

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

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Report

TO: Members of the Judicial Council

FROM: Civil and Small Claims Advisory Committee
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DATE: September 16, 2008

SUBJECT: Temporary Judges: Application of Rules to Retired Judicial
Officers; Education and Training Requirements (amend Cal.
Rules of Court, rules 2.810 and 2.812) (Action Required)

Issue Statement

The rules on court-appointed temporary judges currently do not apply to retired judicial officers. (See Cal. Rules of Court, rule 2.810(a).) Thus, the education and training requirements in the rules for temporary judges do not apply to them. (See rule 3.812(c).) Questions have been raised: (1) whether training should be required of retired judicial officers who serve as court-appointed temporary judges, and if so, (2) at what interval after retirement the training should be required.

Recommendation

The Civil and Small Claims Advisory Committee recommends¹ that the Judicial Council, effective January 1, 2009:

1. Amend rule 2.810 of the California Rules of Court, on the scope of the rules on court-appointed temporary judges (rules 2.810–2.819), to eliminate the statement that these rules do not apply “to retired judicial officers appointed by the courts to serve as temporary judges”;
2. Amend rule 2.812, on the education and training of temporary judges, to add a new subdivision (d) stating: “Commencing five years after the retired judicial officer last served in a judicial position either as a full-time judicial officer or

¹ This proposal was developed by the Temporary Judges Working Group. The Civil and Small Claims Advisory Committee has considered the proposal and recommends the working group’s proposed amendments to rules 2.810 and 2.812.

as an assigned judge, a retired judicial officer serving as a temporary judge must satisfy all the education and training requirements of this rule. However, a retired judicial officer serving as a temporary judge in a small claims case must satisfy all the requirements of Code of Civil Procedure section 116.240(b) and the rules in this chapter before serving in the case”; and

3. Amend rule 2.812(c)(1) to delete the words “or other person approved by the Administrative Office of the Courts,” thereby clarifying that bench officers must provide the mandatory training on bench conduct and demeanor.

The text of amended rules 2.810 and 2.812 is attached at pages 8–10.

Rationale for Recommendations

Background

When the Judicial Council approved the new temporary judge rules in December 2005, it discussed the issue of what education or training should be required of retired judicial officers who serve as court-appointed temporary judges. The approved rules included a provision stating that they do not apply to retired judicial officers appointed by the courts to serve as temporary judges. (See rule 2.810(a).) In the discussion of the rules, a number of council members questioned whether the exemption for retired judicial officers was appropriate, particularly as it related to continuing judicial education. The Judicial Council asked the Temporary Judges Working Group, which had developed the rules, to consider this issue.

In a follow-up to the Judicial Council meeting, the chair of the Judicial Council’s Executive and Planning Committee and the Administrative Director of the Courts sent the co-chairs of the working group a memorandum identifying several topics on which the group should report to the council. One of these topics was “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.”

In spring 2006, the working group reported back to the council on various issues relating to the rules on court-appointed temporary judges. Regarding the issue of training for retired judicial officers, the co-chairs of the working group indicated that the group had considered the matter, but because of the issue’s complexity had not reached a conclusion. The co-chairs indicated that the working group would continue to look at the question.

When the Temporary Judges Working Group met in fall 2007, it again considered the application of the temporary judge rules to retired judicial officers and what

training requirements, if any, would be appropriate for retired judicial officers. The group developed a proposal to amend rules 2.810 and 2.812. This proposal was submitted to the Civil and Small Claims Advisory Committee, which considered the proposal and recommended that, with some modifications, it be circulated for public comment in spring 2008.

The Proposal

As a preliminary matter, it is important to understand the scope of the proposed rule changes. The proposal would modify the rules on court-appointed temporary judges so that they would apply to retired judicial officers. Judicial officers serving as court-appointed temporary judges are different from those serving in the Assigned Judges Program. The present proposal affects only the retired judicial officers serving as court-appointed temporary judges, not those in the Assigned Judges Program. Furthermore, the proposal would not affect retired judges who serve as privately compensated temporary judges at the request of the parties rather than as court-appointed temporary judges serving the courts.

Because of the scope of the proposed rule amendments, few retired judicial officers will be affected. Unlike the Assigned Judges Program that is quite extensive, there do not appear at the present time to be many retired judges who voluntarily serve as court-appointed temporary judges. For these few retired judges, this proposal would amend the rules on court-appointed temporary judges so that the rules, including the modified educational requirements recommended under this proposal, would be applicable to them.

Rule 2.810. Temporary judges appointed by the trial courts

Rule 2.810(a) of the California Rules of Court states that rules 2.810–2.819 apply to attorneys who serve as court-appointed temporary judges in the trial courts. The second sentence of subdivision (a), however, states that the rules do not apply “to retired judicial officers appointed by the courts to serve as temporary judges.” This proposal would eliminate the general exception for retired judicial officers. This means that all retired judicial officers who serve in that capacity would need to meet the same requirements as all other court-appointed temporary judges except as otherwise provided in the rules.

Rule 2.812. Requirements for court appointment of an attorney to serve as a temporary judge

This proposal would also amend rule 2.812, which includes the education and training requirements for court-appointed temporary judges. Specifically, it would add to the rule a new subdivision (d), which would provide:

Commencing five years after the retired judicial officer last served in a judicial position either as a full-time judicial officer or as an assigned judge, a retired

judicial officer serving as a temporary judge must satisfy all the education and training requirements of this rule. However, a retired judicial officer serving as a temporary judge in a small claims case must satisfy all the requirements of Code of Civil Procedure section 116.240(b) and the rules in this chapter before serving in the case.

There are reasons for eliminating the current broad exception for retired judicial officers from the education and training requirements in the rules. Some retired judicial officers may not have been on the bench for years or even decades; hence, it is important for them to take courses so that they will be current in the law. Furthermore, even highly experienced and qualified retired judicial officers may not have any background or training in particular areas (such as small claims or traffic) in which they are asked to serve as court-appointed temporary judges. Therefore, they will need training in those subject areas.

While recognizing that judicial education is very important, the committee also recognized that recently retired judicial officers and judges who have served in the Assigned Judges Program will have extensive bench experience. They will generally have significant expertise in the subject areas in which they will be involved. All those participating in the Assigned Judges Program will regularly have been participating in judicial education programs.

For these reasons, the committee concluded that it is reasonable for the rules to allow some period of time after retired judicial officers' last service before they are required to undertake the education and training required of court-appointed temporary judges in most types of cases. Thus, the committee recommends that the mandatory education requirements of rule 2.812 not apply until five years after a retired judicial officer last served as a full-time judge or as an assigned judge.

In addition, the committee recognized that new subdivision (d) of the rule on education for retired judicial officers must be consistent with applicable statutes concerning temporary judges. In particular, the provision must be consistent with the provisions in the Small Claims Act concerning the training of temporary judges.² Accordingly, the committee added a second sentence to subdivision (d)

² Section 116.240(b) of the Code of Civil Procedure provides:

Prior to serving as a temporary judge in small claims court, on and after July 1, 2006, and at least every three years thereafter, each temporary judge shall take the course of study offered by the courts on ethics and substantive law under rules adopted by the Judicial Council. The course shall include, but not be limited to, state and federal consumer laws, landlord-tenant law along with any applicable county specific rent deposit law, the state and federal Fair Debt Collection Practices Acts, the federal Truth in Lending Act, the federal Fair Credit Billing Act, the federal Electronic Fund Transfer Act, tort law, and contract law, including defenses to contracts and

stating that a retired judicial officer serving as a temporary judge in a small claims case must satisfy all the requirements of Code of Civil Procedure section 116.240(b) and the rules in the chapter on court-appointed temporary judges.

In addition to adding new subdivision (d) to rule 2.812, the committee recommends amending subdivision (c)(1) that concerns training on bench conduct, demeanor, and ethics. The rule currently provides that the course must be taught by a qualified judicial officer “or other person approved by the Administrative Office of the Courts.” The quoted phrase was included for the limited purpose of allowing some professional AOC Education Division staff to assist the courts with training on bench conduct, demeanor, and ethics. But this provision has occasionally been misinterpreted to mean that the Administrative Office of the Courts may approve non-bench officers to teach such courses. To clarify the purpose of the rule and emphasize the importance of bench officers’ providing training on demeanor and ethics, the proposal would delete from subdivision (c) the phrase “or other person approved by the Administrative Office of the Courts.”

Finally, at the suggestion of the copyeditors, a few minor stylistic changes have been made to rules 2.810 and 2.812.

Alternative Actions Considered

The committee considered requiring retired judicial officers to complete exactly the same minimum education and training as all other court-appointed temporary judges. Indeed, the version that was circulated for public comment so provided.³ But after reviewing the comments and discussing the issues, the committee modified the proposal. For the reasons stated above, the committee recommends including in subdivision (d) the provision that, except in small claims cases, retired judicial officers need not meet the education and training requirements of rule 2.812 for a period of five years after they last served either as a full-time judicial officer or as an assigned judge.⁴

defenses to debts. On substantive law, the courts may receive assistance from the Department of Consumer Affairs, to the extent that the department is fiscally able to provide that assistance.

The Judicial Council in 2006 adopted rules specifying how court-appointed temporary judges must satisfy the education requirements of Code of Civil Procedure section 116.240(b). (See Cal. Rules of Court, rules 2.810, 2.812, 2.813, and 2.815.)

³ The text of subdivision (d) that was circulated for comment read as follows: “A retired judicial officer serving as a temporary judge must satisfy all the education and training requirements of this rule.”

⁴ The Temporary Judges Working Group also supported the modified version, except for one member who disagreed with the provision giving retired judges a five-year grace period before they must satisfy the temporary judge education requirements, especially the parts relating to demeanor and cultural competency.

Comments From Interested Parties

Ten comments were received on this rules proposal. The commentators included the California Judges Association, three superior courts, a self-help center, an attorney, a local bar association, the State Bar of California's Committee on Administration of Justice, and the Joint Rules Working Group of the Trial Court Presiding Judges and Court Executives Advisory Committees. The comments and the committee's responses are summarized below.⁵

Most of the commentators supported the proposal as circulated. However, the California Judges Association and the Superior Court of Los Angeles County opposed it. (See comments 1 and 6.) These commentators noted that the judicial branch has not imposed mandatory legal education on trial court judges and opposed requiring it of retired judges who serve as court-appointed temporary judges.

The committee disagreed that retired judicial officers should be permanently exempted from the training and educational requirements that apply to others who serve as court-appointed temporary judges. As explained above, such training is very important for judicial officers who have been retired for a while or for those sitting in areas of the law with which they are not familiar. Nevertheless, in recognition of the experience and knowledge of retired judicial officers, the committee supports including in rule 2.812 a provision that, except in small claims cases, retired judicial officers do not have to meet the same education and training requirements that apply to other temporary judges for a period of five years after the retired judicial officer last served as a full-time judicial officer or as an assigned judge.

The committee believes that this approach properly balances the experience and education of retired judicial officers with the need for such officers serving as temporary judges to receive continuing education. The proposed requirements will ensure that retired judicial officers, after several years of retirement, will take the courses necessary to remain knowledgeable and up-to-date in the areas in which they will serve. Furthermore, the proposed requirements should not be too burdensome. They would affect only those retired judicial officers who have not recently been either a full-time judge or an assigned judge. It is not unreasonable or unduly burdensome to require such judicial officers to meet the same requirements as attorneys serving as temporary judges.

⁵ The specific comments and the committee's responses are contained in the comment chart attached at pages 11-14.

Lastly, there was no opposition to the proposal to delete from rule 2.812(c) the phrase “or other person approved by the Administrative Office of the Courts.”

Implementation Requirements and Costs

Because this proposal will affect few retired judicial officers or courts, there should be no significant implementation requirements or costs. Under the proposal, retired judicial officers who need training will receive the same training as other temporary judges.

Attachments

Rules 2.810 and 2.812 of the California Rules of Court are amended, effective January 1, 2009, to read as follows:

Rule 2.810. Temporary judges appointed by the trial courts

1 **(a) Scope of rule**
2

3 Rules 2.810–2.819 apply to attorneys who serve as court-appointed
4 temporary judges in the trial courts. The rules do not apply to subordinate
5 judicial officers, ~~to retired judicial officers appointed by the courts to serve~~
6 ~~as temporary judges~~, or to attorneys designated by the courts to serve as
7 temporary judges at the parties’ request.
8

9 **(b)–(d) * * ***
10
11

12 **Rule 2.812. Requirements for court appointment of an attorney to serve as a**
13 **temporary judge**
14

15 **(a)–(b) * * ***
16

17 **(c) Education and training requirements**
18

19 The presiding judge may appoint an attorney to serve as a temporary judge
20 only if the following minimum training requirements are satisfied:
21

22 (1) *Mandatory training on bench conduct and demeanor*
23

24 Before appointment, the attorney must have attended and successfully
25 completed, within the previous three years, a course of at least 3 hours’
26 duration on the subjects identified in rule 2.813(a) approved by the
27 court in which the attorney will serve. This course must be taken in
28 person and be taught by a qualified judicial officer ~~or other person~~
29 ~~approved by the Administrative Office of the Courts.~~
30

31 (2) *Mandatory training in ethics*
32

33 Before appointment, the attorney must have attended and successfully
34 completed, within the previous three years, a course of at least 3 hours’
35 duration on the subjects identified in rule 2.813(b) approved by the
36 court in which the attorney will serve. This course may be taken by
37 any means approved by the court, including in-person, by broadcast
38 with participation, or online.
39

1 (3) *Substantive training*
2

3 Before appointment, the attorney must have attended and successfully
4 completed, within the previous three years, a course on the substantive
5 law in each subject area in which the attorney will serve as a temporary
6 judge. These courses may be taken by any means approved by the
7 court, including in-person, by broadcast with participation, or online.
8 The substantive courses have the following minimum requirements:
9

10 (A) *Small claims*
11

12 An attorney serving as a temporary judge in small claims cases
13 must have attended and successfully completed, within the
14 previous three years, a course of at least 3 hours' duration on the
15 subjects identified in rule 2.813(c) approved by the court in which
16 the attorney will serve.
17

18 (B) *Traffic*
19

20 An attorney serving as a temporary judge in traffic cases must
21 have attended and completed, within the previous three years, a
22 course of at least 3 hours' duration on the subjects identified in
23 rule 2.813(d) approved by the court in which the attorney will
24 serve.
25

26 (C) *Other subject areas*
27

28 If the court assigns attorneys to serve as temporary judges in other
29 substantive areas such as civil law, family law, juvenile law,
30 unlawful detainers, or case management, the court must determine
31 what additional training is required and what additional courses
32 are required before an attorney may serve as a temporary judge in
33 each of those subject areas. The training required in each area
34 must be of at least 3 hours' duration. The court may also require
35 that an attorney possess additional years of practical experience in
36 each substantive area before being assigned to serve as a
37 temporary judge in that subject area.
38

39 (D)–(E) * * *
40

41 **(d) Requirements for retired judicial officers**
42

43 Commencing five years after the retired judicial officer last served in a
44 judicial position either as a full-time judicial officer or as an assigned judge,

1 a retired judicial officer serving as a temporary judge must satisfy all the
2 education and training requirements of this rule. However, a retired judicial
3 officer serving as a temporary judge in a small claims case must satisfy all
4 the requirements of Code of Civil Procedure section 116.240(b) and the rules
5 in this chapter before serving in the case.
6

7 ~~(d)~~(e) * * *

8

9 ~~(e)~~(f) * * *

10

11 ~~(f)~~(g) * * *

12

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All comments are verbatim, except comment 2 which is summarized.

	Commentator	Position	Comment	Committee's Response
1.	California Judges Association By Ira R. Kaufman, President San Francisco	N	<p>The California Judges Association (CJA) opposes the proposed amendments to California rule of Court 2.810, et seq. to the extent that it would make the rules pertaining to mandatory education and training for Court-Appointed Temporary Judges applicable to retired judicial officers. CJA notes that the judicial branch has not imposed mandatory continuing education upon trial judges, and believes that policy should not be undermined by establishing mandatory education and training for retired judges agreeing to serve on occasion as temporary trial judges pursuant to the rules.</p> <p>Depending on the assignment, retired judges may not need any further education to fill the role. The decision to allow a retired judge to sit as a Pro Tem without further education should be made by the supervising judge, or her designee, based upon the particular experience of the retired judge, the contemplated assignment, and other factors that would differ from case to case.</p> <p>Many retired judges reactivate their membership in the State Bar and are subject to MCLE requirements. Those retired judges who choose to participate in the Assigned Judge Program are also subject to continuing education requirements. The remaining retired judges,</p>	<p>The committee disagreed that retired judicial officers should be permanently exempted from the training and educational requirements that apply to others who serve as temporary judges. However, it supports amending the rules to provide for a five-year period after the judge has last served as a full-time judicial officer or an assigned judge before the education and training requirements that apply to others would apply to retired judicial officers. This grace period would apply except in small claims cases. (See Code Civ. Proc., § 116.240(b).)</p> <p>The proposed requirements will not be too burdensome. They will affect only those retired judicial officers who have not been either a full-time judge or an assigned judge for five years. It is not unreasonable or unduly burdensome to require these retired judicial officers to meet the</p>

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			<p>however, who on occasion may be requested to assist the courts by sitting as temporary judges, will likely consider the additional educational requirements a burden and decline to serve.</p> <p>In this age of inadequate numbers of judgeships throughout the state, growing caseloads, and massive proposed budget reductions to the trial courts, the proposed change threatens to further hamper the ability of the trial courts to deliver timely access to justice and resolution of the public’s disputes. CJA also encourages all presiding judges to exercise their discretion to ensure that any retired judge appointed to act as a temporary judge is fully educated and qualified to serve.</p> <p>CJA has been at the forefront of judicial education for approximately 40 years, and actively encourages all judges to participate in continuing education programs. CJA offers numerous educational programs for judges throughout the year, including programs and conferences specifically designed to meet the educational needs of our 800 retired members.</p>	<p>same requirements as attorneys serving as temporary judges.</p> <p>The committee is very sensitive to the problem of inadequate numbers of judges and fully supports the efforts to increase the number of judgeships. But it does not agree that this is a ground for permanently exempting retired judicial officers from the rules’ educational requirements for court-appointed temporary judges. Also, it is the committee’s understanding that there are very few retired judges currently serving in this capacity.</p> <p>CJA’s leadership and contributions in the area of judicial education are noted.</p>
2.	Michael R Driskell Sacramento	AM	Mr. Driskell provided comments on a particular small claims action that he filed and expressed dissatisfaction with the temporary judge in the case. He felt that he was deprived of due process because the temporary judge refused to take testimony from his witnesses.	The committee noted Mr. Driskell’s support for the proposal. It declined, however, to provide comments on his particular case.

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3.	Orange County Bar Association By Cathrine Castaldi, President Newport Beach	A	No specific comments.	No specific response required.
4.	Self-Help Legal Access Center Superior Court of Ventura County By Tina Rasnow Senior Attorney / Coordinator Ventura	A	Training on dealing with self-represented litigants and elimination of bias/cultural competency are especially important. A retired bench officer may not have had experience with small claims litigants, for example, since these calendars are often assigned to pro tem judges or commissioners.	Under the proposed rules as revised, retired judicial officers would be required to receive the same training and education as other temporary judges after five years.
5.	State Bar of California, Committee on Administrative Justice By Saul Bercovitz, Staff Attorney San Francisco	A	The Committee on Administration of Justice supports this proposal.	The support for the proposal is noted.
6.	Superior Court of Los Angeles County	N	The Branch has not imposed mandatory education on trial judges and that policy should not be undermined by establishing mandatory education for retired judges serving as temporary trial judges under Rule 2.810.	The committee disagreed that retired judicial officers should be permanently exempted from the training and education requirements in the rules. However, it supports amending the rules to provide for a five-year period after the judge has last served as a full-time judicial officer or an assigned judge before the education and training requirements that apply to others would apply to the retired judicial officers. This grace period would apply except in small claims cases. (See Code Civ. Proc., § 116.240(b).)

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7.	Superior Court of Sacramento County By Edward Pollard Chief Deputy Court Executive Officer Sacramento	A	We agree with this proposal as written.	The support is noted. The committee has modified the proposal based on other comments, however.
8.	Superior Court of San Diego County By Michael M. Roddy, Executive Officer	A	No specific comments.	No specific response required.
9.	Derek Tabone, Attorney Van Nuys	A	No specific comments.	No specific response required.
10	Trial Court Presiding Judges Advisory Committee (TCPJAC)/Court Executives Advisory Committee (CEAC) Joint Rules Working Group By Patrick Danna, Court Service Analyst – Lead AOC Staff	A	TCPJAC/CEAC Joint Rules Working Group has no objection to the proposal.	The position of the group is noted.