



Judicial Council of California • Administrative Office of the Courts

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: February 28, 2012

Title	Agenda Item Type
Temporary Judges: Recruitment, Selection, and Appointment of Temporary Judges by the Court	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Cal. Rules of Court, rules 10.741 and 10.743	July 1, 2012
Recommended by	Date of Report
Access and Fairness Advisory Committee Hon. James R. Lambden, Chair	September 20, 2011
	Contact
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Executive Summary

The Access and Fairness Advisory Committee recommends that the Judicial Council amend two rules of court relating to the oversight and administration of temporary judge programs. These amendments would encourage greater diversity in the selection and appointment of temporary judges, enhance transparency and openness in the temporary judge selection process, and complete the council's 2005 direction to the Temporary Judges Working Group to review whether any rules should be amended to include broad diversity considerations in the recruitment and selection of temporary judges.

Recommendation

The Access and Fairness Advisory Committee recommends that the Judicial Council, effective July 1, 2012:

1. Amend rule 10.741 (Duties and authority of the presiding judge) to:
 - Require courts, except those that have nine or fewer authorized judge positions, to publicize the opportunity to serve in a temporary judge position whenever the court seeks to add attorneys to its pool of temporary judges or within a reasonable time before

conducting its mandatory training for temporary judges, but in any case, no less than once every three years ((b)(1));

- Require courts to publicize the opportunity in a manner that maximizes the potential for a diverse applicant pool and provides an equal opportunity for all eligible individuals to seek appointment as a temporary judge ((b)(2));
- Ensure nondiscrimination in the selection and appointment of temporary judges ((c)); and
- Encourage presiding judges to consider, as an additional qualification for selection and appointment, an applicant's experience with, or exposure to, diverse populations and issues related to those populations ((c)); and

2. Amend rule 10.743 (Administrator of temporary judges program) to incorporate by reference the amendments to rule 10.741.

The text of the amended rules is attached at pages 9–11.

Previous Council Action

At its December 2, 2005, meeting the Judicial Council adopted, effective July 1, 2006, a comprehensive set of rules relating to court-appointed temporary judges, beginning with rule 10.740.¹ The rules were proposed jointly by the Civil and Small Claims and the Traffic Advisory Committees, after considering the recommendations of the Temporary Judges Working Group (working group), which was established in 2005 to develop proposals relating to temporary judge programs in the trial courts.

When the council adopted these rules, it directed the working group to review a number of additional matters, including whether then rules “6.741 . . . 6.743(b)(3), or any other rule should be amended to include broad diversity considerations in the recruitment and selection of temporary judges.”² The working group subsequently circulated a proposal to amend rule 10.741 in spring 2008, shortly before the group was scheduled to sunset. The working group referred that proposal, along with the comments it received, and its recommendations to the advisory committee for further consideration.

Rationale for Recommendation

The advisory committee considered a number of factors in developing this proposal, most notably the budget crisis facing the judicial branch, the working group's recommendation, and recommendations received from the council's Rules and Projects Committee (RUPRO). The advisory committee predicts that some courts will necessarily increase their use of temporary judges to conduct court proceedings due to staff reductions and the lack of financial resources.

¹ Rule 10.740 was originally adopted as rule 6.740 (and later amended and renumbered, effective January 1, 2007, as rule 10.740), effective July 1, 2006, with an operative date of January 1, 2007.

² December 2, 2005, Judicial Council Meeting Minutes, p.17.

This proposal is based upon the working group’s recommendation to address diversity considerations by proposing amendments to the existing temporary judge program rules. The working group’s 2008 proposal adapted the provisions of standard 10.21(b)–(c) of the Standards of Judicial Administration to expressly apply to court-appointed temporary judges and to place those provisions in rule 10.741(b)–(c). The 2008 proposal was consistent with one of the alternatives the Rules and Projects Committee suggested to the working group in 2006. The salient provisions of the working group’s proposal were that:

- each court be required to “publicize the existence of its temporary judge program at least once annually through state and local bar associations, including specialty bar associations”;
- “[t]his publicity should encourage and provide an opportunity for all eligible individuals, regardless of gender, race, ethnicity, disability, sexual orientation, or age, to seek positions as court-appointed temporary judges”;
- “[e]ach trial court also should use other methods to publicize its program that maximize the opportunity for a diverse applicant pool”; and
- “[e]ach trial court that uses court-appointed temporary judges should conduct an application and selection procedure for temporary judges, which ensures that the most qualified applicants for an appointment are selected, regardless of gender, race, ethnicity, disability, sexual orientation, or age.”

Based on the comments received on the 2008 proposal, when the working group referred this matter to the Access and Fairness Advisory Committee for further consideration, it recommended two modifications to that proposal—that courts using temporary judges should conduct a recruitment procedure no less than once every three years, rather than annually,³ and to replace the words “state and local” with “local or state.”⁴ In all other respects, the proposal mirrored standard 10.21.

Following the working group’s recommendation, the advisory committee proposes that the council mandate the primary provisions of standard 10.21 regarding the appointment of attorneys, arbitrators, mediators, referees, and others (see Appendix A) to the recruitment and selection of temporary judges. This proposal would add those provisions to existing rule 10.741 governing the duties and authority of the presiding judge in the administration of temporary judge programs.

³ Some commentators contended that requiring annual recruitment was too burdensome, particularly for small courts.

⁴ This change was to address concerns regarding the necessity that some courts publicize the opportunity through state bar associations and the concern expressed by smaller courts the local recruitment alone would be insufficient or ineffective.

First, proposed rule 10.741 would require courts that use temporary judges to publicize the opportunity to serve as a temporary judge whenever the courts seek to add attorneys to their lists of temporary judges or within a reasonable time before conducting mandatory training for temporary judges but, in any case, no less than once every three years, rather than annually as suggested in standard 10.21. The proposal that the recruitment process occur no less than once every three years is intended to permit the courts the flexibility in determining when to recruit, so long as they do so at least once every three years, when it seeks to add to their lists of temporary judges, or prior to offering the required training (for those courts that provide such training). This is consistent with the working group's recommended compromise on the publication requirement under standard 10.21. Under this proposal, courts could exercise discretion as to how often to publicize the opportunity within a three-year period. (Proposed rule 10.741(b)(1).)

Unlike standard 10.21, the current proposal requires publicizing the opportunity to serve *to* legal communities and organizations (including all local bar associations to the extent they exist in particular regions) in a manner that maximizes the potential for a diverse applicant pool. However, courts may, but are not required to, publicize *through* individual bar associations and legal organizations (in other words, by sending announcements to each group for publication). (CRC 10.741(b)(2)).

Second, unlike standard 10.21, the rule would exempt courts with nine or fewer authorized judge positions and those that use only their research attorneys as temporary judges from this requirement. (CRC 10.741(b).) The advisory committee proposes exceptions to the publication requirement of the proposal because the last three years of temporary judge usage data suggests that although usage varies from year to year, most courts with nine or fewer judge positions use temporary judges substantially less frequently than courts with 10 or more judge positions.⁵ Therefore, there are fewer opportunities for attorneys to serve as temporary judges in those courts. Moreover, based on the comments received, the committee concluded that the rule should eliminate any administrative burden associated with the publication requirement for courts with fewer resources. Finally, compelling those courts using only research attorneys in those positions to publicize the opportunity to serve would be unnecessary and would mislead attorneys outside those court communities to believe that temporary judge opportunities exist, when in fact, they do not. (CRC 10.741(b)(1).)

Third, the proposal requires that courts conduct an application and selection procedures in a manner that ensures the applicants selected meet the requirements for appointment and that otherwise qualified individuals are not rejected because of their gender, race, ethnicity, disability, sexual orientation, age, or other protected class. This proposal broadens the protected classes of individuals in the nondiscrimination provision to be consistent with the classes of protected individuals under Title VII of the Civil Rights Act of 1964.

⁵ For purposes of this rule, the number of judges in a particular court is based on the number of authorized and funded judge positions.

New subdivision (c) also states that courts are to consider, as an additional qualification for selection, an applicant's experience with or exposure to diverse populations and issues related to those populations. This provision is intended to incorporate and clarify the nondiscrimination provision of standard 10.21 and address the concerns of courts with diverse communities, but no or little diversity among their attorney populations. (CRC 10.741(c)).

The advisory committee further proposes to amend existing rule 10.743 by adding language that cross-references rule 10.741. This cross-reference would merely ensure that the duties of the temporary judge administrator are consistent with those of the presiding judge pursuant to the proposed amendment to rule 10.741. (CRC 10.743 (b)(3).)

The recommended amendments are intended to enhance transparency and openness in the temporary judge selection process as well as maximize the courts' ability to attract more diverse candidates for temporary judge positions to the extent that courts use them. An open selection process will enhance public confidence in local courts and the statewide judicial branch. The amendments also will assist the branch in reaching the diversity goals established by the council.

The committee is mindful of the current budget and staffing constraints the entire judicial branch is experiencing. However, it recommends the adoption of these rule amendments at this time because it recognizes that the dire financial situation in the branch may create the need for trial courts to increase their reliance on temporary judges to meet the courts' obligations to the public. By clarifying the roles and responsibilities of the presiding judges and temporary judge administrators, these statewide rules for appointment and selection of temporary judges can help the courts better use all the resources that exist in their communities to help meet the courts' needs for the assistance of temporary judges.

Comments, Alternatives Considered, and Policy Implications

The proposal was circulated for public comment during the spring 2011 invitation-to-comment cycle. The advisory committee received six comments in response to its proposal. Three commentators, Carolyn Demorst, (Mental Health Worker, Los Angeles), Laura Hertlein (Court Clerk, Superior Court of Amador County), and Michael Roddy (Court Executive Officer, Superior Court of San Diego County), agreed with the proposal. Two commentators, the Orange County Bar Association and the Superior Court of Monterey County, agreed with the proposal, if modified. The final commentator, the Trial Court Presiding Judges Advisory Committee/Court Executives Advisory Committee Joint Rules Working Group (JRWG) expressed agreement with the merits of the proposal, but took the position of not agreeing with the proposed amendments due to the branch's current fiscal crisis.

The comment chart is attached at pages 12-18.

Commentators' concerns and suggestions

The Orange County Bar Association disagreed with the exception to the publication requirement, stating that all courts should provide the opportunity, notwithstanding the size. The association also pointed out that the Advisory Committee Comment should be modified to be consistent with the rule proposal, as amended. The advisory committee disagrees, in part. The exception to the publication requirement is intended to give courts with more limited resources the flexibility to administer the temporary judge program in a manner that effectively uses those resources, yet conforms to the intent of the rule. This exemption does not eliminate the courts' obligation to have a recruitment and selection program under existing rule 10.740, but, in fact, requires that the program provide all attorneys in their respective locales with the opportunity to participate in it. The advisory committee agreed to amend the Advisory Committee Comment as suggested.

The Superior Court of Monterey County also commented that the publication requirement is too burdensome for courts that use temporary judges on a limited basis. The advisory committee has a different perspective and believes that courts' temporary judge usage data does not support that view, as discussed above. In addition, rule 10.740 encourages courts in the same geographical region to collaborate in the administration of their temporary judge programs. Such collaboration could potentially lessen any staffing or financial issues associated with publicizing the opportunity to serve as a temporary judge, particularly in those courts that use temporary judges only on a limited basis. The court also commented that attorney time necessary to apply, participate in the required training, and be sworn to serve could be wasted if there is not a significant need for use of temporary judges in a court. The advisory committee concluded, however, that the proposal only creates the obligation to advise all attorneys of the existence of the opportunity, in whatever manner the courts choose to publicize. A court could, for example, simply publicize the opportunity on the most accessible area of its public website, thereby providing full access to the announcement. Moreover, nothing in the proposal eliminates a court's ability to advise temporary judge applicants that the court uses temporary judges only to fill a judicial need (rule 10.742(1)), which may or may not regularly occur.

The Joint Rules Working Group of the Trial Court Presiding Judges and Court Executives Advisory Committees (JRWG) disagreed with the proposal and commented that (a) the amendments would have numerous and significant operational and fiscal impacts upon trial courts, and (b) the rules of court should not create new responsibilities unless absolutely necessary and driven by statutory mandates. It recommended that the advisory committee "re-evaluate how the proposals can be implemented with minimal impact to court operations"; and that it "could consider only moving forward the most critical and clearly mandated proposals, moving back or phasing in implementation deadlines, and identifying all available alternatives to lessen negative impacts to the courts." Finally, the JRWG suggested adding, as an exception to the publication requirement, those courts that use only their research attorneys as temporary judges.

The advisory committee disagrees, in part, with the JRWG's comments. It concluded that while the JRWG raises legitimate concerns that judges and staff are being asked to do more with fewer

resources, the fiscal impact of this proposal is negligible. Because of the fiscal crisis, the advisory committee expects some trial courts to use temporary judges to an even greater degree than the current usage data reflects. Accordingly, the advisory committee concluded that it is even more important that the recruitment and selection process currently established by rule 10.740 is fair and transparent, and that it is perceived as such. This is especially true as the public's access to the courts is predicted to become more difficult. Rule 10.741 only slightly expands the existing procedures to ensure that a fair and inclusive process is employed in implementing courts' temporary judge programs. Any perception that any court's program is a "closed" system is unacceptable. Thus, by announcing, publicizing, or advertising in any manner the court deems most effective given its resources (e-mail, website, etc.), the process is at least perceived as fair and transparent. Moreover, the court should only need to create the "publication" once. The same announcement can be used repeatedly. It is only the recipient list that may need to expand.⁶

Alternatives considered/options

The advisory committee considered the following alternatives:

Option 1. Propose that the council adopt existing standard 10.21 as a rule, retaining its current language.⁷ The advisory committee rejected that option because, due to the advisory, nonmandatory nature of the language used in judicial administration standards, this option would retain the status quo, about which the council was apparently concerned when it directed the working group to consider whether the temporary judge program rules or any others should be amended to include broad diversity considerations. While this option would not impose any additional requirements on the trial courts, it would not advance the strategic goals of the council, as discussed below.

Option 2. Propose that the council adopt the rule amendments, omitting "must" throughout and replacing it with "should." Again, the rule would be rendered optional. The advisory committee rejected this option for reasons previously stated, including those stated in option 1.

Option 3. Make no change. The advisory committee rejected this option for the reasons stated in option 1.

Implementation Requirements, Costs, and Operational Impacts

The Superior Court of Monterey County and the JRWG identified potential operational impacts for the advisory committee's consideration. The advisory committee's response to the superior court's and the JRWG's comments are discussed above.

⁶ The advisory committee can consider recommending the development of a sample announcement to assist the courts with this requirement.

⁷ Although amended rule 10.741 uses mostly the mandatory language common to rules, it does incorporate language from the portion of standard 10.21(b) that provides that the publicity "*should encourage*" (italics added) all eligible individuals to seek temporary judge positions. (See amended rule 10.741(b)(2).)

Courts with 10 or more authorized judge positions and that do not currently publicize the opportunity to serve as a temporary judge to all members of their legal communities will be required to publicize that opportunity at least once every three years. Courts have the flexibility to determine the manner of publication so long as it is designed to reach all attorneys and local bar organizations and that it maximizes the potential to achieve a diverse applicant pool. Courts using only research attorneys would not be required to publicize the opportunity to serve.

Although some staff time can be expected in developing the publication or announcement, the operational and fiscal impact should be minimal, depending on each court's preferred manner of publication. Moreover, the publication, once created, can be used repeatedly. To assist the courts with this task, the advisory committee can consider recommending the development of sample announcements to be posted on the *Serranus* website.

Relevant Strategic Plan Goals and Operational Plan Objectives

These rule amendments are intended to promote Goal I, Access, Fairness and Diversity, of the council's strategic plan (Goal I.2 and I.6) by:

- Enhancing transparency in the selection and appointment process, which is important in maintaining or increasing the gains in public trust and confidence that the courts have achieved during the past 10 years; and
- Fostering collaboration with justice system partners in the community to identify and recruit temporary judges for the judicial branch's workforce that reflect the state's diversity.

Attachments

1. Rules 10.741 and 10.743, at pages 9-11
2. Chart of comments, at pages 12-18
3. Attachment A: Text of Cal. Stds. Jud. Admin., std. 10.21

1 applicant's exposure to and experience with diverse populations and issues related
2 to those populations.

3
4 ~~(b)(d)~~ * * *

5
6 **Advisory Committee Comment**

7
8 **Subdivision (b).** This subdivision is intended to offer all attorneys who satisfy the
9 requirements for appointment under rule 2.812 the opportunity to serve as temporary
10 judges and to expand the size and diversity of the pool of eligible candidates. Pursuant to
11 the rule, courts that do not use temporary judges, that have nine or fewer authorized and
12 funded judge positions, or that only use their research attorneys as temporary judges are
13 exempt from the requirement to publicize the opportunity to serve as a temporary judge.
14 Courts that use temporary judges may publicize the opportunity in a manner they
15 determine to be most effective, given their individual circumstances. In attempting to
16 broaden the diversity of the temporary judge applicant pool, courts also have the
17 flexibility to widen the geographical areas in which they publicize the opportunity. Thus,
18 courts are not limited to publicizing their temporary judge program through the local or
19 state bar associations. However, they must include all local bar associations when they do
20 so. Further, the method of publication is purposefully left to the court's discretion. No-
21 cost methods exist, such as email, use of the court's public website, and oral
22 announcements at local bar association or legal organization events. Publicizing this
23 opportunity no less than once every three years should increase the potential for greater
24 diversity among the temporary judges who serve the courts.

25
26 **Subdivision (c).** This subdivision emphasizes that the selection and appointment process
27 must be devoid of discrimination. These provisions are intended to discourage favoritism
28 in the appointment process and permit the courts to consider, as an additional
29 qualification, an attorney's exposure to and experience with the diverse populations and
30 issues unique to that population in the county where they are seeking appointment.
31 "Exposure to and experience with diverse populations" includes work, social interaction,
32 educational experiences, or community involvement with individuals or groups from
33 diverse communities that may appear in court.

34
35 **Rule 10.743. Administrator of temporary judges program**

36
37 (a) * * *

38
39 (b) **Duties of administrator**

40
41 Under the supervision of the presiding judge, the Temporary Judge Administrator
42 is responsible for the management of the temporary judges program in the court.
43 The administrator's duties include:

44
45 (1)-(2) * * *

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

3
4
5

(4)-(11) * * *

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

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	Carolyn Demorst MHW Los Angeles	A		Agree
2.	Laura Hertlein Court Clerk II Superior Court of Amador County	A	I agree with the proposed exception in subdivision (b) (1) and believe that courts with less than 9 judges is a reasonable number that the exception would apply.	Agree
3.	Orange County Bar Association by John Hueston President	AM	The OCBA believes that the opportunity to participate as a temporary judge ought to be publicized in each trial court which uses temporary judges regardless of the number of actual judges sitting in that trial court. The rationale for the exemption that smaller trial courts do not significantly use temporary judges appears to miss the mark. All attorneys should be given an equal opportunity to participate. Also the Advisory Committee comments should be changed to reflect the amended proposal requirements and not the original proposal which was amended.	The Committee disagrees with the commentator regarding the rationale for exempting smaller courts. The exemption for courts with fewer than nine judge positions is in response to comments received in an earlier draft of the rule. It is intended to permit courts with more limited resources the flexibility to administer the temporary judge program in a manner that effectively utilizes those resources, yet conform to the intent of the rule. This exemption does not eliminate the courts' obligation to have a recruitment and selection program under existing Rule 10.740. The committee modified the advisory committee comments to reflect the proposed rule amendments.
4.	Superior Court of Monterey County by Nona Medina Administrative Analyst	AM	To require a publicized recruitment every three years may place an unnecessary burden on courts who could conceivably utilize temporary judges on a very limited basis, but five calendar days or more per year. The recruitment and training process requires a significant amount of time and effort and may	Disagree. Existing rule 10.740, initially adopted by the Judicial Council, effective January 1, 2006, requires all courts that use temporary judges to institute "a program to recruit, select, train, and evaluate attorneys qualified to serve as temporary judges." This proposed amendment only creates the obligation to advise all attorneys of the existence of the opportunity, in whatever way the

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			<p>unnecessarily waste the time of a group of attorneys interested in providing this volunteer service, who will never be provided an opportunity to do so. The time necessary to apply and participate in the required training, and then be sworn to serve may all be wasted if there is not a significant need for use of temporary judges in the local court.</p> <p>It seems more pragmatic to require the training of temporary judges each 3-years and continue to keep the application process open to the legal community on an ongoing basis. An arbitrary recruitment process would imply a need and may at times be an insincere effort wasting the time and effort of the Court and of volunteer attorneys interested in providing this service.</p>	<p>courts choose to do so. Nothing in the rule proposal eliminates a court’s ability to advise temporary judge applicants that the court uses temporary judges only to fill a judicial need [(Rule 10.742 (1))], which may or may not regularly occur.</p> <p>Disagree. The rule does not, and is not intended to address, training requirements for temporary judges, which are addressed in rule 2.812(c). The rule proposal requires courts to “publicize the opportunity to serve...whenever the court seeks to add attorneys to its pool ...or within a reasonable time before conducting its mandatory training...” but in no case, less than once every three years.” The proposal that courts “publicize” the opportunity <i>at least once every three years</i>” is a compromise put forth in consideration of concerns raised regarding the initial proposal to amend the rule, which would have required <u>annual</u> “publication.” Further, recent temporary judge usage data supports this approach. Courts can and are encouraged to publicize more often than this rule amendment requires.</p>
5.	Superior Court of San Diego County by Mike Roddy Executive Officer	A		Agree
6.	TCPJAC/CEAC Joint Rules Working Group	N	While the TCPJAC/CEAC Joint Rules Working Group agrees with merits of this proposal, it has taken the position of “Do not agree with the proposed changes” in recognition of the current	The advisory committee disagrees with the working group’s objections to the proposal to amend this rule.

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			<p>fiscal crisis and its impact on court operations. The proposals create numerous and significant operational and fiscal impacts upon trial courts that are grappling with one of the worst economies in recent U.S. history. The new requirements created by the proposals, while well-intended, will only worsen the financial condition of the courts. At a time when courts are facing severe budget reductions, potential layoffs, possible court closures, and other urgent matters, rules of court should not create new responsibilities unless absolutely necessary and driven by statutory mandates. The trial courts must use this time to focus on ensuring continuation of the most critical services rather than on dedicating new resources to new requirements.</p> <p>The working group recommends that the committee re-evaluate how the proposals can be implemented with minimal impact to court operations. The committee could consider only moving forward the most critical and clearly mandated proposals, moving back or phasing in implementation deadlines, and identifying all available alternatives to lessen negative impacts to the courts.</p> <p>If this proposal does go forward, the working group that an exemption be added for trial courts that exclusively appoint their research attorneys as temporary judges. (Rule 10.741(b)(1))</p>	<p>The working group raises a legitimate concern that overall judges and staff are being asked to do more with fewer resources. However, the fiscal impact of the proposed amendment is minimal. Because of the current fiscal crisis, the committee expects those trial courts that still have clerical support will use temporary judges to an even greater degree than the usage data currently reflects. Thus, the committee believes that it is even more important that the recruitment and selection process that is already required under Rule 10.740 is fair and transparent and that the public perceives it as such. This is especially true as the public's access to the courts is predicted to become more difficult.</p> <p>Courts are already required to have an established recruitment and selection program as prescribed by current Rule 10.740. The amendment to Rule 10.741 slightly expands the existing procedures to ensure that a fair, inclusive, and open process is employed in implementing court temporary judge programs. Public's perception that court appointment of temporary judges is a "closed" system is unacceptable. Thus, by announcing, publicizing, or advertising in any manner the court deems most cost effective, given its resources (email, website, etc.), the process is fair and transparent. Moreover, the court should only need to create the "publication" once. The same announcement can be used repeatedly. It is only the recipient list that may need to expand. The committee is available to assist the courts with developing sample announcements.</p>

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			<p>Operational impacts identified by the working group:</p> <p>Potential Fiscal Impact There is a possible fiscal impact depending on the method of publication to advertise the court-appointed temporary judge position. It could involve a minimal fee for the courts if bar associations charge a publication fee. No other substantial fiscal impact is anticipated as the proposal requires courts to publicize no less than once every three years.</p> <p>The proposed amendment provides flexibility in advertising for the recruitment of temporary judges. The advertising could include a simple flyer e-mailed to all local justice system partners, including bar associations, or a full blown application online advertised in local newspapers, with bar associations, and on the court’s website. There is great value in investing in some kind of advertising such as reaching out to more potential pro bono temporary judges, promoting the work of the court, and engendering the public’s trust and confidence. While courts with 9 or fewer judges would be exempted, they may wish to follow this rule for the above-mentioned value gained. As resources dwindle and judgeships are not filled, even these smaller courts may find that augmenting their operations through</p>	<p>announcement can be used repeatedly. The committee agrees to modify part (b) (1) of the rule to exclude those courts that use only their research attorneys as temporary judges.</p> <p>Potential Fiscal Impact If the council adopts the proposed rule amendments, the committee predicts minimal financial impact on the courts, if any. The method of “publication” required by proposed subsection (b) (1) is not identified, but purposefully left to the courts’ discretion. Most courts that use temporary judges probably have such a mechanism in place, in compliance with rule 10.740. If a court chooses to advertise in a mainstream or bar association print media, a fee may be charged. However, there are other no-cost methods for publication, as indicated above. The committee will modify the advisory committee comments to illustrate the no-cost methods of advertizing available to courts.</p> <p>Re Requirement to Develop Local Rules or Forms The committee disagrees with this portion of the comment. There is no requirement in this rule proposal that the courts develop local rules and forms to measure outcomes of stated program goals. Such a measure would be left to the individual courts. The option to do so would be subject to the authority of the presiding judge under subsection (a) of existing rule 10.741.</p> <p>Rule 10.500 (f) addresses exemptions from the</p>

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			<p>the use of temporary judges may be a viable option.</p> <p>Require Development of Local Rules or Forms Courts with 10 or more judges will need to develop a process for measuring their respective recruitment outcomes and achievement of stated program goals (i.e. diversity, qualifications, education, etc.) As a precautionary measure, OGC should advise courts if records pertaining to temporary judges recruitment/applications are subject to disclosure under rule 10.500.</p> <p>Increase to Existing Court Staff Workload The increase to workload will depend on the scope of recruitment and enhancements to record keeping adopted by the court.</p> <p>The proposed rule amendment will require court staff to create a notice for publication for the court-appointed temporary judge position and distribute to bar associations. However, the same notice can be recycled for future opening notifications.</p> <p>Changes the Responsibilities of the PJ/Supervising Judge The proposed rule amendment requires changes to the presiding judge’s responsibilities. The two new subdivisions to rule 10.741 will require the presiding judge to publicize the court’s temporary judges program to maximize the opportunity for a diverse applicant pool. This</p>	<p>disclosure of judicial administrative records that are, among other things:</p> <p>“Personnel files whose disclosure would constitute an unwarranted invasion of personal privacy, including records revealing home addresses . . . and work telephone numbers of justices and judges (including temporary and assigned judges), subordinate judicial officers, and their staff attorneys.”</p> <p>Increase to Existing Court Staff Workload The committee agrees that any increase in staff workload will depend on the scope of the court’s recruitment and record-keeping adopted by the court. The proposed amendments <u>do not</u>:</p> <ul style="list-style-type: none"> • require a specific <i>manner</i> of publication of the opportunity to serve as a temporary judge; • require record-keeping not already required under Rule 10.740; • require a change in the training requirements for temporary judges; • require that the courts achieve a specific level of diversity; or • require a change in the applicant review process that creates an unwarranted change in the presiding judges’ responsibilities. <p>When the Judicial Council adopted the rules relating to temporary judges in 2006, it specifically requested that the temporary judge working group consider whether any rules should</p>

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	Commentator	Position	Comment	Committee Response
			<p>new requirement will also help the court promote equal access and nondiscrimination in the recruitment, application, and selection procedures in the appointment of temporary judges.</p> <p>One member of the working group noted that this proposal adds to the responsibilities of the trial courts. The Sacramento Superior Court's current application and review processes allow for the selection of temporary judges who meet the diverse needs of its particular community. Each court's pool of temporary judges should do the same for its community. To impose statewide regulation will not likely achieve the goals of equal access and nondiscrimination, as the needs of each court and community are unique.</p> <p>Other One member noted that the Temporary Judge Program established by the Sacramento Superior Court plays a vital role in the day to-day operations of the court. It allows the court to provide ongoing access to justice during these times of fiscal crisis. As it continually strives for a diverse pool of temporary judges to meet the needs of its unique community, the member noted that putting such an effort into formal practice within a Rule of Court is unnecessary. He cautions against undue emphasis on statewide uniformity.</p> <p>He further noted that, for example, a suggestion</p>	<p>be amended to address diversity considerations. The working group and the advisory committee concluded that the temporary judge rule should be amended. The advisory committee's proposal is intended to implement the council's the charge to the working group.</p> <p>Further, the amendment is merely intended to enhance transparency and the perception of openness in the selection process as well as maximize the courts' ability to attract more diverse candidates for temporary judge positions to the extent that courts use them by 1) advising all attorneys (including diverse attorneys) in courts' respective locales of the opportunity at least once every three years (proposed rule 10.741(b)); and 2) to consider all qualified applicants for the positions and not reject a qualified individual based on his or her status in a protected class (proposed rule 10.741(c)).</p> <p>The committee agrees that the extent of diversity achieved will be dependent upon the diversity of the courts' respective legal communities. The proposal requires nothing more.</p> <p>Changes the Responsibilities of the PJ/Supervising Judge</p> <p>The rule proposal does not require the "presiding judge to publicize the court's temporary judges program." This task can be delegated to the Temporary Judge Administrated required by existing rule 10.743 or to some other staff person.</p>

SPR11-56

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

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			has been made to utilize a service such as NeoGov to accept and monitor applications from prospective temporary judges. To use a program across the state would take away each court's ability to customize its temporary judge program to meet the needs of its constituents. He opposes this. The needs of his court are not the same as the needs in other courts--and vice versa--and true diversity and access can be found through each court retaining autonomy in its temporary judge program.	Other The committee agrees that the needs of each community may be unique. However, an open selection process will enhance public confidence in both the local court and the judicial branch statewide.

Attachment A



California
Rules of
Court
(Revised
January 1,
2012)

Standard 10.21. Appointment of attorneys, arbitrators, mediators, referees, masters, receivers, and other persons

(a) Nondiscrimination in appointment lists

In establishing and maintaining lists of qualified attorneys, arbitrators, mediators, referees, masters, receivers, and other persons who are eligible for appointment, courts should ensure equal access for all applicants regardless of gender, race, ethnicity, disability, sexual orientation, or age.

(b) Nondiscrimination in recruitment

Each trial court should conduct a recruitment procedure for the appointment of attorneys, arbitrators, mediators, referees, masters, receivers, and other persons appointed by the court (the "appointment programs") by publicizing the existence of the appointment programs at least once annually through state and local bar associations, including specialty bar associations. This publicity should encourage and provide an opportunity for all eligible individuals, regardless of gender, race, ethnicity, disability, sexual orientation, or age, to seek positions on the rosters of the appointment programs. Each trial court also should use other methods of publicizing the appointment programs that maximize the opportunity for a diverse applicant pool.

(c) Nondiscrimination in application and selection procedure

Each trial court should conduct an application and selection procedure for the appointment programs that ensures that the most qualified applicants for an appointment are selected, regardless of gender, race, ethnicity, disability, sexual orientation, or age.

(Subd (c) amended effective January 1, 2007.)

Standard 10.21 amended and renumbered effective January 1, 2007; adopted as sec. 1.5 effective January 1, 1999.