

**JUDICIAL COUNCIL OF CALIFORNIA  
ADMINISTRATIVE OFFICE OF THE COURTS**

455 Golden Gate Avenue  
San Francisco, California 94102-3688

**Report Summary**

TO: Members of the Judicial Council

FROM: Temporary Judges Working Group  
Hon. Robert B. Freedman and Hon. Douglas P. Miller, Co-chairs  
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DATE: April 12, 2006

SUBJECT: Temporary Judges: Report and Recommendations (amend Cal. Rules of Court, rules 243.20 and 243.31) (Action Required)

Issue Statement

On December 2, 2005, two Judicial Council advisory committees and the Temporary Judges Working Group recommended to the Judicial Council a set of rules to ensure and improve the quality of temporary judging. The council adopted most of the proposed new rules on temporary judges, which will become effective on July 1, 2006.

However, the council referred four proposed rules to the Supreme Court with a recommendation that these be considered for inclusion in the Code of Judicial Ethics. At the same time, the Judicial Council directed the Temporary Judges Working Group to report back to the council at its April 2006 meeting, providing information and recommendations concerning the following matters:

1. The status of the referral to the Supreme Court Advisory Committee on the Code of Judicial Ethics of the question whether rules on disclosures and disqualifications of temporary judges should be addressed in the Code of Judicial Ethics;
2. The status of the referral to the Supreme Court Advisory Committee on the Code of Judicial Ethics as to whether the Supreme Court has addressed or will address in the Code of Judicial Ethics the provisions contained in proposed rule 243.16 specifying the circumstances under which a temporary judge may use his or her service or title.

3. Whether new rule 6.741(b) on the duties and authority of the presiding judge should be amended to add the phrase “from the court-appointed list” after the words “The presiding judge has the discretion to remove a court-appointed temporary judge”;
4. Whether rule 6.741, rule 6.743(b)(3), or any other rule should be amended to include broad diversity considerations in the recruitment and selection of temporary judges; and
5. Whether training should be required of retired judges who serve as temporary judges after retirement, and if so, at what interval after retirement the training should be required.

This report provides information and makes recommendations on the preceding issues. The report also provides information about several other developments relating to improving the quality of temporary judging and makes additional recommendations.

#### Recommendation

The Temporary Judges Working Group<sup>1</sup> recommends that the Judicial Council, effective July 1, 2006:

1. Amend rule 243.20 of the California Rules of Court to add new subdivisions on limitations on service by court-appointed temporary judges, the waiver of mandatory disqualifications or limitations, the effects of late discovery of grounds for disqualification or limitation, the notification of the court of the disqualification of a temporary judge, and the procedures for requesting that a temporary judge be disqualified; and
2. Amend rule 243.31 of the California Rules of Court to reflect the addition of new provisions on disclosures by temporary judges to the Code of Judicial Ethics and to provide a cross-reference to rule 243.20(d).

In addition, the Working Group recommends that the Judicial Council:

3. Continue the Temporary Judges Working Group for approximately 12 to 18 months or, alternatively, establish an advisory committee or other similar entity to provide guidance, oversight, and recommendations to the Judicial Council concerning temporary judging; and

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<sup>1</sup> The Working Group is chaired by Judges Robert B. Freedman and Douglas P. Miller. The members of the group are Mr. Albert Balingit, Commissioner Douglas G. Carnahan, Judge Julie M. Conger, Ms. Mary Flynn, Judge Michael T. Garcia, Commissioner Harvey E. Goldfine, Judge Frederick Paul Horn, Judge Mary Thornton House, Judge Curtis E. A. Karnow, Justice James R. Lambden, Judge Arnold D. Rosenfield, Judge David M. Rothman (Ret.), Judge B. Tam Nomoto Schumann, Judge David Sotelo, and Justice Laurie D. Zelon.

4. Continue to support legislation to increase the number of judicial positions and thereby decrease the courts' reliance on temporary judges.

The text of amended rules 243.20 and 243.31 is attached to the report at pages 12–14.

### Rationale for Recommendation

#### *Report and Recommendations on Issues Specified by the Judicial Council*

#### Issue One: The status of the referral to the Supreme Court Advisory Committee on the Code of Judicial Ethics on the question whether the rules on disclosures and disqualifications of temporary judges should be addressed in the Code of Judicial Ethics

The Judicial Council, on December 2, 2005, referred three proposed rules on disqualifications and disclosures of temporary judges (proposed Cal. Rules of Court, rules 243.19, 243.20, and 243.31(d)) to the Supreme Court, with a recommendation that they be considered for inclusion in the Code of Judicial Ethics.<sup>2</sup> The Supreme Court Advisory Committee on the Code of Judicial Ethics has carefully considered these rules. Based on this review, it is anticipated that the committee will recommend that most of the provisions in the referred rules be included in the Code of Judicial Ethics.<sup>3</sup>

However, the Supreme Court Advisory Committee also concluded that a few of the provisions in proposed rule 243.20 should not be included in the Code of Judicial Ethics because they primarily concern matters of court administration, practice, and procedure rather than ethics. The Temporary Judges Working Group recommends that these provisions be included in the California Rules of Court, as originally proposed. These provisions will assist the courts in ensuring the quality of temporary judging. They establish certain limitations on when a court-appointed temporary judge may serve (see rule 243.20(b)) and provide procedures relating to the disqualification of temporary judges (see rule 243.20(c)–(f)).

#### Issue Two: The status of the referral to the Supreme Court Advisory Committee on the Code of Judicial Ethics as to whether the Supreme Court has addressed or will address in the Code of Judicial Ethics the provision in rule 243.16

Proposed rule 243.16 of the California Rules of Court specified the circumstances when an attorney may and may not use his or her service as a court-appointed temporary judge

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<sup>2</sup> The rules on disclosures and disqualifications referred to the Supreme Court are contained in the Report to the Judicial Council of Cal., *Temporary Judges: Rules on Quality Assurance, Training, Ethics, and Administration* (Dec. 2, 2005), at pages 47–51.

<sup>3</sup> A memorandum containing the Supreme Court Advisory Committee's recommendations to the Supreme Court is still being prepared. The Supreme Court therefore has not yet considered or adopted the committee's recommendations.

in resumés, ballot designations, advertisements, and other situations. The Judicial Council referred this rule to the Supreme Court Advisory Committee on the Code of Judicial Ethics, with a recommendation that it be included in the Code of Judicial Ethics. It is anticipated that the Supreme Court Advisory Committee will recommend that the provisions of rule 243.16 be included in the Code of Judicial Ethics.

Issue Three: Whether new rule 6.741(b) on the duties and authority of the presiding judge should be amended to add the phrase “from the court-appointed list” after the words “The presiding judge has the discretion to remove a court-appointed temporary judge”

At the December 2, 2005, Judicial Council meeting, the question was raised whether rule 6.741(b) should be amended to add the phrase “from the court-appointed list.” The Working Group recommends that rule 6.741(b) not be amended to include this additional language. The Working Group believes that it is important that a presiding judge have broad discretion to remove a court-appointed temporary judge at any time. The additional phrase could be construed as limiting the removal power of presiding judges to removing court-appointed temporary judges only at a future time.

The Judicial Council’s Rules and Projects Committee (RUPRO) considered pending rule 6.741(b) and the Working Group’s recommendation. It asked the Working Group to consider further the question of the depth and breadth of the presiding judge’s authority to remove a court-appointed temporary judge during the pendency of a case. And it asked the group to consider whether there should be any additional rule amendments, training for presiding judges, or other actions taken concerning the exercise of the presiding judge’s authority to remove court-appointed temporary judges.

Issue Four: Whether rule 6.741, rule 6.743(b)(3), or any other rule should be amended to include broad diversity considerations in the recruitment and selection of temporary judges

At the December 2, 2005 meeting, the Judicial Council directed the Temporary Judges Working Group to consider whether to recommend amending any rules to include diversity considerations in the recruitment and selection of temporary judges. The Temporary Judges Working Group developed amendments to rules 6.741 and 6.743 to provide that courts should recruit, select, and appoint temporary judges so as to reflect broad diversity.<sup>4</sup> On April 6, 2006, the council’s Rules on Projects Committee considered the proposed amendments and some possible alternatives, including amending the rules to provide that courts must comply with section 1.5 of the Standards of Judicial Administration on the recruitment selection and appointment of temporary judges. Based on the divergence of views and complexity of the issues raised, RUPRO has referred the

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<sup>4</sup> In developing its proposals, the Working Group considered draft rule amendments prepared by some members of the Access and Fairness Advisory Committee.

question of what amendments to the temporary judge rules concerning diversity would be appropriate to the Temporary Judges Working Group and to the Access and Fairness Advisory Committee for further consideration.

Issue Five: Whether training should be required of retired judges who serve as temporary judges after retirement, and if so, at what interval after retirement the training should be required

The new rules on court-appointed temporary judges, which were adopted by the Judicial Council on December 2, 2005, and will become effective July 1, 2006, provide that they do not apply to retired judicial officers. (See Cal. Rules of Court, rule 243.11(a).) This means that the requirements of these rules, including the education and training requirements, do not apply to retired judicial officers. At the December 2 meeting, the council directed the Working Group to consider whether retired judges should be required to have training and, if so, at what interval after retirement the training should be required. Because of the complexity of the issue, the Working Group does not recommend changing rule 243.11(a) at this time. But the question of requiring training for retired judges should be considered in the future, particularly in light of actions that the Judicial Council may take regarding minimum continuing legal education for judicial officers.

*Report and Recommendations on Other Issues*

In addition to reporting on the issues on which the Judicial Council specifically requested information, this report provides information about several other developments relating to improving the quality of temporary judging:

- Application form. A form, *Application to Serve as Temporary Judge*, has been developed to assist courts in processing applications from attorneys applying to be temporary judges.
- Education and training. The Education Division of the Administrative Office of the Courts has been developing resources to assist the courts in meeting the new training and education requirements for court-appointed temporary judges.
- Obtaining MCLE credit for educational activities. Information will be provided to the courts regarding the process for having an activity approved for Minimum Continuing Legal Education (MCLE) credit and the process for becoming an MCLE provider.
- Administration of temporary judge programs. The Office of Court Research of the AOC's Executive Office Programs Division is developing means to assist the courts in reporting information about the use of court-appointed temporary judges.

- Implementation of the new rules on temporary judging: review, oversight, and advice. The Temporary Judges Working Group recommends that the Judicial Council either authorize the Temporary Judges Working Group to continue to provide guidance, oversight, and recommendations to the council relating to temporary judging for an additional 12 to 18 months; or establish a new advisory committee charged with providing guidance, oversight, and advice on a permanent basis to the council on matters relating to temporary judging.
- The need for more judicial positions. The Temporary Judges Working Group recommends that the council continue to support legislation to increase the number of judicial positions and thereby decrease the reliance of the courts on temporary judges.

#### Alternative Actions Considered

The Temporary Judges Working Group has considered the specific questions which it was asked to address; its report explains the alternatives considered and reasons for the recommendations made.

#### Comments From Interested Parties

Proposed rules 243.20 and 243.31 on disclosures and disqualifications of temporary judges were previously circulated for comment on a special cycle in the spring of 2005. The comments were summarized and discussed in the Temporary Judges Working Group's report to the council on December 2, 2005. Those rules have not been circulated again.

#### Implementation Requirements and Costs

As indicated in the report to the council on December 2, 2005, the rules on temporary judging previously adopted, which will become effective July 1, 2006, will require implementation efforts and impose costs. The further amendments to the rules proposed in this report will impose some additional responsibilities on the courts to assign temporary judges in a manner that avoids conflicts and the appearance of unfairness or bias, and to implement procedures for the handling of disqualifications. The benefits of instituting these requirements outweigh the costs.

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However, the council referred four rules to the Supreme Court with a recommendation that these be considered for inclusion in the Code of Judicial Ethics. At the same time, the Judicial Council directed the Temporary Judges Working Group<sup>1</sup> to report back to the council at its April 2006 meeting, providing information and recommendations concerning the following matters:

1. The status of the referral to the Supreme Court Advisory Committee on the Code of Judicial Ethics of the question whether rules on disclosures and disqualifications of temporary judges should be addressed in the Code of Judicial Ethics;

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2. The status of the referral to the Supreme Court Advisory Committee on the Code of Judicial Ethics as to whether the Supreme Court has addressed or will address in the Code of Judicial Ethics the provisions contained in proposed rule 243.16. That rule specifies circumstances when an attorney may and may not describe his or her service as a temporary judge in résumés, ballot designations, advertisements, and other situations;
3. Whether new rule 6.741(b) of the California Rules of Court on the duties and authority of the presiding judge should be amended to add the phrase “from the court-appointed list” after the words “The presiding judge has the discretion to remove a court-appointed temporary judge. . . .” This presents the general question of whether the presiding judge has authority to remove a temporary judge at any time or whether the removal authority is limited to future appointments. It presents an additional question as to whether there should be any reference in the rules to an official “list” of court-approved temporary judges;
4. Whether rule 6.741, rule 6.743(b)(3), or any other rule should be amended to include broad diversity considerations in the recruitment and selection of temporary judges; and
5. Whether training should be required of retired judges who serve as temporary judges after retirement, and if so, at what interval after retirement the training should be required.

#### Rationale for Recommendations

This report provides information and makes recommendations on the preceding issues.

The report also provides information about several other developments relating to improving the quality of temporary judging. And it recommends that the Judicial Council: (1) continue the Temporary Judges Working Group for a period of 12 to 18 months or, alternatively, establish a permanent advisory committee to provide guidance, oversight, and advice to the council concerning temporary judging; and (2) continue to support legislation to increase the number of judicial positions and thereby decrease the courts’ reliance on temporary judges.

#### *Report and Recommendations on Issues Specified by the Judicial Council*

Issue One: The status of the referral to the Supreme Court Advisory Committee on the Code of Judicial Ethics on the question whether the rules on disclosures and disqualifications of temporary judges should be addressed in the Code of Judicial Ethics

The Judicial Council, on December 2, 2005, referred three proposed rules on disqualifications and disclosures of temporary judges (proposed Cal. Rules of Court,

rules 243.19, 243.20, and 243.31(d)) to the Supreme Court, with a recommendation that they be considered for inclusion in the Code of Judicial Ethics.<sup>2</sup> The Supreme Court Advisory Committee on the Code of Judicial Ethics has carefully considered these rules. Based on this review, it is anticipated that the committee will recommend that most of the provisions in the referred rules be included in the Code of Judicial Ethics.<sup>3</sup>

In particular, the Supreme Court Advisory Committee will recommend that it is appropriate for the provisions on disclosures and disqualifications of temporary judges (formerly in proposed rules 243.19 and 243.20(b)–(c)) to be included in canon 6D of the Code of Judicial Ethics. Most of these provisions are based on the statutory provisions for the disqualification of judges in Code of Civil Procedure section 170.1, but have been specifically tailored to apply to temporary judges.

In addition, it is anticipated that the Supreme Court Advisory Committee will recommend that two provisions (formerly in proposed rule 243.20(d)(1)–(2)), which disqualify attorneys from serving as court-appointed temporary judges in certain circumstances in family law and in unlawful detainer cases, should be included in the Code of Judicial Ethics. These provisions disqualify an attorney from serving as a court-appointed temporary judge in these types of cases: (1) if the attorney holds himself or herself out to the public as representing exclusively one side; or (2) if the attorney represents one side in 90 percent or more of the cases in which he or she appears.

In reviewing the referred rules, the Supreme Court Advisory Committee also concluded that a few of the other provisions in proposed rule 243.20 should not be included in the Code of Judicial Ethics because they primarily concern matters of court administration, practice, and procedure rather than ethics. Though these provisions do not belong in the Code of Judicial Ethics, it is appropriate for them to be included in the California Rules of Court, as originally proposed.

Specifically, it is appropriate to have a rule (based on originally proposed rule 243.20(e)) providing that an attorney may not serve as a temporary judge (1) in a courthouse on the same day that the attorney is appearing as an attorney or party in that same courthouse, or (2) if the attorney is presently a party to any action or proceeding in the court on the same type of case. In addition, it is appropriate to include in the rules a provision (originally in proposed rule 243.20(d)(3)) that provides that an attorney may not serve as a temporary judge in a case in which one party is self-represented and the other is represented by an attorney or is an attorney. This third provision has been controversial because of the impact it may have on judicial resources in certain types of cases. The Temporary Judges

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<sup>2</sup> The rules on disclosures and disqualifications referred to the Supreme Court are contained in the Report to the Judicial Council of Cal., *Temporary Judges: Rules on Quality Assurance, Training, Ethics, and Administration* (Dec. 2, 2005), at pages 47–51.

<sup>3</sup> A memorandum containing the Supreme Court Advisory Committee’s recommendations is still being prepared. The Supreme Court therefore has not yet considered or approved the committee’s recommendations.

Working Group supports its inclusion in the rules because of the beneficial effects it will have in assuring self-represented litigants and the public of the fairness of the judicial system. This provision effectuates the policy of preserving the appearance of impartiality of the court in cases involving self-represented parties. It ensures that where one party is self-represented, a judicial officer rather than an attorney serving as a temporary judge will determine the case. The Temporary Judges Working Group recommends amending rule 243.20 to include in new subdivision (b) the three provisions described above.<sup>4</sup> For good cause, the presiding judge would be able to waive any of the three limitations in that subdivision.<sup>5</sup>

Based on its review, the Supreme Court Advisory Committee also concluded that it was not appropriate to include in the Code of Ethics several other provisions from originally proposed rule 243.20(f)–(i) that primarily concern matters of procedure rather than ethics. These provisions relate to the waiver of disqualifications, the late discovery of the grounds for disqualification, the notification of the court of the disqualification of a temporary judge, and the procedure for requesting that a temporary judge be disqualified. It is, however, appropriate to include them in the California Rules of Court. These procedural and administrative rules are important. They will assist the court, temporary judges, and litigants in handling disqualifications of temporary judges. Accordingly, the Temporary Judges Working Group recommends that these provisions be added as new subdivisions (c)–(f) to rule 243.20 of the California Rules of Court.

It is anticipated that the Supreme Court Advisory Committee will recommend that the rules relating to mandatory disclosures by temporary judges be included in the Code of Judicial Ethics. If they are included there, the Code of Judicial Ethics will provide the basic source of guidance and direction on what temporary judges must disclose. Rule 243.31(d)(2) of the California Rules of Court, as adopted on December 2, 2005, contains an independent disclosure requirement, however. This disclosure requirement is similar to one of the proposed disclosure requirements to be included in the Code of Judicial Ethics. To simplify the law, the Temporary Judges Working Group recommends that the independent disclosure requirement in rule 243.31(d)(2) be deleted. This will result in all the disclosure requirements for temporary judges being located together in the Code of Judicial Ethics.

Finally, the Temporary Judges Working Group recommends that the cross-reference in rule 243.31 to rule 243.20(f) should be updated and corrected to refer to rule 243.20(d).

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<sup>4</sup> All of the proposed amendments to the California Rules of Court recommended by the Temporary Judges Working Group are located at pages 12–14 of this report.

<sup>5</sup> The original proposed version of these three provisions would have allowed the presiding judge, for good cause, to waive the two provisions from proposed rule 243.20(e), but not the provision from rule 243.20(d)(3). Based on further discussions concerning the limitation from rule 243.20(d)(3), the Working Group recommends that the presiding judge also be given the discretion for good cause to waive that limitation.

Issue Two: The status of the referral to the Supreme Court Advisory Committee on the Code of Judicial Ethics as to whether the Supreme Court has addressed or will address in the Code of Judicial Ethics the provision in rule 243.16

Proposed rule 243.16 of the California Rules of Court specifies the circumstances when an attorney may and may not use his or her service as a court-appointed temporary judge in resumés, ballot designations, advertisements, and other situations. The Judicial Council referred this rule to the Supreme Court Advisory Committee on the Code of Judicial Ethics, with a recommendation that it be included in the Code of Judicial Ethics.

The Supreme Court Advisory Committee on the Code of Judicial Ethics has considered proposed rule 243.16 for inclusion in the code.<sup>6</sup> That rule provides more detailed direction than canon 6D(2)(b) on the circumstances under which a court-appointed temporary judge may or may not use his or her title or service. It is anticipated that the Supreme Court Advisory Committee will recommend that the provisions of rule 243.16 be included in the Code of Judicial Ethics. If these provisions are included in canon 6D as anticipated, they would apply from the time of appointment and continue indefinitely after the termination of the appointment.<sup>7</sup>

Issue Three: Whether new rule 6.741(b) on the duties and authority of the presiding judge should be amended to add the phrase “from the court-appointed list” after the words “The presiding judge has the discretion to remove a court-appointed temporary judge”

At the December 2, 2005, Judicial Council meeting, the question was raised whether rule 6.741(b) should be amended to include the following underlined words:

“The presiding judge has the discretion to remove a court-appointed judge from the court-appointed list or to discontinue using an attorney as a court-appointed temporary judge at any time.”

The council referred the matter to the Temporary Judges Working Group. The Working Group recommends that rule 6.741(b) not be amended to include the additional words “from the court-appointed list.” The Working Group believes that it is important that a presiding judge have broad discretion to remove a court-appointed temporary judge at any time. The additional phrase could be construed as limiting the removal power of presiding judges to removing court-appointed temporary judges only at a future time.

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<sup>6</sup> The Code of Judicial Ethics already contains a provision that prohibits a temporary judge from lending the prestige of judicial office to advance his, her, or another person’s pecuniary or personal interest and from using his or her judicial title in any written communication intended to advance his, her, or another person’s pecuniary or personal interests, except to show his, her, or another person’s qualifications. (See Code of Judicial Ethics, canon 6D(2)(b).) That provision is general and applies only from the time of notice and acceptance of appointment until termination of the appointment.

<sup>7</sup> The Supreme Court Advisory Committee’s recommendations have not yet been considered by the Supreme Court.

Based on the experience of the members of the Working Group, presiding judges sometimes need to remove a court-appointed temporary judge in a short period of time or even immediately. It is not sufficient that a court-appointed temporary judge may be precluded from receiving future assignments. So to preserve the presiding judges' removal authority, the rule should not be changed.

The Judicial Council's Rules and Projects Committee (RUPRO) considered pending rule 6.741(b) and the Working Group's recommendation. It asked the Working Group to consider further the question of the depth and breadth of the presiding judge's authority to remove a court-appointed temporary judge during the pendency of a case. And it asked the group to consider whether there should be any additional rule amendments, training for presiding judges, or other actions taken concerning the exercise of the presiding judge's authority to remove court-appointed temporary judges.

Issue Four: Whether rule 6.741, rule 6.743(b)(3), or any other rule should be amended to include broad diversity considerations in the recruitment and selection of temporary judges

During the December 2, 2005 meeting, the Judicial Council directed the Temporary Judges Working Group to consider whether to recommend any rules to include diversity considerations in the recruitment and selection of temporary judges. The Temporary Judges Working Group developed proposed amendments to rules 6.741 and 6.743 to provide that courts should recruit, select, and appoint temporary judges to reflect broad diversity.<sup>8</sup>

On April 6, 2006, the Judicial Council's Rules and Projects Committee considered the proposed amendments to rules 6.741 and 6.743. It also considered some possible alternatives, including amending the rules to require courts to comply with section 1.5 of the Standards of Judicial Administration in the recruitment, selections, and appointment of temporary judges. Because of the divergence of views and complexity of the issues raised, RUPRO has referred the question of what amendments to the temporary judge rules concerning diversity would be appropriate to the Temporary Judges Working Group and the Access and Fairness Advisory Committee for further consideration.

Issue Five: Whether training should be required of retired judges who serve as temporary judges after retirement, and if so, at what interval after retirement the training should be required

The new rules on court-appointed temporary judges, which were adopted by the Judicial Council on December 2, 2005 and will become effective July 1, 2006, provide that they

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<sup>8</sup> In developing its proposals, the Working Group considered draft rule amendments prepared by some members of the Access and Fairness Advisory Committee.

do not apply to retired judicial officers. (See Cal. Rules of Court, rule 243.11(a).) This means that the requirements of these rules, including the education and training requirements, do not apply to retired judicial officers.

At the council meeting on December 2, 2005, the question was raised whether this exemption is appropriate. The council directed the Working Group to consider whether retired judges should be required to have training and, if so, at what interval after retirement the training should be required. This issue is complicated. At the present time, the Working Group does not recommend amending rule 243.11(a), which contains an exemption for retired judges.

Before arriving at this conclusion, the Working Group discussed various alternatives. One alternative would be to eliminate entirely the exemption in rule 243.11, which would mean that retired judicial officers would be required to satisfy all the training requirements of rules 243.13 and 243.14. This would probably not affect a significant number of retired judges.<sup>9</sup> It should be noted that retired judges who serve as temporary judges under article VI, section 21 of the California Constitution would need to be members of the State Bar. Those retired judges who are members of the State Bar and so are eligible to serve as temporary judges might simply be required to meet the same training requirements as other attorneys who are appointed to serve as court-appointed temporary judges.

Alternatively, the rules might be amended to provide a limited exemption for retired judges who serve as court-appointed temporary judges from the requirements for bench conduct, demeanor, and ethics training for a period of time—for example, for three years. Providing such a “grace period” would recognize the value of the bench experience and training that retired judges already have.

A third alternative would be to amend the rules to allow retired judges who serve as court-appointed temporary judges to receive credit for any specific training or education courses that they have taken on ethics or substantive issues during the period before their retirement. The practical effect of this third option depends on the extent of the training and education that judges are receiving.

Because of the complexity of the issue, the Working Group does not recommend changing rule 243.11(a) at this time; but it believes that the question of requiring training for retired judges should be considered in the future, particularly in light of actions that the Judicial Council may take regarding minimum legal education for judicial officers.

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<sup>9</sup> The temporary judge rules do not affect assigned judges, who serve as judges under article VI, section 6 of the California Constitution.

## *Report and Recommendations on Other Issues*

In addition to reporting on the issues on which the Judicial Council specifically requested information, this report provides information about several other developments relating to improving the quality of temporary judging.

### Application Form

A form, *Application to Serve as Temporary Judge*, has been developed by the Temporary Judges Working Group. This form is designed to assist courts in processing applications from attorneys applying to be temporary judges.

This form is being made available to the courts for their convenience; it will assist the courts in collecting the information concerning applicants required under rule 6.744. Courts will not be required to use it. The form is not an official Judicial Council form. If courts elect to use this form, they may require applicants to supplement it. Alternatively, courts may develop and use their own application form or forms.

### Education and Training

The Education Division of the Administrative Office of the Courts (AOC) has been developing resources to assist the courts in meeting the new training and education requirements for court-appointed temporary judges. These resources include:

- Bench training and demeanor, a three-hour course. The Education Division plans to conduct a series of judicial train-the-trainer sessions starting in the late spring of 2006, so that courts will be able to teach this course locally. The division also plans to deliver this training directly through the regional offices of the AOC.
- On ethics, a training packet and by this fall a Web-based online course.
- On small claims, a training packet and an online Web-based course. These will be available in advance of the July 1, 2006 deadline for the training required by Code of Civil Procedure section 116.240(b) and rule 1726 of the California Rules of Court.
- On traffic, an online Web-based course by this fall.
- On substantive areas of the law, the Education Division plans to have Web-based online courses available by this fall on unlawful detainer, family, juvenile dependency, and juvenile delinquency law. The new rules provide that training on substantive law may be taken by any means approved by the court. So courts may offer courses or may approve courses offered by other providers for Minimum Continuing Legal Education (MCLE) credit in these areas.

### Obtaining MCLE Credit for Educational Activities

Information will be provided to the courts regarding the process for having an activity approved for MCLE credit and the process for becoming an MCLE provider. This information is available on the California State Bar Web site at *www.calbar.org*.

### Administration of Temporary Judges Programs

The Office of Court Research of the AOC's Executive Office Programs Division is developing means to assist the courts in reporting information about the use of court-appointed temporary judges and to assist the judicial branch in collecting information to better assess judicial needs and improve the quality of temporary judging.

### Implementation of the New Rules on Temporary Judging: Review, Oversight, and Advice

The effort to ensure and improve the quality of temporary judging is a major endeavor. It will pose challenges to the courts and require direction and assistance. To effectively implement the new rules, it is desirable to have some entity provide oversight. Also, the council should have ongoing advice on the best means to implement the new rules and improve the quality of temporary judging. Accordingly, the Temporary Judges Working Group believes some committee or entity is needed to provide guidance to the courts and advice to the Judicial Council on temporary judging.

Because the range of uses of temporary judges is currently so broad (including small claims, traffic, unlawful detainer, family and juvenile law and other areas), no single advisory committee is the evident body to which this responsibility should be given. The Temporary Judges Working Group therefore recommends that the Judicial Council either:

- Authorize the Temporary Judges Working Group to continue to provide guidance, oversight, and recommendations to the council relating to temporary judging for an additional 12 to 18 months; or
- Establish a new advisory committee charged with providing guidance, oversight, and advice to the council on matters relating to temporary judging on a permanent basis.

In either case, the group or committee should be charged with working closely with the courts, relevant advisory committees, the Education Division/CJER, and others to ensure and enhance the quality of temporary judging throughout the state.

### Final Comment: The Need for More Judicial Positions

The progress made in recent times to ensure and improve the quality of court-appointed temporary judging is a significant achievement. It should improve the quality of justice,

including especially procedural fairness, in the courts. But much remains to be done to implement the new rules and policies.

Furthermore, these measures will at best be only a limited approach to a more substantial problem. In the long-term, the best means to assure the quality of justice for all the citizens of California is to increase the number of full-time judges. The Temporary Judges Working Group recognizes this and strongly supports the legislation to establish more judicial positions. The judicial branch should have sufficient judges to fill all judicial needs. Until these judges are available, trained and qualified temporary judges can assist the courts. But the goal of having enough judges to serve the public should continue to be vigorously pursued.

#### Alternative Actions Considered

As indicated in this report, the Temporary Judges Working Group considered various alternatives in arriving at the specific recommendations it has made.

#### Comments From Interested Parties

Proposed rules 243.20 and 243.31 on disclosures and disqualifications of temporary judges were previously circulated for comment on a special cycle in the spring of 2005. The comments were summarized and discussed in the Temporary Judges Working Group's report to the council on December 2, 2005. Those rules have not been circulated again.

#### Implementation Requirements and Costs

As indicated in the report to the council on December 2, 2005, the rules on temporary judging previously adopted, which will become effective July 1, 2006, will require implementation efforts and impose costs. The further amendments to the rules proposed in this report will impose some additional responsibilities on the courts to assign temporary judges in a manner that avoids conflicts and the appearance of unfairness or bias, and to implement procedures for the handling of disqualifications. The benefits of instituting these responsibilities outweigh the costs.

#### Recommendations

The Temporary Judges Working Group recommends that the Judicial Council, effective July 1, 2006:

1. Amend rule 243.20 of the California Rules of Court to add new subdivisions on limitations on service by court-appointed temporary judges, the waiver of mandatory disqualifications or limitations, the effects of late discovery of grounds for disqualification or limitations, the notification of the court of the disqualification of a temporary judge, and the procedures for requesting that a temporary judge be disqualified; and

2. Amend rule 243.31 of the California Rules of Court to reflect the addition of new provisions on disclosures by temporary judges to the Code of Judicial Ethics and to provide a cross-reference to rule 243.20(d).

In addition, the Working Group recommends that the Judicial Council:

3. Continue the Temporary Judges Working Group for approximately 12 to 18 months or, alternatively, establish an advisory committee or other similar entity to provide guidance, oversight, and recommendations to the Judicial Council concerning temporary judging; and
4. Continue to support legislation to increase the number of judicial positions and thereby decrease the courts' reliance on temporary judges.

The text of amended rules 243.20 and 243.31 is attached at pages 12–14.

Attachment

Rules 243.20 and 243.31 of the California Rules of Court are amended, effective July 1, 2006, to read:

1 **Rule 243.20. Disqualifications and limitations**

2  
3 **(a) [Code of Judicial Ethics]** A temporary judge must disqualify himself or herself,  
4 ~~and is limited from serving~~ as a temporary judge in proceedings, as provided under  
5 the Code of Judicial Ethics.

6  
7 **(b) [Limitations on service]** In addition to being disqualified as provided in (a), an  
8 attorney may not serve as a court-appointed temporary judge:

9  
10 (1) If the attorney, in any type of case, is appearing on the same day in the same  
11 courthouse as an attorney or as a party;

12  
13 (2) If the attorney, in the same type of case, is presently a party to any action or  
14 proceeding in the court; or

15  
16 (3) If, in a family law or unlawful detainer case, one party is self-represented and  
17 the other party is represented by an attorney or is an attorney.

18  
19 For good cause, the presiding judge may waive the limitations established in this  
20 subdivision.

21  
22 **(c) [Waiver of disqualifications or limitations]**

23  
24 (1) After a temporary judge who has determined himself or herself to be  
25 disqualified under the Code of Judicial Ethics or prohibited from serving under  
26 (b) has disclosed the basis for his or her disqualification or limitation on the  
27 record, the parties and their attorneys may agree to waive the disqualification  
28 or limitation and the temporary judge may accept the waiver. The temporary  
29 judge must not seek to induce a waiver and must avoid any effort to discover  
30 which attorneys or parties favored or opposed a waiver. The waiver must be in  
31 writing, must recite the basis for the disqualification or limitation, and must  
32 state that it was knowingly made. The waiver is effective only when signed by  
33 all parties and their attorneys and filed in the record.

34  
35 (2) No waiver is permitted where the basis for the disqualification is any of the  
36 following:

37  
38 (A) The temporary judge has a personal bias or prejudice concerning a party;  
39



1 (d) **[Disclosure to the parties]** In addition to any other disclosure required by law, no  
2 later than five days after designation as a temporary judge or, if the temporary judge  
3 is not aware of his or her designation or of a matter subject to disclosure at that time,  
4 as soon as practicable thereafter, a temporary judge must disclose to the parties:~~(1)~~  
5 any matter subject to disclosure under the Code of Judicial Ethics; and

6  
7 ~~(2) Any personal or professional relationship known to the temporary judge that~~  
8 ~~the temporary judge or the temporary judge's law firm has or has had with a~~  
9 ~~party, attorney, or law firm in the current case.~~

10  
11 (e) \* \* \*

12  
13 (f) **[Motion to withdraw stipulation]** A motion to withdraw a stipulation for the  
14 appointment of a temporary judge must be supported by a declaration of facts  
15 establishing good cause for permitting the party to withdraw the stipulation, and  
16 must be heard by the presiding judge or a judge designated by the presiding judge.  
17 A declaration that a ruling is based on error of fact or law does not establish good  
18 cause for withdrawing a stipulation. Notice of the motion must be served and filed,  
19 and the moving party must mail or deliver a copy to the temporary judge. If the  
20 motion to withdraw the stipulation is based on grounds for the disqualification of the  
21 temporary judge first learned or arising after the temporary judge has made one or  
22 more rulings, but before the temporary judge has completed judicial action in the  
23 proceeding, the provisions of rule 243.20~~(f)~~(d) apply. If a motion to withdraw a  
24 stipulation is granted, the presiding judge must assign the case for hearing or trial as  
25 promptly as possible.