



# Why become a judge pro tem?

*JPTs perform a critical role in the new world of Discovery Law and Motion that has been born of declining court budgets*

**BY CHUCK GEERHART  
AND MICHELE R. WOLF**

The parties arrive in San Francisco Superior Court for hearing on a medical records subpoena, or to discover the identity of the person behind an Internet post. Or to wrangle over a hundred thousand emails and other documents relating to a real estate investment trust. Or maybe it's as simple as failure to answer form interrogatories. Hearing the motion is a judge pro tem (JPT) – a senior volunteer lawyer from the community who has been specially trained to hear discovery motions. Welcome to the new world of Discovery Law and Motion in this era of declining court budgets. The legal community has stepped up, and now every discovery motion is initially heard

by a JPT. This article will familiarize you with how it all works in practice.

Why become a discovery JPT? Since approximately 2010, California courts have made a huge reduction in the number of judges, commissioners, and staff across the State, which requires that volunteer attorneys take up the torch to help cases get resolved expediently, including civil discovery issues. It takes some training, research, and time to become a JPT, yet the experience is incredibly rewarding.

## **How to become a JPT**

To become a JPT, first look at Rules 2.812, 2.813, and 10.744 of the California Rules of Court, as well as your Local Rules to see what experience, conditions, education and training you need to become a JPT.

Rule 2.812 (a) of the California Rules of Court requires that a volunteer be admitted to practice as a member of the State Bar of California at least 10 years before appointment; for good cause, the presiding judge may permit an attorney who has practiced for at least five years to become a JPT. The San Francisco Superior Court requires that one has been a member of the California State Bar for at least seven years, and meets all of the requirements set forth in Rule 2.812 (b) through (c) of the California Rules of Court. The attorney must be a member in good standing with no disciplinary action pending, and cannot have committed a felony.

For all civil discovery JPTs, either an application under Rule 10.744 of the CRC, or in the case of San Francisco Superior Court, a resume must be submitted



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explaining the type of work the prospective JPT has done to see if that person is a fit for the program. It doesn't matter if you are defense or plaintiff's counsel.

A JPT must have a good working knowledge of the Civil Discovery Act, California Rules of Court, and the Local Rules. There are three mandatory training sessions. The first is the Bench Conduct and Demeanor Training. It is a live three-hour course that every JPT must take every three years to comply with Rule 2.812. The next course will be held on October 22, 2015.

The second mandatory training session is ethics, where the prospective JPT learns about judicial ethics, conflicts, disclosures, disqualifications, and limitations on appearances, as well as ex parte communications. This class also must be taken every three years to comply with Rule 2.812(c)(2).

The third mandatory training session is Civil Discovery Training at San Francisco Superior Court, which takes two hours, and is led by Judge Harold Kahn, at least one Law and Motion Judge, and JPT Coordinator Adrienne Williams. At this session, prospective JPTs are presented with the nuts and bolts of the program, including the program guidelines, procedures, and expectations of the JPTs. Attorneys gather in a circle and discuss hypothetical discovery issues, how they would rule and why the law supports that ruling. It can be invigorating to be surrounded by attorneys from different types of practices giving their opinions with analysis.

Each new JPT must be sworn in prior to service by a Law and Motion Judge. Afterwards, Ms. Williams contacts the discovery JPTs to calendar their dates of availability during each three-month period.

### The hearing process

In San Francisco, you do not need a reservation number for a discovery motion. Simply pick the desired date and file the motion, allowing proper time for notice. The tentative ruling will be posted on the court's Website at 2 p.m. the day

before the hearing. Failure to contest the tentative ruling waives your right to argue, and the tentative will become the ruling of the court. The tentative will also identify who the JPT is. Hearings are at 9 a.m. in Dept. 301. At court, the clerk will ask if you stipulate to a JPT ruling on your case. If both parties so stipulate, the JPT will hear argument and issue a binding ruling. If at least one party does not stipulate, the clerk will assign a new hearing date, usually a few weeks later. The JPT will then take oral argument from both sides, and then prepare a memo recommendation to the "real" Law and Motion judge (presently Hon. Ernest Goldsmith) in Dept. 302.

Approximately 75 to 80 percent of parties stipulate to have the pro tem hear and rule on the motion. Based on an unscientific analysis of subsequent rulings in Law and Motion after the parties have declined to stipulate to a JPT, it appears that the L & M judge agrees with the JPT's recommendation over 90 percent of the time, including on sanctions. Thus, as a general rule, punting the JPT for the "real judge" is not going to result in a different outcome, and you will lose time waiting for the new hearing.

### Success in the hearing

Even with hardworking JPTs sharing the load, the Discovery calendar can sometimes be quite clogged. The best route to success is, first and most important, meet and confer before filing the motion. A strong meet-and-confer effort by both sides narrows issues for the hearing and impresses the court that the parties are not bringing frivolous motions. Always attach your meet and confer letters or emails as exhibits to prove you tried to resolve issues in good faith. That can make a difference in deciding whether, or how much, sanctions should be awarded. Keep narrowing issues as the hearing date approaches.

Next, keep briefs as short as possible. No name-calling or vitriol. Cite the key cases that help you. Make the best argument you can on cases that do not help

Do not cite cases for general principles such as, "The law favors liberal discovery, and doubts should be resolved in favor of discovery." We all know that. But if you are in a specialized area, such as trade secret, or medical/employment records, do not assume the court is familiar with the law.

The separate statement required by CRC 3.1345 is extremely important. The motion will be denied without it. It is an indispensable tool for the court in complicated cases with many discovery requests. If your separate statement is clear and concise, it can win the motion.

If the calendar is crowded (more than six matters), you will not get as much of the JPT's time, since the ex parte calendar starts at 11. If the calendar is light, you may be fortunate enough to have the JPT spend an hour or more going through individual document demands and interrogatories with the parties. But don't count on that luxury.

In training, JPTs are taught that the goal is always to issue a signed order the same day as the hearing. On a crowded hearing day, that may mean the JPT makes some rulings you wish you had more time to argue in court. This is all the more reason to narrow your issues to those that are truly intractable and need a ruling.

Because of frequently congested calendars, if there are notice problems (either with the motion itself or failure to contest the tentative), the JPT will very likely rule against you.

### Sanctions

In years past in San Francisco, it seemed the court commissioners were loath to award sanctions at all, and if they did, they were usually minuscule. In training, JPTs are taught that sanctions should be awarded where a party or attorney has not played by the rules. Based on review of tentative rulings over the past two years (both by JPTs and the "real judge"), that has changed. If a party or attorney takes an unmeritorious position, s/he will be sanctioned. On the other hand, legitimate close calls, if well briefed



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and documented with efforts to meet and confer, will not result in sanctions.

### The pros and cons

As with all new endeavors, there are pros and cons to becoming a discovery JPT. The work is intellectually fun because you learn a lot of interesting new things constantly. It is refreshing to deal with issues that are not generally dealt with in one's own law practice.

Sometimes, attorneys are incredibly rude in court and call each other less-than-civil names (which explains why there are so many "put the civility into civil" articles in magazines such as this one). One JPT reported an unfortunate scenario at her first hearing in which attorneys were calling each other liars and worse, precipitating the JPT's opinion that if they could not be civil then they

should leave the courtroom. Being a JPT can also be more than a little stressful dealing with a new area of the law, especially with a case where the stakes are really high.

One of the biggest pluses is that the parties are very appreciative of the time and work that the JPTs spend before, during, and sometimes even after the discovery hearing when taking issues under advisement, or making sure the order complies with the judgment.



Geerhart

*Chuck Geerhart is a founding partner of Paoli & Geerhart and was admitted to the California bar in 1989. He is a graduate of Cornell University and the UCLA Law School. He has tried more than 20 cases to*

*jury verdict. He has also sat as a juror in three cases in San Francisco County. In addition to his active practice representing injured people, Chuck sits as a judge pro tem and serves as a court-appointed arbitrator and settlement conference officer in the San Francisco Superior Court.*



Wolf

*Michele R. Wolf is a contract attorney who specializes in providing services to plaintiff's personal injury firms throughout the Bay Area. She can be contacted at [michelerwolf@gmail.com](mailto:michelerwolf@gmail.com).*