

**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: Temporary Judges Working Group  
Hon. Robert B. Freedman and Hon. Douglas P. Miller, Co-Chairs  
Patrick O'Donnell, Senior Attorney, Office of the General Counsel,  
415-865-7665, patrick.o'donnell@jud.ca.gov  
Robert Lowney, Managing Attorney, Education Division,  
415-865-7833, bob.lowney@jud.ca.gov

Civil and Small Claims Advisory Committee  
Hon. Elihu M. Berle, Chair  
Patrick O'Donnell, Committee Counsel, 415-865-7665,  
patrick.o'donnell@jud.ca.gov

Traffic Advisory Committee  
Hon. John H. Tiernen, Chair  
Courtney Tucker, Committee Counsel, 415-865-7611,  
courtney.tucker@jud.ca.gov

DATE: November 16, 2005

SUBJECT: Temporary Judges: Rules on Quality Assurance, Training, Ethics,  
and Administration (adopt Cal. Rules of Court, rules 243.10–243.17,  
243.19–243.21, 243.30, 243.32–243.34, 6.740–6.746; amend rule  
244 and renumber it as rule 243.31; amend rules 1726 and 6.603;  
amend rule 1727 and renumber it as rule 243.18; repeal rule 880;  
amend Cal. Stds. Jud. Admin., § 16.5; recommend disclosure and  
disqualification requirements for temporary judges to be included in  
the Code of Judicial Ethics) (Action Required)

Issue Statement

Temporary judges serve an important role in providing access to justice for the people of the State of California. They currently hear many different types of cases, including small claims, traffic, family, and juvenile cases. But even though courts rely extensively on temporary judges, the California Rules of Court presently provide only limited guidance on the use, qualifications, and training of

temporary judges. There is no comprehensive set of rules concerning temporary judges. The existing rules and standards on temporary judges are scattered in different places in the California Rules of Court. Many of these relate only to the use of temporary judges in small claims cases.

To ensure and improve the quality of temporary judging, the Temporary Judges Working Group<sup>1</sup> has developed a complete set of rules to govern the selection, training, appointment, supervision, and evaluation of court-appointed temporary judges. The rules were circulated for public comment on special cycle in 2005 and have been substantially revised in response to the comments. The Traffic Advisory Committee and the Civil and Small Claims Advisory Committee considered the final version of the proposed rules.<sup>2</sup>

### Recommendation

The Civil and Small Claims Advisory Committee and the Traffic Advisory Committee, after considering the rules proposal developed by the Temporary Judges Working Group, have voted to recommend that the Judicial Council, effective July 1, 2006:

1. Adopt rule 243.10 of the California Rules of Court that provides a definition of “temporary judge”;
2. Adopt rules 243.11–243.15 that specify the requirements for appointment for court-appointed temporary judges, including minimum experience and training requirements;
3. Adopt rule 243.16 that specifies the permitted and prohibited use by attorneys of their service as court-appointed temporary judges;
4. Adopt rule 243.17 that prescribes the continuing education that is required for court-appointed temporary judges;
5. Amend rule 1727 and renumber it as rule 243.18, to specify more clearly the procedures for stipulations to temporary judges who have been appointed by the court;

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<sup>1</sup> The Working Group is chaired by Judges Robert B. Freedman and Douglas P. Miller. The members of the group are Mr. Albert Balingit, Hon. Douglas G. Carnahan, Hon. Julie M. Conger, Hon. Michael T. Garcia, Hon. Harvey E. Goldfine, Hon. Frederick Paul Horn, Hon. Mary Thornton House, Hon. Curtis E. A. Karnow, Hon. James R. Lambden, Hon. Arnold D. Rosenfield, Hon. David Rothman (Ret.), Hon. B. Tam Nomoto Schumann, Hon. David Sotelo, Ms. Mary Viviano, and Hon. Laurie D. Zelton.

<sup>2</sup> Several other advisory committees also considered the rules at various stages in their development. Those committees’ comments and suggestions were considered by the Working Group. The suggestions from members of the Trial Court Presiding Judges Advisory Committee particularly influenced the final version of the rules presented in this report.

6. Adopt rule 243.19 on the disclosures required to be made by temporary judges;
7. Adopt rule 243.20 on disqualifications and limitations on temporary judges serving in proceedings;
8. Adopt rule 243.21 to provide that a temporary judge has a continuing duty to make the disclosures under rule 243.19 and to disqualify himself or herself under rule 243.20;
9. Adopt rules 243.30 and 243.32–243.34, and amend rule 244 and renumber it as rule 243.31, to clarify the rules governing temporary judges who are requested by the parties and designated by the court to serve as temporary judges (including privately-compensated temporary judges);
10. Repeal rule 880 because the definitions in that rule will no longer be necessary after rule 243.10 is adopted;
11. Amend rule 6.603 to include a cross-reference to the new rules on court-appointed temporary judges; and
12. Adopt rules 6.740–6.746 to clarify and provide direction to presiding judges and the courts on the administration of court-appointed temporary judges.

The rules changes described above would be effective July 1, 2006; however, the operative date for rules 243.11–243.14 (which primarily concern qualifications and training) would be January 1, 2007, to provide more time for implementation of the rules.

In addition, rule 1726 (on temporary judges in small claims cases) would be amended effective January 1, 2006 to implement the new legislation concerning small claims cases<sup>3</sup> effective on that date; therefore, the Temporary Judges Working Group recommends that the Judicial Council, effective January 1, 2007:<sup>4</sup>

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<sup>3</sup> See Assembly Bill 1459 [Canciamilla] Stats. 2005, ch. 618 and Senate Bill 422 [Simitian] Stats. 2005, ch. 600 (requiring temporary judges hearing small claims cases to complete certain training, under rules adopted by the Judicial Council, by July 1, 2006).

<sup>4</sup> The proposed amendments to rule 1726 to implement the recent small claims legislation were prepared by staff after this legislation was passed and signed by the Governor. Because the need for amendments to rule 1726 only recently became clear, the proposed amendments have not been circulated for comment. However, given their technical, transitional character and the need for these amendments to implement the legislation, the co-chairs of the Temporary Judges Working Group and staff recommend that the amendments be approved to go into effect January 1, 2006, without being circulated, to assist the courts in implementing the legislation.

13. Amend rule 1726 of the California Rules of Court to assist courts in implementing the recent legislation during 2006 and to provide that the rule is repealed effective January 1, 2007, when the new rules on the training of temporary judges become operative; and
14. Amend section 16.5 of the Standards of Judicial Administration to provide that the section is repealed effective January 1, 2007, when the new rules become operative.

Based on newly received recommendations of the Supreme Court Advisory Committee on the Code of Judicial Ethics,<sup>5</sup> this report recommends:

15. The detailed rules on disclosures, disqualifications, and limitations on temporary judges (i.e., proposed rules 243.19, 243.20, and 243.31(d)–(e) that were circulated for comment and revised by the Temporary Judges Working Group) be referred to the Supreme Court, with a recommendation that these rules be included by the Supreme Court in the California Code of Judicial Ethics on or before July 1, 2006.

Finally, to ensure that the new rules are effectively implemented, the Working Group recommends that the Judicial Council, effective January 1, 2006:

16. Direct the Education Division of the Administrative Office of the Courts (AOC) to assist the courts in the training and education of temporary judges in cooperation with the Department of Consumer Affairs; and
17. Direct the Office of Court Research of the AOC's Executive Office Programs Division to assist the courts in reporting information about temporary judges and assist the council by analyzing this information to better determine judicial needs and improve the quality of temporary judging.

The text of the rules is attached to the report at pages 23–51.

#### Rationale for Recommendation

The rules proposed by the Temporary Judges Working Group will provide a comprehensive set of rules governing the selection, training, appointment, supervision, and evaluation of court-appointed temporary judges. These rules will ensure the quality of temporary judging in the trial courts by establishing

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<sup>5</sup> This recommendation was received after the rules had been approved by the Temporary Judges Working Group and advisory committees. The recommendation was considered by the chairs of the Working Group and the advisory committees, who agreed that it should be included in this report. Corresponding changes have been made to the rules to be adopted by the Judicial Council on disclosure, disqualifications, and limitations to indicate that temporary judges must comply with requirements in the Code of Judicial Ethics.

minimum professional experience and training requirements. They will provide guidance to temporary judges and the courts on the means to avoid conflicts and the appearance of impropriety. And the rules will provide direction to the trial courts on administering programs for court-appointed temporary judges.

This is an appropriate time for the Judicial Council to consider the proposed rules to improve the quality of temporary judging in the California trial courts. Two recent events highlight the importance of taking action to improve the quality of temporary judging at this time.

#### *Enhancing Public Trust and Confidence*

First, a major survey on public trust and confidence in the California courts was conducted earlier this year and the results were presented at the judicial branch conference in San Diego in September 2005.<sup>6</sup> According to the survey results, one of the core concerns of the public is procedural fairness. Significantly, procedural fairness is perceived by the public to be lower in traffic, family, and small claims cases than in other types of cases. These are the areas in which court-appointed temporary judges are often used. Hence, the results of the public trust and confidence survey suggest that one effective, short-term way to improve public trust and confidence in the trial courts would be to enhance the quality of temporary judging.

#### *New Small Claims Legislation*

A second development that indicates the public's current concern and interest in improving the quality of temporary judging is the enactment this year of two bills that will increase the jurisdictional limits in small claims cases to \$7,500 for natural persons, effective January 1, 2006. (See Assembly Bill 1459 [Canciamilla], Stats. 2005, ch. 618 and Senate Bill 422 [Simitian], Stats. 2005, ch. 600.) This new legislation not only increases jurisdictional limits, but also imposes new statutory requirements to improve the quality of training of temporary judges in small claims cases. The legislation specifically requires that all temporary judges in small claims proceedings receive, under rules adopted by the Judicial Council, certain ethics and substantive training by July 1, 2006.

#### The Proposed Rules

The proposed rules developed by the Working Group provide a comprehensive set of rules for the guidance of the courts and attorneys who serve as temporary judges. The rules are organized under two main headings: rules in title 2 (Pretrial and Trial Rules) and rules in title 6 (Judicial Administration Rules). The main

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<sup>6</sup> *Trust and Confidence in the California Courts: A Survey of the Public and Attorneys* (Commissioned by the Administrative Office of the Courts on behalf of the Judicial Council of California, Sept. 2005), 2 volumes.

rules are summarized here; a more complete description of the rules is provided in the report.

#### *Rules To Ensure the Quality of Court-Appointed Temporary Judges*

The new rules include an extensive set of provisions to ensure and improve the quality of temporary judges appointed by the courts. (See rules 243.11–243.17.)

- Rule 243.11 would provide that trial courts may appoint and use an attorney as a temporary judge only if the attorney has satisfied the requirements for experience and training provided under the rules.
- Rule 243.12 explains the purpose of the appointment of attorneys to serve as court-appointed temporary judges, states that this appointment is discretionary and does not create an employment relationship, and provides that all appointments are the responsibility of the presiding judge.
- Rule 243.13 specifies the basic experience and training requirements for court appointment as a temporary judge.
- Rule 243.14 prescribes the contents of the training programs. These programs include training on bench conduct and demeanor, on ethics, and on substantive areas of the law (small claims, traffic, and other areas).
- Rule 243.15 provides that attorneys may be appointed only after they have subscribed the oath of office and certified that they are aware of and will comply with Canon 6 of the Code of Ethics.
- Rule 243.16 addresses under what circumstances an attorney who has served as a court-appointed temporary judge may or may not refer to that service in résumés, applications, advertisements, and other documents.
- Rule 243.17 requires that all attorneys serving as temporary judges must receive continuing education.

#### *Stipulation Procedures*

Rule 243.18 provides the procedures for stipulating to a court-appointed temporary judge.

#### *Disclosures, Disqualifications, and Limitations*

Rule 243.19 provides that a temporary judge must make the disclosures, and rule 243.20 provides that a temporary judge must disqualify himself or herself, as provided in the Code of Judicial Ethics. Rule 243.21 provides that a temporary

judge's duty to disclose and disqualify himself or herself is continuing, as provided in the Code of Judicial Ethics.

#### *Temporary Judges Designated at the Request of the Parties*

Rules 243.30–243.34 concern temporary judges who are designated at the parties' request rather than appointed by the court to serve the public; most of these temporary judges are privately compensated. The rules concerning temporary judges requested by the parties are based on current rule 244. The Working Group has recommended only a few, mostly stylistic changes to these rules because it regarded them as generally beyond the scope of its charge, which was to develop rules to ensure and improve the quality of court-appointed temporary judges.

However, in discussing the rules concerning privately compensated temporary judges, members of the Judicial Council's Rules and Projects Committee (RUPRO) identified several substantial issues of concern. Accordingly, RUPRO may recommend further action to review and improve the rules concerning privately compensated temporary judges in the future.

#### *Judicial Administration Rules*

Rules 6.740–6.746 would be added to the Judicial Administration Rules in title 6 of the California Rules of Court. The purpose of these rules is to promote the effective and efficient management of temporary judges in the trial courts.

- Rule 6.740 prescribes that each court that uses temporary judges must develop and monitor a program to recruit, select, train, and evaluate attorneys who serve as court-appointed temporary judges.
- Rule 6.741 provides that the presiding judge is responsible for the recruitment, selection, training, appointment, supervision, assignment, and performance of court-appointed temporary judges.
- Rule 6.742 governs the use of attorneys as court-appointed temporary judges.
- Rule 6.743 requires each presiding judge to designate a clerk, executive officer, or other employee knowledgeable about temporary judges to serve as the temporary Judge Administrator in that court.
- Rule 6.744 prescribes the application procedures for an attorney to be appointed as a court-appointed temporary judge and lists the information that must be provided on the application.

- Rule 6.745 provides that the trial courts must review and monitor the performance of temporary judges.
- Rule 6.746 provides that each court must have procedures for receiving, investigating, and resolving complaints.

#### Alternative Actions Considered

The Working Group considered various alternatives to the rules proposed in this report. The main alternatives were raised in the public comments. The comments and the group's responses to those are discussed in the report.

#### Comments From Interested Parties

The proposed Temporary Judge Rules were circulated on a special cycle in the spring of 2005. A total of 51 comments were received on the proposed rules. The commentators included judges, court administrators, attorneys, bar associations, the Consumer Attorneys of California, Consumers Union, and others. Based on the comments, the proposed rules have been significantly revised. A chart summarizing the comments and the Working Group's responses is attached to the report.

#### Implementation Requirements and Costs

The new rules will require implementation efforts and impose costs. The amount of effort and costs will vary depending on the individual court. Some courts whose existing temporary judge programs are already fairly consistent with the new rules will have to make only minor implementation efforts and will incur little additional expense to comply with the rules. Other courts, especially those with no current temporary judge training programs, will require more substantial implementation efforts and will incur greater expenses.

The Temporary Judges Working Group has taken the courts' implementation needs into account in proposing the new rules. Measures to assist the courts with implementation are described at the end of the report.

Attachments



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SUBJECT: Temporary Judges: Rules on Quality Assurance, Training, Ethics, and Administration (adopt Cal. Rules of Court, rules 243.10–243.17, 243.19–243.21, 243.30, 243.32–243.34, 6.740–6.746; amend rule 244 and renumber it as rule 243.31; amend rules 1726 and 6.603; amend rule 1727 and renumber it as rule 243.18; repeal rule 880; amend Cal. Stds. Jud. Admin., § 16.5; and recommend disclosures and disqualification requirements for temporary judges to be included in the Code of Judicial Ethics) (Action Required)

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Issue Statement

Temporary judges serve an important role in providing access to justice for the people of the State of California. The California Constitution authorizes courts to appoint attorneys to serve as temporary judges on the stipulation of the parties.<sup>1</sup>

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<sup>1</sup> Cal. Const., art. VI, § 21 provides:

Temporary judges currently serve in many different types of cases, including small claims, traffic, family, and juvenile cases. For many members of the public, temporary judges are the face of justice that they encounter when they go to court.

Although the courts rely extensively on temporary judges, the California Rules of Court presently provide only limited guidance on the use, qualifications, and training of temporary judges. There is no comprehensive set of rules concerning temporary judges. The existing rules and standards on temporary judges are scattered in different places in the California Rules of Court. Many of these relate only to the use of temporary judges in small claims cases.

To ensure and improve the quality of temporary judging, a complete set of rules to govern the selection, training, appointment, supervision, and evaluation of court-appointed temporary judges has been developed. These rules will ensure the quality of temporary judging in the trial courts by establishing minimum education and experience requirements. They will provide guidance to temporary judges and the courts on the means to avoid conflicts and the appearance of impropriety. And the rules will provide direction to the trial courts on administering programs for court-appointed temporary judges.<sup>2</sup>

The rules were developed by the Temporary Judges Working Group. The goal of the Working Group, appointed last year by William C. Vickrey, Administrative Director of the Courts, was to ensure and improve the quality of temporary judges, particularly of those appointed by the courts.

The Working Group is broad-based. Its members include Judicial Council members, former presiding judges, members from five advisory committees, specialists in judicial ethics, judicial officers who regularly train temporary judges, commissioners, the Director of Legal Services Outreach of the State Bar of California, and an attorney from the Department of Consumer Affairs who assists the courts in training of temporary judges.

The Working Group is chaired by Judges Robert B. Freedman and Douglas P. Miller. The members of the group are Mr. Albert Balingit, Hon. Douglas G. Carnahan, Hon. Julie M. Conger, Hon. Michael T. Garcia, Hon. Harvey E. Goldfine, Hon. Frederick Paul Horn, Hon. Mary Thornton House, Hon. Curtis E. A. Karnow, Hon. James Lambden, Hon. Arnold D. Rosenfield, Hon. David Rothman (Ret.),

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On stipulation of the parties litigant the court may order a cause to be tried by a temporary judge who is a member of the State Bar, sworn and empowered to act until final determination of the cause.

<sup>2</sup> The rules will also clarify the existing rules concerning privately compensated temporary judges designated by stipulation of the parties; however, this is not the main focus of the proposal presented in this report.

Hon. B. Tam Nomoto Schumann, Hon. David Sotelo, Ms. Mary Viviano, and Hon. Laurie D. Zelon.

The rules developed by the Temporary Judges Working Group were circulated for public comment on special cycle in 2005 and have been substantially revised in response to the comments. The Traffic Advisory Committee and the Civil and Small Claims Advisory Committee considered the final version of the proposed rules.<sup>3</sup> Both committees voted to recommend the adoption of the rules.

### Background

The need to ensure and improve the quality of temporary judging in the California courts was identified several years ago as an important issue to be addressed. In connection with trial court unification, the Legislature mandated the Three Track Study, a joint study by the Judicial Council and the California Law Revision Commission to consider the future of the State's three-tiered civil case processing system (composed of separate small claims, limited, and unlimited tracks).<sup>4</sup> As part of this study, the Administrative Office of the Courts hired consultants to survey the three-tiered system, including small claims. Based on their observations, the consultants expressed concerns about the quality of temporary judging in small claims cases.

Members of the Three Track Study Working Group,<sup>5</sup> who reviewed the consultants' work in 2002, agreed that problems existed with the quality of temporary judging in small claims. These problems impacted proposals to increase the jurisdictional limits for small claims cases. There was public resistance to any increases in these jurisdictional limits until the quality of the judging for small claims cases was improved. Furthermore, the Three Track Study Working Group concluded that the problems relating to temporary judging transcended the area of small claims. Issues relating to the quality of temporary judging were affecting not just civil cases, but all types of cases in which temporary judges are used.

To address the concerns about the quality of temporary judging, the Temporary Judges Working Group was established in 2004. The group was charged with the following: reporting to the Judicial Council on the current use of temporary judges in the trial courts; proposing statewide rules of court, standards of judicial

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<sup>3</sup> Several other advisory committees also considered the rules at various stages in their development. Those committees' comments and suggestions were considered by the Working Group. The suggestions from members of the Trial Court Presiding Judges Advisory Committee particularly influenced the final version of the rules presented in this report.

<sup>4</sup> Gov. Code, § 70219.

<sup>5</sup> This group included presiding judges, judicial administrators, judicial officers who regularly provide training for temporary judges, members of several different advisory committees, and attorneys who provide legal assistance for self-represented litigants.

administration, and programs relating to the selection, appointment, length of service, and assignment of temporary judges; proposing education and training requirements for temporary judges; and presenting an analysis of the likely effects of the Working Group's proposals on the branch, including resource and policy implications.

During the past year, the Temporary Judges Working Group has worked diligently to complete its tasks. It has operated through four subcommittees: Policy and Administration (Chair: Hon. James R. Lambden); Quality Assurance, Complaints, and Discipline (Chair: Hon. Mary Thornton House); Education and Training (Chair: Hon. B. Tam Nomoto Schumann); and Ethics (Chair: Hon. Julie M. Conger). These four subcommittees and the full Working Group developed the rules to improve the quality of temporary judging that are described below. They also worked on developing various means to implement the proposals that are described at the end of this report.

#### Timeliness of the Proposal

This is an appropriate time for the Judicial Council to consider the proposed rules to improve the quality of temporary judging in the California trial courts. The legislation to provide for badly needed additional judgeships is moving slowly. Courts are relying extensively on temporary judges. Two recent events highlight the importance of taking action to improve the quality of temporary judging at this time.

#### *Enhancing Public Trust and Confidence*

First, a major survey on public trust and confidence in the California courts was conducted earlier this year and the results were presented at the judicial branch conference in San Diego in September 2005.<sup>6</sup> The Public Trust and Confidence Survey did not ask the public specifically about temporary judges. But according to the survey results, one of the core concerns of the public is procedural fairness.

“Procedural fairness, the sense that decisions have been made through processes that are fair, is the strongest predictor by far of whether members of the public approve or have confidence in the California courts.”<sup>7</sup> Significantly, procedural fairness is perceived by the public to be lower in traffic, family, and small claims cases than in other types of cases. These are the areas in which court-appointed temporary judges are often used. Hence, the results of the Public Trust and Confidence Survey suggest that one effective, short-term way to improve public trust and confidence in the trial courts would be to enhance the quality of temporary judging.

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<sup>6</sup> *Trust and Confidence in the California Courts: A Survey of the Public and Attorneys* (Commissioned by the Administrative Office of the Courts on behalf of the Judicial Council of California, Sept. 2005), 2 volumes (“Public Trust and Confidence Survey”).

<sup>7</sup> *Id.*, vol. 1 at page 24.

In the long run, the best means to ensure procedural fairness in the trial courts is to significantly increase the number of full-time judicial officers. The Temporary Judges Working Group recognizes this and strongly supports the legislation to establish more judicial positions. The Working Group believes that the judicial branch should have sufficient judges to fill all judicial needs. But even if the judgeship legislation is enacted soon, it will provide for additional judges only over a period of years. So the Working Group believes that immediate action to improve the quality of procedural fairness is highly desirable. To accomplish this, it recommends taking action to enhance the quality of temporary judging: this will be a significant, achievable short-term means to improve public trust and confidence.

The Public Trust and Confidence Survey states: “Policies that promote a sense of procedural fairness are the vehicle with the greatest potential to change how the public views the state’s courts and how litigants respond to court decisions.”<sup>8</sup> The proposed temporary judge rules are designed to directly ensure consistently high quality temporary judging by, among other things, requiring that all temporary judges be trained properly in the areas of bench conduct, demeanor, access, fairness, and elimination of bias, as well as substantive law. The adoption of the proposed rules will enhance the quality of justice and thereby the public’s confidence in the judicial branch.

#### *New Small Claims Legislation*

A second development that indicates the public’s current concern and interest in improving the quality of temporary judging is the enactment this year of two bills that will increase the jurisdictional limit in small claims cases to \$7,500 for natural persons, effective January 1, 2006. (See Assembly Bill 1459 [Canciamilla], Stats. 2005, ch. 618 and Senate Bill 422 [Simitian], Stats. 2005, ch. 600.)

On October 6, 2005, Governor Arnold Schwarzenegger signed these bills. This new legislation not only increases jurisdictional limits, but also takes measures to improve the quality of training of temporary judges in small claims cases. In these bills, the Legislature found that a potential knowledge gap exists between the level of knowledge of court commissioners and temporary judges serving in small claims courts. It declared that this gap “should be narrowed by increased use of commissioners and the use of *well-trained, qualified temporary judges* in small claims court in order to ensure or improve ability to deliver justice.” (Stats. 2005, ch. 618 and Stats. 2005, ch. 600, § 1(a)(1) (italics added).)

The new small claims legislation contains specific provisions to improve the training of temporary judges. The legislation provides: “Prior to serving as a temporary judge in small claims court, on and after July 1, 2006, and at least every

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<sup>8</sup> Id.

three years thereafter, each temporary judge shall take a course of study offered by the courts on ethics and substantive law under rules adopted by the Judicial Council.” (Stats. 2005, ch. 618 and Stats. 2005, ch. 600, § 4(b).) The legislation contains a detailed list of topics on substantive law that must be included in small claims training courses for temporary judges.

As this legislation shows, improving the quality of temporary judging—and more specifically providing better training of temporary judges—is currently a major public policy concern in California. The Legislature is looking to the Judicial Council to adopt rules concerning this training.

### Use of Temporary Judges: Survey Results

Before developing its rule proposals, the Temporary Judges Working Group reviewed information about the use of temporary judges around the state. This information provided a foundation for the work that followed. The information was derived from a survey sent in 2003 to all the superior courts in the state concerning their use of temporary judges.<sup>9</sup> A total of 56 out of the 58 superior courts responded to the survey.

#### *General*

The survey of the courts<sup>10</sup> indicates that temporary judges are used extensively. In response to the survey, 45 courts indicated that they use temporary judges; and 11 courts reported that they did not. All the larger courts in California use temporary judges. The courts that do not use temporary judges tend to be the smallest courts.

In terms of the availability of attorneys to serve as temporary judges, the number varies widely depending on the size of the court. Some of the largest courts have from 800 to more than 1,000 attorneys available to serve. The largest courts may use several hundred attorneys as temporary judges each month. At the other end of the spectrum, a half dozen smaller courts report that they have only one temporary judge available for use; and, as mentioned, 11 courts do not use temporary judges at all.

#### *Qualifications and Selection*

Almost two-thirds (64%) of the courts reported that they require an attorney to have five or more years experience as a member of the State Bar to be appointed as a temporary judge. Two-thirds of the courts maintain a list of attorneys available to serve as temporary judges. Written procedures for the appointment of temporary

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<sup>9</sup> Because the information in this report was collected in 2003, some of it is dated. In the future, more thorough reporting about the use of temporary judges should be provided on a regular basis.

<sup>10</sup> The survey was developed by the Administrative Office of the Court’s Office of Court Research and Office of the General Counsel. The Office of Court Research prepared the findings, which are presented in this section of the report.

judges exist in 24 percent of the courts and written procedures for the selection of temporary judges in 19 percent. Attorneys who serve as temporary judges appear before the court on a regular or frequent basis in 62 percent of the courts.

### *Training*

Most of the courts that use temporary judges provide training. However, 13 courts offered no training in 2003. Most of those were small courts that had only a small pool of attorneys to draw on and used only a few temporary judges each month. But one of the largest courts that had a pool of 800 attorneys and used 86 temporary judges a month had no training program. That court has subsequently instituted a temporary judge training program, which it reports has been very successful.

### *Types of Cases*

Temporary judges are used in a wide range of cases. In all courts except the largest, the greatest use of temporary judges is in small claims, traffic, and family law cases. However, depending on the court, temporary judges are also being used in juvenile, unlawful detainer, criminal misdemeanor, and other types of cases. Several courts use temporary judges extensively for settlement purposes, while many others use attorneys who are not temporary judges to assist in settlements. At least one court uses temporary judges for case management purposes.

In short, the survey shows that the California courts rely extensively on attorneys to serve as temporary judges. Temporary judges serve most often in small claims, traffic, and family law—that is, in areas in which, according to the Public Trust and Confidence Survey, the public perceives a lower level of procedural fairness is provided than in other areas. But temporary judges also serve in many other types of cases.

### Authority for Adoption of the Temporary Judge Rules

Only a few statutes and rules presently provide guidance to courts and attorneys on the use of temporary judges. The proposed rules, which will fill that gap, should significantly enhance the quality of temporary judging in this state. The Judicial Council has authority to promulgate these rules under article VI, section 6 of the Constitution, which authorizes the council to “adopt rules for court administration, practice, and procedure.” The authority to prescribe the proposed rules is evident from a review of recent constitutional history.

Until 1966, the California Constitution’s section on temporary judges contained a provision that stated that the selection of temporary judges “shall be subject to the approval and order of the court in which said cause is pending *and shall also be subject to such regulations and orders as may be prescribed by the Judicial Council.*” (Cal. Const., art. VI, § 22 (italics added).)

In 1966, this language in section 22 was eliminated when article VI, section 6 was amended to broaden the scope of the council's rule-making authority. The 1966 amendments, however, were not intended to diminish the council's authority to make specific rules relating to temporary judges. On the contrary, the California Constitution Revision Commission explained the reason for the elimination of the language authorizing the council to make rules on temporary judges in section 22 as follows: "Reference to the selection of pro tem judges being subject to Judicial Council rule was *deleted as unnecessary in view of proposed Section 6 giving rule-making authority to the council.*" (Cal. Const. Revision Comm., Proposed Revision of the California Constitution (San Francisco, Feb. 1966), p. 98 (emphasis added).) Thus, the history of the 1966 constitutional amendments shows that the Judicial Council's general rule-making authority under article VI, section 6 includes the specific authority to make rules concerning temporary judges.

A member of the Judicial Council's Rules and Projects Committee, although he did not take issue in general with the council's authority to establish rules regulating the use of temporary judges, questioned whether the council's rule-making authority extended to the adoption of rules that would determine who is eligible to serve as a temporary judge. For the legal reasons discussed above, the Working Group believes the council has sufficiently broad authority to adopt the proposed rules. (See also Comment Chart, response to comment 34, pages 166–170.)

The Supreme Court Advisory Committee on the Code of Judicial Ethics has recommended that the proposed, detailed rules on disclosures and disqualifications of temporary judges (rules 243.19, 243.20, and 243.31(d)–(3), as circulated and revised by the Temporary Judges Working Group) be referred to the Supreme Court for consideration and inclusion in the California Code of Judicial Ethics. Though the Judicial Council has general authority to make rules concerning temporary judges, the Supreme Court has authority to prescribe rules for the conduct of judges both on and off the bench, which are contained in the Code of Judicial Ethics. (Cal. Const., art. VI, § 18 (m).) The Code of Judicial Ethics already contains provisions concerning disclosures by, and disqualifications of, temporary judges. (See Cal. Code of Jud. Ethics, Canon 6D.) Hence, it is appropriate that the specific provisions in the proposed rules on disclosures, disqualifications, and limitations be in the Code of Judicial Ethics instead of the Rules of Court.

Accordingly, this report recommends that the detailed rules on disclosures, disqualifications, and limitations that were developed by the Temporary Judges Working Group be referred to the Supreme Court, with a recommendation that they be included in the Code of Judicial Ethics on or before July 1, 2006. To reflect this recommendation, changes have been made to the rules to be adopted by the Judicial Council, effective July 1, 2006, indicating that temporary judges must comply with



the provisions on disclosures, disqualifications, and limitations in the Code of Judicial Ethics.

In sum, temporary judging is an area of crucial interest to the judicial branch. It is one in which the Legislature has until recently taken little action; hence, there is no problem with the proposed rules being inconsistent with statutes. Rule-making concerning temporary judges is an appropriate area in which the Judicial Council may act. Thus, except as mentioned above regarding the detailed rules on disclosure and disqualification that should be referred to the Supreme Court, the council should adopt the proposed rules developed by the Temporary Judges Working Group.

### The Proposed Rules

The proposed rules developed by the Working Group provide a comprehensive set of rules for the guidance of the courts and attorneys who serve as temporary judges, particularly those appointed by the courts. The rules are organized under two main headings within the California Rules of Court: the rules in title 2 (Pretrial and Trial Rules) and the rules in title 6 (Judicial Administration Rules).

### *Definition of Temporary Judge*

A preliminary rule in title 2 provides a definition of “temporary judge.” (See Cal. Rules of Court, rule 243.10.) A “temporary judge” means “an active or inactive member of the State Bar of California who, under article VI, section 21 of the California Constitution and the California Rules of Court, serves or expects to serve as a judge once, sporadically, or regularly on a part-time basis under a separate court appointment, for each period of service or each case heard.” This definition is identical to the definition of “temporary judge” in the Code of Judicial Ethics adopted by the Supreme Court. It would apply both to temporary judges appointed by the courts and to those requested by the parties.<sup>11</sup>

### *Implementation of the New Rules*

The new temporary judge rules would be adopted by the Judicial Council, effective July 1, 2006. But rule 243.11(e) provides that rules 243.11–243.14, which primarily concern the eligibility and training of court-appointed temporary judges, will become operative on January 1, 2007. By that date, all court-appointed temporary judges will need to have satisfied the eligibility and training requirements in the rules. This delayed implementation date will give the courts sufficient time to ensure that all temporary judges are properly qualified and trained.

Certain earlier deadlines will apply to temporary judges serving in small claims cases, however. As a result of recent legislation, temporary judges in small claims proceedings must complete a course of study by July 1, 2006 that includes ethics

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<sup>11</sup> Current rule 880, which contains a different definition, would be repealed.

training and training on certain substantive topics.<sup>12</sup> Temporary judges who have recently received training under rule 1726 would already be qualified to serve, except to the extent that they may need to receive supplemental training on certain substantive topics prescribed in the new statute on which they have not previously received training. All new temporary judges who will serve in small claims will need to satisfy the requirements of Code of Civil Procedure section 116.240(b) and rule 1726 by July 1, 2006.

Rule 1726, the existing rule on temporary judges in small claims cases, should be amended effective January 1, 2006 to serve as a transitional rule concerning the training of temporary judges in small claims cases until the new more general rules on the training of temporary judges become operative on January 1, 2007.<sup>13</sup> The amended rule would provide that an attorney who has already received training as a temporary judge under rule 1726 within three years prior to July 1, 2006, but has not received training on all the specific topics listed in section 116.240(b), must supplement his or her training before July 1, 2006 in order to qualify to serve as a temporary judge hearing small claims cases.

Effective January 1, 2007, rule 1726 would be repealed and rules 243.11–243.14, which apply not only in small claims cases but in all types of cases, would become operative.

#### *Rules on Court-Appointed Temporary Judges*

Eleven new rules (rules 243.11–243.21) in title 2 would apply to attorneys who serve as *court-appointed* temporary judges. These rules would not apply to subordinate judicial officers or to retired judicial officers appointed by the courts to serve as temporary judges, or to attorneys who serve as temporary judges by stipulation of the parties and are designated by the courts to serve as temporary judges at the parties' request. (See rule 243.11(a).)

#### *Rules on Quality Assurance*

The new rules include a number of provisions to ensure and improve the quality of temporary judging. Rule 243.11 would provide that trial courts may appoint and use an attorney as a temporary judge only if the attorney has satisfied the requirements for experience and training provided under the rules. (See rule 243.11(c).) An

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<sup>12</sup> See AB 1459, § 4; SB 422, § 4. The training requirements will be located in new subdivision (b), Code Civ. Proc., § 116.240.

<sup>13</sup> The proposed amendments to rule 1726 to implement the recent small claims legislation were prepared by staff after this legislation was passed and signed by the Governor. Because the need for the amendments to rule 1726 only recently became clear, the proposed amendments have not been circulated for comment. However, given their technical, transitional character and the need for these amendments to implement the legislation, the co-chairs of the Temporary Judges Working Group and staff recommend that the amendments be approved to go into effect January 1, 2006, without being circulated, to assist the courts in implementing the legislation.

exception is provided for “extraordinary circumstances,” but appointments under this exception would be limited to no more than 10 court days in a three-year period. (See rule 243.11(d).)

Rule 243.12 explains the purpose of the appointment of attorneys to serve as court-appointed temporary judges, states that this appointment is discretionary and does not create an employment relationship, and provides that all appointments are the responsibility of the presiding judge, who is to be assisted by a Temporary Judge Administrator. (See rule 243.12(a)–(d).)

Rule 243.13 specifies the basic requirements for court appointment as a temporary judge. First, rule 243.13(a) would require 10 years of practice as a member of the State Bar, unless for good cause the court permits an attorney with at least 5 years of practice to serve. This experience requirement is the same as the requirement for subordinate judicial officers. (See rule 6.660.) Rule 243.13 as circulated would also have required the attorneys to be active members of the State Bar but, based on the persuasive arguments raised in the comments, this requirement has been dropped. Both active and voluntarily inactive members of the State Bar may be appointed as temporary judges.

Second, rule 243.13(b) provides that the court may appoint an attorney as a temporary judge only if the attorney is a member in good standing of the State Bar, has no disciplinary action pending, has not pled guilty to or been convicted of a felony, has satisfied all the training requirements under the rules, and has satisfied all other general or specific requirements for appointment established by the court where the attorney will serve.

Third, rule 243.13(c) specifies the training requirements that must be met for court appointment. This is one of the most important new rules. It will ensure the quality of temporary judges appointed by the court. The rule as circulated provided for at least six hours of in-person ethics training and three hours of substantive training that had to be participatory. Substantive training was required in areas such as family law, juvenile law, or unlawful detainers, and settlements. (See rule 243.13(c).) The minimum requirements have been modified based on practical considerations raised in the public comments. However, it is very important that temporary judges are fully and properly trained; therefore, the Working Group has included a provision in rule 243.13 stating that courts should provide for additional training beyond the rule’s minimum requirements if feasible. (Rule 243.13(d).)

Under the basic training provisions of rule 243.13(c), before appointment as a court-appointed temporary judge, an attorney must have completed a three-hour in-person course on bench conduct, demeanor, and fairness, and a three-hour course on ethics that may be taken by any means approved by the courts. (Rule 243.13(c)(1)–(2).) In

terms of substantive training, an attorney must have completed a three-hour course in each subject area in which the temporary judge will be serving. However, no training is required on settlement. Also, the substantive law training may be taken by any means approved by the court, including in-person, by broadcast with participation, or online. (Rule 243.13(c)(3).) Finally, the rules make it clear that courts may offer Minimum Continuing Legal Education (MCLE) credit for the courses that they provide and may approve MCLE courses provided by others as satisfying the substantive training requirements. (See Advisory Com. Com., rule 243.14.)<sup>14</sup>

Under the rules, the training must have been received within the previous three years to meet the rule's requirements, which generally will become effective January 1, 2007. This means that, if a temporary judge completed training in certain subjects in 2004 or 2005 (i.e., before these rules go into effect) and the court approves this training, the training received would count towards satisfying the minimum training requirements under the new rules. So an attorney who has taken approved courses will only need to take courses in those subjects in which he or she has received no training or insufficient training in order to qualify as a temporary judge effective January 1, 2007, except for temporary judges serving in small claims cases as explained above for which the effective date for certain training is July 1, 2006.

Rule 243.14 prescribes the contents of the training programs. These programs include training on bench conduct and demeanor, on ethics, and on substantive areas of the law (small claims, traffic, and other areas). Specific topics that must be covered in each area are listed in the rule. (See rule 243.14 (a)–(d).) The Education Division of the Administrative Office of the Courts will be assisting the courts by developing educational programs and training.

The rules provide that attorneys may be appointed only after they have completed the educational requirements, subscribed the oath of office, and certified that they are aware of and will comply with Canon 6 of the Code of Ethics. (See rules 243.13(e) and 243.15.)

Rule 243.16 addresses under what circumstances an attorney who has served as a court-appointed temporary judge may or may not refer to that service in résumés, applications, advertisements, and other documents. (See rule 243.16(a)–(b).)

Rule 243.17 requires that all attorneys serving as temporary judges must receive continuing education. Every three years, an attorney must complete courses on

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<sup>14</sup> The Education Division of the Administrative Office of the Courts will assist courts that would like to be MCLE providers, but have not yet qualified.

bench conduct and demeanor, ethics, and a course in each substantive area on which he or she serves as a temporary judge.

### *Stipulation Procedures*

Rule 243.18 provides the procedures for stipulating to a court-appointed temporary judge. It is based on current rule 1727 for small claims cases. However, the rule has been extended to cover all types of proceedings; in addition, the rule has been amended to be clearer and more logically organized.

Rule 243.18 also specifies procedures for withdrawing a stipulation. An application or motion showing good cause is required; and a declaration stating that a ruling is based on an error of fact or law does not establish good cause. (See rule 243.18(e).) This provision is based on current rule 244(g).

### *Disclosures, Disqualifications, and Limitations*

Rule 243.19 provides that a temporary judge must make all the disclosures to the parties required under the Code of Judicial Ethics.<sup>15</sup>

Rule 243.20 provides that a temporary judge must disqualify himself or herself as provided under the Code of Judicial Ethics.<sup>16</sup>

Rule 243.21 provides that a temporary judge has a continuing duty to disclose and disqualify himself or herself as provided under the Code of Judicial Ethics.

### *Temporary Judges Designated at the Request of the Parties*

In contrast to rules 243.11–243.21 that concern court-appointed temporary judges, rules 243.30–243.34 concern temporary judges who are designated at the parties’ request. Most of these temporary judges are privately compensated. The rules concerning these temporary judges are based on current rule 244. The only significant addition is a provision in rule 243.31(e) that would clarify that most of the same rules on disqualification that apply to court-appointed temporary judges also apply to privately compensated temporary judges. This provision would be referred to the Supreme Court with a recommendation that it be included in the California Code of Judicial Ethics.

In reviewing rules 243.30–243.34, the Judicial Council’s Rules and Projects Committee (RUPRO) concluded that the rules concerning privately compensated temporary judges raise some substantial issues that should be further examined.

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<sup>15</sup> As indicated above, this report recommends that the specific provisions of the rule 243.19 on disclosures that were circulated and revised by the Temporary Judges Working Group be referred to the Supreme Court, with the recommendation that they be included in the Code of Judicial Ethics.

<sup>16</sup> The specific provisions in proposed rule 243.20 on disqualifications would be referred to the Supreme Court, with the recommendation that they be included in the Code of Judicial Ethics.

However, consideration of the rules concerning privately compensated temporary judges was beyond the scope of the charge to the Temporary Judges Working Group. The group concentrated on rules to ensure the quality of court-appointed temporary judges. Accordingly, RUPRO may recommend further action be taken to review and improve the rules on privately compensated temporary judges.

### *Judicial Administration Rules*

Rules 6.740–6.746 are added to the Judicial Administration Rules in title 6 of the California Rules of Court. The purpose of these new rules is to promote the effective and efficient management of temporary judges in the trial courts. Current rule 6.603 on the authority and duties of presiding judges would be amended to contain a cross-reference to these new administrative rules and the new rules in title two.

Rule 6.740 prescribes that each court that uses temporary judges must develop and monitor a program to recruit, select, train, and evaluate attorneys who serve as court-appointed temporary judges. This rule is based on current section 16.5 of the Standards of Judicial Administration that applies to courts that use attorneys as temporary judges to hear small claims cases. The provision in that section would be extended to all cases in which a trial court uses temporary judges and would be made into a rule.

Rule 6.741 provides that the presiding judge is responsible for the recruitment, selection, training, appointment, supervision, assignment, performance, and evaluation of court-appointed temporary judges. This rule is based on current rule 6.603(c)(4)(D). The new rule adds that, in performing these responsibilities, the presiding judge is assisted by the Temporary Judge Administrator as provided in rule 6.743.

Rule 6.742 governs the use of attorneys as court-appointed temporary judges. Subdivision (a) provides that the presiding judge is responsible for determining whether a court needs to use a temporary judge and, if so, for what purposes. Subdivision (b) prescribes the conditions under which the presiding judge may appoint an attorney as a court-appointed temporary judge: (1) the appointment of an attorney as a temporary judge is necessary to fill a judicial need in that court; (2) the attorney has been approved under rules 243.10 et seq.; (3) the appointment of the attorney does not result in any conflict of interest; and (4) there is no appearance of impropriety resulting from the appointment.

The final subdivision of rule 6.742 requires each court to record and report quarterly on its use of attorneys serving as temporary judges. (See rule 6.742(c).) This regular recording and reporting will assist the courts in managing and monitoring their

temporary judge programs. It will also provide information to demonstrate the need for additional judicial appointments, particularly in certain areas.

Rule 6.743 requires each presiding judge to designate a clerk, executive officer, or other employee knowledgeable about temporary judges to serve as the Temporary Judge Administrator in that court. (See rule 6.743(a).) This position would be similar to the ADR Administrator currently provided for in the Judicial Administration Rules. The rule lists the duties of the Temporary Judge Administrator. (See rule 6.743(b).)

A member of the council's Rules and Projects Committee expressed a concern that rules 6.740 and 6.743 are not appropriate for courts that only use the exception for extraordinary circumstances under rule 243.11(d). However, the Working Group did not share this view. Rule 6.743 provides that if a court uses a temporary judge at all, it is required to have a program to ensure that temporary judges are properly recruited, trained, appointed, assigned, and evaluated. An Advisory Committee Comment was added to rule 6.743 to explain that the goal of that rule is to ensure the effective and efficient administration of the courts' use of temporary judges. The rule is meant to be applied flexibly. In courts with large temporary judge programs, the court may want to designate a full-time administrator and delegate some of the administrator's duties to other individuals. On the other hand, in courts that use only a few temporary judges, the Temporary Judge Administrator position may consume only part of the administrator's time and be combined with other duties. Also, courts that use a small number of temporary judges may work with other courts, or may cooperate on a regional basis, to perform the functions and duties prescribed under the rule. (See Advisory Com. Com., rule 6.743.)

Rule 6.744 prescribes the application procedures for an attorney to be appointed as a court-appointed temporary judge, and would list the information that must be provided on the application. A standard application form is being developed for this purpose. The presiding judge, assisted by the Temporary Judge Administrator, must review all applications and determine whether to make appointments. This responsibility may be delegated to a committee of judges. (Rule 6.744(d).)

The rules would provide that the trial courts must review and monitor the performance of temporary judges. (See rule 6.745.) Also, each court must have procedures for receiving, investigating, and resolving complaints. (See rule 6.746.) This last rule is based on current section 16.5(d) of the Standards of Judicial Administration.

#### *Repeal of Section 16.5 of the Standards of Judicial Administration*

Current section 16.5 of the Standards of Judicial Administration would be repealed effective January 1, 2007. That section's provisions, which apply only to small

claims cases, will no longer be necessary once the new rules are operative because most of them would be incorporated into the new rules applicable to all cases involving court-appointed temporary judges.

#### *Repeal of Rule 880*

Rule 880 should be repealed effective July 1, 2006, because the new rules would contain their own definitions.

#### *Amendment and Repeal of Rule 1726*

Rule 1726 would be amended effective January 1, 2006, to serve as a transitional rule regarding the training of temporary judges serving in small claims cases. The rule would be repealed when the more general educational rules for temporary judges become operative on January 1, 2007.

#### Alternative Actions Considered

The Working Group considered various alternatives to the rules proposed in this report. The principal alternatives were raised in the public comments. The comments and the group's responses to those are discussed in the next section of this report.

In addition, the Civil and Small Claims Advisory Committee considered four proposed amendments to the rules. These amendments would have: (1) required all ethics courses for temporary judges to be provided online for free; (2) authorized presiding judges to appoint attorneys who have not met the requirements of the rules to serve as temporary judges; (3) allowed attorneys to refer to their service as temporary judges only if they had qualified under the rules; and (4) provided for a sunset of the rules after two or three years. The committee discussed and voted on each of these proposals; none passed.

#### Comments From Interested Parties

The proposed Temporary Judge Rules were circulated on a special cycle in the spring of 2005. A total of 51 comments were received on the proposed rules. The commentators included judges, court administrators, attorneys, bar associations, the Consumer Attorneys of California, Consumers Union, and others. A chart summarizing the comments and the Working Group's responses is attached at pages 52–200.

The main comments and changes made in response to the comments are described below.

#### *Active Bar Membership*

The public was invited to comment on whether the rules should require that court-appointed temporary judges be active members of the State Bar. Several



commentators submitted persuasive arguments why this was unnecessary and would prevent many qualified, but inactive, attorneys from serving as temporary judges. The Working Group agreed that court-appointed temporary judges do not need to be active members of the State Bar. Voluntarily inactive members (including retired attorneys) should be allowed to serve as court-appointed temporary judges, provided they qualify under the rules. The rules have been revised to clarify that courts may appoint inactive members of the State Bar to serve as temporary judges.

### *Bench Conduct and Ethics*

Probably the most controversial rules issue was the amount of training time required for temporary judges. Based on written comments and the views expressed by many presiding judges, the Working Group agreed that the proposed requirement of six hours of in-person ethics and demeanor training in each three-year period should be modified. Instead, the rules would require in each three-year period: (1) a total of three hours of in-person training on bench conduct and demeanor, access and fairness, and the handling of self-represented litigants; and (2) a three-hour course on ethics that may be taken by any method approved by the court, including an online course.

### *Substantive Training*

The provisions concerning substantive training were also the subject of quite a few comments. Based on these, the Working Group revised the rules to clarify that the requirement that an attorney take three hours of substantive course in each area in which he or she adjudicates cases may be met by any method approved by the courts. This is a more flexible approach than provided in the rules that circulated, which had required that the training be participatory. Also, an Advisory Committee Comment clarifies that courts may give MCLE credit for these courses and may use MCLE courses provided by other organizations to qualify temporary judges in substantive areas.

### *Settlements*

Another area of concern to commentators was whether attorneys who assist the courts on settlements must be qualified as temporary judges. The rules were clarified to state that an attorney need not be a temporary judge to assist the court with settlements; but if an attorney assisting with settlements is to perform any judicial function—such as entering a settlement on the record under Code of Civil Procedure section 664.6 or issuing a case management order—then the attorney must be a qualified, trained temporary judge.

### *Stipulations*

Based on comments, the rule on stipulations to court-appointed temporary judges has been extensively revised, renumbered, and reorganized to be clearer and more logical. However, no significant substantive changes have been made in the rule.

### *Disclosures, Qualifications, and Limitations*

Rules 243.19 on disclosures and rule 243.20 on disqualifications and limitations on service by temporary judges received many comments, as indicated in the attached comment chart. Based on the recommendation of the Supreme Court Advisory Committee on the Code of Judicial Ethics, this report recommends that the original proposed rules developed by the Temporary Judges Working Group on these subjects be referred to the Supreme Court, with a recommendation that they be included in the Code of Judicial Ethics on or before July 1, 2006. The specific rules on these subjects recommended for adoption by the Judicial Council have been modified to state that the Code of Judicial Ethics provides the requirements for disclosures by, and disqualifications of, temporary judges.<sup>17</sup>

### *Duties of Presiding Judges*

Based on a suggestion, current rule 6.603 on the duties of presiding judges has been amended to include a cross-reference to the new rules that would be added in titles 2 and 6.

### *Operative Date*

Based on the comments, the rules have been revised to include an operative date of January 1, 2007, for the rules relating to eligibility and training of temporary judges. (See rule 243.11(e).) This delayed implementation date will give the trials courts sufficient time to revise their programs and ensure that attorneys who serve as temporary judges in their courts are properly trained and qualified before the new rules become operative. However, because of the enactment of recent legislation concerning small claims cases, certain specific training for temporary judges hearing these cases will need to be completed by July 1, 2006. Rule 1726 would be amended to give guidance to the courts and attorneys on how to comply with the statutory requirements.

### Implementation Requirements and Costs

The new rules will require implementation efforts and impose costs. The amount of effort and costs will vary depending on the individual court. Some courts whose existing temporary judge programs are already fairly consistent with the new rules will have to make only minor implementation efforts and will incur little additional expense to comply with the rules. Other courts, especially those with no current temporary judge training programs, will require more substantial implementation efforts and will incur greater expenses. The Temporary Judges Working Group has taken the courts' implementation needs into account in proposing the new rules.

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<sup>17</sup> For the reference of the Judicial Council, the Supreme Court, and the public, the attached comment chart continues to include the more detailed versions of rules 243.19 and 243.20 that were circulated for comment and the Working Group's responses to those comments.

First, the rules provide for a delayed implementation date. Although the Judicial Council will be considering the rules in December 2005, the effective date of the rules will be July 1, 2006. Furthermore, under the rules, several main provisions—including the new education and training requirements for temporary judges (outside the area of small claims)—will not need to be satisfied until January 1, 2007. (See rule 243.11(e).)<sup>18</sup> This delayed implementation schedule should give all the superior courts sufficient time to prepare for, and implement, the new rules.

Second, the Education Division of the Administrative Office of the Courts has been working with the Temporary Judges Working Group to develop educational materials and training programs for temporary judges. These should be available for courts to use by early next year. The Education Division will assume a major responsibility for updating materials and training programs for temporary judges in the future. Also, the Task Force on Self-Represented Litigants has volunteered to assist in the development of curriculums for temporary judges.

Third, the Education Division has agreed to assist courts that want to become MCLE providers by providing information and materials.

Fourth, the State Bar of California has been working with the Temporary Judges Working Group to establish an effective means for the trial courts to obtain information about attorneys who are applying to be court-appointed temporary judges. Courts will be informed about the procedures for obtaining this information about applicants as soon as they are ready.

Fifth, a standard application to serve as a temporary judge is being prepared for use by all the trial courts. This application form will provide a means for the court to obtain all the information required under rule 6.744. The form will be circulated for comment in the spring of 2006 so that courts and the public may review it and suggest improvements. A final version of the application form will be available for use by the courts by July 1, 2006.

Sixth, the AOC's Office of Court Research is developing a form or forms to assist the courts in complying with the reporting requirements under rule 6.742. The form or forms will be available before the reporting requirements become effective.

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<sup>18</sup> Temporary judges serving in small claims cases will need to satisfy the training requirements of the new legislation enacted this year. (See AB 1479 and SB 422.) Under this legislation, by July 1, 2006, all court-appointed temporary judges will need to have met the ethics and substantive law training requirements under rule 1726, which would be amended effective January 1, 2006 to require training on the substantive topics specified in the legislation.

### Recommendation

The Civil and Small Claims Advisory Committee and the Traffic Advisory Committee, after considering the rules proposal developed by the Temporary Judges Working Group, have voted to recommend that the Judicial Council, effective July 1, 2006:

1. Adopt rule 243.10 of the California Rules of Court that provides a definition of “temporary judge”;
2. Adopt rules 243.11–243.15 that specify the requirements for appointment for court-appointed temporary judges, including minimum experience and training requirements;
3. Adopt rule 243.16 that specifies the permitted and prohibited use by attorneys of their service as court-appointed temporary judges;
4. Adopt rule 243.17 that prescribes the continuing education that is required for court-appointed temporary judges;
5. Amend rule 1727 and renumber it as rule 243.18, to specify more clearly the procedures for stipulations to temporary judges who have been appointed by the court;
6. Adopt rule 243.19 on the disclosures required to be made by temporary judges;
7. Adopt rule 243.20 on disqualifications and limitations on temporary judges serving in proceedings;
8. Adopt rule 243.21 to provide that a temporary judge has a continuing duty to make the disclosures under rule 243.19 and to disqualify himself or herself under rule 243.20;
9. Adopt rules 243.30 and 243.32–243.34, and amend rule 244 and renumber it as rule 243.31, to clarify the rules governing temporary judges who are requested by the parties and designated by the court to serve as temporary judges (including privately-compensated temporary judges);
10. Repeal rule 880 because the definitions in that rule will no longer be necessary after rule 243.10 is adopted;
11. Amend rule 6.603 to include a cross-reference to the new rules on court-appointed temporary judges; and

12. Adopt rules 6.740–6.746 to clarify and provide direction to presiding judges and the courts on the administration of court-appointed temporary judges.

The rules changes described above would be effective July 1, 2006. However, the operative date of rules 243.11–243.14 (which primarily concern qualifications and training) would be January 1, 2007, as provided under rule 243.11(e). This delayed operative date will provide the superior courts with sufficient time to implement the new rules. Under the rules, by January 1, 2007, all court-appointed temporary judges would be required to satisfy the eligibility and training requirements specified in the rules.

In addition, rule 1726 (on temporary judges in small claims cases) would be amended effective January 1, 2006 to implement the new legislation concerning small claims cases effective on that date.<sup>19</sup> Furthermore, once the new rules on training for all temporary judges become operative on January 1, 2007, rule 1726 of the California Rules of Court and section 16.5 of the Standards of Judicial Administration will no longer be needed. Hence, the Temporary Judges Working Group recommends that the Judicial Council, effective January 1, 2007:

13. Amend rule 1726 of the California Rules of Court to assist courts in implementing the recent small claims legislation during 2006 and to provide that the rule is repealed effective January 1, 2007, when the new rules on the training of temporary judges become operative; and
14. Amend section 16.5 of the Standards of Judicial Administration to provide that the section is repealed effective January 1, 2007, when the new rules become operative.

Based on newly received recommendations of the Supreme Court Advisory Committee on the Code of Judicial Ethics,<sup>20</sup> this report recommends:

15. The detailed rules on disclosures, disqualifications, and limitations on temporary judges (i.e., proposed rules 243.19, 243.20, and 243.31(d)–(e) that were circulated for comment and revised by the Temporary Judges Working Group) be referred to the Supreme Court, with a recommendation that these rules be included in the California Code of Judicial Ethics on or before July 1, 2006.

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<sup>19</sup> Assembly Bill 1459 [Canciamilla] Stats. 2005, ch. 618 and Senate Bill 422 [Simitian] Stats. 2005, ch. 600.

<sup>20</sup> This recommendation was received after the rules had been approved by the Temporary Judges Working Group and advisory committees. The recommendation was reviewed by the chairs of the Working Group and committees, who agreed that it should be included in this report. Corresponding changes have been made to the rules to be adopted by the Judicial Council on disclosure, disqualifications, and limitations, to indicate that temporary judges must comply with the requirements in the Code of Judicial Ethics.

Finally, to ensure that the new rules are effectively implemented, the Working Group recommends that the Judicial Council, effective January 1, 2006:

16. Direct the Education Division of the AOC to assist the courts in the training and education of temporary judges in cooperation with the Department of Consumer Affairs; and
17. Direct the Office of Court Research of the AOC's Executive Office Programs Division to assist the courts in reporting information about temporary judges and assist the council by analyzing this information to better assess judicial needs and improve the quality of temporary judging.

The text of the rules is attached to this report at pages 23–51.

Attachments

The Judicial Council adopts rules 243.10–243.17, 243.19–243.21, 243.30, 243.32–243.34, and 6.740–6.746 of the California Rules of Court; amends rule 244 and renumbers it as rule 243.31; amends rule 1727 and renumbers it as rule 243.18; amends rule 6.603; and repeals rule 880, effective July 1, 2006, as follows:

1 **Rule 243.10. Definition of temporary judge**

2  
3 “Temporary judge” means an active or inactive member of the State Bar of  
4 California who, under article VI, section 21 of the California Constitution  
5 and the California Rules of Court, serves or expects to serve as a judge once,  
6 sporadically, or regularly on a part-time basis under a separate court  
7 appointment, for each period of service or each case heard.

8  
9 **Rule 243.11. Temporary judges appointed by the trial courts**

10  
11 **(a) [Scope of rules]** Rules 243.11–243.21 apply to attorneys who serve as  
12 court-appointed temporary judges in the trial courts. The rules do not  
13 apply to subordinate judicial officers, to retired judicial officers  
14 appointed by the courts to serve as temporary judges, or to attorneys  
15 designated by the courts to serve as temporary judges at the parties’  
16 request.

17  
18 **(b) [Definition of “court-appointed temporary judge”]** A “court-  
19 appointed temporary judge” means an attorney who has satisfied the  
20 requirements for appointment under rule 243.13 and has been appointed  
21 by the court to serve as a temporary judge in that court.

22  
23 **(c) [Appointment of attorneys as temporary judges]** Trial courts may  
24 appoint an attorney as a temporary judge only if the attorney has  
25 satisfied the requirements of rule 243.13.

26  
27 **(d) [Exception for extraordinary circumstances]** A presiding judge may  
28 appoint an attorney who is qualified under 243.13(a), but who has not  
29 satisfied the other requirements of that rule, only in case of  
30 extraordinary circumstances. Any appointment under this subdivision  
31 based on extraordinary circumstances must be made before the attorney  
32 serves as a temporary judge, must be recorded for reporting purposes  
33 under rule 6.742(c)(3), and must not last more than 10 court days in a  
34 three-year period.

35  
36 **(e) [Operative date]** The operative date of rules 243.11–243.14 is January  
37 1, 2007. By that date, all court-appointed temporary judges must satisfy  
38 the eligibility and training requirements specified in these rules. Rule

1 1726 and section 16.5 of the Standards of Judicial Administration, as  
2 amended effective January 1, 2006, will remain in effect until December  
3 31, 2006, at which time they are repealed.  
4

5 **Rule 243.12. Court appointment of temporary judges**  
6

7 **(a) [Purpose of court appointment]** The purpose of court appointment of  
8 attorneys as temporary judges is to assist the public by providing the  
9 court with a panel of trained, qualified, and experienced attorneys who  
10 may serve as temporary judges at the discretion of the court if the court  
11 needs judicial assistance that it cannot provide using its full-time  
12 judicial officers.  
13

14 **(b) [Appointment and service discretionary]** Court-appointed attorneys  
15 are appointed and serve as temporary judges solely at the discretion of  
16 the presiding judge.  
17

18 **(c) [No employment relationship]** Court appointment and service of an  
19 attorney as a temporary judge do not establish an employment  
20 relationship between the court and the attorney.  
21

22 **(d) [Responsibility of the presiding judge for appointments]** The  
23 appointment of attorneys to serve as temporary judges is the  
24 responsibility of the presiding judge, who may designate another judge  
25 or committee of judges to perform this responsibility. In carrying out  
26 this responsibility, the presiding judge is assisted by a Temporary Judge  
27 Administrator as prescribed by rule 6.743.  
28

29 **Rule 243.13. Requirements for court appointment of an attorney to serve as a**  
30 **temporary judge**  
31

32 **(a) [Experience required for appointment and service]** The presiding  
33 judge may not appoint an attorney to serve as a temporary judge unless  
34 the attorney has been admitted to practice as a member of the State Bar  
35 of California for at least 10 years before the appointment. However, for  
36 good cause, the presiding judge may permit an attorney who has been  
37 admitted to practice for at least 5 years to serve as a temporary judge.  
38

39 **(b) [Conditions for appointment by the court]** The presiding judge may  
40 appoint an attorney to serve as a temporary judge only if the attorney:  
41

42 (1) Is a member in good standing of the State Bar and has no  
43 disciplinary action pending;



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- (2) Has not pled guilty or no contest to a felony, or has not been convicted of a felony that has not been reversed;
- (3) Has satisfied the education and training requirements in (c);
- (4) Has satisfied all other general conditions that the court may establish for appointment of an attorney as a temporary judge in that court; and
- (5) Has satisfied any additional conditions that the court may require for an attorney to be appointed as a temporary judge for a particular assignment or type of case in that court.

**(c) [Education and training requirements]** The presiding judge may appoint an attorney to serve as a temporary judge only if the following minimum training requirements are satisfied:

- (1) (Mandatory training on bench conduct and demeanor) Before appointment, the attorney must have attended and successfully completed, within the previous three years, a course of at least 3 hours duration on the subjects identified in rule 243.14(a) approved by the court in which the attorney will serve. This course must be taken in person and be taught by a qualified judicial officer or other person approved by the Administrative Office of the Courts.
- (2) (Mandatory training in ethics) Before appointment, the attorney must have attended and successfully completed, within the previous three years, a course of at least 3 hours duration on the subjects identified in rule 243.14(b) approved by the court in which the attorney will serve. This course may be taken by any means approved by the court, including in-person, by broadcast with participation, or online.
- (3) (Substantive training) Before appointment, the attorney must have attended and successfully completed, within the previous three years, a course on the substantive law in each subject area in which the attorney will serve as a temporary judge. These courses may be taken by any means approved by the court, including in-person, by broadcast with participation, or online. The substantive courses have the following minimum requirements:

1                   (A) (Small claims) An attorney serving as a temporary judge in  
2                   small claims cases must have attended and successfully  
3                   completed, within the previous three years, a course of at least  
4                   3 hours duration on the subjects identified in rule 243.14(c)  
5                   approved by the court in which the attorney will serve.

6  
7                   (B) (Traffic) An attorney serving as a temporary judge in traffic  
8                   cases must have attended and completed, within the previous  
9                   three years, a course of at least 3 hours duration on the  
10                   subjects identified in rule 243.14(d) approved by the court in  
11                   which the attorney will serve.

12  
13                   (C) (Other subject areas) If the court assigns attorneys to serve as  
14                   temporary judges in other substantive areas such as civil law,  
15                   family law, juvenile law, unlawful detainers, or case  
16                   management, the court must determine what additional  
17                   training is required and what additional courses are required  
18                   before an attorney may serve as a temporary judge in each of  
19                   those subject areas. The training required in each area must be  
20                   of at least 3 hours duration. The court may also require that an  
21                   attorney possess additional years of practical experience in  
22                   each substantive area before being assigned to serve as a  
23                   temporary judge in that subject area.

24  
25                   (D) (Settlement) An attorney need not be a temporary judge to  
26                   assist the court in settlement conferences. However, an  
27                   attorney assisting the court with settlement conferences who  
28                   performs any judicial function, such as entering a settlement  
29                   on the record under section 664.6 of the Code of Civil  
30                   Procedure, must be a qualified temporary judge who has  
31                   satisfied the training requirements under (c)(1) and (c)(2) of  
32                   this rule.

33  
34                   (E) The substantive training requirements in (3)(A)–(C) do not  
35                   apply to courts in which temporary judges are used fewer  
36                   than 10 times altogether in a calendar year.

37  
38                   (d) **[Additional requirements]** The presiding judge in each court should  
39                   establish additional experience and training requirements for temporary  
40                   judges beyond the minimum requirements provided in this rule if it is  
41                   feasible for the court to do so.  
42

1 **(e) [Records of attendance]** A court that uses temporary judges must  
2 maintain records verifying that each attorney who serves as a temporary  
3 judge in that court has attended and successfully completed the courses  
4 required under this rule.

5  
6 **(f) [Application and appointment]** To serve as a temporary judge, an  
7 attorney must complete the application required under rule 6.744, must  
8 satisfy the requirements prescribed in this rule, and must satisfy such  
9 other requirements as the court appointing the attorney in its discretion  
10 may determine are appropriate.

11  
12 **Advisory Committee Comment**

13  
14 The goal of this rule is to ensure that attorneys who serve as court-appointed temporary judges are qualified  
15 and properly trained.

16  
17 **Subdivision (a).** If a court determines that there is good cause under (a) to appoint an attorney with less  
18 than 10 years of practice as a temporary judge, the attorney must still satisfy the other requirements of the  
19 rule before being appointed.

20  
21 **Subdivision (b).** “Good standing” means that the attorney is currently eligible to practice law in the State  
22 of California. An attorney in good standing may be either an active or a voluntarily inactive member of the  
23 State Bar. The rule does not require that an attorney be an active member of the State Bar to serve as a  
24 court-appointed temporary judge. Voluntarily inactive members may be appointed as temporary judges if  
25 the court decides to do so.

26  
27 **Subdivision (c).** A court may use attorneys who are not temporary judges to assist in the settlement of  
28 cases. For example, attorneys may work under the presiding judge or individual judges and may assist them  
29 in settling cases. However, these attorneys may not perform any judicial functions such as entering a  
30 settlement on the record under Code of Civil Procedure section 664.6. Settlement attorneys who are not  
31 temporary judges are not required to satisfy the requirements of these rules, but must satisfy any  
32 requirements established by the court for attorneys who assist in the settlement of cases.

33  
34 **Rule 243.14. Contents of training programs**

35  
36 **(a) [Bench conduct]** Before the court may appoint an attorney to serve as a  
37 temporary judge in any type of case, the attorney must have received  
38 training under rule 243.13(c)(1) in the following subjects:

39  
40 (1) Bench conduct, demeanor, and decorum;

41  
42 (2) Access, fairness, and elimination of bias; and

43  
44 (3) Adjudicating cases involving self-represented parties.

45  
46 **(b) [Ethics]** Before the court may appoint an attorney to serve as a  
47 temporary judge in any type of case, the attorney must have received  
48 ethics training under rule 243.13(c)(2) in the following subjects:

- 1
- 2 (1) Judicial ethics generally;
- 3
- 4 (2) Conflicts;
- 5
- 6 (3) Disclosures, disqualifications, and limitations on appearances; and
- 7
- 8 (4) Ex parte communications.
- 9

10 **(c)** [Small claims] Before the court may appoint an attorney to serve as a  
11 temporary judge in small claims cases, the attorney must have received  
12 training under rule 243.13(c)(3)(A) in the following subjects:

- 13
- 14 (1) Small claims procedures and practices;
- 15
- 16 (2) Consumer sales;
- 17
- 18 (3) Vehicular sales, leasing, and repairs;
- 19
- 20 (4) Credit and financing transactions;
- 21
- 22 (5) Professional and occupational licensing;
- 23
- 24 (6) Tenant rent deposit law;
- 25
- 26 (7) Contract, warranty, tort, and negotiable instruments law; and
- 27
- 28 (8) Other subjects deemed appropriate by the presiding judge based on  
29 local needs and conditions.
- 30

31 In addition, an attorney serving as a temporary judge in small claims  
32 cases must be familiar with the publications identified in Code of Civil  
33 Procedure section 116.930.

34

35 **(d)** [Traffic] Before the court may appoint an attorney to serve as a  
36 temporary judge in traffic cases, the attorney must have received  
37 training under rule 243.13(c)(3)(B) in the following subjects:

- 38
- 39 (1) Traffic court procedures and practices;
- 40
- 41 (2) Correctable violations;
- 42
- 43 (3) Discovery;

- (4) Driver licensing;
- (5) Failure to appear;
- (6) Mandatory insurance;
- (7) Notice to appear citation forms;
- (8) Red-light enforcement;
- (9) Sentencing and court-ordered traffic school;
- (10) Speed enforcement;
- (11) Settlement of the record;
- (12) Uniform bail and penalty schedules;
- (13) Vehicle registration and licensing; and
- (14) Other subjects deemed appropriate by the presiding judge based on local needs and conditions.

**Advisory Committee Comment**

The purpose of this rule is to ensure that all court-appointed temporary judges have proper training in bench conduct and demeanor, ethics, and each substantive area in which they adjudicate cases. Each court is responsible for approving the training and instructional materials for the temporary judges appointed by that court. The training in bench conduct and demeanor must be in person, but in other areas each court may determine the approved method or methods by which the training is provided. The methods may include in-person courses, broadcasts with participation, and online courses. Courts may offer MCLE credit for courses that they provide and may approve MCLE courses provided by others as satisfying the substantive training requirements under this rule. Courts may work together with other courts, or may cooperate on a regional basis, to develop and provide training programs for court-appointed temporary judges under this rule.

**Rule 243.15. Appointment of temporary judge**

An attorney may serve as a temporary judge for the court only after the court has issued an order appointing him or her to serve. Before serving, the attorney must subscribe the oath of office and must certify that he or she is aware of and will comply with applicable provisions of Canon 6 of the Code of Judicial Ethics and the California Rules of Court.

**Rule 243.16. Permitted and prohibited uses of past service**

1  
2 **(a) [Permitted uses of past service]** An attorney who has served as a  
3 court-appointed temporary judge may describe his or her service as a  
4 temporary judge:

5  
6 (1) On applications to serve as a temporary judge, including  
7 applications in other courts;

8  
9 (2) On applications for employment or appointment to a judicial  
10 position;

11  
12 (3) On individual resumes or descriptive statements submitted in  
13 connection with an application for employment or for appointment  
14 or election to a judicial position; and

15  
16 (4) In response to requests for information about the public service in  
17 which the attorney has engaged.

18  
19 **(b) [Prohibited uses of past service]** An attorney who has served as a  
20 court-appointed temporary judge may not use this service:

21  
22 (1) As a description of the attorney's primary occupation on ballot  
23 designations for judicial or other elected office;

24  
25 (2) In advertisements about the attorney's law firm or business; or

26  
27 (3) On the letterhead, business cards, or other documents that are  
28 distributed to the public identifying the attorney or the attorney's  
29 law firm.

30 **Rule 243.17. Continuing education**

31  
32 **(a) [Continuing education required]** Each attorney appointed as a  
33 temporary judge must attend and successfully complete every three  
34 years a course on bench conduct and demeanor, an ethics course, and a  
35 course in each substantive area in which the attorney will serve as a  
36 temporary judge. The courses must cover the same subjects and be of  
37 the same duration as the courses prescribed in rule 243.13(c). These  
38 courses must be approved by the court that appoints the attorney.

39  
40 **(b) [Records of attendance]** A court that uses temporary judges must  
41 maintain records verifying that each attorney who serves as a temporary

1 judge in that court has attended and successfully completed the courses  
2 required under this rule.

3  
4 **Rule ~~243.18,1727~~. Stipulation to court-appointed temporary judge in a small  
5 claims case**

6  
7 **(a) [Application]** This rule governs a stipulation for a matter to be heard by  
8 a temporary judge when the court has appointed and assigned an  
9 attorney to serve as a temporary judge in that court.

10  
11 **(b) [Stipulation Contents of Notice]** ~~Notwithstanding rule 244, in small~~  
12 ~~claims actions a party litigant shall be is deemed to have stipulated to~~  
13 ~~the matter being tried by a temporary judge, as defined in rule 880, if all~~  
14 ~~of the following occur~~ Before the swearing in of the first witness in the  
15 at a small claims hearing, before the entry of a plea by the defendant at a  
16 traffic arraignment, or before the commencement of any other  
17 proceeding, the court must give notice to each party that:

18  
19 (1) ~~The court notifies the party litigant that~~ A temporary judge will be  
20 hearing the matters for that calendar;

21  
22 (2) ~~The court notifies the party litigant that~~ The temporary judge is a  
23 qualified member of the State Bar and the name of the temporary  
24 judge is provided; and

25  
26 (3) ~~The court notifies~~ The party litigant that he or she has a right to  
27 have the matter heard before a ~~duly elected or appointed judicial~~  
28 ~~officer~~ judge, commissioner, or referee of the court; and.

29  
30 (4) ~~After notice, the party litigant fails to object to the matter being~~  
31 ~~heard by a temporary judge.~~

32  
33 **(c) [Form of Notice]** ~~This notice may be given~~ The court may give the  
34 notice in (b) in the following forms by either of the following methods:

35  
36 (1) A conspicuous sign posted inside or just outside the courtroom,  
37 accompanied by oral notification or notification by videotape or  
38 audiotape by a court officer on the day of the hearing; or

39  
40 (2) ~~A written stipulation, signed by the party litigant.~~ A written notice  
41 provided to each party.

1 **(d) [Methods of Stipulation]** After notice has been given under (a) and (b),  
2 a party stipulates to a court-appointed temporary judge by either of the  
3 following:

4  
5 (1) The party is deemed to have stipulated to the attorney  
6 serving as a temporary judge if the party fails to object to the  
7 matter being heard by the temporary judge before the temporary  
8 judge begins the proceeding; or

9  
10 (2) The party signs a written stipulation agreeing that the matter may  
11 be heard by the temporary judge.

12  
13 **(e) [Application or motion to withdraw stipulation]** An application or  
14 motion to withdraw a stipulation for the appointment of a temporary  
15 judge must be supported by a declaration of facts establishing good  
16 cause for permitting the party to withdraw the stipulation. In addition:

17  
18 (1) The application or motion must be heard by the presiding judge or  
19 a judge designated by the presiding judge.

20  
21 (2) A declaration that a ruling by a temporary judge is based on error  
22 of fact or law does not establish good cause for withdrawing a  
23 stipulation.

24  
25 (3) The application or motion must be served and filed, and the  
26 moving party must mail or deliver a copy to the presiding judge.

27  
28 (4) If the application or motion for withdrawing the stipulation is  
29 based on grounds for the disqualification of, or limitation of the  
30 appearance by, the temporary judge first learned or arising after the  
31 temporary judge has made one or more rulings, but before the  
32 temporary judge has completed judicial action in the proceeding,  
33 the temporary judge, unless the disqualification or termination is  
34 waived, must disqualify himself or herself, but in the absence of  
35 good cause the rulings the temporary judge has made up to that  
36 time must not be set aside by the judicial officer or temporary  
37 judge who replaces the temporary judge.

38  
39 **Rule 243.19. Disclosures to the parties**

40  
41 A temporary judge must make all disclosures required under the Code of  
42 Judicial Ethics.

43



1 **Rule 243.20. Disqualifications and limitations**

2  
3 A temporary judge must disqualify himself or herself, and is limited from  
4 serving as a temporary judge in proceedings, as provided under the Code of  
5 Judicial Ethics.

6  
7 **Rule 243.21. Continuing duty to disclose and disqualify**

8  
9 A temporary judge has a continuing duty to make disclosures, to disqualify  
10 himself or herself, and to limit his or her service as provided under the Code  
11 of Judicial Ethics.

12  
13 **Rule 243.30. Temporary judges requested by the parties**

14  
15 **(a) [Application]** Rules 243.30–243.34 apply to attorneys designated as  
16 temporary judges under article VI, section 21 of the California  
17 Constitution at the request of the parties rather than by prior  
18 appointment of the court, including privately compensated temporary  
19 judges and attorneys who serve as temporary judges pro bono at the  
20 request of the parties.

21  
22 **(b) [Definition]** “Privately compensated” means that the temporary judge is  
23 paid by the parties.

24  
25 **(c) [Limitation]** These rules do not apply to subordinate judicial officers or  
26 to attorneys who are appointed by the court to serve as temporary judges  
27 for the court.

28  
29 **Rule 244.243.31. Temporary judge—stipulation, order, oath, assignment,**  
30 **compensation, and other matters disclosure, and disqualification**

31  
32 **(a) [Stipulation]** ~~Except as provided in rule 1727, When the parties request~~  
33 ~~that an attorney be designated by the court to serve as a temporary judge~~  
34 ~~on a case, the stipulation of the parties that a case may be tried by a~~  
35 ~~temporary judge must be in writing and must state the name and office~~  
36 ~~address of the member of the State Bar agreed upon on. ~~It~~ The~~  
37 ~~stipulation must be submitted for approval to the presiding judge or to~~  
38 ~~the supervising judge of a branch court or the judge designated by the~~  
39 ~~presiding judge. This subdivision does not apply to the selection of a~~  
40 ~~court commissioner to act as a temporary judge.~~

41  
42 **(b) [Order, and oath, and certification]** The order designating the  
43 temporary judge must be endorsed upon the stipulation signed by the

1            presiding judge or the presiding judge’s designee and refer to the  
2            stipulation. The stipulation and order which must then be filed. The  
3            temporary judge must take and subscribe the oath of office and certify  
4            that he or she is aware of and will comply with applicable provisions of  
5            canon 6 of the Code of Judicial Ethics and ~~these rules~~ the California  
6            Rules of Court. The oath and certification must be attached to the  
7            stipulation and order of designation, and the case will then be assigned  
8            to the temporary judge for trial.

9  
10           **(c) [When the temporary judge may proceed]** The temporary judge may  
11           proceed with the hearing, trial, and determination of the cause after the  
12           stipulation, order, oath, and certification is have been filed, the  
13           ~~temporary judge may proceed with the hearing, trial, and determination~~  
14           ~~of the case.~~

15  
16           ~~A filed oath and order, until revoked, may be used in any case in which~~  
17           ~~the parties stipulate to the designated temporary judge. The stipulation~~  
18           ~~must specify the filing date of the oath and order.~~

19  
20           ~~This subdivision does not apply to the selection of a court commissioner~~  
21           ~~to act as a temporary judge.~~

22  
23           **(e)(d) [Disclosure to the parties]** In addition to any other disclosure required  
24           by law, no later than five days after appointment designation as a  
25           temporary judge or, if the temporary judge is not aware of his or her  
26           appointment designation or of a matter subject to disclosure at that time,  
27           as soon as practicable thereafter, a temporary judge must disclose to the  
28           parties:

29  
30           (1) Any matter subject to disclosure under ~~subdivisions (D)(2)(f) and~~  
31           ~~(D)(2)(g) of Canon 6 of the Code of Judicial Ethics; and~~

32  
33           (2) Any ~~significant~~ personal or professional relationship known to the  
34           temporary judge that the temporary judge or the temporary judge’s  
35           law firm has or has had with a party, attorney, or law firm in the  
36           instant current case, including the number and nature of any other  
37           proceedings in the past 24 months in which the temporary judge  
38           has been privately compensated by a party, attorney, law firm, or  
39           insurance company in the instant case for any services, including,  
40           but not limited to, service as an attorney, expert witness, or  
41           consultant or as a judge, referee, arbitrator, mediator, settlement  
42           facilitator, or other alternative dispute resolution neutral.  
43

1 ~~(d)~~(e) **[Disqualification]** Requests for disqualification of temporary judges are  
2 determined as provided in Code of Civil Procedure sections 170.1,  
3 170.2, 170.3, 170.4, and 170.5. In addition to any other disqualification  
4 required by law, a temporary judge requested by the parties and  
5 designated by the court under this rule must disqualify himself or herself  
6 as provided under the Code of Judicial Ethics.

7  
8 ~~(e)~~ **[Use of court facilities, court personnel, and summoned jurors]** A  
9 party who has elected to use the services of a privately compensated  
10 temporary judge is deemed to have elected to proceed outside the  
11 courthouse, and court facilities, court personnel, or summoned jurors  
12 must not be used, except upon a finding by the presiding judge that their  
13 use would further the interests of justice.

14  
15 For all matters pending before privately compensated temporary judges,  
16 the clerk must post a notice in the courthouse indicating the case name  
17 and number as well as the telephone number of a person to contact to  
18 arrange for attendance at any proceeding that would be open to the  
19 public if held in a courthouse.

20  
21 ~~(f)~~ **[Order for appropriate hearing site]** The presiding or supervising  
22 judge, on request of any person or on the judge's own motion, may  
23 order that a case before a privately compensated temporary judge must  
24 be heard at a site easily accessible to the public and appropriate for  
25 seating those who have made known their plan to attend hearings. The  
26 request must be by letter with reasons stated and must be accompanied  
27 by a declaration that a copy of the request was mailed to each party, to  
28 the temporary judge, and to the clerk for placement in the file. The order  
29 may require that notice of trial or of other proceedings be given to the  
30 requesting party directly. An order for an appropriate hearing site is not  
31 grounds for withdrawal of a stipulation.

32  
33 ~~(g)~~(f) **[Motion to withdraw stipulation or to seal records; complaint for**  
34 **intervention]** A motion to withdraw a stipulation for the appointment of  
35 a temporary judge must be supported by a declaration of facts  
36 establishing good cause for permitting the party to withdraw the  
37 stipulation, and must be heard by the presiding judge or a judge  
38 designated by the presiding judge. A declaration that a ruling is based  
39 on error of fact or law does not establish good cause for withdrawing a  
40 stipulation. Notice of the motion must be served and filed, and the  
41 moving party must mail or deliver a copy to the temporary judge. If the  
42 motion to withdraw the stipulation is based on grounds for the  
43 disqualification of the temporary judge first learned or arising after the

1 temporary judge has made one or more rulings, but before the  
2 temporary judge has completed judicial action in the proceeding, the  
3 provisions of rule 243.20(f) apply. If the a motion to withdraw a  
4 stipulation is granted, the case must be transferred to the trial court  
5 docket the presiding judge must assign the case for hearing or trial as  
6 promptly as possible.

7  
8 ~~A motion to seal records in a cause before a privately compensated~~  
9 ~~temporary judge must be served and filed and must be heard by the~~  
10 ~~presiding judge or a judge designated by the presiding judge. The~~  
11 ~~moving party must mail or deliver a copy of the motion or application to~~  
12 ~~the temporary judge and to any person or organization who has~~  
13 ~~requested that the case be heard at an appropriate hearing site.~~

14  
15 ~~A motion for leave to file a complaint for intervention in a cause before~~  
16 ~~a privately compensated temporary judge must be served and filed, and~~  
17 ~~must be assigned for hearing as a law and motion matter. The party~~  
18 ~~seeking intervention must mail or deliver a copy of the motion to the~~  
19 ~~temporary judge. If intervention is allowed, the case must be returned to~~  
20 ~~the trial court docket unless all parties stipulate in the manner prescribed~~  
21 ~~in subdivision (a) to proceed before the temporary judge.~~

22  
23 ~~(h) [Compensation] A temporary judge must not be compensated by the~~  
24 ~~parties unless the parties agree in writing on a rate of compensation to~~  
25 ~~be paid by the parties.~~

26  
27 **Rule 243.32. Compensation**

28  
29 A temporary judge selected by the parties may not be compensated by the  
30 parties unless the parties agree in writing on a rate of compensation that they  
31 will pay.

32  
33 **Rule 243.33. Notices, use of court facilities, and order for hearing site**

34  
35 **(a) [Posting of notice regarding proceeding before privately**  
36 **compensated judge]** For all matters pending before privately  
37 compensated temporary judges, the clerk must post a notice in the  
38 courthouse indicating the case name and number as well as the  
39 telephone number of a person to contact to arrange for attendance at any  
40 proceeding that would be open to the public if held in a courthouse.

41  
42 **(b) [Use of court facilities, court personnel, and summoned jurors]** A  
43 party who has elected to use the services of a privately compensated

1  
2 facilities, court personnel, and summoned jurors may not be used in  
3 proceedings pending before a privately compensated judge except on a  
4 finding by the presiding judge that their use would further the interests  
5 of justice.

- 6  
7 **(c) [Order for appropriate hearing site]** The presiding judge, on request  
8 of any person or on the judge’s own motion, may order that a case  
9 before a privately compensated temporary judge must be heard at a site  
10 easily accessible to the public and appropriate for seating those who  
11 have made known their plan to attend hearings. The request must be  
12 made by letter with reasons stated and must be accompanied by a  
13 declaration that a copy of the request was mailed to each party, to the  
14 temporary judge, and to the clerk for placement in the file. The order  
15 may require that notice of trial or of other proceedings be given to the  
16 requesting person directly. The granting of an order for an accessible  
17 and appropriate hearing site is not a ground for withdrawal of a  
18 stipulation.

19  
20 **Rule 243.34. Motions or applications to be heard by the court**

- 21  
22 **(a) [Motion or application to seal records]** A motion or application to  
23 seal records in a cause before a privately compensated temporary judge  
24 must be filed with the court and must be served on all parties, the  
25 temporary judge, and any person or organization that has made known  
26 their intention to attend the hearing. The motion or application must be  
27 heard by the trial court judge to whom the case is assigned or, if the case  
28 has not been assigned, by the presiding judge. Rules 243.1–243.2 on  
29 sealed records apply to motions or applications filed under this rule.  
30  
31 **(b) [Motion for leave to file complaint for intervention]** A motion for  
32 leave to file a complaint for intervention in a cause before a privately  
33 compensated temporary judge must be filed with the court and served  
34 on all parties and the temporary judge. The motion must be heard by the  
35 trial court judge to whom the case is assigned or, if the case has not  
36 been assigned, by the presiding judge. If intervention is allowed, the  
37 case must be returned to the trial court docket unless all parties stipulate  
38 in the manner prescribed in rule 243.31(a) to proceed before the  
39 temporary judge.

40  
41 **Rule 880. Temporary judges, referees, and privately compensated judges**  
42 **definitions**

1 In these rules, unless the context or subject matter otherwise requires:

- 2
- 3 (1) “Temporary judge” means a member of the State Bar appointed  
4 pursuant to article VI, section 21 of the California Constitution and rule  
5 244 or rule 532.
- 6
- 7 (2) Unless otherwise indicated, “referee” means a person appointed under  
8 section 638 or 639 of the Code of Civil Procedure.
- 9
- 10 (3) “Privately compensated” means that a temporary judge or referee is paid  
11 by the parties.
- 12

13 **Rule 6.603. Authority and duties of presiding judge**

14

15 (a)–(b) \*\*\*

16

17 (c) [Duties]

18

19 (1)–(3) \*\*\*

20

21 (4) The presiding judge shall:

22

23 (A)–(C) \*\*\*

24

25 (D) [Temporary judges] Be responsible for the recruitment,  
26 training, supervision, approval, and performance of temporary  
27 judges as provided in rules 243.10–243.21 and rules 6.740–  
28 6.746.

29

30 **Rule 6.740. The responsibilities of the trial courts for temporary judge**  
31 **programs**

32

33 Each trial court that uses temporary judges must develop, institute, and  
34 operate—by itself or in collaboration with another court or courts—a  
35 program to recruit, select, train, and evaluate attorneys qualified to serve as  
36 temporary judges.

37

38 **Rule 6.741. Duties and authority of the presiding judge**

39

40 (a) [General duties] The presiding judge is responsible for the recruitment,  
41 selection, training, appointment, supervision, assignment, performance,  
42 and evaluation of court-appointed temporary judges. In carrying out

1            these responsibilities, the presiding judge is assisted by the Temporary  
2            Judge Administrator as provided in rule 6.743.

3  
4            **(b) [Authority to remove or discontinue]** The presiding judge has the  
5            discretion to remove a court-appointed temporary judge or to  
6            discontinue using an attorney as a court-appointed temporary judge at  
7            any time.

8  
9            **Rule 6.742. Use of attorneys as court-appointed temporary judges**

10  
11            **(a) [Responsibility of the presiding judge]** The presiding judge of the trial  
12            court is responsible for determining whether that court needs to use  
13            attorneys as temporary judges and, if so, the specific purposes for which  
14            attorneys are to be appointed as temporary judges.

15  
16            **(b) [Conditions for the use of court-appointed temporary judges]** The  
17            presiding judge may appoint an attorney as a court-appointed temporary  
18            judge only if all the following circumstances apply:

19  
20            (1) The appointment of an attorney to serve as a temporary judge is  
21            necessary to fill a judicial need in that court;

22  
23            (2) The attorney serving as a temporary judge has been approved by  
24            the court where the attorney will serve under rule 243.10 et seq.;

25  
26            (3) The appointment of the attorney as a temporary judge does not  
27            result in any conflict of interest; and

28  
29            (4) There is no appearance of impropriety resulting from the  
30            appointment of the attorney to serve as a temporary judge.

31  
32            **(c) [Record and report of uses]** Each trial court that uses attorneys as  
33            temporary judges must record and report to the Administrative Office of  
34            the Courts on a quarterly basis information concerning its use of them.  
35            The report must state:

36  
37            (1) The number of attorneys used as temporary judges by that court  
38            each month;

39  
40            (2) The number and types of cases, and the amount of time, on which  
41            the temporary judges were used each month; and  
42

1           (3) Whether any of the appointments of temporary judges were made  
2           under the exception in rule 243.11(d) and, if so, the number of and  
3           reasons for these appointments.

4  
5                                   **Advisory Committee Comment**

6  
7           **Subdivisions (a)–(b).** These subdivisions provide that the presiding judge in each court is responsible for  
8           determining whether court-appointed temporary judges need to be used in that court, and these subdivisions  
9           furnish the criteria for determining when their use is proper. Under (b)(1), the use and appointment of  
10           court-appointed temporary judges must be based on judicial needs. Under (b)(3), an attorney serving as a  
11           temporary judge would have a conflict of interest if the disqualifying factors in the Code of Judicial Ethics  
12           exist. Under (b)(4), the test for the appearance of impropriety is whether a person aware of the facts might  
13           entertain a doubt that the judge would be able to act with integrity, impartiality, and competence. In  
14           addition to the disqualifying factors listed in the Code of Judicial Ethics, an appearance of impropriety  
15           would be generated if any of the limitations in family law, unlawful detainer, and other cases identified in  
16           the Code of Judicial Ethics are present.

17  
18           **Subdivision (c).** Regular recording and reporting of information concerning each court’s use of temporary  
19           judges assists the courts in monitoring and managing their use of temporary judges. This information is  
20           also important for establishing the need for additional judicial positions.

21  
22                                   **Rule 6.743. Administrator of temporary judges program**

23  
24           **(a) [Administrator]** The presiding judge who appoints attorneys as  
25           temporary judges must designate a clerk, executive officer, or other  
26           court employee knowledgeable about temporary judges to serve as the  
27           Temporary Judge Administrator in that court.

28  
29           **(b) [Duties of Administrator]** Under the supervision of the presiding  
30           judge, the Temporary Judge Administrator is responsible for the  
31           management of the temporary judges program in the court. The  
32           administrator’s duties include:

33  
34                                (1) Receiving and processing applications from attorneys to serve as  
35                                temporary judges with the court;

36  
37                                (2) Verifying the information on the applications;

38  
39                                (3) Assisting the presiding judge in the recruitment and selection of  
40                                attorneys to serve as temporary judges;

41  
42                                (4) Administering the court’s program for the education and training  
43                                of temporary judges;

44  
45                                (5) Maintaining records of attendance and completion of required  
46                                courses by all attorneys serving as temporary judges in the court;  
47



- (6) Determining that attorneys have satisfied all the conditions required to be appointed as a temporary judge in that court, including continuing education requirements;
- (7) Maintaining a list of attorneys currently appointed and qualified to serve as temporary judges in the court;
- (8) Managing support services for temporary judges, such as providing mentoring programs and reference materials;
- (9) Receiving and processing complaints and other information concerning the performance of attorneys serving as temporary judges;
- (10) Assisting the presiding judge in identifying judicial needs that require the use of temporary judges and in addressing these needs; and
- (11) Maintaining records, gathering statistics, and preparing and transmitting quarterly reports on the court’s use of temporary judges as required under rule 6.742(c).

**Advisory Committee Comment**

The goal of this rule is to ensure the effective and efficient administration of the courts’ use of temporary judges. The rule should be applied flexibly. In courts with large temporary judge programs, the court may want to designate a full-time administrator, and some of the administrator’s duties may be delegated to other individuals. On the other hand, in courts that use only a few temporary judges, the Temporary Judge Administrator position may consume only part of the administrator’s time and be combined with other duties. Also, courts that use only a small number of temporary judges may work with other courts, or may cooperate on a regional basis, to perform the functions and duties prescribed under this rule.

**Rule 6.744. Application procedures to serve as a court-appointed temporary judge**

- (a) **[Application]** Every attorney who applies for appointment as a temporary judge in a trial court must complete an application to serve as a temporary judge.
- (b) **[Information required]** The attorney must provide all applicable information requested on the application. This information must include:
  - (1) The attorney’s name and contact information as required by the court;

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- (2) The attorney's State Bar number;
- (3) The date of the attorney's admission to the State Bar of California and the dates of his or her admissions to practice in any other state;
- (4) Length of membership in the State Bar of California and of practice in any other state;
- (5) Whether the attorney is in good standing with the State Bar of California and in good standing as an attorney in any other state where the attorney has been admitted to practice;
- (6) Whether the attorney has ever been disciplined, or is the subject of a pending disciplinary proceeding, by the State Bar of California or by any other state bar association or court of record; and, if so, an explanation of the circumstances;
- (7) The areas of specialization for which the attorney has been certified in California or in any other state;
- (8) The attorney's major area or areas of practice;
- (9) Whether the attorney holds himself or herself out publicly as representing exclusively one side in any of the areas of litigation in which the attorney practices;
- (10) Whether the attorney represents one side in more than 90 percent of all cases in any areas of litigation in which the attorney specializes or concentrates his or her practice;
- (11) The location or locations in which the attorney principally practices;
- (12) How often the attorney appears in the court where he or she is applying to serve as a temporary judge;
- (13) A list of the attorney's previous service as a temporary judge in the court where the attorney is applying and in any other court;
- (14) Whether the attorney has ever been removed as a temporary judge by any court;

- 1           (15) The types of cases on which the attorney is willing to serve as a  
2           temporary judge;  
3  
4           (16) Whether the attorney has ever been convicted of a felony or  
5           misdemeanor, or is a defendant in any pending felony or  
6           misdemeanor proceeding, and, if so, a statement about the  
7           conviction or pending proceeding;  
8  
9           (17) Whether the attorney has been a party in any legal proceedings  
10           and, if so, a brief description of the proceedings;  
11  
12           (18) Information concerning any circumstances or conditions that  
13           would adversely affect or limit the attorney’s ability to serve as a  
14           temporary judge;  
15  
16           (19) Any facts concerning the attorney’s background that may reflect  
17           positively or negatively on the attorney or that should be disclosed  
18           to the court; and  
19  
20           (20) Such additional information as the court may require.

21  
22           **(c) [Continuing duty to disclose]** An attorney appointed by a court to  
23           serve as a temporary judge has a continuing duty to disclose to the court  
24           any material changes in facts or circumstances that affect his or her  
25           ability to serve as a temporary judge. The attorney must disclose the  
26           changes to the court before the next time the attorney is assigned to  
27           serve as a temporary judge.  
28

29           **(d) [Review of application]** The presiding judge, assisted by the  
30           Temporary Judge Administrator, must review all applications and  
31           determine whether each applicant is qualified, has satisfied the  
32           requirements of rule 243.13, and should be appointed as a temporary  
33           judge. The presiding judge may delegate this task to another judge or a  
34           committee of judges, assisted by the Temporary Judge Administrator. In  
35           appointing attorneys as temporary judges, the presiding judge may go  
36           beyond the minimum qualifications and standards required under the  
37           California Rules of Court. The decision whether to appoint, use, retrain,  
38           remove, or discontinue using any particular attorney as a temporary  
39           judge is at the sole discretion of the presiding judge.  
40

41           **Rule 6.745. Performance**  
42

1           **(a) [Review required]** The court must review on a regular basis the  
2           performance of temporary judges appointed by that court.

3  
4           **(b) [Monitoring performance]** In monitoring and reviewing the  
5           performance of court-appointed temporary judges, the court may use  
6           direct observation, audiotaping of hearings, reports by court staff,  
7           comments from mentor judges, and such other means as may be helpful.

8  
9           **Rule 6.746. Complaints**

10  
11           Each court must have procedures for receiving, investigating, and resolving  
12           complaints against court-appointed temporary judges.

1 The Judicial Council amends rule 1726 and section 16.5 of the Standards of  
2 Judicial Administration, effective January 1, 2006, as follows:

3  
4 **Rule 1726. Temporary judges in small claims cases**

5  
6 **(a) [Qualifications]** To qualify for appointment as a temporary judge hearing  
7 matters in the small claims court or on appeal of a small claims judgment, a  
8 person ~~shall~~ must have:

- 9  
10 (1) Been a member of the State Bar for at least five years immediately  
11 preceding appointment;  
12  
13 (2) Attended and completed a training program for temporary judges  
14 provided by the appointing court; and  
15  
16 (3) Become familiar with the publications identified in Code of Civil  
17 Procedure section 116.930.

18  
19 **(b) [Training program]** The training program ~~shall~~ must cover judicial ethics,  
20 substantive law,\* small claims procedures (including the wording of  
21 judgments), and the conduct of small claims hearings. Judicial ethics and the  
22 conduct of small claims hearings should be taught by a judge, if possible;  
23 substantive law and procedure ~~shall~~ must be taught by any bench officer or  
24 other person experienced in small claims law and procedure.

25  
26 **(c) [Substantive training]** An attorney who has received training under this rule  
27 within three years before July 1, 2006 that did not include training in all the  
28 substantive law topics specified in (b) must supplement his or her training  
29 before that date to include the topics and thereby be qualified to serve as a  
30 temporary judge hearing small claims cases.

31  
32 **(d) [Repeal]** This rule remains in effect through December 31, 2006, at which  
33 time it is repealed.

34  
35 \*Substantive areas of law are intended to include ~~the following: consumer sales;~~  
36 vehicular sales, leasing, and repairs; credit and financing transactions; professional  
37 and occupational licensing; ~~landlord-tenant law; contract, warranty, tort, and~~  
38 negotiable instruments law; state and federal consumer laws; landlord-tenant law  
39 along with any applicable county specific rent deposit law; the state and federal  
40 Fair Debt Collection Practices Acts, the federal Truth in Lending Act, the federal  
41 Air Credit Billing Act, and the federal Electronic Fund Transfer Act; tort law;  
42 warranty law; negotiable instruments law; contract law, including defenses to

1 contracts and defenses to debts; and other subject areas deemed appropriate by the  
2 presiding judge, given local needs and conditions.

3  
4 **§ 16.5. Temporary judges hearing small claims cases**

5  
6 **(a)** Each court that uses temporary judges to hear small claims cases should  
7 develop and monitor a program to recruit, select, train, and evaluate attorneys  
8 qualified to serve as temporary judges.

9  
10 **(b)** The presiding judge should assign a judge or judges to participate in the  
11 selection and evaluation of temporary judges.

12  
13 **(c)** Training for temporary judges should comply with the requirements of rule  
14 1726.

15  
16 **(d)** Each court should establish procedures for receiving, investigating, and  
17 resolving complaints against temporary judges. The presiding judge should  
18 issue no further temporary judge assignments to an attorney who has failed to  
19 perform the duties of a temporary judge in a competent, efficient,  
20 considerate, and ethical manner.

21  
22 **(e)** Model programs for recruiting, selecting, training, and evaluating temporary  
23 judges are available from the Administrative Office of the Courts.

24  
25 **(f)** This section of the Standards of Judicial Administration remains in effect  
26 through December 31, 2006, at which time it is repealed.

1 The Judicial Council refers to the Supreme Court the following rules, which have  
2 been circulated, revised, and recommended by two of the council's advisory  
3 committees, with a recommendation that the provisions in these rules be included  
4 in the Code of Judicial Ethics on or before July 1, 2006:

5  
6 **Rule 243.19. [Version of rule originally proposed for adoption by the Judicial**  
7 **Council.] Disclosures to the parties**

8  
9 In addition to any other disclosure required by law, a temporary judge  
10 must as soon as practicable disclose to the parties:

- 11  
12 (1) Any matter subject to disclosure under subdivisions (D)(2)(f) and  
13 (D)(2)(g) of Canon 6 of the Code of Judicial Ethics; and  
14  
15 (2) Any personal or professional relationship known to the temporary  
16 judge that the temporary judge or temporary judge's law firm has  
17 or has had with a party, attorney, or law firm in the current case.  
18

19 **Rule 243.20. [Version of rule originally proposed for adoption by the Judicial**  
20 **Council.] Disqualifications and limitations**

21  
22 (a) **[Scope of rule]** This rule applies to all temporary judges appointed by  
23 the court under rules 243.11–243.18 of the California Rules of Court. In  
24 addition, subdivisions (b)–(c) and (f)–(h) of this rule apply to all  
25 temporary judges requested by the parties and designated as temporary  
26 judges by the court under rules 243.30–243.34 of the California Rules  
27 of Court, including all privately compensated temporary judges.  
28

29 (b) **[Mandatory disqualifications in any proceeding]** A temporary judge  
30 —other than a temporary judge serving solely in the capacity of a  
31 settlement judge—is disqualified to serve in a proceeding if any one or  
32 more of the following is true:  
33

- 34 (1) The temporary judge has personal knowledge of disputed  
35 evidentiary facts concerning the proceeding;  
36  
37 (2) The temporary judge has served as an attorney in the proceeding;  
38  
39 (3) The temporary judge has given legal advice to, or served as an  
40 attorney for, a party appearing before the court;  
41  
42 (4) The temporary judge has a financial interest in the subject matter  
43 in the proceeding or in a party to the proceeding;

1  
2 (5) The temporary judge, or the spouse or domestic partner of the  
3 temporary judge, or a person within the third degree of relationship  
4 to either of them, or the spouse or domestic partner of such a  
5 person is a party to the proceeding or is an officer, director, or  
6 trustee of a party;  
7

8 (6) An attorney or a spouse or domestic partner of an attorney in the  
9 proceeding is the spouse, former spouse, domestic partner, former  
10 domestic partner, child, sibling, or parent of the temporary judge or  
11 the temporary judge's spouse or domestic partner or if such a  
12 person is associated in the private practice of law with an attorney  
13 in the proceeding;  
14

15 (7) For any reason:  
16

17 (A) The temporary judge believes his or her withdrawal from the  
18 proceeding would further the interests of justice;  
19

20 (B) The temporary judge believes there is a substantial doubt as  
21 to his or her capacity to be impartial; or  
22

23 (C) A person aware of the facts might reasonably entertain a  
24 doubt that the temporary judge would be able to be impartial.  
25 Bias or prejudice toward an attorney in the proceeding is  
26 ground for disqualification;  
27

28 (8) The temporary judge has a current arrangement concerning  
29 prospective employment or other compensated service as a dispute  
30 resolution neutral or is participating in, or within the last two years  
31 has participated in, negotiations regarding or concerning such  
32 prospective employment or service, and either of the following  
33 applies:  
34

35 (A) The arrangement is, or the discussion was, with a party to the  
36 proceeding; or  
37

38 (B) The matter before the temporary judge includes issues  
39 relating to the enforcement of an agreement to submit a  
40 dispute to alternative dispute resolution or the appointment or  
41 use of a dispute resolution neutral.  
42



1           **(c) [Disqualification from appellate review]** A temporary judge before  
2           whom a proceeding was tried or heard is disqualified from participating  
3           in any appellate review of that proceeding.  
4

5           **(d) [Limitations in family law and unlawful detainer proceedings]** An  
6           attorney may not serve as a temporary judge in family law or unlawful  
7           detainer proceedings if in the same type of proceeding:  
8

9           (1) The attorney holds himself or herself out to the public as  
10           representing exclusively one side;

11           (2) The attorney represents one side in 90 percent or more of the cases  
12           in which he or she appears; or

13           (3) One party in the case is an attorney or is represented by an attorney  
14           and the other party or parties are not.  
15

16           **(e) [Other limitations]** An attorney is prohibited from serving as a  
17           temporary judge:  
18

19           (1) In a courthouse in any type of case on the same day that the  
20           attorney is appearing as an attorney or party in that same  
21           courthouse; or

22           (2) If the attorney is presently a party to any action or proceeding in  
23           the court on the same type of case.  
24

25           For good cause, the presiding judge may waive the limitations under  
26           this subdivision.  
27

28           **(f) Waiver of mandatory disqualifications or limitation**  
29

30           (1) After a temporary judge who has determined himself or herself to  
31           be disqualified or limited from serving under (a)–(e) has disclosed  
32           the basis for his or her disqualification or limitation on the record,  
33           the parties and their attorneys may agree to waive the  
34           disqualification or limitation and the temporary judge may accept  
35           the waiver. The temporary judge must not seek to induce a waiver  
36           and must avoid any effort to discover which attorneys or parties  
37           avored or opposed a waiver. The waiver must be in writing, must  
38           recite the basis for the disqualification or limitation, and must state  
39           that it was knowingly made. The waiver is effective only when  
40           signed by all parties and their attorneys and filed in the record.  
41  
42  
43

1  
2 (2) No waiver is permitted where the basis for the disqualification is  
3 any of the following:

4  
5 (A) The temporary judge has a personal bias or prejudice  
6 concerning a party;

7  
8 (B) The temporary judge has served as an attorney in the matter  
9 in controversy; or

10  
11 (C) The temporary judge has been a material witness in the  
12 controversy.

13  
14 (g) **[Late discovery of grounds for disqualification or limitation]** In the  
15 event that grounds for disqualification or limitation are first learned of  
16 or arise after the temporary judge has made one or more rulings in a  
17 proceeding, but before the temporary judge has completed judicial  
18 action in a proceeding, the temporary judge, unless the disqualification  
19 or limitation is waived, must disqualify himself or herself, but in the  
20 absence of good cause the rulings the temporary judge has made up to  
21 that time must not be set aside by the judicial officer or temporary judge  
22 who replaces the temporary judge.

23  
24 (h) **[Notification of the court]** Whenever a temporary judge determines  
25 himself or herself to be disqualified or limited from serving, the  
26 temporary judge must notify the presiding judge or the judge designated  
27 by the presiding judge of his or her withdrawal and must not further  
28 participate in the proceeding, unless his or her disqualification or  
29 limitation is waived by the parties as provided in (f).

30  
31 (i) **[Requests for disqualifications]** A party may request that a temporary  
32 judge withdraw on the ground that he or she is disqualified or limited  
33 from serving. If a temporary judge who should disqualify himself or  
34 herself or who is limited from serving in a case fails to withdraw, a  
35 party may apply to the presiding judge under rule 243.18(e) of the  
36 California Rules of Court for a withdrawal of the stipulation. The  
37 presiding judge or the judge designated by the presiding judge must  
38 determine whether good cause exists for granting withdrawal of the  
39 stipulation.

40  
41 **Advisory Committee Comment**

42  
43 Under subdivisions (b) and (c) of this rule, the same grounds for disqualifications that apply to judicial  
44 officers under Code of Civil Procedure section 170.1 apply to temporary judges, except that (b)(3) of this  
45 rule is stricter than section 170.1(a)(2). The definitions of “personal knowledge,” “financial interest,”

1 “party,” “dispute resolution neutral,” and other terms in sections 170.1 and 170.5 apply to this rule.  
2 Subdivisions (d) and (e) of this rule are new provisions that impose additional limitations on when a  
3 temporary judge may serve that are particularly applicable to temporary judges. Under (d), “one side”  
4 means a category of persons such as husbands, wives, landlords, or tenants. Under subdivisions (f)–(g), the  
5 provisions of section 170.3 on waiver of disqualifications, the effect of late discovery of the grounds of  
6 disqualification, and notification of disqualification of judicial officers apply to temporary judges. Under  
7 (i), requests for disqualification are handled as withdrawals of the stipulation to a temporary judge and are  
8 ruled on by the presiding judge; this procedure is different from that in Code of Civil Procedure section  
9 170.3.

10  
11 **Rule 244.243.31. [Version of rule originally proposed for adoption by the**  
12 **Judicial Council.] Temporary Judge—stipulation, order, oath,**  
13 **assignment, disclosure, and disqualification**

14  
15 (a) \* \* \*

16  
17 (b) \* \* \*

18  
19 (c) \* \* \*

20  
21 ~~(e)~~(d) **[Disclosure to the parties]** In addition to any other disclosure required  
22 by law, no later than five days after appointment designation as a  
23 temporary judge or, if the temporary judge is not aware of his or her  
24 appointment designation or of a matter subject to disclosure at that time,  
25 as soon as practicable thereafter, a temporary judge must disclose to the  
26 parties:

27  
28 (1) Any matter subject to disclosure under subdivisions (D)(2)(f) and  
29 (D)(2)(g) of Canon 6 of the Code of Judicial Ethics; and

30  
31 (2) Any ~~significant~~ personal or professional relationship known to the  
32 temporary judge that the temporary judge or the temporary judge’s  
33 law firm has or has had with a party, attorney, or law firm in the  
34 instant current case, including the number and nature of any other  
35 proceedings in the past 24 months in which the temporary judge  
36 has been privately compensated by a party, attorney, law firm, or  
37 insurance company in the instant case for any services, including,  
38 but not limited to, service as an attorney, expert witness, or  
39 consultant or as a judge, referee, arbitrator, mediator, settlement  
40 facilitator, or other alternative dispute resolution neutral.

41  
42 ~~(d)~~(e) **[Disqualification]** ~~Requests for disqualification of temporary judges are~~  
43 ~~determined as provided in Code of Civil Procedure sections 170.1,~~  
44 ~~170.2, 170.3, 170.4, and 170.5. The disqualification provisions of rule~~  
45 ~~243.20(b)–(c) and (f)–(h) apply to temporary judges who are designated~~  
46 ~~by the court at the parties’ request.~~

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**Temporary Judges: Rules on Quality Assurance, Training, Ethics, and Administration**

(adopt Cal. Rules of Court, rules 243.10-243.17, 243.19-243.21, 243.30, 243.32–243.34, and 6.740-6.746; amend and renumber rule 244 as rule 243.31 and rule 1727 as rule 243.18; amend rule 1726 and 6.603; repeal rule 880; and repeal Cal. Stds. Jud. Admin., § 16.5)

	<b>Commentator</b>	<b>Position</b>	<b>Comment on behalf of group?</b>	<b>Comment</b>	<b>Working Group’s Response</b>
1.	Hon. Larry W. Allen Assistant Presiding Judge Superior Court of California, County of San Bernardino Rancho Cucamonga	AM	N	<p>1. <u>Effective Date</u></p> <p>I do not believe the operative date of July 2006 is feasible. Many courts do not have training programs anywhere near as extensive as the proposed rules will require and a significant amount of time will be required to gear up for this training. It appears that the trainers themselves will also have to be trained. In addition in a large county such as San Bernardino the training programs will have to be put on in different parts of the county at different times which will increase the time necessary to get everyone in compliance. In light of the above and the fact that July 2006 is only a year away and the rules have not been adopted yet, a start date of July 2007 seems more feasible.</p>	<p>1. <u>Effective Date</u></p> <p>The Working Group agreed that courts should be given sufficient time to implement the rules. Hence, although most of the rules on temporary judges would be adopted effective July 1, 2006, the operative date for the rules on the qualification and training of temporary judges (rules 243.11–243.14) would be January 1, 2007. By that date, all court-appointed temporary judges must have satisfied the eligibility and training requirements specified in the rules. This delayed operative date is expressly provided for in the rules. (See Cal. Rules of Court, rule 243.11(e).) This change will give the courts and attorneys who want to serve as temporary judges more time to comply with the new requirements. (However, the enactment of AB 1459 and SB 422 will require temporary judges in small claims cases to meet certain new training requirements by July 1, 2006. Amended rule 1726, which</p>

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	Commentator	Position	Comment on behalf of group?	Comment	Working Group’s Response
				<p>2. <u>Training (Length of Time)</u></p> <p>While I am generally in favor of mandatory training for pro tems and have recently participated in such training for our small claims pro tems, I am concerned about the amount of time for training the new rules would require. To do one area would require a day and a half, and then for any additional areas an additional half-day each. The attorneys doing this are unpaid volunteers doing a public service and we should not require more of them than is necessary to ensure that the public is being well served by them. For heavily impacted counties like San Bernardino, the use of pro tems is not a convenience, but rather part of our solution for dealing with otherwise impossible caseloads. Limiting our ability to use qualified attorneys as pro tems hurts the public rather than benefits it.</p>	<p>would implement this legislation, would be effective on January 1, 2006.)</p> <p>2. <u>Training (Length of Time)</u></p> <p>In response to comments, the Working Group has modified the rules concerning training requirements. In particular, the proposed in-person six-hour ethics course has been replaced with a three-hour in-person course on bench demeanor, access and fairness, and a three-hour ethics course that may be taken by any method approved by the courts including in person, by broadcast with participation, or online. The requirements for the substantive courses that were to have been participatory have been modified to allow courts to decide the method of training. The Advisory Committee Note clarifies that courts may approve MCLE courses provided by others besides the courts as satisfying the requirements of the rules. The</p>

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	Commentator	Position	Comment on behalf of group?	Comment	Working Group’s Response
				<p>3. <u>Rules 243.20[(d)(2)] and 243.20[(e)(1)] (Limitations) [These provisions have been referred to the Supreme Court.]</u></p> <p>1) The restrictions in 243.20[(d)(2)] and [(e)(1)] do not appear necessary. These are for the most part practicing attorneys and to tell them if they are going to handle a morning calendar, they cannot appear in that courthouse that afternoon serves no purpose. The real issue is that they should not have cases heard at that time in that courtroom.</p>	<p>Working Group believes that these modifications should alleviate many of the courts’ main concerns about the proposed rules, i.e., that they would impose an undue burden on the courts and discourage attorneys from participating as temporary judges.</p> <p>3. <u>Rules 243.20[(d)(2)] and 243.20[(e)(1)] (Limitations) [These provisions have been referred to the Supreme Court.]</u></p> <p>1) The Working Group disagreed. Its members had experienced situations in which an attorney who was serving as a temporary judge appeared as an attorney in the same court later in the day. This created appearances of impropriety. Hence, a rule providing for a limitation on appearances is reasonable. However, rule 243(e) has been modified to permit the presiding judge to waive this limitation in an appropriate case. (See rule 243.20(e).)</p>

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	Commentator	Position	Comment on behalf of group?	Comment	Working Group’s Response
				<p>2) Limiting the ability of attorneys who handle cases mostly for one side does not seem necessary to ensure fairness or the appearance of it.</p> <p>4. <u>Active Membership</u></p> <p>Lastly, I do believe the pro tems should be active members of the State Bar. We are more likely to make a valid judgment on their abilities going in if they are currently appearing before judges and have a track record.</p>	<p>2) The Working Group disagreed. The rule only prohibits an attorney in certain types of cases (family law and unlawful detainer proceedings) from serving in the same type of proceeding if (1) the attorney holds himself or herself out as representing exclusively one side, or (2) represents one side in 90 percent or more of the cases in which he or she appears. To avoid the appearance of impropriety as well as potential conflicts, the Working Group believes that these limitations are reasonable.</p> <p>4. <u>Active Membership</u></p> <p>Based on all the comments, the Working Group concluded that temporary judges should not be required to be active members of the State Bar. Inactive attorneys (including retired attorneys) may be very helpful. So the rules have been modified to provide that, if temporary judges are voluntarily inactive, they may serve as temporary judges.</p>

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	<b>Commentator</b>	<b>Position</b>	<b>Comment on behalf of group?</b>	<b>Comment</b>	<b>Working Group’s Response</b>
2.	Mr. Robert C. Aronoff Chair of Judiciary & Bench Bar Relations Beverly Hills Bar Association Beverly Hills	AM	Y	<p>1. <u>Rules 243.14 and 243.17 (Training)</u></p> <p>The training of temporary judges as provided by rule 243.14 and rule 243.17 needs to recognize that many attorneys have many years experience as temporary judges.</p> <p>2. <u>Continuing Education (Rule 243.17)</u></p> <p>While continuing education for temporary judges is important, rule 243.17 should be changed to require different education for experienced temporary judges. Currently, the Los Angeles Superior Court requires experienced temporary judges to attend the same programs as new temporary judges. Many of our members who have served as temporary judges for many years report that the continuing education program has become a waste of time for both the court and the temporary judge who is required to review the same program every three years. The goal of continuing education is not really served.</p> <p>3. <u>Mentoring and Observation (Rules 243.14</u></p>	<p>1. <u>Rules 243.14 and 243.17 (Training)</u></p> <p>The Working Group agreed that training courses should take into account the experience of attorneys who serve as temporary judges.</p> <p>2. <u>Continuing Education (Rule 243.17)</u></p> <p>The Working Group concurred that continuing education is important. It also agreed that courses for temporary judges should be updated and reflect the experience of the temporary judges who take them. The AOC Education Division/CJER will be assisting the courts in the future by providing training materials for courses for temporary judges and updating those materials. Eventually, there should be a wide variety of training materials prepared by AOC/CJER and the courts.</p> <p>3. <u>Mentoring and Observation</u></p>



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				<p>and 243.17)</p> <p>A better version for rule 243.17 would require that the continuing education program be different. Both rule 243.14 and rule 243.17 could also be amended to require experienced temporary judges to mentor less experienced temporary judges. Indeed, rule 243.14 should be amended to require that new temporary judges actually spend time observing experienced judicial officers or temporary judges in the particular fields in which they intend to serve as temporary judges.</p> <p>4. <u>Disqualifications (rule 243.20[(d)]) [These provisions have been referred to the Supreme Court.]</u></p> <p>The last paragraph of rule 243.20[(d)] should be omitted. Except for this paragraph, every other reason for disqualification under rule 243.20 relates to a particular fact which is not common to all attorneys. Thus, the attorney has to disclose the fact that disqualifies him. For example, some attorneys, but not all, may hold themselves out to the public as representing landlords exclusively. The attorney must disclose the fact that he or she represents</p>	<p>(Rules 243.14 and 243.17)</p> <p>On rule 243.17, the provision that the courses should “cover the same subjects” does not mean that they should repeat the same materials. On the contrary, the Working Group agrees that the materials should be updated and changed periodically. The Working Group also supports mentoring and observation. Mentoring is explicitly mentioned in rules 6.743(b)(8) and 6.745(b).</p> <p>4. <u>Disqualifications (rule 243.20[(d)]) [These provisions have been referred to the Supreme Court.]</u></p> <p>The Working Group disagreed. The provision to which the commentator objects has been moved to rule 243.20[(d)(3)]. This provision is intended to prevent the appearance of impropriety that may occur when one party in a family law or unlawful detainer cases is an attorney and the other party or</p>

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	Commentator	Position	Comment on behalf of group?	Comment	Working Group’s Response
				<p>landlords exclusively and therefore is disqualified to serve as a temporary judge in unlawful detainer proceedings.</p> <p>However, in the paragraph in question, the facts that disqualify the attorney from serving as a temporary judge have nothing to do with the attorney, but rather the parties to the action. Since rule 243.20[(f)] allows the parties to waive the disqualification contained in the last paragraph of rule 243.20[(d)], and rule 243.18 requires the parties to stipulate to a temporary judge in the first place, it seems superfluous and confusing to have the final paragraph of subsection [(d)]. Rule 243.18(a)(1) requires the court to identify the temporary judge before the parties stipulate. If there is a case where one side is an attorney, or is represented by the attorney, and the other side is not, a refusal to sign the stipulation accomplishes the purpose of the last paragraph of rule 243.20[(d)].</p> <p>If the final paragraph of subsection [(d)] remains, some courts may misinterpret it and not assign a temporary judge to a family law or unlawful detainer proceeding when one side is</p>	<p>parties are not. In that situation, non-attorney parties may believe that it is a problem that an attorney has been appointed by the court to serve as a temporary judge in the case.</p> <p>While under rule 243.20[(f)] a party may waive the limitation and under 243.18 a party may decline to stipulate to the attorney first, it appears the better policy not to require them to do so. Requiring the party to consider a waiver or to decline to stipulate places the burden on the non-attorney party to challenge a court-appointed temporary judge who is an attorney. A policy similar to the proposed rule 243.20[(d)(3)] has been in effect in the Los Angeles Superior Court and is regarded as achieving positive effects.</p> <p>Subdivision [(d)(3)] will require some pre-assignment review of the calendars in family law and unlawful detainer cases to</p>

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	<b>Commentator</b>	<b>Position</b>	<b>Comment on behalf of group?</b>	<b>Comment</b>	<b>Working Group’s Response</b>
				<p>not represented by an attorney. In practice this will place a difficult burden on court clerks when determining a need for temporary judges. They will have to look not just at the number of cases on calendar for a particular day, but at the representation of the parties on that case. It will cost many wasted hours of court clerks and temporary judges because of the uncertainty.</p> <p>Members of the Beverly Hills Bar Association who have served as temporary judges have first-hand experience with this problem. Clerks in some, but not all, of the unlawful detainer courtrooms of the Los Angeles Superior Court operate under a rule similar to the last paragraph of rule 243.20[(d)]. When attorneys have been assigned to act as temporary judges in these courts, they rearrange their schedules, take time off and arrive at the court only to find that one of the parties in each case on calendar is represented by an attorney. The clerk does not ask the parties for a stipulation, sends the attorney back to his or her office, and continues the case if a judge cannot be found to hear it. Presumably, some of the cases would have stipulated to the temporary judge.</p>	<p>determine if one party is an attorney. This should not be unduly burdensome. The benefits of ensuring that self-represented parties do not feel outnumbered by attorneys and so perceive the system as procedurally unfair outweighs this burden.</p> <p>As the commentator indicates, a policy similar to rule 243.20[(d)(3)] has been in effect in Los Angeles. The specific problem expressed by the commentator may be addressed by changing procedures. The main point is that this policy has been efficacious in increasing a sense of procedural fairness among self-represented litigants in the courts. Based on the experience of the Los Angeles Superior Court, the Working Group recommends that the proposed rule be adopted.</p>
3.	Mr. Kenneth W. Babcock Executive Director	AM	N	<u>Rule 243.13(c)(2)(A) (Training for Temporary Judges in Small Claims)</u>	<u>Rule 243.13(c)(2)(A) (Training for Temporary Judges in Small Claims)</u>

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	<b>Commentator</b>	<b>Position</b>	<b>Comment on behalf of group?</b>	<b>Comment</b>	<b>Working Group’s Response</b>
	Public Law Center Santa Ana			<p>My comment is limited to the training requirements for temporary judges sitting in small claims court set forth in proposed rule 243.13(c)(2)(A). While I am strongly supportive of a training requirement for temporary judges, I do not believe three hours is sufficient time to teach all of the subjects set forth in proposed rule 243.14(b). I base my opinion on two experiences.</p> <p>First, I sat as a small claims temporary judge in the former Los Angeles Municipal Court on approximately 25 different occasions over a 6-year period and heard cases involving many of the topics set forth in proposed rule 243.14. Second, I have taught to both large and small groups of lawyers on approximately 60 to 75 occasions almost all of the training subjects set forth in proposed rule 243.14(b).</p> <p>The topics set forth in the proposed rule are complex and involve a significant body of statutory and case law with which many practitioners are not familiar. These topics would be difficult to teach, on anything more than a superficial level, in a three-hour training. Moreover, crowded small claims court dockets leave limited time for a temporary judge to</p>	<p>The Temporary Judges Working Group was sympathetic to the arguments raised by the commentator in favor of longer training. It recognized that it will be challenging to train temporary judges within the limited time available under the minimum requirements. However, for practical reasons raised by many commentators, presiding judges, and others, the Working Group agreed on the times set forth in the rules. The Working Group has emphasized, however, that the proposed training requirements are a minimum. As mentioned further below, rule 243.13(d) explicitly encourages courts to provide more training if feasible.</p>

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				<p>research issues that will arise. Having more than a passing awareness with these complex legal areas is critical if the working group’s goal of assuring the quality of temporary judging is to be achieved. I would urge that the training requirement in proposed rule 243.13(c)(2)(A) be increased from three hours to six hours. A six-hour training program could easily be divided between two three-hour sessions and would give greater assurances that temporary judges in small claims courts receive the critical information they need.</p> <p>While I realize that proposed rule 243.13(d) gives a presiding judge authority to establish additional training requirements, I believe the additional three hours of training on the topics in proposed rule 243.14(b), which I am proposing, should be mandatory.</p>	<p>Courts would have the discretion to provide for longer training programs, but they would not be required to do so.</p> <p>As the commentator notes, the proposed rules include rule 243.13(d), which encourages courts to provide more training: “The presiding judge in each court should establish additional experience and training requirements for temporary judges beyond those minimal requirements in this rule if it is feasible for the court to do so.”</p>
4.	Saul Bercovitch Staff Attorney The State Bar of California San Francisco	AM	Y	The State Bar of California’s Committee on Administration of Justice (“CAJ”)... lauds the work of the Temporary Judges Working Group. The main or sole interaction that many people have with our justice system is through the	The Working Group notes the CAJ’s recognition of the importance of temporary judges and its commendation of the proposed set of comprehensive rules as a

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				<p>small claims and traffic courts, which are increasingly staffed by temporary judges, and it appears as though the use of temporary judges in other contexts is likely to increase as well. CAJ believes the comprehensive set of uniform rules is a positive step in this important area. CAJ’s specific comments on the proposed rules are provided below.</p> <p><u>Rule 243.10. (Definition of temporary judge)</u></p> <p>Comments were specifically invited on whether court-appointed temporary judges should be required to be active members of the State Bar. CAJ notes that there exists no requirement in the proposed rules that an appointed attorney’s practice be in the area of law relating to the appointment, or even that the attorney be actively practicing <i>at all</i> at the time of appointment. Moreover, other proposed rules require court-appointed temporary judges to receive fairly specific training in the area of law relating to the appointment. Based on consideration of these factors, it was the consensus of CAJ that maintaining active membership in the State Bar, standing alone, may not significantly enhance the appointment of any particular attorney as a temporary judge. Nevertheless, such status would likely inspire</p>	<p>“positive step.” The Working Group’s responses to the CAJ’s specific comments are discussed below.</p> <p><u>Rule 243.10. (Definition of temporary judge)</u></p> <p>The Working Group considered this and the other comments on the issue whether the rules should require an attorney to be an active member of the State Bar in order to be appointed as a temporary judge by the courts. It has concluded that this requirement is not necessary and would reduce the pool of eligible attorneys available to assist the courts. Hence, the rules have been modified to eliminate the active membership requirement. Voluntary inactive as well as active members of the State Bar may be appointed as temporary judges if the presiding judge determines to</p>

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				<p>more confidence among the litigants appearing before the appointed attorney. CAJ perceives the only potentially negative aspect to such a requirement to be a theoretical reduction of the “pool” of temporary judge candidates in a particular county below a level sufficient to meet the county’s needs, but does not know if that would in fact be the case.</p> <p><u>Rule 243.11. (Temporary judges appointed by the trial courts)</u></p> <p>Subdivision (d) of this proposed rule provides in pertinent part: “A presiding judge may appoint an attorney who is qualified under 243.13(a), but who has not satisfied the other requirements of that rule, only in case of extraordinary circumstances.”</p> <p>CAJ’s comment on this proposed rule is offered in light of proposed rule 243.13, which categorizes the requirements for court appointment of a temporary judge as follows:</p> <ul style="list-style-type: none"> <li>• subdivision (a) – number of years admitted to practice before the State Bar;</li> <li>• subdivision (b)(1) – membership in good standing in the State Bar;</li> <li>• subdivision (b)(2) – active membership in</li> </ul>	<p>do so.</p> <p><u>Rule 243.11. (Temporary judges appointed by the trial courts)</u></p> <p>The Working Group understands the CAJ’s concern and shares its goal of ensuring that all attorneys who serve as temporary judges are properly trained and qualified. Nonetheless, based on all the comments and suggestions received, it recognizes that courts especially some of the smallest courts, may have a substantial, unanticipated need for the assistance of a temporary judge and insufficient time or too small a pool of attorneys to fill the position with an attorney who meets all the requirements under the rules. Accordingly, rule 243.12(d)</p>

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				<p>the State Bar;</p> <ul style="list-style-type: none"> <li>• subdivision (b)(3) – absence of a felony conviction;</li> <li>• subdivisions (b)(4),(c) – education and training requirements;</li> <li>• subdivisions (b)(5), (b)(6), (d) – any additional requirements established by the Court.</li> </ul> <p>Under subdivision (d) of this rule, an attorney who meets none of the requirements <i>except for</i> number of years admitted to practice would be eligible to be appointed as a temporary judge. CAJ believes that even in “extraordinary circumstances” the qualification requirements specified in proposed rule 243.13(b)(1)... and particularly [(b)(2)], are at least as important to the general public as the requirement specified in proposed rule 243.13(a), and that compliance with all such requirements should thus be mandated even when “extraordinary circumstances” exist.</p> <p>CAJ also believes that if and when “extraordinary circumstances” are deemed to exist, particularly when time is of the essence in terms of an appointment, it may also be appropriate to allow the appointment of an attorney who does not have the qualification</p>	<p>provides a narrow exception for “extraordinary circumstances.” This exception is limited. Appointments must be made before the attorney serves as a temporary judge, must last no more than 10 days in a three-year period, and must be reported.</p> <p>This comment clarifies the application of the exception. This suggestion will be considered for a possible amendment of rule 243.11 at a future time.</p> <p>This is already permitted under the rule. The exception in rule 243.11(d) would allow an appointment under “exceptional circumstances” even if the attorney has not met the training</p>



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				<p>requirements specified in proposed rule [243.13(b)(3)] and (c), relating to education and training requirements, if otherwise qualified.</p> <p><u>Rule 243.13. (Requirements for court appointment of an attorney to serve as a temporary judge)</u></p> <p>a. <u>Rule 243.13(a)</u></p> <p>Subdivision (a) of this proposed rule provides that in the absence of good cause, the court may not appoint an attorney to serve as a temporary judge unless the attorney has been admitted to practice as a member of the State Bar for at least ten years. CAJ recognizes that this requirement would be the same as the requirement for subordinate judicial officers under rule 6.660, but questions whether the same requirement should apply to court-appointed temporary judges. The current requirement for temporary judges, in at least some counties, is admission to practice for five years. CAJ is concerned that a ten-year requirement may restrict the pool of attorney candidates who are otherwise qualified and willing to accept court appointment as a temporary judge, to the point where a court’s ability to make such appointments may be adversely affected, thereby restricting access to</p>	<p>requirements specified in rule 243.13(b)(3) and rule 243.13(e).</p> <p><u>Rule 243.13. (Requirements for court appointment of an attorney to serve as a temporary judge)</u></p> <p>a. <u>Rule 243.13(a)</u></p> <p>The Temporary Judges Working Group disagreed that attorneys who are appointed as temporary judges should not be required to have the same years of State Bar experience as subordinate judicial officers. Establishing this requirement will help ensure that temporary judges can provide the same high-level of judicial service as commissioners and other subordinate judicial officers. It will prevent the appearance of a two-tiered system of justice. To the extent some courts may need an exception (for example, because of a very small pool of available attorneys) the same “good cause” standard would apply for the appointment of</p>

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				<p>the courts without a commensurate benefit.</p> <p>CAJ questions the basic premise of this rule, which simply looks to years “admitted to practice.” First, the period of time admitted to practice may bear no relationship to actual legal experience, which is not a factor stated in the rule. An attorney who has been admitted to practice for ten years – but has never actually practiced law – may, for example, be less qualified to serve as a temporary judge than an attorney who has practice law for five years. CAJ believes that number of years admitted to practice, without regard to what an attorney has been doing during the time he or she has been admitted, should not be determinative.</p> <p>Second, the proposed rule fails to address the quality or nature of the legal experience of a particular attorney during the time he or she has been admitted to practice. An attorney who has ten years of experience with discovery or transactional matters may, for example, be less “qualified” to serve as a temporary judge than an attorney who has served as a district attorney, public defender, or civil practitioner for five years, and has significant trial</p>	<p>attorneys as temporary judges as for subordinate judicial officers under rule 6.660(b).</p> <p>The premise of this rule—that years of experience as an attorney are helpful in ensuring the qualifications of judicial officers—has been applied successfully to judges and subordinate judicial officers for many years. It would appear also to apply to attorneys serving as temporary judges. The years of experience provide insight and perspective. They ensure that judicial officers have encountered a range of legal issues and have learned to deal with them in a considered, deliberate fashion.</p> <p>Although this point might be made with regard to the experience of all judicial officers, generally the requirement of a minimum number of years without regard to the attorney’s specific experience, has worked well for the appointment of judges and subordinate judicial officers. A similar standard is</p>

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				<p>experience.</p> <p>Years of experience may have little or no bearing on an attorney’s familiarity with the specific subject matter areas addressed by the temporary judge. CAJ believes the proposed rules relating to education and training requirements are appropriate, but those rules would only become relevant, under proposed rule 243.13(a), if a candidate were eligible to be appointed based on the required number of years admitted to practice. CAJ believes greater emphasis should be placed on education and training, and less on number of years admitted to practice.</p> <p>As a separate issue, the proposed rule is modeled on rule 6.660(b) but differs from that rule insofar as rule 6.660(b) provides an alternate qualification for meeting eligibility if the candidate was “serving as a subordinate judicial officer in a trial court as of January 1, 2003.” CAJ believes consideration should be given to including a similar provision in rule 243.13(a) for existing or currently serving temporary judges, as of the date the rule becomes operative.</p>	<p>appropriate for temporary judges.</p> <p>The Working Group agrees with this last point to the extent it emphasizes that, regardless of a temporary judge’s background, an individual will need training and education in the areas in which he or she will appear as a temporary judge. For that reason, the proposed new rules place a great deal of emphasis on ensuring that court-appointed temporary judges have proper training in bench demeanor, ethics, and substantive law.</p> <p>The Working Group did not include a provision authorizing attorneys with less than 10 years’ experience to continue to serve as temporary judges. Under the rules, the presiding judge may appoint attorneys with less than 10 years experience as temporary judges for good cause; otherwise, the general 10-year requirement would apply to appointments. This will ensure a common, minimum level of</p>

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				<p>b. <u>Rule 243.13(b)</u></p> <p>In subdivision (b)(1), this proposed rule requires that an appointed attorney be a member in good standing of the State Bar at the time of appointment. CAJ urges consideration of bolstering of this requirement, such as by including a requirement that the attorney have no disciplinary record with the State Bar for a specified time period before the appointment.</p> <p>Finally, CAJ notes that subdivision [(b)(2)] of this proposed rule, requiring that an appointed attorney “has not been convicted of a felony,” does not account for a felony conviction that was overturned on appeal.</p> <p>c. <u>Rule 243.14. (Contents of training programs)</u></p> <p>Comments were specifically invited on whether the required contents of the training for temporary judges should be more flexible to provide that temporary judges do not need to be</p>	<p>experience for all temporary judges.</p> <p>b. <u>Rule 243.13(b)</u></p> <p>Rule 243.13(b)(1) requires that the attorney be a member in good standing. The court will also collect other information, such as whether there has been any disciplinary action against the attorney or any is pending. (See rule 6.744(b).) The court may use this additional information in determining whether to appoint the attorney as a temporary judge.</p> <p>The Working Group agreed. It has revised subdivision (b)(2) to read: “Has not pled guilty or no contest to a felony or has not been convicted of a felony that has not been reversed.”</p> <p>c. <u>Rule 243.14. (Contents of training programs)</u></p> <p>The Working Group agreed with this comment that it was not</p>

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				<p>trained in certain listed subjects if they will not be adjudicating such issues. CAJ does not believe the specified requirements for temporary judges assigned to either small claims or traffic court (subdivisions (b) and (c)) should be more flexible. The general consensus within CAJ was that there would often be no way to know in advance which subject areas might arise during the course of such appointments, and the inconvenience or potential harm to the litigants caused by the appointment of an attorney who had not received what later proved to be necessary training was viewed as outweighing any gain that might be achieved by providing such flexibility.</p> <p><u>d. Rule 243.16. (Permitted and prohibited uses of past service)</u></p> <p>As an overall structural matter, CAJ believes this rule should include a “catch-all” category either within subdivision (a) (providing for “any use not prohibited by subdivision (b)”) or within subdivision (b) (providing for “any use not permitted by subdivision (a)”). In the absence of such a “catch-all” provision, many potential “uses” of service would not clearly fall under either subdivision, thereby creating an absence of guidance for both appointed attorneys and</p>	<p>feasible to be more flexible about the listed subjects without sacrificing the preparedness and proper training of temporary judges.</p> <p><u>d. Rule 243.16. (Permitted and prohibited uses of past service)</u></p> <p>The Working Group believed that the structure of the proposed rule provides adequate guidance between permitted and not permitted uses of past service.</p>

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				<p>courts or other bodies charged with ruling on alleged violations of the rules.</p> <p>Members of CAJ noted one frequent “use” of service that is not presently categorized by the proposed rule as either a permitted or a prohibited use. Although the rule would permit description of service as a temporary judge on applications for employment or appointment to a judicial position, it would not specifically permit that use on applications for appointment to <i>non</i>-judicial positions, such legislative or executive positions, positions on State Bar committees, positions on corporate boards, and other similar positions. CAJ believes that such a use should explicitly be categorized as a permissible use.</p> <p>CAJ also believes the language in the proposed rule describing the categories of prohibited use is too broad, to the extent that language would prohibit an attorney from including reference to service as a temporary judge in the attorney’s public biography or resume, whether on a law firm web site or in a third party publication such as that produced by Martindale-Hubbell. There was a strong feeling expressed that an attorney who has provided valuable public service as a temporary judge should not be precluded from</p>	<p>This suggestion will be considered for a possible amendment of the rule at a future time.</p> <p>The Working Group did not believe that the proposed rule is over-broad. Unlike resumes and job applications prepared in connection with a job application or in response to a request, public resumes are more like advertisements. The use of an attorney’s experience as a temporary judge on such documents is not appropriate.</p>

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				<p>including that information on his or her public biography or resume as part of the package of that attorney’s experience, and that publication of such information would provide a service to members of the general public when searching for an attorney. The proposed rule would permit description of service as a temporary judge <i>in response</i> to requests for information about the public service in which an attorney has engaged, and CAJ believes describing that same service in an attorney’s public biography or resume should, under the rule, explicitly be treated the same.</p> <p>Finally, as a minor technical matter, the title of this proposed rule and its subdivisions all refer to “past” service, and the text of the rule refers to an attorney who “has served . . .” CAJ believes the titles and text should be modified so they also refer to <i>current</i> or <i>ongoing</i> appointments.</p> <p><u>e. Rule 243.17 (Continuing education)</u></p> <p>In light of the similar training requirements applicable to appointments contained in other rules, this particular rule appears to apply only to successive appointments in the same area of law over a period of at least three years, or to a</p>	<p>The descriptions would be of past service, even if they referred to current or ongoing appointments.</p> <p><u>e. Rule 243.17 (Continuing education)</u> The Working Group disagreed that rule 243.17 should be deleted; however, some clarifying changes would be made to rule 243.13(c), as suggested.</p>

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				<p>single appointment of at least three years in length. As drafted, however, that is not entirely clear. If the intent is to cover such appointments, CAJ proposes that this rule be deleted and that, instead, proposed rule 243.13(c) be amended to read as follows:</p> <p>“(c) [Education and training requirements] The presiding judge may appoint an attorney to serve as a temporary judge only if the following training requirements are satisfied:</p> <p>(1) (<i>Mandatory ethics training</i>) Before appointment, the attorney must have attended and successfully completed, <u>within the previous three years</u>, an ethics course of at least 6 hours duration on the subjects identified in rule 243.14(a) approved by the court in which the attorney will serve. This course must be taken in person and be taught by a qualified judicial officer or other person approved by the Administrative Office of the Courts.</p> <p>(2) (<i>Substantive training</i>) Before appointment, the attorney must have attended and successfully completed, <u>within the previous three years</u>, a course on the</p>	<p>This clarifying language is helpful and has been added.</p> <p>This clarifying language is helpful and has been added.</p>



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				<p>substantive law in each subject area concerning which the attorney will serve as a temporary judge. . . .</p> <p>(3) <u><i>(Appointments in excess of three years) If a single appointment lasts in excess of three years, the attorney must again comply with the requirements of subdivisions (c)(1) and (2), and must continue to do so every three years for as long as that appointment continues.</i></u></p> <p><u>Rule 243.20[(b)(3)] [This provision has been referred to the Supreme Court.]</u></p> <p>CAJ proposes that subdivision [(b)(3)] be amended to provide as follows: “The temporary judge has given <u>legal</u> advice to, or served as an attorney for, a party appearing before the court;”</p> <p>This change will avoid any confusion about disqualification due to “advice” provided to a party in some other capacity.</p>	<p>The Working Group believed that it was clearer to provide expressly for continuing education in a separate rule. Hence, rule 243.17 has been retained.</p> <p><u>Rule 243.20[(b)(3)] [This provision has been referred to the Supreme Court.]</u></p> <p>The Working Group agreed that the word “legal” should be added and has modified the language of subdivision [(b)(3)] to include it.</p>
5.	Consumer Attorneys of California Ms. Nancy Peverini, Attorney Sacramento, California	A	Y	On behalf of the Consumer Attorneys of California (COAC), I write to express strong support for the proposed rules regulating	The Working Group notes the support of CAOC for the proposed rules.

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				<p>temporary judges.</p> <p>We believe that the proposal addresses the crucial goals of statewide rule uniformity and of ensuring public confidence in the quality of the temporary judges that serve in our courts.</p> <p>Current law contains no statewide rules applicable to temporary judges. This causes confusion among the courts and provides no real mechanism for temporary judges to be adequately instructed on items important to the public and litigants, such as avoiding conflicts or the appearance of impropriety. CAOC believes that this important issue be addressed as soon as possible.</p>	
6.	Mr. Marc A. Collins Attorney Law Office of Marc A. Collins Los Angeles	A	N	Same comments as Mr. Arnoff’s above.	Same responses as for comment 2.
7.	Hon. Manuel J. Covarrubias Judge of the Superior Court of California, County of Ventura Ventura	AM	N	<p><u>General Comment</u></p> <p>In general principle terms, I am in agreement with a proposed rule change to mandate training for all temporary judges (including those that serve as settlement officers or mediators), and to establish a protocol for the review and evaluation of temporary judges.</p>	<p><u>General Comment</u></p> <p>The Working Group agreed with this general comment. For many litigants, their first and only experience with the courts may be at a hearing presided over by a temporary judge. Hence, proper</p>

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				<p>The types of cases generally heard by volunteer temporary judges involve small claims, unlawful detainers, family law and traffic. For many of these litigants it will be their first and only interaction with the court. The impression left upon these litigants is crucial to maintaining and/or creating a high level of confidence in the judicial process. Recent studies have shown that the litigants perception and ability to understand the process is just as important, if not more important, to the actual outcome of the case in fostering confidence and trust in our legal system. Therefore, it is imperative that before an attorney serves as a temporary judge, that he or she receives the appropriate training, including mandatory training in the areas of ethics, fairness, and access to the court and the elimination of bias.</p> <p>A. <u>Rule 243.13(c)(1)(2) (Education and Training Requirements)</u></p> <p>The amount of required hours of education and training is a concern. It has been my experience that most temporary judges serve on a volunteer basis. The requirement of 9 hours of mandated training will require that an attorney not only give up the time from her or his time to serve as</p>	<p>training and evaluation of temporary judges is very important.</p> <p>A. <u>Rule 243.13(c)(1)(2) (Education and Training Requirements)</u></p> <p>The Working Group agreed that the training should include mandatory training on these subjects. In response to this comment and other similar comments about the extent of the training required, the</p>

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				<p>a temporary judge, but also to forego more than a full day of her or his work time to attend this training. It is feared that this will deter many prospective attorneys from volunteering their time to serve as a temporary judge.</p> <p>I serve as the chair of our courts committee on training for temporary judges. I have been involved in the formulating of the training program for attorneys who desire to serve as a temporary judge or our court. Our most recent training program was offered for those seeking to serve as a temporary judge, not only in small claims, but also unlawful detainers and family law. The ethics portion of the training also included the area of fairness/access and the elimination of bias, in addition to training on the substantive law.</p> <p>I would suggest that the mandatory training on ethics, fairness, and the elimination of bias be reduced to a minimum of 4 hours and that the mandatory training on substantive law as to each particular area of practice be reduced to a minimum of 2 hours.</p>	<p>Working Group has modified the rules concerning training requirements. In particular, the proposed in-person six-hour ethics course has been replaced with a three-hour in-person course on bench demeanor, access and fairness, and a three-hour ethics course that may be taken by any method approved by the courts including in person, by broadcast with participation, or online. The requirements for the substantive courses that were to have been participatory have been modified to allow courts to decide the method of training. An Advisory Committee note clarifies that courts may approve MCLE courses provided by others besides the courts as satisfying the requirements of the rules.</p> <p>As indicated above, the Working Group has modified the training requirements to lessen the burden on attorneys, but not quite as much as recommended by this commentator. The revised rules also</p>

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				<p><u>B. Rule 243.18 (Stipulation to Court-Appointed Temporary Judge)</u></p> <p>I disagree with the proposed rule that would require that an individual specifically object to a court-appointed temporary judge as compared to affirmatively agreeing to have a temporary judge hear their case by signing a stipulation. Many litigants, especially self-represented litigants who are either non-English or limited English speaking are intimidated by the court. Many times they will not object or disagree with a directive out of lack of knowledge, fear, or a desire not to be disrespectful.</p> <p>I do agree with the proposed change to require the court to be more explicit in its notification to litigants of the case being assigned to a temporary judge and of their right to have their case heard by a judge or other judicial officer.</p> <p><u>C. Rule 243.20[(d)] (Disqualifications and Limitations) [This provision has been referred</u></p>	<p>allow more flexibility in terms of the methods of training that courts may approve.</p> <p><u>B. Rule 243.18 (Stipulation to Court-Appointed Temporary Judge)</u></p> <p>The proposed rule is based on current rule 1727 on stipulations in small claims cases. The rule has been reorganized to be clearer and easier to understand. It does not change the basic procedures for stipulation to court-appointed temporary judges used in small claims cases, but merely extends these procedures to other types of cases. Courts generally have had good experiences with the procedure. It will permit both express stipulations and stipulations by failure to object. It will also ensure everyone receives notice of their right to have the matter heard by a judge, commissioner, or referee.</p> <p><u>C. Rule 243.20[(d)] (Disqualifications and Limitations)</u></p>

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				<p><i>to the Supreme Court.]</i></p> <p>I disagree with the provision that restricts a temporary judge from hearing a family law or unlawful detainer case, in which one side is an attorney or represented by an attorney. This would preclude the use of temporary judges in many family law matters. The mandated training on ethics will provide specific training on the appropriateness of attorney’s serving as temporary judges in such matters and will cover the required disclosures and/or disqualification of a temporary judge when the occasion arises.</p>	<p><i>[This provision has been referred to the Supreme Court.]</i></p> <p>The Working Group continues to support the limitation in family law and unlawful detainer cases. It is important that self-represented parties not perceive that court procedures may be unfair because an attorney is being appointed as a temporary judge in a case in which the other party is also an attorney. Though the disclosure and disqualification rules might mitigate the problem, there may still be a perception of unfairness. To avoid this problem, even if it is only apparent, the limitation should be retained.</p>
8.	Mr. Clinton J. deWitt Attorney Sacramento	AM	N	<p><u>Active Membership (Rules 243.10 and 243.13(b)(2))</u></p> <p>In my opinion, prohibiting inactive members of the State Bar from serving as judges pro tem would be a great disservice to the public and an unnecessary strain on the court system.</p> <p>The State Bar takes the position that an inactive</p>	<p><u>Active Membership (Rules 243.10 and 243.13(b)(2))</u></p> <p>The Working Group reviewed Mr. deWitts’ comments and agreed that attorneys who serve as temporary judges should not be required to be active members of the State Bar. The rules have been revised to</p>

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				<p>member may serve as a judge pro tem so long as he or she does not practice law. Moreover, the State Constitution prohibits judges holding elective office from practicing law, making any prohibition against inactive members of the State Bar serving as judges pro tem nonsensical...</p> <p>Making a judge pro tem who is not currently practicing law pay bar dues, as well as pay for expensive MCLE courses, that has little relevance to his or her qualities as a judge pro tem and is a strong deterrent against those who have the most time available to volunteer to perform this important public service.</p> <p>Finally, I hasten to point out the court is already short of judges pro tem and the need is sure to grow, as it is only a matter of time before the Legislature increases the monetary jurisdiction of small claims court to meet inflation, as well as to ease the load of limited civil cases on superior courts. In short, I urge you to present the virtues of appointing qualified inactive members of the State Bar to the Judicial Council.</p>	reflect this conclusion.
9.	Mr. Thomas J. Eral Staff Attorney/Legislative Analyst	AM	Y	1. <u>Rule 243.13(a)</u>	1. <u>Rule 243.13(a)</u>

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	Superior Court of California, County of San Diego San Diego			<p>Changing the practice requirements to become a temporary judge from 5 to 10 years of practice as a member of the State Bar may greatly reduce the number of temporary judges authorized to hear matters in our court. Our court has a total of 549 active and approved temporary judges who are currently serving in that capacity. Of that amount, there are a total of 148 attorneys who are authorized to hear small claims matters in San Diego’s Central Division, and it is unknown how many of these attorneys have less than 10 years experience. Even with this large number of volunteer temporary judges that are serving in our small claims court, staff still has a difficult time scheduling approved temporary judges for hearings. Small claims in Central relies on temporary judges to hear 22 calendars per week. It may become increasingly difficult to assign temporary judges to the current number of calendars if this change to required experience is made. It is believed that this impact will be felt in other areas in which temporary judges are serving our court as well.</p> <p>2. <u>Rule 243.10</u></p> <p>This court already requires its temporary judges to be active members of the State Bar.</p>	<p>There will be some impact on the availability of temporary judges from the new requirement that they must have 10 years State Bar experience. The exact extent of the impact is difficult to determine, as the commentator acknowledges even for small claims cases of his own court. In general, most temporary judges appear to have a fair amount of legal experience. Hence, the overall impact of the new requirement should not be too great. In courts where the pool of available attorneys is small, the presiding judge has the discretion to permit an attorney who has been admitted to practice for at least 5 years to serve as a temporary judge. (See rule 243.13(a).)</p> <p>2. <u>Rule 243.10</u></p> <p>This requirement that an attorney might be an active member of the</p>



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	Commentator	Position	Comment on behalf of group?	Comment	Working Group’s Response
				<p>3. <u>Rule 243.13(a)</u></p> <p>There is no provision to “grandfather” in attorneys that are currently serving as temporary judges but have only five-plus years of experience, which is this court’s current practice. This seems wrong.</p> <p>4. <u>Effective Date</u></p> <p>There should be a phase-in of the training requirements. This is especially true if implementation is going to occur in July 2006. The phase-in period should be at least a year in duration for those who are already serving as temporary judges.</p> <p>5. <u>Rule 243.13(a)</u></p>	<p>State Bar would not be included in the statewide rules.</p> <p>3. <u>Rule 243.13(a)</u></p> <p>It is true that there is no general “grandfather” provision. This means it will ensure that all temporary judges (absent an exception for good cause) will have at least 10 years experience like superior court judges and commissioners. This provision is appropriate; it should enhance public confidence in the judiciary.</p> <p>4. <u>Effective Date</u></p> <p>Under the proposed rules, there is a delayed implementation date. To qualify, temporary judges will not have to satisfy new training requirements until January 1, 2007 (except for those serving in small claims cases for which certain new statutory requirements will require the completion of substantive law training by July 1, 2006.)</p>

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				<p>The proposed rule 243.13 states the presiding judge may appoint a temporary judge with only 5 years experience if good cause is shown. What would constitute good cause for approval purposes? Currently serving as a temporary judge? Clarification is needed for implementation purposes. Could the court continue to approve applicants with 5 years experience to use as a list of alternates?</p> <p>6. <u>Rule 243.13(c)</u></p> <p>The proposed amount of training, including requiring the courses/materials to be repeated every three years, seems to be excessive. Currently, the court provides a two-part video that encompasses ethics, small claims, and traffic/minor offenses. Revamping the training materials and the course provided would subject the court to considerable costs. Will the training materials/lesson plans be provided by the AOC so as to ensure standardization and consistency, and in order to lessen the financial burden on the courts of each county within the state?</p>	<p>5. <u>Rule 243.13(a)</u></p> <p>Like rule 6.660, rule 243.13 provides that the court may appoint someone with less than 10 years experience to serve. The determination of “good cause” is left to the discretion of the presiding judge. Each court will need to make this determination based on its circumstances.</p> <p>6. <u>Rule 243.13(c)</u></p> <p>The Working Group believes that proper training, including sufficient time to perform it, is very important. Nonetheless, it has modified the minimum requirements of rule 243.13(c) to be more flexible. Except for the training on bench conduct and demeanor, training may be by any means approved by the court. This should significantly reduce the fiscal impact of complying with the new rules. Also, AOC/CJER will be assisting the courts by providing training materials.</p>

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				<p>7. <u>Resources</u></p> <p>The financial burden that would be placed upon trial courts, if training were required to be provided by the individual courts at the proposed levels, would be severe. The San Diego Superior Court has historically provided a four and one-half hour training course to its current and new temporary judges on a periodic basis; in between which, new temporary judges are required to view videotapes of the most recent program prior to being allowed to serve. The cost to the court to provide the most recent four and one-half hour program and to produce the videotapes related thereto was approximately \$11,000. The use of staff attorneys and other personnel from the legal Services Division to prepare and produce the course materials in-house held down this cost. If the trial courts were required to develop and provide programs to cover the minimum of 18 hours of training for its temporary judges as proposed, the program costs would be more than tripled because many of these tasks would have to be outsourced to outside vendors and providers due to the amount of work that would be required. This would be a very heavy financial burden for the individual courts to incur.</p>	<p>7. <u>Resources</u></p> <p>The financial burden in implementing the training rules should not be severe. First, the rules have been revised to permit most training to be conducted by any means approved by the court, including online courses. Second, CJER will be assisting courts by providing course materials. Third, the rules make it clear that courts may offer courses for MCLE credit and approve MCLE courses provided by others as a means to satisfy the substantive training requirements under the rules.</p>

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				<p>8. <u>Rule 243.17 (Continuing Education)</u></p> <p>As to the requirement that all training be repeated every three years, it seems a temporary judge that is regularly assigned to hear cases dealing with a particular area of law would be well-versed in that area’s subject matter. If the repeating of training is deemed to be necessary, could the requirement be limited to only require temporary judges to attend programs related to areas of the law to which they haven not been regularly assigned, and/or could another format been considered for repeat training, such as a seminar discussing changes in law versus checking out a previously viewed video and/or repeating previously attended training? If temporary judges are required to complete such a large amount of training and then to repeat the same training every three years, they may choose not to volunteer due to the time commitment for training alone, which would leave the courts with an inadequate number of temporary judges to meet their needs.</p> <p>9. <u>Rule 243.17</u></p> <p>As noted above, rule 243.17 requires all attorneys serving as temporary judges to receive</p>	<p>8. <u>Rule 243.17 (Continuing Education)</u></p> <p>Continuing education for temporary judges, as for attorneys and judicial officers, is very important. It informs them about changes and new developments in the law. As the commentator notes, such education is particularly important in areas in which a temporary judge is not regularly assigned (or does not practice). Of course, the continuing education should not just repeat the same materials as before. CJER and the courts should regularly update training materials and make them interesting and useful to experienced temporary judges.</p> <p>9. <u>Rule 243.17</u></p> <p>As indicated above, courts may</p>

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				<p>continuing education. Would only training provided by the court qualify as the required training or would temporary judges be allowed to obtain training from outside sources? If they are allowed to receive the training from an outside source, then how would the courts be expected to monitor this and how often? This section is ambiguous because it requires the temporary judges to complete substantial amounts of training but it does not specifically tell the trial courts how they are to monitor and/or enforce this requirement.</p> <p>10. <u>Rule 6.740</u></p> <p>Rule 6.740 requires a court that uses temporary judges to develop, institute, and operate a program to recruit, select, train, and evaluate attorneys who serve as court-appointed temporary judges. This court does not currently have such an extensive program in place. The court would need additional information to know what must be included in such a program and it would potentially need to add staff in order to set up this type of a program. If uniformity is expected in this area and throughout the state, perhaps this part of the Program should be administered by the AOC.</p>	<p>approve outside courses as well as provide their own training in substantive areas of the law. (See Advisory Committee Comment to rule 243.14.) The rules leave it to the discretion of each court as to which outside programs it approves.</p> <p>10. <u>Rule 6.740</u></p> <p>The new rules provide some guidance in recruitment, selecting training, and evaluation. In addition, courts without programs in place may want to contact courts that already have extensive programs and obtain the benefits of their experience. The rules generally leave the responsibility for the programs with the courts although the AOC will be able to provide some assistance, particularly with training.</p>

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				<p>11. <u>Rule 6.743</u></p> <p>The court should not mandate the creation of a specific position — “Temporary Judge Administrator”; instead, the rule should mandate the functions that are to be performed in each court with regard to the utilization of temporary judges and it should be left up to each local court to decide how best to accomplish these tasks. While it might be reasonable for a large court to have a designated position, it would be difficult for some of the smaller courts to have to designate one individual to handle these tasks when the tasks could be handled more effectively by dividing the tasks between several employees as determined by the presiding judge of that court. For example, in our court, the listed functions of the Temporary Judge Administrator contained within rule 6.743(b)(1) through (8) are functions that can be absorbed by personnel, payroll, and training and the functions listed in items (9) through (11) can be performed by this court’s special Projects Division. A separate position is not necessarily needed to handle these matters.</p>	<p>11. <u>Rule 6.743</u></p> <p>This rule is meant to be flexible. An Advisory Committee Comment has been added to explain this. It states: “The goals of this rule is to ensure the effective and efficient administration of the courts’ use of temporary judges. The rule should be applied flexibly. In courts with large temporary judge programs, the court may want to designate a full-time administrator and some of the administrator’s duties may be delegated to other individuals. On the other hand, in courts that use only a few temporary judges, the Temporary Judge Administrator position may consume only part of the administrator’s time and be combined with other duties. Also, courts that use only a small number of temporary judges may work with other courts, or may cooperate on a regional basis, to perform the functions and duties prescribed under this rule.”</p> <p>In addition there are good reasons</p>

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				<p>12. <u>Rule 6.745</u></p> <p>The proposed rules provide the trial court must review and monitor the performance of temporary judges. This is ambiguous. The courts should be given guidance as to what areas of a temporary judge’s performance are to be reviewed and/or monitored. Is the proposed rule concerned with the pro tem’s general demeanor and performance, or how the temporary judge resolved the cases? Also, who is expected to be the party who will be doing the reviewing and monitoring of each temporary judge? Since, under the proposed rules, the presiding judge is the person who is ultimately responsible for the review and monitoring of the temporary judges, does this mean that the presiding judge must personally review and monitor each temporary judge on an ongoing basis in order to determine whether they may continue to serve in that capacity? That would require the presiding judge to observe, review,</p>	<p>for designating one person in each court as the Temporary Judge Administrator. This person will be responsible for coordinating all the courts activities concerning temporary judges, even if many of these are delegated.</p> <p>12. <u>Rule 6.745</u></p> <p>The Working Group believed this area shall generally be left to the discretion of the presiding judges and individual courts. Depending on the size of the courts and the number of temporary judges used, the review and monitoring practices may vary considerably. Nonetheless, some courts have developed policies and practices that others may find useful. Hence, it may be helpful for courts to share information, for example, on the ways they monitor the performance of temporary judges. Although the presiding judge is ultimately responsible for the performance of temporary judges, the task of monitoring their performance</p>

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				<p>and monitor 549 pro tems, which would be an arduous task.</p> <p>13. <u>Rule 6.745</u></p> <p>Also, with regard to the monitoring of a temporary judges performance as specified in rule 6.745, should the court consider comments from the parties or is that thought to be potentially too biased? Sometimes the court receives feedback from the losing party regarding the demeanor of the temporary judge: ‘He was fair,’ ‘She was professional,’ etc. This would appear to be worthy to be considered by the person who is doing the monitoring of the temporary judge.</p> <p>14. <u>Rule 243.13(c)(2)(C)</u></p> <p>There are major concerns with requiring the training requirements to apply to settlement judges in our court. The North County Division of the San Diego Superior Court has a settlement program whereby experienced north county attorneys volunteer to sit on a settlement panel and hear settlement conferences. The attorney settlement panels have been very successful at resolving cases and participation is completely voluntary. If the attorneys involved</p>	<p>certainly can be delegated. Courts have established different ways of doing this.</p> <p>13. <u>Rule 6.745</u></p> <p>The use of “exit surveys” of litigants is presently being considered in connection with the next stages of the Public Trust and Confidence Survey commissioned by the council. These may also be a useful means to obtain information about the performance of temporary judges, as the commentator suggests.</p> <p>14. <u>Rule 243.13(c)(2)(C)</u></p> <p>The rules have been revised to clarify use of attorneys in settlement processes. An attorney need not be a temporary judge to assist the court with settlements. (Rule 243.13(c)(3)(D).) But if the attorney performs a judicial function such as entering a settlement on the record under</p>



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				<p>were required to go through such extensive training in order to be able to volunteer their time for the program, it is believed that they may elect not to participate and the program will have to be disbanded.</p> <p>15. <u>Rule 243.13(c)</u></p> <p>There is insufficient clarity in the rules with regard to what attorneys are being considered temporary judges for settlement purposes and those that are assisting judges considered temporary judges for settlement purposes and those that are assisting judges with settlements. Do the education requirements apply to attorneys who are appointed to resolve disputes pursuant to Code of Civil Procedure, § 639? Do the requirements apply to attorneys appointed as mediators at the Case Management Conference? Clarification is needed as to what settlement roles are meant to be subject to the additional training requirements.</p> <p>16. <u>Rule 243.18[e]</u></p> <p>A party should not be permitted to withdraw a stipulation to having a matter tried by a temporary judge after a ruling has been made because it would be a way to avoid having to</p>	<p>C.C.P., § 664.6, he or she must be a qualified temporary judge who has received bench conduct and other training. The proposed requirement for separate training on settlement has been dropped.</p> <p>15. <u>Rule 243.13(c)</u></p> <p>The rules have been revised to clarify those issues. (See response to previous comment.)</p> <p>The requirements do not apply to referees.</p> <p>The requirements do not apply to mediators.</p> <p>16. <u>Rule 243.18[e]</u></p> <p>The Working Group disagreed. The rule permits a party to apply for a withdrawal because the grounds for</p>

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				<p>file an appeal, which is very important in the small claims setting. This practice would do away with the summary nature of small claims proceedings and would increase the number of small claims matters that would be required to be heard. It would lead to potentially three hearings on the merits, instead of the current maximum of two.</p> <p>17. <u>Rule 243.13(c)</u></p> <p>Several courts may not allow temporary judges to hear certain types of cases, i.e., family and criminal law matters. Would temporary judges only be required to go through the required training in areas where they will be assigned to hear cases? If so, does this mean the court is going to be expected to develop an individualized training program for each temporary judge based upon what types of hearings it expects that temporary judge to hear? Such individualized training would require the courts to keep specialized files on each temporary judge as to what types of matters he or she is entitled to hear and would create an administrative nightmare for the temporary</p>	<p>disqualification may not be learned or occur until after a ruling has been made. But the ability to make such an application would not serve as a substitute for an appeal. If the application is granted based on late-discovered or late-occurring grounds, the rulings of the temporary judge must not be set aside except on a showing of good cause. (See rule 243.18(e) (last sentence).)</p> <p>17. <u>Rule 243.13(c)</u></p> <p>The rules require that “the attorney must have attended and successfully completed, within the previous three years, a course on the substantive law <i>in each subject area concerning which the attorney will serve</i> as a temporary judge.” So aside from the bench demeanor and ethics training which is required for all temporary judges, temporary judges would have to have training in each substantive area which they would hear. Thus, a temporary judge hearing traffic cases must</p>

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				<p>judge administrator.</p> <p>18. <u>Rule 6.743</u></p> <p>The AOC has mentioned in this Invitation to Comment that it modeled this proposal after rule 1603, et seq., concerning ADR Administrators. However, the level of involvement in this proposal is much more extensive than with other forms of ADR. The other types of ADR mentioned in rule 1603 and its related sections are running well with the level of involvement mentioned in those sections. Could that same level of involvement be applied to this as well, instead of what is proposed, at least initially?</p> <p>19. <u>Effective Date</u></p>	<p>have the requisite training in traffic, etc. This minimum training requirement is essential to ensure competence and good quality judging. It is true that it will require record-keeping by the courts to ensure that each temporary judge is qualified in the areas to which he or she is assigned.</p> <p>18. <u>Rule 6.743</u></p> <p>The Working Group intends that rule 6.743 be applied in a practical, flexible manner to assist courts to effectively manage their use of temporary judges. (See response to item 11 above.) The level of involvement the Temporary Judge Administrator has will depend, to a considerable extent, on how extensive the use of temporary judges is in a particular court. If there are a very large number, the responsibilities would be substantial, and if only a few, the responsibilities would be fairly limited.</p>

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				<p>A target date of July 1, 2006, is far too optimistic for the implementation of such an extensive program.</p> <p>20. <u>Rule 243.12</u></p> <p>Rule 243.12(b) and (d) are very closely related. The proposed rule may flow better if section (d) became (c) and (c) became (d). Also, under current section (d), page 9, lines 39–40, could the language be amended to state: “...the presiding judge, who may designate another judge, or committee of judges, to perform this responsibility”?</p> <p>21. <u>Rule 243.14</u></p> <p>Rule 243.14, concerning the contents of training program “(c) Traffic,” could the following topics be added: Civil Assessments; red light photo enforcement; bail recalculations; DMV license actions; and mandatory fines.</p> <p>22. <u>Rule 6.742</u></p>	<p>19. <u>Effective Date</u></p> <p>The Working Group agreed that July 1, 2006 is too early. The operative date for completing the training of temporary judges has been changed to January 1, 2007 (except in small claims). (See rule 243.11(e).)</p> <p>20. <u>Rule 243.12</u></p> <p>Although the order of (c) and (d) might be reversed, it also works as proposed.</p> <p>21. <u>Rule 243.14</u></p> <p>Although the descriptions are different, most of the contents recommended by the commentator would be covered under the existing list of mandatory contents.</p>

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				<p>Rule 6.742, concerning use of attorneys as court-appointed temporary judges in subdivision (b)(1), there should be some examples provided as to what would constitute a “judicial need.” It is somewhat arbitrary and unilateral to let this fall squarely on the presiding judge’s shoulders. Examples of judicial need could include unforeseen absences due to illnesses, unforeseen large walk-in calendars, multiple retirements with little notice, etc.</p> <p>23. <u>Rule 6.744</u></p> <p>Rule 6.744 should be amended by adding a section that deals with attorneys who are on the list as temporary judges but whom frequently cannot serve when called. There should be a three strikes, over a specified amount of time, and you are out, or something similar to that type of a system. If the attorney is always unavailable to serve, then what is the point of having him or her on the list as a temporary judge?</p> <p>24. <u>Rule 6.746</u></p> <p>Rule 6.746 regarding complaints made against a temporary judge should be amended to clarify whether the procedures being referred to are</p>	<p>22. <u>Rule 6.742</u></p> <p>“Judicial need” is intended to be used in a practical manner. It includes the absence of sufficient judicial officers to perform a function or assignment. Specific situations will depend on the circumstances in an individual court, which the presiding judge is in the best situation to determine.</p> <p>23. <u>Rule 6.744</u></p> <p>The presiding judge has discretion over appointments, assignments, and the decision whether or not to continue to use individual temporary judges. (See rule 6.741(d).) Individual courts may develop policies concerning these matters that apply in that particular court.</p> <p>24. <u>Rule 6.746</u></p>

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				investigations on paper or are to be full administrative hearings.	The Working Group considered developing more detailed complaint procedures, but concluded that it should be left to each court to determine its procedures. The presiding judge has the discretion in handling complaints, including whether to remove or discontinue the use of any temporary judge. (See rule 6.741(b).)
10.	Hon. Mary Fingal Erickson Judge, Chairperson of Temporary Judges Committee Superior Court of California, County of Orange Westminster	AM	N	1. <u>Rule 243.11(d)</u> : Ten court days in 3 years is much too few and would require courts to have a large list of temporary judges. How about no more than one court day a month? Or 10 times a year service.  2. <u>Rule 243.13</u> : Our court requires 2 hours ethics, 2 hours substantive every 3 years. Otherwise, these are great.	1. <u>Rule 243.11(d)</u> : The rule is intended only to provide an exception for “extraordinary circumstances.” The Working Group did not believe this exception should be expanded.  2. <u>Rule 243.13</u> : The new rules will require the court to provide additional ethics and substantive training by January 1, 2007. The Working Group believed this additional training is important to ensure the quality of temporary judging.
11.	Hon. Kenneth James Fernandez Commissioner	AM	N	1. <u>Rule 243.11(d)</u> : As drafted, I disagree with this proposed rule.	1. <u>Rule 243.11(d)</u> : The Working Group disagreed. The

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	Superior Court of California, County of Riverside Riverside			<p>The Exception for Extraordinary Circumstances is far too restrictive. If extraordinary circumstances do exist, then why would a presiding judge be limited to an appointment of a temporary judge for only 10 court days in a three-year period?</p> <p>2. <u>Rule 243.13(a):</u> I disagree with this proposed rule. The proposed requirement that a temporary judge must have been a member of the State Bar for at least 10 years is unnecessarily restrictive on the superior court. My suggestion is that the term be set at five years membership in the State Bar. Why should a presiding judge of the superior court need “good cause” in order to appoint an attorney who has practiced more than five years if he or she is otherwise suitable?</p> <p>3. <u>Rule 243.13(c)(1):</u> While I have no issue with the ethics requirement found in this rule, is it necessary that six hours of such be completed? It seems to me that the ethics content areas covered in rule 243.14(a) could be covered in less time. Also, since this is going to be a statewide requirement, I suggest that the AOC enlist CJER to prepare some sort of training that could be presented by</p>	<p>exception is intended to be narrow. If an attorney serves for more than 10 days in a 3-year period, he or she should be properly trained as required by the rules. This will ensure that temporary judges are properly trained.</p> <p>2. <u>Rule 243.13(a):</u> The proposed rule provides the same eligibility requirements for court-appointed temporary judges as for subordinate judicial officers under rule 6.660(b). This common standard will ensure quality and avoid the appearance of the creation of a two-tiered system of justice.</p> <p>3. <u>Rule 243.13(c)(1):</u> The rule has been modified to provide for 3 hours of in-person training on bench demeanor, access and fairness (Rule 243.13(c)(1)), and 3 hours of ethics by any means approved by the court (Rule 243.13(c)(2)). CJER is preparing training materials.</p>

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				<p>way of videotape, DVD or over the Internet.</p> <p>4. <u>Rule 243.13(c)(3)</u>: I disagree with this proposed rule making it mandatory that a temporary judge have to complete substantive training in any particular area. AOC must give the courts some flexibility in this area. If an attorney is qualified to be a temporary judge in the area of law in which he or she practices, then why should that attorney be forced to take substantive training? This requirement should be deleted in its entirety or, at a minimum; the presiding judge should be allowed to exempt qualified attorneys from this requirement.</p> <p>5. <u>Rule 243.13(d)</u>: I disagree with this proposed rule. Why should the presiding judge of each court establish additional experience or training requirements for temporary judges beyond those already set forth? There seems to be no justification for this requirement on the superior courts.</p> <p>6. <u>Rule 243.17</u>: I disagree with this proposed rule. As I already stated under rule 243.13(c)(2), if an attorney is</p>	<p>4. <u>Rule 243.13(c)(3)</u>: To ensure quality, it is appropriate for the rules to require minimum substantive training. (See also AB 1459 and SB 422 requiring substantive training in small claims). The substantive training requirements under rule 243.13 are reasonable and flexible. Courts may offer courses or may approve MCLE courses provided by others as satisfying the rules.</p> <p>5. <u>Rule 243.13(d)</u>: The Working Group disagreed. The proposed rules set minimum standards. To ensure and improve the quality of temporary judging, courts should be encouraged and authorized to establish higher standards.</p> <p>6. <u>Rule 243.17</u>: Continuing education is important.</p>



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				<p>known to be qualified to be a temporary judge in the area of law in which he or she practices, then why should that attorney be forced to take substantive training? If the above is true, then it also makes no sense to require the temporary judge to take continuing education in an area in which he or she already practices and already serves as a temporary judge. Members of the State Bar of California are already subjected to mandatory continuing legal education requirements. This proposed additional requirement is both unnecessary and burdensome on attorneys and the superior courts.</p> <p><u>7. Rule 243.20[(e)(1)] [This provision has been referred to the Supreme Court.]</u></p> <p>I disagree with this proposed rule. I can best explain my opposition by way of an example. Why should an attorney who may have a misdemeanor arraignment on a calendar in one department in the courthouse be precluded from serving as a temporary judge on the traffic infraction calendar in the same courthouse? This is another proposed requirement that is both unnecessary and burdensome on attorneys and the superior courts.</p>	<p>Temporary judges, like attorneys, need to receive ongoing training and updated information. The continuing education provisions are flexible. Hence, the Working Group disagrees that rule 243.17 is unnecessary or burdensome.</p> <p><u>7. Rule 243.20[(e)(1)] [This provision has been referred to the Supreme Court.]</u></p> <p>The proposed rule is intended to avoid any problems or appearances of impropriety or partiality that may arise when an attorney appears on the same day as a temporary judge and an advocate in a case in the same courthouse. The Working Group supports the rule to avoid public perceptions of partiality on</p>

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					the part of temporary judges.
12.	Hon. William D. Gallagher Presiding Judge Superior Court of California, County of Shasta Redding	N	N	<p>In Shasta County, use of pro tem judges dates back more than fifteen years. The assignment of pro tem judges is confined to traffic, small claims, and unlawful detainer matters. As our judicial needs grew, we utilized pro tem judges to fill the void between need and actual judicial resources. We feel our program has been successful and results in relatively few litigants complaints. Though I am reluctant to speak in extreme terms, it is the consensus view of the executive and judicial staff in Shasta County that initiation of these new rules will effectively end our use of temporary judges, because adding these additional training requirements will essentially eliminate an already dwindling pool of volunteer pro tems. The unavoidable consequence will be that the working contribution now being made by our dedicated temporary judges will fall to our full-time judges at the expense of other work they are only free to do now because of the use of the temporary judges.</p> <p>In whatever way we cover these additional responsibilities with full-time judges, it will inevitably disrupt the delicate balance of judicial work presently done by an already</p>	<p>The Working Group is very concerned about the impact of the new rules on smaller courts. It has included a variety of provisions in the rules to make them more flexible and workable for the smaller courts. It has also been working with CJER and others so that these courts will have educational materials and other resources available to implement the new rules.</p> <p>The Working Group is aware that a number of courts are suffering from a serious shortage of full-time judicial officers. It strongly</p>

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				<p>understaffed court. In Shasta County, we have 12 full-time bench officers instead of the more than 17 judges we should have. Thus, whether through eliminating trial departments or reducing trial days, which extends the length of jury trials and adds more inconvenience and expense to litigants and jurors alike, the very real consequence of the proposed changes will be that in some non-quantifiable way, we may have marginally improve the quality of justice in small claims, traffic, and unlawful detainer cases, while we have palpably compromised the delivery of our service elsewhere. We simply cannot have it both ways. Given our chronic shortage of judges, we are at a point where we can no longer do more with less.</p> <p>Thus, we recommend this initiative be deferred until a meaningful judicial needs bill has been signed into law.</p>	<p>supports legislation to ensure that the courts have all the judicial officers that they need. The provision of full-time judicial officers is the best way to guarantee justice for the public. Nonetheless, the group also believes that as long as courts must rely on temporary judges, they must be properly trained and qualified. It is not appropriate to defer action to ensure the quality of temporary judges until a meaningful judicial needs bill has been enacted. That action should be taken now.</p> <p>The Working Group disagreed that action should be deferred. On the contrary, for the reasons stated in the report, this is a very appropriate time for the Judicial Council to take action on the proposals.</p>
13.	Ms. Allison Gatherd Kings County Small Claims Advisor Kings County Law Library Hanford	AM	N	Temporary judges should always be members of the Bar. I think the training should be unified throughout the state. Every temporary judge should have to learn the same things.	Under the rules, the attorneys who serve as temporary judges will all be required to satisfy a certain minimum requirement of experience and training.

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14.	Mr. Timothy Gee Management Analyst III Court Planning and Development Division Superior Court of California, County of San Mateo Redwood City	N	N	<p>Implementation of these proposed rules should just about ensure that the trial courts in this State will come to a grinding halt. This proposal will require additional countless hours of local administrative time that our administrative staff does not already have or further stretch our limited resources to ensure that these additional requirements are met.</p> <p>Secondly, the stringent requirements placed on Pro Tems will definitely result in a deterrence to those who already offer their valuable time to serve our courts as Pro Tems. Our current system of administering our Pro Tem program provides us with well qualified and dedicated individuals who meet our court’s needs.</p>	The Working Group disagreed with this assessment. Effective administration of temporary judge programs should yield substantial benefits to the courts. Although courts will have to expand resources, they will see direct benefits as a result. The recent experience of courts that have instituted new training programs does not indicate that such programs will deter attorneys from participating; on the contrary, in many ways, better programs will encourage participation.
15.	Hon. Mary Ann Grilli Superior Court of California, County of Santa Clara San Jose	N	N	<p>Here are my comments regarding the proposed rules regarding temporary judges. For ease of review, I will go in the order of the proposed rules.</p> <p>1. <u>Rule 243.10 (Definition)</u></p> <p>First, the definition of a temporary judge appears on its face to be inconsistent with the scope of rules. It is vital that the issue of</p>	<p>1. <u>Rule 243.10 (Definition)</u></p> <p>The Working Group has modified the definition to remove the provision that court-appointed</p>

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				<p>whether a temporary judge must be an active member of the State Bar or not be clarified as it relates to ADR, stipulations, and retired judicial officers. Many cases in the family law arena, as well as the civil areas, are resolved by agreement with the assistance of retired judicial officers who are acting as private judges by the express stipulation of the parties.</p> <p>2. <u>Rule 243.11(c) (Extraordinary Circumstances)</u></p> <p>Second, there is not a clear definition of</p>	<p>temporary judges must be active members of the State Bar. The final version of the definition is taken directly from the Code of Judicial Ethics. It is broad enough to apply to both the court-appointed temporary judges covered under rules 243.11–243.21 and the privately-compensated temporary judges covered under rules 243.30–243.34. Based on the comments, the rules have been revised to make it clear that court-appointed temporary judges do not need to be active members of the State Bar. Also, generally, the rules on court-appointed temporary judges do not apply to retired judges (See rule 243.11(a).) The rules on privately compensated temporary judges (rules 243.30–243.34) have been revised for clarity but not substantively changed.</p> <p>2. <u>Rule 243.11(c) (Extraordinary Circumstances)</u></p> <p>The Working Group has concluded</p>

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				<p>extraordinary circumstances in the rules. This could lead to differing standards in various parts of the state, as well as within various areas of the law.</p> <p>3. <u>Rule 243.13 (Court Appointment)</u></p> <p>The sections that deal with court appointment again are not clear, given the issue of whether they apply to stipulated matters, alternate dispute resolution, or retired judicial officers. It appears from the draft that the intention was that these categories would be eliminated from the definitions, but it is not clear overall that that is the case.</p> <p>The section on the purpose of the court appointment would appear to bar the use of temporary judges even as settlement conference judges, absent the meeting of all of the</p>	<p>that it should be left up to the presiding judge to determine if the exception for “extraordinary circumstances” applies.</p> <p>3. <u>Rule 243.13 (Court Appointment)</u></p> <p>The final version of the rules excludes retired judicial officers from the application of the rules on court-appointed temporary judges. (Rules 243.11–243.21.) Attorneys who assist in settlement or ADR do not need to be temporary judges unless they perform judicial functions. (See rule 243.13(c)(3)(D).) Constitutionally, all temporary judges must be stipulated to the procedures for stipulations for court-appointed temporary judges and privately compensated temporary judges have been clarified. (See rules 243.18 and 243.31.)</p> <p>Under the final version of the proposed rules, there should not be the dire consequences predicted by the commentator. The rules clarify</p>

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				<p>requirements of the rules and a finding that the court need assistance that it cannot provide with its full-time judicial officers. Such a mandate would be devastating to the family courts throughout the state for settlement purposes. They provide assistance to the courts that the resources just do not meet. Further, it eliminates the potential trial judge from having to hear all of the parties’ settlement negotiations prior to the trial.</p> <p>In Santa Clara County, for example, the family court utilizes at least 20 to 30 attorneys per week to assist in the settlement of family law matters. They provide excellent work and parties and their attorneys get an independent read on their cases. Well over 80% of the cases resolve fully at the level of the settlement conference, freeing up vital judicial resources to handle those matters which are not able to be resolved.</p> <p>4. <u>Rule 243.18 (Stipulations)</u></p> <p>The rule needs also to clarify whether a stipulation must be co-signed by a sitting judicial officer in each case and whether such stipulations fall within the definitions of court-appointed matters.</p>	<p>that attorneys may assist the courts on settlements without satisfying the requirements for temporary judges unless they perform a judicial function. If they do perform such a function (e.g., by entering a settlement on the record), they must be qualified and trained. (Rule 243.13(c)(3)(D).)</p> <p>4. <u>Rule 243.18 (Stipulations)</u></p> <p>This rule has been revised to be clearer. For court-appointed temporary judges, it would not require that a separate order be signed in each case. There would be</p>

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				<p>5. <u>Rule 243.12(b) and (d) (Appointment)</u></p> <p>The rule requiring the appointment of temporary judges to be a responsibility of the presiding judge needs to be clarified to allow the designation of more than one other judicial officer to undertake this function. For example, in larger counties, the presiding judge might want to designate the supervising judge in various areas of the law to undertake this responsibility.</p> <p>6. <u>Rule 243.13(a) (Practice Requirements)</u></p> <p>The time requirement for years of practice should be shortened to 5 years. That was the requirement, I believe, for the former municipal court judges. Similarly, one can be a specialist in a given area of the law without having 10 years of experience. Some counties may have difficulty in locating sufficient pro tem judges to meet this requirement. In addition, attorneys between 5 and 10 years should be able to be trained and mentored to be judge pro tems. This is a valuable function that a number of courts</p>	<p>such a requirement in cases involving privately compensated temporary judges (See rule 243.31.)</p> <p>5. <u>Rule 243.12(b) and (d) (Appointment)</u></p> <p>The rule permits the presiding judge to designate another judge to be responsible for appointments (Rule 243.12(d).) Also, the rules authorize the use of a committee of judges to assist the presiding judge with reviewing applicants. See rule 6.744(d.)</p> <p>6. <u>Rule 243.13(a) (Practice Requirements)</u></p> <p>The Working Group disagreed with this recommendation. It believed that temporary judges should be required to have the same years of State Bar experience as subordinate judicial officers. (See Cal. Rules of Court, rule 6.660.) This requirement will ensure that temporary judges have the same minimum experience as subordinate judicial officers and will prevent the appearance of a</p>



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				<p>have undertaken, and it does not appear possible under these rules.</p> <p>7. <u>Rule 243.13(c) (Ethics Training)</u></p> <p>The ethics training requirements will need some time in order to allow attorneys to obtain the training after the rules go into effect.... There should also be some consideration for requiring supplemental ethics training after the initial class, similar to that required of sitting judicial officers.</p> <p>8. <u>Rule 243.13(c)(2) (Substantive Training)</u></p> <p>The substantive training is going to be problematic in its implementation. If this is intended to cover those pro tems who act as mediators as well, it is very common that mediators cover areas outside of their specialty,</p>	<p>two-tiered system of justice. To the extent that a court may need an exception (for example, because of a very small pool of experienced applicants), the same “good cause” standard applies for the appointment of temporary judges as for subordinate judicial officers with less than ten years experience.</p> <p>7. <u>Rule 243.13(c) (Ethics Training)</u></p> <p>The ethics rules provide for delayed implementation to allow the attorneys sufficient time to satisfy the requirements. (See rule 243.11(e).) Supplemental ethics training would be provided as part of continuing education. (See rule 243.17.)</p> <p>8. <u>Rule 243.13(c)(2) (Substantive Training)</u></p> <p>The substantive training rules provide for delayed implementation to provide sufficient time for the attorneys to satisfy the training requirements. (See rule 243.11(e).) The rules have been revised to</p>

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				<p>utilizing their ADR skills. Further, it is not really clear what this would mean in the civil law context....</p> <p>The substantive training requirements appear to leave it to the local courts to determine what training is required for areas of the law other than the 3 set forth. One of the largest areas of the use of pro tems is the field of family law. If this training is simply left to the local courts, there will be widely varying standards around the state.</p> <p>The training requirements will also need to have timelines to allow pro tems to obtain the training needed.</p> <p>9. <u>Rule 243.13 and Advisory Committee Comment</u></p> <p>The Advisory Committee Comment (on page</p>	<p>clarify their requirements for attorneys who serve on settlement matters. (See rule 243.13(c)(3)(D).) The requirement of training of temporary judges specifically in settlement has been eliminated.</p> <p>The rules leave it to the discretion of each court to determine what substantive court training programs to approve. CJER will be developing materials that may be used by all courts around the state, however.</p> <p>The rules have been revised to clarify the timelines. Because of the enactment of recent legislation, earlier timelines will apply to certain substantive law training for temporary judges who hear small claims cases.</p> <p>9. <u>Rule 243.13 and Advisory Committee Comment</u></p> <p>The rules have been revised to clarify use of attorneys in</p>

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				<p>12, line 7) states that pro tem judges would not be permitted to take stipulations on the record. It is quite common that parties in family law actions work with pro tem judges in reaching settlement of their cases. They may spend hours with the judge pro tem. The sitting judicial officer often is conducting custody settlement conferences or other judicial work at the same time. To require that each settlement must be taken for the record by the sitting judicial officer would require substantially greater allocation of resources to the family law area of the court, for there are simply not enough resources assigned currently to allow all stipulations to be heard before the sitting judicial officer.</p> <p>10. <u>Rule 243.14 (Contents of Training)</u></p> <p>The content requirements for pro tem training only specify training in small claims and traffic, leaving out civil and family law areas. The latter areas commonly use pro tems.</p>	<p>settlement processes. An attorney need not be a temporary judge to assist the court with settlements. (Rule 243.13(c)(3)(D).) But if the attorney performs a judicial function such as entering a settlement on the record under C.C.P., § 664.6, he or she must be a qualified temporary judge who has received bench conduct and other training. The proposed requirement for separate training on settlement has been dropped.</p> <p>This rule balances the courts’ need for assistance from attorneys on settlement with the need to ensure that all attorneys who perform judicial functions are properly trained as temporary judges.</p> <p>10. <u>Rule 243.14 (Contents of Training)</u></p> <p>The contents of training in small claims and traffic, which will always be provided by the courts, is specified. In the family law and civil areas, it is left to the court to determine what contents to provide</p>

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				<p>11. <u>Rule 243.12(c) (Length of Training)</u></p> <p>In the settlement training requirement, this should be expanded to require much more extensive training on settlement techniques, mediation and arbitration techniques, and the differences between the various styles. To require only 3 hours of training in this area is problematic, since the basic mediation training, for example, is 40 hours in length. Again, such training should also be given to judges, as well as the attorneys who act as pro tems.</p> <p>12. <u>Rule 243.16 (Uses of Past Service)</u></p> <p>The past service section leaves the ballot issue somewhat unclear. While someone cannot list a judge pro tem as their primary occupation, are they able to list it at all and if so, under what circumstances? This has already been the subject of litigation around the state and this would be an excellent time to really clear up this area.</p>	<p>or approve. Courts may often approve programs taken for MCLE credit from other providers on family law and civil topics.</p> <p>11. <u>Rule 243.12(c) (Length of Training)</u> Because many attorneys have experience and training in settlement, the Working Group has dropped the requirement for minimum training in this area. However, courts will certainly want to select attorneys who are highly trained, qualified, and effective to assist with settlements to the extent they are available.</p> <p>12. <u>Rule 243.16 (Uses of Past Service)</u> The rule is intended to clarify the main issue; candidates cannot describe temporary judges as their main occupation. Other issues remain to be dealt with under applicable election laws.</p>

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				<p>13. <u>Rule 243.18 (Stipulation)</u></p> <p>The signage requirement needs substantial clarification. What does the sign have to say? Is it different if the pro tem is just sitting in doing settlement conferences? Where does it have to be? Just outside the courtroom should be clarified further.</p> <p>Subdivision (e) about withdrawing the stipulation needs substantial revision, if it is to be permitted at all.</p> <p>First, if parties stipulate to the appointment of an attorney to act as their judge pro tem for all purposes in their case, why should the rules for disqualifying that individual be any different than those for disqualifying a sitting judicial officer.</p> <p>Second, the issue of who hears the motion should be reviewed. If it is for cause, should it be heard in the county of the appointment or by someone appointed by the Judicial Council?</p>	<p>13. <u>Rule 243.18 (Stipulation)</u></p> <p>Rule 243.18(b) has been modified to clarify the contents of the notice. An attorney assisting with settlements would only need to provide the notice if he or she serves as a temporary judge.</p> <p>First, the Working Group concluded that the procedures for disqualifying a temporary judge should be simpler than those for disqualifying a judicial officer. (Compare rule 243.18(e) with C.C.P., § 170.1–170.3.) This will reduce delays and improve the administration of justice in cases heard by temporary judges.</p> <p>Second, the rule specifies that the motion should be heard by the presiding judge or a judge designated by the presiding judge. The Working Group believed that</p>

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				<p>The timelines for such a motion should be clear and spelled out. Perhaps reference to the timelines set forth in the Code of Civil Procedure would be appropriate. Also, does someone get to do this more than once in a case for a reason other than cause? This section could open dangerous precedents which could ultimately be used against judges in future potential legislation. If parties have fully stipulated to a private judge for all purposes, that individual should be subject to the same rules and regulations as a sitting judge. It is hard to understand why a completely different set of rules should be created for this purpose.</p> <p>14. <u>Rule 243.19 (Disclosures) [This rule has been referred to the Supreme Court.]</u></p> <p>The disclosure requirements could be very onerous in certain areas of the law. In the family law area, attorneys frequently have cases over the years with other firms. To require that they disclose every case they ever had with either attorney would deplete the pool of pro tems and require a massive amount of work in every case.</p> <p>This section should be revised substantially or we will risk losing most of our valuable pro</p>	<p>these are the appropriate judicial officers to consider the matter. The rule indicates that the motion might be brought after some preliminary rulings (because the grounds for disclosure may only have appeared at that stage); however, the motion should be brought while the case is still pending. (See rule 243.18(e).)</p> <p>14. <u>Rule 243.19 (Disclosures) [This rule has been referred to the Supreme Court.]</u></p> <p>The disclosure requirements are not as onerous as the commentator indicates. Temporary judges would be required to disclose personal and professional relationships known to them. These disclosures need to be made only in enough detail so that the parties are fully aware of the past relationship. When a temporary judge learns</p>

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				<p>tems. To give a specific example, a settlement judge pro tem in practice for over 20 years may, over those years, have had a number of cases with either or both attorneys, but have no current matters. As the rule draft is currently written, the pro tem would be required to review his or her entire 20-year client list and disclose any cases in which he or she may have had a case with the attorneys in the matter. Since settlement pro tems are not even assigned cases until that morning or afternoon, the disclosures could not be made until then upon learning of the case to which they might be assigned. Such disclosure of prior cases is incredibly burdensome. Should this rule be different from the requirements of a sitting judge? We are not required to disclose that we once had a case with one of the attorneys 10 years ago.</p> <p>15. <u>Rule 243.20 (Disqualifications) [This rule has been referred to the Supreme Court.]</u></p> <p>The disqualification sections relating to family law are simply not workable. To require that there would never be a judge pro tem when one party has counsel and one does not would be unduly burdensome. At least 70% of family law matters have self-represented parties on both</p>	<p>about a case at the time it is assigned to them for trial or ruling, he or she would need to make the disclosures known to them at that time.</p> <p>The rule is different than that for sitting judges because the latter are no longer active in professional practice and do not have ongoing professional relationships with attorneys or law firms.</p> <p>15. <u>Rule 243.20 (Disqualifications) [This rule has been referred to the Supreme Court.]</u></p> <p>The Working Group disagreed. As the commentator notes, in only approximately 15% of family law cases on one side is represented by</p>

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				<p>sides. An additional 15% at least has one lawyer and one self-represented party. There is no need to bar pro tems from serving in these cases, as long as the parties are aware that no agreement is mandatory and that they have a right to a hearing if the pro tem is not able to settle the matter.</p> <p>16. <u>Rule 243.20(d) (Limitations) [This provision has been referred to the Supreme Court.]</u></p> <p>The section regarding disqualifying pro tems in the areas of family and unlawful detainer if the attorney only represents one side should be amended. There are times where attorneys are paired with each other as pro tems, with an attorney who usually represents one side paired with one who represents the other side. This is often done in civil settlements and has been replicated in family law and unlawful detainer. Such attorney teams should not be barred from participating in teams to assist in settling matters.</p> <p>17. <u>Rule 243.20(e) (Other Limitations) [This</u></p>	<p>an attorney and the other is self-represented. In such cases, the elimination would preclude the use of an attorney as a temporary judge; this will enhance procedural fairness and avoid any appearance of favoritism toward attorneys. In the remaining 85% of cases, the limitation would not apply and attorneys would be able to serve as temporary judges.</p> <p>16. <u>Rule 243.20(d) (Limitations) [This provision has been referred to the Supreme Court.]</u></p> <p>As explained above, the rules have been modified to clarify the role of attorneys in settlements.</p>



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				<p><i>provision has been referred to the Supreme Court.]</i></p> <p>Other limitations also appear somewhat burdensome. If an attorney agrees to assist parties in settlement discussions in the morning and later that day has a law and motion matter, this should not bar the attorney from acting as a pro tem. It is very common that counsel do schedule these matters in that way in family law matters and civil cases. It is different if the pro tem were sitting in on contested matters as opposed to acting to assist in settlement.</p> <p>18. <u>Rule 243.33 (Notices)</u></p> <p>The requirement about posting notices about all cases in which parties have agreed upon the appointment of a private judge or pro tem would be incredibly difficult to comply with and would really burden staff of the courts. There are many cases where parties agree to use alternate dispute resolution, whether mediation, arbitration, or a private judge. The court would have to post notices in many of these cases and it is not clear for how long. Further, the reason that parties agree to these private proceedings is often to avoid the spotlight and the public forum. This would defeat that altogether. Then,</p>	<p>17. <u>Rule 243.20[(e)] (Other Limitations) [This provision has been referred to the Supreme Court.]</u></p> <p>The rules on the use of attorneys in settlements have been clarified. If an attorney only assists the court on settlements and does not perform any judicial functions, he or she would not need to be a temporary judge. (Rule 243.13[(d)(3)(D)].) In that case, the limitation in rule 243.20[(e)] would not apply.</p> <p>18. <u>Rule 243.33 (Notices)</u></p> <p>The notice requirement has been in the rules for a number of years. (See current rule 244(e).) The Working Group has not been informed of any problems with this existing requirement. The rule ensures that members of the public have notice of proceedings in which the court has appointed an attorney to serve as a temporary judge. The rule further provides that sufficient notice must be given to members of</p>

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				<p>there is the debate of when you would have to post the notice. Many hearings are done by telephone in these cases. How would a court even know that these hearings are occurring? We could literally have hundreds of these notices up on the walls for months at a time, since hearings may be ongoing in the cases.</p> <p>If the intent is to bring all private mediation, arbitration, and other proceedings being handled by private judges out into the open, this needs to be more fully debated and discussed before such a rule is even attempted.</p> <p>19. <u>Rule 243.34(a)</u></p> <p>The sealing of records section would conflict with certain family law rules that are in effect pursuant to the Family Code. Parties can currently apply ex parte to seal parts of files that reveal financial information. This would not really be possible under the proposed rule. Further, the sitting judicial officer assigned to the case would potentially have had no dealings with the case, yet would be hearing any issues relating to sealing only.</p>	<p>the public so that they can arrange for attendance at any proceeding that would be open to the public if held at a courthouse. The new rules do not change any of the existing rule’s substantive provisions but only reorganize them and relocate them in new rule 243.33.</p> <p>19. <u>Rule 243.34(a)</u></p> <p>The requirements on sealing records have been in the rules for a number of years. (See current rule 244(g).) The new rules, generally do not make substantive changes, but simply reorganize and relocates the provisions on sealing records and filing complaints in intervention to new rule 243.34. The rule has been modified to allow for ex parte applications for requests to seal documents.</p>

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				<p>20. <u>Rules 6.740–6.743 (Administration of Temporary Judge Programs)</u></p> <p>The rules on court appointed temporary judges remain somewhat unclear in view of the issues of whether these apply to settlement pro tems or ADR cases. This will also require substantial burdens on the already overburdened judicial officers.</p> <p>21. <u>Conclusion</u></p> <p>These draft rules are a significant undertaking and would result in massive changes throughout the state. The impact on the courts should be carefully studied before this is adopted. If there is not good data on the current use of pro tems and private judges around the state, this data should be obtained and reviewed before undertaking to massively revise the system.</p>	<p>20. <u>Rules 6.740–6.743 (Administration of Temporary Judge Programs)</u></p> <p>The rules have been modified to clarify the role of settlement attorneys.</p> <p>21. <u>Conclusion</u></p> <p>The Working Group recognized that its proposals will have an impact, especially on courts that presently provide no training for temporary judges. It has surveyed the courts and learned about recent initiatives to provide training. It believes that this is a very appropriate time to take action to improve the quality of temporary judging for the reasons explained in the report.</p>
16.	Ms. Jonnie Herring Certified Family Law Specialist State Bar of California San Jose	AM	N	Santa Clara County Superior Court has made extensive and successful use of pro tem judges in family, civil, traffic, and small claims matters for many years. The pro bono contributions of	The Working Group appreciates this additional information provided by this commentator about the use of temporary judges in the Superior

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				<p>these attorneys has been critical in disposing of heavy caseloads.</p> <p>In family pro tems are used primarily for settlement on various calendars where they are designated as settlement officers, SOC (settlement officer conference) volunteers, family law property settlement conference officers, and ENE (early neutral evaluation) volunteers. They are also used in an adjudicative capacity by stipulation of the parties on default and support calendars. In 2004 there were 240 such attorneys serving, many of them certified family law practitioners, for an estimated total of 800 equivalent judicial days, a savings of three full-time judicial positions.</p> <p>In civil pro tems have been used since 1975 as settlement conference judges on mandatory settlement conferences (MSC), held in jury and long cause non-jury cases the Wednesday before trial. There is a pool of approximately 300 attorneys who serve in this capacity, from which about 20 or more serve each week. In 2004 they handled 1,004 MSC’s devoting an estimated 4,000 hours to the disposition of these cases. They take pride in their work and will often stay with a complex case over several</p>	<p>Court of Santa Clara County.</p> <p>The new rules will clarify the use of attorneys to assist the courts in the settlement of cases. The rules state that an attorney does not need to be a temporary judge to assist the court. However, if the attorney performs any judicial function such as entering a stipulation on the record, the attorney must be qualified and trained as a temporary judge. (Rule 243.13(c)(3)(D).)</p>

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				<p>days time to settle it. They place settlements on the record, on stipulation of the parties that the proceedings are deemed judicially supervised. The number of trial days avoided by their efforts has not been calculated, but can only be imagined to be quite large. As a result of the effectiveness of the pro tems at MSC, and the effectiveness of our civil trial judges, over the six month period ending June 30, 2005, there have been no resets from the civil trial calendar on account of the unavailability of a trial department.</p> <p>Pro tems serve in traffic and small claims, adjudicating these matters on stipulation of the parties. Pro tems handle as many as 8 calendars in small claims each week, thereby freeing busy commissioners to handle their other duties.</p> <p>[On specific rules, see comment 47 (same).]</p>	<p>[On specific rules, see the responses to comment 47 (same).]</p>
17.	Ms. Gail K. Hillebrand Senior Attorney Consumers Union San Francisco	A	Y	<p><u>General Comments</u></p> <p>Consumers Union, the independent non-profit publisher of Consumer Reports, is in strong support of the proposal for rules on quality assurance, training, ethics, and administration with respect to temporary judges.</p>	<p><u>General Comments</u></p> <p>The Working Group notes the strong support of the Consumers Union for the proposed new rules on temporary judges.</p>

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				<p>We have previously presented comments to the Judicial Council about the issues of quality, consistency, and training for persons who serve as temporary judges in small claims court, and are supportive of legislative efforts to require ongoing training of temporary judges serving in small claims court. We also have been involved in the work of both the Legislature and the Judicial Council to require specific disclosure and conduct with respect to ethics and conflicts for persons who perform a judge-like function as private arbitrators. The proposed ethics rules for temporary judges are similar in many aspects to the rules already adopted for arbitrators, guaranteeing that persons in the court system receive decision makers with at least the same types of ethics obligations as they would receive if they were in private arbitration.</p> <p><u>Ten Year Experience Requirement (Rule 243.13(a))</u></p> <p>Consumers Union supports this requirement. The additional time in practice may contribute to a better understanding of when a situation calls for more information, as a more experienced attorney may find it easier to admit that there are areas where he or she experiences</p>	<p><u>Ten Year Experience Requirement (Rule 243.13(a))</u></p> <p>The Working Group notes Consumer Union’s support for this rule on experience.</p>

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				<p>a gap in knowledge. This may be particularly important when one or both parties appear without legal counsel.</p> <p><u>Good Standing Requirement (Rule 243.13(b))</u></p> <p>The value of this requirement is so obvious that the reader is surprised to learn it is not already in precondition for service.</p> <p><u>Initial and Periodic Training Requirements (Rule 243.13(c))</u></p> <p>Consumers Union is in very strong support of enhanced requirements for both initial and periodic training of small claims court advisors. Small claims court see a wide variety of issues, including issues governed by state and federal consumer protection statutes. These statutes can be highly technical, and may provide, for example, for defenses or offsets to the collection of a debt which are not apparent to a person who is not familiar with these statutes. In addition, consumer statutes may feature statutory damages that, viewed out of context, might at first appear to be out of proportion to the harm of the specific violation in the individual case. Because so few consumer cases</p>	<p><u>Good Standing Requirement (Rule 243.13(b))</u></p> <p>Courts generally establish such a requirement by local policy; the statewide rule will clarify this matter.</p> <p><u>Initial and Periodic Training Requirements (Rule 243.13(c))</u></p> <p>The Working Group notes Consumer Union’s strong support for the new training requirements.</p>

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				<p>are litigated, however, minimum statutory damages serve a function in policing the marketplace. This function would be undermined if individual temporary judges who are unfamiliar with those consumer statutes do not apply those statutes properly.</p> <p><u>(Rule 243.14(b))</u></p> <p>We are concerned that three hours of initial training is not enough for temporary judges in small claims court, given the wide variety of disputes, and applicable statutes, which may be heard in small claims court. However, this portion of the proposed rule makes a good beginning.</p> <p><u>Ethics Training, Conflicts Rules, and Disclosure to the Parties</u> <u>(Rules 243.19–21)</u></p> <p>Consumers Union also supports the proposed rules on ethics training, conflicts, and disclosures very appropriate.</p>	<p><u>Rule 243.14(b)</u></p> <p>The Working Group is aware that it may be difficult to provide training for temporary judges in small claims cases in 3 hours. The rules emphasize that this training is a minimum and courts are encouraged to provide more training. (See rule 243.13(d).)</p> <p><u>Ethics Training, Conflicts Rules, and Disclosure to the Parties</u> <u>(Rules 243.19–21)</u></p> <p>The Working Group notes Consumer Union’s support for the rules on ethics, conflicts, and disclosure.</p>
18.	Hon. C. Anders Holmer	AM	N	<u>Rule 243.12(c)(2) (Substantive Training)</u>	<u>Rule 243.12(c)(2) (Substantive</u>



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	<p>Judge of the Superior Court of California, County of Nevada Truckee</p>			<p>I cannot endorse the rule changes for temporary judges unless modifications are made to the requirement of substantive training. (Rule 242.12(c)(2).)</p> <p>Our court has, for many years, used temporary judges for small claims and traffic cases. Local attorneys have volunteered their time on a rotational basis each year. Therefore, we have many attorneys appearing only once or twice yearly as temporary judges.</p> <p>The proposed rule changes are silent as to the funding for substantive training. Obviously, the court would be obliged to pay for it if this proposed rule is adopted.</p> <p>The rule should be modified as follows:</p> <ol style="list-style-type: none"> <li>1. All training should be on-site at each court, using the technology of satellite broadcasting. An example of this is AOC’s “Broadcast Series For Court Leaders.”</li> <li>2. AOC/CJER must commit to the substantive training at least once a year.</li> </ol>	<p><u>Training)</u> The rules on substantive training have been modified to be more flexible.</p> <p>Courts would be allowed to charge a reasonable cost to cover their expenses. They will also receive assistance on training materials from AOC/CJER.</p> <ol style="list-style-type: none"> <li>1. The rules on substantive training have been modified to allow the courses to be “taken by any means approved by the court including in-person, by broadcast with participation, or online.”</li> <li>2. AOC/CJER is developing educational materials to be used by</li> </ol>

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				<p>3. An otherwise qualified temporary judge who has completed the required ethics training should be allowed to first serve, even if he or she has not completed the substantive training and is within 6 months of the next scheduled course.</p> <p>4. If on-site training is not available, then each court should receive budget increases to offset the cost of compliance, including registration, lodging, and training.</p> <p>Our budget has never been impacted previously by any cost of temporary judges. Unless these modifications or something similar to them, are made, our court will have to discontinue the use of temporary judges. Such a loss would greatly impact this court's ability to serve the public.</p> <p>I am quite certain this proposed rule change is well-intended. Unfortunately, it does not appear that any consideration has been given to the cost</p>	<p>the courts. It is anticipated the programs will also be offered at the AOC Regional Offices.</p> <p>3. The final rules provide for delayed implementation. Thus, temporary judges (except in small claims) will have until January 1, 2007 to complete substantive training. (Because of recent legislation, substantive training in small claims must be completed by July 1, 2006.)</p> <p>4. The modified rules allow for a variety of types of substantive and ethics training. Training on bench demeanor will need to be made available in person. Programs are being developed by AOC/CJER to assist the courts with training. It is also anticipated that training will be offered on a regional basis and courts may work out cooperative programs. (See rule 6.740.)</p> <p>The Working Group is conscious that will be costs of implementation and has modified the rules to reduce</p>

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				of compliance. Rule changes like this should not be proposed unless the Judicial Council has declared a lack of local court budgetary impact or has committed funds to pay for the mandate.	costs and make them more practical.
19.	Mr. Dennis C. Hyde Attorney Wiegel & Fried San Francisco	N	N	<p><u>Rule 243.20([d]) (Limitations) [This provision has been referred to the Supreme Court.]</u></p> <p>I write to express my disagreement with proposed rule 243.20(c). This proposed rule disqualifies all unlawful detainer and family law practitioners from serving as temporary judges in cases concerning those types of matters if their practice is concentrated on representing a particular “side” in those matters.</p> <p>There are other areas of practice in which it is also common for a practitioner to concentrate in the representation of a particular “side.” Personal injury matters are typically handled by practitioners who primarily represent either plaintiffs or defendants. The same is true for consumer law and undoubtedly other practice areas that are less familiar to me. I believe this rule embodies the presumption that practitioners in the areas of unlawful detainer and family law, as opposed to other practice areas, will not be fair and impartial when they serve in the role of a temporary judge.</p>	<p><u>Rule 243.20([d]) (Limitations) [This provision has been referred to the Supreme Court.]</u></p> <p>The Working Group has considered the comments and has concluded that the limitations established in rule 243.20(c) are appropriate. The rule is intended to eliminate any possible appearance of impropriety or unfairness that may result from a litigant having a temporary judge assigned in a family law or unlawful detainer case who represents exclusively or almost exclusively one side in those types of proceedings.</p>

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				<p>I believe that any practitioner who volunteers their time in service to the court as a temporary judge makes a conscientious effort to be fair and impartial. I believe that practitioners in any practice area have the ability to be fair and impartial when the circumstances call for it. Any individual has the potential to be biased by all of their life experiences, not just their practice, and must deliberately work not to let that happen when they serve as a judge, mediator, arbitrator, or temporary judge. I do not believe unlawful detainer and family law practitioners uniquely lack the ability to be fair and impartial.</p> <p>I sit as a judge pro tem for settlement conferences in the San Francisco Superior Court. The unlawful detainer portion of my practice is limited by my firm to representing residential landlords and excludes residential tenants as a matter of policy. Most of the cases which are assigned to me for settlement when I act as a temporary judge are unlawful detainer actions. I also participate in these same settlement conferences representing litigants....</p> <p>I believe it is better for one knowledgeable in</p>	<p>The Working Group recognizes that practitioners who volunteer to serve as temporary judges make conscientious efforts to be fair and impartial. However, the Working Group believes the appearance of—or potential for—conflicts in certain types of proceedings is sufficiently great that it is reasonable as a policy matter to exclude practitioners who represent exclusively or almost exclusively one side from serving as temporary judges on these types of proceedings.</p> <p>The rules clarify that attorneys may assist the courts in settlement without being trained and qualified as temporary judges, unless they perform a judicial function such as entering a settlement on the record. (See rule 243.13(c)(3)(D).)</p>

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**Temporary Judges: Rules on Quality Assurance, Training, Ethics, and Administration**

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				<p>the intricacies of the San Francisco Rent Control Ordinance and unlawful detainer practice to conduct an unlawful detainer settlement conference in San Francisco than someone with limited or no knowledge. This would be true whether they were a “tenant attorney” or a “landlord attorney.” I would also believe a practitioner knowledgeable in family law to be better able to conduct proceedings in family law cases than one who was unfamiliar with community property law or the unique procedures and issues in family law cases. I have never known an unlawful detainer practitioner from one “side” to conduct a settlement conference so as to prejudice the other “side” in negotiations, and I believe this would be equally true for family law practitioners.</p> <p>There are practical problems with the application of this rule, at least if a court seeks knowledgeable practitioners to act as temporary judges. In San Francisco, for example, the majority of knowledgeable residential unlawful detainer practitioners represent either landlords or tenants nearly exclusively. The effect of this rule in San Francisco would be to eliminate nearly all knowledgeable practitioners from service to the court as temporary judges in</p>	<p>Under the rules, attorneys may assist the courts for settlement purposes without being temporary judges. (See rule 243.13(c)(3)(D).)</p> <p>As the commentator notes, it may be difficult to find practitioners in the unlawful detainer area who do not exclusively represent one side. Thus, courts may need either: (1) to use full-time judicial officers for those types of cases; or (2) to have attorneys who practice in other substantive areas receive training in this area so that they can serve.</p>

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				unlawful detainer cases. I would expect that other jurisdictions would face the same problem.	
20.	Mr. Stephen B. R. Keller Superior Court of California, County of El Dorado Placerville	AM	N	<p>I commented on an earlier version of the proposed rules. I said that the proposed rules might improve the quality of temporary judges who decide cases. However, they would cripple programs such as ours that use temporary judges for case management and dispute resolution.</p> <p>The proposed rules have been revised. But, I believe my comments remain valid. This letter will explain how our program works and why we feel the proposed rules would harm our program.</p> <p>Serving as a temporary judge, I supervise civil case management and dispute resolution for the El Dorado County Superior Court. The court assigns me 2,500 cases a year. In addition, we use more than 400 attorney temporary judges</p>	<p>The new rules will improve the quality of temporary judging across the state. The Working Group recognizes that the ADR and case management programs in the commentator’s court have achieved benefits. However, it appears that few, if any, other courts have programs using temporary judges in a similar manner. Hence, the programs’ exceptional nature does not make them models on which to base statewide rules to achieve best practices.</p> <p>The proposed rules on temporary judges have been revised based on public comments including those from this commentator. Some of these revisions may satisfy the commentator, while others will not.</p>

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				<p>for civil dispute resolution. We use more than 50 in our family law program.</p> <p>Our programs have been successful. In terms of case disposition, we went from one of the worst in California in 1997-98 (more than 30% of our civil cases were still pending after 24 months), to one of the best (only 6% still pending after 24 months). With limited civil cases we do even better. We resolve 96% in the first year and 99% after 18 months.</p> <p>We have been successful, in part, because we enlist practicing attorneys as temporary judges for dispute resolution. This has helped to create a culture of settlement. We think that if attorneys help to settle cases as temporary judges, they will be more likely to settle their own cases.</p> <p>But the new rules create barriers to enlisting attorneys. In my view, we will lose half of our attorney volunteers if we make them go through the training the rules require.</p>	<p>Attorneys do not need to be temporary judges to assist the courts with settlement. The rules have been revised to clarify this. However, if the attorneys perform judicial functions, they must receive training on bench demeanor and ethics. (Rule 243.13(c)(3)(d).) Most attorneys who assist courts in settlement will not need to be temporary judges. Hence, they will not need to satisfy the temporary judge training requirements. Some courts consider it desirable to also provide training for settlement attorneys, however.</p>

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				<p>Further, the recordkeeping and reporting requirements will burden our staff. We would have to train, keep records on, and report on each of the hundreds of temporary judges we use....</p> <p>And, if any of those have been in practice less than ten years, we have a special hassle. We have to get the presiding judge to specially appoint them and then report the appointment.</p> <p>In my position, I would have to review each of the 2,500 cases assigned to me every year for possible conflicts (e.g., have I represented any of the parties ever in my career; a problem</p>	<p>Although recordkeeping will impose some burdens, it is essential to keep records to determine if temporary judges serving the courts meet the qualifications for appointment and are properly trained. The reporting will also enable the Judicial Council to demonstrate judicial needs to the Legislature.</p> <p>The requirement of 10 years experience will be established to ensure the quality of the temporary judges and to avoid the appearance of a two-tiered system of justice. The good cause exception to this requirement is not meant to be an administrative impediment but rather a means for courts with demonstrable judicial needs that cannot be met with attorneys with over 10 years experience to satisfy those needs.</p> <p>The new rules provide that, if a temporary judge is used for case management purposes, he or she</p>



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				<p>because I practiced law for 25 years in El Dorado County before I worked for the court.) This alone would be an immensely wasted effort. Our program succeeds, in part, because we don’t look at most cases. We put them (collection cases) on track when they are filed and the case resolves (mostly through default) before the first case management conference.</p> <p>And then, we would have to report separately on each of the 2,000 case management conferences and 500 settlement conferences I conduct a year. This would turn a dream job in which I help people resolve their programs into a nightmare of paperwork.</p> <p>In El Dorado County, we have had a one-third increase in civil case filings since 2000 and a one-third decrease in staff (because of budget cuts). The training, recordkeeping and reporting requirements of your rules would require us to add to our staff. And, who is going to pay for this?</p> <p>We understand that the purpose of the proposed rules is to improve the quality of temporary</p>	<p>must be properly qualified and trained as a temporary judge. (See rule 243.13(c)(3)(C).) Also, under both existing rules and the proposed new rules, temporary judges must comply with the conflicts and disclosure provisions. (See current rule 244(e)–(d) and proposed rules 243.19–243.20.)</p> <p>The reporting requirements do not require a separate report on each case, but rather a quarterly report on the number and types of cases for which temporary judges are used in the court. (See rule 6.742(c).) Reporting this information will help demonstrate your court’s judicial needs.</p> <p>As indicated above, to ensure that all temporary judges who serve the court are properly trained and qualified recordkeeping will be necessary.</p> <p>The rules will increase the quality</p>

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				<p>judging in California. But the proposed rules would not improve the temporary judges who participate in our programs. Settlement and case management skills do not depend on whether an individual is an active or inactive member of the State Bar. Nor do they depend on whether the individual has five or ten years of experience. Nor can they be improved by 8 or 10 hours of training.</p> <p>The best course, we believe, is simply to provide that the proposed rules do not apply to temporary judges who are involved only in case management and dispute resolution and let it go at that.</p> <p>Two final comments may be of assistance.</p> <p>1. The advisory committee suggests that we could use settlement attorneys in place of settlement temporary judges.</p> <p>This is not a good idea for two reasons.</p> <p>First, the principal settlement device we use is</p>	<p>of temporary judging. They have been revised to clarify that attorneys do not need to be temporary judges to assist the courts in settlement, and to eliminate the requirement for active membership in the State Bar. However, the Working Group believes that 10 years of experience is important and so are the trainings requirements under the rules; hence, these have been retained, rules are more flexible regarding the delivering of training.</p> <p>The Working Group disagreed. To the extent an attorney performs judicial functions for the court, he or she should be properly trained and qualified. The rules establish reasonable minimum standards.</p>

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				<p>the dispute resolution conference, an early mandatory settlement conference under California Rules of Court, rule 222. Rule 222 allows us to require what we believe is necessary for an effective settlement conference, i.e., that the parties be personally present and that they be prepared (through preparing a settlement conference statement which states the facts and law of the case and which makes a good faith offer/demand.) Cases don’t settle unless the parties are present and prepared. But a settlement attorney cannot preside over a rule 222 settlement conference. That requires a (temporary) judge.</p> <p>Second, the best way to memorialize a settlement is through Code of Civil Procedure, section 664.6. But, that requires a temporary judge, too.</p> <p>2. It is easy to say that we need new ethical and training requirements for temporary judges. Of course, we want knowledgeable and ethical people in all areas of judging. But when we are talking about (temporary) judges performing only case management and dispute resolution functions, I think that the existing requirements are sufficient. The Code of Civil Procedure section 170.1, et seq., and the Canons of</p>	<p>Under the rules, attorneys may assist the courts with settlement without being a temporary judge; but they cannot perform judicial functions such as entering a settlement on the record unless they are properly trained and qualified. (See rule 243.13(c)(3)(D).) Thus, there is no prohibition against attorneys assisting at settlement conferences; they just cannot act as (temporary) judges.</p> <p>The Working Group agreed; it would require the attorney to be a temporary judge.</p> <p>The Working Group believed that all those who serve as temporary judges should generally be held to the same clear, consistent, and efficacious standards. The rules spell out such standards. The Working Group has modified rule 243.20 (regarding disqualifications)</p>

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				<p>Judicial Ethics spell out ethical requirements for judges. They exempt judges from some of these requirements, however, when they are engaged in managing or settling cases. (See Code of Civil Procedure section 170.4 and Canon 3B(7).) These exemptions exist because while e.g., a judge’s personal knowledge of a disputed evidentiary fact might affect the judge’s decision, it will not affect setting a trial date. See C.C.P., section 170.1(a)(1). I see no reason to create a disparity in the rules for judges and those for temporary judges.</p> <p>We urge the Judicial Council to exempt temporary judges engaged only in case management and dispute resolution from the new rules.</p>	<p>to include an exception for temporary attorneys “serving solely in the capacity of settlement judge.” (See rule 243.20(a).) This is similar to C.C.P., § 170.4(a)(6), which allows a judge who is otherwise disqualified to conduct a settlement conference. Rule 243.20 has not been modified to provide a further exception for temporary judges who issue case management orders. This is not merely an issue concerning a ministerial function. Case management is an important judicial function. (See Gov. Code, § 68607.) Case management orders may go beyond the scope of the exceptions to disqualification listed in C.C.P., § 170.4(a).</p> <p>The Working Group disagreed, except to the extent explained above.</p>
21.	Hon. Barry D. Kohn Commissioner Superior Court of California, County of Los Angeles Los Angeles	AM	N	<p><u>Rule 243.20[(d)(2)] (Limitations) [This provision has been referred to the Supreme Court.]</u></p> <p>In unlawful detainer proceedings, most</p>	<p><u>Rule 243.20[(d)(2)] (Limitations) [This provision has been referred to the Supreme Court.]</u></p> <p>The Working Group disagreed. The</p>

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				attorneys who have the understanding of unlawful detainer law have 90% of practice on one side. This provision should be removed.	problem of an appearance of impropriety or unfairness warrants creating a limitation for these cases.
22.	Mr. Richard Levy Attorney Torrance	AM	N	<p>The decision to create comprehensive statewide rules for temporary judges seems to me excellent because the rules will provide authoritative and readily accessible guidance on frequently recurring issues such as disqualification for a conflict of interest and implied stipulation to a temporary judge. The rules themselves are generally very clear and well arranged. My few concerns are as follows.</p> <p>A. <u>Disqualification (Rule 243.20[(d)]) [This provision has been referred to the Supreme Court.]</u></p> <p>(1) <i>Do the disqualification rules displace local rules?</i> Proposed rule 243.20[(d)], which prohibits an attorney from serving as a temporary judge if one party is an attorney or represented by an attorney and the other is not, is limited to cases in family law and unlawful detainer. The Los Angeles County Superior Court policy is broader: even in traffic and small claims cases, an attorney cannot serve if any party is an attorney (including a judge or commissioner), and it does not matter whether</p>	<p>The Working Group notes the commentator’s general support for the rules.</p> <p>A. <u>Disqualification (Rule 243.20[(d)]) [This provision has been referred to the Supreme Court.]</u></p> <p>(1) In general, courts may adopt local rules provided they are not inconsistent with the California Rules of Court. (See Gov. Code, § 68070(a).)</p>

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				<p>the other party is also an attorney or represented by an attorney. On the other hand, under the Los Angeles policy, an attorney may serve as a temporary judge even if a non-attorney party is represented by an attorney.</p> <p>The proposed rules are ambiguous as to whether the statewide rules displace local rules on this issue. Proposed rule 243.12(b)(6) allows the local court to set additional conditions for appointment of a temporary judge, but does not appear to cover disqualification or recusal. Proposed rules 6.742(b)(3) and 6.742(b)(4) appear to refer to the decision whether to fill a judicial position with temporary judges at all, rather than with case-by-case disqualification.</p> <p>The rules should therefore specify whether the provisions on disqualification displace more-restrictive local policies. I believe they should not. If a well-run program such as Los Angeles’s should find, in its long experience, that temporary judges should be disqualified in particular cases, I do not see any countervailing reason to insist on a lesser standard other than a rigid desire for uniformity.</p> <p><i>(2) Should disqualification be required where one party is an attorney, judge, or</i></p>	<p>Local policies that are more restrictive or set higher standards are permitted as long as they are not inconsistent with the statewide rules.</p> <p>(2) The Working Group agreed that attorneys should be disqualified</p>

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				<p><i>commissioner?</i> The Los Angeles policy seems to be based on the obvious appearance of a conflict if a local attorney presides over a case in which another local attorney or local judge is a litigant. If the temporary judge acquits another attorney in a traffic trial, other litigants and the public in the audience may assume that this is a kind of professional courtesy. If he acquits a judge or commissioner, they may assume he is attempting to curry favor. Given that the appearance of favoritism is inherent in such cases, the rules should require disqualification in all such cases.</p> <p>Although there may also be an appearance of a conflict where a non-attorney is represented by an attorney in a traffic case, I do not believe that disqualification should be required in such cases. The appearance of favoritism is attenuated because laymen understand that the attorney has much less at stake than his client. Further, in some courts there is an attorney or near-attorney on the other side, so that an observer could not readily assume that one side was being favored on the ground of professional camaraderie. (Most traffic trial in Long Beach are prosecuted by certified law clerks, who are either third-year law students or recent graduates, and who are supervised by the city</p>	<p>from serving as a temporary judge in a case involving another attorney and a self-represented party. (See rule 243.20(e).) As the commentator observes, the rule is intended to address appearances of impropriety or unfairness.</p> <p>Rule 243.20 makes no exception for traffic. Although the problem may be attenuated, it is still present.</p>

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				<p>attorney’s office.)</p> <p><b>B. <u>Training</u></b></p> <p>(1) <i>Should traffic training specifically include preparation of settled statements?</i> Proposed rule 243.14(c), which enumerates required topics of training for traffic judges, does not include preparation of settled statements for appeal or, more generally, post-judgment procedures. Although the topic is arguably encompassed by “Traffic court procedures and practices,” the topic has sufficient practical importance to merit specific mention.</p> <p>(2) <i>Are the total hours of required training too burdensome?</i> Proposed rule 243.13(c) requires six hours of training in ethics and three hours in substantive areas every three years. This requirements appears to be based on a Los Angeles policy that requires three hours of ethics and one and a half hours in each of two substantive areas, for a total of six hours. The proposed rules thus double the time required for training in Los Angeles, to a total of 12 hours. By way of comparison, the State Bar requires only a total of 12–1/2 hours of participatory MCLE credit every three years.</p>	<p><b>B. <u>Training</u></b></p> <p>(1) The Working Group agreed and has added settlement of the record to the list of mandatory training topics in traffic under rule 243.14(d).</p> <p>(2) This rule has been modified to require three hours of in-person training in bench conduct and demeanor and three hours of ethics training “by any means approved by the court.”</p>



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				<p>This requirement seems to be too burdensome and too irksome, particularly in the absence of any evidence that a doubling of training hours will produce better or more ethical judges. In Los Angeles, training is provided only twice a year, at a downtown courthouse, on two consecutive evenings for three hours each evening. The proposed rule would therefore require four lengthy commutes plus a commitment of 12 hours over a very short period. (Although the proposed rules allow the substantive training sessions to broadcast, they must still be participatory; and it is unlikely that the courts will be able to invest the time and money needed for, say, Internet broadcasts of training sessions.)</p> <p>I do not have access to statistics as to whether participation in the Los Angeles program dropped substantially after Los Angeles began to require triennial training. One suspects, however, that it did drop; and a doubling of the required hours would surely produce an even more precipitate drop that could make it difficult for Los Angeles to retain volunteers. It is true that the training sessions count toward MCLE requirements (at least in Los Angeles). This, however, would not be an adequate enticement because many attorneys would need</p>	<p>The Working Group does not consider the revised training rules to be too burdensome.</p> <p>As mentioned, this requirement has been modified to allow substantive training to be “by any method approved by the court.”</p> <p>The Los Angeles Superior Court has been successful in recruiting attorneys to serve as temporary judges. The court reports that there was some drop in participation when, as a result of trial court unification, attorneys who had served in the municipal courts were required to receive training. However, the drop was not substantial. All courts would be able to provide MCLE credits for</p>

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				<p>to attend different MCLE classes to satisfy legal specialization or other professional needs.</p> <p>The heavy burden upon volunteers would be ameliorated if fewer hours were required for renewal of certification than for initial certification, such as two hours of ethics and one hour of substantive training per subject area every three years. This remedy, however, skirts the fundamental question: How useful are lengthy formal training sessions? Auditing a few training sessions might lead one to a more-skeptical view as to whether the imposition of additional hours would be worth the burden upon volunteers, their resentment, and the drop in qualified applicants.</p> <p><u>C. Complaints</u></p> <p><i>Should the administrator be required to notify temporary judges of complaints?</i> Proposed rule 6.746 requires only that each court “must have procedures for receiving, investigating, and resolving complaints against court-appointed temporary judges.” As a matter of fairness and courtesy to attorneys who volunteer their time, this rule should at least require that the program administrator notify the temporary judge of the contents of any complaint. This rule would also</p>	<p>their courses. This will offer an incentive to participate. Also, courses provided by other providers would qualify if the courts approve them.</p> <p><u>C. Complaints</u></p> <p>The Working Group deliberately recommends leaving the handling of complaints up to the local courts because there are such a wide variety of types of complaints, programs, issues, etc.</p>

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				serve an important educational purpose. Even if a complaint were substantively unfounded, the fact that the litigant was irate enough to spend the time to find out to whom to complain, and to send him or her a letter, might perhaps signal that the temporary judge’s demeanor could be improved.	
23.	Mr. Curt Livesay Chief District Attorney Los Angeles County District Attorney’s Office Los Angeles	AM	N	<p><u>Rule 243.10 (Active Membership)</u></p> <p>Proposed rule 243.10 would state that a court-appointed temporary judge must be an active member of the State Bar. The Judicial Council has invited comment as to whether temporary judges should be active members of the State Bar. We recommend that indeed temporary judges should all be active members of the State Bar.</p> <p><u>Rule 243.12(c) (Training)</u></p> <p>Proposed rule 243.13(c) requires specific training requirements be met for court appointment, including at least six (6) hours of ethics training and three (3) hours of substantive training in each subject matter area to which the</p>	<p><u>Rule 243.10 (Active Membership)</u></p> <p>Based on all the comments, the Working Group has concluded that temporary judges should not be required to be active members of the State Bar. Attorneys who satisfy all the other eligibility and training requirements should be allowed to serve. Precluding inactive members from serving would deprive the courts of many capable, experienced temporary judges.</p> <p><u>Rule 243.12(c) (Training)</u></p> <p>While the Working Group believed there would be many benefits to longer training, it recognized that for practical reasons, the minimum amount of time required should be</p>

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				<p>temporary judge would be assigned. Rule 243.13(d) states that presiding judges are encouraged to require additional experience and training if feasible. While additional training is encouraged, mandating only three hours seems to be an insufficient amount of training. Our suggestion would be to increase the three hours to match the six hours of required ethics training so that temporary judges would receive six hours of training in both ethics and the particular subject matter area.</p> <p><u>Rule 243.13(c) (Settlement and Advisory Committee Comment)</u></p> <p>The advisory committees comment for proposed rule 243.13(c) states that the court may use attorneys who are not temporary judges to assist in the settlement of cases. This comment further states that those attorneys who are not temporary judges are not required to satisfy the requirements of these proposed rules, but must satisfy any requirements established by the court for attorneys who assist in the settlement of cases. We would suggest that attorneys who assist in the settlement of cases have the same training as that required for temporary judges.</p>	<p>less than initially proposed. Still, as noted, the requirements establish only minimum amounts of time and courts are encouraged to provide more extensive training. (See rule 243.13(d).)</p> <p><u>Rule 243.13(c) (Settlement and Advisory Committee Comment)</u></p> <p>Based on all the comments, the Working Group concluded that the rules should further clarify that attorneys do not have to be temporary judges to assist the courts for settlement purposes. But if the attorneys perform any judicial functions, they must be trained and qualified to be temporary judges. (See Rule 243.13(c)(3)(D).) This strikes a balance between different concerns and needs. The rules have been also modified to not require</p>

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				<p><u>Rule 243.18 (Stipulations)</u></p> <p>Proposed rule 243.18 deals with the procedure for stipulations to temporary judges. We would stress the importance of this section.</p> <p><u>Rule 243.19 (Disclosures) [This rule has been referred to the Supreme Court.]</u></p> <p>Proposed rule 243.19 requires that temporary judges must as soon as practical disclose to the parties any personal or professional relationship known to the temporary judge that the temporary judge or his firm has or has had with a party, attorney, or law firm in the current case. Our suggestion would be that this section be expanded to include witnesses in the group about whom disclosures should be made.</p>	<p>separate substantive training on settlements, however, courts may make such training available.</p> <p><u>Rule 243.18 (Stipulations)</u></p> <p>The Working Group agreed that this rule is very important. It has been revised to be clearer.</p> <p><u>Rule 243.19 (Disclosures) [This rule has been referred to the Supreme Court.]</u></p> <p>The proposed rule retains the same list as under the current rules.</p>
24.	Hon. David W. Long Judge Superior Court of California, County of Ventura Ventura	N	N	In an informal survey of attorneys who serve as a temporary judge, the passage of this bill would result in a “kiss of death” to these attorney’s volunteering as temporary judges. This rule is not necessary and the individual courts are capable of providing the needed screening, training, and oversight of temporary	The Temporary Judges Working Group does not agree with the commentator’s pessimistic assessment of the impact of the new rules. It believes that the rules will ensure and improve the quality of temporary judging throughout the

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				judges.  I am vehemently opposed to this proposed rule change.	state. Also, based on the experience of courts that have recently instituted programs, it believes that most attorneys will respond favorably to the new programs.
25.	Hon. Catherine Lyons Commissioner Superior Court of California, County of San Francisco San Francisco	AM	N	<p><u>Rule 6.743 (Administrator)</u></p> <p>Specifically: Is the rule providing for a Temporary Judge Administrator and proscribing the duties necessary?</p> <p>Yes. We will never have any meaningful quality assurance otherwise. Let each presiding judge do more, if he or she wishes.</p> <p><u>Rule 243.10 (Active Membership)</u></p> <p>I strongly disagree that a temporary judge needs to be an active member of the State Bar. I don’t see what this requirement guarantees us, except for a smaller pool of applicants.</p> <p><u>Rule 243.20[(d)] (Limitation) [This provision has been referred to the Supreme Court.]</u></p> <p>I strongly disagree that a temporary judge may</p>	<p><u>Rule 6.743 (Administrator)</u></p> <p>The Temporary Judges Working Group agreed with this assessment.</p> <p><u>Rule 243.10 (Active Membership)</u></p> <p>The Temporary Judges Working Group agreed that attorneys who serve as temporary judges do not need to be active members of the State Bar.</p> <p><u>Rule 243.20[(d)] (Limitation) [This provision has been referred to the Supreme Court.]</u></p> <p>Even though temporary judges who</p>

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				not serve if one side is an attorney or if one side is self-represented. Part of the training in ethics and fairness for these folks is meant to cover dealing with pro pers. Why do it if they’re not going to hear those cases? And I think they should hear those cases.	are attorneys may generally act fairly and impartially when one party in a case before them is an attorney and the other is not, the non-attorney may feel that the process and/or outcome is unfair. Hence, to avoid actual or potential problems or an appearance of unfairness or impropriety, the rule should be adopted.
26.	Hon. Thomas M. Maddock Presiding Judge Superior Court of California, County of Contra Costa Martinez	AM	N	<u>A. Comments in Response to Specific Questions Raised by the Rules and Projects Committee (RUPRO)</u>  1. Should the temporary judge rules on qualifications, training stipulations, and conflicts in Title Two not be applicable to attorneys who serve as temporary judges on alternative dispute resolution and case management purposes?  No to all of no. 1. It is not clear what “case management purposes” actually means in this context. If this refers to the attorney who is assisting in the settlement of cases, these rules should not apply. They should also not apply to attorneys who serve as temporary judges for alternative dispute resolution matters. The	<u>A. Comments in Response to Specific Questions Raised by the Rules and Projects Committee (RUPRO)</u>  1. This states the first RUPRO question.  The Working Group has revised the rules to be clearer on how they apply to attorneys who assist the courts in settlement and case management matters. The rules have been modified to explain that an attorney need not be a temporary

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				<p>Contra Costa Superior Court considers that the parties have certified the qualification of a particular attorney when they stipulate that the attorney should be appointed temporary judge for just their case.</p> <p>2. Should the rule providing criteria for presiding judges on the use of temporary judges by the courts in Title Six be applicable to temporary judges used for alternative dispute resolution and case management purposes?</p> <p>No. (See comments in question 1 above.)</p> <p>3. Do the rules distinguish sufficiently clearly between settlement attorneys and settlement temporary judges?</p> <p>No. The language contained in Advisory Committee Comment (subdivision c) should be incorporated into the rule.</p>	<p>judge to assist in settlement. But if the attorney performs judicial functions, he or she must be properly qualified and trained as a temporary judge. Also, all temporary judges who serve on case management must be properly qualified and trained. Stipulation alone is not sufficient to ensure that court-appointed temporary judges are properly trained and qualified.</p> <p>2. This states the second RUPRO question</p> <p>The Working Group disagreed. (See response to comment 1 above.)</p> <p>3. This states the third RUPRO question.</p> <p>The Working Group agreed. It has clarified the rule by incorporating the Advisory Committee Comment.</p>



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				<p>4. Should the Advisory Committee Comment to rule 243.13 concerning the use of attorneys who are not temporary judges to assist in settlement be made part of the rule?</p> <p>Yes.</p> <p>5. Should the rule governing the training of attorneys appointed as temporary judges for settlement purposes set forth in greater detail the distinction between settlement and mediation?</p> <p>Yes.</p> <p>6. Should a party be permitted to withdraw a stipulation to a matter being tried by a temporary judge after the temporary judge has had a ruling?</p> <p>The parties should not be permitted to withdraw a stipulation to a matter being tried by a temporary judge until after the hearing is</p>	<p>4. This states the fourth RUPRO questions.</p> <p>The Working Group agreed. It has incorporated the comment into rule 243.13(c)(3)(D).</p> <p>5. This states the fifth RUPRO question.</p> <p>The issue is no longer relevant because the entire provision requiring separate training on settlement has been eliminated from the rules.</p> <p>6. This states RUPRO’s sixth question.</p> <p>The Working Group disagreed in part. Parties should be allowed to</p>

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				<p>concluded. Further, the parties’ stipulation should not necessarily be binding for future hearings.</p> <p>7. Should the required contents of the training for temporary judges be more flexible to provide that temporary judges do not need to be trained in certain listed subjects if they will not be adjudicating such issues?</p> <p>Yes.</p> <p>8. Is the rule providing for a temporary judge administrator and prescribing the administrator’s duties necessary? Instead of the proposed rule, should more discretion be given to presiding judges over how to administer the</p>	<p>withdraw stipulations after some partial rulings of the grounds for disqualification only appear afterward. But under these circumstances, the provisions of rule 243.20(g) should apply.</p> <p>7. This states RUPRO’s seventh question.</p> <p>The Working Group disagreed. I concurred with another commentator who stated that it is not practical or desirable to try to determine which parts of the contents of the training program should be omitted. It is better that each temporary judge in an area receive training in all the minimum contents prescribed in that specific area.</p> <p>8. This states RUPRO’s eighth question.</p>

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				<p>program in each county?</p> <p>This rule is unnecessary. Instead, the presiding judge must be given discretion to manage the program, as he or she deems appropriate. If courts are required to create an administrator position that is separate from the court’s ADR administrator, this may place an undue (and unachievable) financial burden on the courts.</p> <p><u>B. Comments relating to training requirements:</u></p> <p>On-the-job training is often equally as important as formal training. The rule should allow flexibility to give credit for time spent in on-the-job training.</p> <p>This proposal is so onerous (length of time for initial and continuing training) that the vast majority of attorneys may not be willing to serve as temporary judges. Why should they jump through all of these hoops for something</p>	<p>The Working Group disagreed with this comment. It is important for each court to designate a person responsible for the temporary judges in that court to assist the presiding judge with his or her duties concerning temporary judges. However, the Temporary Judge Administrator rule is intended to be flexible and practical, as explained in the Advisory Committee Comment to rule 6.743.</p> <p><u>B. Comments relating to training requirements:</u></p> <p>It is unclear how this suggestion would work. The new rules recognize the importance of years of experience as a practicing attorney.</p> <p>The length of time required for training has been modified so that it should not be perceived as onerous. The proposed amount of training should significantly enhance the</p>

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				<p>that pays them little or nothing? Given the numbers of attorneys who have competently served as temporary judges for many years, the cost and extent of this additional training does not clearly relate to a public benefit. The adoption of this proposal may severely and negatively impact the court’s ability to maintain a temporary judge program. This negative impact will result in reduced court services to the public.</p> <p><u>Rule 243.13(c)(2)(D) (Substantive Training in Other Areas):</u></p> <p>Until judicial courses are formally developed, we may have difficulty finding attorneys who meet the training requirements. Therefore, it may be helpful for the courts to be able to accept attorney continuing education courses in the subject areas in lieu of the court-sponsored course work.</p> <p>The costs associated with providing the training described in these rules will be substantial, and there are no provisions for funding this training. Courts will not have the resources to fund the</p>	<p>quality of temporary judging statewide. There is a definite public benefit to ensuring that all temporary judges have at least a minimum amount of training on bench conduct and demeanor, ethics, and each area of substantive law in which they will hear cases. The Working Group disagrees that the impact will be reduced services and believes strongly that there will be improved services throughout the state.</p> <p><u>Rule 243.13(c)(2)(D) (Substantive Training in Other Areas):</u></p> <p>To explain and clarify that courts may recognize MCLE courses provided by others, the Advisory Committee Note to rule 243.14 has been expanded.</p> <p>As just mentioned, courts may recognize training and substantive law provided by other providers. Courts may also charge a</p>

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				<p>extensive training curriculum. The possibility of asking attorneys to pay for this training, especially if they serve as temporary judges without compensation, appears remote.</p> <p>Research attorneys sometimes sit as temporary judges in civil actions. The training requirement will mean additional time off for them to attend the required trainings and, of course, additional court cost to cover the expense.</p> <p>Many of the attorneys appointed as temporary judges in the Contra Costa Superior Court are volunteering their time. This rule will require them to take additional unpaid time to complete 9 hours of additional training, and the rule requires that such training be in person. (At a minimum, distance learning and self-study should be permitted.) The 9 hours of training might be okay if MCLE courses qualify to satisfy the requirement, but MCLE requires only 4 hours of ethics training, not the 6 hours</p>	<p>reasonable cost for the expenses they incur in providing training programs.</p> <p>Research attorneys, like other attorneys, must satisfy all the requirements to be appointed and serve as temporary judges. Each court should determine if this training is a valuable use of their time. Other factors may also affect whether a court decides to use research attorneys as temporary judges. The Working Group takes no position on the use of research attorneys as temporary judges.</p> <p>The rules have been modified to require less time for training and to be more flexible about the methods of training. Courts will be able to provide MCLE credit for courses. Still courts are encouraged to provide more training if feasible.</p>

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				<p>proposed by this rule. Further, the 6 hours required focus on judicial ethics so the attorney MCLE ethics courses are not likely to pertain.</p> <p><u>Rule 243.11(d) (Extraordinary Circumstances):</u></p> <p>The “extraordinary circumstances” in this section should allow for up to 15 court days service in a three year period, particularly for smaller courts.</p> <p>C. <u>Comments related to experience requirements:</u></p> <p><u>Rule 243.10:</u></p> <p>It is absolutely necessary that attorneys have been active members of the State Bar before being appointed to serve as a temporary judge.</p> <p><u>Rule 243.13(a):</u></p>	<p><u>Rule 243.11(d) (Extraordinary Circumstances):</u></p> <p>The Working Group considered various changes in the rule, such as proposed here, but concluded that 10 days in the three-year period is appropriate.</p> <p>C. <u>Comments related to experience requirements:</u></p> <p><u>Rule 243.10:</u></p> <p>Based on all the comments, the Working Group decided that this requirement was not necessary and will unduly reduce the pool of attorneys available to assist the courts as temporary judges. The rules will ensure that attorneys—regardless of their active or inactive status—are properly trained and qualified.</p> <p><u>Rule 243.13(a):</u></p>

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				<p>Requiring 5 years of active membership in the State Bar should be sufficient, especially since municipal court judges (who only had to have 5 years experience) were elevated to superior court judges (who had to have 10 years of practice) following unification. If the requirement remains at 10 years membership in the State Bar, there are likely to be disputes regarding whether this means 10 years total, or 10 years of continuous, uninterrupted active practice. This matter should be clarified at the outset.</p> <p>D. <u>Comments related to handling cases involving self-represented litigants:</u></p> <p><u>Rule 243.20[(d)] [This provision has been referred to the Supreme Court.]</u></p> <p>We absolutely disagree with the final provision of this rule. There is no foundation in fact or experience that would indicate a need for this rule. This rule would present a significant problem in family law and unlawful detainer cases and the vast majority of these cases involve pro pers.</p>	<p>The Working Group disagreed. Like subordinate judicial officers (see rule 6.660), temporary judges should be required to have been admitted to practice for 10 years before being appointed, unless the court for god cause permits an attorney with at least 5 years experience to serve. The criteria of “admitted to practice... for at least 10 years before the appointment” is quite clear.</p> <p>D. <u>Comments related to handling cases involving self-represented litigants:</u></p> <p><u>Rule 243.20[(d)] [This provision has been referred to the Supreme Court.]</u></p> <p>The Working Group based on its experience disagreed. There are problems both real and perceived that warrant the limitations imposed by this rule.</p>

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				<p><u>Comments related to supervision and performance evaluation requirements:</u></p> <p>Direct supervision and performance evaluation may be difficult particularly in family law where you have many different attorneys sitting as temporary judges for short periods of time (i.e., a day here and there). It is also particularly difficult for traffic and small claims calendars, as these assignments are often in outlying facilities. If the court had an available judge to observe the proceedings, there would have been no need for assigning a temporary judge to call that calendar.</p> <p><u>Rule 243.17(a):</u></p> <p>The requirements listed in this rule are too onerous unless some hours can be completed via distance learning.</p> <p><u>Rule 6.743:</u></p> <p>The requirements under this rule are unnecessary and excessive. For all courts (but most especially for small courts) the level of bureaucracy anticipated by this rule would be</p>	<p><u>Comments related to supervision and performance evaluation requirements:</u></p> <p>The rule leaves it to the discretion of the presiding judge in each court as to what monitoring or review processes should be used in that court.</p> <p><u>Rule 243.17(a):</u></p> <p>The training requirements for continuing education—as for the initial education—would be more flexible than originally proposed.</p> <p><u>Rule 6.743:</u></p> <p>The Working Group believes that it is crucial to have an administrator responsible for performing the functions under rule 6.743. But the</p>



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				<p>onerous. These matters should be left to the discretion of the presiding judge.</p> <p><u>Rule 6.744:</u></p> <p>Courts should be able to use their own applications as long as required data elements are captured.</p> <p><u>Rule 6.745:</u></p> <p>There is no need for this rule. Performance evaluation criteria and procedures should be left to the discretion of the presiding judge.</p> <p><u>Rule 6.745(a):</u></p> <p>Unclear what level of performance review is expected. While it is important to ensure that all attorneys appointed to serve as temporary judges meet high standards, the language should be structured so that the courts aren’t required to maintain an elaborate, time-intensive process.</p> <p><u>Other Issues (Compensation):</u></p>	<p>new Advisory Committee Comment explains that this rule should be flexibly applied.</p> <p><u>Rule 6.744:</u></p> <p>The Working Group agreed that the application form should not be mandatory.</p> <p><u>Rule 6.745:</u></p> <p>The Working Group believes that, although the procedures should generally be left to the discretion of the presiding judge, the general guidance provided by this rule will be helpful to the courts.</p> <p><u>Rule 6.745(a):</u></p> <p>The Working Group believes, as just indicated, that the performance review process should generally be left to the discretion of the presiding judge.</p> <p><u>Other Issues (Compensation):</u></p>

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				We agree that this rule does not prohibit the court from compensating temporary judges when appropriate and as funds allow.	The Working Group has not taken any position on whether temporary judges should be compensated. This is beyond the scope of its charge.
27.	Hon. Bob W. McNatt Presiding Judge Superior Court of California, County of San Joaquin Stockton	A	N	No specific comment.	No response required.
28.	Ms. Sheila Mentkowski Committee Member Access and Fairness Committee Sacramento	A	N	Agree with the draft report.	No response required.
29.	Mr. Edward F. Mills Attorney Santa Clara	AM	N	1. We use extensive numbers of pro tem judges in our family court and on the calendars of our child support commissioners. The limitations on the use of pro tems in cases where one side is represented could have a major negative impact on the efficient management of cases on these calendars, unless there is clarification that the limitation does not extend to cases where DCSS appears on behalf of the county, our calendars will become badly backed up.  Currently, I have fifteen pro tem judges with between five and ten years’ experience on two	1. The rules on court-appointed temporary judges do not apply to commissioners or other subordinate judicial officers who serve as temporary judges. (Rule 243.11(a).) Unless the temporary judges are not commissioners, the rules will not apply to them.  The rules do require 10 years experience, which is the same as for

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	<b>Commentator</b>	<b>Position</b>	<b>Comment on behalf of group?</b>	<b>Comment</b>	<b>Working Group’s Response</b>
				<p>different calendars. We can ill-afford to have their volunteer time restricted.</p> <p>2. The training requirements should specify that the required hours can be granted MCLE credit.</p> <p>3. I see no clear-cut definition of the distinctions between ADR providers and pro tem judges.</p> <p>Please consider revising the proposed rules to clarify these points.</p>	<p>commissioners. (See rule 6.660.)</p> <p>2. An Advisory Committee Note to rule 243.14 has been added to clarify that courts may offer courses in MCLE credit. Also, AOC/CJER and the State Bar have been working together to make it possible for all courts to offer MCLE credit.</p> <p>3. This distinction has been clarified in the revised rules. (See rules 243.13(c)(3)(D).) As indicated above, the rules have been clarified.</p>
30.	Hon. George A. Miram Presiding Judge of the Superior Court of California, County of San Mateo Redwood City	N	N	<p>This rule goes too far in formalizing training for judge pro tems. We will lose most of our best pro tems because of the additional training required. They don’t have time for it. In our county, we will have great difficulty covering our existing needs, which are constantly expanding. In my view, this rule will perpetuate and empower the very pro tems we hope to avoid—those who seek the office for personal ego gratification and power. It will dissuade attorneys with busy (successful) practices. It is</p>	<p>The Working Group disagrees that the rules on training have gone too far. Modifications have been made in response to the comments. The proposed rules on training are practical, realistic, and will ensure and improve the quality of temporary judging throughout the state. The rule also includes provisions to ensure that attorneys will not merely use the status of</p>

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				a good idea gone too far.	temporary judge for personal ego gratification or power. The experience of courts that have recently established, improved, or expanded their training programs indicates that good attorneys will respond positively to these programs.
31.	Hon. Peter J. Mirich Judge of the Superior Court of California, County of Los Angeles San Pedro	AM	N	I agree with the training requirements for judge pro tems. However, occasionally courts are unable to assign trained pro tems. In unusual or emergency situations, the supervising site judge should be allowed to authorize an attorney with proper experience to be assigned as a judge pro tem.  <u>Reason for comment:</u> At the San Pedro Branch, I am the judge who handles traffic, small claims and unlawful detainers when pro tems do not show up or the assignment office is unable to find a trained attorney from their list. When that occurs, I must continue cases (which upsets litigants and attorneys), work through lunch hours (which upsets administration in light of judicial assistant and bailiff overtime), or handle cases in the late afternoon which should have been resolved by 10:30 a.m.	In general, the rules provide for flexibility in terms of appointing attorneys as temporary judges. In large courts, the court will need to determine how the training program appointments, assignments, and exceptions will operate.

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				I think that by allowing the supervising site judge, in an unusual or emergency situation, to appoint, as a judge pro tem, a willing attorney with 10 or 15 years of experience (although not having completed the pro tem training class) eliminates unnecessary delay and costs to litigants and attorneys.	Under the rules, exceptions for “extraordinary circumstances” would be up to the presiding judge. These exceptions should be fairly unusual in large courts that have a substantial pool of qualified temporary judges.
32.	Ms. Pam Moraida Court Program Manager Fairfield	A	N	No specific comment.	No response required.
33.	Ms. Elizabeth B. Mulford Attorney at Law Cupertino	AM	Y	I have been a family law attorney for 30 years and for many years served as a judge pro tem. I have reviewed the proposed rules and have the following concerns:  1. <u>Rule 243.13(C)(1)</u> :  I concur that the attorney must have completed ethics courses of at least six hours taught by competent people. It seems to me that any course that qualifies for MCLE or specialization credit should qualify. I fail to understand why this should be on six-hour course.	1. <u>Rule 243.13(C)(1)</u> :  For practical reasons, the Working Group has revised the course to provide for (1) three hours of bench contact and demeanor training, and (2) three hours of ethics training. The Working Group agrees that both of these are very important. The substantive law training would be for three hours in each area in which the temporary judge serves;

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				<p>2. <u>Rule 243.20(d)(3) final paragraph [This provision has been referred to the Supreme Court.]</u></p> <p>I fail to see why a judge pro tem may not be a pro tem when one side has an attorney and the other is in pro per. The notion that judges handle these situations with more fairness or more sensitivity rather than very accomplished members of the State Bar seems groundless in my experience. I, therefore, consider that inappropriate.</p> <p>3. <u>Rule 243.20(d)(1) and (2) [This provision has been referred to the Supreme Court.]</u></p> <p>Given the fact that often there are morning and afternoon calendars (six departments in our courthouse), this provision would limit a great number of people able to serve as pro tems on a given day. I see no reason for it and suggest that it be stricken.</p>	<p>and courses for MCLE credit may be approved by the court.</p> <p>2. <u>Rule 243.20(d)(3) final paragraph [This provision has been referred to the Supreme Court.]</u></p> <p>The reason is that it may appear to an unrepresented party that if an attorney serving as a temporary judge rules against them, that attorney has unfairly favored the other side. Even if not accurate, there may be a perception of unfairness that should be avoided.</p> <p>3. <u>Rule 243.20(d)(1) and (2) [This provision has been referred to the Supreme Court.]</u></p> <p>The Working Group disagreed. The rule avoids the possibility of an appearance of impropriety or unfairness (if, say, a party before the temporary judge sees that attorney later the same day as an advocate in a similar kind of proceeding). By restricting the rule to proceedings in the same</p>

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					courthouse on the same day in similar kinds of proceedings, it has been cast quite narrowly.
34.	Hon. Dennis E. Murray Superior Court of California, County of Tehama Red Bluff	AM	N	<p>1. <u>General Objections:</u></p> <p>My primary objection to these proposed rules is that they create an intricate and extensive set of rules that simply would not work in small courts. In the smallest courts, generally meaning those with five judicial officers or less, but even in somewhat larger courts, there is a fundamental difference in the appointment of temporary judges and in the way that temporary judges are used.</p> <p>Proposed rule 243.12(a) states, “the purpose of court appointment of attorneys as temporary judges is to assist the public by providing the court with a panel of trained, qualified, and experienced attorneys....” That may very well be the purpose in large courts with programs</p>	<p>1. <u>General Objections:</u></p> <p>The rules have been modified so that they should operate effectively for small as well as large courts. Exceptions have been made for courts that use temporary judges only very rarely. (See rule 243.11(d) (exception for “extraordinary circumstances”) and rule 243.13(c)(3)(e) (exception for courts that use temporary judges fewer than 10 times in a calendar year).) These exceptions would allow smaller courts to use attorneys who have not received training in substantive law.</p> <p>It is important that all temporary judges should receive proper training, particularly on bench conduct and demeanor and ethics. The goal of providing trained, qualified temporary judges should</p>

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				<p>with established panels of attorneys who regularly serve as temporary judges. Temporary judges are simply not used that way in small courts. In small courts, temporary judges are used on a sporadic basis, without regularity, often at the last minute, or they are appointed for specific cases where appointment of a temporary judge may be necessary or even just convenient. For example, a typical appointment might be to cover a calendar at the last minute due to the unavailability of a judge in order to avoid inconveniencing attorneys and litigants and to make use of an available courtroom.</p> <p>Unlike large counties, the attorneys who serve are often doing it as a favor to the court without compensation. To ask those same attorneys to go through a training program would be both unfair and impractical. While, for example, a two-hour ethics educational program over the Web may not seem overly burdensome, it becomes so when the attorney has been asked to cover a court calendar at the last minute for half a day, and it may be literally years before the attorney is asked to serve as a temporary judge again. It is impractical in the sense that many small courts use temporary judges so seldom that it would be nonsensical to ask attorneys to undergo training or ethics programs, not</p>	<p>apply to all courts regardless of size.</p> <p>It is not only in small counties that attorneys serving as temporary judges are not compensated. In almost all courts, the attorneys serve voluntarily as temporary judges without compensation. Furthermore, the attorneys generally agree to participate in training.</p> <p>The Temporary Judges Working Group strongly believes that all temporary judges should receive minimum training in bench conduct and demeanor and ethics. These</p>



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				<p>knowing when or if you would use them, but just to have them trained so that if at the last minute you needed them, you could.</p> <p>It is recognized that one, if not the main, purpose of the set of rules is to protect the public. Small courts have some protections in that regard that large courts do not and cannot have. In small courts, temporary judges are individually appointed; in other words, not from the list or a panel. The judge making the appointment knows the attorney, knows the attorney’s qualifications, knows the attorney’s reputation in the community, knows the attorney’s work habits, and ultimately is held much more personally responsible for that appointment than a judge would be in a large court.</p> <p>Additionally, because rural areas have fewer attorneys, the attorney pool of potential appointees could be significantly limited. There may not be that many attorneys, if any, who would be interested. We should seek to avoid appointing based upon longevity when there may be more qualified attorneys who don’t have the required number of years since admission.</p>	<p>requirements should not depend on the size of the court.</p> <p>The rules, as indicated, are intended to protect the public and ensure trust and confidence in the judicial system. In this respect, minimum qualification and training standards should be satisfied on every court in California regardless of size or other factors. Even if the presiding judge knows the attorney very well, that attorney will need training on ethics, conflicts rules, and bench conduct.</p> <p>It is true that rule 243.13(a) requires at least 10 years’ experience as a member of the State Bar to ensure that experienced attorneys are appointed. This is the same amount of State Bar experience as required for judges and commissioners. However, in a county where the pool of qualified attorneys is very small, the rule permits the presiding</p>

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				<p>2. <u>Legal Issues:</u></p> <p>I do not take issue with the rule-making authority of the council to establish rules regulating the use of temporary judges. In fact, such rules already exist. I do, however, question the validity of some of these rules because they may run afoul of the prohibition regarding rules that conflict with constitutional authority.</p> <p>Article 6, section 21 requires only that there be a stipulation and that the appointee be a member of the State Bar. (See <i>People v. Moore</i> (1969) 270 Cal.App.2d 486, 490.) The proposed rules would add other conditions, including that the appointee be an active member of the State Bar and be admitted to practice for at least 10 years (proposed rule 243.13(a)). I respectfully submit that rules which restrict the court’s power in exercise of discretion under section 21, by adding additional criteria prior to appointment of a temporary judge are of questionable validity. For example, if the court were to appoint an inactive member of the State Bar admitted to practice for 4 years as a temporary judge, the court would be specifically acting</p>	<p>judge to appoint attorneys with only 5 years’ experience if there is good cause.</p> <p>2. <u>Legal Issues:</u></p> <p>As explained in the report, the Judicial Council has the authority to promulgate rules concerning temporary judges. There is no conflict with constitutional authority.</p> <p>The Working Group disagreed with the commentator’s interpretation of the council’s rule-making authority to adopt the proposed rules. The Judicial Council has authority to promulgate the rules on temporary judging under article VI, section 6 of the Constitution, which authorizes the council to “adopt rules for court administration, practice, and procedure.” The authority to prescribe the proposed rules is evident from a review of recent constitutional history.</p>

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				<p>under its constitutional power, yet would be acting unlawfully under the Rules of Court.</p>	<p>Until 1966, the California Constitution’s section on temporary judges contained a specific provision that stated that the selection of temporary judges “shall be subject to the approval and order of the court in which said cause is pending <i>and shall also be subject to such regulations and orders as may be prescribed by the Judicial Council.</i>” (Cal. Const., art. VI, sec. 22 (italics added).)</p> <p>In 1966, this language in section 22 was eliminated when article VI, section 6 was amended to broaden the scope of the council’s rule-making authority. The 1966 amendments, however, were not intended to diminish the council’s authority to make specific rules relating to temporary judges. On the contrary, the California Constitution Revision Commission expressly explained the reason for the elimination of the language authorizing the council to make rules on temporary judges in section 22 as follows: “Reference to the</p>

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					<p>selection of pro tem judges being subject to Judicial Council rule was <i>deleted as unnecessary in view of proposed Section 6 giving rule-making authority to the council.</i>” California Constitution Revision Commission, Proposed Revision of the California Constitution (San Francisco, February 1996), p. 98 (emphasis added.).</p> <p>Thus, the history of the 1966 constitutional amendments shows that the Judicial Council’s general rule-making authority under article VI, section 6 includes the specific authority to make rules concerning temporary judges. Furthermore, this is an area of crucial interest to the judicial branch; and it is one in which the Legislature has taken little action. Hence, rule-making concerning temporary judges is an entirely appropriate area in which the Judicial Council may act.</p> <p>Finally, the 1969 <i>People v. Moore</i> opinion mentioned in the comment does not consider this constitutional</p>

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				<p>3. <u>Proposed Exceptions:</u></p> <p>The primary issue being addressed by the proposed rules is the use of temporary judge “programs,” as they are generally used in large counties. Since these programs generally do not exist in small counties, and given the vastly different conditions in small counties, I request that the rules have exceptions either based on court size or based upon the number of days temporary judges are used in any calendar or fiscal year.</p> <p>For example, [the rules should] create an exception and make the rules inapplicable to any court that does not use temporary judges for more than 10 days per year, or any temporary judge that serves on a single case in any calendar of fiscal year. The latter suggestion is to address a situation where a judge may only be appointed for one case, but the case extends longer than 10 days.</p> <p>Second, I suggest that perhaps the rules should</p>	<p>history nor address the council’s rule-making authority, which this history demonstrates extends to cover making rules concerning temporary judges.</p> <p>3. <u>Proposed Exceptions:</u></p> <p>The goal of the Working Group in proposing the rules is to ensure that all attorneys who serve as temporary judges are qualified and properly trained. This should not be a matter of court size. Nonetheless, the rules for practical reasons recognize that some exceptions should be made for small courts.</p> <p>The rules have been modified to recognize certain exceptions that apply to small courts, is explained above.</p>

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				<p>only apply where the court does not appoint the temporary judge on a case-by-case basis.</p> <p>I submit this may be appropriate for two reasons. First, if the court makes the appointment on a case-by-case basis, there is a more considered decision as to the temporary judge being appointed. Second, since a case-by-case appointment would be highly impractical for most of the calendars where temporary judges are being used in a “temporary judge program,” the rules would generally apply in the area where they are most needed, but would probably avoid some of the legal issues which I have previously addressed.</p>	The Working Group disagreed with this proposal for a case-by-case exception. It would provide an open-ended exception that would make it unclear when or under what circumstances a court might recognize an exception to the rules requiring that all attorneys serving as temporary judges should be properly qualified and trained.
35.	Ms. Sharon Ngim State Bar of California State Bar Standing Committee on the Delivery of Legal Services San Francisco	A	Y	The State Bar Standing Committee on the Delivery of Legal Services (SCDLS) wholeheartedly supports the proposed rule changes as they will improve the quality of temporary judges, many of whom sit on cases that impact low-income, moderate-income, and self-represented litigants, especially in the areas of small claims, family law and traffic. Also, SCDLS encourages the Judicial Council to implement the changes in a timely manner.	The Temporary Judges Working Group notes the support of SCDLS for the proposed rules. As the commentator observes, the rules will particularly impact law-income, moderate-income, and self-represented litigants, especially in the areas of small claims, traffic, and family law.
36.	Ms. Mary Oaklund Attorney	A	N	In Alameda County, family law departments have pro tems that comply with your current	The new rules should support and enhance existing programs that

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	Oaklund & Oaklund San Leandro			<p>proposed rules in that:</p> <ul style="list-style-type: none"> <li>• The pro tem has practiced 10 years;</li> <li>• Is a family law attorney known to the court; and</li> <li>• Alameda County has extensive MCLE and encourages attorneys to attend.</li> </ul> <p>Therefore, I am curious to know if the new proposed rule is adding some “layer” of formal training for pro tems versus qualified family law attorneys who are willing to “help-out” when the court has a time of need.</p>	provide for the minimum qualifications and training of temporary judges. The statewide rules will provide minimum standards for experience and training. To the extent local rules or policies require higher standards, the new rules support these. (See rule 243.13(d).)
37.	Mr. Robert J. O’Hair Chairperson Family Law Executive Committee of Sacramento County Bar Association Sacramento	AM	Y	<p>Our comments primarily deal with the concern over the requirements for education. In the proposed rules, there are significant requirements that appear to us that an attorney serving as a settlement judge in our court would require nine hours of training. This is nine hours of training that would have to be created by our court system on judicial ethics.</p> <p>We have an extremely successful pro tem program whereby the attorneys are conducting settlement conferences.</p> <p>The problem is we use approximately 70</p>	<p>The rules relating to attorneys and temporary judges assisting in settlements have been revised in response to this and other comments. Rule 243.13(c)(3)(D) has been clarified. It states that an attorney need not be a temporary judge to assist the court on settlement.</p> <p>However, if the attorney performs any judicial function such as entering a settlement on the record, he or she must be qualified and trained as a temporary judge. The</p>

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				<p>attorneys to have this program conducted four days per week. To get this many attorneys trained would be virtually impossible, and our system would likely shut down. One possible solution would be to grandfather people who have been serving as temporary judges for the last number of years.</p> <p>However, this would still place a huge burden on our court system to set up a training program and train this many pro tems in that over the years the new pro tems will have to be replaced. Our concern is that for settlement purposes, we do conduct a two-hour training program for anybody new coming into the program. Is anything else really necessary?</p>	three-hour minimum training requirement on settlements has been eliminated.
38.	Justice Kathleen E. O’Leary, Chair Judicial Council Task Force on Self-Represented Litigants Judicial Council of California San Francisco	AM	Y	The Task Force on Self-Represented Litigants commends the Working Group on Temporary Judges for their thoughtful proposal. All too often pro tem judges are assigned to hear cases involving self-represented litigants. While we look forward to the time that the courts are adequately staffed so that temporary judges need not be used, it is critical that until that time, pro tem judges are appropriately selected, supervised, educated and evaluated to ensure that all persons appearing before a judge receive fair and equal treatment. These proposed rules	The Working Group notes the support of the Task Force on Self-Represented Litigants for the new rules.



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				<p>appropriately address both the potential for actual conflicts and the appearance of impropriety.</p> <p>The Task Force looks forward to working with staff to assist in developing the curriculum for temporary judges on issues regarding self-represented litigants. Given the high number of self-represented litigants that the courts face, this training is particularly critical. This training was recommended for pro tems as well as other judicial officers in the Statewide Action Plan for Serving Self-Represented Litigants, prepared by the Task Force, which was approved by the Judicial Council in February, 2004.</p>	The offer of assistance by the Task Force in developing training for temporary judges is appreciated.
39.	Mr. David Oppenheim Executive Director Child Support Directors Association Sacramento	AM	Y	<p><u>Rule 243.20[(d)] [This provision has been referred to the Supreme Court.]</u></p> <p>The Child Support Directors Association would agree with the proposal if modified by removing the reference to family law in rule 243.20[(d)] and removing the following paragraph in rule 243.20[(d)]: "In addition, an attorney may not serve as a temporary judge in these types of cases if one party in the case is an attorney or is represented by an attorney and the other party or parties are not[.]"</p>	<p><u>Rule 243.20[(d)] [This provision has been referred to the Supreme Court.]</u></p> <p>The Working Group disagreed with the proposed modifications. The limitation in rule 243.20[(d)] is intended to prevent the appearance of unfairness that may occur when an attorney is assigned to serve as a temporary judge in a case in which one party is an attorney or</p>

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				<p>Parties make decisions to hire a lawyer for their own subjective reasons. To limit a potential judicial officer because one of the parties has chosen not to be represented, whether temporary or not, has no basis in law or fact. It is giving greater consideration to a party that has chosen not to "hire" a lawyer. It is a consideration that has traditionally not been given to a party and has no inherent truth or value. Other legal avenues may be chosen by either party to eliminate any real prejudice.</p> <p>This rule would unnecessarily limit the use of Temporary Judges where they are needed the most. At least 50% or more of the family law calendar is made up of parties that are not represented. Many of those individuals have opposing counsel on the other side. There is no inherent or real conflict that this Rule would eliminate or resolve. Thus, singling out family law for this specific rule serves no real purpose.</p>	<p>represented by an attorney and the other party is self-represented. Even if the case is handled fairly, a self-represented party in this situation may perceive the process as unfair. This problem may be particularly an issue in family law and unlawful detainer cases. Hence, the rule as proposed should be adopted. The percentage of cases affected appears to be less than indicated in the comment.</p>
40.	Ms. Jody Patel Executive Office Superior Court of California, County of Sacramento Sacramento	AM	N	The educational requirements proposed will ensure the quality of temporary judges used by courts in California; however, we are concerned that these same requirements will reduce the available pool of volunteers. Some of the	As the comments indicate, the new education rules will ensure the quality of temporary judges used by the courts. The minimum training requirements have been made

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	<b>Commentator</b>	<b>Position</b>	<b>Comment on behalf of group?</b>	<b>Comment</b>	<b>Working Group’s Response</b>
				<p>attorneys donating their time to serve as temporary judges may find the new regulations to be burdensome and will withdraw from service.</p> <p>Also, the requirement that an attorney serving as a temporary judge be an active member of the State Bar would leave out those retired attorneys who still volunteer their time. We would strongly suggest that consideration be given to allowing retired attorneys to continue to serve as temporary judges.</p>	<p>shorter and more flexible based on the comments. The experience of courts that recently instituted training programs suggests that the response of attorneys will be favorable. The rules have been revised to allow voluntarily inactive members of the State Bar to serve as court-appointed temporary judges.</p>
41.	Hon. Norma Castellanos-Perez Commissioner Superior Court of California, County of Tulare Visalia	AM	N	<p>The rules need to clarify the role of pro tems sitting on AB 1058 calendars with pro pers and DCSS attorneys. If there may be no pro tems when there are attorneys and self-represented litigants, there will be an effect on case management and calendar assignments for judges.</p> <p>You need to have child support specific training. (Family Code section 4053 requires specific training for AB 1058 Commissioners.)</p>	<p>The rules will have some impact on calendars in which attorneys and self-represented litigants both appear.</p> <p>While the rules do not expressly provide for such training, they prescribe that courts must determine what additional training is required in subjects not expressly covered in the rules. (See rule 243.13(c)(3)(C).)</p>
42.	Ms. Tina Rasnow	AM	N	This should be implemented as soon as possible.	To give courts and attorneys time to

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	Senior Attorney/Coordinator Superior Court of California, County of Ventura Ventura			<p><u>Rule 243.13 (Requirements)</u></p> <p>A court-appointed temporary judge should not have record of discipline.</p> <p>Should there be an exception under rules for pro tem judges presiding over Teen/Peer/Youth courts in that 5 years experience as attorney is sufficient and training specific to youth court is all that is required.</p> <p><u>Rule 243.18 (Stipulation):</u></p> <p>Under 243.18, the stipulation should not be the “sign-in sheet” for the litigants, but a separate explanation of the rights being waived and consequences.</p> <p><u>Rules 243.14(a) and 243.17 (Training)</u></p>	<p>satisfy the new requirements, a delayed implementation date is provided. (Rule 243.11(e).) However, training should begin as soon as possible.</p> <p><u>Rule 243.13 (Requirements)</u></p> <p>The application process should disclose whether any record of discipline exists. The presiding judge has the discretion whether to make any appointment.</p> <p>The Working Group did not make any exceptions to the 10-year rule. For good cause, the presiding judge may allow an attorney with at least 5 years’ experience to serve.</p> <p><u>Rule 243.18 (Stipulation):</u></p> <p>Rule 243.18(b) prescribed the contents of the notice about stipulation. This notice may be given either by conspicuous sign or by written notice. (See rule 243.18(c).)</p>

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	<b>Commentator</b>	<b>Position</b>	<b>Comment on behalf of group?</b>	<b>Comment</b>	<b>Working Group’s Response</b>
				Training for temporary judges should be required on a regular basis. ADA training and language access issues should be covered.	<u>Rules 243.14(a) and 243.17 (Training)</u> Training on bench conduct, and access and fairness is required for all attorneys who serve as temporary judges
43.	Mr. Tony Richardson Chair California Commission on Access to Justice	AM	Y	<u>Overall Purpose of the Proposed Rules</u>  Temporary judges tend to be used in areas of the law where many of the litigants are indigent and self-represented, such as in small claims courts and in landlord-tenant and family law disputes. As a result, a de facto “second class” system of justice has been inadvertently created. While the proposed rules on training, ethics and administration will go a long way to ensure that temporary judges are qualified, what should be expressed as an overall purpose of these rules is an intention to limit and ultimately even phase out the use of temporary judges on a regular basis.  In order to ensure equal access to the court system, every litigant should be entitled to have his or her case heard by a sworn judicial officer. For this reason, the proposed rules should emphasize and reinforce the concept that temporary judges should be used only as a stop	<u>Overall Purpose of the Proposed Rules</u> The Working Group shared the concerns of the commentator. It agreed that it would be better to have full-time judicial officers hearing all types of cases. However, the judicial needs legislation is moving slowly; hence, it is important to ensure that all temporary judges are qualified and trained.

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				<p>gap measure to address a temporary need. Proposed rule 6.742(b)(1) does provide that “the convenience of the court alone is not sufficient to warrant the use of attorneys as temporary judges.” The Access Commission recommends that the conditions under which temporary judges are to be used be worded even more strongly and that this be a more prevalent theme in the proposed rules overall, as discussed in more detail below.</p> <p><u>Rule 243.10 (and 243.13(b)(2))</u></p> <p>The Access Commission supports the requirement that all temporary judges be active members of the State Bar, as this is one further step in ensuring competence, knowledge of the judicial system and ongoing legal training. But we are aware that this requirement may make it difficult for certain state employees to serve as temporary judges. Therefore, perhaps an exemption for certain state employees should be considered.</p> <p><u>Rule 243.12</u></p>	<p>Rule 6.742(b) expressly provides an appointment should be made only if it “is necessary to fill a judicial need in that court.” The Judicial Council’s Rules and Projects Committee regarded the language regarding necessity to be sufficiently clear that the reference to “convenience of the court” was not needed and should be deleted.</p> <p><u>Rule 243.10 (and 243.13(b)(2))</u></p> <p>Based on all the comments, the Working Group concluded that attorneys should not be required to be active members of the State Bar to serve as temporary judges. The required training under the rules will ensure competence and knowledge. A limitation that would exclude inactive members would prevent many qualified retired and publicly employed attorneys from serving.</p> <p><u>Rule 243.12</u></p>

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				<p>The Access Commission supports the assignment of oversight to the presiding judge, as this will also be a means of ensuring proper oversight.</p> <p><u>Rule 243.13(a)</u></p> <p>The Access Commission believes that exceptions to the 10-year rule should be limited to extraordinary circumstances on a case-by-case basis.</p> <p><u>Rule 243.13(b)</u></p> <p>The Access Commission suggests that court staff attorneys not be allowed to serve as temporary judges, or that they be allowed to serve only in exceptional circumstances. An attorney may not feel comfortable refusing to stipulate to that person being a temporary judge because of his or her relationship to the sitting judge. Further, if an attorney complains on behalf of one client, he or she may be concerned that the rejection of the staff attorney in a prior case could hurt future clients.</p> <p><u>Rule 243.13(c)</u></p>	<p>The Working Group agreed with this comment.</p> <p><u>Rule 243.13(a)</u></p> <p>The rule provides for a good cause exception. This is similar to the provision in rule 6.660 that applies to subordinate judicial officers. The same standard is appropriate in both situations.</p> <p><u>Rule 243.13(b)</u></p> <p>The Working Group took no position on this issue.</p> <p><u>Rule 243.13(c)</u></p>

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				<p>This section should cross-reference section 243.17, clarifying that this training is required every three years.</p> <p><u>Rule 243.13(d)</u></p> <p>This rule should be amended to emphasize that the requirements set forth in section 243.13(c) are the minimum requirements any temporary judge should satisfy before appointment and that the presiding judge is responsible for ensuring that a temporary judge receives any additional training necessary for the temporary appointment. For this reason, we recommend that the language “if it is feasible to do so” be deleted and replaced with “as necessary.”</p> <p><u>Rule 243.17</u></p> <p>The continuing education requirement should be clarified to ensure that any attorney serving as a temporary judge regularly receives training, whether or not they have actually served or are only on the approved list during that three-year period. To this end, the Access Commission</p>	<p>References to training “within the previous three years” have been added to rule 243.13(c). Rule 243.17 further clarifies that additional training is required every three years.</p> <p><u>Rule 243.13(d)</u></p> <p>Rule 243.13(d) has been revised to indicate that the presiding judge should establish additional requirements beyond minimum ones set under rule 243.13 if feasible.</p> <p><u>Rule 243.17</u></p> <p>This clarification is unnecessary. The rule requires continuing training in order to serve.</p>



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				<p>recommends amending the first sentence to state “Any attorney seeking appointment as a temporary judge must attend and successfully complete every three years an ethics course and a course in each substantive area in which the attorney applies to serve as a temporary judge.”</p> <p><u>Rule 243.18(b)</u></p> <p>The notice requirement should be amended to add a requirement to subdivision (1) because this procedure for notice, alone, will not likely result in a meaningful stipulation. Instead, subdivision (1) should also require that the parties enter into an oral stipulation in open court. In addition, prior to a court appearance, self-represented litigants should be directed to an office designated by the court for additional information regarding the ramifications of stipulating to a temporary judge.</p> <p><u>Rule 243.20(d) [This provision has been referred to the Supreme Court.]</u></p> <p>This proposed rule should be edited to clarify that service by an attorney who represents one side, or “one category” of litigants, would be prohibited. For example, in family law courts,</p>	<p><u>Rule 243.18(b)</u></p> <p>The stipulation rule has been clarified, but this additional requirement of our oral stipulation has not been added.</p> <p>Failure to object after notice is sufficient to constitute a stipulation to a temporary judge.</p> <p><u>Rule 243.20(d) [This provision has been referred to the Supreme Court.]</u></p> <p>The Working Group agreed that the term “one side” should be explained. A statement has been</p>

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				<p>an attorney who only represents husbands would not be restricted by this provision because the husbands may be plaintiffs or defendants.</p> <p><u>Rule 243.20(f) [This provision has been referred to the Supreme Court.]</u></p> <p>This provision should be amended to allow a waiver only if both sides in a case are represented by an attorney, because the risk is too great that a self-represented litigant will agree to waive a disqualification without understanding the significance of the disclosure of his or her waiver.</p> <p><u>Rule 6.742(b)(1)</u></p> <p>As written, this proposed rule suggests that convenience can be a factor in determining whether to utilize temporary judges, but it just cannot be the only factor. The access Commission believes that this was not the intention of the drafters, and the misinterpretation can be eliminated by deleting</p>	<p>added to the Advisory Committee Comment clarifying this term.</p> <p><u>Rule 243.20(f) [This provision has been referred to the Supreme Court.]</u></p> <p>Rule 243.20(f) establishes limitations that protect self-represented litigants. The Working Group declined to go farther and limit the ability of parties to waive disqualifications or limitations under rule 243.20(f). The waiver provisions contain protections for the parties.</p> <p><u>Rule 6.742(b)(1)</u></p> <p>At the suggestion of the Judicial Council’s Rules and Projects Committee, the reference to “convenience of the court” should be deleted. The remaining sentence in (b)(1) makes it clear that an appointment must be “necessary to</p>

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				<p>the word “alone.” We feel strongly that this rule should clearly state that the convenience of the court should not be a basis at all for warranting the use of attorneys as temporary judges.</p> <p><u>Rule 6.742(c)</u></p> <p>The Access Commission strongly supports the reporting requirement set forth in this rule, because the information reported can help identify problems posed by the use of temporary judges as well as where there is a need for more judicial officers.</p> <p>In addition to the three requirements listed in the proposed rule, we recommend adding a requirement that the report list the names of the attorneys appointed to serve as temporary judges and their length and frequency of service.</p> <p>Also, to avoid extensive, long-term service as a temporary judge, we believe that the working group should consider an upper limit of days of service per year by any one individual and a possible total limit of days of service.</p> <p><u>Rule 6.743</u></p>	<p>fill a judicial need in that court.”</p> <p><u>Rule 6.742(c)</u></p> <p>The Working Group did not believe it necessary to collect this additional information on a statewide basis.</p> <p>The Working Group considered establishing such limits, but decided the length and total amount of service should left up to the discretion of the courts.</p> <p><u>Rule 6.743</u></p>

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	<b>Commentator</b>	<b>Position</b>	<b>Comment on behalf of group?</b>	<b>Comment</b>	<b>Working Group’s Response</b>
				In addition to the duties listed in (b)(1)–(11), the Access Commission recommends adding that the Temporary Judge Administrator be responsible for responding to questions from self-represented litigants regarding the use of temporary judges in their cases.	While this might be a duty for the Temporary Judge Administrator, courts may want to assign it to another employee. Hence, the rule has not been changed.
44.	Mr. Leonard Sacks Attorney Attorney at Law Granada Hills	A	N	No specific comment.	No response required.
45.	Hon. Lisa Steingart Commissioner Superior Court of California, County of Santa Clara San Jose	N	N	Same as comment 46.	Same as responses to comment 46.
46.	Superior Court of California, County of Los Angeles Los Angeles	AM	Y	1. <u>Active Membership (Rule 243.10)</u>  Proposed rule 243.10 provided that a court-appointed temporary judge must be an active member of the State Bar. Los Angeles county currently has approximately 25 retired attorneys who serve as temporary judges. It is worthy of consideration whether those who retire in good standing should continue to be permitted to serve as temporary judges. Retired attorneys are particularly helpful in emergency situations.	1. <u>Active Membership</u>  The Working Group agreed that retired attorneys can be helpful to the courts by serving as temporary judges. It has concluded that voluntarily inactive members of the State Bar should be allowed to serve as temporary judges. The rules have been modified to allow this.

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				<p><u>2. Requirements for Appointment (Rule 243.13(b)(2))</u></p> <p>Proposed rule 243.13(b)[(2)] provides that one may not serve as a temporary judge if previously convicted of a felony. The current Los Angeles County Superior Court policy is to exclude anyone from serving who has suffered either a felony or a misdemeanor conviction. However, recently the court has considered circumstances of candidates who have suffered a misdemeanor conviction more than ten years ago.</p> <p>Therefore, it might also be appropriate to state in this rule that “the presiding judge shall have the discretion to enact an even more restrictive policy regarding convictions and judicial determinations.” For example, those who have been convicted of certain misdemeanors or those against whom a domestic violence restraining order has been granted may not be suitable to serve in this capacity. (Proposed rules 6.741(b) and 6.744(d) do, however, confer on the presiding judge the right to approve and remove any judge pro tem.)</p> <p><u>3. Continuing Education (rule 243.13(c)/Effective Date</u></p>	<p><u>2. Requirements for Appointment (Rule 243.13(b)(2))</u></p> <p>As the commentator states, the proposed rules prohibit an attorney who has been convicted of a felony from serving as a temporary judge. (See rule 243.13(b)(2).) Also, the rules require disclosure by the attorney of any misdemeanors. (See rule 6.744(b)(16).) As the commentator mentions, the rules leave it to the sole discretion of the presiding judge whether to appoint or remove any temporary judge. Hence, the proposed rules do not need to specify further that the presiding judge has the discretion to enact an even more restrictive policy than provided under rule 243.13(b)(2).</p> <p><u>3. Continuing Education (rule 243.13(c)/Effective Date</u></p>

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				<p>Proposed rule 243.13(c) mandates a minimum continuing education requirement for court-appointed temporary judges of at least six hours of ethics training and three additional hours of training in each substantive area of law that the temporary judge intends to sit. This training must be repeated every three years, as per proposed rule 243.17. The Los Angeles Superior Court has approximately 1,200 attorneys in our program at this time. As such, there may be additional staffing needs to coordinate and monitor the training requirements. Moreover, a July 1, 2006, implementation date is unrealistic for Los Angeles County. A more feasible date would be January 1, 2007.</p> <p><u>5. Training (Length of Time)</u></p> <p>The number of volunteers may diminish as the result of these requirements. While a well-trained volunteer panel is essential, but it might be appropriate to reduce the hours of ethics training to an amount consistent with that required of judicial officers.</p>	<p>The proposed rules have been modified to provide for 3 hours of in-person training in bench conduct, demeanor, 3 hours of ethics, and 3 hours of substantive training in each area in which the temporary judge is assigned. The training in the last two categories may be by any method approved by the court. This may lessen the training burden for many courts.</p> <p>The Working Group agreed and recommends an operative date of January 1, 2007.</p> <p><u>5. Training (Length of Time)</u></p> <p>Based on the experiences of courts that have recently been introduced to training, the requirements should not significantly reduce the number of volunteers. Also, the rules have been further modified to require 3 hours of ethics training by any means approved by the court. (Rule 243.13(c)(2).)</p>

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				<p>Additionally, while Los Angeles Superior Court may be able to handle all training requirements, some smaller courts may be greatly impacted. Consideration of their needs should be given.</p> <p>6. <u>Rule 243.14(d)</u></p> <p>Proposed rule 243.14(d) applies to an attorney who has been appointed to serve as a temporary settlement judge. Although it appears that this section does not apply to mediators assigned through our ADR program, it would be clearer if the rules so stated.</p>	<p>The rules have been further modified to reflect the needs of smaller courts, including more flexible training standards and an exception to the substantive training requirements for courts in which temporary judges are used fewer than 10 times altogether in a calendar year. (See rule 243.13(c)(3)(E).)</p> <p>6. <u>Rule 243.14(d)</u></p> <p>This subdivision on training for temporary judges on settlement has been eliminated. Also, the rules have been modified to expressly state that an attorney need not be a temporary judge to assist at settlement conferences. However, an attorney assisting the court on settlement conferences, such as entering a settlement on the record under C.C.P., § 664.6 must be a qualified temporary judge who has satisfied the training requirements under rule 243.13(c)(1) and (c)(2). (Rule 243.13(c)(3)(D).)</p>

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				<p>7. <u>Rule 243.18(c)</u></p> <p>Proposed rule 243.18(c) provides a mechanism for the withdrawal of a stipulation for the appointment of a temporary judge upon a showing of good cause. Such a mechanism is not available for other judicial or subordinate judicial officers. If it were made clear that Code of Civil Procedure section 170.1 applies to temporary judges, this section would otherwise be unnecessary and could be potentially problematic.</p> <p>8. <u>Rule 243.20(d)] [This provision has been referred to the Supreme Court.]</u></p> <p>Proposed rule 243.20(d)] prohibits an attorney from serving as a temporary judge in family law or unlawful detainer proceedings if, in the same type of proceeding, the lawyer either (1) holds himself or herself out to the public as representing exclusively one side; or (2) represents one side in 90 percent or more of the cases in which he or she appears. It also prohibits a temporary judge from hearing a matter if counsel represents one side but the other is pro per.</p>	<p>7. <u>Rule 243.18(c)</u></p> <p>The Working Group considers the procedure in (c) for withdrawal of a stipulation to be a simpler, more straightforward procedure than that available under C.C.P., § 170.1–170.3. That statutory procedure would be cumbersome, not only for self-represented litigants, but also for the courts. Hence, subdivision (c) should be retained.</p> <p>8. <u>Rule 243.20(d)] [This provision has been referred to the Supreme Court.]</u></p>



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				<p>While the concern addressed by this section is understandable, there has to be some level of trust and confidence that attorneys, when they sit as temporary judges, will do so in a neutral and professional manner. Otherwise, where should the line be drawn? For example, why should a criminal defense lawyer be permitted to hear traffic matters or a personal injury attorney a slip and fall case?</p> <p>Furthermore, the restriction that prevents a temporary judge from hearing a matter wherein only one side is represented may significantly impact the numerous calendars that handle unlawful detainers, as well as the proposed family law department that will be staffed by temporary judges (and others that are so covered when the judicial officer is unavailable). Perhaps additional work in this area is necessary and the Los Angeles Superior Court Pro Tem Judges Committee is prepared to assist in any efforts.</p> <p>9. <u>Rule 243.20[(e)(2)]</u> <i>[This provision has been</i></p>	<p>This comment accurately states the rule. Attorneys acting as temporary judges should be trusted to be fair and impartial. Nonetheless, the Working Group believed that there is a sufficient potential appearance of impropriety where an attorney exclusively represents one side or represents one side in 90% or more of his or her cases in unlawful detainer and family law cases to warrant the limitations in rule 243.20[(d)].</p> <p>There will be some impacts from rule 243.20[(d)] on the availability of attorneys to serve as temporary judges; however, the benefits in terms of fairness and the public perception outweigh this burden.</p> <p>9. <u>Rule 243.20[(e)(2)]</u> <i>[This</i></p>

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				<p><i>referred to the Supreme Court.]</i></p> <p>Proposed rule 243.20[(e)(2)] prohibits a lawyer from serving as a temporary judge if the attorney is presently a party to any action in the court on the same type of case. For good cause, the presiding judge may waive this limitation. An alternative approach might be to highlight the temporary judge’s obligation to disclose the information and, if appropriate, to recuse himself or herself.</p> <p>10. <u>Rule 243.34(a)</u></p> <p>Proposed rule 243.34(a) addresses motions to seal records in a cause before a privately-compensated temporary judge. “The motion or application must be heard by the judge to whom the case is assigned or, if the case has not been assigned, to the presiding judge.” To be consistent with the language throughout the proposed rules, the concluding sentence should instead state that “the motion or application must be heard by the judge to whom the case is assigned or, if the case has not been assigned, by the presiding judge, <i>or the judge designated by the presiding judge.</i>”</p>	<p><i>provision has been referred to the Supreme Court.]</i></p> <p>The comment accurately states the rule. The rule avoids any appearance of impropriety or unfairness that may result from the appointment of an attorney to serve as a temporary judge in a case involving another attorney and a non-attorney. The Working Group did not regard disclosure or recusal as adequate alternatives to this rule.</p> <p>10. <u>Rule 243.34(a)</u></p> <p>The additional phrase is not necessary. (The presiding judge has the authority to apportion court business and assign cases under rule 6.603.)</p>

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				<p>11. <u>Rules 243.12(d), 6.741(a), and 6.743(b)</u></p> <p>Similarly, proposed rules 243.12(d), 6.741(a) and 6.743(b) refer to the responsibilities of the presiding judge. For consistency and practicality, it might be better if each of these proposed rules reads: “the presiding judge, <i>who may delegate this task to another judge or a committee of judges.</i>”</p> <p>12. <u>Rule 6.746</u></p> <p>Proposed rule 6.746 states that “[e]ach court must have procedures for receiving, investigating, and resolving complaints against court-appointed temporary judges.” Inclusion of the word “resolving” might imply that the ruling of a temporary judge can be modified other than through an appeal. An alternative choice of words would be “[e]ach court must have procedures for receiving, investigating, <i>responding to and addressing</i> complaints against court-appointed temporary judges.</p> <p>13. <u>Other Comments</u></p> <p>Finally, the Judicial Council’s Rules and Projects Committee has asked for comment on a</p>	<p>11. <u>Rules 243.12(d), 6.741(a), and 6.743(b)</u></p> <p>The additional phrase is not necessary. (The presiding judge has the authority to apportion court business and assign cases under rule 6.603.)</p> <p>12. <u>Rule 6.746</u></p> <p>The current language is sufficiently clear because “resolving” refers to “complaints” and not to resolving the temporary judge’s rulings.</p> <p>13. <u>Other Comments</u></p> <p>The rules have been revised to include further clarification about</p>

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				<p>number of matters. In short, it would be appropriate for the rules to better distinguish between attorneys who sit as temporary judges to hear cases versus those who serve for alternative dispute resolution and case management purposes.</p> <p>The rules should also set forth in greater detail the distinction between settlement and mediation, as well as the distinction between settlement attorneys and settlement temporary judges. The proposed rules, though, should not apply to those who serve on the ADR volunteer panel.</p>	<p>the use of temporary judges for settlement and case management purposes. (See rule 243.13(c)(3) (C)–(D) and the Advisory Committee Comment to that rule.</p> <p>The rules no longer include a requirement for training on settlement. They do include further clarification on settlement attorneys versus settlement temporary judges, as indicated above. And the rules would not apply to those who serve on an ADR volunteer panel. ADR volunteers are not temporary judges.</p>
47.	Superior Court of California, County of Santa Clara San Jose	–	Y	<p><u>Rule 243.10</u> (Defining of temporary judge)</p> <p>The definition is unclear whether the temporary judge is to be an active member of the State Bar.</p> <p><u>Rule 243.11(d)</u> (Temporary judges appointed by the trial courts. Exception for extraordinary</p>	<p><u>Rule 243.10</u></p> <p>The definition expressly states that “temporary judge” means “an active or inactive member of the State Bar.” The provision that court-appointed temporary judges must be active members has been removed from the definition and from elsewhere in the rules.</p> <p><u>Rule 243.11(d)</u></p>

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				<p>circumstances)</p> <p>How does the AOC define “extraordinary circumstances?” This could be a troublesome clause.</p> <p><u>Rule 243.12(d)</u> (Court appointment of temporary judges—Responsibility of the presiding judge for appointments)</p> <p>The court does not have money budgeted for a temporary judge administrator. Is the AOC planning to provide funds for this position?</p> <p><u>Rule 243.13(a)</u> (Requirements for court appointment of an attorney to serve as a temporary judge—Experience required for appointment and service)</p> <p>Our pro tem programs have been working well with a 5-year minimum State Bar membership requirement, and likely could be seriously impacted by an increase to a new minimum of 10 years. What is the reason for the increase, and is it really necessary?</p>	<p>The commentator is correct that this term is not defined. The concept of “extraordinary circumstances” will need to be developed based on the experience of the courts.</p> <p><u>Rule 243.12(d)</u> The Working Group recognizes that this position may require some additional resources, particularly in courts that newly constitute training programs. It further notes that a number of courts already have staff performing this function, though not under this rule.</p> <p><u>Rule 243.13(a)</u></p> <p>There are a number of reasons for establishing the 10-year standard. For instance, it will ensure a minimum level of current experience. The 10-year level is used for subordinate judicial officers. (See rule 6.660.) Using this</p>

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				<p><u>Rule 243.13(c)</u> (Education and training requirements)</p> <p>If the training requirement is mandatory, and applies to all temporary judges, including those presently serving, we will have to scrap everything that we already have working so well for us, especially in family and civil cases. It seems an insult to ask pro tem judges in Santa Clara County, many of whom have been volunteering their time for 10 or more years, and who are specialists in family law and civil practice, to undertake training to learn how to do what they have been doing so effectively for so many years. There is great concern here that they would refuse to sign up for the new program. Wouldn’t there be a way for them to satisfy the educational requirement with their State Bar MCLE requirements? Why does the mandatory ethics training have to be in person instead of by broadcast as the substantive training is allowed to be? Can’t these requirements be phased in gradually so as to maintain existing successful programs using temporary judges? Could those attorneys</p>	<p>same standard should help eliminate concerns that a two-tiered system of justice is involved when a court uses temporary judges.</p> <p><u>Rule 243.13(c)</u></p> <p>The establishment of minimum training standards for court-appointed temporary judges should not require the court to scrap everything it has been working on. On the contrary, it should help improve the quality of the court’s program even further. Training is widely accepted as desirable for attorneys, subordinate judicial officers, and judges. Ensuring that temporary judges are properly trained on bench conduct, ethics, and substantive law is desirable and reasonable. In substantive areas, the rules permit the courts to approve MCLE courses provided by others as satisfying the training requirements. The ethics training, which will be provided by the court, maybe provided in a variety of ways under the rules which have</p>

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				<p>currently working as temporary judges be “grandfathered” into the new system, to avoid a decrease in available volunteer judges when many decide not to undertake what they may consider to be unnecessary and time-consuming educational requirements?</p> <p><u>Rule 243.17(a)</u> (Continuing education)</p> <p>The continuing education classes every three years would be an additional burden, unless programs are allowed to use their State Bar MCLE credits to satisfy this requirement.</p> <p><u>Rule 243.20(c)–(d)</u> (Limitations in family law; Other Limitations) <i>[This provision has been referred to the Supreme Court.]</i></p> <p>It would be unworkable for us not to have pro tem assistance in family law cases where one side is appearing pro se, as that situation</p>	<p>been modified based on the comments. The rules also allow for a year (i.e., until January 1, 2007) for attorneys to complete the training except to some aspects of training in small claims which by statute must be completed before July 1, 2006. The experience of courts that have recently introduced training has been positive. Attorneys have responded favorably to the new programs and have not considered them “unnecessary and time-consuming.”</p> <p><u>Rule 243.17(a)</u></p> <p>Continuing education is valuable. In substantive areas, courts may allow temporary judges to use their MCLE courses to satisfy the requirements.</p> <p><u>Rule 243.20(c)–(d)</u> <i>[This provision has been referred to the Supreme Court.]</i></p> <p>The Working Group was aware that there will be an impact on the</p>

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				<p>pertains in a significant number of family law cases here. Furthermore, it is very common in Santa Clara County for an attorney to serve as a pro tem the same day as he or she appears as an attorney in another matter in the same court facility. This has not presented a problem for us, but not allowing it would create a real problem in scheduling and in the availability of pro tems.</p> <p><u>Rule 6.742(b)(1)</u> (Use of attorneys as court-appointed temporary judges)</p> <p>It is proposed that a pro tem may be used only to fill a “judicial need,” but not when it is for the “convenience of the court alone.” What is the definition of a “judicial need?” When is a “judicial need” not for the “convenience of the court?”</p>	<p>courts from the limitation on attorneys serving as temporary judges in family law cases in which one party is represented by an attorney and the other is not. But it concluded that the risk of an appearance of unfairness to the self-represented party outweighs the burden in the courts.</p> <p><u>Rule 6.742(b)(1)</u></p> <p>The term “judicial need” is used in a practical, not a technical, sense. A “judicial need” includes the situation where there is a shortage of sufficient bench officers to fill a position. At the suggestion of the council’s Rules and Projects Committee, the statement concerning “convenience” has been removed as unnecessary; the requirement that the appointment “is necessary to fill a judicial need” is sufficiently clear.</p>
48.	Mr. Ty Tasker Los Angeles	AM	N	In that the stated goal is to have comprehensive rules governing judge pro tems, the rules should	The Working Group did not take any position on the use of research



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				<p>also address unique aspects of the many employed court research attorneys already serving in California courts statewide as judge pro tems.</p> <p>Related rules could state that trial court employees may: (1) count towards training requirements their other training compliance already required of them by the California Rules of Court (e.g., fairness and ethics training); (2) serve as judge pro tem as part of their usual work assignment and as part of their regular salary earnings; (3) serve as judge pro tem in the same department to which they are assigned to serve as research attorney or staff attorney; and (4) serve as judge pro tem outside of their employment and in any California county.</p>	attorneys.
49.	Hon. Patrick E. Tondreau Judge of the Superior Court of California, County of Santa Clara San Jose	N	N	Same as comment 46.	Same as responses to comment 46.
50.	Ms. Diane Wasznicky Liaison to Family and Juvenile Advisory Committee Bartholomew, Wasznicky & Molinaro LLP Attorneys at Law Sacramento	N	N	<p><u>Rule 243.19 (Disclosures) [This provision has been referred to the Supreme Court.]</u></p> <p>Technically every opposing counsel a temporary judge has dealt with qualifies as a “professional” relationship. This is an extraordinarily burdensome, and realistically</p>	<p><u>Rule 243.19 (Disclosures) [This provision has been referred to the Supreme Court.]</u></p> <p>The Working Group disagreed. On an individual case basis, the temporary judge will know what he</p>

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				<p>probably impossible, standard to meet. The temporary judge should have to disclose any and all possible personal relationships or situations wherein the temporary judge may have some economic tie to a party/attorney appearing before him or her.</p> <p>I also object to the limitation in rule 243.20[(d)] unlabeled sentence at end regarding not hearing case if one side is unrepresented. This is neither necessary nor efficient. Many cases often only involve one attorney but trained temporary judges can certainly insure that the pro per does not get intimidated or go unheard. This would have a dramatic and negative impact on currently efficient settlement programs in family law cases.</p>	<p>or she needs to disclose.</p> <p>This rule is based on rule 244(c), which has been in effect for a number of years.</p> <p>This provision has been numbered as rule 243.20(d)(3). The Working Group disagreed with the comment that the provision is not necessary or efficient. It avoids the problem or the appearance of a problem that arises when an attorney is assigned as a temporary judge in a case in which one party is an attorney or represented by an attorney and the other side is not. Finally, the provision should not impact settlement. The disqualification rule has been revised to indicate it does not apply to temporary judges serving solely in the capacity of a settlement judge. (See rule 243.20(b).</p>
51.	Ms. Chris Zupanovich Program Coordinator, Legal Services Outreach	AM	Y	Same as comment 43.	Same responses to comment 43.

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	San Francisco				