



JUDICIAL COUNCIL OF CALIFORNIA

POLICY COORDINATION
AND LIAISON COMMITTEE

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POLICY COORDINATION AND LIAISON COMMITTEE

MINUTES OF OPEN MEETING WITH CLOSED SESSION

October 26, 2015

10:30 AM - 12:00 PM

2860 Gateway Oaks Drive, Suite 400, American Room
Sacramento, CA

Advisory Body Hon. Kenneth K. So, Chair; Hon. Gary Nadler, Vice-Chair; Hon. Brian J. Back;
Members Present: Hon. Samuel K. Feng; Hon. James M. Humes; Hon. Dean T. Stout;
Hon. Charles D. Wachob; Mr. Mark G. Bonino; Ms. Kimberly Flener;
Mr. Patrick M. Kelly; and Ms. Donna Melby.

Advisory Body None
Members Absent:

Others Present: Hon. Brian L. McCabe and Hon. Eric C. Taylor, Members, Judicial Council;
Hon. Steven K. Austin, Chair, Court Interpreters Advisory Panel; Ms. Kristine
Mayotte, Eaton Interpreting Services; Ms. Karin Fujisaki, Principal Attorney to
the Chief Justice, Supreme Court of California; **Judicial Council Staff:** Dr. Amy
Bacharach; Ms. Deborah Brown; Ms. Tara Lundstrom; Ms. Anne Marx; Ms.
Susan McMullan; Ms. Leslie Miessner; Mr. Patrick O'Donnell; and Ms. Kelly
Quinn; **Committee Staff:** Mr. Cory Jasperson; Ms. Laura Speed; Mr. Daniel
Pone; Ms. Sharon Reilly; Ms. Andi Liebenbaum; Mr. Alan Herzfeld; Ms. Yvette
Casillas-Sarcos; and Ms. Amanda Wells.

CLOSED SESSION

Call to Order and Roll Call

The chair called the meeting to order at 10:30 a.m., and committee staff took roll call.

Item 1

Approval of Minutes

The advisory body reviewed and approved the minutes of the Policy Coordination and Liaison Committee for the following meetings:

- September 4, 2015
- September 8, 2015
- September 21, 2015

Item 2

Pursuant to California Rules of Court 10.75(d)(3)

Negotiations concerning legislation.

PROPOSAL FOR JUDICIAL COUNCIL-SPONSORED LEGISLATION

- a) Disposition of the San Pedro Courthouse (No action required)
Authorize the disposition of the San Pedro Courthouse to allow the judicial branch to retain the proceeds to be deposited in the Immediate and Critical Needs Account of the State Court Facilities Construction Fund established by Senate Bill 1407 (Perata; Stats. 2008, ch. 311).

Action: Informational only.

Item 3

Pursuant to California Rules of Court 10.75(c)(1)

New Member Orientation.

Action: Informational only. No action required.

Adjourned closed session at 11:18 a.m.

OPEN MEETING

Call to Order and Roll Call

The chair called the meeting to order at 11:22 a.m., and committee staff took roll call. Written comments were received and provided to advisory body members prior to the meeting date.

CONSENT ACTION ITEM

Item 1

- a) Judicial Council Legislative Policy Summary: 2015 (Action Required)
Sets forth concise council policy guidelines regarding court-related legislative proposals.

Action: Approved for submission to the Judicial Council.

DISCUSSION AND ACTION ITEMS

Item 1

PROPOSALS FOR JUDICIAL COUNCIL-SPONSORED LEGISLATION

- a) Judicial Council: 2016 Legislative Priorities (Action Required)
Cory Jasperson led a discussion of potential items for the 2016 legislative priorities.

Action: Approved for submission to the Judicial Council

- b) Disposition of the San Pedro Courthouse (Action Required)
Authorizes the disposition of the San Pedro Courthouse to allow the judicial branch to retain the proceeds to be deposited in the Immediate and Critical Needs Account of the State Court Facilities Construction Fund established by Senate Bill 1407 (Perata; Stats. 2008, ch. 311).
Action: Recommend alternative proposal for Judicial Council sponsorship.
- c) Juvenile competency (Action Required)
Clarifies the legal process and procedures in proceedings that determine the legal competency of juveniles in delinquency proceedings.
Action: Recommend Judicial Council sponsorship.
- d) Court Jurisdiction Over and Calculation of Time During Supervision Revocation (Action Required)
Clarifies that when supervision has been revoked, summarily or otherwise, the time that elapses during revocation shall not be credited toward any period of supervision.
Action: Recommend Judicial Council sponsorship.
- e) Provisional Qualifications of American Sign Language of Interpreters (Action Required)
Incorporates language allowing for provisional qualification of American Sign Language interpreters.
Action: Recommend Judicial Council sponsorship be deferred.
- f) Timing of Electronic Service (Action Required)
Clarifies that service of motion papers may be made electronically, and provides that the notice period before a hearing for motion papers served electronically is extended by two court days
Action: Rejected for Judicial Council sponsorship.

Item 2

INVITATION TO COMMENT

- a) Court Records: Preservation of Historic and Sample Records Under Rule 10.855 and Elimination of Reporting Requirement Under Government Code Section 68153 (Action Required)
Eliminates the statutory requirement that superior courts must report destroyed court records to the Judicial Council.
Action: Approved for circulation.

A D J O U R N M E N T

There being no further open meeting business, the meeting was adjourned at 12:07 p.m.

Approved by the advisory body on [enter date].



JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date	Action Requested
November 2, 2015	Recommend for Judicial Council Sponsorship
To	Deadline
Members of the Policy Coordination and Liaison Committee	N/A
From	Contact
Trial Court Budget Advisory Committee Hon. Jonathan B. Conklin, Chair	Patrick Ballard, 818-558-3115 patrick.ballard@jud.ca.gov Cory Jaspersen, 916-323-3121 cory.jaspersen@jud.ca.gov
Subject	
Proposal for Judicial Council-Sponsored Legislation: Amendments to the Statute Requiring a 2 Percent Reserve Held in the Trial Court Trust Fund (TCTF)	

Executive Summary

The Trial Court Budget Advisory Committee recommends the Judicial Council sponsor legislation to amend Government Code section 68502.5, the statute that establishes the 2 percent reserve held in the Trial Court Trust Fund (TCTF) to require the Judicial Council to set aside no more than .5 percent of the total funds appropriated in Program 45.10 of Item 0250-101-0932 of the annual 2014 Budget Act and to provide that these funds shall remain in the Trial Court Trust Fund.

Recommendation

The Trial Court Budget Advisory Committee recommends the Judicial Council sponsor legislation to amend Government Code section 68502.5, the statute that establishes the 2 percent

reserve held in the Trial Court Trust Fund (TCTF) to require the Judicial Council to set aside no more than .5 percent of the total funds appropriated in Program 45.10 of Item 0250-101-0932 of the annual 2014 Budget Act and to provide that these funds shall remain in the Trial Court Trust Fund.

Previous Council Action

On June 27, 2012, the Governor signed into law Senate Bill 1021, which repealed the provisions in Government Code section 77209 related to urgent needs funding from the Trial Court Improvement Fund (TCIF) and added Government Code section 68502.5, which requires that the Judicial Council set aside as a reserve an amount equal to 2 percent of the Trial Court Trust Fund (TCTF) appropriation in Program 45.10. In response to this new statute, the Judicial Council, at its August 31, 2012 meeting, approved the current policy with regard to the process, criteria, and required information for requesting supplemental funding from the reserve. This process modified what was approved by the council at its October 28, 2011 meeting as it related to requests for supplemental funding for urgent needs from the TCIF.

At the June 3, 2014 Trial Court Budget Advisory Committee (TCBAC) meeting, Judge Laurie Earl appointed Michael Planet to head a 2 Percent Reserve Process Working Group with the goal of bringing options for possible changes back to the TCBAC. The other members of the working group are: Judge Laurie Earl, Presiding Judge Mark Cope, Presiding Judge Barry Goode, Mike Roddy, Sherri Carter, Mary Beth Todd, David Yamasaki, and Zlatko Theodorovic.

The TCBAC discussed options and recommendations at its July 7, 2014 meeting, brought forward by the 2 Percent Methodology Working Group to change the current Judicial Council–approved process for the allocation of the 2 percent state-level reserve in the TCTF. At the council’s business meeting on July 29, 2014, the committee recommended that the Judicial Council make changes to the 2 percent allocation process including the repeal of Government Code section 68502.5(c)(2)(B), which establishes the state-level reserve. The Judicial Council deferred the TCBAC recommendations presented for changes to the process for the allocation of the 2 percent state-level reserve until their October meeting, and requested the TCBAC work with other advisory bodies to provide further input to the council on the issues and recommendations presented in those items.

At the TCBAC meeting on September 26, 2014 the committee discussed options and recommendations for changes to the supplemental funding process from the 2 percent reserve, all of which originated from its working group, to be presented at the Judicial Council’s October 28 business meeting. The TCBAC recommended changes to expedite the distribution of the unexpended reserve funds to trial courts earlier in the fiscal year, and to establish a process for courts to apply for funding for emergencies after these funds have been distributed. For 2015–2016, the TCBAC recommended proposing amendments to the statute that establishes the 2 percent state-level.

The Judicial Council approved the following recommendations at its October 28, 2014, business meeting¹:

- 1) Starting in 2014–2015, approved the distribution in January, after the Judicial Council’s December business meeting, of 75 percent of the remaining Trial Court Trust Fund (TCTF) 2 percent reserve funds. From January 1 through March 15, the remaining 25 percent of the 2 percent reserve are available for court requests due to unforeseen emergencies or unanticipated expenses. These court requests are to be reviewed and recommended to the Judicial Council by a TCBAC working group. Any remaining funds are to be distributed back to the trial courts after March 15. The Judicial Council’s current approved supplemental funding process is to be updated by staff to reflect these changes.
- 2) Directed that court requests due to unforeseen emergencies or unanticipated expenses approved after March 15 and until June 30 be distributed to the court as a cash advance loan until the following fiscal year when the court, if necessary, could apply for supplemental funding from the TCTF 2 percent reserve at the Judicial Council’s October business meeting in order to repay the cash advance loan. These court requests are to be reviewed and recommended to the Judicial Council.
- 3) Directed the TCBAC, working with the Court Executive Advisory Committee, Trial Court Presiding Judges Advisory Committee, and the Policy Coordination and Liaison Committee, to recommend proposed amendments to Government Code section 68502.5(c)(2)(B), the statute that establishes the 2 percent reserve, to be included as trailer bill language to the 2015 Budget Act.

Rationale for Recommendation

The Trial Court Budget Advisory Committee recommends this sponsored legislation because it applies the historical percentage that was set aside for urgent needs in the Trial Court Improvement Fund, caps the amount at the 2014–2015 TCTF appropriation level in order to eliminate annual allocation adjustments, and gives the Judicial Council discretion to determine the process and timing for courts to apply for emergency funding.

Comments, Alternatives Considered, and Policy Implications

Alternatives

Other alternatives that were considered:

Option 1: Review the approved changes to the process for the allocation of the 2 percent state-level reserve by the Judicial Council at its October 28, 2014 meeting, in one year, prior to proposing any amendments to Government Code section 68502.5(c)(2)(B), which establishes the reserve.

¹ <http://www.courts.ca.gov/documents/jc-20141028-itemM.pdf>

Option 2: The Judicial Council would set-aside one-half of one percent instead of the current two-percent, of the total funds appropriated in TCTF Program 45.10 of the annual Budget Act. This one-half of one percent is based on a historical percentage that was set aside for urgent needs in the Trial Court Improvement Fund. (Government Code section 77209 was repealed and replaced with the current statute.)

Option 3: The Judicial Council would determine the amount of the emergency reserve to be set aside annually and the process for managing the funds. The council might consider a percentage or flat amount based on prior years experience, or historical trends based on requests made for prior emergency set asides process. It also gives the council the discretion to determine the process and timing for courts to apply for emergency funding, and for distributing any unexpended funds.

Option 4: The Judicial Council would establish a percentage and/or amount to be set aside for an emergency reserve from the total funds appropriated in TCTF Program 45.10 of the annual Budget Act. This emergency reserve fund would be allocated directly from the TCTF. For this reason, there would be no need to return the monies to the trial courts. If emergency monies were unspent during the fiscal year, the amount in the fund would roll over. The result would be to reduce any additional amount set aside for emergency funding in the subsequent fiscal year and therefore increase the funding available for allocations to the trial courts. This would replace the current model of allocating the funds, then reducing the allocation and then returning the allocation to the courts

Policy Implications

This option would give the council discretion to determine the process and timing for courts to apply for emergency funding. The emergency reserve set-aside would be capped at no more than \$9.5 million and would remain in the TCTF. Any unspent funds by the end of each fiscal year would be rolled over to the next fiscal year.

Implementation Requirements, Costs, and Operational Impacts

No significant implementation requirements, costs, or operational impacts are expected.

Attachments

1. Text of proposed Government Code section 68502.5(c)(2)(B), at page 8
2. Attachment A: Issue Paper

Government Code section 68502.5(c)(2)(B) would be amended, effective January 1, 2017, to read:

1
2 “~~Prior to~~ Upon preliminary determination of the allocations to trial courts pursuant to
3 subparagraph (A), the Judicial Council shall set aside no more than ~~2.5~~ 1.5 percent of the total
4 funds appropriated in Program 45.10 of Item 0250-101-0932 of the ~~annual~~ 2014 Budget Act and
5 these funds shall remain in the Trial Court Trust Fund. . . . ~~Unavoidable funding shortfall~~
6 ~~requests for up to 1.5 percent of these funds shall be submitted by the trial courts to the Judicial~~
7 ~~Council no later than October 1 of each year. The Judicial Council shall, by October 31 of each~~
8 ~~year, review and evaluate all requests submitted, select trial courts to receive funds, and notify~~
9 ~~those selected trial courts. By March 15 of each year, the Judicial Council shall distribute the~~
10 ~~remaining funds if there has been a request from a trial court for unforeseen emergencies or~~
11 ~~unanticipated expenses that has been reviewed, evaluated, and approved. Any unexpended~~
12 ~~funds shall be distributed to the trial courts on a prorated basis.”~~

Amendments to the Statute Requiring a 2 Percent Reserve Held in the TCTF

Issue

Should Government Code section 68502.5, the statute that establishes the 2 percent reserve, be changed for 2015–2016? If so, what should the amendments be?

Background

On June 27, 2012, the Governor signed into law Senate Bill 1021, which repealed the provisions in Government Code section 77209 related to urgent needs funding from the Trial Court Improvement Fund (TCIF) and added Government Code section 68502.5, which requires that the Judicial Council set aside as a reserve an amount equal to 2 percent of the Trial Court Trust Fund (TCTF) appropriation in Program 45.10. In response to this new statute, the Judicial Council, at its August 31, 2012 meeting, approved the current policy with regard to the process, criteria, and required information for requesting supplemental funding from the reserve. This process modified what was approved by the council at its October 28, 2011 meeting as it related to requests for supplemental funding for urgent needs from the TCIF.

At the June 3, 2014 Trial Court Budget Advisory Committee (TCBAC) meeting, Judge Earl appointed Michael Planet to head a 2 Percent Reserve Process Working Group with the goal of bringing options for possible changes back to the TCBAC. The other members of the working group are: Judge Laurie Earl, Presiding Judge Mark Cope, Presiding Judge Barry Goode, Mike Roddy, Sherri Carter, Mary Beth Todd, David Yamasaki, and Zlatko Theodorovic.

The TCBAC discussed options and recommendations at its July 7, 2014 meeting, brought forward by the 2 Percent Methodology Working Group to change the current Judicial Council–approved process for the allocation of the 2 percent state-level reserve in the TCTF. At the council’s business meeting on July 29, 2014, the committee recommended that the Judicial Council make changes to the 2 percent allocation process including the repeal of Government Code section 68502.5(c)(2)(B), which establishes the state-level reserve. The Judicial Council deferred the TCBAC recommendations presented for changes to the process for the allocation of the 2 percent state-level reserve until their October meeting, and requested the TCBAC work with other advisory bodies to provide further input to the council on the issues and recommendations presented in those items.

At the TCBAC meeting on September 26, the committee discussed options and recommendations for changes to the supplemental funding process from the 2 percent reserve, all of which originated from its working group, to be presented at the Judicial Council’s October 28 business meeting. The TCBAC recommended changes to expedite the distribution of the unexpended reserve funds to trial courts earlier in the fiscal year, and to establish a process for courts to apply for funding for emergencies after these funds have been distributed. For 2015–2016, the TCBAC recommended proposing amendments to the statute that establishes the 2

percent state-level. The Judicial Council approved the following recommendations at its October 28, 2014, business meeting²:

- 1) Starting in 2014–2015, approved the distribution in January, after the Judicial Council’s December business meeting, of 75 percent of the remaining Trial Court Trust Fund (TCTF) 2 percent reserve funds. From January 1 through March 15, the remaining 25 percent of the 2 percent reserve are available for court requests due to unforeseen emergencies or unanticipated expenses. These court requests are to be reviewed and recommended to the Judicial Council by a TCBAC working group. Any remaining funds are to be distributed back to the trial courts after March 15. The Judicial Council’s current approved supplemental funding process is to be updated by staff to reflect these changes.
- 2) Directed that court requests due to unforeseen emergencies or unanticipated expenses approved after March 15 and until June 30 be distributed to the court as a cash advance loan until the following fiscal year when the court, if necessary, could apply for supplemental funding from the TCTF 2 percent reserve at the Judicial Council’s October business meeting in order to repay the cash advance loan. These court requests are to be reviewed and recommended to the Judicial Council.
- 3) Directed the TCBAC, working with the Court Executive Advisory Committee, Trial Court Presiding Judges Advisory Committee, and the Policy Coordination and Liaison Committee, to recommend proposed amendments to Government Code section 68502.5(c)(2)(B), the statute that establishes the 2 percent reserve, to be included as trailer bill language to the 2015 Budget Act. These recommended amendments are to be presented at the Judicial Council’s business meeting in either January or February 2015.

The 2 Percent Methodology Working Group met on November 20 and December 17, 2014, to consider options for amendments to the statute that establishes the 2 percent reserve statute. Each option reviewed, along with a description of the option, is provided below.

Options for Amendments to the Statute that Establishes the 2 Percent Reserve

Option 1: Review the approved changes to the process for the allocation of the 2 percent state-level reserve by the Judicial Council at its October 28, 2014 meeting, in one year, prior to proposing any amendments to Government Code section 68502.5(c)(2)(B), which establishes the reserve.

Option 2: The Judicial Council would set-aside one-half of one percent instead of the current two-percent, of the total funds appropriated in TCTF Program 45.10 of the annual Budget Act. This one-half of one percent is based on a historical percentage that was set aside for

² <http://www.courts.ca.gov/documents/jc-20141028-itemM.pdf>

urgent needs in the Trial Court Improvement Fund. (Government Code section 77209 was repealed and replaced with the current statute.)

Option 2 Amendments to Government Code section 68502.5(c)(2)(B):

“Upon preliminary determination of the allocations to trial courts pursuant to subparagraph (A), the Judicial Council shall set aside ~~2~~ 5 percent of the total funds appropriated in Program 45.10 of Item 0250-101-0932 of the annual Budget Act and these funds shall remain in the Trial Court Trust Fund....”

Option 3: The Judicial Council would determine the amount of the emergency reserve to be set aside annually and the process for managing the funds. The council might consider a percentage or flat amount based on prior years experience, or historical trends based on requests made for prior emergency set asides process. It also gives the council the discretion to determine the process and timing for courts to apply for emergency funding, and for distributing any unexpended funds.

Option 3 Amendments to Government Code section 68502.5(c)(2)(B):

“Upon preliminary determination of the allocations to trial courts pursuant to subparagraph (A), the Judicial Council shall establish a percentage or amount to be set aside ~~2 percent~~ of the total funds appropriated in Program 45.10 of Item 0250-101-0932 of the annual Budget Act and these funds shall remain in the Trial Court Trust Fund.... ~~Unavoidable funding shortfall requests for up to 1.5 percent of these funds shall be submitted by the trial courts to the Judicial Council no later than October 1 of each year. The Judicial Council shall, by October 31 of each year, review and evaluate all requests submitted, select trial courts to receive funds, and notify those selected trial courts. By March 15 of each year, the Judicial Council shall distribute the remaining funds if there has been a request from a trial court for unforeseen emergencies or unanticipated expenses that has been reviewed, evaluated, and approved. Any unexpended funds shall be distributed to the trial courts on a prorated basis.~~”

Option 4: The Judicial Council would establish a percentage and/or amount to be set aside for an emergency reserve from the total funds appropriated in TCTF Program 45.10 of the annual Budget Act. This emergency reserve fund would be allocated directly from the TCTF. For this reason, there would be no need to return the monies to the trial courts. If emergency monies were unspent during the fiscal year, the amount in the fund would roll over. The result would be to reduce any additional amount set aside for emergency funding in the subsequent fiscal year and therefore increase the funding available for allocations to the trial courts. This would replace the current model of allocating the funds, then reducing the allocation and then returning the allocation to the courts.

Option 4 Amendments to Government Code section 68502.5(c)(2)(B):

“~~Prior to~~ Upon the preliminary determination of the allocations to trial courts pursuant to subparagraph (A), the Judicial Council shall establish a percentage or amount to be set

aside 2 percent of the total funds appropriated in Program 45.10 of Item 0250-101-0932 of the annual Budget Act and these funds shall remain in the Trial Court Trust Fund. . . . ~~Unavoidable funding shortfall requests for up to 1.5 percent of these funds shall be submitted by the trial courts to the Judicial Council no later than October 1 of each year. The Judicial Council shall, by October 31 of each year, review and evaluate all requests submitted, select trial courts to receive funds, and notify those selected trial courts. By March 15 of each year, the Judicial Council shall distribute the remaining funds if there has been a request from a trial court for unforeseen emergencies or unanticipated expenses that has been reviewed, evaluated, and approved. Any unexpended funds shall be distributed to the trial courts on a prorated basis.~~"

Option 5: The Judicial Council would set-aside no more than one-half of one percent instead of the current two percent, of the total funds appropriated in TCTF Program 45.10 of Item 0250-101-0932 of the 2014 Budget Act. This option also would give the council discretion to determine the process and timing for courts to apply for emergency funding. The emergency reserve set-aside would be capped at no more than \$9.5 million and would remain in the TCTF. Any unspent funds by the end of each fiscal year would be rolled over to the next fiscal year.

Option 5 Amendments to Government Code section 68502.5(c)(2)(B):

~~"Prior to Upon preliminary determination of the allocations to trial courts pursuant to subparagraph (A), the Judicial Council shall set aside no more than 2.5 percent of the total funds appropriated in Program 45.10 of Item 0250-101-0932 of the annual 2014 Budget Act and these funds shall remain in the Trial Court Trust Fund. . . . Unavoidable funding shortfall requests for up to 1.5 percent of these funds shall be submitted by the trial courts to the Judicial Council no later than October 1 of each year. The Judicial Council shall, by October 31 of each year, review and evaluate all requests submitted, select trial courts to receive funds, and notify those selected trial courts. By March 15 of each year, the Judicial Council shall distribute the remaining funds if there has been a request from a trial court for unforeseen emergencies or unanticipated expenses that has been reviewed, evaluated, and approved. Any unexpended funds shall be distributed to the trial courts on a prorated basis."~~

Recommendation

The working group recommends Option 5. The working group chose this option because it applies the historical percentage that was set aside for urgent needs in the Trial Court Improvement Fund, caps the amount at the 2014–2015 TCTF appropriation level in order to eliminate annual allocation adjustments, and gives the Judicial Council discretion to determine the process and timing for courts to apply for emergency funding.



JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date	Action Requested
November 6, 2015	Recommend for Judicial Council Sponsorship
To	Deadline
Members of the Policy Coordination and Liaison Committee	N/A
From	Contact
Court Interpreters Advisory Panel Hon. Steven K. Austin, Chair	Anne Marx, 415-865-7690 anne.marx@jud.ca.gov Alan Herzfeld, 916-323-3121 alan.herzfeld@jud.ca.gov
Subject	
Proposal for Judicial Council-Sponsored Legislation: Provisional Qualification of American Sign Language Interpreters	

Executive Summary

The Court Interpreters Advisory Panel (CIAP) recommends that the Judicial Council sponsor legislation to amend Evidence Code section 754 to incorporate language allowing for provisional qualification of American Sign Language (ASL) interpreters. This proposal was developed at the request of courts to create flexibility for the courts in securing services of ASL interpreters. Its enactment will result in revisions to Judicial Council forms dealing with the use of interpreters, which will provide guidance to court staff when court certified ASL interpreters are not available.

Recommendation

CIAP recommends that the Judicial Council sponsor legislation to amend Evidence Code section 754 as follows:

1. Update and clarify unnecessary, inaccurate, or obsolete language, including replacing all references to the term “hearing impaired” with “deaf or hard of hearing”

2. Simplify language regarding the process for selecting the ASL testing entity, and tie the process to the requirements of the California Rules of Court.
3. Add language requiring ASL court interpreters to enroll with the Judicial Council, in order to become California court certified, and not just to hold the requisite certification, while eliminating the need for local courts to maintain their own rosters.
4. Add language expressly allowing courts to use provisionally qualified ASL interpreters when a California court certified interpreter is not available. Courts will be able to provisionally qualify ASL interpreters according to the same rules and guidelines which govern use of provisionally qualified spoken language interpreters.

The text of the proposed amendment to Evidence Code section 754 is attached at pages 23–25.

Previous Council Action

In April 2013, PCLC first approved that proposed changes to Evidence Code section 754 go out for public comment. The council has taken no previous action related to this proposal.

Rationale for Recommendation

Court certified and registered spoken language interpreters are governed by a body of state laws which are different from those which govern American Sign Language (ASL) court certified interpreters. ASL interpreters are regulated by California Evidence Code section 754. One of the differences between ASL interpreters and spoken language interpreters is that there is an established process in place for courts to provisionally qualify spoken language interpreters when no certified or registered interpreter is available. There is currently no method to do this for American Sign Language interpreters. As a result of shortages in court certified ASL interpreters, courts are regularly forced to use interpreters who are not court certified.

Without a procedure by which to provisionally qualify ASL interpreters, courts are left to determine how to fill a need in the second most used language in the state. The proposed changes will update Evidence Code section 754 and will provide a process allowing for provisional qualification of ASL interpreters. This will standardize the process statewide, and assure courts appropriately consider an interpreter's qualifications when determining whether to appoint a non-court certified interpreter when no certified interpreter is available. The proposal brings the process for provisionally qualifying ASL interpreters in line with the process for spoken language interpreters.

Beginning in 2011, as a result of shortages of ASL court certified interpreters in California, the Court Interpreters Advisory Panel's American Sign Language Subcommittee began reviewing possible changes to section 754, including adding language to allow for provisional qualification. In June 2013, the proposed changes went out for public comment. After receiving these comments, staff and CIAP representatives have engaged in direct outreach and education at the local and national level to review the proposed changes, including explaining that upon the

adoption of any statutory changes, rules of court and forms would be changed to effectuate the statutory change.

CIAP continues to support the need to amend section 754 to provide a clear, uniform process to provisionally qualify non-court certified ASL interpreters when court certified ASL interpreters are not available.

Comments, Alternatives Considered, and Policy Implications

Comments and Policy Implications

Comments were received from 27 commentators, including two court representatives, eight community organizations or businesses, two members of the deaf or hard of hearing communities, nine interpreters and six other members of the public. The comments can be categorized into the following five themes:

- 1) There are sufficient numbers of court certified ASL interpreters to interpret whenever needed by the courts and so only court certified interpreters should be used.
- 2) The proposal lowers the standards for ASL interpreters from what currently exists in California courts. Courts should not be able to provisionally qualify non-court certified interpreters and do not have the skill set to do so.
- 3) Only Specialist Certificate Legal (SC:L) interpreters, as certified by the Registry of Interpreters for the Deaf (RID), are currently working in the courts and only court certified interpreters should be allowed to work in court.
- 4) California should support the training required to become court certified in order to increase the pool of court certified interpreters.
- 5) Courts need flexibility when they are not able to find a court certified ASL interpreter and the current law does not provide them with any flexibility.

CIAP reviewed all the concerns raised by commentators, and provides the following responses to the generalized issues raised:

- 1) **There is a shortage of court certified ASL interpreters in the California Courts so courts should not be restricted to only using court certified ASL interpreters**

ASL is currently the second most used language in the courts and there are approximately 35 court certified interpreters who are active in the courts.³ ASL court users require approximately 7500 service days a year of interpreter time. There are not sufficient numbers of court certified ASL interpreters to meet the need.

If courts only hired court certified interpreters there would be very long delays for deaf court users, which is unacceptable for the courts and would be unfair to deaf

³ While there are 55 ASL certified court interpreters on the Master List, some of them maintain the certification but do not regularly work in the courts.

court users. Courts have been placed in the position of using non-court certified interpreters to address the need, but do not have clear statutory authority nor direction to do so. The proposed changes to section 754 will raise standards by providing courts with clear, uniform direction about how to handle a situation when one of the 35 active court certified interpreters is not available. This will ensure that courts appropriately consider whether a non-court certified interpreter is qualified to provide the interpretation in each case, and create accountability for a process which out of necessity has, until now, been unregulated.

2) The proposed changes raise standards by formalizing the process and creating accountability when courts cannot secure a California Court Certified ASL Interpreter for a court event.

Currently non-court certified ASL interpreters work in California courts when court certified interpreters are not available. It became clear to CIAP that many stakeholders who commented, but may not be regulars to the court community, were not aware that many courts are currently forced to use non-court certified interpreters due to the shortage of ASL interpreters.

Advocates, interpreters, judges, and court staff are using court certified interpreters in the most complex and high-stakes cases and saving non-court certified interpreters for more routine events, such as continuances. The courts have been important partners in bringing in court certified interpreters when the defendant or court user simply cannot do without. When no court certified interpreter is available, however, the more than 100 coordinators working in the courts have no formal direction about who they should hire instead. It is difficult to determine which of the more than one dozen RID certifications should be sought, or if other certifications would be acceptable. Coordinators do not have the specialized background to know what kinds of training or mentoring they should look for in order to understand who may be most qualified to interpret in these instances.

CIAP believes that the proposed changes to Evidence Code section 754 will support courts in selecting the best available interpreter, while formally instituting the minimum qualifications that ASL interpreters must meet. If the statute is amended, the form INT 110 will be modified to include a selection of generalist certifications which must be part of any provisional qualification. CIAP will also be suggesting a number of changes to the INT forms for interpreters of all languages, including the kinds and amounts of training and mentoring the local courts should look for when considering an interpreter for provisional qualification. This will significantly increase the standards currently observed in some courts.

CIAP also believes that requiring courts to comply with California Rule of Court 2.893 in relation to ASL and complete provisional qualification documentation, including affirming on the record of the court that the appropriate process was followed, will create accountability for the process.⁴ Rule 2.893 also contains safeguards related to the length of time an interpreter can be provisionally qualified.

Finally, CIAP believes these changes will enforce the requirement that courts must first use court certified interpreters from the Master List, just as they are required to for spoken language interpreters. It is only when a court certified ASL interpreter is not available that courts would then follow the provisional qualification process. Once all of the changes are in place, courts will be required to use provisionally qualified interpreters who hold a specified RID generalist certification.

3) Court Certified ASL interpreters are not the only interpreters currently working in courts and it is not reasonable, or even possible, to expect they would be.

Contrary to the perceptions of many commentators, including the Registry of Interpreters for the Deaf (RID), California courts are currently using non-court certified ASL interpreters in some instances. CIAP worked with RID over the past two years to try and find common ground on how to address this issue of minimum requirements for provisionally qualified ASL interpreters when a court certified interpreter is not available.

This proposal recognizes that fact and imposes obligations on courts when they need to provisionally qualify an ASL interpreter. While RID prefers that the SC:L be incorporated into statute, CIAP believes this is not the best approach. California statutes are designed to allow more than one certification program to be considered as a certifying body and allow any given certification program to recommend one or more certificates. Both the certifying body, and the required certificate itself, could change over time.

Highlighting the importance of creating and maintaining flexibility, in August 2015, RID announced a moratorium on performance exams for all certifications, including the Specialist Certificate Legal, effective January 1, 2016, but with enrollment deadlines in the September/October 2015 timeframe.

⁴ On January 1, 2015, new layers of accountability to the provisional qualification process for spoken language interpreters were instituted. This was not originally contemplated when the changes to Evidence Code section 754 were originally proposed in 2013. If § 754 is changed as proposed, the provisional qualification of ASL interpreters would be treated the same as for spoken language interpreters.

For an undefined period of time, effective immediately, no one will know what to prepare for, or be able to take the legal certification test in California or in the rest of the country. This underscores the fact that it is not reasonable to continue with a system which does not have provisional qualification when over the next few years it will be impossible for new interpreters to become certified.

4) The Judicial Council has continually supported the training of prospective ASL court interpreters over the past 7 years.

CIAP agrees that helping to promote trainings for a career in court interpreting, and not just for passing any specific exam, is critical for prospective court interpreters. Over the past seven years the Judicial Council has either co-sponsored, expanded, or created legal training opportunities within California, RID's western Region V, and nationally.

This year, the Judicial Council co-sponsored a significant train-the-trainer event for ASL legal interpreter trainers. Through this partnership, California assured that four legally certified interpreters (one deaf and three hearing) participated in the multi-day workshop and they were required to use this training to offer legal trainings in California. To date, four such training workshops have occurred, and this is the beginning of a series of opportunities for introductory and advanced level interpreters to learn about court work, familiarize themselves with the responsibilities and skills and prepare for a career in court interpreting.

5) CIAP believes that California courts need flexibility in assuring language and disability access for Deaf and Hard of Hearing court users

As outlined above, there are not enough court certified interpreters working in the courts, and yet current law requires the courts to only use court certified interpreters in ASL, and treats ASL differently from spoken languages in this regard. While other states have a range of policies regarding certification, from a preference for the highest levels of certification down to not requiring any certification at all, California is unique in not having a backup system in place for when there are no court certified ASL interpreters available.

Courts cannot continue to be bound by requirements that are not and cannot be met. Modifying Evidence Code section 754 as proposed, to allow for the provisional qualification of ASL interpreters, subject to existing rules, codes, forms and formalities, will give the courts the flexibility they need, while simultaneously raising standards and creating the accountability that deaf court users and community members deserve.

Alternatives considered

- No change, no allowance for provisional qualification with ASL interpreters. The current situation forces courts, on a regular basis, to use interpreters who are not court certified, without any basis in current California statutes. While some commentators proposed not making any changes, this appeared to be based on a mistaken assumption that courts currently use only court certified interpreters. Continuing without any change, particularly in light of the testing moratorium announced by the only national ASL interpreter testing organization in the country, is untenable for the California courts.
- Provisional Qualification that is more prescriptive than currently required in spoken languages. California could go forward with provisional qualification requirements for ASL which are different, and more restrictive, than those for spoken language however this would not be good for the courts, or for the public. While suggestions were made by RID to establish very specific requirements if a court certified interpreter is not available, it is not practical for more than 100 court interpreter coordinators around the state to stay up to speed on a changing list of generalist certifications or for them to check highly detailed proofs of educational courses taken or hours of mentored time completed. Instead, CIAP will be proposing changes to INT forms that will provide guidelines of what court staff may look for, along the lines of suggestions made by RID. In light of the upcoming moratorium, with an undefined effective period, CIAP does not suggest making changes to the Evidence Code more specific than the attached proposal.

Implementation Requirements, Costs, and Operational Impacts

No significant implementation requirements, costs, or operational impacts are likely. Limited training to inform court staff and judicial officers that ASL interpreters should now be treated like spoken language interpreters, as related to provisional qualification, will be required, most likely through written memoranda or regularly scheduled Center for Judicial Education and Research educational events.

Attachments

1. Text of proposed Evidence Code section 754, at pages 20–22
2. Chart of comments, at pages 23–73

Evidence code section 754 would be amended, effective January 1, 2017, to read:

Evidence Code section 754. Deaf or hearing impaired persons; interpreters; qualifications; guidelines; compensation; questioning; use of statements

1 (a) As used in this section, “individual who is deaf or ~~hearing impaired~~ hard of hearing”
2 means an individual with a hearing loss so great as to prevent his or her understanding language
3 spoken in a normal tone, but does not include an individual who is ~~hearing impaired~~ hard of
4 hearing provided with, and able to fully participate in the proceedings through the use of, an
5 assistive listening system or computer-aided transcription equipment provided pursuant to
6 Section 54.8 of the Civil Code.

7
8 (b) In any civil or criminal action, including, but not limited to, any action involving a traffic
9 or other infraction, any small claims court proceeding, any juvenile court proceeding, any family
10 court proceeding or service, or any proceeding to determine the mental competency of a person,
11 in any court-ordered or court-provided alternative dispute resolution, including mediation and
12 arbitration, or any administrative hearing, where a party or witness or juror is an individual who
13 is deaf or ~~hearing impaired~~ hard of hearing and the individual who is deaf or ~~hearing impaired~~
14 hard of hearing is present and participating, the proceedings shall be interpreted in a language
15 that the individual who is deaf or ~~hearing impaired~~ hard of hearing understands by a qualified
16 court certified interpreter appointed by the court or other appointing authority, or as agreed upon.

17
18 (c) For purposes of this section, “appointing authority” means a court, department, board,
19 commission, agency, licensing or legislative body, or other body for proceedings requiring a
20 qualified court certified interpreter.

21
22 (d) For the purposes of this section, “interpreter” includes, but is not limited to, an oral
23 interpreter, a sign language interpreter, or a deaf-blind interpreter, depending upon the needs of
24 the individual who is deaf or ~~hearing impaired~~ hard of hearing.

25
26 (e) For purposes of this section, “intermediary interpreter” means an individual who is deaf
27 or ~~hearing impaired~~ hard of hearing, or a hearing individual who is able to assist in providing an
28 accurate interpretation between spoken English and sign language or between variants of sign
29 language or between American Sign Language and other foreign languages by acting as an
30 intermediary between the individual who is deaf or ~~hearing impaired~~ hard of hearing and the
31 qualified court certified interpreter.

32
33 (f) For purposes of this section, “qualified court certified interpreter” means an interpreter
34 who has been certified as competent to interpret court proceedings by an organization approved
35 pursuant to the California Rules of Court by a testing organization, agency, or educational
36 institution approved by the Judicial Council as qualified to administer tests to court interpreters
37 for individuals who are deaf or hearing impaired and who is listed on the Judicial Council’s list
38 of recommended interpreters.

1 (g) In the event that the appointed interpreter is not familiar with the use of particular signs
2 by the individual who is deaf or ~~hearing impaired~~ hard of hearing or his or her particular variant
3 of sign language, the court or other appointing authority shall, in consultation with the individual
4 who is deaf or ~~hearing impaired~~ hard of hearing or his or her representative, appoint an
5 intermediary interpreter.

6
7 (h) ~~Prior to July 1, 1992, the Judicial Council shall conduct a study to establish the guidelines
8 pursuant to which it shall determine which testing organizations, agencies, or educational
9 institutions will be approved to administer tests for certification of court interpreters for
10 individuals who are deaf or hearing impaired. It is the intent of the Legislature that the study
11 obtain the widest possible input from the public, including, but not limited to, educational
12 institutions, the judiciary, linguists, members of the State Bar, court interpreters, members of
13 professional interpreting organizations, and members of the deaf and hearing impaired
14 communities. After obtaining public comment and completing its study, the Judicial Council
15 shall publish these guidelines. By January 1, 1997, the Judicial Council shall approve one or
16 more entities to administer testing for court interpreters for individuals who are deaf or hearing
17 impaired. Testing entities may include educational institutions, testing organizations, joint
18 powers agencies, or public agencies.~~

19
20 ~~Commencing July 1, 1997, court interpreters for individuals who are deaf or hearing impaired
21 shall meet the qualifications specified in subdivision (f).~~

22
23 A court may for good cause appoint an interpreter who is not court certified pursuant to
24 subdivision (f). The court shall follow the good cause and qualification procedures and
25 guidelines for noncertified or nonregistered spoken language interpreters set forth in Government
26 Code section 68561 and those adopted by the Judicial Council.

27
28 (i) Persons appointed to serve as interpreters under this section shall be paid, in addition to
29 actual travel costs, the prevailing rate paid to persons employed by the court to provide other
30 interpreter services unless such service is considered to be a part of the person's regular duties as
31 an employee of the state, county, or other political subdivision of the state. Except as provided in
32 subdivision (j), payment of the interpreter's fee shall be a charge against the court. Payment of
33 the interpreter's fee in administrative proceedings shall be a charge against the appointing board
34 or authority.

35
36 (j) Whenever a peace officer or any other person having a law enforcement or prosecutorial
37 function in any criminal or quasi-criminal investigation or non-court proceeding questions or
38 otherwise interviews an alleged victim or witness who demonstrates or alleges deafness or
39 hearing impairment, a good faith effort to secure the services of ~~an~~ a court certified interpreter
40 shall be made, without any unnecessary delay, unless either the individual who is deaf or ~~hearing~~
41 ~~impaired~~ hard of hearing affirmatively indicates that he or she does not need or cannot use an
42 interpreter, or an interpreter is not otherwise required by Title II of the Americans with
43 Disabilities Act of 1990 (Public Law 101-336) and federal regulations adopted thereunder.

1 Payment of the interpreter's fee shall be a charge against the county, or other political
2 ~~subdivision of the state, in which the action is pending~~ employer of the investigating peace
3 officer or other person as identified above in this subdivision.
4

5 (k) No statement, written or oral, made by an individual who the court finds is deaf or
6 ~~hearing impaired~~ hard of hearing in reply to a question of a peace officer, or any other person
7 having a law enforcement or prosecutorial function in any criminal or quasi-criminal
8 investigation or proceeding, may be used against that individual who is deaf or ~~hearing impaired~~
9 hard of hearing unless the question was accurately interpreted and the statement was made
10 knowingly, voluntarily, and intelligently and was accurately interpreted, or the court ~~makes~~
11 ~~special findings~~ finds that either the individual could not have used an interpreter, or an
12 interpreter was not otherwise required by Title II of the Americans with Disabilities Act of 1990
13 (Public Law 101-336) and federal regulations adopted thereunder and that the statement was
14 made knowingly, voluntarily, and intelligently.
15

16 (l) In obtaining services of an interpreter for purposes of subdivision (j) or (k), priority shall
17 be given to first obtaining a ~~qualified~~ court certified interpreter.
18

19 (m) Nothing in subdivision (j) or (k) shall be deemed to supersede the requirement of
20 subdivision (b) for use of a ~~qualified~~ court certified interpreter for individuals who are deaf or
21 ~~hearing impaired~~ hard of hearing participating as parties or witnesses in a trial or hearing.
22

23 (n) In any action or proceeding in which an individual who is deaf or ~~hearing impaired~~ hard
24 of hearing is a participant, the appointing authority shall not commence proceedings until the
25 appointed interpreter is in full view of and spatially situated to assure proper communication
26 with the participating individual who is deaf or ~~hearing impaired~~ hard of hearing.
27

28 ~~(o) — Each superior court shall maintain a current roster of qualified interpreters certified~~
29 ~~pursuant to subdivision (f).~~

30 (o) No statement attributed to a person who is deaf or hard of hearing shall be considered by the
31 court unless (1) the statement was accurately interpreted, or (2) either the individual could not
32 have used an interpreter, or an interpreter was not otherwise required by Title II of the
33 Americans with Disabilities Act of 1990 (Public Law 101-336) and federal regulations adopted
34 thereunder. A statement interpreted by a court certified interpreter or an interpreter appointed as
35 provided in subdivision (h) is presumed to be accurately interpreted.
36

LEG13-07**Provisional Qualification of American Sign Language Interpreters (amend Evidence Code section 754)**

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	Mike Roddy Court Executive Officer Superior Court of San Diego County	A	This proposal will assist the court in locating ASL interpreters consistent with other language interpreters hired for court hearings, when certified ASL interpreters are unavailable. Revising the INT 100, INT 110, and INT 120 consistent with the updated language is appropriate.	CIAP agrees.
2.	Kathleen Gibbins Ms. Gibbins indicated comments presented on behalf of an organization, but no organization name given	N	*Using a non certified ASL interpreter can result slow responses or even misunderstanding. This may even cause a mistrial due to lack of information that was missed during the interpreter and so who will judge who is qualified to interpret if they need one. My daughter was given a mom who had a deaf child and that lady could not read my daughters sign language. My daughter gave a wrong answer and she told her it was right answer. It really is not going to help the court or the session go any faster if the interpreter is uncertified. Please do not pass this one it will cause a lot of problems. (Rancho Cucamonga, CA)	CIAP disagrees that the proposal lowers standards. The goal is to always have a court certified ASL interpreter, but we know they are not available for all of the needed assignments and noncertified interpreters are used. The proposed changes raise standards by formalizing the process and creating accountability when a court certified ASL interpreter is not available. This is the same process used for spoken language interpreters.
3.	Terri Manning ASL Interpreter Northern CA Registry of Interpreters for the Deaf	N	Thank you for taking my comment. I am a RID certified Sign Language Interpreter and vice president of my local affiliate chapter of the RID, NorCRID. I am extremely concerned that giving provisional legal credentials to a generalist interpreter sets the interpreting standards at a lower bar for cases before the courts. I do not want any the People of the state of California to pay for mistrial cases corrupted by an underqualified interpreter. While I am a 27-year, highly qualified generalist interpreter, I am not qualified to serve in the courts because I	CIAP disagrees that the proposal lowers standards. The goal is to always have a court certified ASL interpreter, but we know they are not available for all of the needed assignments and noncertified interpreters are used. The proposed changes raise standards by formalizing the process and creating accountability when a court certified ASL interpreter is not available. This is the same process used for spoken language interpreters. CIAP disagrees that the proposal will not provide sufficient guidance. Upon successful enactment of

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	Commentator	Position	Comment	Committee Response
			<p>am not trained as a legal interpreter. I question, as this Proposal is written, how the courts would screen for qualified vs. unqualified. This Proposal sets no standards for what makes a generalist qualify for provisional court interpreting. Such a screening needs to be sensitively, statistically reliable and validly in place to verify whether one, like me, is indeed qualified for provisional standing. Such a screening needs to involve experts in the ASL interpreting field and Deaf Community, and not be approved by non-experts: the plaintiff, defendant or judge. I fear that the veteran "bad apples" in the field would flock to the courts for such work if no high standards, proctored by the appropriate experts, are in place. (Oakland, CA)</p>	<p>the legislation, Judicial Council will revise the INT forms to collect information about the interpreter's required generalist certification, as well as their legal training and experience. These forms must be signed by the interpreter. A judicial officer must also affirm on the record that all processes for provisional qualification are followed every time a provisionally qualified interpreter is used.</p>

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Provisional Qualification of American Sign Language Interpreters (amend Evidence Code section 754)

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	Commentator	Position	Comment	Committee Response
4.	Robin Mills Interpreter	N	This is a step backwards for the field of ASL interpreting. The registry of Interpreters for the Deaf (RID) states who is qualified to work in court - those that have the SC:L. 754 (f) of the Evidence Code states those qualified to work in court have the RID SC:L certification. Interpreters receiving their SC:L have demonstrated a high level of proficiency in interpreting between ASL and English in a court of law. They have studied and trained extensively. They have been evaluated and have passed a rigorous test that has been shown to be psychometrically sound. Allowing a coordinator to "qualify" an interpreter based on anything less than that would be a disservice to Deaf people in the court system. An interpreter's qualifications can not be ascertained by what is stated on paper or prior experience. (Oakland, CA)	CIAP disagrees. There is not a sufficient number of court certified interpreters to provide services in all needed assignments around the state. The goal is to always have a court certified ASL interpreter, but we know they are not always available for court assignments and noncertified interpreters are used. The proposed changes raise standards by formalizing the process and creating accountability when a court certified ASL interpreter is not available. This is the same process used for spoken language interpreters.
5.	Jennifer Jacobs, CSC	N	I am writing to express my outrage over the suggestion that requirements for ASL interpreters be lowered. It is vital to continue to require interpreters to have specialized training and certification to enable them to work in the courts. This is the only way to ensure equal access to people whose primary means of communication is a form of signed language. I do not have that specialized training. I am well aware of the scarcity of such interpreters, and have been called upon to work with interpreters in the courts, but only with the understanding that I am working with someone who does have	CIAP disagrees that the proposal lowers standards. The goal is to always have a court certified ASL interpreter, but we know they are not available for all of the needed assignments and noncertified interpreters are used. The proposed changes raise standards by formalizing the process and creating accountability when a court certified ASL interpreter is not available. This is the same process used for spoken language interpreters. CIAP agrees that training potential court interpreters is essential to creating a sufficient and qualified pool of ASL court interpreters. The California Judicial Council has continually

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Provisional Qualification of American Sign Language Interpreters (amend Evidence Code section 754)

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	Commentator	Position	Comment	Committee Response
			<p>such training, to ensure that communication is accurately conveyed. There is no way for the court to determine on their own whether or not an ASL interpreter is provisionally qualified to work in that setting. To provide an unqualified interpreter is worse than having no interpreter at all, because if someone is there signing, the assumption is the deaf person is getting full access to the information, while in reality this could very well NOT be true.</p> <p>If the court is that concerned about having access to interpreters with the proper skills set, perhaps a better solution is to sponsor advanced training for interpreters willing to invest their time and energy in becoming qualified to work in the courts.</p> <p>Thank you for the opportunity to share my concerns.</p>	<p>supported the training of prospective ASL court interpreters over the past 7 years.</p>
6.	Jeanine Strobel	N	<p>In the interest of justice, I strongly believe that only legally certified interpreters should be used in any legal proceeding. (Fairfax, CA)</p>	<p>CIAP disagrees. There is not a sufficient number of court certified interpreters to provide services in all needed assignments around the state. The goal is to always have a court certified ASL interpreter, but we know they are not always available for court assignments and noncertified interpreters are used. The proposed changes raise standards by formalizing the process and creating accountability when a court certified ASL interpreter is not available. This is the same process used for spoken language interpreters.</p>

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	Commentator	Position	Comment	Committee Response
7.	Barbara Bell	N/I or N	<p>This is in response to the changes that someone is trying to make to use other ASL interpreters when qualified, certified court interpreters are not available.</p> <p>My biggest concern with this is: What if the court system in a small rural town doesn't have the experience or the exposure of ASL interpreting or the Deaf culture to make good judgment of an ASL interpreter hired to do the job?</p> <p>A good analogy would be this....Suppose someone hires a Cantonese interpreter to interpret a client who speaks Cantonese...how would I know that the interpreter is qualified? How would I know if he is able to understand the client or is interpreting correctly about the court system to the client? How would I know if the interpreter is knowledgeable about the court system or their culture? I need something to prove to me without any qualms that this person is qualified. This person's life is at stake...and cannot defend himself because of a big language barrier. To depend on good faith is not enough in this case.</p> <p>Another analogy: This happened in a General Hospital. Someone pulled a staff member from another part of the hospital who claimed that he knew and used ASL interpreting to help a patient. He went ahead and interpreted for a mentally ill client who was in the psychiatric</p>	<p>CIAP disagrees. There is not a sufficient number of court certified interpreters to provide services in all needed assignments around the state. The goal is to always have a court certified ASL interpreter, but we know they are not always available for court assignments and noncertified interpreters are used. The proposed changes raise standards by formalizing the process and creating accountability when a court certified ASL interpreter is not available. This is the same process used for spoken language interpreters.</p> <p>CIAP disagrees that the proposal will not provide sufficient guidance. Upon successful enactment of the legislation, Judicial Council will revise the INT forms to collect information about the interpreter's required generalist certification, as well as their legal training and experience. These forms must be signed by the interpreter. A judicial officer must also affirm on the record that all processes for provisional qualification are followed every time a provisionally qualified interpreter is used.</p>

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	Commentator	Position	Comment	Committee Response
			<p>ward. Fortunately, another therapist who uses ASL was there and saw this person. And stated that the interpreter only knew the basic signs of abc but not the fluent ASL language! And this interpreter was doing the communicating between the psychiatrist and the patient! That is extremely dangerous and harmful for the client especially if the client may be psychotic, suicidal...or is from another country such as Mexico. This happens all the time... And the psychiatrist makes the wrong diagnosis or wrong medication....They are doing more harm than good to the deaf patient.</p> <p>We have too many wannabes ASL interpreters who are incompetent...Try using one who is not certified or doesn't know sex education to teach or provide sex education to a deaf asl student....it is a laugh and very embarrassing....</p> <p>Please don't embarrass yourselves, California and the court system by getting just temporary ASL interpretersPlease do not give up, just find and use those who are qualified.....</p> <p>Thank you for reading this email.</p>	
8.	Holly Newstead	AM	<p>I would like to comment on Proposal: LEG13-07.</p> <p>I whole heartedly agree with the proposed changes to obsolete language and juror requirements. I would like to commend the Court Interpreters Advisory Panel's hard work. My comments are related to the proposed revision of section 754. I have not seen in other</p>	<p>CIAP disagrees that the proposal lowers standards. The goal is to always have a court certified ASL interpreter, but we know they are not available for all of the needed assignments and noncertified interpreters are used. The proposed changes raise standards by formalizing the process and creating accountability when a court certified</p>

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	Commentator	Position	Comment	Committee Response
			<p>fields where a deficit in qualified individuals leads to the lowering of standards. If there aren't enough qualified, say, Firefighters, society does not say "well, then, we will lower the certification requirements and accept those without the training required to enter the field". No, more training facilities are set up and offered in a variety of places. You NEVER lower the standards because there are not enough qualified people, you INCREASE the number of qualified people.</p> <p>California has shown serious intention about increasing this pool by offering several trainings, the last one being in 2010. The current RID SC:L test has a very high fail rate, which means generalist interpreters are not being provided with enough training to become proficient to work in the courts. I have been approached by many generalist interpreters stating that they wonder why I work in court; that they are too scared of the legal realm to ever work there. These are highly skilled generalist interpreters who have the skill to contribute to the legal field. I believe that if there were training programs available for them, they could become confident in the legal field and contribute enormously. So, if there few current legal specific training programs offered, and few highly skilled generalist interpreters being trained, then who are these provisionally qualify American Sign Language (ASL) interpreters going to be? My concern is that they will be interpreters without the skill and ethical knowledge necessary to work in a court.</p>	<p>ASL interpreter is not available. This is the same process used for spoken language interpreters.</p> <p>CIAP disagrees that the proposal will not provide sufficient guidance. Upon successful enactment of the legislation, Judicial Council will revise the INT forms to collect information about the interpreter's required generalist certification, as well as their legal training and experience. These forms must be signed by the interpreter. A judicial officer must also affirm on the record that all processes for provisional qualification are followed every time a provisionally qualified interpreter is used.</p> <p>The statewide Language Access Plan's Implementation Task Force is charged with implementing complaint processes to address complaints about the lack of language access, or an interpreter's skills. As these processes are implemented, they will be positioned to address abuses in the over use, or improper use of the provisional qualification process for any language, including ASL.</p> <p>CIAP agrees that training potential court interpreters is essential to creating a sufficient and qualified pool of ASL court interpreters. The California Judicial Council has continually supported the training of prospective ASL court interpreters over the past 7 years.</p>

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			<p>This does not mean that I do not understand the problem of scarcity of court-certified ASL interpreters and the difficult circumstances of having no alternative to a certified interpreter. I know from personal experience that this is the case. I do not believe that all of the California Courts, however, do due diligence in trying to locate and appropriately pay current certified SC:L Interpreters working in the State. I am often available and willing to travel to Courts; however, they won't pay me – the Judicial Council daily payment rate, mileage and travel. I believe there is a scarcity of ASL court interpreters; however, I also believe the ones that are currently working are not being utilized to their fullest. My main concern is that courts will state they have attempted to locate an SC:L, but that one could not be found, and use generalist certified interpreters instead; without putting any effort into actually locating an SC:L. I don't see any provision for the monitoring of the home Courts and the interpreter coordinators.</p> <p>I think that a time limit should be built into the system whereby a generalist interpreter has a certain amount of time to sit for and pass the RID SC:L exam after which their ability to work in the courts will be withdrawn. There must be incentive for generalist interpreters to improve their skills and become court certified. I would also like to emphasize that the record must clearly reflect the qualifications of the interpreter working. If the interpreter is not an SC:L, the attorneys/clients should be absolutely</p>	

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Provisional Qualification of American Sign Language Interpreters (amend Evidence Code section 754)

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	Commentator	Position	Comment	Committee Response
			<p>clear that they are using a generalist certified interpreter. Thank you for taking the time to read my comments. This topic is very important to me.</p> <p>(Navarro, CA)</p>	
9.	Cris Eggers, MA, CI & CT, President Communique Interpreting	N/I	<p>I am highly concerned about the proposed revisions to Evidence Code Section 754 regarding the discarding of requirements for sign language interpreter qualifications. With the current standards, requiring the Registry of Interpreters for the Deaf (RID) certification SC:L, the vetting of the interpreters is done by RID, an entity that specializes in ascertaining interpreter qualifications. RID tests interpreters not only for knowledge of the legal system but tests interpreters to ensure their competency in interpretation of sign language and English in the legal setting.</p> <p>With the proposed revisions, court personnel become the supposed experts who determine interpreters' capabilities. Let us imagine for a moment that court personnel can actually ascertain an interpreter's knowledge of the legal system by that interpreter's exposure to legal settings. This is a bit dubious as a qualifier, but let us accept it as a valid way to measure competence.</p> <p>Even supposing that exposure to legal concepts qualifies an interpreter knowledge-wise, how will those court personnel test and validate the interpreters' language competence? Do court</p>	<p>CIAP disagrees that the proposal lowers standards. The goal is to always have a court certified ASL interpreter, but we know they are not available for all of the needed assignments and noncertified interpreters are used. The proposed changes raise standards by formalizing the process and creating accountability when a court certified ASL interpreter is not available. This is the same process used for spoken language interpreters.</p> <p>CIAP disagrees that the proposal will not provide sufficient guidance. Upon successful enactment of the legislation, Judicial Council will revise the INT forms to collect information about the interpreter's required generalist certification, as well as their legal training and experience. These forms must be signed by the interpreter. A judicial officer must also affirm on the record that all processes for provisional qualification are followed every time a provisionally qualified interpreter is used.</p> <p>The statewide Language Access Plan's Implementation Task Force is charged with implementing complaint processes to address complaints about the lack of language access, or an interpreter's skills. As these processes are implemented, they will be positioned to address</p>

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			<p>personnel speak English and sign language? Have court personnel been trained to assess interpreters?</p> <p>I understand the shortage of interpreters with the SC:L qualifications. Living in a semi-rural area, I understand the time and the cost involved to get an SC:L interpreter to a remote court. The court currently must pay higher costs for the SC:L qualification as well as travel costs. Should the proposed revisions be approved, what is to prevent courts from stating they tried to locate but could not find an SC:L? What is an acceptable level of effort on locating an SC:L before they are allowed to hire a generalist to do a specialist job?</p> <p>I have been RID certified since 1996, as a generalist. I took introduction the American legal system, introduction to legal interpreting (two times), observed in the courts, and took a full semester of legal interpreting at the graduate level. On paper I appear qualified and I am certain any court would approve me provisionally to interpret in court. Yet, if RID were to test me, I would fail epically on the test because I do not possess the necessary legal language in English or sign language to interpret accurately. Also, my knowledge is derived from books, not from actual experience. Even with my many years of experience as a generalist and my apparent paper qualifications I could not provide deaf participants in a court proceeding access linguistically to the proceedings.</p>	<p>abuses in the over use, or improper use of the provisional qualification process for any language, including ASL.</p> <p>CIAP agrees that training potential court interpreters is essential to creating a sufficient and qualified pool of ASL court interpreters. The California Judicial Council has continually supported the training of prospective ASL court interpreters over the past 7 years.</p>

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			<p>Fortunately I am self-aware and honest about my own competence and would not offer my services to the courts. Should the revisions to 754 interpreting requirements be approved, what is most likely to occur is that courts after doing some undetermined amount of searching could claim that an SC:L is not available. Then they will find a generalist willing to work outside of his or her area of expertise. So the courts will hire interpreters who do not have the self-awareness or sense of accountability to ensure due process for deaf individuals.</p> <p>Rather than eschewing requirements, I suggest the State invest in training generalists to take and pass the SC:L test. A community college course would be a good venue for this. I know the courts have made an effort to implement VRI. Could this technology be employed even further? At a minimum, it should be an SC:L interpreter, not court personnel who determine an interpreter generalist’s ability to function in a legal setting.</p> <p>Thank you for taking time to read my comments and concerns.</p>	
10.	Sarah E. Prudhom, CI Agency Owner/interpreter Hired Hands LLC (indicated NOT on behalf of organization)	N	A court certified interpreter cannot, and should never be substituted with an interpreter holding only a generalists certification, or no certification at all. It is abominable that the CA court system should even propose this. The rights of everyone in that courtroom would be at	CIAP disagrees that the proposal lowers standards. The goal is to always have a court certified ASL interpreter, but we know they are not available for all of the needed assignments and noncertified interpreters are used. The proposed changes raise standards by formalizing the process

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			<p>risk. It would be the equivalent of having a law school student representing a plaintiff or defendant.</p> <p>There is no judge qualified to assess an interpreters' skill level and competency. As much as we have our Code of Conduct under RID, there are still rogue interpreters who would like to think their skills and ethics equivalent to that of a court-certified interpreter and would accept the role of court interpreter a: for the money; and b: because of an over-inflated view of their own skills and experience. You must stop this legislation. (Fremont, CA)</p>	<p>and creating accountability when a court certified ASL interpreter is not available. This is the same process used for spoken language interpreters.</p> <p>CIAP disagrees that the proposal will not provide sufficient guidance. Upon successful enactment of the legislation, Judicial Council will revise the INT forms to collect information about the interpreter's required generalist certification, as well as their legal training and experience. These forms must be signed by the interpreter. A judicial officer must also affirm on the record that all processes for provisional qualification are followed every time a provisionally qualified interpreter is used.</p>
11.	Brenda Roberts	N	<p>I have been working for L.A. County for almost 15 years and I have yet to meet a judge who is qualified to qualify an interpreter. Yes there are few of us who hold the SC:L, however there are many who are certified and have extensive training in the legal field and are available to provide services. This proposal is a major disservice to the deaf and hard of hearing community and to us professionals who take our training and legal certification seriously. (Ontario, CA)</p>	<p>CIAP disagrees that the proposal lowers standards. The goal is to always have a court certified ASL interpreter, but we know they are not available for all of the needed assignments and noncertified interpreters are used. The proposed changes raise standards by formalizing the process and creating accountability when a court certified ASL interpreter is not available. This is the same process used for spoken language interpreters.</p>
12.	Arlene Cervantes Interpreter & Jury Manager – Countywide Superior Court, County of Riverside	A	<p>Does the proposal reasonably achieve the stated purpose?</p> <p>Yes</p> <p>Would this proposal have an impact on public's access to the courts? If a positive impact, please</p>	<p>CIAP agrees that the proposed language would allow courts to hire provisionally qualified interpreters when court certified interpreters are not available.</p> <p>CIAP does not believe that this proposal would necessarily result in the fiscal savings indicated by the commentator.</p>

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			<p>describe. If a negative impact, what changes might lessen the impact?</p> <p>Yes. This would allow the court to hire provisionally qualified interpreters (PQI) when certified interpreters are unavailable.</p> <p>POSITIVE IMPACT: This would eliminate continuances and delays; and provide increased access to the public by creating a PQI list of interpreters to hire from. There are many times when unscheduled customers are needing an ASL interpreter, and are asked to return on a different date due to unavailability.</p> <p>NEGATIVE IMPACT: This is a new process that will affect all areas of litigation (mandated and non-mandated). It will require training, revisions to procedures, and creating codes for the case management systems. Having adequate time for implementation would alleviate this problem.</p> <p>Would the proposal provide costs savings? If so, please quantify. If not, what changes might be made that would provide savings, or greater savings?</p> <p>The only savings to the court would come by our ability to enforce the non-certified, non-registered state rate (\$175.00 Full Day / \$92.00 Half-Day) on the provisionally qualified ASL interpreters.</p>	<p>Commentator’s proposed changes regarding the length of time for which an interpreter may be provisionally qualified are beyond the scope of CIAP’s original proposal to modify Evidence Code 754. The commentator’s proposed changes would need to be incorporated into changes to Rule 2.893. A review of Rule 2.893 is underway by CIAP during the 2015-2017 timeframe and these comments will be considered as part of that process.</p>

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			<p>Also, if we have a large list of PQ's, then more likely this will cause the interpreters to compete for the assignments and we will be able to negotiate for the non –certified, non-registered state rate. If the list is small, then those interpreters who have been provisionally qualified will know that they can ask for a higher rate because the Court will have a need, and the alternative would be to continue the matter.</p> <p>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.</p> <p>We would need time to implement the provisionally qualifying process, update our action and minute codes; train our judges, managers and staff. We already have some codes created, and some of our judges, clerks and coordinators are already familiar with the INT process for spoken language interpreters. For those with this existing knowledge the training time will be less.</p> <p>Would twelve (12) months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</p>	

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			<p>Yes</p> <p>If this proposal would be cumbersome or difficult to implement in a court of your size, what changes would allow the proposal to be implemented more easily or simply in a court of your size?</p> <p>No, but it will take some time to formalize the process and train Judicial Officers and staff. The most difficult challenge will be when ASL PQI's have exceeded the time in which they can be provisionally qualified (four 6 month periods), this is a total of 2 years. Currently the court must make “specific findings on the record in each case in which the interpreter is sworn that good cause exists to appoint the interpreter notwithstanding, that he or she has failed to achieve Judicial Council certification”.</p> <p>RECOMMENDED CHANGES: It is recommended that the PQ time periods be modified to extended from four 6 month periods to four 12 month periods. This will allow us to keep our more experienced ASL interpreters for a longer period without having the court make good cause findings on the record, due to the ASL interpreter’s failure to become certified. The interpreter will still only be allowed to renew 4 times, but will extend the time to 4 years, rather than 2 years.</p>	
13.	Alice Russell	N/I	As a person who is hard of hearing, I write regarding the Judicial Council of California	CIAP disagrees. There is not a sufficient number of court certified interpreters to provide services

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			<p>changing Evidence Code Section 754 and the arrangement for ASL interpreters when court certified interpreters are not available. I am concerned that the quality of communication might not be high enough to serve the people being represented, resulting in justice not being served.</p> <p>As with any language, there are nuances and interpretations that only someone experienced would be able to distinguish. People well versed in ASL are the only ones that could determine the suitability of an interpreter for a task as important as court interpreting. I would ask that you work with the Deaf Community and take their recommendations under consideration regarding interpreter shortages.</p> <p>(Santa Cruz, CA)</p>	<p>in all needed assignments around the state. The goal is to always have a court certified ASL interpreter, but we know they are not always available for court assignments and noncertified interpreters are used. The proposed changes raise standards by formalizing the process and creating accountability when a court certified ASL interpreter is not available. This is the same process used for spoken language interpreters.</p>
14.	Carrie Levin	N	<p>The Courts should NOT have the authority to temporarily qualify ASL interpreters as it wrongly accuses innocent deaf people, fails to meet the ADA requirements, and a very bad strategy . Here’s why:</p> <p>1- Diminishing deaf community rights’ to have access to excellent and quality communication that can have serious consequences of unfair trial & wrongfully accusing innocent deaf people. The chance of using incompetent ASL interpreters in court proceedings increases and legal misinterpretations are likely to happen as a result.</p>	<p>CIAP disagrees that the proposal lowers standards. The goal is to always have a court certified ASL interpreter, but we know they are not available for all of the needed assignments and noncertified interpreters are used. The proposed changes raise standards by formalizing the process and creating accountability when a court certified ASL interpreter is not available. This is the same process used for spoken language interpreters.</p>

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			<p>2- The Courts have no understanding of ASL language, court interpreting professions or the Deaf community. None. ASL language is considered a foreign language by many colleges and universities. Add to that the years of training required for ASL court interpreters need to become certified. The Deaf community has its own culture, complete with rules, etiquette, expectations, etc. The Courts have no background in the study or understanding of a culture foreign to them. Using uncertified interpreters is a violation of the ADA as it fails to address competent interpreters and clear communication access.</p> <p>3- Using a temporary ASL interpreter and then certifying them is a poor solution to the backlog and delays because there's a shortage of qualified court ASL interpreters. In emergency situations, it even jeopardizes the legal rights deaf people to fair trial due to the likelihood of communication breakdown of incompetent ASL interpreters not familiar with courts.</p> <p>I demand fair justice, fair representation and a fair trial for all Deaf Californians. I strongly urge that the courts not be given the power to certify temporary ASL interpreters in legal court proceedings.</p> <p>(Sunnyvale, CA)</p>	
15.	Colin Piotrowski	N	It is not the deaf community's fault that the court are unable to locate certified ASL interpreters. it just mean the court has poor time management or does not pay ASL interpeters	CIAP disagrees that the proposal lowers standards. The goal is to always have a court certified ASL interpreter, but we know they are not available for all of the needed assignments and

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			<p>well enough for them to stay on the court's list. Any compromise to this will risk Deaf defendant to jail time if we put them together with non certified interpreter and they often do make a lot of misunderstanding statements. It is the court's responsibility to see that deaf people are due to fair process, not shoddy and cheaper process. I promise you there will be so many problems if you went ahead with the proposed changes. I am a teacher and hold two master's degrees and I've had my share of experience with certified and non certified in court setting and my lawsuits. Listen to the experts please.</p> <p>(Pleasanton, CA)</p>	<p>noncertified interpreters are used. The proposed changes raise standards by formalizing the process and creating accountability when a court certified ASL interpreter is not available. This is the same process used for spoken language interpreters.</p>
16.	<p>Linda Drattell Community Relations Director Deaf Counseling, Advocacy and Referral Agency (DCARA) (indicated NOT on behalf of organization)</p>	N	<p>I am concerned with the Judicial Council of California’s decision to Revise Evidence Code Section 754 to provide “Provisional Qualification for American Sign Language Court interpreters.” Here are my reasons:</p> <ol style="list-style-type: none"> 1. The ADA requires that interpreters be competent. 2. ASL is a language unto itself, and has a different syntax, grammar and diction rules than English. In addition, there are local and regional differences in ASL. A sentence in English translated word for word into sign language, might be unintelligible by an ASL speaker. Similarly, an unqualified interpreter may incorrectly interpret what an ASL signer is saying. Here is an example of how a sentence translated from ASL into English would look like: “DADDY MANY MANY HIT 	<p>CIAP disagrees that the proposal lowers standards. The goal is to always have a court certified ASL interpreter, but we know they are not available for all of the needed assignments and noncertified interpreters are used. The proposed changes raise standards by formalizing the process and creating accountability when a court certified ASL interpreter is not available. This is the same process used for spoken language interpreters.</p> <p>CIAP disagrees that the proposal will not provide sufficient guidance . Upon successful enactment of the legislation, Judicial Council will revise the INT forms to collect information about the interpreter’s required generalist certification, as well as their legal training and experience. These forms must be signed by the interpreter. A judicial officer must also affirm on the record that all processes for provisional qualification are</p>

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			<p>BLOOD ME SAW ME RAN TELL FRIEND ME AFRAID CALL POLICE MAYBE JAIL”</p> <p>The meaning would be lost on the court. The meaning of the sentence in English is “ DADDY HIT HER SO MANY TIMES UNTIL I SAW THE BLOOD. I WAS SO SCARED AND RAN AND TOLD A FRIEND ABOUT IT. MY FRIEND CALLED THE POLICE AND MAYBE DADDY WILL GO TO JAIL. ”</p> <p>3. An uncertified interpreter doesn't meet the ADA requirements because of the years of training and practice that have to be met to be certified. Just as with any language, special training is required to become a court interpreter, according to the Superior Court of California (http://www.occourts.org/directory/cris/interpreter-information.html. California has a Court Interpreter Program, which requires complete fluency in both English and the foreign language, requiring a level of expertise that is far greater than everyday bilingual conversation. The interpreter must have full command of of specialized legal and technical terminology to street slang. ADA requires that interpreters be competent. 28 CFR Part 35, Section section 35.160 requires that. a public entity must ensure that its communications with individuals with disabilities are as effective as communications with others. Allowing uncertified interpreters would undermine the requirement in this</p>	<p>followed every time a provisionally qualified interpreter is used.</p>

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			<p>Section. Allowing uncertified sign language interpreters to be considered provisionally qualified for court representations does not allow for equally effective communication for the deaf individual who must rely on the interpreter both to understand the court proceedings and to convey his or her testimony. It would be quite easy for an interpreter not acquainted with the nuances of legal terms or street slang to miscommunicate the meaning of what a deaf defendant or witness is saying, or to miscommunicate to the deaf defendant or witness the question being asked – resulting in inaccurate testimony.</p> <p>ASL is a language unto itself.</p> <p>The regulations define the qualifications of a “qualified interpreter”: “Qualified interpreter means an interpreter who...is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary. Qualified interpreters include, for example, sign language interpreters...” 28 CFR section 35.104. The interpreter has to be able to “interpret effectively” and “accurately”. ASL is a language, and not merely deaf English. It has its own vocabulary, syntax and grammar rules. A comparison can be made when translating for someone who speaks Spanish. If you translated English word for word into Spanish, and ignored vocabulary, syntax, dialect, and so forth, the translation would be poor at best, and unintelligible at worst. As the regulations state, a qualified interpreter must provide</p>	

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			<p>communication between a deaf and hearing person that is effective, accurate, and impartial, using any necessary specialized vocabulary. Certified court interpreters, are both impartial and possessing the necessary vocabulary, and are able to interpret both receptively and expressively, as outlined in the ADA, section Title II: Signing and interpreting are not the same thing. Being able to sign does not mean that a person can process spoken communication into the proper signs, nor does it mean that he or she possesses the proper skills to observe someone signing and change their signed or finger-spelled communication into spoken words. The interpreter must be able to interpret both receptively and expressively.</p> <p>An uncertified interpreter doesn't meet the ADA requirements because of the years of training and practice that have to be met to be certified.</p> <p>The mere fact that a person who happens to sign would be given "temporary" designation as a qualified interpreter leads one to believe that this same person would not normally qualify to interpret in a court setting under normal circumstances if other certified interpreters knowledgeable in interpreting court proceedings were present. The deaf defendant, or a defendant affected by a deaf witness, would be ill-served by an unqualified interpreter – no matter the temporary designation – due to the lack of functional equivalence in communications that goes directly against the intention of ADA Title II-7.0000.</p>	

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			<p>Recommendations</p> <p>One recommendation is to work with Deaf interpreters in Court (http://www.interpretereducation.org/wp-content/uploads/2011/06/Deaf-Interpreter-in-Court_NCIEC2009.pdf). As this paper presents, Deaf litigants present regional and dialectical variations in American Sign Language. Such a Deaf-hearing interpreting team accommodation is reasonable to avoid misclassifying Deaf litigants as incompetent, and it assists and improves the quality of interpretation, especially since non-Deaf interpreters may not be fluent in ASL.</p> <p>I would also recommend that no decision be made without working together with leaders of the Deaf Community and the Registry of Interpreters for the Deaf.</p> <p>(Pleasanton, CA)</p>	
17.	Margaret Ransom Cobb, SC:L	AM or NI	<p>I tried repeatedly today to submit my comments via the Judicial Council website but was unable to find the invitation for this particular proposal. I am emailing my comments to this address instead.</p> <p>I am a CA Court Certified (RID SC:L) interpreter and have been since 2000. I have worked in Los Angeles, Santa Barbara, Alameda, and San Francisco counties as an independent contractor from 1989 to the present, and have held the position of Staff Sr.</p>	Technical correction adopted with a direct reference to the California Rules of Court.

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			<p>ASL Interpreter for the Superior Court, Ventura County from September of 2006 to the present.</p> <p>I will be brief. I am in favor of all of the proposed changes but I do want to highlight one concern that I have with sub-section f) (copied here from the proposal):</p> <p>f) For purposes of this section, “qualified interpreter” means an American Sign Language interpreter who has been certified as competent to interpret court proceedings by a testing organization, agency, or educational institution approved by the Judicial Council as qualified to administer tests to court interpreters for individuals who are deaf or hearing impaired and who has enrolled with, and is listed on, the state roster maintained by the Judicial Council.</p> <p>My concern with this proposed change is that removing this language without providing a specific reference to the information contained in the proposed strike-through portion of sub-section f) leaves it reading much as it did before the current language was added to EC 754.</p> <p>To anyone who is unfamiliar with the legislative and administrative history of the development and implementation of these guidelines, it may appear that the Judicial Council is taking a step backward in the definition of "qualified interpreter". I would strongly urge the inclusion of a reference to Rule 2.892 immediately after</p>	

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			<p>the text that has the strike-through that I have referenced above.</p> <p>As an interpreter, and CA citizen, I was very involved with the efforts that led to the establishment of the language of EC 754 and also served on the Judicial Council's first advisory committee to begin the process of implementing the requirement for guidelines. I am aware that many years have passed and many people have come and gone in the Judicial Council as well as in the CA Deaf and interpreting communities since that time. I would like to be sure that anyone who might be considering further revisions or changes to EC 754 would be well aware of the location of the guidelines that define "qualified interpreter". I understand the need for brevity in the text of the code. I think that providing the immediate reference to Rule 2.892 in the text of f) will provide the most expedient and direct access to the document, entitled, "Guidelines for Approval of Certification Programs for Interpreters for Deaf and Hard- of-Hearing Persons".</p> <p>My final comment is related to the preceding one. With regard to the following proposed language of sub-section j) (copied here from the proposal):</p> <p>j) Whenever a peace officer or any other person having a law enforcement or prosecutorial</p>	

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			<p>function in any criminal or quasi-criminal investigation or proceeding questions or otherwise interviews an alleged victim or witness who demonstrates or alleges deafness or hearing impairment, a good faith effort to secure the services of an a qualified interpreter shall be made, without any unnecessary delay, unless either the individual who is deaf or hearing impaired hard of hearing affirmatively indicates that he or she does not need or cannot use an interpreter, or an interpreter is not otherwise required by Title II of the Americans with Disabilities Act of 1990 (Public Law 101-336) and federal regulations adopted thereunder. Payment of the interpreter's fee shall be a charge against the county, or other political subdivision of the state, in which the action is pending employer of the investigating peace officer or other person as identified above in this subdivision.</p> <p>I am focusing only on the addition of the term "a qualified interpreter". I applaud the insertion of the word "qualified". However, this increases my concern that the definition of "qualified interpreter" in sub-section f) is missing in the proposed changes to that language. Without a clear reference to Rule 2.892 in sub-section f) it is unclear how these definitions are being used in sub-section f) and sub-section j). I am assuming that the definition in sub-section j) is that used in the Americans with Disabilities Act, which is vastly</p>	

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			<p>different from the definition used by the Judicial Council for court ASL interpreters.</p> <p>Thank you for taking the time to read and consider these comments.</p> <p>(Newbury Park, CA)</p>	
18.	<p>Jim Brune Executive Director Deaf Counseling Advocacy and Referral Agency (DCARA)</p>	N	<p>Deaf Counseling Advocacy and Referral Agency (DCARA) respectfully files the following comments in response to the Invitation to Comment released by the Judicial Council of California seeking feedback on the proposed changes to Evidence Code Section 754.</p> <p>Established in 1962, DCARA is a community-based non-profit organization that serves the needs of Deaf, Hard of Hearing, Late-Deafened, and Deaf-Blind people in 14 counties in the greater San Francisco Bay Area and North Coast. We provide a wide range of services including information and referral, independent living skills training, advocacy, peer counseling, employment preparation/placement/retention, and community education services to deaf, deafened, hard of hearing, and deaf-blind individuals and their families.</p> <p>DCARA applauds the Court Interpreter Advisory Panel’s efforts to update the language in Section 754 and provide clear guidelines for the judiciary to follow in the event that an interpreter holding the SC:L certificate is not</p>	<p>CIAP disagrees that the proposal lowers standards. The goal is to always have a court certified ASL interpreter, but we know they are not available for all of the needed assignments and noncertified interpreters are used. The proposed changes raise standards by formalizing the process and creating accountability when a court certified ASL interpreter is not available. This is the same process used for spoken language interpreters.</p> <p>The proposal was not intended to modify, nor does it modify, the requirements or process for a Deaf Interpreter to work in the courts, when needed to establish access for a deaf or hard of hearing court user. Such a change is beyond the scope of the committee’s original charge.</p> <p>The statewide Language Access Plan’s Implementation Task Force is charged with implementing complaint processes to address complaints about the lack of language access, or an interpreter’s skills. As these processes are implemented, they will be positioned to address abuses in the over use, or improper use of the provisional qualification process for any language, including ASL.</p>

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			<p>available. There are some issues that DCARA would like to address in response to the Invitation to Comment:</p> <p>Lowering of standards for certified interpreters: While DCARA appreciates the fact that the scarcity of interpreters holding the SC:L certificate is a very real challenge facing California courts, DCARA strongly feels that a generalist interpreter certificate, even one by NAD-RID (NIC), is not at all adequate to prepare an interpreter for the complexity of communications and dialogues that occur in the court room. DCARA proposes that language be added to clarify that in the event that a SC:L interpreter is not available, the courts shall provisionally qualify interpreters who possess professional experience in legal settings in addition to possessing a generalist interpreter certificate. For example, this provisional qualification can be granted to an interpreter who provides documentation of formal legal interpreter training and interpreting or mentoring experience. The impact on Deaf and hard of hearing people’s lives as a result of communication that is relayed in a courtroom proceeding is far too great to lower this standard.</p> <p>Deaf Intermediary Interpreters: DCARA believes that the Judicial Council of California should offer certification to Deaf intermediary interpreters who possess the Conditional Legal Interpreting Permit – Relay (CLIP:R). The</p>	

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All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>CLIP:R is the highest standard currently available to evaluate a deaf interpreter’s legal acumen and should be the only means used by the court to certify Deaf Intermediary Interpreters.</p> <p>Empowerment of the Deaf or hard of hearing client during a court proceeding: DCARA feels it is of utmost importance that the court engage in interactive dialogue with the Deaf or hard of hearing client to determine whether effective communication is happening during the court proceeding. The court should check in with the Deaf or hard of hearing client at several occasions during the proceeding. The court should also cease the proceeding if it is determined that effective communication is not happening. Part of this dialogue should include the court informing the Deaf or hard of hearing client of their right to effective communication at every court proceeding.</p> <p>DCARA sees this Invitation to Comment as a starting point for further dialogue on developing stronger and more clear language within Evidence Code Section 754 to ensure provision of optimal American Sign Language (ASL) interpreting services within the courts of California. DCARA urges the Judicial Council of California to seek input from professionals who are affiliated with the Registry of Interpreters for the Deaf (RID), the Northern California chapter of the Registry of Interpreters for the Deaf (NorCRID), DCARA, as well as</p>	

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			<p>the organizations that comprise the California Coalition of Agencies Serving Deaf and Hard of Hearing Persons (CCASDHH), of which DCARA is part.</p> <p>Please do not hesitate to contact me if you have any questions regarding DCARA’s response to this Invitation to Comment on proposed regulation changes to Evidence Code Section 754. I can best be reached at 510.343.6672 or Jim.Brune@dcara.org.</p> <p>(San Leandro, CA)</p>	
19.	Marilyn Finn HLAA member	N/I	<p>I feel that this piece of legislation has not realized the difference in the communication needs of people who are deaf and those of us who are hard of hearing.</p> <p>Ninety nine percent of hard of hearing people do not use sign language, will need a captioner, not an interpreter. Some will be able to use FM or infrared systems, those with a more profound hearing loss, like me, must have captioning to understand.</p> <p>This legislative proposal just came to my attention a few moments ago. I hope that I am mistaken in thinking that you propose to provide hard of hearing people with ASL interpreters, which would be the same as giving them someone speaking Swahili.</p>	A person who is hard of hearing, such as described by the commentator, is excluded from Evidence Code 754. (see section (a).)

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			<p>As a former member of the staff of the Hearing Loss Association of America (HLAA) and a former president of the HLAA California State Association, I am most concerned that the captioning issue was not being spelled out. I sincerely hope that the writers of this proposal know of our separate communication needs and will be specific in addressing the importance of captioning.</p> <p>Thank you for being present for our population.</p>	
20.	Robin Mills (2nd submission)	AM	<p>My concern is, an interpreter can be qualified on paper (having received an RID certification-not SC:L- and taken legal trainings) yet not possess the skills necessary to interpret in a court of law. An interpreter may have previously interpreted in legal settings, when he/she should not have. A coordinator who is not fluent in ASL or a certified ASL interpreter would not be able to make the determination that the interpreter had skills to work in a legal setting. If the final decision was in the hands of an interpreter holding an SC:L in conjunction with the court coordinator, i believe interpreters not possessing the skills would be weeded out.</p> <p>(Oakland, CA)</p>	<p>CIAP disagrees that the proposal will not require sufficient standards. The goal is to always have a court certified ASL interpreter, but we know they are not available for all of the needed assignments and noncertified interpreters are used. The proposed changes raise standards by formalizing the process and creating accountability when a court certified ASL interpreter is not available. This is the same process used for spoken language interpreters.</p>
21.	Ken Arcia HH/LD Support Specialist DCARA (Did not indicate on behalf of organization)	N/I or N	<p>I am late-deafened, meaning I grew up with regular hearing and became deaf after learning to speak (at age 21). I feel it is VITAL that a certified interpreter be used for all court related functions! I would not trust the future of my situation in a court of law to someone who was</p>	<p>CIAP disagrees that the proposal lowers standards. The goal is to always have a court certified ASL interpreter, but we know they are not available for all of the needed assignments and noncertified interpreters are used. The proposed changes raise standards by formalizing the process</p>

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			<p>not certified. Many deaf do not even know that they can ask for their proceedings to be postponed until a certified interpreter is found! Thank you. Ken Arcia (Castro Valley, CA)</p>	<p>and creating accountability when a court certified ASL interpreter is not available. This is the same process used for spoken language interpreters.</p> <p>CIAP disagrees that the proposal will not provide sufficient guidance . Upon successful enactment of the legislation, Judicial Council will revise the INT forms to collect information about the interpreter’s required generalist certification, as well as their legal training and experience. These forms must be signed by the interpreter. A judicial officer must also affirm on the record that all processes for provisional qualification are followed every time a provisionally qualified interpreter is used.</p>
22.	Howard A. Rosenblum, Chief Executive Officer National Association of the Deaf	AM or NI	<p>The National Association of the Deaf (NAD) submits this Comment with respect to LEG 13-07 which focuses on the “Provisional Qualification for American Sign Language Court interpreters and other updates to Evidence Code Section 754.”</p> <p>The proposed updating of Evidence Code Section 754 consists of nine specific changes outlined on pages 2-3 of the Invitation to Comment publicized by your office. The NAD supports many of these changes as appropriate in terms of terminology and comports with the requirements of the Americans with Disabilities Act (ADA). However, the NAD objects to two particular proposed changes, specifically those proposed in paragraphs numbered 4 (affecting subdivision (h)) and 9 (affecting subdivision (o)). The NAD responds to your “Request for Specific Comments,”</p>	<p>CIAP disagrees that the proposal lowers standards. The goal is to always have a court certified ASL interpreter, but we know they are not available for all of the needed assignments and noncertified interpreters are used. The proposed changes raise standards by formalizing the process and creating accountability when a court certified ASL interpreter is not available. This is the same process used for spoken language interpreters.</p> <p>CIAP disagrees that the proposal will not provide sufficient guidance . Upon successful enactment of the legislation, Judicial Council will revise the INT forms to collect information about the interpreter’s required generalist certification, as well as their legal training and experience. These forms must be signed by the interpreter. A judicial officer must also affirm on the record that all processes for provisional qualification are</p>

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			<p>specifically whether “the proposal reasonably achieves the stated purpose” and whether “this proposal [would] have an impact on public’s access to the courts[, and if the impact is negative,] what changes might lessen the impact. These two proposed changes (paragraphs 4 and 9) would not achieve the stated purpose, and urge in this letter changes that would lessen the impact.</p> <p>The new language proposed for subdivision (h) would allow a non-certified interpreter to be appointed by a court for good cause. There appears to be no guidance on what constitutes “good cause” or on what the minimum level would be required for any individual to be appointed as an interpreter for purpose of a court proceeding. While the NAD is sensitive to the need for locating and appointing an interpreter to facilitate effective communications in a California state court where an interpreter that is certified and listed on the state’s court roster is not available, the fact remains that court proceedings often greatly impact the rights of deaf and hard of hearing individuals – including whether they live or die, whether they are put in prison, and whether they are stripped of funds, property or rights. As a result, it is imperative that the interpreter who handles such court proceedings be qualified specifically for such court matters. The interpreter must, at a minimum, be qualified pursuant to the definition of a “qualified interpreter” pursuant to the regulations under</p>	<p>followed every time a provisionally qualified interpreter is used.</p>

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			<p>Title II of the ADA, found at 28 C.F.R. section 35.104, as follows: Qualified interpreter means an interpreter who, via a video remote interpreting (VRI) service or an on-site appearance, is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary. Qualified interpreters include, for example, sign language interpreters, oral transliterators, and cued-language transliterators.</p> <p>The new language in subdivision (o) reinforces the point that a non-certified interpreter appointed by a court for “good cause” is by indicating that “A statement interpreted by a qualified interpreter or an interpreter appointed as provided in subdivision (h) is presumed to be accurately interpreted.”</p> <p>This language fails to protect deaf and hard of hearing individuals from misinterpretations by unqualified interpreters that have been appointed by any court, because their misinterpreted statement will be presumed to be accurately interpreted.</p> <p>The NAD proposes changes to these updates to better protect the rights of deaf and hard of hearing individuals who require interpreter services in California state courts.</p> <p>The new subdivision (h) should be modified to read as follows: “Should an interpreter on the roster pursuant to subdivision (f) not be available for a court</p>	

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			<p>proceeding including with any reasonable delay and advance scheduling, a court may for good cause appoint an interpreter who is not certified at the level required by subdivision (f). However, the good cause and qualification procedures and guidelines adopted by the Judicial Council shall include requirements that the court only appoint an interpreter who is certified at the next highest level by the testing organization recognized by the Judicial Council and has substantive interpreting experience in court. Such appointed interpreters shall only be allowed to work within the courts for a period of six months. A court may not appoint an interpreter for good cause pursuant to this subdivision beyond January 1, 2020, as the Judicial Council will take steps to ensure that a sufficient number of interpreters certified pursuant to subdivision (f) are placed on the Judicial Council’s state roster to meet the needs of the entire state as well as take other measures to meet the communication needs of deaf and hard of hearing individuals.”</p> <p>The new subdivision (o) should be modified to retain only the first sentence. The second sentence should be eliminated in its entirety to protect the right of deaf and hard of hearing individuals to not have their statement misinterpreted.</p> <p>Should the Judicial Council have questions regarding this Comment proposed by the NAD, please do not hesitate to contact me at howard.rosenblum@nad.org. (Silver Spring, MD)</p>	

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23.	Linda Twilling, Ph.D. Psychologist, Kaiser Permanente, Fremont, CA Psychologist, Cochlear Implant Team, Children's Hospital Oakland.	N or NI	Hello, The Registry of Interpreters for the Deaf carefully evaluates ASL interpreters to insure that they are able to interpret for Deaf people in the courtroom. It would be inappropriate for a judge--or any lay person-- to evaluate the sign language skills of an interpreter and determine that he or she is qualified at that level. Deaf people vary considerably in their sign skills--fluent ASL to limited sign skills and everything in between. Further, many Deaf people have additional disabilities such as learning disabilities, CP, vision issues, etc., that can impair their ability to understand or express language. Deaf people need to have a highly qualified interpreter, especially in a situation as important and serious as a court room. I high recommend that you leave the current rules in place and do not interfere with the ability of a Deaf person to participate in a fair trial. (Oakland, CA)	CIAP disagrees that the proposal lowers standards. The goal is to always have a court certified ASL interpreter, but we know they are not available for all of the needed assignments and noncertified interpreters are used. The proposed changes raise standards by formalizing the process and creating accountability when a court certified ASL interpreter is not available. This is the same process used for spoken language interpreters. CIAP disagrees that the proposal will not provide sufficient guidance . Upon successful enactment of the legislation, Judicial Council will revise the INT forms to collect information about the interpreter’s required generalist certification, as well as their legal training and experience. These forms must be signed by the interpreter. A judicial officer must also affirm on the record that all processes for provisional qualification are followed every time a provisionally qualified interpreter is used.
24.	Saul Bercovitch Legislative Counsel State Bar's Committee on Administration of Justice (CAJ)	AM	The State Bar of California’s Committee on Administration of Justice (CAJ) has reviewed and analyzed the Judicial Council’s Invitations to Comment, and appreciates the opportunity to submit these comments... (unrelated comments deleted) 5. Provisional Qualification for American Sign Language Court Interpreters and Other Updates to Evidence Code Section 754 - LEG13-07 CAJ supports this proposal subject to the comments below.	CIAP determined the technical correction suggested regarding interpreters in civil is not necessary because a certified interpreter must already be prioritized under existing procedures and guidelines for spoken language. CIAP disagrees that the proposal lowers standards. The goal is to always have a court certified ASL interpreter, but we know they are not available for all of the needed assignments and noncertified interpreters are used. The proposed changes raise standards by formalizing the process and creating accountability when a court certified

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			<p>First, unlike American Sign Language (ASL) interpreters, the spoken language interpreters have an employment system with the California courts. Under this system, courts are required to give priority to certified/registered employees and contractors. This system has led to reductions in the use of non-certified/non-registered spoken language interpreters in California courts. (Trial Court Interpreters Program Expenditure Reports, 2004-2008 and 2011-2012). Without a similar employment system for ASL interpreters, the good cause exception may be applied with much more frequency in ASL interpretations than with spoken language. In the end, frequent use of the good cause exception may result in a less reliable supply of qualified ASL interpreters, as there would be less incentive for ASL interpreters to seek certification. To protect against this possibility, and maximize the use of certified ASL interpreters, CAJ believes the rules should provide that priority be given to the engagement of certified ASL interpreters.</p> <p>Second, the proposed language would provide that “the courts shall follow the good cause and qualifications procedures and guidelines for spoken language adopted by the Judicial Council.” There do not appear to be specific “good cause” guidelines for spoken language for civil cases, although there are procedures and guidelines for the appointment of non-certified interpreters in criminal and juvenile</p>	<p>ASL interpreter is not available. This is the same process used for spoken language interpreters.</p>

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			<p>delinquency proceedings. (See Government Code Section 68561, California Rule of Court 2.893 and Procedures and Guidelines to Appoint a Noncertified Interpreter in Criminal and Juvenile Delinquency Proceedings (Form IN-110)). To avoid potential confusion, the proposed language should be modified so it applies specifically to both civil and cases.</p> <p>To address these issues CAJ recommends that proposed subdivision (h) be modified to read as follows:</p> <p style="padding-left: 40px;">“<u>Priority shall be given to an interpreter who is certified pursuant to subdivision (f) but A a court may for good cause appoint an interpreter who is not certified pursuant to <u>that</u> subdivision (f). <u>In civil and criminal cases</u> The the court shall follow the good cause and qualification procedures and guidelines for spoken language interpreters adopted by the Judicial Council.”</u></p> <p>Disclaimer</p> <p>This position is only that of the State Bar of California’s Committee on Administration of Justice. This position has not been adopted by the State Bar’s Board of Trustees or overall membership, and is not to be construed as representing the position of the State Bar of California. Committee activities relating to this position are funded from voluntary sources.</p>	

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			(San Francisco, CA)	
25.	Trilingual Interpreting Services by Carol Sue Richardson MA, CSC, SC: L, CCI	AM	<p>The CIAP-proposed changes throughout the document which substitute "hard-of-hearing" for "hearing-impaired" indeed bring the language up-to-date.</p> <p>In order to avoid confusion and to reflect that the Registry of Interpreters for the Deaf is now the sole body which certifies American Sign Language Interpreters to interpret court proceedings, Subdivision (f) should read:</p> <p>For the purposes of this section, "qualified interpreter" means an American Sign Language Interpreter who has been certified by the Registry of Interpreters for the Deaf as competent to interpret court proceedings and who has enrolled with, and is listed on, the state roster maintained by the Judicial Council.</p> <p>While the text of Subdivision (h) is obsolete at this time, instead of the wording proposed by the CIAP, the new language should instead read as follows:</p> <p>A court may for good cause appoint an interpreter who is not on the state roster of court-certified interpreters but who would otherwise qualify to join said roster, chiefly that she or he hold a Specialist Certificate: Legal from the Registry of Interpreters for the Deaf.</p> <p>(Oakland, CA)</p>	<p>CIAP adopted a technical correction to include a direct reference to the California Rules of Court in lieu of the commentator’s suggested language.</p> <p>CIAP disagrees with the proposed change to subsection (h) which would require the SC:L as the only alternative to an interpreter qualified under subdivision (f). There is not a sufficient number of court certified interpreters to provide services in all needed assignments around the state.</p>

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26.	Law Office of Susan Gonzalez by Susan Gonzalez, Deaf Attorney	N	<p>Granted there is a scarcity of qualified and appropriately certified ASL interpreters for any legal proceedings. The proposal fails to address the incompetency of the local "coordinators" for accommodations and their refusal to follow recommendations. Further the proposal outlines no consequences should the court continue to fail to provide SC:L or qualified ASL interpreters. Lacking any enforcement and consequential action results in a recommendation that is brushed aside at the whim of each coordinator. Case in point is a coordinator at the Santa Clara County Superior Court who is buddy-buddy with two uncertified and unqualified interpreters. I have had cases continued because those two "interpreters" were not available. My clients suffered harm as result of continued delays. The coordinators are able to choose whomever they wish without penalty. The judge and opposing counsel had no clue as to the resulting damage.</p> <p>The proposal fails to outline precisely who will be responsible for determining if an interpreter may be provisionally qualified. Judges, clerks, coordinators, attorneys or AOC etc. do not have the requisite staff to make qualified, informed and appropriate determinations. To require the Deaf/DeafBlind/Hard of Hearing/Late-Deafened individual to place such blind trust in those entities is tantamount to trying to put out a building fire with a single glass of water. It simply does not work. To determine qualifications requires the person making said</p>	<p>CIAP disagrees that the proposal lowers standards. The goal is to always have a court certified ASL interpreter, but we know they are not available for all of the needed assignments and noncertified interpreters are used. The proposed changes raise standards by formalizing the process and creating accountability when a court certified ASL interpreter is not available. This is the same process used for spoken language interpreters.</p> <p>CIAP disagrees that the proposal will not provide sufficient guidance . Upon successful enactment of the legislation, Judicial Council will revise the INT forms to collect information about the interpreter’s required generalist certification, as well as their legal training and experience. These forms must be signed by the interpreter. A judicial officer must also affirm on the record that all processes for provisional qualification are followed every time a provisionally qualified interpreter is used.</p> <p>The statewide Language Access Plan’s Implementation Task Force is charged with implementing complaint processes to address complaints about the lack of language access, or an interpreter’s skills. As these processes are implemented, they will be positioned to to address abuses in the over use, or improper use of the provisional qualification process for any language, including ASL.</p>

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			<p>determination to have a basic grasp of what makes the individual qualified to do the job. To allow courts et al. to provisionally qualified ASL interpreters to appease themselves momentarily most definitely will result in long-term harm, especially when the ASL interpreter should never have been provisionally qualified.</p> <p>At the bare minimum, should this language persist into the final form, require that all parties, especially the Deaf/DeafBlind/Hard of Hearing/Late-Deafened individual/s, expressly, knowingly and voluntarily consent on record to the use of said ASL interpreter who only possess XYZ certificate for the particular proceeding only. Transcripts of said proceeding shall be made available to all parties for verification of interpreting. All orders should be pending rather than final until transcripts verify the accuracy of interpreting. For verification purposes, only an interpreter possessing SC:L or NCI: Master may be used in conjunction with representing attorneys and the Deaf/DeafBlind/Hard of Hearing/Late-Deafened party/ies.</p> <p>The proposal makes no reference to the SC:L however comments from Tracy Clark states AOC will continue to require said certificate. If that is indeed the case, the proposal should outline in preferential order what certificate/s shall be required when coordinators (ick) are to determine qualifications of an interpreter. Leaving the language as vague as it currently is</p>	

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			<p>leaves the door open for varied interpretations depending on the individual and their perception and/or understanding of ASL interpreters. Such has been the case with terms contained within ADA; for example "reasonable accommodations" have been interpreted differently and rarely is there an agreement between the individual making the request for accommodations and the individual/entity providing accommodations.</p> <p>It also would be wise and courteous to include DeafBlind and Late-Deafened as adjectives. These individuals have just as much right to be recognized and their unique needs acknowledged.</p> <p>Thank you for this opportunity to comment.</p> <p>Respectfully submitted June 19, 2013 at 8:55PM. (San Francisco, CA)</p>	
27.	Shane Feldman Executive Director Registry of Interpreters for the Deaf, Inc.	AM (or N)	<p>Jointly Filed Comments of the Registry of Interpreters for the Deaf, Inc., Northern California Registry of Interpreters for the Deaf, Sacramento Valley Registry of Interpreters for the Deaf, and San Diego County Registry of Interpreters for the Deaf The Registry of Interpreters for the Deaf, Inc. (RID), Northern California Registry of Interpreters for the Deaf (NorCRID), Sacramento Valley Registry of Interpreters for the Deaf (SaVRID), and San Diego County Registry of Interpreters for the</p>	<p>CIAP disagrees that the proposal lowers standards. The goal is to always have a court certified ASL interpreter, but we know they are not available for all of the needed assignments and noncertified interpreters are used. The proposed changes raise standards by formalizing the process and creating accountability when a court certified ASL interpreter is not available. This is the same process used for spoken language interpreters.</p> <p>CIAP disagrees that the proposal will not provide sufficient guidance . Upon successful enactment</p>

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			<p>Deaf (SDCRID) respectfully file the following comments in response to the Invitation to Comment (LEG 13-07) released by the Judicial Council of California seeking feedback on the proposed changes to Evidence Code Section 754.</p> <p>Established in 1964 and incorporated in 1972 as a 501 (c)(3) non-profit membership organization, the Registry of Interpreters for the Deaf, Inc promotes the welfare and growth of individual interpreters as well as the profession of interpretation of American Sign Language (ASL) and English. NorCRID, SaVRID, and SDCRID are California-based affiliate chapters of RID working to support ASL interpreters within the state.</p> <p>While the “Invitation to Comment” categorizes the proposed changes as an update, we believe introducing the provisional qualification of ASL interpreters is a substantive change and warrants careful consideration. We believe that the proposal will have a negative impact on public’s access to the courts, specifically by impeding the Deaf community’s ability to have fair and equal access through effective communication to California’s judicial system. Furthermore, we want to impress upon the court that additional staff time and resources will be</p>	<p>of the legislation, Judicial Council will revise the INT forms to collect information about the interpreter’s required generalist certification, as well as their legal training and experience. These forms must be signed by the interpreter. A judicial officer must also affirm on the record that all processes for provisional qualification are followed every time a provisionally qualified interpreter is used.</p> <p>Further, RID has issued a moratorium on SC:L performance exams beginning January 1, 2016 and there is no indication of how long it will take until interpreters can again become court certified. This will exacerbate the current situation, and a backup plan for what to do when a court certified ASL interpreter is not available is now more urgent than ever.</p> <p>The proposal was not intended to modify, nor does it modify, the requirements or process for a Deaf Interpreter to work in the courts, when needed to establish access for a deaf or hard of hearing court user. Such a change is beyond the scope of the committee’s original charge.</p> <p>CIAP encourages the interpreting community, and the Deaf community to provide input to CIAP’s ASL advisory member if there are additional future suggestions related to changes for the Rules or INT forms.</p>

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			<p>necessary to appropriately evaluate an ASL interpreter’s qualifications in the absence of a bright line rule. We believe that the administrative impact of these changes goes beyond informing the jurisdictions when they are able to provisionally qualify interpreters. The court interpreter coordinators will need to be trained on the changes to Rule 2.893 and Forms INT 100, INT 110, and INT 120 and additional time and resources will need to be available to properly engage in the qualification process.</p> <p>Standards The California Department of Social Services website explains, “Section 504 of the Rehabilitation Act of 1973 and Title II and Title III of the Americans with Disabilities Act (ADA), as well as other state and federal laws require the provision of auxiliary aids and services (i.e., interpreting services) necessary to ensure effective communication with deaf, hard of hearing or deaf-blind individuals. An interpreter should be certified by either the Registry of the Interpreters for the Deaf (RID), the National Association of the Deaf (NAD) or the American Consortium of Certified Interpreters (ACCI).”¹ (Emphasis added) We could not agree more.</p>	

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			<p>We believe that current California law employs best practices by recognizing the Specialist Certificate: Legal (SC:L) as the only means to become a certified court interpreter. RID, NorCRID, SaVRID, and SDCRID emphasize that this is the best available standard to certify court interpreters who are hearing. We also believe that the Judicial Council of California should offer certification to deaf intermediary interpreters who possess the Conditional Legal Interpreting Permit-Relay (CLIP:R). The SC:L and the CLIP-R are the highest credentials currently available to evaluate an interpreter's legal acumen and thus should be the only means used by the court to certify American Sign Language interpreters, including Deaf intermediary interpreters. Of the SC:L, the National Consortium of Interpreter Education Centers (NCIEC) observes, "Certification of interpreters in this area of specialization is administered by the Registry of Interpreters for the Deaf, and requires that one possess generalist certification, and completion of a set number of hours of training and supervised work experience prior to application. The certification process involves a stringent written and</p>	

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			<p>performance exam.”² In a 2003 Wisconsin Law Review Article, Michelle Lavigne and McCay Vernon observed, “Just as a law license ensures that a lawyer has at least a minimal level of competence, as attested by her law school and the bar examiners, so too does the certification of an interpreter.”³ RID, NorCRID, SaVRID, and SDCRID believe that becoming a highly qualified interpreter begins with attaining appropriate credentials. Fortunately, the field of American Sign Language interpreting, unlike many other languages, has a robust certification system whereby interpreters may obtain a generalist certificate in interpreting and then become specialists in the field of legal interpreting. Best Practice: Using an SC:L in Legal Situations In order to provide deaf or hard of hearing people access the judicial system in a free and unimpaired manner, Lavigne and Vernon suggest that there be a “rebuttable presumption that if an interpreter is not certified, the interpretation was not adequate. This rebuttable presumption may seem harsh, but the potential for miscommunication and harm is so great that, on balance, it is worth whatever inconvenience or discomfort it</p>	

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			<p>may cause.”⁴ RID, NorCRID, SaVRID, and SDCRID agree with their observation that “requiring the appointment of a certified interpreter will bring a measure of rationality and dependability to the process.”⁵ Notably, Lavigne and Vernon emphasize, “In complex proceedings, the appointment of an interpreter who has an additional certification in Legal Interpreting (SC:L) is strongly encouraged. In an ideal world, the best practice would be the use of a legally certified interpreter only.”⁶ (Emphasis added.) A generalist interpreter certificate, even an NAD-RID generalist certificate, is not adequate to prepare an interpreter for the complex nature of communications in the courtroom, police stations, and prisons. NCIEC explains, “Nationally certified Interpreters who hold this credential have demonstrated specialized knowledge of legal interpreting, and greater familiarity with procedure and protocol followed within the court and legal system. These interpreters have also demonstrated the necessary skills in being able to interpret complex legal discourse.”⁷ Intermediary Deaf Interpreters in Legal Settings RID, NorCRID, SaVRID, and SDCRID encourage the Judicial Council of California to adopt rules that allow</p>	

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			<p>intermediary Deaf interpreters who hold a Conditional Legal Interpreting Permit-Relay (CLIP:R) to be certified to interpret in the court system. Through the RID certification system, a person may become a Certified Deaf Interpreter (CDI) if that person demonstrates knowledge and understanding of deafness, the Deaf community, and Deaf culture. The CDI also possesses native or near-native fluency in American Sign Language and has demonstrated specialized training and/or experience in the use of gesture, mime, props, drawings and other tools to enhance communication. Holders of CLIP:R have completed an RID-recognized training program designed for interpreters and transliterators who work in legal settings and who are deaf or hard of hearing. A generalist certification for interpreters/translitterators who are deaf or hard of hearing (RSC or CDI) is required prior to enrollment in the training program. We urge the Judicial Council of California adopt the CLIP-R as the means by which CDIs are able to become certified court interpreters. Provisional Qualification of Interpreters RID, NorCRID, SaVRID, and SDCRID believe that this proposal will have a negative impact on public's</p>	

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			<p>access to the courts, specifically by impeding the Deaf community’s ability to have fair and equal access through effective communication to California’s judicial system. We believe that using interpreters who possess an SC:L or CLIP:R employs best practices in the provision of communication access and should be the standard employed by the California court system. However, we recognize that in rare and limited situations, the courts may need to resort to the provisional qualification of interpreters. Should this proposal pass, we believe that strong guidelines must be in place to ensure that those who are provisionally qualified by the court possess the knowledge, skills, and abilities to facilitate effective communication. Without clear, concise guidelines, the courts may inadvertently provisionally qualify an interpreter without appropriate credentials or training. To this end, we offer the following recommendations:</p> <ol style="list-style-type: none">1. The proposal states that “If legislation is adopted the Court Interpreters Advisory Panel will consider conforming changes to Rule 2.893 and Forms INT 100, INT 110, and INT 120.” We believe that the equitable administration of justice hinges on the content of these updates and changes must be made to	

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			<p>ensure effective evaluation of the qualifications of ASL interpreters.</p> <p>2. In revising forms INT 100, INT 110, and INT 120, deaf and hearing interpreters, as well as the Deaf community, should be consulted and involved in this process. RID and its affiliate chapters stand ready to serve as resources as these important changes are considered. We also encourage the Council to reach out to advocacy organizations such as California Association of the Deaf and the California Coalition of Agencies Serving the Deaf and Hard of Hearing, Inc. for input from the Deaf community.</p> <p>3. The Judicial Council of California should adopt rules that allow intermediary Deaf interpreters who hold a Conditional Legal Interpreting Permit-Relay (CLIP:R) to be certified to interpret in the court system.</p> <p>In addition to making conforming changes to the INT 100, INT 110, and INT 120 forms, guidelines about hiring ASL interpreters should be established for court systems unfamiliar with the knowledge, skills, and abilities necessary to interpret in the courtroom. RID, NorCRID, SaVRID, and SDCRID, as well as documents published by the NCIEC, can facilitate this process.</p>	

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			<p>5. There should be mandatory criteria for the provisional qualification of interpreters, including:</p> <p>a. To be provisionally qualified by the court, an ASL interpreter must possess a generalist certification. The Judicial Council should establish a system through which a novice in the evaluation of ASL interpreters can easily ascertain what generalist certifications are available and applicable to legal interpreting.</p> <p>b. In addition to possessing a generalist certification, an ASL interpreter must provide documentation of formal legal interpreter training and interpreting or mentoring experience.</p> <p>6. There should be a strict time limit on provisionally qualifying American Sign Language interpreters and this time limit should be made clear in any updates of the INT 100, INT 110, and INT 120 forms.</p> <p>7. The court, in consultation with a hearing interpreter, Deaf intermediary interpreter, and the client, should engage in an interactive process to determine whether effective communication is happening in the absence of a certified court interpreter. This should happen several times in the proceeding. If effective communication is not happening, the proceeding should halt and the court should seek out the services of a certified interpreter.</p>	

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			<p>8. Every person that receives interpreting services should to be informed, in their native language, that they have a right to effective communication and they have the right to complain or inform the court when and if they feel the interpreter is not effective. This should be read by every judge or shown to every person who is using an interpreter before the start of any judicial proceeding.</p> <p>Conclusion RID, NorCRID, SaVRID, and SDCRID view this Invitation to Comment as a beginning and not an end. We ask that the Judicial Council of California engage RID, its affiliate chapters, and the Deaf community when implementing these changes through the revision of Rule 2.893 and Forms INT 100, INT 110, and INT 120. We stand ready to serve as a resource by providing our knowledge and expertise on legal interpreting. Access to the courts in a free and unimpaired manner is a cornerstone of our justice system. We must work together to ensure that interpreters are well qualified to provide effective communication to deaf and hard of hearing people who access the legal system through the use of ASL interpreters.</p> <p>Alexandria, VA)</p>	