You have a California Constitutional Right to be heard by a Judge appointed by the people and to Not stipulate to be heard by a Commissioner.I highly suggest that you Do Not Stipulate to be heard by Commissioner Williams.... he has skirted the law buy repeatidely not obtaining stipulation in advance of a hearing! He may change if he sees this document... and that would be good.

When you file a compliant, I recommend that you present to the clerks office in a written documentation that specifically's request that your case be heard by a Judge who was appointed by the people! That is your RIGHT!

### **In Brief: Judge vs Commissioner**

**Judge** = Elected by the People for the People
**California Consitution** = Right to be heard by a Judge. A Judge is also known through Ca Penal Code 807 & 808 **California Penal Code Section 807**

* A magistrate is an officer having power to issue a warrant for the arrest of a person charged with a public offense.

**California Penal Code Section 808**

The following persons are magistrates (ie Judges):

 (a) The judges of the Supreme Court.

 (b) The judges of the courts of appeal.

 (c) The judges of the superior court.

Court commissioners have the power to act as temporary judges by stipulation of the parties (if you don't stipulate, then a Judge must hear your case) . The jurisdiction of a court commissioners, or any other temporary judge, to try a cause derives from the parties = stipulation. In the absence of a proper stipulation, a judgment entered by a court commissioner would be void. In re Horton , 54 Cal. 3d 82, 90 (1991).

**Per Napa Register Nov 26, 2009**

* for a fair proceeding. "....... they're entitled to an elected judge," Davis said. "These cases are really, really important to each defendant that walks to the door, and they need to be taken seriously."
* **Presiding Judge Raymond Guadagni said**

"From the court's point of view, we recognize that Terry Davis has a constitutional right to not stipulate to the commissioner, and we recognize that right, so I've just made the changes the best I can," he said.

In terms of how they work, and their knowledge of the law, and how they get paid, there is no difference between judges and commissioners.

However, Judges are "elected officials" and you have a right to have your case heard by someone who was elected by the People. The theory goes, that someone who's been elected is someone who the People trust to resolve both Criminal and Civil matters.

A Commissioner is appointed to the bench by the Presiding Judge of the court. They are like "substitute" teachers, taking up the slack when a judge is ill, or otherwise cannot appear on the bench. They are also used when, on a regular basis, a particular courthouse has a shortfall of judges for all of the courtrooms. That's why some Commissioners are assigned to a particular courtroom.

Commissioners are still used quite frequently; but because they are not elected officials, you have a constitutional right to have someone who the People chose to sit at a bench to make judgments.

A judge is a person who has been legally appointed or elected to the bench (depending upon the jurisdiction). In California, although the Governor may make interim appointments, all judges must stand for election, and be re-elected every few years. A judge has the legal power to act in any case brought before him or her.

Commissioners are attorneys who are hired by the court (in California, every county has a superior court), and they are authorized to perform "subordinate judicial duties." They can perform judicial duties involving the determination of contested issues only upon the stipulation of the parties, but with that stipulation they have the same powers as judges.

### Source(s):

California Constitution, article VI, sections 21 & 22
30 years as a criminal defense attorney

California Code Of Civil Procedure Section 259

Subject to the supervision of the court, every court commissioner shall have power to do all of the following:
(a) Hear and determine ex parte motions for orders and alternative writs and writs of habeas corpus in the superior court for which the court commissioner is appointed.

(b) Take proof and make and report findings thereon as to any matter of fact upon which information is required by the court. Any party to any contested proceeding may except to the report and the subsequent order of the court made thereon within five days after written notice of the court's action. A copy of the exceptions shall be filed and served upon opposing party or counsel within the five days. The party may argue any exceptions before the court on giving notice of motion for that purpose within 10 days from entry thereof. After a hearing before the court on the exceptions, the court may sustain, or set aside, or modify its order.

(c) Take and approve any bonds and undertakings in actions or proceedings, and determine objections to the bonds and undertakings.

(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.

(e) Hear and report findings and conclusions to the court for approval, rejection, or change, all preliminary matters including motions or petitions for the custody and support of children, the allowance of temporary spousal support, costs and attorneys' fees, and issues of fact in contempt proceedings in proceedings for support, dissolution of marriage, nullity of marriage, or legal separation.

(f) Hear actions to establish paternity and to establish or enforce child and spousal support pursuant to subdivision (a) of Section 4251 of the Family Code.

(g) Hear, report on, and determine all uncontested actions and proceedings subject to the requirements of subdivision (d). Section: 259

Last modified: January 12, 2009