

Judicial Council of California • Administrative Office of the Courts

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INVITATION TO COMMENT LEG13-07

Title	Action Requested
Provisional Qualification for American Sign Language Court interpreters and other updates to Evidence Code Section 754	Review and submit comments by June 19, 2013
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Revise Evidence Code Section 754 and add a new section; if legislation is adopted the Court Interpreters Advisory Panel will consider conforming changes to Rule 2.893 and Forms INT 100 , INT 110 , and INT 120	January 1, 2015
	Contact
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Proposed by	
Court Interpreters Advisory Panel Hon. Steven K. Austin, Chair	

Executive Summary and Origin

This proposal is for Judicial Council-sponsored legislation that would authorize courts to provisionally qualify American Sign Language (ASL) interpreters when a certified court interpreter is not available. This will bring the provision of ASL interpreters in line with existing law related to spoken language interpreting and codify the process for a court that cannot locate a certified court interpreter.

This proposal stems from court needs related to the scarcity of court-certified ASL interpreters and the difficult circumstances of having no alternative to a certified interpreter. Courts have requested assistance related to provisional qualification for ASL interpreters. In late 2010, the California Law Revision Commission separately requested a review by the Administrative Office of the Courts (AOC) of Evidence Code section 754 to consider specific changes required by the unification of the California court system. When AOC Court Interpreter Program staff reviewed the statute, together with the Court Interpreter Advisory Panel's (CIAP) ASL committee member, they identified a number of outdated usages of language and sections in need of improvement.

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

If the proposed legislation is adopted, CIAP will consider the need for conforming changes to [Rule 2.893](#) and Forms [INT 100](#), [INT 110](#), and [INT 120](#), such as adding references to Evidence Code section 754.

Background

The development of Evidence Code section 754 has been guided by the deaf community it strives to serve. These proposed changes are the result of continued discussions with several ASL interpreters and Certified Deaf Interpreters (CDIs) working in the California courts, and with the participation of two of these interpreters (one ASL interpreter and one CDI), at the CIAP meeting in which the proposal was recommended for adoption.

This proposal, if adopted, would be especially beneficial courts in rural counties that have no certified ASL interpreters on the Judicial Council’s master list of certified and registered interpreters. Courts in these areas sometimes have immediate interpreting needs that cannot be satisfied due to a lack of available court-certified interpreters. This results in the need to provisionally qualify a local interpreter.

The Proposal

The proposed legislation would update Evidence Code section 754 to do the following:

1. Change “hearing impaired” to “hard of hearing” throughout. This would bring the statute up to date with currently accepted terminology. “Impaired” or “impairment” is no longer considered appropriate because it suggests something is lacking instead of acknowledging a difference.
2. Subdivision (b) would be amended to add “juror” to the list of those for whom interpretation is required. This is a clarifying change since courts already are required to provide ASL interpreters for jurors under Code of Civil Procedure section 224(c).
3. Subdivision (f) would be amended to revise the definition of “qualified interpreter” by specifying that a qualified interpreter is one who interpreters in ASL and is not one of the other types of interpreters identified in subdivision (d). The deletion of generic language regarding testing entities and the addition of language referencing an interpreter listed on the Judicial Council’s master list of certified and registered interpreters brings the statute up to date with existing practice, as currently there is only one testing organization in the country, and the Judicial Council requires the “Specialist Certificate: Legal” from that testing entity.
4. Subdivision (h) would be amended to delete obsolete language. The new language regarding good cause and qualification procedures is a reference to existing law for spoken language interpreters under Judicial Council guidelines.
5. Subdivision (i) would be amended to correct and clarify changes in payment practices since court unification, shifting costs away from the county and to the state court system.

6. Subdivision (j) would be amended to delete “or proceeding” in the section on law enforcement investigations. The reason for this change is that the inclusion of “proceedings” may create ambiguity about who pays the interpreter. In court proceedings, interpreters are paid by the court under subdivision (b).
7. Subdivision (j) would be further amended to insert “qualified” in the reference to interpreter. This term, which was inadvertently omitted from the statute, is consistent with the original intent of the drafters. Requiring an ASL interpreter to be qualified when interpreting in investigations whose reports are likely to end up in court proceedings or court records is consistent with the rest of this statute.
8. Subdivision (j) also would be amended to insert a new last sentence in the section on the interpreter’s fee in interviews by law enforcement, changing the designation of the payor from the “county or other political subdivision” to the “employer” of the investigating officer. This change would provide better clarity given the variety of law enforcement officers who could be involved, such as park police, district police, state CHP, and others. It also falls more in line with how the American with Disabilities Act of 1990 (Public Law 101-336) (ADA) and federal regulations outline payment of services.
9. Subdivision (o) would be deleted as obsolete. The requirement that each trial court maintain a roster of interpreters is no longer needed since a state roster is now maintained by the Judicial Council under the amended version of subdivision (f). Moreover, the new language identifying what interpreted statements may not be considered by the court reinforces the provisions in subdivision (j) and (k), and incorporates the new changes in subdivision (h).

Discussion

The inability to provisionally qualify ASL interpreters, as is allowed for spoken language interpreters, causes difficult dilemmas for courts because it offers no alternative for interpreter services if a qualified (i.e., an interpreter on the Judicial Council’s master list) is not available.

The general certification system for ASL interpreters, not limited to certification for court proceedings, is very complex. Without guidance, a court would not be able to proceed when no certified interpreter is available. Currently, the absence of a system for provisionally qualifying ASL interpreters results in two choices to a court: moving a case forward with no interpreter, or using an interpreter whose qualifications do not satisfy court or legal certification. Both of these options pose legal risks, because in either case, the court will not be complying with current California law, which requires the use of an ASL interpreter from the Judicial Council’s master list.

Courts have raised concerns about not having the ability to provisionally qualify ASL interpreters. The proposed changes will provide relief by allowing for the provisional qualification of ASL interpreters, consistent with the provisions that allow for provisional qualification of spoken language interpreters. Additionally, the term “hearing impaired,” a term

no longer commonly used because it generally is regarded as negative, will be replaced with more appropriate language.

The proposed changes will streamline and codify the process of providing ASL interpreters when court-certified ASL interpreters are not available.

Alternatives Considered

CIAP is not recommending the alternative, which is making no changes, because the need for qualified ASL interpreters, at times, exceeds the availability of interpreters who are enrolled on the Judicial Council's master list. It is important to note that other avenues of providing qualified interpreters are also being developed, such as the use of video remote interpreting (VRI) for ASL interpreted events (see Recommended Guidelines for Video Remote Interpreting (VRI) for ASL-Interpreted Events at <http://www.courts.ca.gov/documents/CIP-ASL-VRI-Guidelines.pdf>), and efforts at consolidated scheduling of in-person interpreted events. Given the statutory and financial constraints of the courts, courts need a way to assess provisional qualifications if all other options are unavailable.

Implementation Requirements, Costs, and Operational Impacts

There are no expected costs for implementing the proposed changes. The AOC's Court Interpreters Program will provide support to the courts in announcing the changes. Specifically, courts will need to notify court interpreter coordinators of the ability to provisionally qualify ASL interpreters.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal reasonably achieve the stated purpose?
- Would this proposal have an impact on public's access to the courts? If a positive impact, please describe. If a negative impact, what changes might lessen the impact?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide costs savings? If so, please quantify. If not, what changes might be made that would provide savings, or greater savings?
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- Would twelve (12) months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- If this proposal would be cumbersome or difficult to implement in a court of your size, what changes would allow the proposal to be implemented more easily or simply in a court of your size?

Attachments and Links

1. The text of the proposed legislation is at page 5.

Evidence Code § 754. Deaf or hearing impaired persons; interpreters; qualifications; guidelines; compensation; questioning; use of statements

- 1 (a) As used in this section, “individual who is deaf or ~~hearing-impaired~~ hard of hearing” means
2 an individual with a hearing loss so great as to prevent his or her understanding language
3 spoken in a normal tone, but does not include an individual who is ~~hearing-impaired~~ hard of
4 hearing provided with, and able to fully participate in the proceedings through the use of, an
5 assistive listening system or computer-aided transcription equipment provided pursuant to
6 Section 54.8 of the Civil Code.
7
- 8 (b) In any civil or criminal action, including, but not limited to, any action involving a traffic or
9 other infraction, any small claims court proceeding, any juvenile court proceeding, any
10 family court proceeding or service, or any proceeding to determine the mental competency
11 of a person, in any court-ordered or court-provided alternative dispute resolution, including
12 mediation and arbitration, or any administrative hearing, where a party or witness or juror is
13 an individual who is deaf or ~~hearing-impaired~~ hard of hearing and the individual who is deaf
14 or ~~hearing-impaired~~ hard of hearing is present and participating, the proceedings shall be
15 interpreted in a language that the individual who is deaf or ~~hearing-impaired~~ hard of hearing
16 understands by a qualified interpreter appointed by the court or other appointing authority,
17 or as agreed upon.
18
- 19 (c) For purposes of this section, “appointing authority” means a court, department, board,
20 commission, agency, licensing or legislative body, or other body for proceedings requiring a
21 qualified interpreter.
22
- 23 (d) For the purposes of this section, “interpreter” includes, but is not limited to, an oral
24 interpreter, a sign language interpreter, or a deaf-blind interpreter, depending upon the needs
25 of the individual who is deaf or ~~hearing-impaired~~ hard of hearing.
26
- 27 (e) For purposes of this section, “intermediary interpreter” means an individual who is deaf or
28 ~~hearing-impaired~~ hard of hearing, or a hearing individual who is able to assist in providing
29 an accurate interpretation between spoken English and sign language or between variants of
30 sign language or between American Sign Language and other foreign languages by acting as
31 an intermediary between the individual who is deaf or ~~hearing-impaired~~ hard of hearing and
32 the qualified interpreter.
33
- 34 (f) For purposes of this section, “qualified interpreter” means an American Sign Language
35 interpreter who has been certified as competent to interpret court proceedings by a testing
36 organization, agency, or educational institution approved by the Judicial Council as qualified
37 to administer tests to court interpreters for individuals who are deaf or hearing impaired and
38 who has enrolled with, and is listed on, the state roster maintained by the Judicial Council.
39

- 1 (g) In the event that the appointed interpreter is not familiar with the use of particular signs by
2 the individual who is deaf or ~~hearing impaired~~ hard of hearing or his or her particular variant
3 of sign language, the court or other appointing authority shall, in consultation with the
4 individual who is deaf or ~~hearing impaired~~ hard of hearing or his or her representative,
5 appoint an intermediary interpreter.
6
- 7 (h) ~~Prior to July 1, 1992, the Judicial Council shall conduct a study to establish the guidelines
8 pursuant to which it shall determine which testing organizations, agencies, or educational
9 institutions will be approved to administer tests for certification of court interpreters for
10 individuals who are deaf or hearing impaired. It is the intent of the Legislature that the study
11 obtain the widest possible input from the public, including, but not limited to, educational
12 institutions, the judiciary, linguists, members of the State Bar, court interpreters, members of
13 professional interpreting organizations, and members of the deaf and hearing impaired
14 communities. After obtaining public comment and completing its study, the Judicial Council
15 shall publish these guidelines. By January 1, 1997, the Judicial Council shall approve one or
16 more entities to administer testing for court interpreters for individuals who are deaf or
17 hearing impaired. Testing entities may include educational institutions, testing
18 organizations, joint powers agencies, or public agencies.~~

19
20 Commencing July 1, 1997, court interpreters for individuals who are deaf or hearing
21 impaired shall meet the qualifications specified in subdivision (f).
22

23 A court may for good cause appoint an interpreter who is not certified pursuant to
24 subdivision (f). The court shall follow the good cause and qualification procedures and
25 guidelines for spoken language interpreters adopted by the Judicial Council.
26

- 27 (i) Persons appointed to serve as interpreters under this section shall be paid, in addition to
28 actual travel costs, the prevailing rate paid to persons employed by the court to provide other
29 interpreter services unless such service is considered to be a part of the person's regular
30 duties as an employee of the state, county, or other political subdivision of the state.
31 ~~Payment~~ Except as provided in subdivision (j), payment of the interpreter's fee shall be a
32 charge against the ~~county, or other political subdivision of the state, in which that action is~~
33 ~~pending court.~~ Payment of the interpreter's fee in administrative proceedings shall be a
34 charge against the appointing board or authority.
35
- 36 (j) Whenever a peace officer or any other person having a law enforcement or prosecutorial
37 function in any criminal or quasi-criminal investigation ~~or proceeding~~ questions or otherwise
38 interviews an alleged victim or witness who demonstrates or alleges deafness or hearing
39 impairment, a good faith effort to secure the services of ~~an~~ a qualified interpreter shall be
40 made, without any unnecessary delay, unless either the individual who is deaf or ~~hearing~~
41 ~~impaired~~ hard of hearing affirmatively indicates that he or she does not need or cannot use
42 an interpreter, or an interpreter is not otherwise required by Title II of the Americans with
43 Disabilities Act of 1990 (Public Law 101-336) and federal regulations adopted thereunder.

1 Payment of the interpreter's fee shall be a charge against the county, or other political
2 subdivision of the state, in which the action is pending employer of the investigating peace
3 officer or other person as identified above in this subdivision.
4

- 5 (k) No statement, written or oral, made by an individual who the court finds is deaf or ~~hearing~~
6 ~~impaired~~ hard of hearing in reply to a question of a peace officer, or any other person having
7 a law enforcement or prosecutorial function in any criminal or quasi-criminal investigation
8 or proceeding, may be used against that individual who is deaf or ~~hearing-impaired~~ hard of
9 hearing unless the question was accurately interpreted and the statement was made
10 knowingly, voluntarily, and intelligently and was accurately interpreted, or the court ~~makes~~
11 ~~special findings~~ finds that either the individual could not have used an interpreter, or an
12 interpreter was not otherwise required by Title II of the Americans with Disabilities Act of
13 1990 (Public Law 101-336) and federal regulations adopted thereunder and that the
14 statement was made knowingly, voluntarily, and intelligently.
15
- 16 (l) In obtaining services of an interpreter for purposes of subdivision (j) or (k), priority shall be
17 given to first obtaining a qualified interpreter.
18
- 19 (m) Nothing in subdivision (j) or (k) shall be deemed to supersede the requirement of
20 subdivision (b) for use of a qualified interpreter for individuals who are deaf or ~~hearing~~
21 ~~impaired~~ hard of hearing participating as parties or witnesses in a trial or hearing.
22
- 23 (n) In any action or proceeding in which an individual who is deaf or ~~hearing-impaired~~ hard of
24 hearing is a participant, the appointing authority shall not commence proceedings until the
25 appointed interpreter is in full view of and spatially situated to assure proper communication
26 with the participating individual who is deaf or ~~hearing-impaired~~ hard of hearing.
27
- 28 ~~(o) Each superior court shall maintain a current roster of qualified interpreters certified pursuant~~
29 ~~to subdivision (f).~~
- 30 (o) No statement attributed to a person who is deaf or hard of hearing shall be considered by the
31 court unless (1) the statement was accurately interpreted, or (2) either the individual could
32 not have used an interpreter, or an interpreter was not otherwise required by Title II of the
33 Americans with Disabilities Act of 1990 (Public Law 101-336) and federal regulations
34 adopted thereunder. A statement interpreted by a qualified interpreter or an interpreter
35 appointed as provided in subdivision (h) is presumed to be accurately interpreted.
36
37