

Judicial Council of California

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INVITATION TO COMMENT

W15-06

Title	Action Requested
Temporary Judges: Reporting on Use of Attorneys as Court-Appointed Temporary Judges	Review and submit comments by January 23, 2015
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rules 2.810 and 10.742	July 1, 2015
Proposed by	Contact
Trial Court Presiding Judges Advisory Committee	Claudia Ortega, 415- 865-7623 claudia.ortega@jud.ca.gov
Hon. Marsha G. Slough, Chair	Katherine Sher, 415-865-8031, katherine.sher@jud.ca.gov
Court Executives Advisory Committee	
Ms. Mary Beth Todd, Chair	

Executive Summary and Origin

The Trial Court Presiding Judges and the Court Executives Advisory Committees (the committees) recommend the repeal of the provision in California Rules of Court, rule 10.742(c) that requires each trial court that uses temporary judges to record and report on a quarterly basis the number of temporary judges used in that court; the types and number of cases in which temporary judges were used each month; and whether any appointments were made under the exception in rule 2.810(d). Because the information that the rule requires courts to report on has not been used, is not necessary for court operations, and is burdensome for the courts and the branch to collect and report, the committees recommend the repeal of subdivision (c) of rule 10.742 and the related reference to the reporting requirement in subdivision (d) of rule 2.810. This proposal is part of the ongoing set of proposals to provide for cost savings and efficiencies in the trial courts.

Background

Rule 10.742 concerning the use of attorneys as court-appointed temporary judges and related rule 2.810(d) were adopted by the Judicial Council, effective July 1, 2006, as part of the comprehensive set of rules on temporary judges. These rules were renumbered, with their current numbers effective January 1, 2007.

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 These proposals are circulated for comment purposes only.

In June 2012, the Judicial Council's Rules and Projects Committee (RUPRO) asked advisory committees to suggest changes to rules and forms that could result in cost savings or efficiencies for the courts. As part of that process, a trial court executive officer suggested that the reporting requirements in subdivision (c) of rule 10.742 be repealed because neither the council nor trial courts utilize the data collected under this rule. In November 2012, RUPRO referred this proposal to the Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court Executives Advisory Committee (CEAC) for future consideration and action. The TCPJAC and CEAC jointly propose repealing subdivision (c) of rule 10.742 and amending rule 2.810(d) to achieve efficiencies and cost savings.

The Proposal

Subdivision (c) of rule 10.742 would be amended to eliminate all reporting requirements concerning the use of court-appointed temporary judges. Currently, subdivision (c) requires each trial court that uses attorneys as temporary judges to record and report to council staff the following information on a quarterly basis:

1. The number of attorneys used as temporary judges by that court each month;
2. The number and types of cases, and the amount of time, on which the temporary judges were used each month; and
3. Whether any of the appointments of temporary judges were made under the exception in rule 2.810(d) and, if so, the number of and reasons for these appointments.

In addition, subdivision (d) of rule 2.810, which addresses the appointments made under extraordinary circumstances, should be amended to eliminate the reference to the reporting requirements in rule 10.742(c).

The Advisory Committee Comment for subdivision (c) of rule 10.742 states that the regular reporting of the above-mentioned information assists the courts in monitoring and managing their use of temporary judges and that the information is important for establishing the need for additional judicial positions. The members of both the TCPJAC and CEAC have reviewed the requirements of subdivision (c) and no court has found that the quarterly reporting requirements of this rule have assisted them with monitoring and managing their use of temporary judges. In contrast, trial court leadership has conveyed that these reporting requirements do not assist the courts and, instead, require the courts to direct critical staff resources to this endeavor when they could be used on more essential tasks. The repeal of these reporting requirements would eliminate the courts' need to dedicate court staff to track information for each courtroom, compile that information, and prepare the mandated reports.

The council's Office of Court Research has also verified that the information required in subdivision (c) is not used to establish the need for additional judicial positions.

Alternatives Considered

The committees considered not recommending the repeal of rule 10.742(c) and the amendment of rule 2.810(d), but concluded that inaction would not provide any relief to the courts, and it would leave an unnecessary reporting requirement in the California Rules of Court.

Implementation Requirements, Costs, and Operational Impacts

The repeal of rule 10.742(c) and the amendment of rule 2.810(d) would result in cost savings to the courts as they would be able to direct staff resources to more necessary functions.

Implementation requirements and negative operational impacts are not anticipated as a result of the amendment of the rules.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committees are interested in comments on the following:

- Does the proposal appropriately address the stated purpose?

The advisory committees also seek comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so please quantify.

Attachments

1. Cal. Rules of Court, rules 2.810 and 10.742, at pages 4–5

Rules 2.810 and 10.742 of the California Rules of Court would be amended, effective July 1, 2015, to read:

1 **Rule 2.810. Temporary judges appointed by the trial courts**

2
3 (a)–(c) * * *

4
5 (d) **Exception for extraordinary circumstances**

6
7 A presiding judge may appoint an attorney who is qualified under rule 2.812(a), but
8 who has not satisfied the other requirements of that rule, only in case of
9 extraordinary circumstances. Any appointment under this subdivision based on
10 extraordinary circumstances must be made before the attorney serves as a
11 temporary judge, ~~must be recorded for reporting purposes under rule 10.742(c)(3),~~
12 and must not last more than 10 court days in a three-year period.

13
14 **Rule 10.742. Use of attorneys as court-appointed temporary judges**

15
16 (a)–(b) * * *

17
18 (e) ~~**Record and report of uses**~~

19
20 ~~Each trial court that uses attorneys as temporary judges must record and report to~~
21 ~~the Administrative Office of the Courts on a quarterly basis information concerning~~
22 ~~its use of them. The report must state:~~

- 23
24 (1) ~~The number of attorneys used as temporary judges by that court each month;~~
25
26 (2) ~~The number and types of cases, and the amount of time, on which the~~
27 ~~temporary judges were used each month; and~~
28
29 (3) ~~Whether any of the appointments of temporary judges were made under the~~
30 ~~exception in rule 2.810(d) and, if so, the number of and reasons for these~~
31 ~~appointments.~~

32
33 **Advisory Committee Comment**

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35 **Subdivisions (a)–(b).** These subdivisions provide that the presiding judge in each court is
36 responsible for determining whether court-appointed temporary judges need to be used in that
37 court, and these subdivisions furnish the criteria for determining when their use is proper. Under
38 (b)(1), the use and appointment of court-appointed temporary judges must be based on judicial
39 needs. Under (b)(3), an attorney serving as a temporary judge would have a conflict of interest if
40 the disqualifying factors in the Code of Judicial Ethics exist. Under (b)(4), the test for the
41 appearance of impropriety is whether a person aware of the facts might entertain a doubt that the
42 judge would be able to act with integrity, impartiality, and competence. In addition to the
43 disqualifying factors listed in the Code of Judicial Ethics, an appearance of impropriety would be

1 generated if any of the limitations in family law, unlawful detainer, and other cases identified in
2 the Code of Judicial Ethics are present.

3

4 ~~**Subdivision (c).** Regular recording and reporting of information concerning each court's use of~~
5 ~~temporary judges assists the courts in monitoring and managing their use of temporary judges.~~

6 ~~This information is also important for establishing the need for additional judicial positions.~~