



## JUDICIAL COUNCIL OF CALIFORNIA

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 28, 2016

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**Title**

Temporary Judges: Reporting on Use of Attorneys as Court-Appointed Temporary Judges

**Agenda Item Type**

Action Required

**Effective Date**

January 1, 2017

**Rules, Forms, Standards, or Statutes Affected**

Amend Cal. Rules of Court, rules 2.810 and 10.742

**Date of Report**

October 18, 2016

**Recommended by**

Trial Court Presiding Judges Advisory Committee

Hon. Jeffrey B. Barton, Chair

Court Executives Advisory Committee  
Mr. Jake Chatters, Chair

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### Executive Summary

The Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court Executives Advisory Committee (CEAC) recommend amending (1) rule 10.742 of the California Rules of Court to eliminate that rule's reporting requirements concerning the use of court-appointed temporary judges, and (2) subdivision (d) of rule 2.810 to delete the related reference to this reporting requirement.

Rule 10.742 governs the use of attorneys as court-appointed temporary judges. Subdivision (c) of the rule requires each trial court that uses attorneys as temporary judges to report quarterly to the Judicial Council the number of attorneys used as temporary judges each month, the number and types of cases on which they were used, and whether any of the appointments were made under the exception in rule 2.810(d). This exception allows, in extraordinary circumstances, for

appointment of an attorney as a temporary judge who has not met all of the requirements for such appointment.

TCPJAC and CEAC recommend these changes because the information that rule 10.742(c) requires courts to report on is in part duplicative of information collected and reported to the council in another report, and thus the rule places an unnecessary burden on the courts.

## **Recommendation**

The Trial Court Presiding Judges Advisory Committee and Court Executives Advisory Committee recommend that the Judicial Council, effective January 1, 2017, amend:

1. Rule 10.742 of the California Rules of Court to eliminate all reporting requirements concerning the use of court-appointed temporary judges; and
2. Rule 2.810, which addresses certain appointments made under extraordinary circumstances, to eliminate the reference to the reporting requirements in rule 10.742(c).

The text of the proposed amended rules is attached at pages 5–6.

## **Previous Council Action**

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

## **Rationale for Recommendation**

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

Currently, subdivision (c) of rule 10.742 requires each trial court that uses attorneys as temporary judges to record and report to council staff the following information on a quarterly basis:

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

The Advisory Committee Comment for subdivision (c) of rule 10.742 states that the regular reporting of the above-mentioned information assists the courts in monitoring and managing

their use of temporary judges and that the information is important for establishing the need for additional judicial positions. The members of both the TCPJAC and CEAC have reviewed the requirements of subdivision (c), and none have found that the quarterly reporting requirements of this rule have assisted their courts with monitoring and managing the use of temporary judges. In contrast, trial court leadership has conveyed that these reporting requirements do not assist the courts and, instead, require the courts to direct critical staff resources to this endeavor when they could be used on more essential tasks. Also, the web-based survey that was conducted under rule 10.742(c) was discontinued in early 2013 due to staff losses at the Judicial Council and a lack of data received from the courts. In short, the repeal of these reporting requirements would eliminate the courts' need to dedicate court staff to track information for each courtroom, compile that information, and prepare the mandated reports.

The council's Office of Court Research has also verified that the information required in subdivision (c) is not used to establish the need for additional judicial positions. The necessary data concerning the use of temporary judges (as well as part-time and nonauthorized commissioners and referees) is separately collected by the trial courts and reported to the council quarterly in the report titled *Use of Temporary Judges, Part-time Commissioners, Part-time Referees, and Part-time Hearing Officers*. Specifically, the Office of Court Research asks the trial courts to report, on a quarterly basis via an Excel spreadsheet, the total usage (in full-day increments) of temporary judges (judges pro tem), part-time commissioners, part-time referees, and part-time hearing officers. This report will continue to be produced if rule 10.742 is amended as proposed.

### **Comments, Alternatives Considered, and Policy Implications**

This proposal was circulated for public comment from December 12, 2014, through January 23, 2015. Ten comments were received (two from one individual). Four supported the change, three suggested modifications, and three disagreed with the proposal entirely.

One court commissioner who wrote in opposition to the proposed change commented that it is premature to eliminate the reporting requirement before the statistics compiled from the information reported have been distributed and any benefits from collecting the information assessed. The two comments received from a member of the public (both from the same person) took issue with the use of temporary judges in general, and did not specifically address the reporting requirement.

Three commentators suggested modification of the reporting requirement, rather than eliminating it entirely. One court commissioner noted that information on the use of temporary judges must be tracked for other purposes, and that this information may be important to foster transparency and assess the need for additional judicial officers. This commentator suggested that perhaps the burden of reporting could be reduced by asking for less detailed information and requiring reporting annually rather than quarterly. A superior court judge similarly noted that information on the use of temporary judges is already collected and is useful for workload assessments, and also suggested reducing the reporting requirement to an annual report. The California Court

Commissioners Association also suggested that reducing the requirement to an annual report on the number and use of temporary judges could reduce the burden on trial court staff while making sure information is available for assessment of judicial officer needs.

As mentioned above, information on the number of days of temporary judge time for each trial court is collected for the quarterly *Use of Temporary Judges, Part-time Commissioners, Part-time Referees, and Part-time Hearing Officers* report, which is submitted to the council separately from the data required by rule 10.742. The TCPJAC and CEAC, in considering this alternative, have concluded that reducing the reporting requirement to an annual report, although it would reduce the burden on trial court staff, would still leave staff collecting duplicative and unnecessary data. The elimination of the reporting requirement is preferable, as the essential data on the use of temporary judges will still be collected and reported without the necessity for duplicative reporting. Additionally, the elimination of the reporting requirement under rule 10.742 would not preclude the trial courts from producing their own reports concerning the usage of temporary judges whenever they have a need to do so.

The TCPJAC and CEAC recommended this proposal at a RUPRO meeting on April 16, 2015. In light of the concerns raised by commissioners in the public comments, RUPRO referred the proposal back to TCPJAC and CEAC with a request to meet with commissioner representatives to further discuss their concerns. In July 2016, Judge Brian L. McCabe (former chair, TCPJAC) and Mr. Richard Feldstein (former chair, CEAC) met with Commissioner David Gunn (Superior Court of Butte County) and Commissioner Rebecca Wightman (Superior Court of San Francisco County) to further discuss the concerns of the commissioners and attempt to find a mutual resolution. The concerns that were raised by the commissioner representatives during this discussion mirrored those contained in the public comments. After discussing the commissioners' concerns and the resource constraints of the trial courts, Judge McCabe and Mr. Feldstein concluded that proceeding with the proposal as previously submitted to RUPRO was in the best interests of the trial courts because the process of reporting on their use of temporary judges was time-consuming and the essential data concerning temporary judge usage is still collected and reported by the council.

### **Implementation Requirements, Costs, and Operational Impacts**

The amendment of rules 2.810 and 10.742 would result in cost savings to the trial courts because they would be able to direct staff resources to more necessary functions. Implementation requirements and negative operational impacts are unlikely as a result of amendment of these rules.

### **Attachments and Links**

1. Cal. Rules of Court, rules 2.810 and 10.742, at pages 5–6
2. Chart of comments, at pages 7–20

Rules 2.810 and 10.742 of the California Rules of Court are amended, effective January 1, 2017, to read:

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

**(a)–(c) \* \* \***

**(d) Exception for extraordinary circumstances**

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

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

**(a)–(b) \* \* \***

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

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

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

**Advisory Committee Comment**

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

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

3  
4 ~~**Subdivision (c).** Regular recording and reporting of information concerning each court's use of~~  
5 ~~temporary judges assists the courts in monitoring and managing their use of temporary judges. This~~  
6 ~~information is also important for establishing the need for additional judicial positions.~~  
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 Amend Cal. Rules of Court, rules 2.810 and 10.742

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
1.	California Court Commissioners Association By Jeri M. Hamlin President	AM	<p>CCCA is concerned with the proposal, due to the fact that no reasonable alternatives were considered to reduce the burden on trial courts for the reporting of information that clearly should be utilized and evaluated in assessing judicial officer needs in the judicial branch.</p> <p>Trial courts are already required to keep track of names and training requirements of JPTs, and logistically have to track scheduling/assignments of JPTs within their respective courts, so the information is there.</p> <p>Reducing the reporting requirement to an annual reporting of the number and use of JPTs, <i>and making sure that information is utilized in future assessments</i>, would better serve the branch as a whole.</p>	<p>The committees appreciate the concern that the use of temporary judges continues to be tracked, and used to assess judicial officer needs. The elimination of the reporting requirement under rule 10.742, however, will not end the collection of information on the use of temporary judges. This information is tracked by the courts for other purposes and they would still be able to produce their own reports whenever necessary. Nor will it end the reporting of necessary data on the use of temporary judges to the Judicial Council. The total usage (in full-day increments) of temporary judges (judges pro tem), part-time commissioners, part-time referees, and part-time hearing officers will continue to be reported to the council as part of the quarterly report titled <i>Use of Temporary Judges, Part-time Commissioners, Part-time Referees, and Part-time Hearing Officers</i>. Thus even if the reporting requirements under rule</p>

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
				10.742 were streamlined and the data was required only once a year, the work involved would be in part duplicative of work otherwise being done.
2.	Charmaine Leorna Orangevale, CA	N	There is a shortage of Judges...the problem is the Judge and Attorney World is a very small world and the PRO TEM judges are mainly practicing attorneys for Profits and they are deciding the cases based on friendships, BIAS, and what is not a fair and Judicial process. Instead they accept payoffs for deciding cases in a biased manner and should not sit in a PRO TEM position knowing the cases via other Law Firms and though "friendships" the system is SICK and VERY flawed. I can guarantee that it is sick and actually costs the "PEOPLE" pain suffering and presents a FALSE portrayal of "justice" and actually makes more money for attorneys and PRO TEM Judges. There will be NO MONETARY burden if the change is handled correctly...Peter principle tactics created by greedy attorneys in an EXTREMELY WEALTHY STATE!	This comment is directed at perceived problems with the use of attorneys as temporary judges. The proposed change does not affect the requirements applicable when attorneys are appointed as temporary judges, but only eliminates the requirement for quarterly reporting of such appointments to the Judicial Council.



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3.	Charmaine Leorna Orangevale, CA	N	<p>I have submitted a short comment on the other link...I may still be able to write some expansion on REPORTING ON USE OF ATTORNEYS AS COURT-APPOINTED TEMPORARY JUDGES. I am so BURDENED by court filings and answers that I cannot make a correct full accounted and substantiated objective comment for "THE PEOPLE".</p> <p>#1. I just happen to stumble upon this "AMENDMENT" I will guarantee the Judicial Council that this will come back to bite....</p> <p>#2. Do not fool yourself into thinking it will save money....It NEVER worked to begin with and whatever modifications are made, are made to support JUDGES/ATTORNEYS/POLITICIANS/CALBAR and people like you who are paid to support and modify for the sake of padding pockets of the tight circle of unjust "lawmakers/liars" of the Golden State of California. This is not designed for "PEOPLE" like me to comment on. I can guarantee you Ms. Ortega PRO TEM is a sick and EVIL SCAM. There will soon come a day when I will prove</p>	<p>This comment is directed at perceived problems with the use of attorneys as temporary judges. The proposed change does not affect the requirements applicable when attorneys are appointed as temporary judges, but only eliminates the requirement for quarterly reporting of such appointments to the Judicial Council.</p>

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			the “SCAM” beyond a reasonable doubt in several Superior Court “BRANCHES”. Best Wishes with whatever it is you believe you are accomplishing, Ms. Ortega and Ms. Sher. Perhaps it is in some obscure low populated county that ultimately it does not matter....FRESNO maybe?	
4.	Superior Court of Los Angeles County Los Angeles, CA	AM	The proposal appropriately addresses the stated purpose and we support these amendments to CRC, Rules 2.810 and 10.742 unequivocally. These reporting requirements have required the utilization of precious staff resources throughout the LASC that could be expended in more essential court functions. An amendment to Subdivision (c) of Rule 10.742 would provide savings to the LASC by eliminating the court’s need to dedicate staff to the time-consuming collection of data and compilation of these reports. The LASC’s dedication to the administration of its rules compliant Temporary Judge Program will continue and we welcome this modest change to the current requirements.	The commentator’s support for the proposal is noted.  Note: Although the response form is marked “Agree with proposed changes only if modified,” it is clear from the text of the comment that the Superior Court of Los Angeles County supports the proposal without modification and, in its own words, “unequivocally.”

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5.	Superior Court of Marin County By Kim Turner, CEO Marin, CA	A	I strongly agree that this requirement should be repealed. It creates unnecessary workload for the courts and appears to serve no real purpose.	The commentator's support for the proposal is noted.
6.	Philip Pimentel Court Commissioner Hughson, CA	N	I have reviewed the pertinent provisions of Rules 10.742 (c) and 2.810 (d). I also reviewed the comments made at the time of the enactment of these two provisions. The stated purposes and benefits of the Rules cannot be assessed accurately without seeing the statistics compiled consistent with these Rules. I would request the proposal to eliminate these reporting provisions be tabled until such time as the statistics can be distributed for further comment. Thank you.	The committees appreciate the concern that the use of temporary judges continues to be tracked and used to assess judicial officer needs. The elimination of the reporting requirement under rule 10.742, however, will not end the collection of information on the use of temporary judges. This information is tracked by the courts for other purposes and they would still be able to produce their own reports whenever necessary. Nor will it end the reporting of necessary data on the use of temporary judges to the Judicial Council. The total usage (in full-day increments) of temporary judges (judges pro tem), part-time commissioners, part-time referees, and part-time hearing officers will continue to be reported to the council as part of the quarterly

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				report titled <i>Use of Temporary Judges, Part-time Commissioners, Part-time Referees, and Part-time Hearing Officers</i> . Thus even if the reporting requirements under rule 10.742 were streamlined and the data was required only once a year, the work involved would be in part duplicative of work otherwise being done.
7.	Superior Court of Riverside County By Marita Ford Senior Management Analyst Riverside, CA	A	No specific comment.	No specific response required.
8.	Superior Court of San Diego County By Mike Roddy, CEO San Diego, CA	A	No specific comment.	No specific response required.
9.	Rebecca Wightman Commissioner of the Superior Court of the County of San Francisco San Francisco, CA	AM	Thank you for the opportunity to comment. I disagree with the proposal as submitted, but agree that a <i>modified proposal</i> should go forward that both (1) lessens any burden on trial courts, and (2) preserves important information that can and should be used in both assessing judicial needs of the courts, as well as maintaining quality access to the	The committees appreciate the concern that the use of temporary judges continues to be tracked, and used to assess judicial officer needs. The elimination of the reporting requirement under rule 10.742, however, will not end the collection of information on the

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			<p>courts, and preserving the public’s trust and confidence in the courts.</p> <p>The purpose of having a system where presiding judges may appoint experienced attorneys (aka Judge Pro Tems or JPTs) is set forth in Rule 2.811: “The purpose of court appointment of attorneys as temporary judges is to assist the public by providing the court with a panel of trained, qualified, and experienced attorneys who may serve as temporary judges at the discretion of the court <b>if the court needs judicial assistance that it cannot provide using its full-time judicial officers.</b>” [Emphasis added]</p> <p><b>1. Query:</b> If trial courts are consistently utilizing JPTs to the tune of being the equivalent of <b>many FTEs</b> (full-time equivalent) in judicial service, isn’t that information important in terms of the judicial needs of the trial courts? The information of the extent and use of JPTs is no less important than it was when the system of use of JPTs was put in place.</p> <p><b>2.</b> The fact that the information that has been reported to date has not been used does <u>not</u> automatically mean the information is not useful or that keeping or reporting such</p>	<p>use of temporary judges. This information is tracked by the courts for other purposes and they would still be able to produce their own reports whenever necessary. Nor will it end the reporting of necessary data on the use of temporary judges to the Judicial Council. The total usage (in full-day increments) of temporary judges (judges pro tem), part-time commissioners, part-time referees, and part-time hearing officers will continue to be reported to the council as part of the quarterly report titled <i>Use of Temporary Judges, Part-time Commissioners, Part-time Referees, and Part-time Hearing Officers</i>. Thus even if the reporting requirements under rule 10.742 were streamlined and the data was required only once a year, the work involved would be in part duplicative of work otherwise being done.</p>

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			<p>information should be <i>eliminated</i>; rather, that fact begs the following questions:</p> <p><b>A. WHY hasn't this information been used?</b> This should be investigated prior to the complete elimination as proposed. Is it possible it was not brought to the attention of other individuals working on reports (mandated or otherwise) where such information could indeed be useful? The information on the use and extent of use of JPTs <i>should</i> be used to help determine the judicial needs of the courts, as well as preserve the integrity of the courts.</p> <p><b>Chronic use of JPTs -- especially if concentrated in particular areas/case types – can be an indication of not only of a persistent judicial need, but also negatively impact the public's perception of the courts, as well as the public's access to a proper compliment of qualified elected or appointed judicial officers (vs. a panel of attorneys who have simply received demeanor training and 3 hours of substantive training).</b></p> <p><b>B. Has anyone analyzed the reported information, and <i>reported to the Judicial Council</i> as to its usefulness (or</b></p>	

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			<p><b>otherwise)?</b> It is <i>premature</i> to simply eliminate the reporting of such information – which a prior Advisory Committee comment found would be “important for establishing the need for additional judicial positions” – if the information has not been meaningfully analyzed to understand its usefulness and/or importance. <b>This analysis should be done prior to any complete elimination as proposed.</b></p> <p><b>3.</b> Recordkeeping in and of itself is a chore; however, trial courts are already required to keep track of information regarding JPTs, and certainly must keep track within their own courts of when judges, SJOs or certain Depts. or calendars need to be covered and whether such coverage will be provided by a JPT (given the need to schedule JPTs for coverage, post calendars, etc.). In this day and age of communication, information recording, excel, scheduling systems, etc., <b>it cannot be that difficult to keep track of the extent and use of JPTs, such that an annual report or other type of report could not be generated fairly easily for reporting.</b> [Currently, courts must track applications, training (Rule 2.812), and</p>	

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			<p>many have a designated individual to track and manage the use of Temporary Judges under Rule 10.743, including 10.743(10) to assist in identifying judicial needs that require use of JPTs and addressing those needs. Again, by necessity, there has to be a system of scheduling for the use of JPTs, so the information is already there. Some courts even put their information online.] There is insufficient evidence that elimination of the reporting requirement would provide any great cost savings to the courts give the above. Rather than <i>eliminating</i> the requirement, ways should be explored to make it easier to track and report on a less frequent basis.</p> <p><b>4. Viable alternatives were not considered in this proposal.</b> The “alternative” listed in the Invitation to Comment document was a non-alternative (“The committee considered not recommending the repeal...”). If the current quarterly reporting requirement is burdensome, then why aren’t other, less burdensome, alternatives considered – such as reporting on a less frequent basis (e.g. annually), and considering reporting less</p>	



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			<p>detailed information (enabling a simple report to be generated on numbers of JPTs, areas of service, and half/whole days of service vs. actual time, or any other simpler pieces of information already kept by trial courts)?</p> <p><b>5. Without adequate tracking of information on the use of JPTs, by eliminating the reporting requirement altogether, the Judicial Council and the trial courts are not fostering transparency, cannot fully assess the true judicial needs of the branch, and will lose information that may help in understanding the public's trust and confidence in the courts.</b> It should be noted that since courts have been closing courtrooms and cutting staff, the use of JPTs have increased; in other courts, JPTs were already heavily used. (See, e.g. the Business Journal article in 2012 in Fresno which stated that "[w]ith larger caseloads following the recent closure of seven rural branch courts, the Fresno Superior Court is now seeking to expand its temporary judge program." Also, a recent article in one of the legal journals in 2014 reported on the</p>	

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			<p>uptick in the use of JPTs across the state, and noted some of the associated complaints.</p> <p><b>6. Bottom Line: The Judicial Council (and trial courts themselves) should be keeping track of this information, and it should be reported on an annual basis. The information should be used to inform the courts and the Judicial Council in the efficient administration of justice and access to the courts.</b></p> <p>Thank you very much for the opportunity to comment. This is my individual comment, and not on behalf of anyone or any organization.</p>	

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10.	Hon. Monica F. Wiley Judge of the San Francisco Superior Court San Francisco, CA	AM	I strongly urge the committee to continue to formally track the use of Judge Pro Tems (JPTs) by the Courts in the State of California. This tracking requirement is necessary to ensure consistency within our courts and to maintain transparency in our justice system. Courts in this State are already required to maintain a list of the names and training of JPTs and also have available daily calendars for scheduling and assignment of JPTs within their courts. As a result, this information is already being gathered and maintaining the reporting requirement does not place an undue burden on the court system. Reducing the reporting requirement to an annual report would ensure that this information is utilized in future Judicial Council workload assessments and continue to greatly benefit our court system.	The committees appreciate the concern that the use of temporary judges continues to be tracked, and used to assess judicial officer needs. The elimination of the reporting requirement under rule 10.742, however, will not end the collection of information on the use of temporary judges. This information is tracked by the courts for other purposes and they would still be able to produce their own reports whenever necessary. Nor will it end the reporting of necessary data on the use of temporary judges to the Judicial Council. The total usage (in full-day increments) of temporary judges (judges pro tem), part-time commissioners, part-time referees, and part-time hearing officers will continue to be reported to the council as part of the quarterly report titled <i>Use of Temporary Judges, Part-time Commissioners, Part-time Referees, and Part-time Hearing Officers</i> . Thus even if the

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1				reporting requirements under rule 10.742 were streamlined and the data was required only once a year, the work involved would be in part duplicative of work otherwise being done.