



## JUDICIAL COUNCIL OF CALIFORNIA

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on: January 22, 2015

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Title	Agenda Item Type
California's Language Access Plan: <i>Strategic Plan for Language Access in the California Courts</i>	Action Required
	Effective Date
	January 22, 2015
Rules, Forms, Standards, or Statutes Affected	Date of Report
N/A	January 6, 2015
Recommended by	Contact
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Hon. Manuel J. Covarrubias, Cochair, and Member of the Court Interpreters Advisory Panel	

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### Executive Summary

The Joint Working Group for California's Language Access Plan recommends that the Judicial Council adopt the *Strategic Plan for Language Access in the California Courts* (Language Access Plan). The plan is the result of an 18-month effort that included public hearings and public comment, including a 60-day period for submission of formal public comments on a draft plan. The final plan provides recommendations, guidance, and a consistent statewide approach to ensure language access to all limited English proficient (LEP) court users in California. Having completed its task, the Joint Working Group also recommends immediate formation of two groups that would report to the Judicial Council's Executive and Planning Committee: (1) a Language Access Implementation Task Force, which would develop and recommend the methods and means for implementing the Language Access Plan in all 58 counties, as well as coordinate with related advisory groups and Judicial Council staff on implementation efforts; and

(2) a translation committee, which would oversee translation protocols for Judicial Council forms, written materials, and audiovisual tools.

## **Recommendation**

The Joint Working Group for California's Language Access Plan recommends that the Judicial Council, effective January 22, 2015:

1. Adopt the *Strategic Plan for Language Access in the California Courts*;
2. Recommend to the Chief Justice the composition and establishment of a Language Access Implementation Task Force, to be overseen by the Executive and Planning Committee; and
3. Direct staff to report to the Executive and Planning Committee regarding the establishment of a translation committee to oversee translation protocols for Judicial Council forms, written materials, and audiovisual tools.

## **Previous Council Action**

The Joint Working Group for California's Language Access Plan includes members of both the Court Interpreters Advisory Panel (CIAP) and the Advisory Committee on Providing Access and Fairness, along with other stakeholders. In June 2013, the Chief Justice appointed the working group to develop a comprehensive statewide language access plan that will serve California's LEP court users. In October 2013, the Joint Working Group provided an informational presentation to the council to update members on the working group's goals, timeline, and anticipated steps in the development of a comprehensive Language Access Plan (LAP).<sup>1</sup> In August 2014, the Joint Working Group provided an additional informational presentation<sup>2</sup> to the council regarding the formation of a draft plan. The status update in August included a description of the formal public comment process (from July 31 to September 29, 2014) that was then underway, and the Joint Working Group's intent to prepare and submit a final plan following the formal public comment process.

## **Rationale for Recommendation**

California is the most diverse state in the country, with approximately 7 million LEP residents and potential court users dispersed over a vast geographic area and speaking more than 200 languages. Without proper language assistance, LEP court users may be excluded from meaningful participation in the judicial process. Many LEP litigants appear without an attorney and without a qualified interpreter, and courts have had to rely on friends and/or family members

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<sup>1</sup> California's Language Access Plan: Status Report, Item J for the October 25, 2013 Judicial Council business meeting, available at [www.courts.ca.gov/documents/jc-20131025-itemJ.pdf](http://www.courts.ca.gov/documents/jc-20131025-itemJ.pdf).

<sup>2</sup> California's Language Access Plan: Update on Development of the *Strategic Plan for Language Access in the California Courts*, Item G for the August 22, 2014 Judicial Council business meeting, available at [www.courts.ca.gov/documents/jc-20140822-itemG.pdf](http://www.courts.ca.gov/documents/jc-20140822-itemG.pdf).

of the court user—individuals who generally do not understand legal terminology or court procedures—to act as the court interpreter. Further, LEP court users’ language needs are not limited to the courtroom; the need for language assistance extends to all points of contact with the public, including clerks’ offices, self-help centers, court-connected clinics, and beyond.

The California judicial branch has long supported the need for language access services in the courts. However, the branch has not adopted a comprehensive plan that provides recommendations, guidance, and a consistent statewide approach to ensure language access to *all* LEP court users. The *Strategic Plan for Language Access in the California Courts* (Language Access Plan) achieves this goal and aligns with the U.S. Department of Justice’s recommendations for California to expand its language access efforts. It also aligns with recent legislation in California (Assem. Bill 1657; Stats. 2014, ch. 721) that sets out priorities for the provision of court interpreters in civil proceedings. Extensive language assistance has been and continues to be a priority in the state’s courts, including providing court interpreters for many types of cases.<sup>3</sup>

In August 2013, the Chief Justice announced her vision for improving access to justice for Californians through an effort called “Access 3D” that involves physical, remote, and equal access to the justice system. Efforts to enhance language access for LEP court users are a critical component of this vision.

The Joint Working Group’s objective for the Language Access Plan is to provide a comprehensive set of recommendations that create a branchwide approach to providing language access services to court users throughout the state while accommodating an individual court’s need for flexibility in implementing the plan recommendations. A primary goal of the plan is to develop and support a culture in which language access is considered a core court service in every courthouse.

This report recommends that the Judicial Council recommend to the Chief Justice the composition and establishment of a Language Access Implementation Task Force, which will have a three- to five-year charge and be overseen by the Executive and Planning Committee. As part of its charge, the Implementation Task Force will develop an implementation plan for presentation to the Judicial Council and identify the costs associated with implementing the plan’s recommendations. The Task Force will coordinate with related advisory groups and Judicial Council staff on plan implementation and have the flexibility to monitor and adjust

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<sup>3</sup> The Legislature provides funding to the courts for interpreter services in a special item of the judicial branch budget (Program 45.45 of the Trial Court Trust Fund). At its public meeting on January 23, 2014, the Judicial Council approved recommendations that explicitly allow expenses for court interpreter funds from 45.45 to include costs for all appearances in domestic violence cases, family law cases in which there is a domestic violence issue, and elder abuse cases, as well as interpreters for indigent parties in civil cases. At its public meeting on December 12, 2014, the council modified the action, approving expenditure of these funds consistent with the priorities and preferences set forth in AB 1657. (For the full text of AB 1657, see [http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201320140AB1657&search\\_keywords=.](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB1657&search_keywords=))

implementation plans based on feasibility and available resources. The Task Force will also establish the necessary systems for monitoring compliance with the plan, and develop a single form, available statewide, on which court users may register a complaint about the provision of, or the failure to provide, language access (see Recommendations #60–62).

This report further recommends that the Judicial Council direct staff to report to the Executive and Planning Committee regarding the establishment of a translation committee to oversee translation protocols for Judicial Council forms, written materials, and audiovisual tools. The responsibilities of the translation committee will be to develop and formalize a translation protocol for Judicial Council translation of forms, written materials, and audiovisual tools, and will also include identifying qualifications for translators, and the prioritization, coordination, and oversight of the translation of materials (see Recommendation #36).

### **Comments, Alternatives Considered, and Policy Implications**

In February and March 2014, the Joint Working Group held three public hearings across the state.<sup>4</sup> Major themes that emerged during the public hearing process are summarized in the Joint Working Group’s August 2014 status report to the council.<sup>5</sup> Following the public hearing process, the Joint Working Group prepared a draft Language Access Plan, which was posted from July 31 through September 29, 2014, on the California Courts website for public comment.

#### **Formal public comments**

Twenty-one separate public comments, consisting of 195 pages, were submitted regarding the draft Language Access Plan during the formal public comment period. Commentators included:

- 41 legal services and community organizations;
- ACLU of California and other community organizations;
- California Association of Family Court Services Directors;
- California Commission on Access to Justice;
- California Federation of Interpreters;
- California Rural Legal Assistance;
- California State Bar’s Standing Committee on the Delivery of Legal Services;
- Indigenous language interpreters and community organizations;
- Individual superior courts (Alameda, Fresno, Los Angeles, Orange, Placer, and Ventura)
- Legal Aid Association of California; and
- Two attorneys, one court commissioner, and one court interpreter.

All formal public comments received were posted in their entirety to the LAP Joint Working Group’s web page. One commentator expressed the position that she did not agree with the

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<sup>4</sup> After the hearings, oral and written comments, as well as prepared presentations from panelists, were posted to the Joint Working Group’s web page, located at [www.courts.ca.gov/LAP.htm](http://www.courts.ca.gov/LAP.htm).

<sup>5</sup> California’s Language Access Plan: Update on Development of the *Strategic Plan for Language Access in the California Courts*, available at [www.courts.ca.gov/documents/jc-20140822-itemG.pdf](http://www.courts.ca.gov/documents/jc-20140822-itemG.pdf).

proposed plan. Two commentators agreed with the proposed plan, one did not express an opinion, and the remainder agreed with the plan if modified.

Major themes that emerged from the formal public comments are summarized below:

- Some individuals commented that greater specificity is needed for certain terms used in the Language Access Plan; for example, what constitutes “court-ordered, court-operated” programs, services, or events.
- Commentators, including individual courts, expressed concern that courts may not have an adequate (or any) case management system that is currently able to collect and track data on LEP court users.
- Legal services providers and others raised concerns about the phasing-in of civil case types for which qualified interpreters would be provided, including a request that indigency be a factor for prioritization. Reference to recent legislation, not yet in place at the time of release of the draft plan, was also made.
- Many suggested that the use of family and friends to interpret, especially minors, should be avoided because those individuals are not qualified to interpret court proceedings, do not understand legal terminology, and are not trained in necessary interpreter ethics and the need to be impartial.
- Groups, including the California Federation of Interpreters and ACLU, proposed that the California judicial branch should establish clear guidelines and standards for the use of video remote interpreting (VRI) to ensure due process and proper application. A number of courts, and other stakeholders, were positive about VRI and supportive of its role in expanding language access, particularly in languages other than Spanish.
- Practitioners expressed the view that Family Court Services mediation is an essential and mandatory court service in all child custody disputes and should be included in the initial phase-in of civil expansion to provide court interpreters in civil matters.
- Legal services organizations requested that specific recommendations addressing compliance with the Language Access Plan—such as the implementation committee establishing necessary systems for monitoring compliance, and the development of a complaint process for language access services—be prioritized for more immediate implementation. They also asked that the body charged with implementation of the plan include key language access stakeholders.
- Some commentators, including court administrators, expressed concern that a population threshold that would require translations of written or audiovisual materials into a community’s top five languages would be overly burdensome on courts. Other commentators, such as legal services agencies and community groups, requested a more expansive threshold that would increase the number of languages for translations.
- Court administrators in particular provided comments on the critical need for increased funding for the judicial branch, concerned that, without additional funds, compliance with the language access plan would present difficulties or lead to a reduction of court services in other areas.

Attachment 2 to this report is a public comment chart including the Joint Working Group's responses to individual comments.<sup>6</sup> As described in the comment chart and below in this report, the Joint Working Group reviewed all public comment and incorporated numerous suggested changes into the final plan.

### **Alternatives considered**

The Joint Working Group met in person on October 21 and 22, 2014, to discuss public comment and revisions to the draft Language Access Plan. Several of the suggestions made by commentators were included in the final plan. The working group then held a final meeting by teleconference on December 5, 2014, to discuss final changes to the plan and approved the attached plan for submission to the Judicial Council. The major areas that the Joint Working Group discussed at these meetings, along with subsequent changes made to the plan, are summarized below:

- *Tone* — The Joint Working Group agreed that the tone of the Language Access Plan needed to be revised to not focus so much on challenges or constraints experienced by the courts, but to instead focus on future opportunities and the need to make language access a part of core court services.
- *Implementation* — The Joint Working Group added language to the front of the plan regarding the formation of a Language Access Implementation Task Force (see also discussion below in the section regarding Implementation Requirements), and clarified that the membership of the task force should include language access stakeholders from both inside and outside the court (including, but not limited to, judicial officers, court administrators, court interpreters, legal services providers, and attorneys that commonly work with LEP court users). The working group also agreed with commentators that specific recommendations addressing compliance with the plan, such as establishing necessary systems for monitoring compliance, and development of a complaint process for language access services, should be prioritized and were moved to Phase 1.
- *Definitions/Concepts* — The Joint Working Group agreed with commentators that more clarity was needed for concepts utilized throughout the plan, and a section identifying and explaining major plan concepts was added to the front of the document.
- *Civil expansion* — The Joint Working Group agreed that Recommendation #8 regarding civil expansion should conform to language in Evidence Code section 756, which is effective January 1, 2015,<sup>7</sup> and further, that the goal should be to provide court interpreters in all civil matters by the end of Phase 2 (i.e., by the end of 2017). Family Court Services mediation was also added to Recommendation #8 as a priority for providing court interpreters (also within Phases 1 and 2).

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<sup>6</sup> For ease of understanding, all commentators who submitted formal public comment on the draft Language Access Plan are listed alphabetically in the first four pages of Attachment 2, and then each commentator's specific comments on plan provisions are broken up and listed in the order that the provisions appeared in the draft plan (e.g., Goal 1, Goal 2, etc.).

<sup>7</sup> Evidence Code section 756 provides a prioritization for civil case types in the event that a court does not have access to sufficient resources to handle all civil matters (see Attachment 1, Appendix H).

- *Use of friends and family to interpret* — The Joint Working Group agreed with commentators that the use of family and friends, especially minors, to provide court interpretation should be avoided for the reasons cited above. The consensus was to delete former Recommendation #17 regarding use of family and friends to interpret, since it was duplicative of the provisional qualification process. The recommendation prohibiting the use of minors to interpret for court proceedings (#23) was also clarified.
- *Court-ordered programs* — The Joint Working Group added Recommendation #11 to clarify that LEP court users should not be ordered to any court-ordered programs that cannot provide appropriate language accessible services, and that courts must work with LEP court users, including, if applicable, alternative and language accessible programs, to ensure their ability to meet the requirements of court orders.
- *Video remote interpreting (VRI)* — The Joint Working Group discussed VRI and agreed it was important to add language to the plan stating that the quality of interpretation is of paramount importance and should never be compromised. Two new recommendations were added: Recommendation #14 states that the Implementation Task Force will establish minimum technology requirements for remote interpreting; and Recommendation #16 states that the Judicial Council should conduct a VRI pilot project, in alignment with the judicial branch’s Tactical Plan for Technology 2014–2016, to collect data on the impacts of VRI usage and provide a cost-benefit analysis.
- *Phasing* — A number of the recommendations were discussed as being of greater priority and were moved to an earlier phase. For example, Recommendation #61 (former #63), which requires the Implementation Task Force to establish systems to monitor compliance and provide plan oversight, was moved up to Phase 1.
- *Waiver* — The working group also clarified the recommendation regarding waiver (Recommendation #75) to help the Implementation Task Force with development of appropriate standards for waiver (including that the policy shall reflect the expectation that waivers will rarely be invoked in light of access to free interpreter services).

### **Policy implications**

The Language Access Plan proposes a measured, incremental approach to expand and enhance language access in the California courts for California’s 7 million LEP residents and potential court users. California has over 1,800 highly trained certified and registered court interpreters, significantly more than any other state, who provide 215,000 interpreter service days annually at a cost of over \$92 million each year.<sup>8</sup> Expansion of language access services will by necessity require creative solutions and securing additional court funding.

The plan includes eight goals and 75 recommendations designed to address and meet the various language access needs of LEP court users at all points of contact with the courts. In preparing the final plan, the Joint Working Group was very deliberate in its use of the terms “will,” “must,” and “should” throughout the recommendations of the plan, and has made further revisions to

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<sup>8</sup> Total statewide court interpreter expenditures incurred during 2013–2014 that are eligible to be reimbursed from the Trial Court Trust Fund (TCTF) Program 45.45 (court interpreter) totaled \$92,471,280.

clarify the wording of individual recommendations. Where the recommendations addressed policy statements on language access, or addressed activities that are required by law or are under the power and control of the Judicial Council, the terms “must” and “will” were generally used. Where the Joint Working Group made recommendations for local courts to take certain actions to expand language access at the local level, the term “should” was utilized.

Each LAP goal has an issue description, which captures the concerns heard at listening sessions conducted at the beginning of 2014, at the public hearings, or through public comment, followed by recommendations that outline strategies for providing language accessibility.

**Goals:**

1. Improve Early Identification of and Data Collection on Language Needs
2. Provide Qualified Language Access Services in All Judicial Proceedings
3. Provide Language Access Services at All Points of Contact Outside Judicial Proceedings
4. Provide High Quality Multilingual Translation and Signage
5. Expand High Quality Language Access Through the Recruitment and Training of Language Access Providers
6. Provide Judicial Branch Training on Language Access Policies and Procedures
7. Conduct Outreach to Communities Regarding Language Access Services
8. Identify Systems, Funding, and Legislation Necessary for Plan Implementation and Language Access Management

One of the plan’s key goals (Goal 2) is to ensure that, “By 2017, and beginning immediately where resources permit, qualified interpreters will be provided in the California courts to LEP court users in all courtroom proceedings and, by 2020, in all court-ordered, court-operated events.” Many civil cases such as evictions, guardianships, conservatorships, and family matters involving custody of children and termination of parental rights are critical to the lives of Californians. Court-ordered and court-operated programs, services and events, such as settlement conferences or mandatory mediation, are also essential to the fair resolution of disputes. It is therefore the intent of the Language Access Plan that the phase-in of interpreter services in civil proceedings and court-ordered, court-operated events be instituted immediately and be ongoing throughout the process of implementation of full language access.

The plan recommends a strategy for courts to gradually phase in the expansion of spoken language interpreter services in all court matters, as well as the creation of scheduling protocols to ensure the most efficient use of interpreters. The plan also proposes the thoughtful and responsible deployment of technological solutions, such as appropriate use of video remote technology and multilingual audiovisual tools, which provide language access while ensuring due process and high quality language services. The recommendations in the plan also set the framework for seeking the additional funding that will be needed to enable the courts to meet the increased demand on court resources that will arise from the branch’s commitment to language access, without sacrificing any other court services.



## **Implementation Requirements, Costs, and Operational Impacts**

The most significant operational impact for courts will be the expansion of court interpreters in all civil matters, which should already be underway in many courts. The Language Access Plan also identifies and advocates for the use of cost-effective methods to enhance language access throughout the courthouse, such as early identification of LEP court users, enhanced data collection, appropriate notice of language access services, multilingual self-help services and brochures, multilingual information on court websites (both audio recordings and written information), remote language services for interactions with court staff, and translated court signage and Judicial Council and local court forms. The plan places a significant focus on the appropriate qualification and use of a broad spectrum of language access providers, from court interpreters to bilingual employees to volunteers at the various points of contact that LEP court users have with the courts. The Language Access Implementation Task Force will need to provide guidance for courts on all of these issues, from proper qualification of providers, to best or existing practices and innovative approaches regarding operational changes suggested in the plan, to the implementation of expansion of interpreters in civil proceedings.

The plan also identifies categories of training for judicial officers, court administrators, and court staff on how to understand and address the needs of LEP court users. Training and education will include education in cultural competence, the optimal methods of managing a court proceeding in which interpreting services are being provided, the provision of language access services throughout the court system, and state and local language access policies.

Other subjects addressed in the plan include the recruitment and training of bilingual court staff and interpreters, the formation of partnerships with community organizations serving LEP populations, and the need for an infrastructure to address implementation, monitoring, and quality control of all language access services.

The 75 recommendations in the plan enumerate the policies and operational changes that will need to take place to make comprehensive language access a reality in the California courts. To turn these recommendations and policies into a practical roadmap for courts, the plan recommends that the Judicial Council immediately form a Language Access Implementation Task Force, which would report to the Judicial Council's Executive and Planning Committee. The Implementation Task Force would develop and recommend the methods and means to fully implement the Language Access Plan in all 58 counties, and would coordinate with related advisory groups and Judicial Council staff on implementation efforts, as appropriate. The Implementation Task Force would also make best estimates of the costs of implementation and the feasibility of the phasing process based upon resources available. The implementation process would include the monitoring and updating of the LAP, in particular, as the trial courts provide information, feedback, suggestions, and innovative solutions. The Joint Working Group also recommends that the Judicial Council direct staff to report to the Executive and Planning Committee regarding the establishment of a translation committee to oversee translation protocols for Judicial Council forms, written materials, and audiovisual tools.

## **Relevant Strategic Plan Goals and Operational Plan Objectives**

The *Strategic Plan for Language Access* supports Goal I of the Judicial Council’s 2006–2012 strategic plan—Access, Fairness, and Diversity—which sets forth that:

- All persons will have equal access to the courts and court proceedings and programs;
- Court procedures will be fair and understandable to court users; and
- Members of the judicial branch community will strive to understand and be responsive to the needs of court users from diverse cultural backgrounds.

The plan also aligns with the 2008–2011 operational plan for the judicial branch, which identifies additional objectives, including:

- Increase qualified interpreter services in mandated court proceedings and seek to expand services to additional court venues; and
- Increase the availability of language access services to all court users.

The plan also aligns with the Chief Justice’s Access 3D framework and enhances equal access by serving people of all languages, abilities, and needs, in keeping with California’s diversity.

## **Attachments**

1. *Strategic Plan for Language Access in the California Courts*
2. Chart of comments on Proposal SP14-05 [the draft plan posted 7/31/2014]