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Private judging in California

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Although nearly half of the American states provide some form of private judging, none does so as extensively as California. This state first made provision for a private judge system in the California Code of Civil Procedure in 1872 but little use was made of it until the 1970s.

Presently, by virtue of art VI, s 21 of the California State Constitution, a court can order a matter to be heard by a temporary judge (referred to as a judge *pro tem*), being a member of the state bar, sworn and empowered to act. The section provides that the court may make such an order on stipulation of the litigating parties. The temporary judge must be a member of the state bar.

The requirements for the appointment of the temporary judge are set out in Rule 244 of the California Rules of Court. For example, the stipulation must be in writing, must be submitted to and approved by the court, and the proposed person must consent to the appointment and take an oath of office.

The Code of Civil Procedure (in s 638) also allows parties, if they agree, to select 'referees' to try any or all of the issues in the action (a 'general reference'). Section 639 empowers a court on application of either party or of its own motion to order a 'special reference' to a referee to preside over discovery, to perform an accounting and to perform certain other specified matters.

The label of 'rent-a-judge' is used colloquially to describe both temporary judges and referees. Many individual private judges in California offer their services on separate web pages designed by an organisation called Wheatmedia. These judges can be contacted by accessing the particular page of each

judge. This is done through the Wheatmedia web page and also via the home page of Lawzone which allows access to Californian courts, judges, law firms, private judges, products and services, laws, cases etc.

The relevant website provides service information to prospective consumers. For example, an introductory section is headed 'What Is Private Judging?'. The details of the service are provided, together with an outline of the advantages for clients of the private judging service.

Information on each private judge is available, including areas of speciality. These pages look rather like resumes: details are given about each person's educational background, community service record, professional and judicial experience, and ADR training and experience. Other more specific information is also included. For instance, some mention awards that have been received such as 'Trial Judge of the Year'. Others list affiliations with various committees such as the Committee on Disadvantaged Persons, Community Council of the League of Women Voters, Women's Lawyers Associations, Jewish Community Relations Committee, and Anti-Defamation League Regional Board. Still others list their publications in books and journals. All of these details are presumably included to allow consumers to be able to select the person best suited to judge the particular dispute.

The only information that is not published is the fee to be charged — this is available on request. ❖

Relevant websites:

<http://www.lawzone.com>

<http://www.wheatmedia.com>