



JUDICIAL COUNCIL OF CALIFORNIA

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JOINT WORKING GROUP FOR
CALIFORNIA'S LANGUAGE ACCESS PLAN

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MINUTES OF OPEN MEETING WITH CLOSED SESSION

October 21-22, 2014

October 21: 8:30 a.m. to 5:00 p.m.; October 22: 9:30 a.m. to 1:00 p.m.

Judicial Council Board Room

Advisory Body Members Present: Hon. Maria P. Rivera, Co-Chair, Hon. Manuel J. Covarrubias, Co-Chair, Mr. Kenneth W. Babcock, Mr. Jaeis Chon, Ms. Tracy Clark, Ms. Debra A. Donson, Hon. Dennis Hayashi, Ms. Janet Hudec, Ms. Oleksandra Johnson, Ms. Kristine Kussman, Ms. Ginger Lamar, Hon. Miguel Márquez, Ms. Lisa McNaughton, Ms. Thuy Thi Nguyen, Ms. Ivette Peña, Ms. Christina M. Volkers, Hon. Laurie D. Zelon

Advisory Body Members Absent: Hon. Steven K. Austin, Mr. Bao Luu, Ms. Ivette Peña (Day 2), Hon. Rebecca S. Riley, Mr. Michael Roddy

Others Present: Ms. Dianne Bolotte, Ms. Carmen Castro-Rojas, Mr. Curt Child, Mr. Jarrett Chin, Ms. Valeria DaSilva-Sasser, Mr. Douglas Denton, Ms. Linda Foy, Mr. Scott Gardner, Mr. Alan Herzfeld, Ms. Donna Hershkowitz, Ms. Bonnie Hough, Ms. Cristina Llop, Ms. Anne Marx, Ms. Angeline O'Donnell (Day 2), Ms. Catharine Price, Ms. Sonia Sierra-Wolf, Ms. Elizabeth Tam

CLOSED SESSION (OCTOBER 21, 2014)

Call to Order and Roll Call

Co-Chairs Hon. Maria P. Rivera and Hon. Manuel J. Covarrubias called the meeting to order at 8:30 a.m., and took roll call.

Item 1

California Rules of Court, Rule 10.75(d)(2) (Agency Investigations)

From 8:30 a.m. to 1:15 p.m., the Joint Working Group considered U.S. Department of Justice guidance on language access planning efforts. The closed session was continued at 1:15 p.m. in order to begin the open session.

OPEN MEETING (OCTOBER 21, 2014)

Approval of Minutes

No minutes requiring approval.

PUBLIC AND WRITTEN COMMENT (ITEM 2)

Ms. Mary Lou Aranguren, California Federation of Interpreters, Ms. Laura Alvarez, Bay Area Legal Aid, and Ms. Lorin Kline, Legal Aid Association of California, commented on agenda Item 2. Ms. Alvarez submitted a one-page handout to the Joint Working Group during her public comments, which has been included in the written comments.

Mr. Thomas Baybrook, Marbrook Partners LLC, and Ms. Angie Birchfield, IGA-The Interpreters Guild of America, submitted written comments.

DISCUSSION AND ACTION ITEMS (ITEMS 2)

Item 2

Discuss Potential Revisions to Draft Language Access Plan (No Action Required)

The draft *Strategic Plan for Language Access in the California Courts* was posted for formal public comment on the California Courts website from July 31, 2014 through September 29, 2014. The Joint Working Group (JWG) discussed potential revisions to the draft plan based on public comments received.

Recommendation No. 8, Expansion of court interpreters to all civil proceedings. JWG agreement to ensure that the case priority that is listed in this recommendation conforms to the case types listed in recently passed legislation (AB 1657), and to move Family Court Services mediation into Phase 1 (see also Recommendation No. 10 below). Agreement that the goal should be to provide court interpreters in all civil case types by the end of phase 2 (i.e., by the end of 2017). Because small claims is not listed in recommendation, additional suggestion to clarify that small claims is not excluded from “other civil.”

Recommendation No. 9, Provisional qualification requirements. JWG agreement that development of a new rule should remain in Phase 2, but add language that it be done as soon as is practicable. Other components of this recommendation, regarding the use of the steps outlined in Rule 2.893 in order to provisionally qualify interpreters in civil matters before adoption of a new rule, should be moved to Phase 1.

Recommendation No. 10, Provision of qualified interpreters in all court-ordered/court-operated proceedings. JWG agreement to move Family Court Services mediation into phase I of Recommendation No. 8. Suggestion to clarify the meaning of “court-ordered/court-operated proceedings” and “court-annexed proceedings” throughout the plan and to add examples regarding specific court programs that will require language access compliance.

Recommendation No. 16, Avoiding conflicts of interest. Change to “must not appoint” and delete “clear or perceived.”

[Note: see Day 2 for summary of discussion regarding video remote interpreting]

Ms. Catharine Price and Ms. Donna Hershkowitz gave brief updates regarding new legislation: AB 1657 (court interpreters in civil proceedings) and AB2370 (requires that the name and qualifications of non-certified interpreters be stated on the record).

Recommendation No. 19, Appointment of bilingual staff. Courts should avoid appointing bilingual court staff to interpret in courtroom proceedings. If the court does appoint staff, he or she must meet all of the provisional qualification requirements as listed on the court interpreter INT forms (add a cross-reference to Forms INT-100, INT-110, and INT-120).

Recommendation No. 33, Use of bilingual volunteers. Suggested change: “Courts should consider the use of bilingual volunteers to provide language access services where appropriate OUTSIDE THE COURTROOM ...”

Recommendations No. 47 (Language proficiency standards for bilingual staff) and 48 (Standards and online training for bilingual staff). No change.

JWG discussion regarding use of “should,” “will,” or “must” within draft plan. All policy statements should be “must” with any “how-to-do-it” being in optional language if possible. One specific example was changing the “should” in recommendation 53 to “must” or “will.”

The following items should be mandatory: setting up a complaint process; compliance with any “minimum standards” [leaving the how-to-comply as optional, if possible]; record-keeping and reporting; verification of interpreter credentials; all training recommendations.

C L O S E D S E S S I O N (O C T O B E R 2 1 - 2 2 , 2 0 1 4)

Item 1 (continued)

California Rules of Court, Rule 10.75(d)(2) (Agency Investigations)

On October 21, 2014, from 4:00 to 5:00 p.m., the Joint Working Group again considered U.S. Department of Justice guidance on language access planning efforts. The closed session was continued to October 22, 2014, from 8:30 to 9:30 a.m. At 9:30 a.m. on October 22, 2014, the closed session was adjourned in order to begin the open meeting session.

O P E N M E E T I N G (O C T O B E R 2 2 , 2 0 1 4)

Approval of Minutes

No minutes requiring approval.

D I S C U S S I O N A N D A C T I O N I T E M S (I T E M S 2)

Item 2 (continued)

Discuss Potential Revisions to Draft Language Access Plan (No Action Required)

JWG discussion regarding potential phasing in of plan recommendations:

- Suggestion to include language in the plan that the future Implementation Committee should be allowed to revise phasing in of the plan recommendations based on what is possible at the present time and what funding is actually available to the courts.
- Suggestion that it be specified that the phasing recommended in the plan not stop courts from implementing recommendations sooner (and that they continue to provide services that they already provide, even though the plan may recommend later phase in).
- As noted above for Recommendation No. 8, agreement that the goal should be to provide court interpreters in all civil case types by the end of phase 2 (i.e., by the end of 2017).
- Suggestion to move Recommendations No. 20, 21, and 23 in front of recs 16-19, under “considerations when appointing interpreters...”
- Suggestion to move Recommendation No. 35 (notice) to Phase 1, with the caveat that courts should not provide notice before language access services are available.
- Suggestion to move Recommendations No. 38 and 42 (signage) to Phase 2. See if Recommendations Nos. 35, 42 and 54 (notice and other information for the public) can be combined. If not, then at least reduce the redundancies.
- Suggestion to move Recommendations No. 66 and 62 (complaint issues) to Phase 1, and the remaining complaint recommendations to phase 2.

Discussion regarding population thresholds identified in Recommendations No. 34, 35, 38, 42. Defer setting language thresholds for all the recommendations that contain them after enough data-gathering has been done. Proposed threshold language: “In English and Spanish and up to four other languages, based on local community needs assessed through due diligent communication with the public, justice partners including legal services providers, community-based organizations, and other entities working with LEP populations.”

Discussion regarding future development of a tool-kit for courts with key documents and resources to assist the courts with plan implementation.

Discussion of a possible recommendation, unless already in the plan, for the Judicial Council to develop multilingual informational materials at the state level that can be adapted for local use by courts.

Discussion of a possible new recommendation regarding California Rule of Court 2.891, including a request that the Implementation Committee evaluate appropriateness of the rule or needed modification or repeal.

Recommendation No. 17, Appointment of family and friends to interpret. The JWG clarified that family and friends should only be used in rare circumstances, for example, brief non-evidentiary matters or for exigent circumstances when a LEP court user speaks a rare language and a certified or registered interpreter is not available. The end result was to take out Recommendation No. 17 because it was duplicative of the provisional qualification process.

Recommendations 16 and 19 regarding appointment of non-certified nonregistered interpreters: Suggestion was made to add “absent exigent circumstances.”

Recommendation No. 18, Appointment of minors to interpret. Agreement to take out that recommendation applied to minors of LEP parties so that it would apply to all minors. Suggestion to clarify recommendation wording to “Minors will not be appointed to interpret in courtroom proceedings nor court-ordered and court-operated activities such as mandatory child custody mediation.”

Recommendation No. 20, Verifying credentials of interpreters. Suggestion to use the language from new legislation (AB 2370), as it sets requirements for the courts regarding the stating of interpreter credentials on the record.

Recommendation No. 21, Expansion of regional coordination system. Remove “consistent with applicable labor agreements” and add global language that all plan recommendations are subject to applicable labor agreements.

Recommendation No. 22, Considerations regarding appointment of interpreters. Suggestion to merge the topics of this recommendation into educational training (See Recommendation No. 50).

Recommendation No. 23, Methods for calendaring and coordination of court interpreters. Suggestion to strike “more” and change “for example” text to say “including but not limited to the use of calendaring and coordination.”

Recommendation No. 76, New rule of court regarding waiver of interpreter. Suggestion to add language to this recommendation that waiver of an interpreter is subject to findings on the record (or on a form), and that rescission of the waiver be allowed at any time by an LEP litigant or the court without a showing of good cause.

Recommendation No. 28, Development of protocols for where bilingual staff are not available. Remove “subject to applicable labor agreements” language and add global language that all plan recommendations are subject to applicable labor agreements

Recommendation No. 32, Qualifications of court-appointed professionals. Change should to must. Delete “to the same degree that services are provided to English speakers.” Remove “subject to local labor agreements” language and add global language in the plan that all recommendations are subject to applicable labor agreements.

Recommendation 42, Multilingual Signage and Recommendation 54 regarding informing public of language access services: Suggestion they be evaluated and possibly folded into 35.

Recommendations No. 62-67, Complaint processes. Suggestion to reorder the recommendations regarding the complaint process (move 66 before existing 62), and make those Phase 1 recommendations. Suggestion to move Recommendations Nos. 63, 64 and 65 to Phase 2. It was also decided that there would be no Judicial Council oversight of how complaints were handled at the local level, but that courts would report the complaints received to the Judicial Council in the same manner they report many other items of operations.

Video Remote Interpreting: Issue Statements and Recommendations (see also handout):

- (New paragraph 2 in Issue Statement, page 35, sec. C). “The quality of interpretation is of paramount importance and should never be compromised. Generally, remote interpreters

are not a substitute for an in person certified or registered interpreter. There may be situations; however, if the effectiveness of the communication is in no way compromised and certain steps have been taken, where remote interpreting can be appropriate.”

- Page 37. 1st paragraph, after 1st sentence:
In 2010 and 2011, California conducted a successful pilot of Video Remote Interpreting in American Sign Language interpreted events which resulted in very high participant satisfaction, and improved access to court certified interpreters. Although this pilot did not specifically address spoken language interpretation, it did establish that remote interpreting, with equipment which meets minimum technology requirements, could be used to provide meaningful language access in a variety of courtroom environments. Based on this demonstrated success, the use of VRI in ASL events has expanded to more than a dozen courts around the state. (Cite the one page document.)
- Page 37 Begin a new paragraph with the sentence starting with: “Courts additionally”
- Page 38 1st full paragraph, BEFORE sentence beginning “similarly” ADD: Suggested language for the judicial officer is provided in Appendix C.
- Rec. 11 ADD: Remote interpreting may only be used in place of on-site interpreting whenever it will allow LEP court-users to fully and meaningfully participate in the proceedings. If it is determined that using RI would negatively impact access for any reason, an on-site interpreter should be used instead.
- Rec. 12: Before using remote interpreting in the courtroom, the court must consider, at a minimum, the specific factors set forth in Appendix B, “Factors and Considerations for Remote Interpreting,” or other factors that may develop as the technology evolves.
- New Rec. 13 The implementation committee should establish minimum technology requirements for VRI which should be updated on an ongoing basis and must include requirements for both simultaneous and consecutive interpreting. (See also CLAC Remote Interpreting Guidelines.)
- Old Rec. 13, no changes
- NEW recommendation after old 13:
In order to fully explore and further develop best practices in the use of remote interpreting and video remote interpreting with spoken languages, the Judicial Council should conduct a pilot, in alignment with the Judicial Branch’s Tactical Plan for Technology 2014-2016. This pilot should, to the extent possible, collect relevant data on: due process issues, participant satisfaction, use of certified and registered interpreters as opposed to provisionally qualified interpreters and the effectiveness of a variety of available technologies including for both simultaneous and consecutive interpreting.

- Old rec. 14 DELETE: “in high frequency languages”
- Recommendation 52 (make bench cards), ADD: “including related to remote interpreting.”

Appendix B

- First bold line at top, replace “should” with “must”.
- Add a new sentence: Until the implementation committee has established technology minimums for RI, as required under recommendation 13, appendix D should be consulted on an interim basis.

Appendix C:

- CHANGE “judge” to “judicial officer.”

The JWG discussed making the plan a more positive and optimistic document. Ideally, the plan will be used as a tool to assist the courts and the branch with securing additional funding. Development of a gold standard for courts regarding language access was discussed, along with interim guidelines that would provide guidance and help courts.

To help make the plan a more positive document, the JWG discussed changing the tone of the document by not focusing so much on challenges or constraints experienced by courts, but to instead focus on future opportunities and the clear need to make language access a part of the core court services. A discussion also took place about plan organization and moving text regarding implementation to the front of the document. This will help stakeholders and the public understand that successful implementation of California’s Language Access Plan will require immediate action by a new advisory body to monitor and oversee achievement of plan recommendations, as well as provide guidance and resources to courts.

A D J O U R N M E N T

There being no further open meeting business, the meeting was adjourned at 1:00 p.m.

Approved by the advisory body on enter date.