

Judicial Council of California • Administrative Office of the Courts

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INVITATION TO COMMENT

SPR11-56

Title	Action Requested
Court-Appointed Temporary Judges: Recruitment and Appointment	Review and submit comments by June 20, 2011
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend rules 10.741 and 10.743	January 1, 2012
Proposed by	Contact
Access and Fairness Advisory Committee Hon. James R. Lambden, Chair	Donna Clay-Conti, 415-865-7911 donna.clay-conti@jud.ca.gov

Summary

To ensure and improve the quality of temporary judges in California, the Judicial Council adopted, effective January 2007, a comprehensive set of rules relating to court-appointed temporary judges. This proposal would amend rule 10.741 relating to the duties of presiding judges with respect to oversight of temporary judge programs. It would also amend rule 10.743, with respect to the duties of temporary judge administrators, to cross-reference rule 10.741. The new provisions would require courts that use temporary judges five calendar days or more per year to publicize to the local legal community the opportunity to serve in a temporary judge position and conduct and application and selection procedure that is intended to ensure nondiscrimination in the selection and appointment of temporary judges.

Discussion

When the Judicial Council adopted rule 10.741, it directed the Temporary Judges Working Group, which initially proposed rule 10.741 et seq., to consider how to address the diversity of temporary judges in the rule. Because the working group's term was expiring, the issue was referred to the Access and Fairness Advisory Committee to explore the issue and make recommendations to the Judicial Council. The advisory committee developed this rule proposal and solicited feedback on an earlier draft of this proposal from the outgoing chair of the temporary judges working group and from trial court presiding judges, particularly those from small courts that infrequently appoint temporary judges. The advisory committee considered their comments and incorporated their suggestions into this proposal.

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

Proposed amendment to rule 10.741

Currently, rule 10.741(a) provides that the presiding judge is responsible for the recruitment, selection, training, appointment, supervision, assignment, performance, and evaluation of court-appointed temporary judges. It further provides that the presiding judge, in carrying out these responsibilities, is assisted by the temporary judge administrator.

This proposal would add two new subdivisions to rule 10.741. One would require courts, except those that use temporary judges fewer than five times per calendar year, to publicize the opportunity to serve in a temporary judge position. The second is intended to ensure nondiscrimination in the recruitment, application, and selection procedures in the appointment of temporary judges. These new subdivisions mirror, in part, standard 10.21 of the California Standards of Judicial Administration. Subdivisions (b) and (c) of that standard address nondiscrimination in the recruitment, application, and selection of court-appointed attorneys, arbitrators, mediators, referees, masters, and receivers. The standard, however, does not apply to court-appointed temporary judges and, because it is a standard, is not mandatory. This rule proposal would adopt the core provisions of standard 10.21(b)–(c) to apply to court-appointed temporary judges and place certain portions of those provisions in rule 10.741(b)–(c).

Specifically, new subdivision (b) would provide that courts publicize the opportunity to serve in a temporary judge position (1) whenever the courts seek to add attorneys to their lists of temporary judges *or* (2) within a reasonable time before offering mandatory training for temporary judges but, in either circumstance, no less than once every three years. The new subdivision, like standard 10.21, would further provide that courts publicize the existence of the temporary judge program through local bar associations, including specialty bar associations. This subdivision would not apply to courts that use temporary judges fewer than five times per calendar year.

The proposal would also add new subdivision (c), which addresses nondiscrimination in the application and selection procedures for temporary judges. It substantially mirrors standard 10.21(c). This provision would require that courts conduct application and selection procedures in a manner that is intended to ensure that the applicants selected meet the requirements for appointment and that otherwise qualified individuals are not rejected because of their gender, race, ethnicity, disability, sexual orientation, age or other classification protected under title VII. In addition, this new subdivision would permit the courts to consider, as an additional qualification, an applicant's experience with or exposure to diverse populations and issues related to those populations.

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That exposure and experience may consist of, but would not be limited to, work, social interaction, educational experiences, or community involvement with individuals or groups from diverse communities that may appear in court.

Proposed amendment to rule 10.743

Rule 10.743(b) includes a list of the duties of the temporary judge administrator, who is responsible for the management of the courts' temporary judge program. The cross-reference in subdivision (b)(3) would be amended to read: “(3) Assisting the presiding judge in the recruitment and selection of attorneys to serve as temporary judges, as provided in rule 10.741” (new text underlined). This cross-reference clarifies the duties of the temporary judge administrator regarding the recruitment and selection of temporary judges under the proposed amendment to rule 10.741.

Specific Comments Requested

The advisory committee invites comment regarding the exception set forth in subdivision(b)(1)of the proposed rule, which is intended to relieve courts that use temporary judges infrequently (as compared with other courts that use temporary judges) from the requirement of publicizing the opportunity to act as a temporary judge through local bar associations. The committee's initial proposal was to exempt courts that used temporary judges for five or fewer days per calendar year. The committee received preliminary feedback suggesting that the exception of fewer than five times per calendar year was insufficient and that 30 days per calendar year was more reasonable.

However, an analysis of the courts' temporary judge usage data (which is reported on a fiscal year basis) for the past three fiscal years revealed that an exception based on the number of days temporary judges are used per calendar year (or fiscal year) may present compliance challenges for the courts because the usage per fiscal year for any particular court varies significantly. Thus, courts that use temporary judges may not be able to determine whether the exception applies to them from year to year. The committee concluded that was not reasonable and that the exception should instead be based on the number of authorized judges in the courts as the use of temporary judges is more closely correlated to those numbers, with a few exceptions. Moreover, a court will be able to immediately determine whether it falls within the publication exception without analyzing its annual usage of temporary judges. The committee is also aware of the fiscal challenges that courts are facing and wants to craft the rule so that it minimizes any administrative time that may be required to comply with this rule. With two exceptions, there are 15 courts with nine or fewer authorized judges where temporary judges were used substantially less than larger courts (12 courts with nine or fewer judges do not use temporary judges). These courts would not be required to publicize the temporary judge opportunity with all local bar associations.

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The committee invites comment on the proposed exception in subdivision (b)(1), specifically with respect to whether the number of authorized judges in a court as proposed, or some other factor should determine whether a court is exempt from the publication requirement of that subdivision; and whether courts with nine or fewer judges is a reasonable number to which the exception would apply.

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Rules 10.741 and 10.743 of the California Rules of Court would be amended, effective January 1, 2012, to read:

1 **Title 10. Judicial Administration Rules**

2
3 **Division 4. Trial Court Administration**

4
5 **Chapter 5. Temporary Judges**

6
7
8 **Rule 10.741. Duties and authority of the presiding judge**

9
10 **(a) General duties**

11
12 The presiding judge is responsible for the recruitment, selection, training,
13 appointment, supervision, assignment, performance, and evaluation of court-
14 appointed temporary judges. In carrying out these responsibilities, the presiding
15 judge is assisted by the Temporary Judge Administrator as provided in rule 10.743.

16
17 **(b) Publicizing the opportunity to serve as a temporary judge**

18
19 (1) Except for those courts that have nine or fewer authorized judges, each trial
20 court that uses court-appointed temporary judges must publicize the
21 opportunity to serve as a temporary judge whenever the court seeks to add
22 attorneys to its pool of temporary judges or within a reasonable time before
23 conducting its mandatory training for temporary judges but, in any case, no
24 less than once every three years.

25
26 (2) Courts must publicize this opportunity in a manner that maximizes the
27 potential for a diverse applicant pool, which includes, but is not limited to,
28 publicizing the opportunity to legal communities and organizations, including
29 all local bar associations, in their geographical area. This publicity should
30 encourage and must provide an equal opportunity for all eligible individuals to
31 seek positions as court-appointed temporary judges and not exclude
32 individuals based on their gender, race, ethnicity, disability, religion, sexual
33 orientation, age, or other protected class.

34
35 **(c) Nondiscrimination in application and selection procedure**

36
37 Each trial court that uses court-appointed temporary judges must conduct an
38 application and selection procedure for temporary judges that ensures the most
39 qualified applicants for appointment are selected and must not reject applicants
40 who otherwise meet the requirements for appointment based on their gender, race,
41 ethnicity, disability, religion, sexual orientation, age, or other protected class.
42 Among the qualifications to be considered in the selection procedure are the
43 applicant's exposure to and experience with diverse populations and issues related
44 to those populations.

1
2 ~~(b)~~(d) * * *

3
4 **Advisory Committee Comment**

5
6 **Subdivision (b).** This subdivision is intended to offer all attorneys who satisfy the
7 requirements for appointment under rule 2.812 the opportunity to serve as temporary
8 judges and to expand the size and diversity of the pool of eligible candidates. Pursuant to
9 the rule, courts that do not use temporary judges or that use temporary judges fewer than
10 five court days per year are exempt from the requirement to publicize the opportunity to
11 serve as a temporary judge. Courts that use temporary judges may publicize the
12 opportunity in a manner they determine to be most effective, given their individual
13 circumstances. In attempting to broaden the diversity of the temporary judge applicant
14 pool, courts also have the flexibility to widen the geographical areas in which they
15 publicize the opportunity. Thus, courts are not limited to publicizing their temporary
16 judge program through the local or state bar associations. However, they must include *all*
17 local bar associations when they do so. Publicizing this opportunity no less than once
18 every three years should increase the potential for greater diversity among the temporary
19 judges who serve the courts.

20
21 **Subdivision (c).** This subdivision emphasizes that the selection and appointment process
22 must be devoid of discrimination. These provisions are intended to discourage favoritism
23 in the appointment process and permit the courts to consider, as an additional
24 qualification, an attorney’s exposure to and experience with the diverse populations and
25 issues unique to that population in the county where they are seeking appointment.
26 “Exposure to and experience with diverse populations” includes, but is not limited to,
27 work, social interaction, educational experiences, or community involvement with
28 individuals or groups from diverse communities that may appear in court.

29
30 **Rule 10.743. Administrator of temporary judges program**

31
32 (a) * * *

33
34 (b) **Duties of administrator**

35
36 Under the supervision of the presiding judge, the Temporary Judge Administrator
37 is responsible for the management of the temporary judges program in the court.
38 The administrator’s duties include:

39
40 (1)–(2) * * *

41
42 (3) Assisting the presiding judge in the recruitment and selection of attorneys to
43 serve as temporary judges, as provided in rule 10.741;

44
45 (4)–(11) * * *

Item SPR11-56 Response Form

Title: Court-Appointed Temporary Judges: Recruitment and Appointment of Temporary Judges (amend rules 10.741 and 10.743)

- Agree with proposed changes
- Agree with proposed changes **if modified**
- Do not agree** with proposed changes

Comments: _____

Name: _____ Title: _____

Organization: _____

- Commenting on behalf of an organization

Address: _____

City, State, Zip: _____

To Submit Comments

Comments may be submitted online, written on this form, or prepared in a letter format. If you are *not* commenting directly on this form, please include the information requested above and the proposal number for identification purposes. Please submit your comments online or email, mail, or fax comments. You are welcome to email your comments as an attachment.

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DEADLINE FOR COMMENT: 5:00 p.m., Monday, June 20, 2011

Circulation for comment does not imply endorsement by the Judicial Council or the Rules and Projects Committee. All comments will become part of the public record of the council's action.