

THE 2006-2007 CODIFICATION OF CRC 2.816 AND 2.818

**Jurisdictional "Stipulation to a Commissioner" Defect
And
Pre-meditated unconscionable Binding Instruments**

EXEMPLAR EVIDENCE

LITIGANT PERMISSION (STIPULATION) TO A TEMPORARY JUDGE

California Constitution, Art. 6, § 21:

“On stipulation of the parties litigant the court may order a cause to be tried by a temporary judge who is a member of the State Bar, sworn and empowered to act until final determination of the cause.”

Commissioners function under a separate, SUBORDINATE lane and status

California Constitution, Art. 6, § 22:

“The Legislature may provide for the appointment by trial courts of record of officers such as commissioners to perform subordinate judicial duties.”

Separation of Powers: commissioners are SUBORDINATE Judicial officers (SJOs), having ONLY administrative judicial authority; lacking full judge power to act as a final arbiter in contested matters and rendering binding decisions (“final determination of the cause”). This jurisdictional authority is that of a judge or a Temporary Judge upon the sovereign stipulation (permission) of the litigants.

Only the posture of Temporary Judge, with, permission from the litigants, may a commissioner preside with judge authority; as a final arbiter and issue binding orders.

Code of Civil Procedure - CCP § 259:

“Subject to the supervision of the court, every court commissioner shall have power to do all of the following:”

(d) “Act as temporary judge when otherwise qualified so to act and when appointed for that purpose, on stipulation of the parties litigant. While acting as temporary judge the commissioner shall receive no compensation therefor other than compensation as commissioner.”

Superior Court of California County of Riverside Local Rule 1060: Commissioners Appointed as Temporary Judges

“All Commissioners are appointed as Temporary Judges. Their Oaths of Office are available at the Executive Office of the Court.” Effective 7-1-06. This appointment complies with CRC 2.810 but does not grant judge powers, which is only acquired by litigant permission; the court appointment is only an appointment of status for application in temporary judge lanes.

CALIFORNIA RULES OF COURT Rule 2.816 Stipulation to court-appointed temporary judge

(Effective January 1, 2007)

(a) Scope of rule

“Rules 2.810-2.819 apply to attorneys who serve as court-appointed temporary judges in the trial courts.

The rules do not apply to subordinate judicial officers or to attorneys designated by the courts to serve as temporary judges at the parties' request.”

(b) Contents of notice

“Before the swearing in of the first witness at a small claims hearing, before the entry of a plea by the defendant at a traffic arraignment, or before the commencement of any other proceeding, the court must give notice to each party that:

- (1) A temporary judge will be hearing the matters for that calendar;
- (2) The temporary judge is a qualified member of the State Bar and the name of the temporary judge is provided; and
- (3) The party has a right to have the matter heard before a judge, commissioner, or referee of the court.”

(c) Form of notice

“The court may give the notice in (b) by either of the following methods:

- (1) A conspicuous sign posted inside or just outside the courtroom, accompanied by oral notification or notification by videotape or audiotape by a court officer on the day of the hearing; or
- (2) A written notice provided to each party.”

(d) Methods of stipulation

“After notice has been given under (a) and (b), a party stipulates to a court-appointed temporary judge by either of the following:

- (1) The party is deemed to have stipulated to the attorney serving as a temporary judge if the party fails to object to the matter being heard by the temporary judge before the temporary judge begins the proceeding; or
- (2) The party signs a written stipulation agreeing that the matter may be heard by the temporary judge.”

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Only the posture of Temporary Judge, with, permission from the litigants, may a commissioner preside with judge authority; as a final arbiter and issue binding orders.

Code of Civil Procedure - CCP § 259:

“Subject to the supervision of the court, every court commissioner shall have power to do all of the following:”
(d) “Act as temporary judge when otherwise qualified so to act and when appointed for that purpose, on stipulation of the parties litigant. While acting as temporary judge the commissioner shall receive no compensation therefor other than compensation as commissioner.”

Superior Court of California County of Riverside Local Rule 1060: Commissioners Appointed as Temporary Judges

“All Commissioners are appointed as Temporary Judges. Their Oaths of Office are available at the Executive Office of the Court.” (effective July 1, 2006). *This appointment complies with CRC 2.810. The appointment does not apply to commissioners but provides the separate status and qualifications of a court appointed temporary judge, as the rule clarifies. The appointment does not grant judge powers. These powers are granted by litigant permissions, per CA Const, Art. 6, § 21.*

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(Effective January 1, 2007)

(a) Scope of rule

“Rules 2.810-2.819 apply to attorneys who serve as court-appointed temporary judges in the trial courts. *(Commissioners are also attorneys)*”

The rules do not apply to subordinate judicial officers or to attorneys designated by the courts to serve as temporary judges at the parties’ request.”

Requests for a temporary judge outside of standard court calendar hearings is covered in CRC, Rules 2.830-2.834 (stipulation process in 2.831)

Clarifying that litigants do not “stipulate to a commissioner” (SJO), they “stipulate to a temporary judge.”

(b) Contents of notice

“Before the swearing in of the first witness at a small claims hearing, before the entry of a plea by the defendant at a traffic arraignment, or before the commencement of any other proceeding, the court must give notice to each party that:

- (1) A temporary judge will be hearing the matters for that calendar;
(not a commissioner)
- (2) The temporary judge is a qualified member of the State Bar and the name of the temporary judge is provided; and
- (3) The party has a right to have the matter heard before a judge, commissioner, or referee of the court.”

(c) Form of notice

“The court may give the notice in (b) by either of the following methods:

(1) A conspicuous sign posted inside or just outside the courtroom, accompanied by oral notification or notification by videotape or audiotape by a court officer on the day of the hearing; or

(2) A written notice provided to each party.”

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“After notice has been given under (a) and (b), a party stipulates to a court-appointed temporary judge by either of the following:

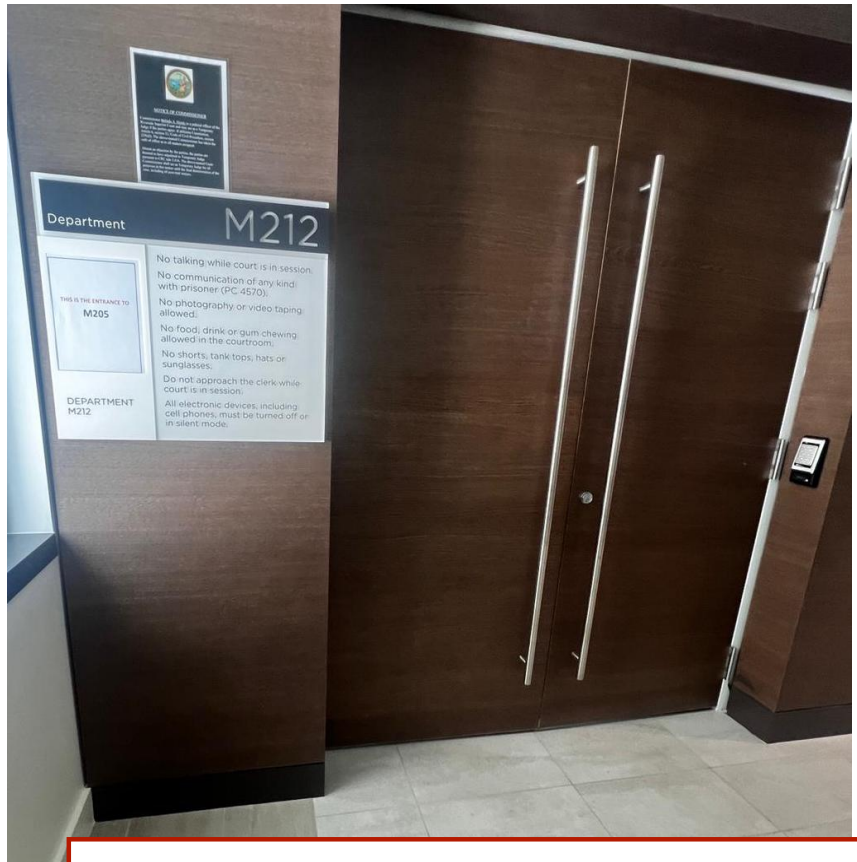
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(2) The party signs a written stipulation agreeing that the matter may be heard by the temporary judge.”

(contains required notice)

CALIFORNIA RULES OF COURT Rule 2.816

Stipulation to court-appointed temporary judge



2.816(c) "Form of notice

(c)(1) "A conspicuous sign posted inside or just outside the courtroom, accompanied by oral notification or notification by videotape or audiotape by a court officer on the day of the hearing"



Riverside County's judiciary, tribunal officers, municipal leadership, Sheriff's Court Services, and Sheriff Chad Bianco have repeatedly been placed on notice of systematic due process violations, unlawful court practices, and enforcement of corrupt rulings causing irreparable harm.

Those notices specifically identified violations of California Rules of Court, rules 2.816–2.819, including deceptive signage, and explained the resulting county liability, harm to individuals and families, and erosion of public trust.

Yet despite formal motions, supporting evidence, and repeated service by certified mail, email, and personal delivery, the issues have been ignored and whistleblowers retaliated against.

Rule 2.816(a) does not mandate notice of "Commissioner."
The subsection requires notice of "Temporary Judge."

CCP §259(d) provides for a commissioner (SJO) to act as a temporary judge upon a litigant's stipulation.

The inversion appears intended to misdirect and keep litigants ignorant of the authority lanes, potentially leading to the impression that commissioner status carries greater authority and that "temporary judge" is a subordinate status.

Omission: Mandatory disclosure of membership in the State Bar. Concealed lawyer status hardens obscurities and curtails the litigant's awareness of their remedy to file a complaint with the state bar (shielding the commissioner's attorney license from exposure).

The sign omits the designation, "subordinate" judicial officer (SJO), pursuant to CA Const., Art. 6, § 22, CRC, Rule 10.701(a) and (b), which may lead litigants to perceive the commissioner as having full judicial powers and authority.

Commissioners, optically presented as judges; in the same black robe, postured behind the same bench and staged courtroom, further a facade of near indistinguishable full judicial power, leading litigants away from considerations, including available remedies, such as SJO accountability under CRC 10.703

The Court's noncompliant signage appears self-evident of its failure to provide litigants the right to procedural due process.

The Court's subsequent entries in the record, using the litigant's identification, representing their interests and agreement to a significant binding legal obligation, and certifying the commissioner to act as a temporary judge with judge powers and jurisdiction over their person and matter, create a potentially fraudulent, unconscionable legal instrument.

The oath of office and other embedded notice language are not required, per Rule 2.816. However, they appear to serve as "filler" substitutions, distracting from the absence of essential advisements, such as informing litigants of their right to have a judge over their case. As a result, these elements create the illusion that complete advisement has been given.



NOTICE OF COMMISSIONER

Commissioner **Nicholas Firetag** is a judicial officer of the Riverside Superior Court and may act as a temporary judge if the parties agree. (California Constitution, Article 6, section 21; Code of Civil Procedure, section 259(d)). The above named Commissioner has taken the oath of office as to all matters assigned.

Absent an objection by the parties, the parties are deemed to have stipulated to temporary judge pursuant to CRC rule 2.816. The above-named Court Commissioner shall act as a Temporary Judge for all purposes in this matter until the final determination of the case, including all post-trial matters.

This signage fails to comply with Rule 2.816 per se, providing prima facie evidence of defective litigant stipulation, indicating commissioners systematically preside over litigants and their matters with asserted power of a temporary judge but NOT "empowered to act" as a final arbiter, in violation of CA Const., Art 6 §21 and CCP §259(d), as cited. If so, the commissioner proceeds ultra vires, imposing void final renderings, carried out with downstream tribunal enforcement, absent valid authority.

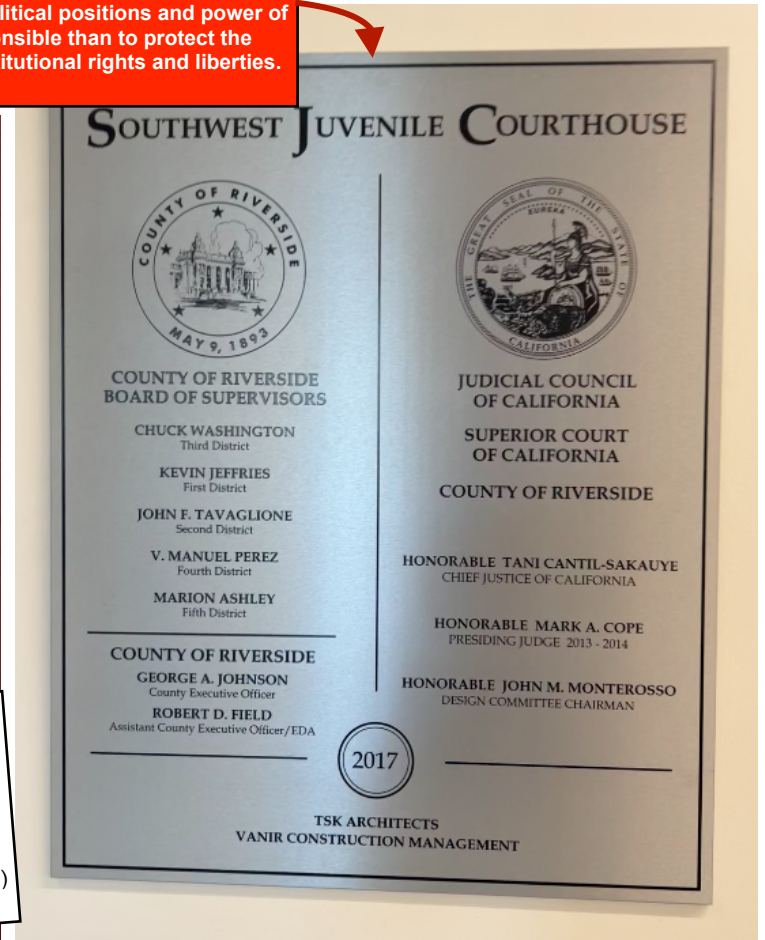
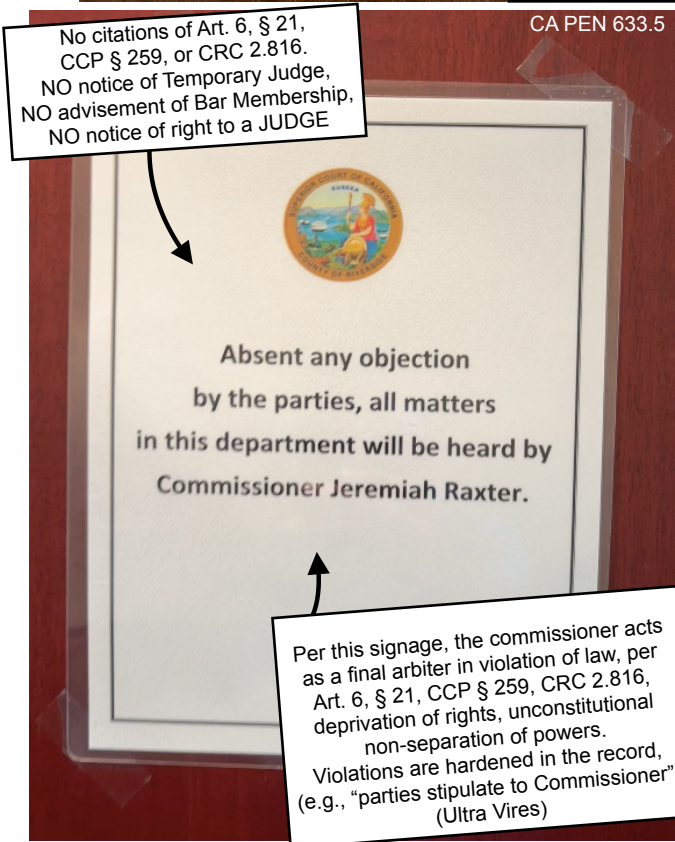
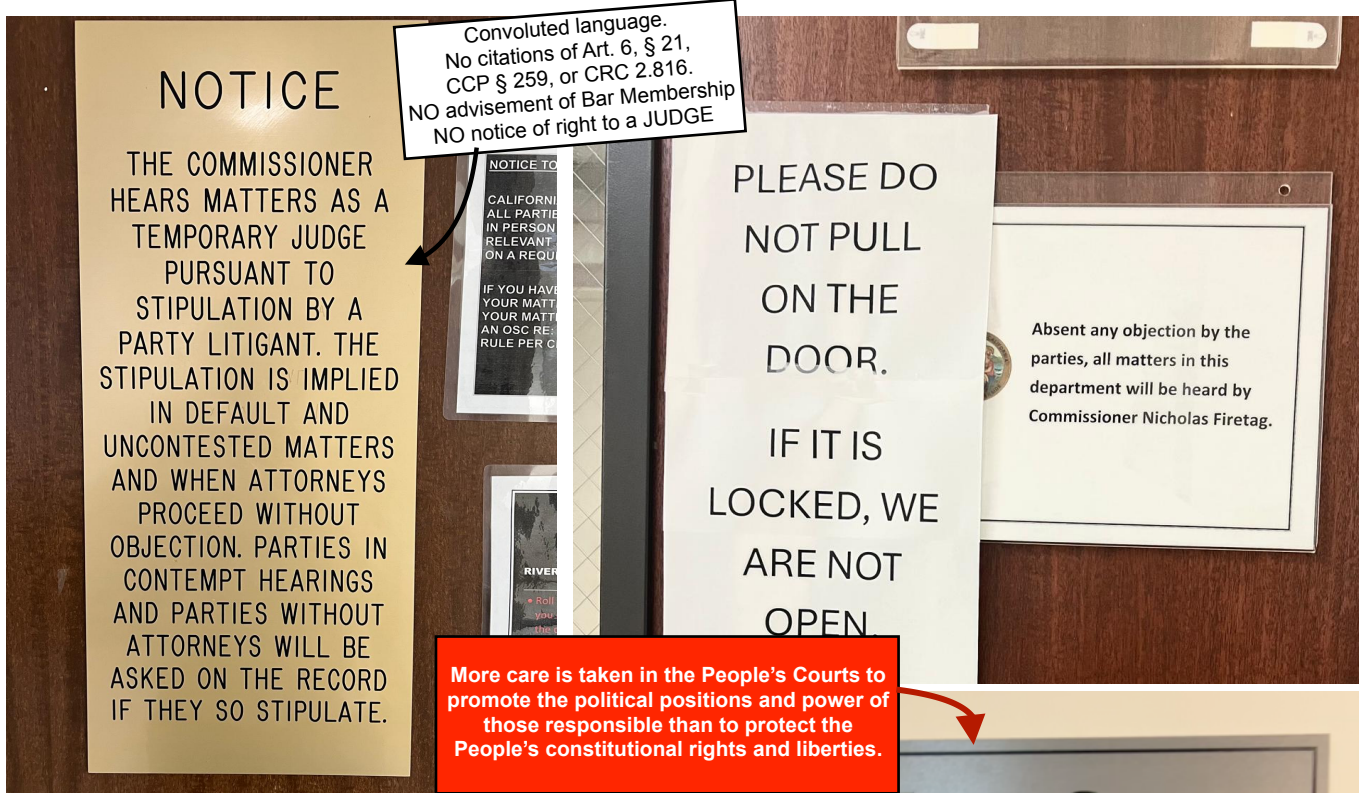
If the signage is posted to represent compliance with CRC 2.816 but is determined invalid, it may be deemed an unlawful instrument defrauding litigants and used as an apparatus to exert authority in excess of office under the color of law.

The sign asserts that, pursuant to Rule 2.816, a litigant's failure to object provides the Court with standing to deem the litigant's stipulation satisfied;

HOWEVER, the Court's systemic avoidance of providing Rule 2.816 mandatory advisements (such as the litigant's right to a judge), and to administer required secondary oral advisements, renders a litigant's failure to object flawed standing for the Court to deem litigants provided valid stipulation.

**Sanctioned, Inconsistent, Non-Compliant
CRC 2.816 Signage Across Riverside County Courts Is More Unconscionable.**

The Courts Consistently Focus the Onus on the Litigant's Failure to Object, Despite the Court Systemically Concealing Mandatory Notices From Litigants.



The 2007 Codification of CRC 2.816 and 2.818, and the Jurisdictional Fallacy of "Stipulation to a Commissioner"

I. The 2007 Jurisdictional Reset

The January 1, 2007, codification of **California Rules of Court, Rules 2.816 and 2.818(b)(3)**, represents a sweeping impact on prior-established law and case law regarding acquired judicial stipulations. The introduction of these required predicate advisements displaced the "tantamount" doctrine, repositioning viable application to post mandatory, unified due process requirements. By defining the exclusive procedure for "Deemed Stipulation" (Rule 2.816(d)), the Judicial Council established a **jurisdictional safeguard**: post-2006, a stipulation cannot be inferred from a litigant's conduct unless the court first satisfies the **mandatory** notice requirements of Rule 2.816(b).

II. The Legal Fallacy of "Stipulating to a Commissioner"

A fundamental flaw exists in court records that assert "parties stipulate to the Commissioner." Under **California Constitution, Article VI, Section 22**, a commissioner is limited to "**subordinate** judicial duties." A litigant cannot, by way of stipulation, grant a commissioner "judge powers" while that officer remains in the posture of a commissioner (limited to administrative judicial acts).

The power to act as a final arbiter of facts and law exists solely in the office of a **Judge** or a **Temporary Judge** (Art. VI, § 21). Therefore, a stipulation directed toward a "Commissioner" is a **legal nullity**—it is an agreement to have a subordinate officer *act as a subordinate officer*. Unless the stipulation explicitly and legally transitions the officer's status to that of a **Temporary Judge**, no certified acquisition of final adjudicatory power occurs. Any proceeding conducted under the fallacy of "stipulating to a commissioner" is unenforceable, as the subordinate officer never legally occupied the posture required to render a binding judgment.

III. Rule 2.816 as a Mandatory Condition Precedent

Post-2007, the "tantamount stipulation" doctrine (e.g., *In re Horton*) has been superseded by a regime of **Mandatory Condition Precedents**. Rule 2.816(b) requires the court to advise the litigant of their right to a Superior Court Judge and the identity of the Temporary Judge needing stipulation.

The completed advisements are the **certification mechanism** that allows the transition from a subordinate posture to a temporary judge posture. Without the specific administration of due process, the "Deemed Stipulation" under Rule 2.816(d) cannot trigger. Participation by a litigant in the absence of these advisements is not "informed consent" but is a failure of the court to secure jurisdiction.

IV. Voidness for Lack of Jurisdictional Activation

As established in ***People v. Tijerina (1969) 1 Cal.3d 41***, a commissioner's authority is constitutionally capped. Following the 2007 codification, the only method for a commissioner to ascend these bounds is through a stipulation obtained in strict compliance with Rules 2.816.

If the record fails to reflect the mandatory 2.816 advisements, the **Temporary Judge posture** is never activated. Consequently, the officer remains a commissioner—a subordinate officer—who lacks the standing to issue final, binding renderings. Any orders resulting from such a proceeding are **void ab initio** (from the beginning) for lack of subject-matter and decisional jurisdiction, as the court failed to establish and properly record a valid transition to the only office capable of finality.

CONTENTION OF FUNDAMENTAL JURISDICTION, VOID ORDERS, AND THE CONTINUING INVALIDITY OF PROCEEDINGS BUILT ON A VOID FOUNDATION

California law distinguishes between a court acting merely in excess of jurisdiction and a court lacking jurisdiction in the fundamental sense. In **Abelleira v. District Court of Appeal** (1941) 17 Cal.2d 280, the Supreme Court explained that lack of jurisdiction in its “most fundamental or strict sense” means an entire absence of power over the subject matter or the parties. When that defect exists, the issue is not procedural error; it is a failure of lawful adjudicatory power itself.

Under **People v. American Contractors Indemnity Co.** (2004) 33 Cal.4th 653, when a court lacks jurisdiction in that fundamental sense, the resulting judgment is **void**, not merely voidable, and is therefore vulnerable to direct or collateral attack at any time. **American Contractors** also makes clear that only where a court already has fundamental jurisdiction, but acts contrary to a prescribed procedure, is the act generally merely voidable. That distinction is critical and must be kept central.

Because a void judgment is a nullity, it has no binding force and does not become valid through the passage of time or continued proceedings. In **Olivera v. Grace** (1942) 19 Cal.2d 570, the Supreme Court held that a court has inherent power, apart from statute, to vacate a judgment void on its face because such a judgment is a nullity. In **Rochin v. Pat Johnson Manufacturing Co.** (1998) 67 Cal.App.4th 1228, the Court of Appeal reaffirmed that a void judgment on its face may be attacked at any time, directly or collaterally.

The right to raise such a defect is not waived by participation, timing, or omission from prior motion practice. In **Barnick v. Longs Drug Stores, Inc.** (1988) 203 Cal.App.3d 377, the court held that lack of subject matter jurisdiction is such a basic defect that it may be raised “at any time by any available procedure,” and is not subject to waiver. In **People v. Ford** (2015) 61 Cal.4th 282, the Supreme Court reiterated that a claim based on lack of fundamental jurisdiction may be raised for the first time on appeal. If it may be raised for the first time on appeal, it necessarily may be raised before trial proceedings begin.

Nor can fundamental jurisdiction be created by consent, waiver, estoppel, or subsequent acquiescence. In **re Marriage of Halpern** (1982) 133 Cal.App.3d 297 states that subject matter jurisdiction otherwise lacking cannot be conferred by waiver, consent, or estoppel. That rule matters because once the defect is fundamental, neither party conduct nor later judicial handling can supply power that never lawfully attached in the first place.

The same principle applies with particular force where a commissioner purports to act with the authority of a temporary judge. Article VI, section 21 permits a cause to be tried by a temporary judge only on stipulation of the parties. CCP section 259(d) likewise provides that a commissioner may act as temporary judge only when otherwise qualified, appointed for that

purpose, and on stipulation of the parties litigant. In **Nierenberg v. Superior Court** (1976) 59 Cal.App.3d 611, the court held that a commissioner's authority to act as temporary judge "emanates solely from stipulation by the parties," and absent such stipulation the act is "null and void."

That rule remains current. In **In re Marriage of Djulus** (2017) 10 Cal.App.5th 1042, the Court of Appeal stated that without qualifying a commissioner to act and without the required stipulation, any ruling by or judgment of the commissioner is void. Djulus further explained that when the missing stipulation problem became apparent, the commissioner should have stopped and sent the matter back for reassignment rather than continue forward on an unsupported theory of consent.

Accordingly, where the record fails to show the lawful activation of temporary-judge authority, the defect is not cured because the matter later continues before a judge or because later orders are entered in the same case. A void act does not become valid by being carried forward. **Hager v. Hager** (1962) 199 Cal.App.2d 259 states that the affirmance of a void judgment upon appeal imparts no validity to the judgment, but is itself void by reason of the nullity of the judgment appealed from. If even appellate affirmance cannot validate a void judgment, then later continuation of the matter before another judicial officer cannot retroactively create jurisdiction or validate void prior proceedings.

That is the governing principle here: where jurisdiction is fundamentally lacking, the defect is not repaired by transfer, continuation, later judicial participation, or downstream enforcement. Void jurisdiction yields void products. The court's power must appear from a lawful source and a lawful record; it cannot be presumed into existence from momentum, prior handling, or administrative continuation.

The controlling California authorities therefore establish the following propositions:

A lack of fundamental jurisdiction means an absence of adjudicatory power over the subject matter or parties.

A judgment entered without such jurisdiction is void and may be attacked at any time.

Such a defect is not waived and may be raised at any stage by any available procedure.

Jurisdiction otherwise lacking cannot be created by consent, estoppel, or later proceedings.

A commissioner acting as temporary judge derives that authority solely from valid stipulation, and absent it the act is void.

A void judgment is not validated by subsequent proceedings, including appellate affirmance; therefore later reassignment or continuation before a judge cannot retroactively cure an originally void exercise of adjudicatory authority.



If the required procedural advisements outlined in Rule 2.816 were not provided, or if a valid stipulation to the temporary judge was not established, then Rule 2.818 would have no effect. In such cases, the court could not impose this rule. It cannot later use a waiver obtained from the litigants under Rule 2.818 as a remedy or substitute for the lack of an original stipulation from the litigants.

Rule 2.818. Disqualifications and limitations

(a) Code of Judicial Ethics

A temporary judge must disqualify himself or herself as a temporary judge in proceedings as provided under the Code of Judicial Ethics.

(Subd (a) lettered effective July 1, 2006; adopted as unlettered subd effective July 1, 2006.)

(b) Limitations on service

In addition to being disqualified as provided in (a), an attorney may not serve as a court-appointed temporary judge:

- (1) If the attorney, in any type of case, is appearing on the same day in the same courthouse as an attorney or as a party;
- (2) If the attorney, in the same type of case, is presently a party to any action or proceeding in the court; or
- (3) If, in a family law or unlawful detainer case, one party is self-represented and the other party is represented by an attorney or is an attorney.

For good cause, the presiding judge may waive the limitations established in this subdivision.

(Subd (b) adopted effective July 1, 2006.)

(c) Waiver of disqualifications or limitations

- (1) After a temporary judge who has determined himself or herself to be disqualified under the Code of Judicial Ethics or prohibited from serving under (b) has disclosed the basis for his or her disqualification or limitation on the record, the parties and their attorneys may agree to waive the disqualification or limitation and the temporary judge may accept the waiver. The temporary judge must not seek to induce a waiver and must avoid any effort to discover which attorneys or parties favored or opposed a waiver. The waiver must be in writing, must recite the basis for the disqualification or limitation, and must state that it was knowingly made. The waiver is effective only when signed by all parties and their attorneys and filed in the record.
- (2) No waiver is permitted where the basis for the disqualification is any of the following:
 - (A) The temporary judge has a personal bias or prejudice concerning a party;
 - (B) The temporary judge has served as an attorney in the matter in controversy; or
 - (C) The temporary judge has been a material witness in the controversy.

(Subd (c) adopted effective July 1, 2006.)

(d) Late discovery of grounds for disqualification or limitation

In the event that grounds for disqualification or limitation are first learned of or arise after the temporary judge has made one or more rulings in a proceeding, but before the temporary judge has completed judicial action in the proceeding, the temporary judge, unless the disqualification or limitation is waived, must disqualify himself or herself.

But in the absence of good cause, the rulings the temporary judge has made up to that time must not be set aside by the judicial officer or temporary judge who replaces the temporary judge.

(Subd (d) amended effective January 1, 2007; adopted effective July 1, 2006.)

Good Cause: failure to provide the notices required by Rule 2.816, or no valid stipulation to the temporary judge was established (initial jurisdiction/certification defect).

(e) Notification of the court

Whenever a temporary judge determines himself or herself to be disqualified or limited from serving, the temporary judge must notify the presiding judge or the judge designated by the presiding judge of his or her withdrawal and must not further participate in the proceeding, unless his or her disqualification or limitation is waived by the parties as provided in (c).

(Subd (e) adopted effective July 1, 2006.)

Failure to provide the notices required by Rule 2.816, or no valid stipulation to the temporary judge was established, then there is no established jurisdiction for the temporary judge to withdraw from and no stipulation for the litigant to withdraw.

(f) Requests for disqualifications

A party may request that a temporary judge withdraw on the ground that he or she is disqualified or limited from serving. If a temporary judge who should disqualify himself or herself or who is limited from serving in a case fails to withdraw, a party may apply to the presiding judge under rule 2.816(e) of the California Rules of Court for a withdrawal of the stipulation. The presiding judge or the judge designated by the presiding judge must determine whether good cause exists for granting withdrawal of the stipulation.

(Subd (f) amended effective January 1, 2007; previously adopted effective July 1, 2006.)

Rule 2.818 amended and renumbered effective January 1, 2007; adopted as rule 243.20 effective July 1, 2006; previously amended effective July 1, 2006.

Advisory Committee Comment

Subdivision (a) indicates that the rules concerning the disqualification of temporary judges are provided in the Code of Judicial Ethics. Subdivision (b) establishes additional limitations that prohibit attorneys from serving as court-appointed temporary judges under certain specified circumstances. Under subdivisions (c)-(e), the provisions of Code of Civil Procedure section 170.3 on waiver of disqualifications, the effect of late discovery of the grounds of disqualification, and notification of disqualification of judicial officers are made applicable to temporary judges. Under subdivision (f), requests for disqualification are handled as withdrawals of the stipulation to a temporary judge and are ruled on by the presiding judge. This procedure is different from that for seeking the disqualification of a judge under Code of Civil Procedure section 170.3.

People v. Tijerina, 1 Cal.3d 41 (1969)

The California Supreme Court held that a court commissioner cannot act as a temporary judge to revoke probation without a valid stipulation (agreement) from the parties involved. Because no stipulation was filed authorizing the commissioner to preside in that case, the revocation order was deemed void. Thus, well-establishing that a commissioner may not act as a temporary judge without valid stipulation and that without a valid stipulation the proceeding and renderings by the uncertified judicial officer is VOID. CA Const., Art. 6, § 22, CCP § 259(d), CRC, Rule 2.816 and 2.818