

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT SPR17-21

Title	Action Requested
Language Access: Designation of Representative and Handling Complaints	Review and submit comments by April 28, 2017
Proposed Rule	Proposed Effective Date
Adopt Cal. Rules of Court, rules 2.850 and 2.851	January 1, 2018
Proposed by	Contact
Language Access Plan Implementation Task Force	Douglas G. Denton 415-865-7870 douglas.denton@jud.ca.gov
Hon. Mariano-Florentino Cuéllar, Chair	
Hon. Manuel J. Covarrubias, Vice-chair	

Executive Summary and Origin

To implement Recommendations 25, 62, and 63 in the *Strategic Plan for Language Access in the California Courts*, adopted by the Judicial Council in January 2015, the Language Access Plan (LAP) Implementation Task Force proposes two new California Rules of Court to require each superior court to (1) designate a Language Access Representative, and (2) adopt a language access services complaint form and complaint procedures.

Background

The Judicial Council charged the Task Force with overseeing and ensuring implementation of the *Strategic Plan for Language Access in the California Courts* (LAP). The plan provides a comprehensive and systematic approach to expand language access in the California courts.

The LAP embraces the principle that it is the court's responsibility to provide language access throughout the continuum of court services, from the first time an individual tries to access the court's website, or walks in the door of the courthouse, to posthearing events necessary to comply with court orders (LAP, p. 45). To help achieve this goal, the LAP recommends that each county designate an office or person that serves as the court's Language Access Representative:

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 These proposals are circulated for comment purposes only.

25. The court in each county will designate an office or person that serves as a language access resource for all court users, as well as court staff and judicial officers. This person or persons should be able to: describe all the services the court provides and what services it does not provide, access and disseminate all of the court's multilingual written information as requested, and help LEP court users and court staff locate court language access resources.

In conjunction with LAP implementation, each of the 58 superior courts designated a Language Access Representative in January 2016.

The LAP also notes that a multifaceted complaint procedure is essential to ensure the quality of language access services delivered. The LAP states:

All participants in the court system, including LEP court users, attorneys, legal services providers, community-based organizations, interpreters, judicial officers, and other justice partners, must be able to register complaints if a court fails to provide adequate language access services, or if the services provided are of poor quality, whether the service involves bilingual staff, written translation, or interpreter employees or contractors. Any complaint procedure must be available to all, consistent and transparent, with procedures and forms, and should be utilized in a way that protects LEP court users or other interested persons from actual or perceived negative repercussions either to them personally or to the outcome of their case. (LAP, pp. 75–76)

To address the need to develop a complaint form and procedure, the LAP contains the following recommendations regarding development of statewide and local LAP-related complaint processes:

62. The Implementation Task Force will develop a single form, available statewide, on which to register a complaint about the provision of, or the failure to provide, language access. This form should be as simple, streamlined, and user-friendly as possible. The form will be available in both hard copy at the courthouse and online, and will be capable of being completed electronically or downloaded for printing and completion in writing. The complaints will also serve as a mechanism to monitor concerns related to language access at the local or statewide level. The form should be used as part of multiple processes identified in the following recommendations of this plan.

63. Individual courts will develop a process by which LEP court users, their advocates and attorneys, or other interested persons may file a complaint about the court's provision of, or failure to provide, appropriate language access services, including issues related to locally produced translations. Local courts may choose to model their local procedures after those developed as part of the

implementation process. Complaints must be filed with the court at issue and reported to the Judicial Council to assist in the ongoing monitoring of the overall implementation and success of the Language Access Plan.

As an initial step in implementing these recommendations, at its July 6, 2016, meeting, the Task Force approved a model complaint form, recommended procedures, and other materials in a packet for the superior courts. In September 2016, the packet was distributed to the 58 superior courts and posted to the Language Access Toolkit (a link to the toolkit is provided below). Subsequently, the Task Force worked to develop the new rule of court that is contained in this proposal.

The Proposal

The Task Force is proposing two new California Rules of Court to implement LAP recommendations 25, 62, and 63.

Rule 2.850

Proposed new rule 2.850 is intended to implement LAP Recommendation 25. This new rule would require each superior court to designate a Language Access Representative that serves as the court's language access resource for all court users, as well as court staff and judicial officers. As of January 2016, each court has already identified a Language Access Representative, so this rule will not impose new responsibilities on the courts. It will, however, make clear that this is an ongoing requirement for courts.

Rule 2.851

Proposed new rule 2.851 is intended to implement LAP Recommendations 62 and 63. This new rule would require each superior court to adopt a language access services complaint form and related procedures for the Language Access Representative to respond to complaints. This rule will benefit the judicial branch, justice partners, attorneys, self-represented litigants, and others by (1) ensuring that LEP court users who may not have received a court interpreter will, as appropriate and needed, receive a court interpreter; and (2) by alerting the court of any other language access services that may need to be provided or improved upon, or issues that need to be remedied.

The complaint form required by the rule will allow limited-English-proficient (LEP) court users, their advocates and attorneys, or other interested persons, to submit a complaint to the court's Language Access Representative about the court's provision of, or failure to provide, appropriate language access services, including issues related to locally produced translations. The rule will also establish minimum required procedures for courts to receive and respond to complaints, and clarify that complaints must be submitted to the court at issue and reported to the Judicial Council to assist in the ongoing monitoring of the overall implementation and success of the Language Access Plan.

Under this rule, individual courts may choose to continue to use their existing language access complaint form and procedures, or model their new complaint form and/or procedures after the rule and model form and recommended procedures that were developed by the Task Force.

Alternatives Considered

No alternatives were considered. The proposed rules are intended to support implementation of the Judicial Council's *Strategic Plan for Language Access in the California Courts* (LAP Recommendations 25, 62, and 63). The new rules requiring all superior courts to designate a Language Access Representative and adopt a language access services complaint form and related procedures are designed to achieve consistent practices across the state.

Implementation Requirements, Costs, and Operational Impacts

Proposed rule 2.850 is not expected to impose any new costs or to have any operational impacts. As of January 2016, each of the superior courts has already designated a Language Access Representative. The new rule simply makes clear that this is an ongoing requirement for courts.

Proposed rule 2.851 should have minimal implementation requirements, costs, and operational impacts on the courts. The LAP Implementation Task Force has developed a model complaint form and court user instructions, which we have shared with all 58 superior courts. The Judicial Council will turn the existing model complaint form and court user instructions into a fillable PDF that is usable by any court, and will translate the model form and court user instructions into at least eight languages for courts to use as appropriate in order to address the specific language needs of their county. The Task Force will share these documents with courts for posting on their websites. Depending on the nature of any language access complaints, courts may need to make appropriate operational changes to ensure that LEP court users receive appropriate language access services. There will also be some implementation requirements, costs, and operational impacts associated with the required semiannual reporting to the Judicial Council on any complaints received.

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 appropriately address the stated purpose?

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

- What would be the implementation requirements be for courts? For example, costs, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), or modifying case management systems.
- Would three and a half months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Proposed Cal. Rules of Court, rules 2.850 and 2.851, at pages 6–9
2. Attachment A: *Strategic Plan for Language Access in the California Courts*, http://www.courts.ca.gov/documents/CLASP_report_060514.pdf
3. Attachment B: Language Access Toolkit, <http://www.courts.ca.gov/lap-toolkit-courts.htm>
4. Attachment C: Model Complaint Form and Procedures, <http://www.courts.ca.gov/documents/lap-Model-Procedures-and-Complaint-Form.pdf>

Rules 2.850 and 2.851 of the California Rules of Court would be adopted, effective January 1, 2018, to read:

1 **Title 2. Trial Court Rules**

2
3 **Chapter 4. Language Access**

4
5 **Article 1. General Provisions**

6
7 **Rule 2.850. Language Access Representative**

8
9 **(a) Designation of Language Access Representative**

10
11 The court in each county will designate a Language Access Representative. That
12 function can be assigned to a specific job classification or office within the court.

13
14 **(b) Duties**

15
16 The Language Access Representative will:

- 17
18 (1) Serve as the court’s language access resource for all court users, as well as
19 court staff and judicial officers, and should be familiar with all the language
20 access services the court provides;
21
22 (2) Access and disseminate all of the court’s multilingual written information as
23 requested; and
24
25 (3) Help limited-English-proficient (LEP) court users and court staff locate
26 language access resources.

27
28 **Rule 2.851. Language access services complaints**

29
30 **(a) Purpose**

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32 The purpose of this rule is to ensure that each superior court makes available a form
33 on which court users may submit a complaint about the provision of, or the failure
34 to provide, language access and that each court has procedures for handling those
35 complaints.

36
37 **(b) Complaint form and procedures required**

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39 Each superior court must adopt a language access services complaint form and
40 complaint procedures that are consistent with this rule.

41

1 **(c) Minimum requirement for complaint form**

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3 The language access services complaint form adopted by the court must meet the
4 following minimum requirements:

- 5
6 (1) Be written in plain language;
7
8 (2) Allow court users to submit complaints about how the court provided or
9 failed to provide language services;
10
11 (3) Allow court users to specify whether the complaint relates to court
12 interpreters, other staff, or local translations;
13
14 (4) Include the court’s mailing address and the contact information for the
15 court’s designated Language Access Representative;
16
17 (5) Be made available both in hard copy at the courthouse and online on the
18 court’s website, where court users can complete the form online and then
19 submit it to the court by hand, postal mail, or e-mail; and
20
21 (6) Be made available in the languages spoken by significant proportions of the
22 county population.

23
24 **(d) General requirements for complaint procedures**

25
26 The complaint procedures adopted by the court must provide for the following:

- 27
28 (1) Submission and referral of local language access complaints
29
30 (A) Language access complaints may be submitted anonymously.
31
32 (B) Language access complaints regarding local court services should be
33 submitted to the court’s designated Language Access Representative.
34
35 (C) A complaint submitted to the improper entity must immediately be
36 forwarded to the appropriate court, if that can be determined, or, where
37 appropriate, to the Judicial Council.
38
39 (2) Acknowledgment of complaint
40
41 Except where the complaint is submitted anonymously, within 10 days after
42 the complaint is submitted, the court’s Language Access Representative must

1 send the complainant a written acknowledgment that the court has received
2 the complaint.

3
4 (3) *Preliminary review and disposition of complaints*

5
6 Within 90 days, the court's Language Access Representative should conduct
7 a preliminary review of every complaint to determine whether the complaint
8 can be informally resolved or closed, or whether the complaint warrants
9 additional investigation. Court user complaints regarding denial of a court
10 interpreter for pending cases should be addressed promptly.

11
12 (4) *Procedure for complaints not resolved through the preliminary review*

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14 If a complaint cannot be resolved through the preliminary review process
15 within 90 days, the court's Language Access Representative should inform
16 the complainant (if identified) that the complaint warrants additional review.

17
18 (5) *Notice of outcome*

19
20 Except where the complaint is submitted anonymously, the court must send
21 the complainant notice of the outcome taken on the complaint.

22
23 (6) *Disagreement with outcome*

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25 If a complainant disagrees with the outcome on his or her complaint, within
26 90 days, he or she may submit a written follow-up statement to the Language
27 Access Representative indicating that he or she disagrees with the outcome of
28 the complaint. The follow-up statement should be brief, specify the basis of
29 the disagreement, and describe the reasons the complainant believes the
30 court's action lacks merit. The court's response to any follow-up statement
31 submitted by the complainant after receipt of the notice of outcome will be
32 the final action taken by the court on the complaint.

33
34 (7) *Promptness*

35
36 The court must process complaints promptly.

37
38 (8) *Records of complaints*

39
40 The court should maintain information about each complaint and its
41 disposition. The court must report to the Judicial Council on a semiannual
42 basis the number and kinds of complaints received, the resolution status of all
43 complaints, and any additional information about complaints requested by

1 Judicial Council staff to facilitate the monitoring of the *Strategic Plan for*
2 *Language Access in the California Courts.*

3
4 **Advisory Committee Comment**

5
6 **Subdivision (a).** Judicial Council staff have developed a model complaint form and model
7 local complaint procedures, which are available in the Language Access Toolkit at
8 www.courts.ca.gov/33865.htm. The model complaint form is posted in numerous languages.
9 Courts are encouraged to base their complaint form and procedures on these models.

10
11 **Subdivision (d)(1).** Court user complaints regarding language access that relate to Judicial
12 Council meetings, forms, or other translated material hosted on www.courts.ca.gov, should be
13 submitted directly to the Judicial Council at www.courts.ca.gov/languageaccess.htm.
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