

Judges, Justices, Magistrates, and Commissioners

ONE PIECE OF ADVICE that the novice litigator learns quickly if he or she wants to be successful is that it is not enough to know all about the law, you must also know enough about the judge. This means that counsel should have a thorough understanding of the various types of judges.

In the federal court system, trial-level federal bench officers include district court judges, magistrate judges, bankruptcy court judges, and administrative law judges (ALJs). Bankruptcy judges (appointed by the court of appeals for 14-year terms) and ALJs have specialized jurisdiction. District court judges are nominated by the president of the United States and confirmed by the U. S. Senate pursuant to Article III of the Constitution. These are lifetime appointments to the bench.

District court judges handle civil and criminal matters. Generally, a case is sent to a particular judge when it is filed, and that judge retains the case through its disposition. This includes pretrial proceedings, motions, trial, and posttrial proceedings.

Other Federal Bench Officers

Magistrate judges are Article I judges appointed for terms of eight years by the district court judges to assist them in handling cases.

Magistrate judges generally oversee such issues as the initial proceedings in criminal cases (e.g., search warrants, bail hearings), try criminal misdemeanor cases, try civil cases with the consent of the parties, and conduct other proceedings referred to them by district court judges (e.g., pretrial and settlement conferences, discovery disputes, review of prisoner petitions). It is common for a district court or some or all of the district judges of that court to issue one or more orders making a blanket reference of certain types of matters, such as discovery, to magistrate judges.

Each federal district court has a chief judge (and many have a chief magistrate judge as well) who exercises administrative authority over the court in addition to handling a normal workload. In addition, district courts will often have committees of judges that serve to review and make recommendations regarding various aspects of court administration.

Appeals from district court rulings go to the circuit courts of appeals. The judges of the circuit courts of appeals, like district court judges, are Article III judges. However, unlike state appellate bench officers, they are referred to as judges, not justices. (This has led to the quip, "There's no justice in the court of appeals.") One sure way to distract a panel of circuit judges from focusing on the merits of the matter being argued is to mistakenly call one of the judges a justice, which may lead to the rejoinder, "Thanks for the promotion, counsel, but I'm not on the Supreme Court yet." This is funny to everyone except the lawyer trying to argue the case.

The Ninth Circuit also has an appellate commissioner. This is a non-Article III officer who makes nondispositive decisions on case management issues, such as appointment or release of counsel, attorney discipline, case settlement, and special masters. The commissioner also may reconsider decisions made by a procedural motions clerk.

Although appointed for life (technically while showing "good behavior"), district and circuit court judges have the option of retiring from regular active service and taking senior status, which is based on a formula involving their age and years of service. Senior judges may opt for a reduced caseload. Judges on senior status are an indis-

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pensible part of the federal judiciary, handling approximately 15 to 20 percent of the workload of the district and circuit courts.

In addition to active judges and senior judges, a typical court of appeals panel also may include a visiting judge, who is sitting by invitation either from another court of appeals circuit or a district court.

The U.S. Supreme Court consists of the chief justice of the United States (not the chief justice of the Supreme Court) and eight associate justices. One Supreme Court justice is assigned to each court of appeals to act as that circuit's circuit justice. Among other duties, the circuit justice will initially consider emergency applications, such as death penalty stays, from all courts within the circuit.

California Bench Officers

California has the nation's largest court system, with more than 2,000 judicial officers serving the state's 58 counties. The sole qualification to become a judge in California is membership in the State Bar for 10 years. Generally, superior court judges are appointed by the governor after a review by the state's Judicial Nominees Evaluations Committee and various bar associations. Once appointed, they must stand for election, usually in the next general election. However, if the judge receives no filed opposition, he or she is automatically

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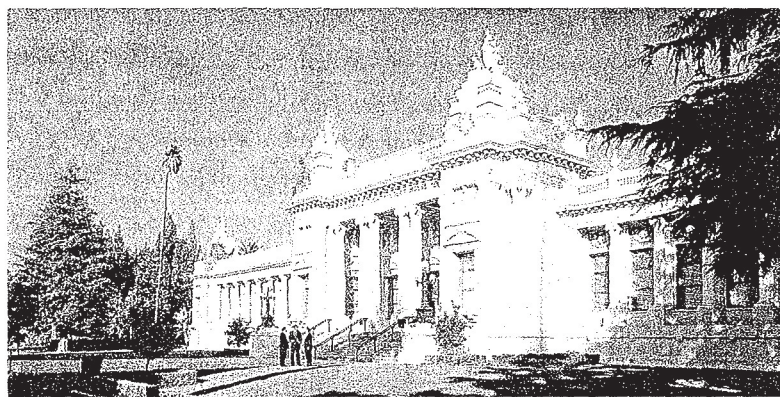
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elected and does not appear on the ballot. The judge is elected for a six-year term.

A judicial aspirant who has not been appointed may also seek a spot on the superior court bench by running for election against a judge whose term is expiring or running for a vacant seat after the retirement or death of a judge.

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Almost a quarter of superior court judicial positions statewide are occupied by subordinate judicial officers who are selected by the superior court judges. These include commissioners, referees, and magistrates. Commissioners commonly hear preliminary hearings (among many other types of cases), misdemeanor and small claims matters, juvenile matters, family law matters, and traffic cases. They set bail and perform other tasks to assist the superior court, including acting as judges pro tempore. Commissioners are generally addressed as "judge" as an appropriate sign of respect.

Referees and Others

A referee is a lawyer appointed by the court to hear and make decisions on limited legal matters. Magistrates issue arrest warrants and find probable cause at preliminary hearings. Judges pro tempore (or pro tem for short) are acting judges serving temporarily, such as volunteer lawyers or referees or commissioners filling in for a judge.

In the California Court of Appeal and the California Supreme Court, the bench officers are called justices. They are appointed by the governor, confirmed by the Commission on Judicial Appointments, and then reconfirmed by the voters in uncontested confirmation elections every 12 years. Unlike trial judges, an appellate justice cannot be challenged by another candidate.

The court of appeal is divided into districts, and some of those are subdivided into divisions, with each district having an administrative presiding justice and each division having a presiding justice. The California Supreme Court consists of a chief justice and six associate justices.

Before appearing before any judicial officer, the wise advocate reviews the relevant judicial profile to learn more about the person wearing the robe. Another good idea is to search for relevant opinions that the judge or justice has authored and to talk to other lawyers who have appeared before the judge. Always remember that despite their robes, judges simply are fellow professionals with a difficult job to accomplish.