

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

LEG16-07

Title	Action Requested
Small Claims: Provision of Court Interpreters	Review and submit comments by June 14, 2016
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Government Code section 68560.5(a) and Code of Civil Procedure section 116.550	January 1, 2018
Proposed by	Contact
Language Access Plan Implementation Task Force Hon. Mariano-Florentino Cuéllar, Chair	Elizabeth Tam-Helmuth, 415-865-4604 elizabeth.tam@jud.ca.gov

Executive Summary and Origin

On January 22, 2015, the Judicial Council adopted the *Strategic Plan for Language Access in the California Courts*. The plan provides a comprehensive set of 75 recommendations to help create a branch-wide approach to providing language access services to court users throughout the state while accommodating an individual court's need for flexibility in implementing the plan recommendations. The plan provides that by 2017, and beginning immediately where resources permit, qualified interpreters will be provided in the California courts to limited English proficient (LEP) court users in all courtroom proceedings, including small claims proceedings.

In order to complete the systematic expansion of language access services, including the provision of court interpreters in small claims actions when court resources allow, the Language Access Plan (LAP) Implementation Task Force recommends that the Judicial Council sponsor legislation to (1) amend Government Code section 68560.5(a) to delete an exception stating that interpreters are not required in small claims proceedings, and (2) amend Code of Civil Procedure section 116.550 to require courts to provide credentialed interpreters in small claims actions, consistent with the language of Evidence Code section 756, which prioritizes the manner in which courts will provide interpreters if there are not sufficient resources to provide interpreters in all civil matters.

Background

In January 2015, following an extensive stakeholder participation process that included public

hearings and public comment, the Judicial Council adopted the *Strategic Plan for Language Access for the California Courts*.¹ The Language Access Plan (LAP) provides a comprehensive set of recommendations to help create a branch-wide approach to providing language access services to court users throughout the state while accommodating an individual court's need for flexibility in implementing the plan recommendations.

Effective January 1, 2015, Evidence Code section 756 provides that qualified interpreters should be provided to LEP court users in all court proceedings, including small claims proceedings, at no cost to the parties, regardless of the income of the parties. If sufficient funding is not available to provide interpreters in all civil matters, the statute sets forth an order of priority for courts to follow in deploying interpreters. Small claims matters are in priority 8, "all other civil matters." (Assembly Bill 1657, Stats. 2014, ch. 721.)

The Chief Justice established the LAP Implementation Task Force in March 2015, pursuant to recommendations in the LAP.² Chaired by Supreme Court Justice Mariano-Florentino Cuéllar, with Judge Manuel J. Covarrubias of the Superior Court of Ventura County serving as vice-chair, the Task Force has a three- to five-year charge and is overseen by the Judicial Council's Executive and Planning Committee.

The LAP states that legislative action to amend, delete, or add statutory language, and Judicial Council action to create or revise court forms or rules of court, will be necessary to fully and effectively implement the recommendations contained in this Language Access Plan. Such actions should include clarification of existing statutes..." (LAP, p. 78). Two specific LAP recommendations describe legislation necessary to ensure qualified interpreters, subject to court resources, are provided in small claims actions:

LAP Recommendation #71. The Judicial Council should sponsor legislation to amend Government Code section 68560.5(a) to include small claims proceedings in the definition of court proceedings for which qualified interpreters must be provided.

LAP Recommendation #72. The Judicial Council should sponsor legislation to amend Code of Civil Procedure section 116.550 dealing with small claims actions to reflect that interpreters in small claims cases should, as with other matters, be certified or registered, or provisionally qualified where a credentialed interpreter is not available.

Judicial Council-sponsored legislation to amend California Government Code section 68560.5(a) and Civil Code of Procedure section 116.550 as described below (to delete the exception for small claims proceedings, and require credentialed interpreters for small claims, respectively)

¹ The full report, *Strategic Plan for Language Access in the California Courts*, may be viewed at: www.courts.ca.gov/documents/CLASP_report_060514.pdf

² Information regarding the Language Access Plan Implementation Task Force is available at: <http://www.courts.ca.gov/LAP.htm>

will ensure that, when resources allow, qualified and adequate interpreter services are provided in small claims proceedings.

Prior Circulation

To our knowledge, there has not been previous circulation and/or attempts to amend California Government Code section 68560.5(a) and Code of Civil Procedure section 116.550.

The Proposal

The Task Force recommends that the Judicial Council sponsor legislation to (1) amend Government Code section 68560.5(a) to delete the exception for providing interpreters in small claims proceedings; and (2) amend Code of Civil Procedure section 116.550 to require courts to provide credentialed interpreters in small claims actions, along with all other civil matters.

California Government Code §68560.5(a)

Current text³

(a) “Court proceeding” means a civil, criminal, or juvenile proceeding, or a deposition in a civil case filed in a court of record. However, “court proceeding” does not include a small claims proceeding.

Proposed revision

(a) “Court proceeding” means a civil, criminal, or juvenile proceeding, or a deposition in a civil case filed in a court of record. ~~However, “court proceeding” does not include a small claims proceeding.~~

California Code of Civil Procedure §116.550

Current text⁴

- (a) If the court determines that a party does not speak or understand English sufficiently to comprehend the proceedings or give testimony, and needs assistance in so doing, the court may permit another individual (other than an attorney) to assist that party.
- (b) Each small claims court shall make a reasonable effort to maintain and make available to the parties a list of interpreters who are able and willing to aid parties in small claims actions either for no fee, or for a fee which is reasonable considering the nature and complexity of the claims. The list shall include interpreters for all languages that require interpretation before the court, as determined by the court in its discretion and in view of the court’s experience.
- (c) Failure to maintain a list of interpreters, or failure to include an interpreter for a particular language, shall not invalidate any proceedings before the court.

³ CA Government Code § 68560.5 is available at:
www.leginfo.ca.gov/faces/codes_displaySection.xhtml?sectionNum=68560.5.&lawCode=GOV

⁴ CA Code of Civil Procedure § 116.550 is available at:
www.leginfo.ca.gov/faces/codes_displaySection.xhtml?sectionNum=116.550.&lawCode=CCP

(d) If a court interpreter or other competent interpreter is not available to aid a party in a small claims action, at the first hearing of the case the court shall postpone the hearing one time only to allow the party the opportunity to obtain another individual (other than an attorney) to assist that party. Any additional continuances shall be at the discretion of the court.

Proposed revision⁵

(a) If the court determines that a party does not speak or understand English sufficiently to comprehend the proceedings or give testimony, and needs assistance in so doing, the court ~~may~~ *shall appoint an interpreter* ~~permit another individual (other than an attorney) to assist interpret~~ for that party. *The requirements of Government Code section 68561 apply to the appointment of interpreters in small claims matters.*

~~(b) Each small claims court shall make a reasonable effort to maintain and make available to the parties a list of interpreters who are able and willing to aid parties in small claims actions either for no fee, or for a fee which is reasonable considering the nature and complexity of the claims. The list shall include interpreters for all languages that require interpretation before the court, as determined by the court in its discretion and in view of the court's experience.~~

~~(c) Failure to maintain a list of interpreters, or failure to include an interpreter for a particular language, shall not invalidate any proceedings before the court.~~

~~(d) If a court interpreter or other competent interpreter is not available to aid a party in a small claims action, at the first hearing of the case the court shall postpone the hearing one time only to allow the party the opportunity to obtain another individual (other than an attorney) to assist that party. Any additional continuances shall be at the discretion of the court.~~

Alternatives Considered

No alternatives were considered. Failure to amend the above-referenced statutes will result in confusion and is contrary to provisions in both the LAP and the newly enacted provisions of Evidence Code section 756, which provides that qualified interpreters should be provided to LEP court users in all court proceedings, subject to available resources, including small claims proceedings.

Implementation Requirements, Costs, and Operational Impacts

The Governor's proposed budget for fiscal year 2016–2017 appropriates an additional \$7 million, ongoing, for the expansion of interpreter services in civil proceedings. If approved, trial courts throughout the state should have funding available to address and meet increased costs necessary to provide interpreter services. To the extent funding is not yet sufficient to provide interpreters in all civil matters, small claims matters, contained within the final priority group, may not receive interpreters immediately.

⁵ CA Government Code §68561 is available at:

http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=68561.&lawCode=GOV

Proposed revisions to the Code of Civil Procedure section 116.550 to include small claims proceedings would require the use of qualified (certified/registered) and credentialed interpreters, similar to the requirements for all other court proceedings, which benefits California's approximate 7 million LEP residents and potential court users. Adding this would also require courts to follow the steps for provisionally qualifying interpreters (California Rules of Court, Rule 2.893) when there is no credentialed interpreter available.

Request for Specific Comments

In addition to comments on the proposal as a whole, the Language Access Plan Implementation Task Force is interested in comments on the following:

- If the proposed amendments regarding the provision of interpreters in small claims matters become law, what operational changes for the courts may be necessary (e.g., training, updating court web pages, or interpreter scheduling)?
- If the proposed amendments are made to the California Code, what are some recommended steps to help inform attorneys, judicial officers, court staff, and/or court interpreters regarding the changes?

Attachments and Links

1. Text of Government code section 68560.5(a), at page 75
2. Text of Code of Civil Procedure section 116.550, at page 76

Government Code section 68560.5(a) would be amended, effective January 1, 2018, to read:

- 1 (a) “Court proceeding” means a civil, criminal, or juvenile proceeding, or a deposition in a
- 2 civil case filed in a court of record. ~~However, “court proceeding” does not include a small~~
- 3 ~~claims proceeding.~~

Government Code section 68560.5(a) would be amended, effective January 1, 2018, to read:

- 1 a) If the court determines that a party does not speak or understand English sufficiently to
2 comprehend the proceedings or give testimony, and needs assistance in so doing, the
3 court ~~may~~ *shall appoint an interpreter* ~~permit another individual (other than an attorney)~~
4 to ~~assist~~ *interpret* for that party. *The requirements of Government Code section 68561*
5 *apply to the appointment of interpreters in small claims matters.*
- 6 ~~(b) Each small claims court shall make a reasonable effort to maintain and make~~
7 ~~available to the parties a list of interpreters who are able and willing to aid parties~~
8 ~~in small claims actions either for no fee, or for a fee which is reasonable~~
9 ~~considering the nature and complexity of the claims. The list shall include~~
10 ~~interpreters for all languages that require interpretation before the court, as~~
11 ~~determined by the court in its discretion and in view of the court's experience.~~
- 12 ~~(c) Failure to maintain a list of interpreters, or failure to include an interpreter for a~~
13 ~~particular language, shall not invalidate any proceedings before the court.~~
- 14 ~~(d) If a court interpreter or other competent interpreter is not available to aid a party in~~
15 ~~a small claims action, at the first hearing of the case the court shall postpone the~~
16 ~~hearing one time only to allow the party the opportunity to obtain another~~
17 ~~individual (other than an attorney) to assist that party. Any additional continuances~~
18 ~~shall be at the discretion of the court.~~