

2 Ways to Mitigate the Upcoming Reduction to the Trial Court Assigned Judges Program

Subject to case-by-case exceptions, the current 33,000 annual service days provided across the state under the program that temporarily assigns retired judges and justices to cover vacancies will be cut by 50 percent.

By **Ignazio J. Ruvolo**

On May 21, a memorandum was sent to all administrative presiding justices and presiding judges in California outlining changes to the statewide Assigned Judges Program (AJP) resulting from a review of that program. Some years earlier the AJP had been commenced by the chief justice under the authority of Article VI, Section 6 of the California Constitution to expedite judicial business and to equalize the work of the judges by temporarily assigning retired judges and justices to cover vacancies resulting from various circumstances.

The May 21 memorandum states that, effective with the commencement of the fiscal year on July 1, and subject to case-by-case exceptions, the current 33,000 annual service days provided under the program will be cut by 50 percent. Retired judges enrolled in the AJP will now be limited to a maximum of 120 assignment days annually, and to a cumulative maximum of 1,320 days, the equivalent to a six-year term of

an elected Superior Court judge. The reduction is expected to be gradual in order to limit disruption to ongoing court calendars.

At least one large county Superior Court and a judges' association have expressed concern that these changes could result in widespread reductions in the ability of the Superior Courts to serve the needs of their county residents and businesses. There appears to be statistical support for the conclusion that the reductions, once fully implemented, and even if liberal exceptions are granted, will have a substantial impact on the pace of adjudications in all substantive areas of court services.

Since its inception, the AJP has become a vital component of the judicial resources available in the public courts. Each month the Judicial Council receives 350 to 450 requests for assignments under the program from presiding judges and justices. Between 2008 and 2016, 130 to 163 full-time judge equivalents have been assigned each year. Total annual service days have ranged



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from 33,000 to more than 40,000.

Even with the assistance of a robust AJP, statistical data compiled by the Judicial Council reveal that between 2007 and 2015 there was a shortfall between the "assessed judicial needs" of the courts and the "judicial position equivalents," the latter including AJP appointments. In 2016, these same statistics show that the courts minimally met their needs with the aid of 30,000 to

40,000 assigned judges annual service days.

Because the Judicial Council has given greatest priority for assignments to those courts, which have been at risk of dismissing criminal cases, the impending AJP cuts likely will force some courts to shift remaining resources to criminal assignments thereby aggravating the impact on civil courts. This reduction in service comes at a time when the civil courts already appear to be losing ground in resolving cases in a timely fashion.

For example, despite the reduced shortfall between assessed needs and available judicial resources over the years, the length of time to dispose of general unlimited civil cases has expanded. In 2007, 92 percent of unlimited civil cases were resolved in less than 24 months, while by 2016 the 24-month disposition rate had slipped to 83 percent.

In light of these statistics, concerns expressed by the trial courts over the impact of the reduction in the AJP appear to be well-founded. One way the parties and the courts might mitigate the predicted negative impact on civil litigation is by turning to private alternative dispute resolution providers for referee assistance under Code of Civil Procedure Sections 638 and 639.

Section 638 allows the court to appoint a referee upon agreement of the parties filed with the court, or upon motion by a party

showing that there is a pre-existing written agreement to refer any controversy between them to a referee. The referee then may be authorized to decide designated issues raised by the parties. Alternatively, the referee can be delegated the task to make factual determinations needed by the court to adjudicate the case fully. While normally the services of a referee take place outside the public court and without the assistance of court personnel, the presiding judge can order court facilities and personnel to be made available to the referee upon a finding that their use would further the interests of justice.

Thus, civil parties facing delays in resolving disputes do not have to abandon the public court system but can agree instead, either by pre-existing written agreement or by subsequent stipulation, to have critical issues resolved with the help of a private referee that will expedite resolution of their dispute.

Alternatively, CCP Section 639 empowers the trial court, either upon written motion of a party, or even on the court's own motion without the parties' consent, to appoint a referee. The appointment can be made when: (1) an accounting is necessary; (2) a question of fact determination is needed to adjudicate the case; or (3) the court needs assistance in resolving discovery disputes. [CCP 639(d)] In ordering a sua sponte appointment, the trial court also

is required to set forth in its order findings that no party with an "economic inability to pay" its share of the stated referee's cost will be prejudiced. [Rule 3.907, Cal. Rules of Court]

The 58 county trial courts of this state range in size from single digits to more than 400 judges, and it is likely that each court will have to fashion other remedies that fit their specific circumstances to meet any resource impacts resulting from AJP reductions. Doubtlessly, as they have before in the face of other resource droughts, the trial courts will use their indefatigable ingenuity to find solutions. However, the parties' voluntary use of Section 638 and the courts' exercise of its authority under Section 639 are two approaches that will go some distance in allowing the courts to continue meeting the needs of those litigants who avail themselves of public judicial services.

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