

Invitation to Comment

Title	Court-Appointed Temporary Judges: Application of Rules to Retired Judicial Officers (amend Cal. Rules of Court, rules 2.810 and 2.812)
Summary	To ensure and improve the quality of temporary judges in California, the Judicial Council previously adopted a comprehensive set of rules relating to court-appointed temporary judges. This proposal would amend these rules to eliminate the provision that excludes retired judicial officers from the application of the rules. Retired judicial officers would be required to satisfy the same education and training requirements as other court-appointed temporary judges.
Source	Civil and Small Claims Advisory Committee Hon. Lee Smalley Edmon, Chair
Staff	Patrick O’Donnell, Committee Counsel, 415-865-7665, patrick.o’donnell@jud.ca.gov
Discussion	<p><u>Proposal</u></p> <p>When the Judicial Council adopted the comprehensive rules on court-appointed temporary judges, it discussed the issue of whether the education requirements in the rules should apply to retired judicial officers. It directed the Temporary Judges Working Group to look into this issue.</p> <p>The working group has developed proposals relating to this question and sent them to the Civil and Small Claims Advisory Committee. The Civil and Small Claims Advisory Committee reviewed the proposals to amend rules 2.810 and 2.812, and recommends that the Judicial Council adopt these proposals.</p> <p><i>Rule 2.810. Temporary judges appointed by the trial courts</i></p> <p>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.” The Civil and Small Claims Advisory Committee recommends that the exception for retired judicial officers be eliminated. This will mean that all retired judicial officers who serve in that capacity should meet the same education and other requirements as all other court-appointed temporary judges.</p>

There are a number of reasons for this. Even highly experienced and qualified retired judicial officers may not have any background or training in a particular area in which they are asked to serve as a court-appointed temporary judge (for example, in small claims or traffic). Hence, they will need training in that subject area. Also, some retired judicial officers may not have been on the bench for years or even decades. Hence, it will be important for them to take courses so that they will be current in the law.

It is important that the scope of the proposed rule changes is clearly understood. The proposal would modify the rules so that they apply to retired judicial officers who serve as *court-appointed temporary judges*. Serving as court-appointed temporary judges is different from serving in the assigned judges program, in which many retired judges participate. This proposal would only affect the retired judicial officers serving as court-appointed temporary judges, not those in the assigned judges program. The proposal also would not affect retired judges who serve as temporary judges at the request of the parties in particular cases rather than by prior appointment of the court.

Because of the scope of the proposed rule amendments, it should not affect many retired judicial officers. Unlike the assigned judges program that is quite extensive, there do not appear to be very many retired judges who serve as voluntarily as court-appointed temporary judges. However, because the proposal may impact courts' ability to get the valuable services of retired judicial officers, comments are invited on whether there are reasons to either modify the proposal or not pursue it.

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

The Civil and Small Claims Advisory Committee further recommends amending rule 2.812 to expressly require retired judicial officers to receive the same minimum education and training as all other court-appointed temporary judges. Specifically, it recommends amending rule 3.812 by adding the following new subdivision (d):

(d) Requirements for retired judicial officers

A retired judicial officer serving as a temporary judge must satisfy all the education and training requirements of this rule.

For most retired judicial officers, the educational requirements should not be onerous. For example, for those retired judicial officers who have recently taken courses as active judges or as judges in the assigned judges program, the rules often will impose no additional requirements. The court where they will serve as temporary judges can approve the courses that they have taken, if those courses were applicable, in satisfaction of the requirements of the rules. (See rule 2.812(e).) So the impact of the rule changes will mostly affect those retired judges who have been retired for a while and have not participated in the assigned judges program.

For some of those judges, the additional educational requirements may be a burden and so they may decline to serve as court-appointed temporary judges if the rules are changed as proposed. The question is raised whether, despite this burden, retired judges should be required to satisfy all the same educational requirements as others under the rules—or should there be any modifications for retired judicial officers. Comments are invited on this issue.

Finally, in addition to this change relating to retired judicial officers, the committee proposes modifying rule 2.812(c)(1) regarding the 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 the training on demeanor and ethics, this proposal would delete the phrase “or other person approved by the Administrative Office of the Courts.”

Attachment

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

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

2
3 **(a) Scope of rules**

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

10
11 **(b)–(d) * * ***

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

15
16 **(a)–(b) * * ***

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

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

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

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

31
32 (2) *Mandatory training in ethics*

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

40
41 (3) *Substantive training*

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

9 (A) *Small claims*

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

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

23 (C) *Other subject areas*

24
25 If the court assigns attorneys to serve as temporary judges in other
26 substantive areas such as civil law, family law, juvenile law, unlawful
27 detainers, or case management, the court must determine what additional
28 training is required and what additional courses are required before an
29 attorney may serve as a temporary judge in each of those subject areas.
30 The training required in each area must be of at last 3 hours duration.
31 The court may also require that an attorney possess additional years of
32 practical experience in each substantive area before being assigned to
33 serve as a temporary judge in that subject area.
34

35 (D) *Settlement*

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37 An attorney need not be a temporary judge to assist the court in
38 settlement conferences. However, an attorney assisting the court with
39 settlement conferences who performs any judicial function, such as
40 entering a settlement on the record under Code of Civil Procedure
41 section 664.6, must be a qualified temporary judge who has satisfied the
42 training requirements under (c)(1) and (c)(2) of this rule.

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(E) The substantive training requirements in (3)(A)–(C) do not apply to courts in which temporary judges are used fewer than 10 times altogether in a calendar year.

(d) Requirements for retired judicial officers

A retired judicial officer serving as a temporary judge must satisfy all the education and training requirements of this rule.

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

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

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

Item SPR08-27 Response Form

Title: Court-Appointed Temporary Judges: Application of Rules to Retired
Judicial Officers: and Evaluating the Performance of Temporary Judges
(amend Cal. Rules of Court, rules 2.810, 2.812, and 10.745)

- 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 written on this form, prepared in a letter format, or submitted online. 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.

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Email: invitations@jud.ca.gov

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Fax: (415) 865-7664, Attn: Camilla Kieliger

DEADLINE FOR COMMENT: 5:00 p.m., Friday, June 20, 2008

*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.*