

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: Civil and Small Claims Advisory Committee
Hon. Dennis M. Perluss, Chair
Anne Ronan, Attorney, 415-865-8933
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Heather Anderson, Senior Attorney, 415-865-7691,
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DATE: August 21, 2009

SUBJECT: Alternative Dispute Resolution: Access to Hearings and Records in Proceedings Before Temporary Judges and Referees (adopt Cal. Rules of Court, rules 2.833, 3.930, 3.931, and 3.932; amend rules 2.400, 3.902, 3.922, and 3.926; amend and renumber rules 2.833, 2.834, and 3.909 as 2.834, 2.835, and 3.907, respectively; and repeal rules 3.907, 3.908, 3.910, and 3.927) (Action Required)

Issue Statement

The California Rules of Court contain rules relating to temporary judges, both court-appointed temporary judges as defined in rule 2.810¹ and temporary judges requested by the parties as defined in rule 2.830,² and to referees, both those appointed with the consent of the parties under Code of Civil Procedure section 638 and those appointed on order of the court under section 639. Among other things, these rules address public access to proceedings conducted by temporary judges and referees and to the records from these proceedings. Despite these existing provisions, however, there are concerns that the public may not always have appropriate access to these proceedings or to records that have been filed in these proceedings.

¹ Rule 2.810 provides that “‘court-appointed temporary judge’ means an attorney who has satisfied the requirements for appointment under rule 2.812 and has been appointed by the court to serve as a temporary judge in that court.”

² Rule 2.830 provides that temporary judges requested by the parties are “attorneys designated as temporary judges under article VI, section 21 of the California Constitution at the request of the parties rather than by prior appointment of the court, including privately compensated temporary judges and attorneys who serve as temporary judges pro bono at the request of the parties.”

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective January 1, 2010:

1. Amend rule 2.400 to ensure that the court has a complete file in any proceedings before temporary judges and referees³ and that the public has appropriate access to records in these proceedings, including, among other things, clarifying that all original documents in proceedings conducted by either a temporary judge or a referee must be filed with the court clerk, not deposited with the temporary judge or referee and requiring that all documents and exhibits in the possession of a temporary judge or referee that would be open to the public if filed or lodged with the court be made available to the public;
2. Adopt new rules 2.833 and 3.930, which cross-reference rule 2.400, to increase awareness of the applicable provisions in rule 2.400;
3. Reorganize the rules relating to references to make them simpler and easier to understand;
4. Amend and renumber rules 2.833 and 3.309, amend rules 3.902, 3.922, and 3.926, and adopt new rule 3.931 relating to hearings in any proceedings before referees and temporary judges requested by the parties to:
 - a. Ensure that the public has appropriate access to these hearings;
 - b. Make the language concerning applications for an appropriate hearing site more consistent with other rules regarding applications and clarify that the proceedings are not stayed pending a decision on such an application unless the presiding judge or his or her designee orders such a stay; and
 - c. Require that if a court staff mediator or evaluator is required to attend a hearing before temporary judge requested by the parties or a referee, that hearing must take place at a location requiring no more than 15 minutes' travel time from the mediator's or evaluator's work site, unless otherwise ordered by the presiding judge or his or her designee;
5. Amend and renumber rule 2.834 and adopt new rule 3.932 to make the requirements concerning motions to seal records in proceedings before referees and temporary judges requested by the parties more consistent with the rules regarding sealed records and with the procedures generally followed with regard to motions; and

³ Rule 2.400 applies to all temporary judges, whether they are appointed by the court or requested by the parties, and to all referees, whether appointed under Code of Civil Procedure section 638 or 639.

6. Make other clarifying changes to the rules relating to temporary judges and referees.

The text of the new and amended rules is attached at pages 16–25.

Rationale for Recommendation

Access to records

This proposal would amend rule 2.400 to ensure that the court clerk’s office has the complete case file and can make all nonconfidential portions of such a file available to the public. The proposed amendments would clarify that all original documents in proceedings conducted by either a temporary judge (whether appointed by the court or requested by the parties) or a referee (whether appointed under Code of Civil Procedure section 638 or 639) must be filed with the court clerk, not submitted to the temporary judge or referee. The amendments would also prohibit a temporary judge or referee from accepting any document that is required to be filed before it is considered by a court unless the document either has the clerk’s file stamp or is accompanied by a declaration from the party stating that the document has been submitted to the court for filing. To ensure that the public has appropriate access to materials in the possession of the temporary judge or referee, rule 2.400(c)(2) would be replaced by a new broader requirement that all documents and exhibits in the possession of a temporary judge or referee that would be open to the public if filed or lodged with the court must be made available during business hours for inspection by any person within a reasonable time after the request and under reasonable conditions.

Access to hearings

The rules relating to temporary judges and referees currently contain several provisions relating to public access to hearings conducted by referees appointed under Code of Civil Procedure sections 638 or 639 and temporary judges requested by the parties. This proposal would add new provisions to these rules specifically requiring that all proceedings before a referee appointed under Code of Civil Procedure section 638 or 639 or a temporary judge requested by the parties that would be open to the public if held before a judge must be open to the public, regardless of whether they are held in a court facility or at another location. It would also require that, when they accept their appointments, all referees appointed under Code of Civil Procedure section 638 or 639 and temporary judges requested by the parties provide the court with a statement containing information about who to contact for access to the hearings in these proceedings. Court clerks would be required to post this statement in the court facility. This would broaden and replace the current requirements that such contact information be included in orders appointing referees under Code of Civil Procedure sections 638 or 639 and that clerks post notices in the courthouse indicating who to contact for access to hearings conducted by referees appointed under Code of Civil Procedure section 638 and privately compensated temporary judges.

Alternative Actions Considered

The committee considered, but ultimately rejected, the idea of proposing that temporary judges and referees be prohibited from accepting any documents that were not file-stamped by the court. The committee also rejected the idea of requiring that temporary judges and referees be required to notify the clerk of all scheduled hearings and that this information be included in the court's docket.

Comments from Interested Parties

These proposed amendments were circulated as part of the spring 2009 comment cycle. Seven individuals or organizations submitted comments on this proposal. Three commentators agreed with the proposal, two agreed with the proposal if amended, and two did not agree with the proposal. The full text of the comments received and the committee's responses is attached beginning on page 26.

Rule 2.833, relating to temporary judges requested by the parties, and rule 3.909, relating to referees appointed under Code of Civil Procedure section 638, currently provide that the clerk must post a notice in the courthouse indicating the telephone number of a person to contact to arrange for attendance at any proceeding conducted by privately compensated temporary judges and referees that would be open to the public if held in a courthouse. The proposal that was circulated for public comment would have eliminated this posting requirement. Two commentators objected to this change on the basis that it would reduce public access to hearings in proceedings before temporary judges and referees. In response to these comments, the committee revised its proposal to replace the current posting requirement with a broader requirement that the clerk post this information for all cases in which referees are appointed under either Code of Civil Procedure section 638 or 639 or and all cases in which temporary judges requested by the parties are appointed.

Rules 2.833 and 3.909 also provide that court facilities and court personnel may not be used in proceedings pending before a privately compensated temporary judge or referee, except on a finding by the presiding judge that their use would further the interests of justice. The proposal that was circulated for public comment would have added a provision to these rules allowing parties in these proceedings to use the courts' child custody and visitation mediation and evaluation services in family law cases. The Trial Court Presiding Judges Advisory Committee/Court Executives Advisory Committee Joint Rules Working Group did not agree with these amendments. Based on these comments, the committee revised its proposal to eliminate this provision.

Implementation Requirements and Costs

These proposed amendments will place some additional burdens on temporary judges and referees to ensure public access to documents and hearings in matters before them, including that they provide courts with a statements containing information about who to contact to obtain access to these documents and hearings. There may also be some

additional work for courts associated with enforcing these new requirements until temporary judges and referees become familiar with them.

Attachments

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Report

TO: Members of the Judicial Council

FROM: Civil and Small Claims Advisory Committee
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Issue Statement

The California Rules of Court contain rules relating to temporary judges, both court-appointed temporary judges as defined in rule 2.810⁴ and temporary judges requested by the parties as defined in rule 2.830,⁵ and to referees, both those appointed with the consent of the parties under Code of Civil Procedure section 638 and those appointed on order of the court under section 639. Among other things, these rules address public access to proceedings conducted by temporary judges and referees and to the records from these proceedings. Despite these existing provisions, however, there are concerns that the public may not always have appropriate access to these proceedings or to records that have been filed in these proceedings.

⁴ Rule 2.810 provides that “‘court-appointed temporary judge’ means an attorney who has satisfied the requirements for appointment under rule 2.812 and has been appointed by the court to serve as a temporary judge in that court.”

⁵ Rule 2.830 provides that temporary judges requested by the parties are “attorneys designated as temporary judges under article VI, section 21 of the California Constitution at the request of the parties rather than by prior appointment of the court, including privately compensated temporary judges and attorneys who serve as temporary judges pro bono at the request of the parties.”

Rationale for Recommendation

Access to records

Rule 2.400(b) addresses documents filed in proceedings before temporary judges and referees.⁶ Currently this rule provides that in a case pending before a temporary judge or referee, “a party must tender and the clerk must accept for filing all original papers accompanied by the required fee within the time limits specified by law.” Despite this provision, there are concerns that original documents are not always being filed with the court and thus are not always included in the court file in the case. To ensure that the court has a complete file in any proceedings before temporary judges and referees, this proposal would amend rule 2.400(b) to clarify that all original documents in proceedings conducted by either a temporary judge or a referee must be filed with the court clerk, not submitted to the temporary judge or referee.

Rule 2.400(b) also currently requires that parties provide the temporary judge or referee with a file-stamped copy of each paper relevant to the issues before the temporary judge or referee. This proposal would add new provisions to this rule prohibiting a temporary judge or referee from accepting any document that is required to be filed before it is considered by a court unless the document either has the clerk’s file stamp or is accompanied by a declaration from the party stating that the document has been submitted to the court for filing. For any document that is not ordinarily filed before it is considered by a court, these amendments would require that the document be filed no later than the next court day after the document is submitted to the temporary judge or referee and that the party must promptly provide a file-stamped copy of the document to the temporary judge or referee. This should ensure that the court clerk’s office has the complete case file and can make all nonconfidential portions of the file available to the public, as it does in any equivalent case being heard by the court.

To ensure that the temporary judge or referee does not act based on documents that are not accepted for filing by the court, these amendments would also require parties to inform the temporary judge or referee if a document is not accepted for filing by the court or if the filing is subsequently canceled.

Rule 2.400(c)(2) addresses the handling of exhibits in proceedings before temporary judges and referees. This rule currently requires that, if proceedings are conducted by a temporary judge or a referee outside of court facilities, at the conclusion of the proceedings, the temporary judge or referee must deliver the exhibits, properly marked, to the clerk unless the parties file a stipulation that provides otherwise. To ensure that the court, rather than the parties, decides how the exhibits are to be handled, this proposal

⁶ Rule 2.400 applies to all temporary judges, whether they are appointed by the court or requested by the parties, and to all referees, whether appointed under Code of Civil Procedure section 638 or 639.

would amend this rule to require that the court approve any stipulation for an alternate disposition of exhibits.

Rule 2.400(c)(2) also currently requires that exhibits in the possession of the temporary judge or referee be made available during business hours for inspection by any person within a reasonable time after the request. This proposal would replace that provision with a new subdivision (d)(1) providing that all documents and exhibits in the possession of a temporary judge or referee that would be open to the public if filed or lodged with the court must be made available during business hours for inspection by any person within a reasonable time after the request and under reasonable conditions. This provision is broader than the existing provision because it addresses access to both exhibits and documents filed in the case, but it also clarifies that the public may access only those materials that would be open to the public if filed or lodged with the court and that there may be reasonable conditions on this access. The proposed advisory committee comment accompanying this provision clarifies this latter point by indicating that public access to documents and exhibits in the possession of a temporary judge or referee should be the same as if the case were being heard by a judge. It also notes that documents and exhibits are not normally available to the public during a hearing or when needed by the judge for hearing or decision preparation, and it provides that a temporary judge or referee may direct that access to documents and exhibits will be available by scheduled appointment. To facilitate public access to these records, proposed new subdivision (d)(2) would be added requiring that temporary judges and referees provide the court with information about who can be contacted to obtain access to documents or exhibits submitted to the temporary judge or referee.

To increase awareness of the applicable provisions in rule 2.400, this proposal would add new rule 2.833 to the rules on temporary judges requested by the parties and new rule 3.930 to the rules on referees providing that all temporary judges, referees, and parties in proceedings before such individuals must comply with the applicable requirements of rule 2.400 concerning the filing and handling of documents and exhibits (this would require renumbering current rule 2.833 as rule 2.834).

In addition to these changes, this proposal would add a definition of “court facility” to rule 2.400. Rule 2.400(a) refers to use of court records “in a court facility” and 2.400(c)(2) refers to proceedings conducted by a temporary judge or referee outside of “court facilities.” The term “court facility” is ambiguous; it is unclear whether it applies to all areas within a courthouse, including those used for other purposes. This proposal would define “court facility” to mean those areas within a building required or used for court functions (see proposed rule 2.400(e).) This definition is based on language from Government Code section 70301(d), which is part of the Trial Court Facilities Act.

Reorganization of rules regarding referees

Currently, rules 3.900–3.910 address references with the consent of the parties under Code of Civil Procedure section 638, and rules 3.920–3.927 address court-ordered references under Code of Civil Procedure section 639. This proposal would amend and reorganize the rules relating to referees to make their structure and format more consistent with the equivalent provisions in rules 2.830–2.834 relating to temporary judges requested by the parties. Among other things, these amendments would: (1) create a new chapter of rules that apply to both references with the consent of the parties under Code of Civil Procedure section 638 and court ordered references under Code of Civil Procedure section 639; (2) move the content of current rules 3.907, 3.908, and 3.910 into this chapter;⁷ and (3) delete rule 3.927 because it duplicates rule 3.920(c). These changes are intended to make the rules simpler and easier to understand.

Access to hearings

The rules relating to temporary judges and referees currently contain several provisions relating to public access to hearings conducted by temporary judges and referees. Rule 2.833(a), which is part of the rules relating to temporary judges requested by the parties, currently provides that the clerk must post a notice in the courthouse indicating the telephone number of a person to contact to arrange for attendance at any proceeding conducted by a privately compensated temporary judge that would be open to the public if held in a courthouse. Similarly, rule 3.909(b), which is part of the rules relating to referees appointed under Code of Civil Procedure section 638, currently provides that the clerk must post such a notice in any proceeding conducted by a privately compensated referee. Rule 3.902(5), relating to referees appointed under Code of Civil Procedure section 638, and rule 3.922(h), relating to referees appointed under Code of Civil Procedure section 639, also provide that the orders appointing these individuals must include the name and telephone number of a person to contact to arrange for attendance at any proceeding before the referee.⁸ In addition, rule 3.926, relating to referees appointed under Code of Civil Procedure section 639, provides that if the proceedings are held in a private facility, the facility must be open to the public on request of any person.

This proposal would add new provisions to the rules relating to temporary judges requested by the parties (proposed rule 2.834(a)) and referees (proposed rule 3.931(a)) specifically requiring that all proceedings before a temporary judge requested by the parties or a referee that would be open to the public if held before a judge must be open to the public, regardless of whether they are held in a court facility or at another location. The proposal would also require that, when they accept their appointments, all temporary judges requested by the parties and referees provide the court with statement containing information about who to contact for access to the hearings they conduct in these proceedings (see proposed rules 2.834(b) and 3.931(b)). The clerk would be required to

⁷ The content of rules 3.907, 3.908, and 3.910 would be moved into new rules 3.932(a), 3.932(b), and 3.931(c), respectively.

⁸ Currently, there is no similar requirement applicable to temporary judges requested by the parties.

post this information in the court facility (see proposed rules 2.834(b)(3) and 3.931(b)(3)). This would broaden and replace the current requirement that such contact information be included in orders appointing referees and that clerks post notices in the courthouse with information about who to contact for access to hearings conducted by privately compensated temporary judges and referees. In addition, these new provisions would permit temporary judges requested by the parties and referees to also provide the court with the address of a publicly accessible Web site that has information about these hearings. These changes should ensure that interested members of the public can access information about all scheduled hearings in proceedings conducted by temporary judges requested by the parties or referees that would have been open if held before a judge.

Appropriate hearing site

Currently, rule 2.833(c), relating to temporary judges requested by the parties, and rule 3.910, relating to referees appointed under Code of Civil Procedure section 638, provide that the court may, on request of any person or on the court's own motion, order that a case pending before such a privately compensated temporary judge or a referee be heard at a site easily accessible to the public and appropriate for seating those who have made known their plan to attend hearings.⁹ This proposal would amend these provisions¹⁰ to use language that is more consistent with other rules regarding applications. It would also add language to clarify that the proceedings are not stayed pending a decision on an application concerning a hearing site unless the presiding judge or his or her designee orders such a stay.

In addition, this proposal would amend these rules to include a new provision requiring that if a court staff mediator (such as a child custody mediator from a court in which these mediators may make recommendations to the court) or evaluator is required to attend a hearing before a temporary judge requested by the parties or a referee, that hearing must take place at a location requiring no more than 15 minutes' travel time from the mediator's or evaluator's work site, unless otherwise ordered by the presiding judge or his or her designee. Like the existing rules concerning the use of court facilities and personnel, this provision is designed to ensure that the use of a temporary judge or referee does not create extra burdens for the public court system.

Motions to seal court records

Currently, rule 2.834(a), relating to temporary judges requested by the parties, and rule 3.907, relating to referees appointed under Code of Civil Procedure section 638, provide that a motion to seal records under rules 2.550–2.551 must be served on all parties, the temporary judge or referee, and any person or organization that has made their intention to attend the hearing known.¹¹ This proposal would amend these rules¹² to make them

⁹ Rules 2.833 and 3.910 contain slightly different language regarding those who plan to attend hearings.

¹⁰ The language of current rule 3.910 would be moved to new rule 3.931(c).

¹¹ Rules 2.834 and 3.907 contain slightly different language regarding those who plan to attend hearings

¹² The language of current rule 3.907 would be moved to new rule 3.932(a).

more consistent with rule 2.551(b)(2), which requires that such motions be served on all parties “that have appeared in the case.” This includes eliminating the current requirement for service on any persons or organizations that have made known their intention to attend the hearing because such service is not required in proceedings before sitting judges.

Other amendments

This proposal would also make several clarifying changes throughout the rules relating to temporary judges and referees.

To reflect recent amendments to the rules relating to temporary judges that distinguish between court-appointed temporary judges and temporary judges requested by the parties, current references in the rules to “privately compensated” temporary judges would be replaced with references to temporary judges “requested by the parties.” However, in rule 2.400(b), the clause referring to temporary judges or referees “whether privately compensated or not” would be deleted entirely because it is not necessary; it is already clear that this provision applies to all temporary judges and referees.

To ensure that items such as Judicial Council forms filed by the parties are encompassed in the rules regarding the handling of documents in matters before temporary judges and referees, current references in these rules to “papers” filed by the parties would be replaced with references to “documents.”¹³ However, in rule 2.400(a), the references to “papers” would be replaced with the term “court records” as the provisions limiting removal of items from court files should be broadly applicable to all court records.

Finally, in several places, these rules provide for an action to be taken by the presiding judge. This proposal would amend these rules to indicate that the action can also be taken by the presiding judge’s designee.

Alternative Actions Considered

To ensure that all original documents are filed with the court, the committee considered proposing that rule 2.400 be amended to prohibit temporary judges and referees from accepting any documents that were not file-stamped by the court. The committee sought public comment on this idea as part of an earlier proposal. Concerns about delays in obtaining file-stamped copies of documents were raised during that earlier public comment process. To address these concerns, the committee decided to recommend that parties also be permitted to submit a declaration stating that the original document has been submitted to the court for filing.

¹³ Rule 2.3 defines “paper” as including all documents offered for filing, except exhibits or Judicial Council or local court forms.

To improve public access to hearings conducted by temporary judges and referees, the committee considered proposing that temporary judges and referees be required to notify the clerk of all scheduled hearings and that this information be included in the court's docket. The committee also sought public comment on this idea as part of an earlier proposal. Based on input provided during that earlier public comment process, the committee decided not to recommend this approach both because it was not practical given the frequency with which hearings before temporary judges and referees are rescheduled and because it would be administratively burdensome for trial court clerks.

Comments From Interested Parties

These proposed amendments were circulated as part of the spring 2009 comment cycle. Seven individuals or organizations submitted comments on this proposal. Three commentators agreed with the proposal, two agreed with the proposal if amended, and two did not agree with the proposal. The full text of the comments received and the committee's responses is attached beginning on page 26.

Rules 2.400 and 2.833-2.835 – Replacing “privately compensated temporary judge” with “temporary judge requested by the parties”

Currently, rules 2.400, 2.833, and 2.834 contain references to “privately compensated” temporary judges. To reflect recent changes to the rules relating to temporary judges that distinguish between court-appointed temporary judges and temporary judges requested by the parties, the proposal that was circulated for public comment included amendments to change these references to “privately compensated” temporary judges to temporary judges “requested by the parties,” the term used in the new temporary judge rules. One commentator, the Superior Court of San Diego County, indicated that it did not support replacing the references to “privately compensated temporary judges” with “temporary judges requested by the parties.” The court's main concern was that this change might mislead self-represented litigants into thinking they may have a private judge appointed by the court—and compensated at the court's expense—by simply asking for one.

In response to this comment, the committee has revised its proposal to eliminate the reference to temporary judges requested by the parties in rule 2.400. However, the committee declined to revise the proposed amendments to rules 2.833 and 2.834. Current rule 2.830 defines the term “temporary judge requested by the parties” as encompassing both “privately compensated temporary judges and attorneys who serve as temporary judges pro bono at the request of the parties.” Because rule 2.830 immediately precedes rules 2.833–2.835, the committee does not believe it will be misleading to use the term “temporary judge requested by the parties” in rules 2.833–2.835. Using this term in rules 2.833–2.835 also ensures that temporary judges who serve on a pro bono basis at the request of the parties are subject to the same requirements relating to hearings and records as temporary judges who are compensated by the parties. However, because rule 2.400 is separated from the definition of “temporary judge requested by the parties” in rule 2.830, the potential for misunderstanding is greater. The current reference to

privately compensated temporary judges in rule 2.400 is also surplusage; its purpose is to emphasize that rule 2.400(b) applies to all temporary judges and referees, including those that are privately compensated. Therefore, eliminating the reference to privately compensated temporary judges in rule 2.400 altogether, rather than replacing it with a reference temporary judges requested by the parties, will address the commentators' concerns without affecting the substance of the rule. Even without this reference, it is still clear the rule 2.400(b) applies to all temporary judges.

Rules 2.834(b) and 3.931(b) – Posting notice of contact for hearing information

As noted above, rules 2.833(a), relating to temporary judges requested by the parties, and 3.909(b), relating to referees appointed under Code of Civil Procedure section 638, currently provide that, in proceedings before privately compensated temporary judges and referees, the clerk must post a notice in the courthouse indicating the telephone number of a person to contact to arrange for attendance at any proceeding conducted by such individuals that would be open to the public if held in a courthouse. The proposal that was circulated for public comment would have eliminated this posting requirement.

Two commentators objected to eliminating the posting requirement on the basis that it would reduce public access to hearings in proceedings before temporary judges and referees. In response to these comments, the committee revised its proposal to replace the current posting requirement with a broader requirement that the clerk post this information for all cases in which temporary judges requested by the parties or referees are appointed.

Rules 2.834(c) and 3.907 – Use of court child custody mediation and evaluation services

Rule 2.833(b) (which would be renumbered as rule 2.834(c) in this proposal) and rule 3.909(a) (which would be renumbered as rule 3.907 in this proposal) provide that court facilities and court personnel may not be used in proceedings pending before a privately compensated temporary judge or referee, except on a finding by the presiding judge that their use would further the interests of justice. The proposal that was circulated for public comment would have added a provision allowing parties in these proceedings to use the courts' child custody and visitation mediation and evaluation services in family law cases.

The Trial Court Presiding Judges Advisory Committee/Court Executives Advisory Committee Joint Rules Working Group did not agree with these amendments. The working group expressed concern that temporary judges and referees could overuse these public services and that the court would have no control over their use. Based on these comments, the committee revised its proposal to eliminate the new provision that would have allowed the use of the courts' child custody and visitation mediation and evaluation services in proceedings before temporary judges and referees. Under the existing rule language, presiding judges are still be free to permit the use of these services in an individual case if they determine that it was would further the interest of justice.

Implementation Requirements and Costs

These proposed amendments will place some additional burdens on temporary judges and referees to ensure public access to documents and hearings in matters before them, including requiring that they provide courts with a statements containing information about who to contact to obtain access to these documents and hearings. There may also be some additional work for courts associated with enforcing these new requirements until temporary judges and referees become familiar with them.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective January 1, 2010:

1. Amend rule 2.400 to ensure that the court has a complete file in any proceedings before temporary judges and referees¹⁴ and that the public has appropriate access to records in these proceedings, including, among other things, clarifying that all original documents in proceedings conducted by either a temporary judge or a referee must be filed with the court clerk, not deposited with the temporary judge or referee and requiring that all documents and exhibits in the possession of a temporary judge or referee that would be open to the public if filed or lodged with the court be made available to the public;
2. Adopt new rules 2.833 and 3.930, which cross-reference rule 2.400, to increase awareness of the applicable provisions in rule 2.400;
3. Reorganize the rules relating to references to make them simpler and easier to understand;
4. Amend and renumber rules 2.833 and 3.309, amend rules 3.902, 3.922, and 3.926, and adopt new rule 3.931 relating to hearings in any proceedings before referees and temporary judges requested by the parties to:
 - a. Ensure that the public has appropriate access to these hearings;
 - b. Make the language concerning applications for an appropriate hearing site more consistent with other rules regarding applications and clarify that the proceedings are not stayed pending a decision on such an application unless the presiding judge or his or her designee orders such a stay; and

¹⁴ Rule 2.400 applies to all temporary judges, whether they are appointed by the court or requested by the parties, and to all referees, whether appointed under Code of Civil Procedure section 638 or 639.

- c. Require that if a court staff mediator or evaluator is required to attend a hearing before a temporary judge requested by the parties or a referee, that hearing must take place at a location requiring no more than 15 minutes' travel time from the mediator's or evaluator's work site, unless otherwise ordered by the presiding judge or his or her designee;
5. Amend and renumber rule 2.834 and adopt new rule 3.932 to make the requirements concerning motions to seal records in proceedings before referees and temporary judges requested by the parties more consistent with the rules regarding sealed records and with the procedures generally followed with regard to motions; and
6. Make other clarifying changes to the rules relating to temporary judges and referees.

The text of the new and amended rules is attached at pages 16–25.

Attachments

Rules 2.833, 3.930, 3.931, and 3.932 of the California Rules of Court are adopted; rules 2.400, 3.902, 3.922, and 3.926 are amended; rules 2.833, 2.834, and 3.909 are amended and renumbered as 2.834, 2.835, and 3.907, respectively; and rules 3.907, 3.908, 3.910, and 3.927 are repealed, effective January 1, 2010, to read:

Title 2. Trial Court Rules

Division 4. Court Records

Chapter 1. General Provisions

Rule 2.400. Court records

(a) Removal of ~~papers~~ records

Only the clerk may remove and replace ~~papers~~ records in the court's files. Unless otherwise provided by these rules or ordered by the court, ~~filed papers~~ court records may only be inspected by the public in the office of the clerk and released to authorized court personnel or an attorney of record for use in a court facility. No original ~~papers filed with the clerk~~ court records may be used in any location other than a court facility, unless so ordered by the presiding judge or his or her designee.

(b) Original ~~papers~~ documents filed with the clerk; duplicate ~~papers~~ documents for temporary judge or referee

- (1) All original documents in a case pending before a temporary judge or referee, whether privately compensated or not, a party must tender and be filed with the clerk must accept for filing all original papers in the same manner as would be required if the case were being heard by a judge, including accompanied by the required fee filing within the any time limits specified by law and paying any required fees. The filing party must provide a filed-stamped copy to the temporary judge or referee of each ~~paper~~ document relevant to the issues before the temporary judge or referee. ~~When the paper may be filed without payment of a fee, instead of a filed stamped copy, the filing party may use a true copy of the paper accompanied by a declaration about the date of its filing.~~
- (2) If a document must be filed with the court before it is considered by a judge, the temporary judge or referee must not accept or consider any copy of that document unless the document has the clerk's file stamp or is accompanied by a declaration stating that the original document has been submitted to the court for filing.

- (3) If a document would ordinarily be filed with the court after it is submitted to a judge or if a party submits an ex parte application, the party that submits the document or application to a temporary judge or referee must file the original with the court no later than the next court day after the document or application was submitted to the temporary judge or referee and must promptly provide a filed-stamped copy of the document or application to the temporary judge or referee.
- (4) A party that has submitted a document to a temporary judge or referee must immediately notify the temporary judge or referee if the document is not accepted for filing by the court or if the filing is subsequently canceled.

(c) Return of exhibits

- (1) The clerk must not release any exhibit except on order of the court. The clerk must require a signed receipt for a released exhibit.
- (2) If proceedings are conducted by a temporary judge or a referee outside of court facilities, the temporary judge or referee must keep all exhibits and deliver them, properly marked, to the clerk at the conclusion of the proceedings, unless the parties file, and the court approves, a written stipulation that the exhibits may be disposed of otherwise providing for a different disposition of the exhibits. On request of the temporary judge or referee, the clerk must deliver exhibits filed or lodged with the court to the possession of the temporary judge or referee, who must not release them to any person other than the clerk, unless the court orders otherwise. ~~Exhibits in the possession of the temporary judge or referee must be made available during business hours for inspection by any person within a reasonable time after request.~~

(d) Access to documents and exhibits in matters before temporary judges and referees

- (1) Documents and exhibits in the possession of a temporary judge or referee that would be open to the public if filed or lodged with the court must be made available during business hours for inspection by any person within a reasonable time after request and under reasonable conditions.
- (2) Temporary judges and referees must file a statement in each case in which they are appointed that provides the name, telephone number, and mailing address of a person who may be contacted to obtain access to any documents or exhibits submitted to the temporary judge or referee that would be open to the public if filed or lodged with the court. The statement must be filed at the same time as the temporary judge's or referee's certification under rule 2.831(b).

3.904(a), or 3.924(a). If there is any change in this contact information, the temporary judge or referee must promptly file a revised statement with the court.

(e) Definition

For purposes of this rule, “court facility” consists of those areas within a building required or used for court functions.

Advisory Committee Comment

Subdivision (b)(1). Rules 2.810 and 2.830 provide definitions of temporary judges appointed by the court and temporary judges requested by the parties, respectively.

Subdivision (d)(1). Public access to documents and exhibits in the possession of a temporary judge or referee should be the same as if the case were being heard by a judge. Documents and exhibits are not normally available to the public during a hearing or when needed by the judge for hearing or decision preparation. A temporary judge or referee may direct that access to documents and exhibits be available by scheduled appointment.

Division 6. Appointments by the Court or Agreement of the Parties

Chapter 2. Temporary Judges Requested by the Parties

Rule 2.833. Documents and exhibits

All temporary judges requested by the parties and parties in proceedings before these temporary judges must comply with the applicable requirements of rule 2.400 concerning the filing and handling of documents and exhibits.

Rule ~~2.834~~ 2.833. Open proceedings; notices of proceedings, use of court facilities, and order for hearing site

(a) Open proceedings

All proceedings before a temporary judge requested by the parties that would be open to the public if held before a judge must be open to the public, regardless of whether they are held in or outside a court facility.

~~(a)(b)~~ Posting of Notice regarding proceedings before privately compensated temporary judge requested by the parties

- (1) ~~For all matters pending before privately compensated~~ In each case in which he or she is appointed, a temporary judge, the clerk must post a notice in the courthouse indicating requested by the parties must file a statement that provides the case name, and number as well as the telephone number, and mailing address of a person to contact to arrange for attendance at any who may be contacted to obtain information about the date, time, location, and general nature of all hearings and other proceedings scheduled in the matter that would be open to the public if held before a judge in a courthouse. This statement must be filed at the same time as the temporary judge's certification under rule 2.831(b). If there is any change in this contact information, the temporary judge must promptly file a revised statement with the court.
- (2) In addition to providing the information required under (1), the statement filed by a temporary judge may also provide the address of a publicly accessible Web site at which the temporary judge will maintain a current calendar setting forth the date, time, location, and general nature of any hearings scheduled in the matter that would be open to the public if held before a judge.
- (3) The clerk must post the information from the statement filed by the temporary judge in the court facility.

~~(b)~~**(c) Use of court facilities, court personnel, and summoned jurors**

A party who has elected to use the services of a ~~privately compensated~~ temporary judge requested by the parties is deemed to have elected to proceed outside ~~the courtroom~~ court facilities. Court facilities, court personnel, and summoned jurors may not be used in proceedings pending before a ~~privately compensated temporary judge requested by the parties~~ except on a finding by the presiding judge or his or her designee that their use would further the interests of justice.

~~(e)~~**(d) Order the Appropriate hearing site**

- (1) The presiding judge or his or her designee, on ~~request~~ application of any person or on the judge's own motion, may order that a case before a ~~privately compensated temporary judge requested by the parties~~ must be heard at a site easily accessible to the public and appropriate for seating those who have made known their plan to attend hearings. The ~~request application must be made by letter with reasons stated~~ state facts showing good cause for granting the application, and must be ~~accompanied by a declaration that a copy of the request was mailed to each party, to~~ served on all parties and the temporary judge, and ~~to the clerk for placement in the file~~ filed with the court. The order may require that notice of trial or of other proceedings be given to the requesting person directly. The proceedings are not stayed while the

application is pending unless the presiding judge or his or her designee orders that they be stayed. The granting issuance of an order for an accessible and appropriate hearing site is not a ground for withdrawal of a stipulation that a case may be heard by a temporary judge.

- (2) If a court staff mediator or evaluator is required to attend a hearing before a temporary judge requested by the parties, unless otherwise ordered by the presiding judge or his or her designee, that hearing must take place at a location requiring no more than 15 minutes' travel time from the mediator's or evaluator's work site.

Rule ~~2.835~~ 2.834. Motions or applications to be heard by the court

(a) Motion or application to seal records

A motion or application to seal records in a ~~cause case pending~~ before a ~~privately compensated~~ temporary judge requested by the parties must be filed with the court and must be served on all parties, that have appeared in the case and the temporary judge, and any person or organization that has made known their intention to attend the hearing. The motion or application must be heard by the trial court judge to whom the case is assigned or, if the case has not been assigned, by the presiding judge or his or her designee. Rules 2.550–2.551 on sealed records apply to motions or applications filed under this rule.

(b) Motion for leave to file complaint for intervention

A motion for leave to file a complaint for intervention in a ~~cause case pending~~ before a ~~privately compensated~~ temporary judge requested by the parties must be filed with the court and served on all parties and the temporary judge. The motion must be heard by the trial court judge to whom the case is assigned or, if the case has not been assigned, by the presiding judge or his or her designee. If intervention is allowed, the case must be returned to the trial court docket unless all parties stipulate in the manner prescribed in rule 2.831(a) to proceed before the temporary judge.

Title 3. Civil Rules

Division 9. References

Chapter 1. Reference by Agreement of the Parties Under Code of Civil Procedure Section 638

Rule 3.902. Order appointing referee

An order appointing a referee under Code of Civil Procedure section 638 must be filed with the clerk or entered in the minutes and must specify:

- (1) The name, business address, and telephone number of the referee and, if he or she is a member of the State Bar, the referee's State Bar number;
- (2) Whether the scope of the reference covers all issues or is limited to specified issues;
- (3) Whether the referee will be privately compensated; and
- (4) Whether the use of court facilities and court personnel is authorized. ; ~~and~~
- ~~(5) The name and telephone number of a person to contact to arrange for attendance at any proceeding that would be open to the public if held in a courthouse.~~

~~Rule 3.907. Motion or application to seal records~~

~~A motion or application to seal records in a case pending before a referee must be served on all parties, the referee, and any person or organization that has made their intention to attend the hearing known and be filed with the court. The motion or application must be heard by the judge to whom the case is assigned or by the presiding judge or law and motion judge. Rules 2.550 and 2.551 apply to the motion or application to seal the records.~~

~~Rule 3.908. Motion for leave to file for complaint intervention~~

~~A motion for leave to file a complaint for intervention in a case pending before a referee must be served on all parties and the referee and filed with the court. The motion must be heard by the judge to whom the case is assigned or by the presiding judge or law and motion judge if the case has not been assigned. If intervention is allowed, the case must be returned to the trial court docket unless all parties stipulate in the manner prescribed in rule 3.901 to proceed before the referee.~~

Rule ~~3.907~~ 3.909. Proceedings before privately compensated referees Use of court facilities and court personnel

(a) ~~Use of court facilities and court personnel~~

A party who has elected to use the services of a ~~privately compensated~~ referee appointed under Code of Civil Procedure section 638 is deemed to have elected to proceed outside ~~the courthouse~~ court facilities. Court facilities, ~~and court personnel, and summoned jurors~~ may not be used in proceedings pending before a ~~privately compensated~~ such a referee except on a finding by the presiding judge or his or her designee that their use would further the interests of justice.

(b) ~~Posting of notice in courthouse~~

~~For all matters pending before privately compensated referees, the clerk must post a notice in the courthouse identifying the case name and number and the name and telephone number of a person to contact to arrange for attendance at any proceeding that would be open to the public if held in a courthouse.~~

Rule ~~3.910~~. Request and order for appropriate and accessible hearing site

~~The court may, on the request of any person or on the court's own motion, order that a case pending before a referee must be heard at a site easily accessible to the public and appropriate for seating those who have notified the court of their intention to attend hearings. A request for hearings at an accessible and appropriate site must state the reasons for the request, be served on all parties and the referee, and be filed with the court. The order may require that notice of trial or of other proceedings be given to the requesting person directly.~~

**Chapter 2. Court-Ordered Reference Under Code of Civil Procedure
Section 639**

Rule 3.922. Form and contents of order appointing referee

(a) Written order required

An order appointing a referee under Code of Civil Procedure section 639, on the motion of a party or on the court's own motion, must be in writing and must address the matters set forth in (b) through ~~(h)~~(g).

(b) – (g) * * *

~~(h) — Contact to arrange attendance at proceedings before referee~~

~~The order must state the name and telephone number of a person to contact to arrange for attendance at any proceeding before the referee.~~

Rule 3.926. Use of court facilities

A reference ordered under Code of Civil Procedure section 639 entitles the parties to the use of court facilities and court personnel to the extent provided in the order of reference. The proceedings may be held in a private facility, but, if so, the private facility must be open to the public ~~upon request of any person~~ as provided in rule 3.931.

~~**Rule 3.927. Circumstances required for appointment of discovery referee**~~

~~A discovery referee must not be appointed under Code of Civil Procedure section 639(a)(5) unless the exceptional circumstances of the particular case require the appointment.~~

Chapter 3. Rules Applicable to References Under Code of Civil Procedure Section 638 or 639

Rule 3.930. Documents and exhibits

All referees and parties in proceedings before a referee appointed under Code of Civil Procedure section 638 or 639 must comply with the applicable requirements of rule 2.400 concerning the filing and handling of documents and exhibits.

Rule 3.931. Open proceedings, notice of proceedings, and order for hearing site

(a) Open proceedings

All proceedings before a referee that would be open to the public if held before a judge must be open to the public, regardless of whether they are held in a court facility or in another location.

(b) Notice regarding proceedings before referee

- (1) In each case in which he or she is appointed, a referee must file a statement that provides the name, telephone number, and mailing address of a person who may be contacted to obtain information about the date, time, location, and general nature of all hearings scheduled in matters pending before the referee that would be open to the public if held before a judge. This statement must be filed at the same time as the referee's certification under rule 3.904(a) or 3.924(a). If there is any change in this contact information, the referee must promptly file a revised statement with the court.
- (2) In addition to providing the information required under (1), the statement filed by a referee may also provide the address of a publicly accessible Web site at which the referee will maintain a current calendar setting forth the date, time, location, and general nature of any hearings scheduled in the matter that would be open to the public if held before a judge.
- (3) The clerk must post the information from the statement filed by the referee in the court facility.

(c) Appropriate hearing site

- (1) The presiding judge or his or her designee, on application of any person or on the judge's own motion, may order that a case before a referee must be heard at a site easily accessible to the public and appropriate for seating those who have made known their plan to attend hearings. The application must state facts showing good cause for granting the application, must be served on all parties and the referee, and filed with the court. The proceedings are not stayed while the application is pending unless the presiding judge or his or her designee orders that they be stayed. The issuance of an order for an accessible and appropriate hearing site is not grounds for withdrawal of a stipulation for the appointment of a referee.
- (2) If a court staff mediator or evaluator is required to attend a hearing before a referee, unless otherwise ordered by the presiding judge or his or her designee, that hearing must take place at a location requiring no more than 15 minutes' travel time from the mediator's or evaluator's work site.

Rule 3.932. Motions or applications to be heard by the court

(a) Motion or application to seal records

A motion or application to seal records in a case pending before a referee must be filed with the court and served on all parties that have appeared in the case and the referee. The motion or application must be heard by the trial court judge to whom the case is assigned or, if the case has not been assigned, by the presiding judge or his or her designee. Rules 2.550 and 2.551 apply to the motion or application to seal the records.

(b) Motion for leave to file complaint for intervention

A motion for leave to file a complaint for intervention in a case pending before a referee must be filed with the court and served on all parties and the referee. The motion must be heard by the trial court judge to whom the case is assigned or, if the case has not been assigned, by the presiding judge or his or her designee. If intervention is allowed, the case must be returned to the trial court docket unless all parties stipulate in the manner prescribed in rule 3.901 to proceed before the referee.

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	Commentator	Position	Comment	Committee Response
1.	Committee on Alternative Dispute Resolution State Bar of California by Steven Cerveris, Chair	A	The State Bar of California’s Committee on Alternative Dispute Resolution has reviewed and discussed the Civil and Small Claims Advisory Committee’s proposal concerning access to hearings and records in proceedings before temporary judges and referees, and supports that proposal.	No response required.
2.	James Coy Driscoll Attorney at Law San Francisco	AM	<p>The proposed changes do not increase the general public's access to hearings before party-requested temporary judges, in [sic] reduces that access. By eliminating the requirement that information about all hearings be posted by the court clerk, it removes the only way for the general public to become aware of the hearing.</p> <p>The purpose of public hearings of judicial procedures is not just to protect the parties' interests, but to make certain that the public's business is done in public. By making it impossible for someone who is not aware of the information about a particular case to attend a hearing, the proposed Rule deprives the public of the right to observe public proceedings.</p> <p>Since the proposed Rule limits the public's access to public proceedings without a showing of “findings demonstrating the interest protected</p>	Please note that the current rules do not require that information about all hearings conducted by temporary judges and referees be posted by the court clerk; rules 2.833(a) and 3.909(b) require that, for all matters pending before privately compensated temporary judges and referees, the clerk must post a notice in the courthouse indicating the case name and number as well as the telephone number of a person to contact to arrange for attendance at any proceeding that would be open to the public if held in a courthouse. Based on this and other comments, the committee has revised its proposal to replace this current requirement with a broader requirement that the clerk post this contact information in all proceedings in which a referee or a temporary judge requested by the parties has been appointed.

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	Commentator	Position	Comment	Committee Response
			<p>by the limitation and the need for protecting that interest,” it violates the California Constitution, Article I, Section 3.</p> <p>A better solution would be to require that notice of all hearings conducted by all private judges be posted in the court clerk’s office, listed in the local legal newspaper, and posted on the court’s web site. Doing so would give the general public meaningful notice of the hearing the opportunity to attend the hearing.</p>	<p>The committee previously considered and circulated for public comment a proposal to revise the rules to require that temporary judges and referees notify the clerk of the date, time, location, and nature of all hearings and that the clerk enter this information in the docket. The committee received many comments at that time indicating that this approach was impractical because of the frequency with which hearing dates change in these proceedings and that it would impose unwarranted additional workload on the clerks. Based on these earlier comments, the committee modified its proposal to focus on ensuring that the public court file contains information about who can be contacted to find out about hearings in a matter before a temporary judge or referee. As noted above, the committee has now revised its proposal to also include a requirement that this contact information be posted in the court facility.</p>
3.	Orange County Bar Association by Michael G. Yoder, President	A	No additional comments.	No response required.
4.	Ben Stough Executive Officer	N	Allowing private judges access to court facilities, personnel, and summoned jurors	The committee is not proposing any substantive change to the existing rule language providing

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	Commentator	Position	Comment	Committee Response
	Superior Court of Mendocino County		<p>would be a nightmare for courts to manage, and brings into question the merits of a two-tiered system of justice.</p> <p>Just a few issues that immediately come to mind:</p> <p>There would be no fiscal or operational controls if non-court staff were put in charge of juries.</p> <p>Non-court staff are without authority to swear in juries.</p> <p>If a matter resolved by way of a private “jury trial”, would it get reported to the Judicial Council as a jury trial and does this mean all matter resolved by way of a private judge should be reported as a jury or court trial?</p> <p>How would a court recover costs, both direct and indirect, from private parties that help themselves to court resources?</p> <p>Can a court require private parties to enter into a contract for use of its resources? Would the AOC prepare a standard template for courts to use?</p> <p>How would a court prioritize its own needs</p>	<p>that court facilities and court personnel may <i>not</i> be used in proceedings pending before a privately compensated temporary judge or referee, except on a finding by the presiding judge that their use would further the interests of justice. Thus, as is currently the case, private judges would not have access to these court resources unless the presiding judge permits this access. The proposal that was circulated for public comment did propose adding a provision allowing parties in these proceedings to use the courts’ child custody and visitation mediation and evaluation services, but, based on the comments of the Trial Court Presiding Judges Advisory Committee/Court Executives Advisory Committee Joint Rules Working Group below, the committee has revised its proposal to eliminate this provision.</p>

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	Commentator	Position	Comment	Committee Response
			<p>against those of the private parties? How would disputes be resolved?</p> <p>Also note, it appears the draft language is missing the word “not”:</p> <p>“(2) Court facilities, court personnel, and summoned jurors may be used in a proceeding before a temporary judge requested by the parties except on a finding by the presiding judge or his or her designee that their use would further the interests of justice.”</p>	
5.	Superior Court of Los Angeles County	A	No additional comments.	No response required.
6.	Superior Court of San Diego County by Michael M. Roddy, Executive Officer	AM	<p>1. This court would <u>not</u> like to have the term or reference to “privately compensated temporary judges” replaced with “temporary judges requested by the parties.” The present wording clearly indicates that it is the parties, themselves, who are paying for the court appointed temporary judge. The proposed change could confuse or mislead self-represented litigants into thinking they may have a private judge appointed by the court—and at the court’s expense—by simply asking for one. The proposed change also eliminates the positive public relations for the court that the private judges are compensated privately not</p>	To address the commentator’s concerns, the committee has revised its proposal to eliminate the reference to temporary judges requested by the parties in rule 2.400. However, the committee is still recommending that this term be used in rules 2.833–2.835. The rules relating to temporary judges were modified several years ago to clarify the distinction between temporary judges appointed by the courts to hear particular calendars and other temporary judges appointed under the state Constitution. The term “temporary judge requested by the parties” was developed as part of that earlier set of amendments and, under current rule 2.830, the term encompasses both

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	Commentator	Position	Comment	Committee Response
			<p>publicly.</p> <p>2. Rule 2.833(a) and new rule 2.834(a) – This court would <u>not</u> like to eliminate the courthouse posting of the PCTJ information for anyone wanting to attend a hearing by replacing it with the requirement that the PCTJ’s contact information be included only in the appointment orders. The proposed amendment will likely result in less public access to hearings than more access because the contact information will be buried in a court file rather than publicly</p>	<p>“privately compensated temporary judges and attorneys who serve as temporary judges pro bono at the request of the parties.” The amendments to rules 2.833–2.835 included in this proposal are intended to reflect that earlier change in terminology and to ensure that temporary judges who serve on a pro bono basis at the request of the parties are subject to the requirements relating to hearings and records. Because the term “temporary judge requested by the parties” is defined in rule 2.830, immediately preceding these rules, the committee does not believe it will be misleading. Because rule 2.400 is separated from this definition, however, the potential for misunderstanding is greater. Therefore, the committee has revised its proposal to eliminate the reference to “temporary judges requested by the parties” in rule 2.400.</p> <p>Based on this and other comments, the committee has revised its proposal to replace this current requirement with a broader requirement that the clerk post this contact information in all proceedings in which a referee or a temporary judge requested by the parties has been appointed.</p>

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	Commentator	Position	Comment	Committee Response
			<p>posted in the courthouse. This court will support the proposed change in the rule to include the PCTJ information in the order (notably, San Diego’s mandatory form already includes this information) as long as it is <i>in addition</i> to the posting requirement. Or, alternatively, the rule should be modified to require some other type of easily accessible public list of all cases assigned to a PCTJ.</p> <p>3. Is it possible, at this point, to add language to proposed Rule 2.835, possibly a subsection (c) and (d), similar to a motion to seal records and a motion for leave to file a complaint in intervention that “(c) any action for contempt which may result in actual imprisonment for contempt and (d) any action or proceeding for domestic violence temporary and/or permanent restraining orders must be filed with the court and served on all parties that have appeared in the case and the temporary judge. These motions must be heard by the presiding judge or his or her designee.” Note: San Diego has already implemented these additional restrictions.</p> <p>4. Proposed Rule 2.835 and proposed Rule 3.932 both provide that motions or applications to seal records and motions for leave to file</p>	<p>Under rule 10.22, substantive changes to the California Rules of Court generally cannot be adopted without first being circulated for public comment. Because this would be a substantive change that was not included in the proposal that was circulated for public comment, it cannot be recommended for adoption by the Judicial Council at this time. The committee will consider this suggestion during a later rules cycle.</p> <p>The committee agrees with this comment and has revised its proposal as suggested by the commentator.</p>

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	Commentator	Position	Comment	Committee Response
			<p>complaints for intervention "... must be heard by the presiding judge or his or her designee" rather than "by the trial court judge to whom the case is assigned, or if the case has not yet been assigned, by the presiding judge or his or her designee" (see language currently contained in Rule 2.834). These motions are properly heard by the trial court judge to whom the case is assigned, and in the interest of facilitating trial court case and document management, they should be heard by the assigned judge and should only be heard by the presiding judge or his or her designee if the case has not yet been assigned.</p> <p>Proposed modification: the relevant language that is currently contained in Rule 2.834 ("by the trial court judge to whom the case is assigned, or if the case has not yet been assigned, by the presiding judge or his or her designee") should not be revised, and this same language should be incorporated into proposed Rule 3.932 (a) and (b), so that both sections would read in pertinent part: <i>"The motion ... must be heard by the trial court judge to whom the case is assigned, or if the case has not yet been assigned, by the presiding judge or his or her designee."</i></p>	

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

	Commentator	Position	Comment	Committee Response
7.	Trial Court Presiding Judges Advisory Committee/Court Executives Advisory Committee Joint Rules Working Group by Patrick Danna Court Services Analyst	N	The working group recommends that the rule proposal not go into effect under its current language due to the concerns that off-site hearings being conducted by temporary judges and referees will be difficult for the courts to maintain control over, especially when it comes to the court having to provide the required court staff and security; and A working group operational impact review on this proposal is available by contacting working group staff.	Based on this comment, the committee has revised its proposal to eliminate the proposed amendments to rules 2.833 and 3.909 that would have allowed the use of court mediation and evaluation services in family law proceedings before temporary judges and referees selected by the parties.