

THE PRIVATE JUDGE: CALIFORNIA ANOMALY OR WAVE OF THE FUTURE?

By
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INTRODUCTION

For the past 20 years, private judging¹ has been largely a California phenomenon. Especially in the family law context, it is a by-product of the myriad difficulties practitioners and litigants face in accessing an overwhelmed judicial system.²

Although private judging is the subject of some philosophical controversy, and use of a private judge to conduct evidentiary hearings and/or trial³ may not fit every family law case, it is an essential tool in the family lawyer's arsenal. Clients should be counseled on whether the private judging option is in their interest.

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¹ Those who act as private judges are referred to in the vernacular as “rent-a-judges,” “judges for hire” or “neutrals.” I have elected to use the more dignified term “private judge.”

² In gathering material for this article, comments were solicited from numerous attorneys and experts whose thinking and observations are contained herein. Elizabeth Potter Scully, CFLS provided the author with editorial assistance.

³ The focus of this article is the use of private judging in family law litigation/trial, as opposed to the mediation context. While mediation and settlement conferences are a significant part of the private judge's repertoire, a wealth of literature exists about mediation. In contrast, there is a dearth of literature about private judging.

Given the massive budgetary cutbacks California currently faces, and the devastating impact these cutbacks continue to have on judicial resources, private judging remains a widely-used and attractive alternative for family law practitioners.

DEFINITION

Private judges are typically experienced, knowledgeable retired judicial officers who are selected by counsel to hear and determine family law and/or civil matters and are compensated by one or both litigants. While there is no requirement that a private judge have prior experience as a judicial officer, most private judges are former bench officers, which enhances their credibility. The standards of proof are typically the same as in a public trial, and the outcome is enforceable in appellate courts. While the parties are free, by mutual agreement, to modify procedures and/or rules that would govern in a public courtroom, the Superior Court retains a supervisory role.

Both the State of California and a number of the individual counties within the state have comprehensive rules governing the use of private judges. Relevant portions of the California Rules of Court and those of the Los Angeles County Superior Court have been attached as appendices to this article.

MECHANICS AND PROCESS

A. SELECTION

Unlike public judges, private judges are selected by the parties. One tremendous advantage of private judging is that it allows counsel to ensure that the judicial officer has experience in the relevant substantive area of law involved. Family law, for example, has become so sophisticated that the attorney must have a working knowledge of juvenile dependency, bankruptcy, general corporate formation, business transactions and valuation techniques, cash flow analysis, security and enforcement methodology for future payments, and behavioral sciences, to name a few. This knowledge, of course, is in addition to the substantive area of family law and all its intricacies. Some family law judges never practiced family law before their appointment. Accordingly, the selection of a private judge with expertise in the applicable area or areas provides a significant advantage, not only in reducing "education time" but in providing the attorney and client with the certainty that the private judge will understand the evidence presented.

There are, however, risks to the practitioner in the selection process. For example, when attorneys recommend a particular private judge who subsequently issues a ruling unfavorable to their clients, clients inevitably respond, "How could you have let me go with Judge X?" While the adverse ruling may have been warranted by bad facts or law,

or attributable to the client's conduct or lack of credibility, the clear nexus that exists in the client's mind between the lawyer's recommendation and the poor result puts lawyers at greater risk of being blamed.⁴ Good practice, when counseling clients on the selection of a private judge, includes a written disclaimer letter to the client confirming the lack of certainty in outcome (let alone guarantee) in using a particular private judge.

Pre-existing relationships between counsel and the private judge, and the resulting collegial tone, can also affect clients' perceptions about the impartiality (or lack thereof) of the private judge. Private judges are in business, just like lawyers. When one attorney has had more matters with a particular private judge than the other attorney, it may be impossible to shake a client's belief that the judge is favoring the attorney whom the judge may believe to be a better source of future business. There is a feeling that private judges may be unwilling to make hard calls, such as issuing sanctions, out of fear the sanctioned attorney will never use the judge again. Attorneys need to research private judges and avoid anyone the attorney in concerned might favor a particular side in order to obtain future business. (To the extent such a private judge exists, it is hard to imagine he or she would be in business for long.)

While clients may be susceptible to the belief that private judges have an economic incentive to favor firms most likely to supply future work, the reality is that since the

⁴ Attorneys' strategic decision-making about whether to stipulate to a commissioner or file an affidavit of bias in superior court can leave them open to similar criticism. The wider freedom to select the private judge, however, leaves attorneys open to correspondingly wider

appearance of bias would so damage their reputation and credibility, private judges tend to bend over backwards to appear impartial. One partner in a large family law firm, speaking to the concept of perceived favoritism, commented: “if anything, private judges tend to be *more* cautious about the appearance of favoritism because any such reputation could adversely affect their businesses. After all, it always takes two parties to agree to any particular private judge, and no party and his/her attorney is going to agree to someone with a perceived bias for or against any particular lawyer or law firm.”

B. DISCLOSURE

It is critical that the private judge selected follow the applicable rules and statutes on disclosure in the relevant jurisdiction. In California, those rules include Code of Civil Procedure Sections 170 et seq. Where there are no specific rules on disclosure, it is important, at a minimum, to state the number of cases the private judge has had with each firm during the prior twenty-four months (or longer, if requested), as well as any other interests or relationships that warrant disclosure.

Full disclosure helps assure impartiality. In jurisdictions that do not require disclosure, private judges may have concerns that disclosure will result in lost business. Erring on the side of disclosure and transparency, however, will foster the reputation of impartiality on which private judging practices thrive, trumping any potential loss of business. While disclosures require careful record keeping, current computer

criticism by disgruntled clients.

technology makes it easy to track such information and the benefit of this extra work far outweighs the hassle.

C. **OATH**

In California, attorneys and/or retired judicial officers may be appointed as Judges Pro Tem or “temporary judges,” but may only serve as a temporary judge after the court has issued an order appointing him or her. Prior to being appointed, attorneys must subscribe the oath of office and must certify that they are aware of and will comply with applicable provisions of Canon 6⁵ of the Code of Judicial Ethics and the California Rules of Court. (California Rule of Court 2.831).

D. **STIPULATION**

A Stipulation re: Appointment is required in Los Angeles County and many other counties. Los Angeles County has its own form, as do a number of other California

⁵ Among other things, Canon 6 generally governs the conduct of judicial officers by promoting public confidence, order and decorum with patient, dignified, and courteous treatment, requiring lawyers to refrain from bias or prejudice, prevent family or other relationships from influencing judicial conduct, hear and decide all matters unless disqualified, be faithful to and maintain competence in the law, perform judicial duties without bias or prejudice, accord full right to be heard to those entitled, avoid ex parte communications except as specified, dispose of matters fairly and promptly, discharge administrative responsibilities without bias, with competence and cooperatively, require staff and personnel to observe standards of conduct and refrain from bias and prejudice, and make only fair, necessary, and appropriate appointments. Canon 6 also contains provisions for when the private judge should disqualify himself or herself.

counties. The Stipulation must contain the names of the parties and counsel for the parties (all of whom must sign the Stipulation), dates set for trial, number of days, location, completion date for the entire matter, an oath of office and other technical details.

E. APPOINTMENT

Once counsel and the parties have agreed on a private judge and signed the required Stipulation, a judicial officer of the Superior Court appoints the agreed-upon individual as a Judge Pro Tempore for all purposes. In Los Angeles County, the appointment is made by the presiding or assistant presiding judge. The Los Angeles Superior Court follows up periodically to ascertain whether or not the case has been concluded. Shortly before the completion date set forth in the Stipulation, the Superior Court sends a Minute Order to counsel requiring an appearance to advise as to whether the matter has been concluded. Counsel can obviate the need to make the appearance by calling to advise the court that either (1) the matter has been concluded; or (2) that a stipulation to extend the appointment is being circulated. Once appointed, the private judge has all the powers of a sitting judge, with a few exceptions (e.g. the private judge lacks authority to seal a file or any portion thereof or to approve a confidentiality agreement).

F. PUBLIC ACCESS

Notwithstanding the use of the word “private,” all original pleadings submitted to the private judge in Los Angeles County must now be filed with the Superior Court (a fairly recent rule), and trials by a private judge must allow reasonable accommodation for the presence of the public and media. Since all pleadings must be filed with the court, private judging may lose some of its “privacy” appeal. While counsel often agree to handle motions and ex parte matters on a more informal basis so there are no pleadings and more privacy, it takes two to tango.

Hearings are usually held in the offices of a law firm, a court reporter or one of a few private courtrooms. There are, however, notice provisions available to the public. Effective July 1, 2006, California Rule of Court 2.833 provides as follows:

“1.(a) Posting of notice regarding proceeding before privately compensated judge

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

(b) Use of court facilities, court personnel, and summoned jurors

A party who has elected to use the services of a privately compensated judge is deemed to have elected to proceed outside the courtroom. Court facilities, court

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

(c) Order the appropriate hearing site

The presiding judge, on request of any person or on the judge's own motion, may order that a case before a privately compensated temporary judge must be heard at a site easily accessible to the public and appropriate for seating those who have made known their plan to attend hearings. The request must be made by letter with reasons stated and must be accompanied by a declaration that a copy of the request was mailed to each party, to the temporary judge, and to the clerk for placement in the file. The order may require that notice of trial or of other proceedings be given to the requesting person directly. The granting of an order for an accessible and appropriate hearing site is not a ground for withdrawal of a stipulation.”

Consequently, if members of the public wish to attend, they may do so unless the case is one normally closed (e.g. a proceeding to establish parental relationship). In the years since this rule has been in effect, however, I have never once received a request by any member of the public to attend a trial.

G. **PROCEDURE**

The private judge is required to follow all court rules, including but not limited to those pertaining to evidence, unless the parties and counsel otherwise agree. Practically speaking, formal rules governing evidence, protocol and presentation may be relaxed, adapted or hybridized upon stipulation of counsel. Many lawyers are oft heard to complain that rules of evidence often fall by the wayside in family law. Others believe that the rules are followed too strictly and there should be more leniency in private trials. Deviation from what might happen in a courtroom may or may not serve a particular client's interests.

It is essential that the client know in advance the particular procedures of the private judge who is under consideration so that the clients can prepare themselves substantively and emotionally for the trial. Equally important, counsel must communicate with one another and with the judge in advance to make sure everyone's expectations about the parameters of the hearing and the general level of formality are the same. One way to ensure communication about such matters is to schedule a "pre-trial" conference to cover such matters as protocols, rules to be followed, whether formal motions are required in all instances, whether a court reporter, clerk or bailiff will be needed, et cetera.

CONSIDERATIONS FOR THE PRACTITIONER

A. CONVENIENCE

Despite valiant efforts of judges and court staff, overcrowding and lack of judicial resources mean that many cases are not heard on the date scheduled, are repeatedly continued, and/or are tried piecemeal over a period of many months. In contrast, use of a private judge gives counsel the invaluable ability to control scheduling of hearing dates and times. The private judicial officer is ready when the attorneys are, and there is no waiting time or wasted preparation time. Once the dates are coordinated with the clients, counsel, any expert and the private judge, attorneys know that the calendared days are “their days.” Trials are typically 6 hours per day with a 1 hour lunch break.

Conducting hearings at a lawyer’s office, alternate dispute resolution office, private courtroom or court reporter’s office is often more convenient for the parties and counsel. Attorneys or accountants (at least those in whose offices the hearing is taking place) can have greater access to their computers and client files. Usually there is a room in which each side can prepare for testimony and receive outside communications such as emails and faxes. Although there are facilities at the courthouse that provide those same amenities, they are frequently not located close enough to the courtroom to make the process reasonably convenient. In addition, printers, copy machines and public computers need to be shared with other users and are not “private.” There is better

telephone and internet access in a private office. Cell phone reception and internet capability is poor or non-existent at many Los Angeles County courthouses.

Because private judges have substantially smaller caseloads than sitting judges, they are more apt to be user friendly by scheduling telephonic conferences outside of usual court hours, telephonic conferences to resolve disputes before they become motions, and utilize informal case management upon prior agreement of counsel, all cost saving and efficient techniques. Counsel also have the singular attention of the private judge, without the inevitable interruptions that other calendared cases and ex parte matters demand of sitting judges.

Lawyers often complain that individual pleadings and/or entire court files get misplaced frequently, resulting in delays or continuances so the trial judge can read the moving and responding papers. In the private judging context, since copies of documents are submitted directly to the office of the private judge, they are less apt to go missing and there is more certainty that the judicial officer will have had ample opportunity to read the file.

In order for private judging to work well, a private judge must make time to conduct emergency hearings and ex parte matters, whether that means leaving a day or half day “open” a week, scheduling early morning or late afternoon hearings, or using some other method acceptable to counsel. In scheduling ex parte hearings, the procedure

should be no different than in the Superior Court, to avoid the possibility of manipulation by one side or the other. *Ex parte* protocol should be discussed in advance between the private judge and counsel. In addition, should an emergency arise while the private judge is unavailable due to illness, vacation or some other reason, the remedy is unclear. Counsel should consider a clause in their stipulation for appointment of the private judge, giving the supervising family law judge of the Superior Court or an alternate private judge jurisdiction to make orders in such a situation.

B. COST AND EFFICIENCY

While at first blush, use of a privately compensated judge might appear to cost more than litigation within the court, the perception that private judging is more expensive is short sighted. Attorneys and clients should consider the amount of time they expend waiting while public judges call other matters, including *ex parte* applications, and the additional time attorneys spend re-preparing a case due to the fact that public court calendars often require cases to be tried on non-consecutive days. It is not atypical for a 4 day trial to be heard over 6 months in 2 hour increments of time, or for attorneys and experts to wait all day to start a trial while pro per cases are heard, only to be told to come back the next day, with that process repeating itself so that the client may end up paying for 20 hours of wasted attorney and accountant time which could more than cover the cost of a private judge for the same 4 day trial.

One forensic accountant told of appearing in court “ready” for trial. The accountant had a case scheduled for four days of trial, which, while never consecutive, were at least only 2 weeks apart. Of those four scheduled days, the parties only received 2.5 hours of actual trial time, but incurred 16 hours of attorneys’ and accountants’ fees. On the first scheduled day of trial, counsel and experts were told to come back after lunch because there were many ex parte matters to be handled, the result on that day being less than 1 hour of trial time. The next scheduled trial day was vacated due to other cases having priority. On the 3rd scheduled day, actual trial time was 1.5 hours after the ex partes and other hearings took precedence. The next scheduled return date was 4 months away. The accountant calculated that all the fees wasted by waiting around and the time that was spent getting “up to speed” again could have been spent more wisely on 3 days with a private judge. Simple as it sounds, the time saved in preparing only once for trial and starting trial on the date set is invaluable. This is especially true for mid-sized cases in which saving money is a primary concern and clients have little or no financial leeway.

Cynical attorneys might believe they can earn more by keeping the case in the system, profiting from the delay. However, clients and referral sources recognize and appreciate representation that is calculated to avoid waste. Satisfied clients will pay their bill and refer their friends.

C. PUBLIC POLICY IMPLICATIONS

It is inconsistent with the principle of “Equal Justice Under Law,” for wealthy parties to enjoy adjudication which is faster, more private, and over which they have more control. While the truthful and honest approach should be to remedy the problem of overburdened and underfunded courts which are ill-equipped to meet the needs of litigants, the practical answer is this is simply an impossibility. The economy has continued to dominate headlines throughout the United States, whether it be the increasing bankruptcy, government buyouts, foreclosures or high unemployment. These changes have affected family law matters by creating a greater difficulty in settling a case as dollars are more precious - there is less money to go around due to a challenging job market where 2 wage earner families may now have only 1 or no wage earners and people are taking jobs as lower levels and lower pay, to name just a few consequences. California is suffering a budget meltdown which has resulted in the closure of some family law courts and furlough days in many other family law courts. The inevitable result has been an increased reliance upon alternate dispute resolution and, in particular, private trials. While the argument goes that a separate, unequal forum has been created for those who have economic means, at the same time, the use of private judges for trials and mediation can also free up the courts and make them more accessible to the general public.

D. TIMING AS TACTIC

Some litigants use the inherent delay created by the public system to their strategic advantage. For example, a parent with essentially all of the parenting time has no incentive to conclude a trial where the other parent is requesting equal custody or more custodial time. A business owner unable to invest or operate his or her business as usual due to the automatic temporary restraining orders may waive rights or agree to pay more just to end the case. When this tactic is exploited, delay can have substantive as well as procedural implications.

The saying "justice delayed is justice denied" is applicable. As discussed above, a common complaint of attorneys is the challenge to secure enough consecutive court time to hear a complicated or even a simple case, resulting in trials being conducted a few hours at a time over the course of months or longer. One case, which involved an allegation that a client was at risk of abducting his child, continued in this fashion for over one year. The father had supervised visitation during the pendency of the trial, which severely limited his ability to parent his child while the court decided whether or not the abduction risk was real.

E. FORMALITY

Attorneys and parties have mixed feelings concerning the lack of formality. Some attorneys miss the formality of the courtroom, as most proceedings are conducted in an

attorney's office around a conference table, without a court clerk or bailiff. Counsel are more apt to address each other directly and sometimes act disrespectfully with a private judge, who may not be able to stop inappropriate behavior. It feels different to appear before a public judge on an elevated platform, wearing a robe, with the presence of a uniformed deputy sheriff whose presence causes all concerned to act with decorum.

Other attorneys see the lack of formality as positive, a more humanizing approach to what can be a very disempowering and humiliating experience. Some believe that conducting the hearing in a more informal setting eases tensions that might otherwise be heightened at the courthouse. It is also possible to have more interaction with the court, otherwise unavailable in a public court with a courtroom of people waiting for their cases to be heard.

There are some clients who like the special treatment they believe they receive from private judging, whether it be the more relaxed atmosphere, the congeniality, the flexibility or other internal reasons. Many clients may also feel less intimidated and a bit more relaxed in a less formal atmosphere, which makes the experience less stressful. The private judge comes to the attorney's office - it is much more comfortable, convenient and private than a court room and most clients feel this fact alone humanizes the process.

F. SECURITY CONCERNS

Unless counsel hire a private bailiff, there is no security -- no metal detectors, no armed deputy sheriff, no panic button for the private judge. Security is available at a cost, but is rarely used because most people do not expect violence to occur. But who does? Certainly not one of my cases where the wife was killed in a parking lot the night before a hearing for temporary support and attorney fees. The husband has been indicted.

CONCLUSION

Private judging is not a panacea. It is, however, a constructive and practical response to the fact that lack of resources renders our judicial system less responsive and more expensive than we would like it to be.

This situation is worsening. On December 1, 2009, in the Los Angeles Daily Journal, Judge Charles W. McCoy, Jr., presiding judge of the Los Angeles Superior Court, wrote, "Cuts already imposed on the Los Angeles Superior Court, if unabated, will force the closure of over 180 courtrooms and layoffs of more than 1,800 employees in the coming years. Far beyond only closing one Wednesday a month, nearly half of the court's civil, family and juvenile courtrooms will be shut down permanently and the staffs let go. . . . Everyone from children and families to commercial litigants will suffer tremendously"

For so long as public courtrooms continue to be overcrowded, private judging remains an essential vehicle for resolving family law disputes. Attorneys who consider private judging an option only for high net worth clients should broaden their thinking, since the cost savings private judging can yield make it an increasingly attractive option for mid-sized cases. In light of recent economic developments, I believe that use of private judges will become a necessity for many, rather than a luxury for few.

2010 California Rules of Court

Rule 2.814. 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 2.830. Temporary judges requested by the parties

1. (a) **Application**

Rules 2.830-2.834 apply to attorneys designated as temporary judges under article VI, section 21 of the California Constitution at the request of the parties rather than by prior appointment of the court, including privately compensated temporary judges and attorneys who serve as temporary judges pro bono at the request of the parties.

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

(b) Definition

"Privately compensated" means that the temporary judge is paid by the parties.

(c) Limitation

These rules do not apply to subordinate judicial officers or to attorneys who are appointed by the court to serve as temporary judges for the court.

Rule 2.830 amended and renumbered effective January 1, 2007; adopted as rule 243.30 effective July 1, 2006.

Rule 2.831. Temporary judge - stipulation, order, oath, assignment, disclosure, and disqualification.

1. (a) Stipulation

When the parties request that an attorney be designated by the court to serve as a temporary judge on a case, the stipulation of the parties that a case may be tried by a temporary judge must be in writing and must state the name and office address of the member of the State Bar agreed on. The stipulation must be submitted for approval to the presiding judge or the judge designated by the presiding judge.

(Subd (a) amended effective July 1, 2006; previously amended and relettered effective July 1, 1993; previously amended effective January 1, 2001, and July 1, 2001.)

(b) Order, oath, and certification

The order designating the temporary judge must be signed by the presiding judge or the presiding judge's designee and refer to the stipulation. The stipulation and order must then be filed. The temporary judge must take and subscribe the oath of office and 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.

(Subd (b) amended effective July 1, 2006; previously amended and relettered effective July 1, 1993; previously amended effective July 1, 2001.)

(c) When the temporary judge may proceed

The temporary judge may proceed with the hearing, trial, and determination of the cause after the stipulation, order, oath, and certification have been filed.

(Subd (c) amended and relettered effective July 1, 2006; formerly adopted as subd (b).)

(d) Disclosure to the parties

In addition to any other disclosure required by law, no later than five days after designation as a temporary judge or, if the temporary judge is not aware of his or her designation or of a matter subject to disclosure at that time, as soon as practicable thereafter, a temporary judge must disclose to the parties any matter subject to disclosure under the Code of Judicial Ethics.

(Subd (d) amended effective July 1, 2006; adopted as subd (c) effective July 1, 2001; previously amended and relettered effective July 1, 2006.)

(e) Disqualification

In addition to any other disqualification required by law, a temporary judge requested by the parties and designated by the court under this rule must disqualify himself or herself as provided under the Code of Judicial Ethics.

(Subd (e) amended and relettered effective July 1, 2006; adopted as subd (c) effective July 1, 1993; previously amended and relettered as subd (d) effective July 1, 2001.)

(f) Motion to withdraw stipulation

A motion to withdraw a stipulation for the appointment of a temporary judge must be supported by a declaration of facts establishing good cause for permitting the party to withdraw the stipulation, and must be heard by the presiding judge or a judge designated by the presiding judge. A declaration that a ruling is based on error of fact or law does not establish good cause for withdrawing a stipulation. Notice of the motion must be served and filed, and the moving party must mail or deliver a copy to the temporary judge. If the motion to withdraw the stipulation is based on grounds for the disqualification of the temporary judge first learned or arising after the temporary judge has made one or more rulings, but before the temporary judge has completed judicial

action in the proceeding, the provisions of rule 2.816(e)(4) apply. If a motion to withdraw a stipulation is granted, the presiding judge must assign the case for hearing or trial as promptly as possible.

(Subd (f) amended effective January 1, 2007; adopted as subd (f) effective July 1, 1993; previously amended and relettered as subd (g) effective July 1, 2001, and as subd (f) effective July 1, 2006.)

Rule 2.831 amended and renumbered effective January 1, 2007; adopted as rule 244 effective January 1, 1999; previously amended effective April 1, 1962, July 1, 1981, July 1, 1987, July 1, 1993, July 1, 1995, January 1, 2001, and July 1, 2001; previously amended and renumbered as rule 243.31 effective July 1, 2006.

Rule 2.832. Compensation

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

Rule 2.832 renumbered effective January 1, 2007; adopted as rule 243.32 effective July 1, 2006.

Rule 2.833. Documents and exhibits

All temporary judges requested by the parties and parties in proceedings before these temporary judges must comply with the applicable requirements of rule 2.400 concerning the filing and handling of documents and exhibits.

Rule 2.833 adopted effective January 1, 2010.

(Rule 2.400 referred to above provides as follows:

Rule 2.400. Court records

1. (a) Removal of records

Only the clerk may remove and replace records in the court's files. Unless otherwise provided by these rules or ordered by the court, court records may only be inspected by the public in the office of the clerk and released to authorized court personnel or an attorney of record for use in a court facility. No original court records may be used in any location other than a court facility, unless so ordered by the presiding judge or his or her designee.

(Subd (a) amended effective January 1, 2010; previously amended effective July 1, 1993, January 1, 2007, January 1, 2008, and January 1, 2009.)

(b) Original documents filed with the clerk; duplicate documents for temporary judge or referee

(1) All original documents in a case pending before a temporary judge or referee must be filed with the clerk in the same manner as would be required if the case were being heard by a judge, including filing within any time limits specified by law and paying any required fees. The filing party must provide a filed-stamped copy to the temporary judge or referee of each document relevant to the issues before the temporary judge or referee.

(2) If a document must be filed with the court before it is considered by a judge, the temporary judge or referee must not accept or consider any copy of that document unless the document has the clerk's file stamp or is accompanied by a declaration stating that the original document has been submitted to the court for filing.

(3) If a document would ordinarily be filed with the court after it is submitted to a judge or if a party submits an ex parte application, the party that submits the document or application to a temporary judge or referee must file the original with the court no later than the next court day after the document or application was submitted to the temporary judge or referee and must promptly provide a filed-stamped copy of the document or application to the temporary judge or referee.

(4) A party that has submitted a document to a temporary judge or referee must immediately notify the temporary judge or referee if the document is not accepted for filing by the court or if the filing is subsequently canceled.

(Subd (b) amended effective January 1, 2010; adopted effective July 1, 1993; previously amended effective January 1, 2007.)

(c) Return of exhibits

(1) The clerk must not release any exhibit except on order of the court. The clerk must require a signed receipt for a released exhibit.

(2) If proceedings are conducted by a temporary judge or a referee outside of court facilities, the temporary judge or referee must keep all exhibits and deliver them, properly marked, to the clerk at the conclusion of the proceedings, unless the parties file, and the court approves, a written stipulation providing for a different disposition of the exhibits. On request of the temporary judge or referee, the clerk must deliver exhibits filed or lodged with the court to the possession of the temporary judge or referee, who must not release them to any person other than the clerk, unless the court orders otherwise.

(Subd (c) amended effective January 1, 2010; adopted as subd (b) effective January 1, 1949; previously amended and relettered effective July 1, 1993; previously amended effective January 1, 2007.)

(d) Access to documents and exhibits in matters before temporary judges and referees

(1) Documents and exhibits in the possession of a temporary judge or referee that would be open to the public if filed or lodged with the court must be made available during business hours for inspection by any person within a reasonable time after request and under reasonable conditions.

(2) Temporary judges and referees must file a statement in each case in which they are appointed that provides the name, telephone number, and mailing address of a person who may be contacted to obtain access to any documents or exhibits submitted to the temporary judge or referee that would be open to the public if filed or lodged with the court. The statement must be filed at the same time as the temporary judge's or referee's certification under rule 2.831(b), 3.904(a), or 3.924(a). If there is any change in this contact information, the temporary judge or referee must promptly file a revised statement with the court.

(Subd (d) adopted effective January 1, 2010.)

(e) Definition

For purposes of this rule, "court facility" consists of those areas within a building required or used for court functions.

(Subd (e) adopted effective January 1, 2010.)

Rule 2.400 amended effective January 1, 2010; adopted as rule 243 effective January 1, 1949; previously amended and renumbered effective January 1, 2007; previously

amended effective July 1, 1993, January 1, 2008, and January 1, 2009.)

Rule 2.834. Open proceedings; notices of proceedings, use of court facilities, and order for hearing site

2. (a) Open proceedings

All proceedings before a temporary judge requested by the parties that would be open to the public if held before a judge must be open to the public, regardless of whether they are held in or outside a court facility.

(Subd (a) adopted effective January 1, 2010.)

(b) Notice regarding proceedings before temporary judge requested by the parties

(1) In each case in which he or she is appointed, a temporary judge requested by the parties must file a statement that provides the name, telephone number, and mailing address of a person who may be contacted to obtain information about the date, time, location, and general nature of all hearings and other proceedings scheduled in the matter that would be open to the public if held before a judge. This statement must be filed at the same time as the temporary judge's certification under rule 2.831(b). If there is any change in this contact information, the temporary judge must promptly file a revised statement with the court.

(2) In addition to providing the information required under (1), the statement filed by a temporary judge may also provide the address of a publicly accessible Web site at which the temporary judge will maintain a current calendar setting forth the date, time, location, and general nature of any hearings scheduled in the matter that would be open to the public if held before a judge.

(3) The clerk must post the information from the statement filed by the temporary judge in the court facility.

(Subd (b) amended and relettered effective January 1, 2010; adopted as subd (a) effective July 1, 2006.)

(c) Use of court facilities, court personnel, and summoned jurors

A party who has elected to use the services of a temporary judge requested by the parties is deemed to have elected to proceed outside court facilities. Court facilities, court personnel, and summoned jurors may not be used in proceedings pending before a temporary judge requested by the parties except on a finding by the presiding judge or his or her designee that their use would further the interests of justice.

(Subd (c) amended and relettered effective January 1, 2010; adopted as subd (b) effective July 1, 2006.)

(d) Appropriate hearing site

(1) The presiding judge or his or her designee, on application of any person or on the

judge's own motion, may order that a case before a temporary judge requested by the parties must be heard at a site easily accessible to the public and appropriate for seating those who have made known their plan to attend hearings. The application must state facts showing good cause for granting the application, and must be served on all parties and the temporary judge and filed with the court. The proceedings are not stayed while the application is pending unless the presiding judge or his or her designee orders that they be stayed. The issuance of an order for an accessible and appropriate hearing site is not a ground for withdrawal of a stipulation that a case may be heard by a temporary judge.

(2) If a court staff mediator or evaluator is required to attend a hearing before a temporary judge requested by the parties, unless otherwise ordered by the presiding judge or his or her designee, that hearing must take place at a location requiring no more than 15 minutes' travel time from the mediator's or evaluator's work site.

(Subd (d) amended and relettered effective January 1, 2010; adopted as subd (c) effective July 1, 2006.)

Rule 2.834 amended and renumbered effective January 1, 2010; adopted as rule 243.33 effective July 1, 2006; previously renumbered as rule 2.833 effective January 1, 2007.

Rule 2.835. Motions or applications to be heard by the court

1 (a) Motion or application to seal records

A motion or application to seal records in a case pending before a temporary judge requested by the parties must be filed with the court and must be served on all parties that have appeared in the case and the temporary judge. The motion or application must be heard by the trial court judge to whom the case is assigned or, if the case has not been assigned, by the presiding judge or his or her designee. Rules 2.550-2.551 on sealed records apply to motions or applications filed under this rule.

(Subd (a) amended effective January 1, 2010; previously amended effective January 1, 2007.)

(b) Motion for leave to file complaint for intervention

A motion for leave to file a complaint for intervention in a case pending before a temporary judge requested by the parties must be filed with the court and served on all parties and the temporary judge. The motion must be heard by the trial court judge to whom the case is assigned or, if the case has not been assigned, by the presiding judge or his or her designee. If intervention is allowed, the case must be returned to the trial court docket unless all parties stipulate in the manner prescribed in rule 2.831(a) to proceed before the temporary judge.

(Subd (b) amended effective January 1, 2010; previously amended effective January 1,

2007.)

Rule 2.835 amended and renumbered effective January 1, 2010; adopted as rule 243.34 effective July 1, 2006; previously amended and renumbered as rule 2.834 effective January 1, 2007.

LOS ANGELES SUPERIOR COURT RULES

RULES APPLICABLE TO BOTH TRIALS BEFORE TEMPORARY JUDGES AND REFERENCES

12.44 PROCEEDINGS TO BE OPEN TO THE PUBLIC

All proceedings before a temporary judge or referee shall be open to the public, with no restriction on attendance that would not be applicable if the proceedings were held in a courthouse.

The stipulation for appointment of temporary judge or agreement to a reference shall set forth the name and telephone number of a person to contact to arrange for attendance at any proceeding that would be open to the public if held in a courthouse. A notice containing such name and address shall be posted by the clerk as required by California Rules of Court, rules 2.831 and 3.900 *et seq.*

(Rule 12.44 new title & text, and effective 7/1/09.)

12.45 COURT FILES TO REMAIN OPEN FOR PUBLIC'S INSPECTION

The Court's files shall not be removed from the courthouse and will remain as available

for public inspection as they would be if the case were being tried and the matter heard by the Court.

(Rule 12.45 new title & text, and effective 7/1/09.)

12.46 SEALING ORDERS AND CONFIDENTIALITY AGREEMENTS

Motions for sealing orders or approval of confidentiality agreements are to be made to the presiding judge or supervising judge, not to the temporary judge or referee.

(Rule 12.46 new title & text, and effective 7/1/09.)

12.47 HEARINGS

The scheduling of hearings before the temporary judge or referee shall be arranged by the parties directly with such temporary judge or referee, and the Court shall not participate therein.

Copies of all relevant documents filed in the matter shall be furnished to the temporary judge or referee by the filing party.

(Rule 12.47 new title & text, and effective 7/1/09.)

RULES APPLICABLE TO TEMPORARY JUDGES

12.48 RESERVED

(Rule 12.48 new title & text, and effective 7/1/09.)

12.49 MATTERS TO BE AGREED UPON IN ORDER STIPULATING TO APPOINTMENT OF TEMPORARY JUDGE

Before submitting the stipulation to the Court, the parties must agree upon a privately compensated temporary judge to try the case, obtain the agreement of said temporary judge to do so and fix a date by which all proceedings within the jurisdiction of this Court shall be completed.

(Rule 12.49 [as 12.23 3/1/96] renumbered, title amended and effective 7/1/09.)

12.50 SUBMISSION OF STIPULATION

The stipulation and proposed order for appointment of a privately compensated temporary judge shall be submitted to the courtroom of the Supervising Judge of the Civil Departments of the Los Angeles Superior Court, Department 1, at 111 No. Hill Street, Los Angeles, California, pursuant to California Rules of Court, Rule 2.831.

(Rule 12.50 [as 12.24 3/1/96, 1/1/07, 1/1/08] renumbered, amended and effective 7/1/09.)

12.51 REPRESENTATIONS BY THE STIPULATING PARTIES

By submitting the stipulation and proposed order to the Court, the stipulating parties and their attorneys represent to the Court: (1) that they are the only parties to the case; (2) that no new parties will be added.

(Rule 12.51 [as 12.25 3/1/96] renumbered and effective 7/1/09.)

12.52 APPLICATION OF TRIAL COURT DELAY REDUCTION RULES TO PROCEEDINGS BEFORE TEMPORARY JUDGES

Upon the signing of the proposed order by the presiding judge or supervising judge, the action shall be exempt from the trial court delay reduction rules of this Court, pursuant to Local Rule 7.2(b)(7). Until such order is signed, the case remains fully subject to said rules and to all other applicable rules of this Court, and all previously ordered deadlines, hearings, and other orders made in the case remain in full force and effect.

(Rule 12.52 [as 12.26 3/1/96, 1/1/2003] renumbered and effective 7/1/09.)

12.53 DEADLINE FOR COMPLETION OF PROCEEDINGS BEFORE TEMPORARY JUDGE

The date upon which all proceedings within the jurisdiction of this Court shall be completed, as agreed to by the parties and approved by the presiding judge or supervising judge, shall constitute an order of the Court to complete all such

proceedings by said date. Said order is directed to all parties, their attorneys, and to the temporary judge. Said date shall not be extended except by order of the presiding judge or supervising judge as the case may be, and violation of said order will be sanctionable under California Rules of Court, rule 2.30.

(Rule 12.53 [as 12.27 3/1/96, 1/1/08] renumbered and effective 7/1/09.)

12.54 USE OF PUBLIC FACILITIES

The presiding judge may permit a temporary judge to use public facilities, when they are available, upon payment of a reasonable fee set by the presiding judge.

(Rule 12.54 [as 12.28 3/1/96] renumbered and effective 7/1/09.)

12.55 EXHIBITS

All exhibits shall be as available for public inspection as they would be if the case were being tried by the Court. Upon final determination of the cause by the temporary judge, all exhibits shall be delivered to the Executive Officer/Clerk properly marked and with proper exhibit receipt form completed, unless a written stipulation for the return or disposal of such exhibits has been approved by the temporary judge and filed.

(Rule 12.29 [as 12.29 3/1/96] renumbered, amended and effective 7/1/09.)

12.56 FILING OF ORIGINAL PAPERS AND ORDERS OF TEMPORARY JUDGE

All original papers are to be filed with the Executive Officer/Clerk within the same time and in the same manner as would be required if the case were being tried by the Court.

Signed orders of the temporary judge are to be presented for filing to the Assistant Division Chief in Room 109 of the County Courthouse if the case is pending in the Central District, and to the person designated by the supervising judge if the case is pending in another district. Minute orders will not be accepted unless they are signed by the temporary judge. If the minute order format is used, the order must set forth the name, address, telephone number, and CSR number of any privately retained court reporter or, if electronic reporting is used, the minute order shall so state.

(Rule 12.30 [as 12.30 3/1/96] renumbered and effective 7/1/09.)