</u></b> ” means <b><u>an individual</u></b> 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 <b><u>a</u></b>	<p>The committee agrees with this suggested change.</p> <p>The committee disagrees with this suggestion and believes the proposed additional language would add unnecessary confusion.</p> <p>The committee considered this suggestion and believes the proposed additional language is unnecessary. The committee notes that the current definition of a person with a disability already includes individuals with both physical and mental disabilities and the definition of health care provider includes psychologists and other medical professionals who are competent to evaluate persons with mental as well as physical conditions.</p> <p>The committee agrees with this suggestion and will incorporate these changes.</p>

## SP18-40

### Jury Service: Permanent Medical Excuse (adopt Cal. Rules of Court, rule 2.1009)

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

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

Commenter	Position	Comment	Committee Response
		<p><u>person</u> who <u>has</u> a physical or mental medical condition that limits one or more of the major life activities, <u>has</u> a record of such a condition, or <u>is</u> regarded as having such a condition.”</p> <p>(b) - Add new subsection (3):</p> <p><u>(3) It is also the policy of the court to permanently excuse a person with a disability who, as a result of that disability, is permanently incapable of performing jury service, with or without accommodation, as substantially supported by a qualified health care provider.</u></p> <p>Add new section (c) Insert new section (c) to avoid confusion about the applicable standard the court will apply. Renumber the following sections.</p> <p><u>(c) Standard for Permanent Medical Excuse</u></p> <p><u>A person with a disability shall be granted a permanent medical excuse when he or she meets the following standard:</u></p> <p><u>He or she is a person with a disability who, as a result of that disability, is permanently</u></p>	<p>The committee considered the suggestion to add this new provision to the policy portion of the rule but does not recommend making this change for the basic reasons stated above. The committee does not feel it would be appropriate to impose any additional documentation requirements on health care providers in light of the inability of jury commissioners to properly evaluate the highly sensitive, personal and confidential nature of an applicant’s underlying medical information.</p> <p>The committee does not agree with adding this proposed new standard for the above reasons.</p>

## SP18-40

### Jury Service: Permanent Medical Excuse (adopt Cal. Rules of Court, rule 2.1009)

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

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

Commenter	Position	Comment	Committee Response
		<p><b><u>incapable of performing jury service, with or without accommodation, as substantially supported by a qualified health care provider.</u></b></p> <p><b>Renumbered section (d) Process for requesting permanent medical excuse</b> This is suggested to avoid conclusory notes that effectively preclude any meaningful evaluation of the application.</p> <p>(1) Add “confidential” to first line: (1) “An applicant must submit to the court a <b><u>confidential</u></b> written request for permanent...”</p> <p>Add new sentence to the end: “...signed by the provider. <b><u>The letter, memo, or note should not be conclusory, but rather must contain sufficient information demonstrating that the conclusion is well supported.</u></b>”</p> <p>(2) Since many counties use an on-call system, we suggest a change in wording to “scheduled to serve.”</p>	<p>The committee does not agree with this suggestion for the reasons stated above.</p> <p>The committee does not agree with the suggestion to add “confidential” to the applicant’s written request as it is unnecessary given the courts’ overall confidentiality obligation under the rule (see subdivision (c)(4).)</p> <p>The committee does not agree with this suggestion for the reasons stated above.</p> <p>The committee discussed this suggestion and considered a variety of possible clarifying changes to subdivision (c)(2). After considerable deliberation, the committee agreed that appearance should be the triggering event in order to give applicants as much</p>

## SP18-40

### Jury Service: Permanent Medical Excuse (adopt Cal. Rules of Court, rule 2.1009)

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

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

	Commenter	Position	Comment	Committee Response
			<p>time as possible to submit their applications. Accordingly, the committee decided to make the following clarifying change to subdivision (c)(2):</p> <p>“(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 <b>required</b> to appear for jury service.”</p> <p>Also suggest adding a requirement to include the state license number of the health care provider.</p> <p>“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 <b>scheduled to serve</b> jury service. <b><u>Documentation should include the state license number of the health care provider.</u></b>”</p> <p><b>Renumber section (d) to (e) Response to request</b></p> <p><b>Delete former section (e)</b> This section is unnecessary with the addition of a standard for granting the application. <del>(e) Denial of request</del> <del>Only if the court determines the applicant failed to satisfy the requirements of this rule may the</del></p>	<p>time as possible to submit their applications. Accordingly, the committee decided to make the following clarifying change to subdivision (c)(2):</p> <p>“(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 <b>required</b> to appear for jury service.”</p> <p>The committee considered this suggestion but does not recommend making this change. Not all health providers include their license number on their letterhead, and the committee believes that imposing this new requirement would result in unnecessary delays in processing applications.</p> <p>The committee disagrees with making this renumbering change, which is not necessary in light of its decision above regarding the proposed new standard language.</p> <p>The committee disagrees with this suggestion in light of its decision above not to include the proposed new standard language.</p>

## SP18-40

### Jury Service: Permanent Medical Excuse (adopt Cal. Rules of Court, rule 2.1009)

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

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

Commenter	Position	Comment	Committee Response
		<p><del>court deny the permanent medical excuse request.</del></p> <p><b>(f) Right to reapply</b> Add language - absent this addition, the “right to reapply” appears to be an unlimited right to seek reconsideration of the ruling.</p> <p>“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 <b><u>(d) and by presenting information showing that the circumstances have changed, or new information has been obtained, since the last application.</u></b></p> <p><b>Does the proposal appropriately address the stated purpose?</b> Yes, however, a couple of changes could make it more effective. Please see suggested modifications above.</p> <p><b>Should the Judicial Council create any optional or mandatory forms to assist in implementation of the proposed rule?</b></p> <p>We recommend that forms be created for optional use and could include the following:</p>	<p>The committee considered this suggestion but recommends not making this change. The committee is mindful of the fact that people with disabilities have conditions that may change rapidly and over time. In light of this fact, the committee did not support imposing additional hurdles on an applicant’s ability to reapply.</p> <p>See responses above to proposed modifications.</p> <p>As noted above, the committee does not believe that optional or mandatory forms are needed at the present time for successful implementation of the</p>



## SP18-40

### Jury Service: Permanent Medical Excuse (adopt Cal. Rules of Court, rule 2.1009)

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

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

	Commenter	Position	Comment	Committee Response
			<ul style="list-style-type: none"><li>• Request/application form</li><li>• Health care provider certification form stating the requirements to be permanently excused so the health care provider can certify that he/she understands the requirements.</li><li>• Notice of incomplete request</li><li>• Determination on request for permanent excuse</li></ul> <p><b>Would the proposal provide cost savings? If so please quantify.</b></p> <p>Depending on the volume of requests received, some limited staff savings could be achieved if the review of requests is limited to ensuring that applications are complete and that the requirements of the rule are satisfied.</p> <p><b>What would the implementation requirements be for courts?</b></p> <p>The Los Angeles Superior Court currently has a permanent excuse program so minimal training would be required as to the new requirements and process. Three full time Office Assistant staff, two for back- up purposes, a supervisor and manager would need to be trained. Our Jury Management Information System is already programmed to process permanent excuses, including removing jurors permanently excused from the rolls of potential jurors. Minimal</p>	<p>proposed rule. However, the committee is prepared to revisit this issue at a later date if experience with the rule demonstrates the utility of doing so.</p> <p>No response required.</p> <p>No response required.</p>

**SP18-40****Jury Service: Permanent Medical Excuse** (adopt Cal. Rules of Court, rule 2.1009)

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

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

	Commenter	Position	Comment	Committee Response
			programming would be required and could be done by court technology staff.  <b>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</b>  Three months would be sufficient lead time for implementation.	No response required.