

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

W15-03

Title	Action Requested
Court Interpreters: Request for Interpreter	Review and submit comments by January 23, 2015
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Adopt Cal. Rules of Court, rule 2.895; recommend model local court form	July 1, 2015
Proposed by	Contact
Civil and Small Claims Advisory Committee Hon. Patricia M. Lucas, Chair	Anne M. Ronan, 415-865-8933 anne.ronan@jud.ca.gov

Executive Summary and Origin

In early 2014, the Judicial Council directed the Civil and Small Claims Advisory Committee to create a new form for parties to use to request court interpreters in civil matters. Later in 2014, the Judicial Council sponsored legislation to add a section to the Government Code to authorize courts, subject to available funding, to provide interpreters to parties in civil actions at no cost to the parties, regardless of the income of the parties. Assembly Bill 1657 (Stats. 2014, ch. 721) enacts that provision as well as prioritizing the types of civil cases in which courts should provide interpreters when funds are insufficient to provide them in all civil matters.

In this proposal, the Civil and Small Claims Advisory Committee proposes a model form, *Request for Court Interpreter (Civil Actions)*, that local courts may adopt or use as a template for a local form and recommends a rule of court mandating that courts adopt and publish procedures for accepting and processing such requests. The committee also solicits comments on whether the council's adoption of *Request for Court Interpreter (Civil Actions)* as a statewide mandatory form would be a better alternative at this time than its recommending a model local form.

Background

Last fall, the Judicial Council formed the Ad Hoc Joint Working Group to Address Court Interpreter Issues. The working group was charged with addressing (a) options for using all or a portion of accumulated Program 45.45 funds and (b) options for ensuring coordination of efforts to expand the provision of court interpreter services in California. The Ad Hoc Joint Working Group made a report on these issues—*Court Interpreters: Expenditure of Unused Savings From*

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.

Program 45.45—at the January 23, 2014, Judicial Council meeting.¹ The recommendations that were adopted by the council included directing the Civil and Small Claims Advisory Committee to create a new form for parties requesting interpreters in civil matters. The form was to include space for the party to indicate the language in which an interpreter is required and whether a waiver of court fees and costs has been granted. The form was also to advise parties that interpreters would be available in civil cases only for parties who are indigent—a direction based on the law at the time the recommendations were made. This last provision is no longer relevant in light of the enactment of AB 1657, which provides in new Government Code section 68092.1(b) that a court may provide an interpreter in a civil action at no cost to the parties, regardless of the income of the parties.²

The Proposal

Rule 2.895

Limited funding means court interpreters are not currently available in all civil proceedings. Where court interpreters are available, in which languages they are available to interpret, and how they will be assigned differ from court to court. Courts have different preferences as to how long before a hearing an interpreter should be requested in order to facilitate scheduling of interpreters, and different time frames as to when the court will be able to tell a party whether the request can be fulfilled. Because of these differences and because the Judicial Council did not direct the committee to develop statewide rules regarding such procedures, at this time the advisory committee recommends only that each court develop its own procedures and make them available to the public. The proposed rule also requires that notice that the procedures exist be made available in whichever languages are most prevalent within the court's jurisdiction. See proposed California Rules of Court, rule 2.895, at page 7.

The rule would be located with the other rules of court regarding interpreters.³ It would also have an Advisory Committee Comment noting the availability of a model form to request an interpreter.

Model Request for Court Interpreter form

The advisory committee has also developed a *Request for Court Interpreter* form and proposes that the form be made available to courts as a model local form, with translations in the five major languages used in California also made available as resources permit. As proposed, the model local form would be available to the trial courts in an editable format and stored on the Serranus website; thus, it could be used as is or tailored by the court to meet the needs of the court and parties in the area, including adding a description of the specific procedures that would

¹ A copy of the report is available at www.courts.ca.gov/documents/jc-20140123-itemD.pdf.

² AB 1657 is available at http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB1657.

³ Note, rule 2.893 (Appointment of noncertified interpreters in criminal cases and juvenile delinquency proceedings) is also applicable to civil cases and will soon be amended to expressly state so. Potential amendments to that rule and other rules and forms regarding court interpreters are being developed separately to implement Assembly Bill 2370.

be used in that court for providing interpreters in civil cases. The local form could be amended to provide more information concerning where, when, and how interpreters would be provided in civil departments in that court.⁴

The draft model *Request for Court Interpreter (Civil Actions)* is attached at pages 8–9. The form begins with a warning to parties that court interpreters will not be available for all hearings or in all languages.

The first questions asks for the identity of the person requesting the interpreter and the language in which interpretation is needed. The party is asked to identify the specific proceeding for which an interpreter is requested, including date and place, if set.

The form next asks for the type of case at issue. See item 6. This information is required because, as the instructions on the back of the form explain, the Legislature has set priorities for which types of civil cases a court should assign interpreters to when funds are insufficient to provide interpreters to all. (See new Evid. Code, § 756(b).)⁵

The questions conclude with an item in which a party is to indicate whether a fee waiver has been granted. See item 7. This item is included because, although, as noted above, the existence of a fee waiver will no longer be a requirement for a court’s provision of an interpreter in civil cases under the new law, a party with a fee waiver does receive a preference in certain types of cases. (*Id.*, § 756(c)(1).)

The instructions on the second page of the form, to which the party is directed at the top of the first page, include information that court proceedings are conducted in English and that a party who does not speak English well may ask for an interpreter. The instructions also note that courts are not always able to provide interpreters and set out the priority of cases in which interpreters will be provided. (See Instructions items 2 and 3.) The instructions also identify those types of cases for which a finding of indigence (via the grant of a fee waiver) will provide a greater preference in the new statutory priority scheme. Parties with financial need—who will receive preference in those case types—are advised to apply for a fee waiver and informed of the form on which to do so. (See Instructions item 3.)

Paragraph 4 of the instructions provides a general instruction to use the form to request a court interpreter. It can conclude with one of two alternatives. Alternative A is a sentence instructing the party to contact the local court for more specific information about when such a request

⁴ See below for discussion of the alternative to having the council adopt the form as a statewide mandatory form.

⁵ The first priority set by the Legislature includes three different types of cases: domestic violence actions, family law cases with domestic violence claims, and elder and dependent adult cases with claims of physical abuse (see new Evid. Code, § 756(b)(1)). These case types are described separately in item 6 of the proposed form to make the form easier for parties to understand. The committee does not intend in any way to change the priority accorded any of those case types.

should be made and when and how a court will respond.⁶ Alternative B is a blank space, where a court can expressly describe within the form the court's procedures for filing and processing requests for interpreters—e.g., how far before a hearing the court wants the request to be filed, when the court will be able to provide an answer as to whether an interpreter will be provided, and how that information will be provided.

Paragraph 5 provides general information regarding what a party for whom the court is unable to provide a court interpreter can do to proceed with the hearing or proceeding, including what will be required if the party brings his or her own interpreter to the court to be provisionally qualified, and a pointer to a Judicial Council form that provides information about the duties of an interpreter in civil actions.

The committee asks for comments as to whether it would be helpful to courts for the form to request additional information and whether it would be helpful to parties for additional information to be added to the instructions.

Alternatives Considered and Specific Comments Requested

The advisory committee considered developing a recommendation for procedures to be used in all superior courts throughout California for the filing and processing of requests for interpreters. The majority of the committee concluded that, under the current fiscal circumstances, the funding for and availability of court interpreters differed too much from court to court and region to region to make statewide rules and procedures workable at this time. The committee concluded that recommending a rule that each court have and publish its own procedures was sufficient.

The committee also considered the alternative of recommending a statewide *Request for Court Interpreter (Civil Actions)* form, in the same format as the model form, differing only in paragraph 4 of the instructions (Alternative A would be used in the statewide form, concluding that paragraph with the general instruction to contact the local court for more specific information about filing the forms). One of the original reasons for the committee's deciding to develop a model local form—uncertainty as to what cases would be given priority in a specific court or region—has now been resolved by the enactment of AB 1657. A statewide form on the California Courts website would be easier for parties to locate and possibly easier for them to receive help in completing, because the same form would be used statewide. Making such a form mandatory would also assure that all parties make their requests in the same format.⁷ In addition, a statewide form would ensure that a request form would be available for use in all courts,

⁶ This note would be similar to the final instruction provided on the petition for name change, which, after fairly detailed instructions on how to complete and file the name change forms, notes that local courts may supplement the instructions and that the applicant should check with the local court to determine if supplemental information is available. See the bottom of the Instructions page of *Petition for Change of Name* (form NC-100).

⁷ Alternatively, the form could be approved as an optional form, which would allow parties to make the request in other ways also.

eliminating the possibility that a court might opt out of using the proposed model local form without replacing it with another form and so leave parties to find some other way to request an interpreter.

Ultimately, the advisory committee concluded that, at this point, it would recommend circulation of the proposed form for comment as a model local form. However, the committee requests that courts and others provide specific comments on whether a statewide mandatory form, in the format of the attached form with the modification to Instruction paragraph 4 described above, including only Alternative A, would be a better alternative for the committee to recommend to the council.

Implementation Requirements, Costs, and Operational Impacts

The advisory committee was directed to develop the form by the Judicial Council, and so has not specifically considered cost implications of the form in making this proposal. Courts that choose to use the model *Request for Court Interpreter* form should be able to save some cost in not having to develop a local form from scratch, although if a court modifies the proposed model form to include its own procedures, it may incur some administrative costs. Although some training costs will be necessary regarding use of any *Request for Court Interpreter* form, training will be required in any event to implement AB 1657.

Some costs will be involved in developing and publishing foreign language notices in each court regarding the existence of procedures for accepting and processing requests for interpreters. Without such notice, however, those with limited English proficiency whom such procedures are intended to benefit will not know that the procedures exist.

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?
- Would courts benefit from having any additional items included on the model form?
- Would parties benefit from having any additional instructions included on the model form?
- Would the council's adoption of the *Request for Court Interpreter (Civil Actions)* form as a statewide mandatory form be a better alternative at this time than its recommending a model local form?

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

- Would the proposal provide cost savings? If so please quantify.
- 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 two 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, rule 2.895, at page 7
2. Proposed model local *Request for Court Interpreter* form, at pages 8–9
3. AB 1657, at http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB1657

Rule 2.895 of the California Rules of Court would be adopted, effective July 1, 2015, to read:

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Title 2. Trial Court Rules

Division 6. Appointments by the Court or Agreement of the Parties

Chapter 4. Court Interpreters

Rule 2.895. Requests for interpreters

Each court must have and publish procedures for parties to file and the court to process requests for interpreters. Each court must publish notice of these procedures in the major languages used within the court’s jurisdiction.

Advisory Committee Comment

A model form that courts may use as a basis for a local *Request for Court Interpreter (Civil Actions)* is available from the Judicial Council.

MODEL FORM

Form ##

ATTORNEY OR PARTY WITHOUT ATTORNEY: NAME: FIRM NAME: STREET ADDRESS: CITY: TELEPHONE NO.: E-MAIL ADDRESS (if available): ATTORNEY FOR (name):	STATE BAR NO: STATE: ZIP CODE: FAX NO. (if available):	DRAFT 11/20/14
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:		
REQUEST FOR COURT INTERPRETER (CIVIL ACTIONS)		CASE NUMBER:

IMPORTANT: Interpreters will not be available for all hearings or in all languages. See instructions on the back of this form for more information about requesting an interpreter in a civil action.

1. I (name): _____ am a party in this case (check one item below):
 Plaintiff/Petitioner Defendant/Respondent Other (describe): _____
2. I need an interpreter for (check all that apply) me a witness (describe): _____
3. The language(s) in which I need an interpreter are (list all): _____
4. The court hearing or proceeding for which I need an interpreter is (describe): _____

5. The court proceeding is going to take place on (date): _____ at (time): _____
in (department): _____ before (name of judicial officer, if known): _____
 No date is set yet.
6. **Type of case (check one)**
 - a. Domestic violence case
 - b. Family law case in which there is a domestic violence claim
 - c. Elder or dependent adult physical abuse case
 - d. Unlawful detainer or eviction action
 - e. Case to terminate parental rights
 - f. Guardianship or conservator action
 - g. Sole custody or visitation rights case
 - h. Elder or dependant adult abuse case *not* involving physical abuse
 - i. Family law case *not* involving domestic violence or sole custody or visitation rights
 - j. Any other civil action, including Small Claims cases
7. **Fee waiver status (check one)**
 - a. I received a fee waiver in this case on (give date of order granting fee waiver; attach copy of order if available): _____
 - b. I applied for a fee waiver in this case on (date application was filed): _____
 - c. I have not received and am not seeking a fee waiver.

Date:

(TYPE OR PRINT NAME)



(SIGNATURE)

INSTRUCTIONS

1. Court proceedings are conducted in English. If a party or a witness does not speak English well, he or she may need an interpreter to testify, to speak to the judge, and to understand what others are saying in the proceeding. Certified and registered court interpreters are specifically trained to interpret in court proceedings. If you need language assistance, you should ask the court if it can provide a court interpreter by filling out this form.
2. Courts are not always able to provide or pay for an interpreter in every language or in every civil case. The Legislature has set priorities for which cases courts with limited funds are to try to provide court interpreters. The first priority is to try to provide interpreters in the following kinds of cases:
 - a. Domestic violence cases,
 - b. Family law cases in which there is a domestic violence issue,
 - c. Elder or dependent adult physical abuse cases, and
 - d. Unlawful detainer or eviction cases.

Even in those cases, interpreters will not always be available for all hearings or in all languages.

3. Courts may be able to provide interpreters in some languages in some other civil cases. The Legislature has set priorities in these cases also, providing that the court should try to provide interpreters for cases in the following order:
 - e. Actions to terminate parental rights,
 - f. Actions relating to conservatorships or guardianships,
 - g. Actions for child custody or visitation,
 - h. Elder abuse cases and dependant adult abuse cases that do not involve domestic violence,
 - i. Actions relating to family law other than those relating to domestic violence or child custody or visitation, and
 - j. All other civil actions, including small claims cases.

In these types of cases, preference will be given to parties with financial need who have qualified for a fee waiver, so if you need a court interpreter *and* need financial assistance, you should apply for a fee waiver if you do not already have one. To do so, complete and file a *Request to Waive Court Fees (Civil Actions)* (form FW-001). You should note in item 7 of this form whether you have a fee waiver already, have applied for one, or do not intend to apply for one.

4. If your case falls within one of the categories of cases listed in paragraphs 2 or 3 above, and you would benefit from having an interpreter during your court proceedings, you should use this form to request a court interpreter. Complete the first page and file it with the court. **[Alternative A:** Check with your local court to find out about any local rules it has regarding requests for an interpreter, including how long before the hearing you must file the request and when the court will act on it. **OR Alternative B:** *Court to add description of its procedures or rules here.*]
5. If the court is unable to provide an interpreter, you may bring a person who can speak English with you to act as an interpreter at the proceeding. The court may have a list of interpreters in your area whom you could hire. You may ask a friend or relative (it should be an adult) to act as an interpreter. It must be someone who can understand, speak, and read both your language and English. The court will need to make sure that person is qualified to interpret for you or the witness before the proceeding begins and will require the person to take an oath, swearing to interpret as completely and accurately as possible. If you are going to use a noncertified court interpreter, you should give him or her a copy of the form *Foreign Language Interpreter's Duties--Civil and Small Claims* (form INT-200), which is available on the California Courts website at www.courts.ca.gov/documents/int200.pdf.