

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

LEG17-07

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| Title | Action Requested |
| Proposed Legislation (Small Claims): Provision of Court Interpreters | Review and submit comments by October 13, 2017 |
| Proposed Rules, Forms, Standards, or Statutes Amend Government Code section 68560.5(a) and Code of Civil Procedure section 116.550 | Proposed Effective Date January 1, 2019 |
| Proposed by Language Access Plan Implementation Task Force Hon. Mariano-Florentino Cuéllar, Chair Civil and Small Claims Advisory Committee Hon. Raymond M. Cadei, Chair | Contact Douglas G. Denton, 415-865-7870 douglas.denton@jud.ca.gov 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 Language Access Plan, or LAP). The plan provides a comprehensive set of 75 recommendations to help create a branchwide 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. 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 Implementation Task Force and Civil and Small Claims Advisory Committee recommend 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 authorize courts to appoint certified and registered interpreters in small claims proceedings. Revised Code of Civil Procedure section 116.550 also makes clear that courts should follow the provisional qualification process if a certified or registered interpreter is not available. It also provides judges with discretion to appoint a temporary interpreter to assist a court user during a small claims hearing if a certified/registered or provisionally qualified interpreter is not available even after a continuance, or at the first hearing if the judge makes a similar determination of unavailability, depending on the

complexity of the case. These changes to the statute also conform to recent changes recommended by the Court Interpreters Advisory Panel to California Rules of Court, Rule 2.893, regarding the appointment of noncertified interpreters in court proceedings.

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 LAP provides a comprehensive set of recommendations to help create a branchwide 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 set forth a goal 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 and in all court-ordered, court-operated events by 2020.

The Chief Justice established the Language Access Plan Implementation Task Force (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.

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 group 8, "all other civil matters," the lowest of the priority groups (Assembly Bill 1657, Stats. 2014, ch. 721.) Separate statutes currently exempt small claims cases from the definition of court proceedings in which qualified interpreters must be appointed and specifically authorize a court to permit an individual (other than an attorney) to assist an LEP party in small claims proceedings (Government Code section 68560.5(a) and Civil Code of Procedure section 116.550).

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:

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>.

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.

Prior Circulation

On April 7, 2016, the PCLC approved an original proposal from the Task Force to amend Government Code section 68560.5(a) and Code of Civil Procedure section 116.550 to move forward for public comment. That original proposal would have deleted the provisions in these statutes identified by LAP Recommendations 71 and 72, effective January 1, 2018. The original proposal was out for public comment until June 14, 2016. Following this public comment period, the Civil and Small Claims Advisory Committee (the Committee) provided internal comments to the Task Force. These comments raised concerns about whether sufficient interpreter resources would be available by the effective date of the proposed legislation to fully address the language access needs in small claims cases and about the impact on small claims litigants and the courts if such resources were not available. (When proposed changes to Government Code section 68560.5(a) circulated previously, no objections/negative comments were submitted.)

Pursuant to LAP Recommendations 71 and 72, the Task Force subsequently approved a revised proposal at its October 17, 2016, open meeting to go forward to PCLC for 2017 legislation, but did not alter the proposal to address the Committee's concerns. The Committee then requested that the Task Force proposal for 2017 legislation be delayed until compromise language could be developed between the Task Force and the Committee regarding proposed amendments to Code of Civil Procedure section 116.550 to address the Committee's concerns.

In 2017, a joint working group comprised of three Task Force members and three Committee members developed compromise language for Code of Civil Procedure section 116.550. The attached proposal was subsequently approved by the Task Force on August 9, 2017, and by the Civil and Small Claims Advisory Committee on August 16, 2017, to go out for public comment.

The Proposal

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 Task Force and Civil and Small Claims Advisory Committee recommend 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 authorize courts to appoint certified and registered

interpreters in small claims proceedings. The revised statute also makes clear that courts should follow the provisional qualification process if a certified or registered interpreter is not available. To address the concerns raised by the Committee, the statute also provides judges with discretion to appoint a temporary interpreter to assist a court user during a small claims hearing if an attempt to secure a certified/registered or provisionally qualified interpreter was not successful either (1) after the matter was continued to allow for a further search or (2) at the first hearing if the judge determines that appointment of a temporary interpreter is appropriate without a further postponement, depending on the complexity of the case.

These changes to the statute also conform to recent changes recommended by the Court Interpreters Advisory Panel to California Rules of Court, Rule 2.893, regarding the appointment of noncertified interpreters in court proceedings.³ That rule change is anticipated to go into effect on January 1, 2018. Once proposed changes to Code of Civil Procedure section 116.550 go into effect, there may be minor additional changes that need to be made to Rule 2.893 to ensure that the rule conforms to the amended statute.

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 permit courts to appoint qualified [certified and registered] interpreters for small claims, respectively) will ensure that, when resources allow, qualified and adequate interpreter services are provided in small claims proceedings. Proposed revisions to the Code of Civil Procedure section 116.550 to include small claims proceedings would authorize the appointment of qualified (certified/registered) interpreters in small claims matters, similar to the provision of court interpreters for all other court proceedings, which benefits California's LEP court users. The revisions would also require courts to follow the steps for provisionally qualifying interpreters (California Rules of Court, Rule 2.893) when there is no qualified (certified/registered) interpreter available. Judges will have discretion to appoint a temporary interpreter to assist a court user during a small claims hearing only if an attempt to secure a certified/registered or provisionally qualified interpreter was not successful after the matter was postponed, or at the first hearing if the judge similarly determines that appointment of a temporary interpreter is appropriate, depending on the complexity of the case.

Alternatives Considered

As noted above in the Prior Circulation section, the Task Force proposed and previously circulated for public comment a different proposal. That proposal did not move forward because of Committee concerns about that proposal's impact on small claims litigants and courts.

In response to the prior circulation, one commenter suggested that the proposed revision for Code of Civil Procedure section 116.550 should say "may appoint" an interpreter rather than "shall appoint," to ensure that it is consistent with Government Code § 68092.1(b), and the

³ The proposed revision of CA Rule of Court 2.893 is available at: <https://jcc.legistar.com/View.ashx?M=F&ID=5402334&GUID=9737C480-318A-4385-868A-4D6116EECD04>

priority order established by Evidence Code section 756 (where small claims matters fall under Priority 8). The proposed revision to Code of Civil Procedure section 116.550 that has been approved by the Task Force and Committee for recirculation incorporates this suggested change (see attached).

The Task Force did not consider the option of not recommending any change to these statutes. 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

Two of the six commenters who submitted public comment on the prior proposal shared the need to train judicial officers and court staff regarding the proper appointment of certified and registered interpreters, and provisionally qualified interpreters, in accordance with California Rules of Court. Further, one commenter suggested that court websites will need to be updated, court signage should be posted to inform court users regarding the availability of court interpreters, and notice to attorneys and the public should be posted on the Judicial Council website and individual court websites. In terms of outreach, courts may need to inform all interested stakeholders regarding the changes. One commenter suggested local bar associations be informed about the changes so they are able to inform their attorney members.

The proposed amendments (effective January 1, 2019) continue the expansion of language services in the courts, including the provision of court interpreters in small claims actions when court resources allow. This will require that more qualified interpreters in more languages be made available for parties and witnesses. The Governor's budget for fiscal year 2016–2017 appropriated an additional \$7 million, ongoing, for the expansion of court interpreter services in civil proceedings. An additional ongoing amount up to \$4 million for continued expansion will also be requested by the Judicial Council for fiscal year 2018–2019. 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, courts may not be able to provide interpreters immediately in small claims matters, which are contained within the lowest priority group.

Request for Specific Comments

In addition to comments on the proposal as a whole, the Task Force and Committee are 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 forms, 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 7
2. Text of Code of Civil Procedure section 116.550, at page 8

Government Code section 68560.5(a) would be amended, effective January 1, 2019, 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.~~

Code of Civil Procedure section 116.550 would be amended, effective January 1, 2019, 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 *appoint an interpreter* ~~permit another individual (other than an attorney) to~~
4 ~~assist to interpret for that party. The requirements of Government Code section 68561~~
5 *apply to the appointment of interpreters in small claims matters.*
6
- 7 ~~(b) Each small claims court shall make a reasonable effort to maintain and make available to~~
8 ~~the parties a list of interpreters who are able and willing to aid parties in small claims~~
9 ~~actions either for no fee, or for a fee which is reasonable considering the nature and~~
10 ~~complexity of the claims. The list shall include interpreters for all languages that require~~
11 ~~interpretation before the court, as determined by the court in its discretion and in view of~~
12 ~~the court's experience.~~
- 13
- 14 ~~(c) Failure to maintain a list of interpreters, or failure to include an interpreter for a particular~~
15 ~~language, shall not invalidate any proceedings before the court.~~
- 16
- 17 ~~(d) If a court interpreter or other competent interpreter is not available to aid a party in a~~
18 ~~small claims action, at the first hearing of the case the court shall postpone the hearing~~
19 ~~one time only to allow the party the opportunity to obtain another individual (other than~~
20 ~~an attorney) to assist that party. Any additional continuances shall be at the discretion of~~
21 ~~the court.~~
- 22
- 23 ~~(d)~~ *(b) Notwithstanding the provisions of Government Code section 68651, if a court makes a*
24 *finding that a certified or registered court interpreter or an interpreter provisionally*
25 *qualified under the Rules of Court is not available to aid a party in a small claims action,*
26 *at the first hearing of the case the court should consider postponing the hearing,*
27 *depending on the complexity of the matter, in order to attempt to obtain a certified or*
28 *registered court interpreter or an interpreter that has been provisionally qualified. If at*
29 *the next court hearing the court makes a similar finding of unavailability, or upon such a*
30 *finding at the original hearing if it is not continued, the court may allow use of an*
31 *individual as a "temporary interpreter" under the provisions of the Rules of Court to*
32 *assist as an interpreter during the hearing. Any other continuances shall be at the*
33 *discretion of the court.*
- 34
- 35 (c) *The Judicial Council shall adopt Rules of Court to implement this statute.*