



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: December 11–12, 2014

Title	Agenda Item Type
Court Interpreters: Revised Policy on Use of Unused Savings from Program 45.45	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
N/A	January 1, 2015
Recommended by	Date of Report
Court Interpreters Advisory Panel	November 10, 2014
Hon. Steven K. Austin, Chair	Contact
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Executive Summary

The Court Interpreters Advisory Panel (CIAP) recommends that the Judicial Council update the action taken on January 23, 2014, on the proper usage of unused interpreter savings in light of the enactment of Assembly Bill (AB) 1657 (Stats. 2014, ch. 721). On January 23, 2014, the Judicial Council authorized the use of unused interpreter savings for civil matters where the parties are indigent. AB 1657, effective January 1, 2015, authorizes courts to provide interpreters to all parties in civil matters, regardless of income, and sets forth a priority and preference order when courts do not have sufficient resources to provide interpreters for all persons. CIAP recommends that the Judicial Council authorize the use of unused interpreter savings consistent with the requirements of the newly enacted statute.

Recommendation

The Court Interpreters Advisory Panel recommends that the Judicial Council authorize trial courts, effective January 1, 2015, to request reimbursement from the Trial Court Trust Fund Program 45.45 appropriation, and any unused savings from that appropriation, for expenditures

on court interpreters for parties in civil cases, consistent with the priorities and preferences set forth in Evidence Code section 756, as enacted by Assembly Bill 1657 (Stats. 2014, ch. 721)

The text of Evidence Code section 756 is attached at pages 5–6.

Previous Council Action

In May 2013, the Executive and Planning Committee, on behalf of the council, approved the formation of a limited-term Ad Hoc Joint Working Group to Address Court Interpreter Issues made up of representatives from each of the council’s civil law subject matter advisory committees as well as the Trial Court Presiding Judges Advisory Committee, the Court Executives Advisory Committee, the Access and Fairness Advisory Committee,¹ the Court Interpreters Advisory Panel, and the council’s internal Policy Coordination and Liaison Committee. The Ad Hoc Joint Working Group sunset on December 31, 2013.

On January 23, 2014, the Judicial Council adopted the recommendations of the Ad Hoc Joint Working Group to expand the allowable use of the Program 45.45 appropriation (funding for interpreter services) and directed the use of the unused savings related to the Program 45.45 appropriation accumulated since fiscal year 2009–2010 in the following ways:

1. Authorized trial courts to request reimbursement from the Trial Court Trust Fund Program 45.45 appropriation for costs related to court interpreters for all appearances in domestic violence cases, family law cases in which there is a domestic violence issue, and elder or dependent adult abuse cases, thereby eliminating the \$1.73 million cap previously in place for such expenditures. The council further directed that if expenditures in Program 45.45 exceed the \$92 million expenditure authority, any unused savings related to the Program 45.45 appropriation since fiscal year 2009–2010 may also be used for these purposes.
2. Clarified that trial courts can request reimbursement from the Trial Court Trust Fund Program 45.45 appropriation, and any unused savings from that appropriation, for expenditures on court interpreters for indigent parties in civil cases.
3. Directed Judicial Council staff to provide guidance to courts of the changes to what is reimbursable.
4. Directed the Civil and Small Claims Advisory Committee to create a new form for parties requesting interpreters in civil matters.
5. Directed staff of the Center for Judiciary Education and Research to develop training resources, as appropriate, for court staff on how the new form may be used to assist in the calendaring of cases and scheduling of interpreters.
6. Directed the Trial Court Budget Advisory Committee (TCBAC) to provide recommendations to the council at the April 2014 council meeting on the maximum amount each court will be eligible to receive in reimbursement from the unused savings in a manner that will result in complete exhaustion of the unused savings by the end of fiscal year 2014–2015.

¹ Subsequently the name of this committee was changed to Advisory Committee on Providing Access and Fairness.

7. Directed that trial courts track the usage of interpreters in civil matters and report this information to the Judicial Council staff in the format and timeframe specified by Judicial Council staff.

On January 23, 2014, the council also approved a recommendation from the Policy Coordination and Liaison Committee to sponsor legislation to authorize courts to provide interpreters in civil matters to all parties, regardless of income. The enactment of that legislation is what requires this follow-up action.

On April 24, 2014, the council approved a recommendation of the Trial Court Budget Advisory Committee regarding how the unused savings are to be allocated among the trial courts. Specifically, the council action provided that each interpreter region would be eligible to receive, in reimbursement from the unused savings, a percentage of the unused savings equal to the average percentage of Program 45.45 reimbursements it received over the past five years. The Superior Courts of Solano and Ventura Counties, which are not in interpreter regions, would be eligible for individual earmarked funds based on the same methodology.

Rationale for Recommendation

In the report received for the January 23, 2014, meeting, the Joint Ad Hoc Working Group noted:

The working group was charged with making recommendations for the appropriate expenditure of those unused savings. The working group cannot recommend that the unused savings from Program 45.45 be used to fund interpreters in all civil cases without a statutory clarification giving courts discretion to provide these services in civil matters. While there appears to be a strong legal argument that courts can provide interpreters in civil cases to indigent litigants who have limited English proficiency, existing law is at best ambiguous on whether a court may assign interpreters in *all* civil cases at no cost to the parties. The council will be considering a recommendation today from PCLC and the working group for sponsored legislation to provide that authority. As a result, at the earliest, it will be January 2015 before courts will have the legal authority to provide interpreters in all civil proceedings regardless of the income of the parties. The working group therefore turned its attention to how it could expand access to interpreters in the interim, while waiting for a statutory fix.

(Original italics.)

The courts now have the legal authority that was lacking in January 2014, and the council action must be updated to reflect the current state of the law. This action does not affect in any way the allocation of the surplus to the courts decided at the April 2014 council meeting.

Judicial Council staff have developed and are developing various tools to assist courts in understanding the requirements of Evidence Code section 756 and in implementing them. Briefly stated, AB 1657 provides that “a court may provide an interpreter in any civil action or proceeding at no cost to the parties, regardless of the income of the parties. However, until

sufficient funds are appropriated to provide an interpreter to every party who needs one, interpreters shall initially be provided in accordance with the priorities set forth in Section 756 of the Evidence Code” (Gov. Code, § 68092.1). Evidence Code section 756 provides that if there are not sufficient funds appropriated to provide an interpreter to every party, each court shall allocate court interpreters to cases in the following priority order:

- (1) Domestic violence cases, family law cases in which there is a domestic violence issue, and elder or dependent adult abuse cases (non-financial abuse)
- (2) Unlawful detainer
- (3) Termination of parental rights
- (4) Conservatorships and guardianships
- (5) Proceedings to obtain sole legal or physical custody of a child or rights to visitation
- (6) Civil harassment or elder abuse not addressed in (1).
- (7) All other family law
- (8) All other civil

For items 3 through 8, above, if there are not sufficient resources to provide interpreters for all who need it in those case types, “preference shall be given for parties proceeding in forma pauperis pursuant to Section 68631 of the Government Code.” (Evid. Code, § 756(c).)

Comments, Alternatives Considered, and Policy Implications

This change is necessary to comply with the newly adopted law. The Judicial Council could continue to operate under the direction provided in January 2014, but CIAP believes that would only create confusion in the courts. In the absence of Judicial Council direction, some courts would follow the new law and others might elect not to. Compliance with the new law is not discretionary however, and CIAP believes the council should revise its prior action to meet the dictates of the current law. The fact that the Judicial Council sponsored that law only serves to strengthen CIAP’s belief that the action recommended is the only appropriate action.

Implementation Requirements, Costs, and Operational Impacts

The Judicial Council’s Court Language Access Support Program (CLASP) is preparing various implementation tools, such as FAQs, webinars, and training tools to assist courts in understanding the provisions of AB 1657. For those courts that began providing interpreters in civil matters for indigent parties pursuant to the council’s January action, this new law represents a significant change. However, due to the need to conduct impact bargaining regarding the expansion of interpreter services into civil, most courts had not implemented the council’s policy as of the writing of this report.

Attachments and Links

1. Attachment A: Evidence Code section 756.

Attachment A: Evidence Code section 756 – Effective January 1, 2015

756. (a) To the extent required by other state or federal laws, the Judicial Council shall reimburse courts for court interpreter services provided in civil actions and proceedings to any party who is present in court and who does not proficiently speak or understand the English language for the purpose of interpreting the proceedings in a language the party understands, and assisting communications between the party, his or her attorney, and the court.

(b) If sufficient funds are not appropriated to provide an interpreter to every party that meets the standard of eligibility, court interpreter services in civil cases reimbursed by the Judicial Council, pursuant to subdivision (a), shall be prioritized by case type by each court in the following order:

(1) Actions and proceedings under Division 10 (commencing with Section 6200) of the Family Code, actions or proceedings under the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12 of the Family Code) in which a protective order has been granted or is being sought pursuant to Section 6221 of the Family Code, and actions and proceedings for dissolution or nullity of marriage or legal separation of the parties in which a protective order has been granted or is being sought pursuant to Section 6221 of the Family Code; actions and proceedings under subdivision (w) of Section 527.6 of the Code of Civil Procedure; and actions and proceedings for physical abuse or neglect under the Elder Abuse and Dependent Adult Civil Protection Act (Chapter 11 (commencing with Section 15600) of Part 3 of Division 9 of the Welfare and Institutions Code).

(2) Actions and proceedings relating to unlawful detainer.

(3) Actions and proceedings to terminate parental rights.

(4) Actions and proceedings relating to conservatorship or guardianship, including the appointment or termination of a probate guardian or conservator.

(5) Actions and proceedings by a parent to obtain sole legal or physical custody of a child or rights to visitation.

(6) All other actions and proceedings under Section 527.6 of the Code of Civil Procedure or the Elder Abuse and Dependent Adult Civil Protection Act (Chapter 11 (commencing with Section 15600) of Part 3 of Division 9 of the Welfare and Institutions Code).

(7) All other actions and proceedings related to family law.

(8) All other civil actions or proceedings.

(c) (1) If funds are not available to provide an interpreter to every party that meets the standard of eligibility, preference shall be given for parties proceeding in forma pauperis pursuant to Section 68631 of the Government Code in any civil action or proceeding described in paragraph (3), (4), (5), (6), (7), or (8) of subdivision (b).

(2) Courts may provide an interpreter to a party outside the priority order listed in subdivision (b) when a qualified interpreter is present and available at the court location and no higher priority action that meets the standard of eligibility described in subdivision (a) is taking place at that location during the period of time for which the interpreter has already been compensated.

(d) A party shall not be charged a fee for the provision of a court interpreter.

(e) In seeking reimbursement for court interpreter services, the court shall identify to the Judicial Council the case types for which the interpretation to be reimbursed was provided. Courts shall regularly certify that in providing the interpreter services, they have complied with the priorities and preferences set forth in subdivisions (b) and (c), which shall be subject to review by the Judicial Council.

(f) This section shall not be construed to alter, limit, or negate any right to an interpreter in a civil action or proceeding otherwise provided by state or federal law, or the right to an interpreter in criminal, traffic, or other infraction, juvenile, or mental competency actions or proceedings.

(g) This section shall not result in a reduction in staffing or compromise the quality of interpreting services in criminal, juvenile, or other types of matters in which interpreters are provided.