

CALIFORNIA JUDICIAL BRANCH

Strategic Plan for Language Access in the California Courts (Proposal SP14-05)

Formal Public Comments Received

(The draft *Strategic Plan* was posted on the California courts website for public comment on July 31, 2014, with the comment period continuing through September 29, 2014)

From: [Kenneth Brooks](#)
To: [Denton, Douglas](#)
Subject: Interpreters LA Daily Journal 8/7/2014
Date: Monday, August 11, 2014 3:49:55 PM

Thank you for addressing this topic. I read in the article that actual changes are scheduled for 2015. This may be too soon given the legislative part asking for needs research. I recommend we do the complete research first. Ken.

From: [Invitations](#)
To: [Denton, Douglas](#)
Subject: FW: Invitation to Comment: SP14-05
Date: Monday, August 18, 2014 1:46:17 PM

For your proposal -

-----Original Message-----

From: Invitations
Sent: Monday, August 18, 2014 12:58 PM
To: Invitations
Subject: Invitation to Comment: SP14-05

Proposal: SP14-05
Position: Disagree
Name: Diana Barahona
Title: court interpreter
Organization: California Federation of Interpreters Comment on Behalf of Org.: No

COMMENT:

Chief Justice Tani Cantil-Sakauye was correct when she said the courts must provide equal access to justice for all Californians: "Access to the courts for all LEP individuals is critical not just to guarantee access to justice in our state, but to ensure the legitimacy of our system of justice and the trust and confidence of Californians in our court system."

This is not just a matter of fairness, it is the law, as the U.S. Justice Department told the courts in its August 16, 2010 letter. Not providing interpreters or charging for interpreters is a violation of people's civil rights, and it has been going on for decades. The courts need to be reminded of this.

Therefore I propose that Title VI of the Civil Rights Act, National Origin Discrimination Against Persons With Limited English Proficiency be placed on page one of the Access Plan, not in an appendix on the next-to-the-last page.

Regarding the use of VRI to expand language access:

I support the position of the California Federation of Interpreters, which stated the following:

"The experience of judicial systems in other states, as well as its application in private industry indicates that VRI is often implemented with unreasonable expectations for its potential to increase language access services and reduce costs while ignoring concerns and the limitations of the technology. Large outlays of capital are undertaken to implement the technology resulting in users becoming invested in the use of VRI regardless of the harm it may cause. This then presents court administrators with the problematic choice of maintaining a commitment to use a system that oftentimes does not provide meaningful access, or abandoning a significant investment that was originally meant to save money." (September 2013) http://www.calinterpreters.org/wp-content/uploads/2013/10/CFI_VRI_Position.pdf

There has been a headlong rush by courts to outsource interpreting services to companies promising lower costs without asking for any input from interpreters themselves. The draft Access Plan itself highlights the many problems with remote interpreting, but without asking whether these problems, and the investment in the technology, will be worth the savings in labor costs. The Access Plan only vaguely mentions potential savings (and in my view, exaggerates them) without giving any numbers. How much money are these private companies going to charge per day or per half-day or per hour for a remote interpreter?

Additionally, are these interpreters all certified and registered? Since the Access Plan does not state

categorically that certified or registered interpreters must be used in all court proceedings involving widely-spoken languages, I suspect that the prices quoted by the private companies may be for interpreters who are not certified or registered in California.

Furthermore, although the Access Plan calls for giving the remote interpreter the opportunity to say that it's not working out, does anyone really believe that an interpreter working for a private company is going to say the hearing should be rescheduled so that a live interpreter can come in? Employees or even independent contractors are going to do what their employers want them to do, and that means that they absolutely will not say that their company should not be used for a hearing. And if that is the case, who is going to advocate for the LEP persons?

Finally, the remote interpreting companies are for-profit, whereas most court interpreting is performed by state employees. These private companies can only make a profit if their employees receive less in total compensation than public employees, which they will because they will not be unionized.

The requirement by the DOJ that the courts stop violating the civil rights of LEP individuals should NOT be used as an excuse to outsource work done by unionized state employees to non-union private corporations. As with all other cases of outsourcing, there will NOT be any real cost savings, but simply a shift in costs from the courts to workers receiving lower pay and benefits (and lowered state tax revenues), and a shift in income from state employees to profit out-of-state corporations.

Therefore, I propose is that the Access Plan recommend that VRI be put on hold until every effort has been made to use the current interpreter workforce, which includes independent contractors, to interpret in family courts, UD courts, small claims courts, civil courts and mediations. To date, there have been no meetings that I am aware of among court administrators, bench officers and court interpreters to see if some civil proceedings can be covered by assigned interpreters or with floaters.

Regarding recommendation #75, which proposes increasing the number of days independent contractors can work per year:

I propose that the law not be changed. If independent contractors want to work for the courts for more than 100 days, they can simply apply for employment under "F" status. This would make them employees, able to work as many days per year as they wanted to, while imposing no obligation on them to accept assignments. Because of this, it is unnecessary to make any changes to the Trial Court Interpreter Employment and Labor Relations Act.

Attempts to change the law would be highly detrimental to interpreters, the courts and to LEP individuals. The Trial Court Interpreter Employment and Labor Relations Act was passed to provide secure employment and benefits to hundreds of interpreters who were acting as de facto public employees, as well as to make the quality of interpreting more uniform and professional. The 100-day rule was put into the law to prevent widespread outsourcing interpreting services to the private sector that could be provided by court employees. The obvious solution to the need for more court interpreters is not to re-privatize interpreting services, but to hire more interpreter employees.

Regarding recommendation #76, which proposes having LEP persons waive their right to an interpreter:

I propose that no waivers of interpreter be allowed without counsel present. A person who doesn't have a lawyer and who doesn't understand English well (LEP) cannot make a knowing, intelligent and voluntary waiver of an interpreter. A waiver should only be allowed if the LEP individual has legal counsel present.

That said, people previously identified as LEP who don't have lawyers present should be allowed to state to the court that they are, in fact, proficient in English, (which is not the same as waiving their right to an interpreter) that they understand everything that is going on and that they can express themselves clearly. Whether this is the case can be determined by the judicial officer, using the same standards used to find that jurors are proficient in English.

Regarding Appendix A: Phase-In of Recommendations:

PHASE I: These recommendations are urgent or should already be in place. Actions to begin implementation of these recommendations should begin by year 1 (2015).

#8 Expansion of court interpreters to all civil proceedings. Qualified interpreters will be provided in the California courts to LEP court users in all courtroom proceedings and in all court-ordered/court-operated events.

Missing from Phase 1 is the urgent need for courts to stop charging parties for interpreting services they receive, which is a violation of their civil rights under Title VI of the Civil Rights Act. In the Compton courthouse, Dept. M, the court is still ordering parties who use an interpreter to pay \$76 for each hearing. This practice must stop immediately.

Another practice that must stop immediately is civil clerks instructing parties to bring their own interpreters to court-ordered mediations and other court-ordered events. Instead, civil clerks must be instructed to call interpreter services and schedule interpreters for court-ordered events.

Regarding #36, Establishment of Translation Committee:

The courts already employ many qualified translators on a full-time basis. To save money, I propose that the Translation Committee take advantage of this fact and request that qualified court interpreters volunteer to translate forms and signage into other languages.

From: [Invitations](#)
To: [Denton, Douglas](#)
Subject: FW: Invitation to Comment: SP14-05
Date: Friday, August 29, 2014 11:37:47 AM

-----Original Message-----

From: Invitations
Sent: Friday, August 29, 2014 11:33 AM
To: Invitations
Subject: Invitation to Comment: SP14-05

Proposal: SP14-05
Position: Agree
Name: Kristen Boney
Title: Senior Staff Attorney
Organization: Legal Assistance for Seniors Comment on Behalf of Org.: No
Address:
City, State, Zip: Berkeley California,
Telephone:
Email: |

COMMENT:

I support changes that will increase access to justice for those who have difficulty reading or understanding English. I am a legal services attorney in Alameda County, although I am writing on my own behalf, not my agency's. I represent seniors petitioning for guardianship of children in their care. For years now, our probate court has not provided interpreters for guardianship (or any) cases. My agency and my clients cannot afford to hire interpreters, so litigants must bring family members, none of whom are trained, to act as interpreters. This impedes their access to justice. Many other litigants are self represented and have a much more difficult time than those with attorneys.

From: [Invitations](#)
To: [Denton, Douglas](#)
Subject: FW: Invitation to Comment: SP14-05
Date: Monday, September 08, 2014 9:03:15 AM

-----Original Message-----

From: Invitations
Sent: Friday, September 05, 2014 11:09 AM
To: Invitations
Subject: Invitation to Comment: SP14-05

Proposal: SP14-05
Position: Disagree
Name: Diana Barahona
Title:
Organization: California Federation of Interpreters Comment on Behalf of Org.: No

COMMENT:

I am submitting an article about the experience of courts in the UK after they outsourced interpreting services to a private corporation. It is titled, "Lost in privatisation: Capita, court interpreting services and fair trial rights (<http://www.irr.org.uk/news/lost-in-privatisation-capita-court-interpreting-services-and-fair-trial-rights/>)

This move resulted in costly delays in proceedings, defendants remaining in jail just because they hadn't been able to obtain interpreters for them, and the use of less qualified interpreters by the private contractor. If California courts try to replace interpreters with VRI, the results will be even worse.

Written by Aisha Maniar

A translator and human rights activist analyses the ongoing issues thrown up by the privatisation of court interpreting services by the Ministry of Justice.

Next year marks the 800th anniversary of the Magna Carta, arguably one of the most important legal documents in the world, guaranteeing the right to a fair trial. That right is also ensured under Article 6 of the European Convention on Human Rights, which includes the minimum right of a defendant 'to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him' and 'to have the free assistance of an interpreter if he cannot understand or speak the language used in court.' The right to interpretation also applies to complainants. These fair trial rights are now under threat in various ways in modern Britain, particularly through plans to privatise legal aid services and the privatisation of court interpreting services, the privatisation framework agreement for which became operational on 30 January 2012.

The framework agreement replaced a system governed by a National Agreement whereby interpreters, who are largely self-employed and work independently, are selected from the National Register of Public Service Interpreters (NRPSI), the UK's independent voluntary regulator for the interpreting profession (formed in 1994). This system, introduced following a number of miscarriages of justice related to a failure to appreciate the language needs of criminal justice system users, functioned adequately until the beginning of this decade. But in August 2011, following a public procurement procedure, the Ministry of Justice (MoJ) signed a five-year, £90 million contract with a small private language service provider called Applied Language Services (ALS). Before the contract went live six months later, ALS was acquired by Capita, a private company notorious for its large stake in the public sector and its ability to both secure and mismanage public contracts. Both the MoJ and ALS deny that they knew at the time of signing the contract of the imminent acquisition of ALS by Capita.

A failure to heed the warnings and advice given by the very interpreters who are essential to the provision of such a service, along with a failure to consider what would be involved in managing such a large contract, meant that the new system fell apart before it even began. Most of the over 2,200 qualified and highly-skilled interpreters registered with the NRSPI, who work in over 100 languages, decided to boycott the new arrangement, which both cut their pay and downgraded the level of skill required to provide the service. As a result, in its first month of operation in February 2012, just 67 per cent of interpreting assignments were fulfilled. Interpreters failed to turn up, delaying all kinds of legal hearings and leaving defendants on remand for weeks, sometimes simply because no-one had been allocated to interpret for them, and courts and judges reverted to the old agreement, kept as a contingency plan, contacting interpreters through the register. Two years on, over 85 per cent of qualified court interpreters are reportedly still boycotting the agreement.

Although the agreement set a target to fulfil 98 per cent of interpreting assignments, that target has yet to be met, effectively meaning that Capita has been continuously in breach. Statistics published by the MoJ in March 2013, taken from Capita and covering the first year of the agreement, show that out of over 130,000 requests made for language services covering 259 languages, there was only a 90.2 per cent 'success rate' for the whole period. Indeed, at the end of the first year, in January 2013, just 86 per cent of assignments had been met, meaning that in almost one in seven hearings where an interpreter was necessary, none was provided.

The agreement fared little better in its second year, and cancellations and disruptions to court proceedings continued. In May 2013, a judge in a quadruple murder trial called the system a 'complete disgrace' when a Mandarin interpreter failed to attend for a defendant to enter a plea; the court clerk had been told that it was not worth the interpreter's time financially to attend the hearing in Nottingham. The hearing was postponed until July. Again, in November 2013, a judge at Bradford Crown Court described the failure on two occasions to provide a Polish interpreter as 'wholly unsatisfactory' in a sentencing hearing for two women who had pleaded guilty in March to keeping a brothel; the judge was told sentencing would have to wait another week.

The need for courtroom interpreters

Interpreting services are used mainly in criminal and immigration proceedings. Interpreters have played a crucial role in a number of major cases over the past year, including child cruelty, trafficking and murder. Without an interpreter, none of these cases would have seen justice. The interpreter's task in interpreting accurately and without prejudice, taking into consideration the social, cultural and behavioural codes of two languages and cultures is no small feat; it takes an exceptional amount of skill and ability. The interpreter's role in the final verdict is by no means incidental or marginal.

A foreign language speaker who can speak some English may sometimes ask for an interpreter to mitigate the difficulties often faced by giving evidence in court or standing trial, particularly if they are asked to relate traumatic incidents. The failure to provide such a service, which sees trials delayed, cases reheard and prisoners held for extended periods on remand, is not only an additional unnecessary cost to taxpayers but also undermines the credibility of and confidence in the justice system.

Where an interpreter fails to attend, judges may file wasted cost orders against the supplier, Capita, if the non-attendance is evidence of 'serious misconduct' such as negligence. So far, only eleven such orders have been filed, totalling £7,299. In March 2013, Capita won an appeal against ordered costs of £23.25 for interpreter non-attendance, as its failure to provide a Lithuanian interpreter was considered a one-off, and not deliberate or negligent. Nevertheless, the judges dismissed Capita's argument that it only needed to deliver 98 per cent of the time, as per the agreement: 'the provision of an interpreter where either a witness or a defendant does not speak English (or Welsh), is essential. Without one a case cannot proceed [...] It is simply no use to a court having an interpreter there on 98% of occasions when interpreters are required, because if an interpreter is required justice cannot be done without one and a case cannot proceed. An interpreter is required on 100% of such occasions.'

'Saving public money'

The complaints have continued from all sides: interpreters, courts, lawyers and politicians. A damning report by the National Audit Office (NAO) on the procurement and performance of the agreement up to July 2012 was followed by reports by the parliamentary Public Accounts Committee (PAC)[1] and the

Justice Select Committee (JSC), which were both highly critical of the procurement and performance of the contract, describing the agreement as 'shambolic'. The JSC observed that while the old system had its own problems, it was not fundamentally faulty. The Committee also condemned the government 'edict' which told court staff not to participate in its online consultation about the changes.

The MoJ's response, published in April 2013, rather than paying attention to the qualitative issues raised by critics, emphasised savings and 'better value for money for taxpayers'. During subsequent discussions with interpreter organisations and professionals, it offered a new package to entice interpreters, including a 22 per cent pay increase and other improved terms, pumping a further £2.8 million of public money into the agreement, while conceding that performance 'under the contract has not been of a satisfactory level'. As yet there is no evidence either that qualified interpreters have been won over by the new package or that the contract offers better value for money for taxpayers.

The MoJ claims that the contract has led to savings of £25 million over the past two years, while Capita Translation and Interpreting reported a sharp fall in its profits after taking on the contract in 2012, with a steep rise in operating costs. Having failed to impose contractual penalties for non-performance in the first few months of the agreement, the MoJ fined Capita over £46,000 for 'fatal flaws in its court interpreter service between May 2012 and November 2013'[2] – the maximum possible under the contract, which PAC chair Margaret Hodge MP referred to as 'peanuts' in view of the size of the contract and the level of non-performance.

During the parliamentary debate on the issue in June 2013, Sir Alan Beith MP, chair of the Justice Committee, stated that while the MoJ has emphasised cost-effectiveness and efficiency, 'the principle must be to provide the same level of service. The Government signally [sic] failed to achieve that objective'; it had failed to achieve 'any improvement in service to the courts.' 'The standard of court interpretation needs to be restored, preferably by bringing back those whose experience can return the service to the standards that the courts used to expect,' he added. Alan Johnson MP, who also praised the achievements of the old system, concluded that 'justice and the right to a fair trial have been seriously compromised as a result of this debacle.' The only response from then justice minister Helen Grant was again to emphasise the savings that the MoJ had made, as opposed to improvements to the service.

Dodgy figures, declining standards

The latest statistics show the 'success rate' to have been around 94 per cent by the end of September 2013 (still 4 per cent below the contractual target). There are unexplained discrepancies, too, in Capita's statistics. The MoJ's most recent statistics, published in January 2014, show that 237,700 interpreter requests were fulfilled in the period between 30 January 2012 and 30 September 2013.[3] That is over 400 per day, yet in 2012, then justice minister Lord McNally stated that the courts receive some 800 interpretation requests per day. How can this discrepancy be accounted for?

The current agreement makes use of a three-tier system, with Tier 3 interpreters being insufficiently qualified to interpret in court. But according to the progress report by the NAO, there has been a sharp increase in the use of Tier 3 interpreters; by November 2013, they were dealing with 10 per cent of the month's bookings. Tier 3 interpreters are only to be used as a last resort and lack adequate qualifications. The NAO observed that the quality of interpreters is still not adequately assessed. Not surprisingly, complaints went up in the first three quarters of 2013. As for value for money, the NAO pointed out that the 'savings' boasted by the MoJ took no account of costs of delay and additional work in court cases.

Observing that 'This is a vital service for ensuring that people who do not speak English as a first language have fair access to justice', PAC chair Margaret Hodge MP invited the MoJ and Courts Service to speak to the committee again in January. The committee criticised Capita's failure to improve the service, pointing out that it had failed to fulfil over 23,000 requests, and the MoJ's failure to test the market before putting an extra £2.8 million into the contract in May 2013. Was it really value for money? MPs asked. Hodge's view was that Capita 'has not succeeded in this contract'. Asked whether the MoJ had considered terminating the agreement, Peter Handcock (CEO of the Courts and Tribunals Service) replied he had thought of it at the beginning but would not contemplate that now as the service was satisfactory. Why is the MoJ still considering making further contracts with Capita, asked the committee, when it has clearly failed in this case.

More criticism – and more contracts

Now in its third year, the agreement appears ever more unsalvageable, particularly considering the decline in standards and the continuing boycott by professionals. Beyond court interpreting services, the issue has wider ramifications for the outsourcing of legal services by the MoJ; the emphasis on saving money may be appropriate in a private corporate setting, yet these are public services paid for and in the service of the wider public, where quality matters. During the June 2013 parliamentary debate, Lorely Burt MP questioned whether the MoJ is 'trying to deliver an important service at the potential expense of quality'. Jeremy Corbyn MP observed that 'The Ministry of Justice and others are obsessed with the contract culture. It distances Ministers from the immediacy of decisions and, at the other end, leaves the public and the victims in a much worse situation, with much less accountability on the delivery of services.'^[4] Indeed, Capita is not accountable to the public (who pay for the service), but to the MoJ with whom it is has a contract. Ian Swales MP called it 'a business to win a public sector bid or PFI contract and then trade it on. That is how companies really make money, and ALS is a good example of it.'^[5]

The MoJ's relationship with companies like Capita is being called into question, with MPs and interpreters asking time and again why the agreement has not been terminated given its catalogue of disasters. Since 30 January 2012, the ministry has had the option of terminating the contract for non-performance, but has chosen not to. Instead, Capita was named as a preferred bidder for the MoJ's electronic tagging contract, in a deal that will create £400 million in revenue for the company over six years. Because of fraud by its rivals Serco and G4S, the contract has already been handed to it on an interim basis until March 2014. According to the Law Society Gazette, the MoJ has increased spend significantly with Capita since 2010/11, from £3.9 to £25 million in 2011/12, although as the PAC suggested, the problems in this contract could affect other contracts currently going through the MoJ, such as for probation services and legal aid. Under the pretext of value for money and savings, with a legal system increasingly geared towards those who can afford it, the real victim is the justice system, which is up for sale.

From: Invitations
To: Denton, Douglas
Subject: FW: Invitation to Comment: SP14-05
Date: Wednesday, September 17, 2014 7:45:11 AM

-----Original Message-----

From: Invitations
Sent: Tuesday, September 16, 2014 4:23 PM
To: Invitations
Subject: Invitation to Comment: SP14-05

Proposal: SP14-05
Position: Agree
Name: Michael Planet
Title: Court Executive Officer
Organization: Superior Court for Ventura County Comment on Behalf of Org.: Yes
Address:
City, State, Zip: Ventura CA, 93006

COMMENT:

The primary goal of this proposed Strategic Plan to "incorporate language access as part of the core court services" is consistent with this court's mission, and one we support. The draft is comprehensive, ambitious, and cognizant of the operational and budget challenges currently facing the trial courts.

CALIFORNIA COMMISSION ON ACCESS TO JUSTICE

c/o State Bar of California · 180 Howard Street · San Francisco, CA 94105

September 9, 2014

VIA EMAIL AND U.S. POSTAL MAIL

Joint Working Group for California's Language Access Plan
c/o Judicial Council of California
455 Golden Gate Avenue
San Francisco, CA 94102
LAP@jud.ca.gov

Dear Members of the Joint Working Group:

The California Commission on Access to Justice is grateful for the opportunity to comment on the *Strategic Plan for Language Access in the Courts*. The Commission has long been interested in language access issues, and in 2005 published the report *Language Barriers to Justice in California* to illuminate language access issues in California, as well as to make recommendations for improvement. We are delighted that the *Strategic Plan* addresses the issues that the Commission was concerned about, and also wish to support recommendations regarding some basic implementation issues:

- **Language access is neither optional nor supplemental.** Language access is critical to access to justice, and should be a core service of the courts. We concur with the Chief Justice in deeming language access one of the highest priorities for the courts, and thank the Joint Working Group for creating a plan in which the early stages of implementation will begin immediately.

In these tough economic times for California courts, language access might be regarded by some as an unaffordable luxury, but the Commission believes that it is as important and necessary, as was the implementation of the Americans with Disabilities Act (ADA). In the early days of ADA implementation, there were objections to it—based on cost—that rarely are heard now because people have come to understand that access is a core element of fairness.

- **Additional resources from the legislature are needed to implement the plan.**

The Commission strongly endorses Recommendation 57 of the Strategic Plan, regarding securing funding for language implementation through legislation, so that all phases of the plan can be fully implemented without *any* reduction in other court services, which are already highly impacted by the last four years of budget cuts.

HON. RONALD B. ROBIE
Chair
Court of Appeal, Third Appellate District
Sacramento

JOANNE E. CARUSO
Vice Chair
Jacobs Engineering Group, Inc
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MARY LOU ARANGUREN
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MEERA E. DEO
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VENUS D. JOHNSON
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HON. MARK A. JUHAS
Los Angeles County Superior Court
Los Angeles

MARY E. KELLY
Calif. Unemployment Insurance Appeals Board
Los Angeles

HON. VICTORIA S. KOLAKOWSKI
Alameda County Superior Court
Hayward

MICHAEL J. LEVY
California Energy Commission
Sacramento

HON. GOODWIN H. LIU
California Supreme Court
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PAUL S. MARKS
Neufeld Marks
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DEBORAH D. MOSS-WEST
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PAUL S. TEPPER
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DIAN M. VORTERS
State of Calif., Office of Administrative Hearings
Sacramento

KELLI M. EVANS
Senior Director Administration of Justice
State Bar of California

- **Guidelines for the use of remote interpreting are important.**

The Commission supports the use of remote interpreting as one means to ensure language access, and it also supports the development of strong guidelines regarding the factors to be considered in determining when to use remote interpreting. Therefore, the Commission supports Recommendation 12, "(r)emote interpreting in the courtroom should be used only after the court has considered, at a minimum, the specific factors set forth in Appendix B." Appendix B incorporates Appendix D, and together they list multiple factors and circumstances to be considered in balancing the need to use court resources efficiently and conveniently against the need to ensure attorney client confidentiality and support effective interpretation.

- **Staff training on language access policies and procedures is critical.**

The Commission applauds Recommendation 50, regarding training court staff, administrators and bench officers to provide consistent, effective, and culturally competent language access services. In *Language Barriers*, the Commission recommended this type of training to give court staff the skills to determine what language assistance is needed, and what level of interpreter is capable of providing adequate service under the circumstances. The report further recommended that staff be provided with training in cultural differences because litigants from other countries may bring different political and cultural norms and perceptions that can affect courtroom communication. The report highlights the importance of adequate training because court staff without knowledge of the potential problems posed by cultural differences could inadvertently act or fail to act in ways that could prejudice the interests of litigants.

- **Implementation of the Strategic Plan should be swift.**

The Commission commends the Joint Working Group for proposing that Phase I of the Plan be implemented in 2015, and that the courts "will provide language access in all court matters by 2020." As the Commission's report *Language Barriers* noted nearly a decade ago, "(t)he starkest consequence of linguistic barriers to the courts is simply that justice is unavailable."

- **The courts should continue to communicate with the Limited English Proficient community and LEP advocates.**

The Commission is aware of the tremendous amount of work that was involved in creating the *Strategic Plan* and commends the Joint Working Group for listening to so many voices in developing the *Plan*, particularly those of the LEP community and of the legal services community. Both the public hearings and Recommendation 53, "Courts should establish partnerships with local community-based organizations....to gather feedback to improve court services for LEP court users and disseminate court information and education," parallel the recommendation in

Language Barriers that “local courts work with community-based organizations....to address language access issues and needs.” Ongoing communication, education, and improvements to language access in the courts will ensure that the goals of the *Strategic Plan* continue to be met in the future.

Thank you again for allowing the California Commission on Access to Justice to comment on the draft *Strategic Plan for Language Access in the California Courts*.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald B. Robie". The signature is written in a cursive style with a large initial "R".

Hon. Ronald B. Robie
Chair, California Commission on Access to Justice

From: [Alexander, Commissioner Sue, Superior Court](#)
To: [LAP](#)
Subject: Public Comment
Date: Friday, September 26, 2014 11:48:17 AM
Attachments: [Comments on Language Access Plan 2014.docx.docx](#)

Contact me if you have any questions. Thanks

Sue Alexander
Commissioner, Superior Court, Alameda County

Comments on Language Access Plan

Include having the Judicial Council Staff develop cards in all 147 languages that state that the matter is being continued to request an interpreter and the continuance date, and, until interpreters are available in all subject areas, if the litigant is to bring someone, who is appropriate to act as an interpreter. In many cases the litigant can't even understand when they are to return when the matter is continued to obtain an interpreter.

Many courts are in the process of updating their case management systems. Be sure that any case management system adopted by the courts has the ability to capture and maintain the language need information.

Recommendation 7 – Add county social services to list.

Recommendation 8 - Since current provisions for interpreters include minors and parents in dependency cases only if an attorney has been appointed, Phase 1 should include interpreters for minors and parents who are self-represented in dependency cases.

To clarify, Other Family Law are family law matters (dissolutions, legal separations, nullities and petitions for custody and support) that do not have domestic violence allegations, whether there are children or not. UPAs would be included in Phase 1 as parentage is determined in those matters. Where do family law cases with children born before or after separation fall? Is there a distinction for cases with/without Voluntary Declarations of Paternity? Since determination of whether the court provides an interpreter or not during the phase in will be so fact specific, it may be better to just include all family law matters with children and/or domestic violence allegations in Phase 1. (I realize that will increase the funding need.)

Recommendation 10 – More clarity is needed regarding court ordered, but not provided, services. Many services are not court provided, e.g. batterers treatment, DUI classes, traffic schools, parenting classes, etc. What “consideration” can the court give if these services are not provided in the community in the litigant’s language? Will the DMV accept an alternative to traffic school? Statutory changes to some mandatory sentencing provisions?

Recommendation 22 – Need clarity regarding when the court should provide interpreters and when the justice partners have responsibility to provide the interpreter.

Translations – There are several places that reference either the top 5 languages or languages spoken by 5% or more of the population. Is the intent to do whichever is greater? Some places say, whichever “is appropriate” (Recommendation 38) and others say “at least” (Recommendation 42). For example, if the top 5 languages total 40% of the population but there are 2 additional languages that more than 5% of the population speak, should the translations be done in all 7 languages? If there are no languages other than English that are spoken by 5% of the population, are translations done in the top 5

languages? If done at the state level, this is probably a non-issue since most common languages will be either the top 5 or 5% of some court's population.

Advisory Committees – 2 advisory committees are recommended – Implementation and Translation. Is the intent for these to be free standing advisory committees or sub committees of existing advisory committees and are they time limited or ongoing?

Complaint process – There may be an issue of having bilingual staff assist (page 78) since that may be the only staff that speaks the complainant's language and may be the one they are complaining about. If that's the case, there may need to be some referral process for assistance, keeping in mind confidentiality issues.

September 26, 2014

Via Electronic and U.S. Mail

Chief Justice Tani Cantil-Sakauye
Judicial Council of California
455 Golden Gate Avenue
San Francisco, CA 94102

Joint Working Group for California's Language Access Plan
Judicial Council of California
Court Operations Services
Operations & Programs
c/o Douglas G. Denton
455 Golden Gate Avenue
San Francisco, California 94102

Re: Video Remote Interpreting (VRI) in California Courts

Dear Chief Justice and Joint Working Group:

We write to express our concern about current plans to deploy video remote interpreting ("VRI") in California's state courts.

The California state courts serve the largest population of limited-English proficient (LEP) individuals nationwide. Over the past thirty years, the courts have developed a strong foundation in law and practice to provide certified and otherwise qualified interpreters in many proceeding types, including criminal, juvenile and some civil proceedings. The courts have also established certification standards to ensure a consistent level of competent, in-court interpretation services.

We are concerned that current proposals by trial courts in the Central Valley, as well as the promotion of VRI initiatives by the Judicial Council, lack sufficient safeguards to require adequate technology and to limit VRI to instances in which in-court interpretation is otherwise impossible. It has been reported that these plans are not supported by a comprehensive cost-benefit analysis and fail to give due consideration to the implications for LEP communities. Specifically, from our understanding, the Fresno Superior Court and other Region 3 courts are launching VRI without any clear and enforceable statewide standards or conditions for its appropriate use. This anticipated use of VRI raises several serious concerns.

The Region 3 courts are deploying VRI using inadequate technology. It has been reported that the Region 3 courts are set to implement a conferencing system and equipment with poor video quality and narrow-band audio that will compromise the integrity of the communications and make a complete and accurate interpretation virtually impossible.

There appear to be no clear restrictions or guidance in place to ensure VRI is used appropriately. We are informed that the Region 3 courts intend to use VRI not just for unusual circumstances when no in-person interpreter is available or for one-on-one, out-of-court communications, but for in-court communications more generally, including evidentiary proceedings, regardless of the complexity or number of speakers. Further, the courts need not prioritize the use of in-person interpreters nor ask for the consent of litigants before relying on VRI, which is a marked departure from recognized standards for court interpretation.¹ To the extent that VRI is appropriate to expand access under limited circumstances—for emergency hearings and short matters that cannot be delayed, or for extreme language minorities for whom no interpreter is able to appear—these circumstances and proceeding types must be clearly and narrowly defined to ensure that remote interpreting is not misused.

Most important, due process and meaningful access to the courts may be threatened by the expanded use of remote interpretation. We caution against expanding the use of video appearances and video-mediated interpreting when serious questions remain whether the currently contemplated protocols and technological capacity adequately protect a number of constitutional rights. The right to competent interpretation in criminal proceedings is well established based on the fundamental connection between linguistic presence and due process rights.² Article I, section 14 of the California Constitution requires that a non-English speaking defendant be provided the assistance of an interpreter throughout the proceedings and “nothing short of a sworn interpreter at defendant’s elbow,” will satisfy this constitutional guarantee.³ Unfettered access to a competent interpreter is also closely associated with the right to effective assistance of counsel: “if the right to be [linguistically] present is to have meaning [it is imperative that every criminal defendant] possess ‘sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding.’”⁴

The need for competent interpretation in civil courts is also well established. As stated in a recent publication by the Brennan Center for Justice:

¹ See e.g. Court Interpreters Program of the Administrative Office of the Courts, Judicial Council of California, Recommended Guidelines for Video Remote Interpreting (VRI) for ASL-Interpreted Events, (2012) page 2, (“all parties must consent, on the record, to using VRI”).

² See *United States ex rel. Negron v. New York* (2d Cir. 1970) 434 F.2d 386, 389-90 (holding that a criminal defendant’s right to an interpreter affects fundamental due process rights and implicates key considerations of “fairness, the integrity of the fact-finding process, and the potency of our adversary system”); *People v. Carreon* (1984) 151 Cal.App.3d 559, 567 (“Various courts and commentators have noted denial of interpreter services impairs not only the defendant’s due process rights, but also his rights to confront adverse witnesses, to the effective assistance of counsel, and to be present at his own trial.” (citations omitted)).

³ *People v. Menchaca*, (1983) 146 Cal.App.3d 1019, 1026.

⁴ *United States ex rel. Negron*, 434 F.2d at 389 (quoting *Dusky v. United States* (1960) 362 U.S. 402, 402).

“Across the country, people are stuck in a Kafkaesque nightmare: they must go to court to protect their children, homes or safety, but they can neither communicate nor understand what is happening. [...] When state courts fail to provide competent interpreters to LEP people in civil cases, the costs are high. People suffer because they cannot protect their children, their homes, or their safety. Courts suffer because they cannot make accurate findings, and because communities lose faith in the justice system. And society suffers because its civil laws – guaranteeing the minimum wage, and barring domestic violence and illegal eviction – cannot be enforced.”⁵

While high quality video technology can help expand interpretation services that otherwise could not be delivered, clear standards are necessary to avoid unnecessary and inadequate VRI that undermines the right to competent and effective interpretation. Just as anyone who has attempted to attend a meeting as the sole person participating via video conference knows, one’s ability to participate in an otherwise in-person conversation is hampered by not being in the same room as other participants. Separating interpreters from LEP court users and other proceeding participants raises multiple issues that can impact accuracy, access, and linguistic presence. Hand gestures and other visual cues are necessary elements of communication that may be disrupted by VRI. Nonverbal cues are essential for an interpreter to understand meaning and accurately interpret what is being said. They are also critical for communicating with both the court and LEP witnesses (e.g., to request a repetition, a clarification or a pause for an LEP party to confer with her attorney, to remind a witness to pause to allow for the interpretation, or to wait before answering a question while an objection is pending). These critical nonverbal elements occur simultaneously, as the interpretation is taking place, and may be unreadable or go unnoticed using VRI, particularly with the technology currently available for the proposed expansion. The already difficult task of understanding verbal statements for precise translation necessary to court proceedings will undeniably be made more difficult by this separation and by less-than-perfect audio conditions. Private conferring between a defendant and his counsel with the help of a court interpreter will become artificially controlled, more limited, and potentially impossible depending on the VRI equipment and conditions. The issues outlined above, as well as more subtle issues related to the impacts of technology on communication, require further evaluation and review to ensure LEP rights are protected under any expanded use of VRI.

Given these concerns, recent research has recommended that “videoconference technology [for remote interpreting] . . . be used with utmost care and that further research on its effects is required before it can be used more widely.”⁶ In fact, the limited research available on video-mediated communication raises serious questions about potential harm to defendants and litigants from experimentation in the area of video appearances and other video mediated communications, including VRI. A Chicago study on the use of video conferencing for immigration courts hearings found that:

⁵ Laura K. Abel, Brennan Center for Justice, *Language Access in State Courts*, Brennan Center for Justice at New York University School of Law (2009) page 1.

⁶ See Braun, S. and J. L. Taylor, *Video-Mediated Interpreting: An Overview of Current Practice and Research in Videoconference and Remote Interpreting in Criminal Proceedings* (2011), University of Surrey, Guildford, UK, page. 29.

“Respondents relying on interpreters had a greater frequency of problems created or exacerbated by videoconferencing and were more likely to receive negative dispositions.”⁷

Considering the above concerns, we provide the following recommendations:

1. **VRI should not be implemented without statewide and enforceable standards in place to protect the integrity of the judicial process and the rights of all parties.** We urge the Judicial Council to adopt clear and enforceable rules on VRI to safeguard LEP rights as part of the language access plan. Standards for VRI must take into account the inherent limitations of video-mediated communications, set technological minimums, and ensure that the use of in-person interpreters is prioritized, as is already the case in other standards that have been adopted.⁸ Such standards should be established through a process that involves careful study of existing research as well as input from a broad array of stakeholders, and provides for testing and pilot programs to evaluate the success of implementation.
2. **The Judicial Council should adopt rules and budget policies to ensure that individual courts do not implement VRI before a statewide plan can be finalized.** We note that although the Judicial Council is currently developing a language access plan for California that could address the use of VRI, and has created mechanisms for public input, individual courts are already forging ahead with their own plans and adopting their own practices for implementing VRI before the statewide plan is even finalized.
3. **No assumption should be made that VRI is the one-stop solution to providing interpretation services.** We are encouraged by current efforts to adopt a statewide language access plan and to expand interpreter services to include all civil proceedings. We warn, however, that use of VRI is not an appropriate solution for expansion of interpreter services in most cases. Overreliance on VRI could create a two-tier system of justice, with second-rate access and compromised due process rights for LEP populations.

In sum, we oppose expanding the use of VRI in California courts before the language access plan is completed and without standards and rules that are based on validated research and that maximize access to justice and protect due process, and—except in rare situations where VRI is the best alternative to having *no* certified interpreter—we specifically object to the implementation of VRI in the Fresno Superior Court and other Region 3 courts given the reported technological shortcomings in their current equipment and capacity. Given

⁷ *Access to Courts and Videoconferencing in Immigration Court Proceedings* (2009) 122 Harv. L. Rev. 1181, 1193 n.46 (citing Legal Assistance Found. of Metro. Chi. & Chi. Appleseed Fund for Justice, *Videoconferencing in Removal Hearings: A Case Study of the Chicago Immigration Court*, pages 40-44 (2005), available at http://www.chicagoappleseed.org/projects/immigration/VideoConfReport_080205.pdf).

⁸ See Recommended Guidelines for Video Remote Interpreting (VRI) for ASL-Interpreted Events, *supra* n.3, page 3.

the serious risks to the integrity of communications, accuracy and fairness, VRI should not be pursued or justified as a cost-cutting opportunity. Rather, it should be implemented to enhance and expand language access to ancillary services outside the courtroom. Its use for court proceedings should be restricted until such time as the courts have completed a thorough, realistic analysis of its true costs, including its impacts on civil liberties and the integrity of the judicial process.

Thank you for your consideration and please do not hesitate to contact Julia Harumi Mass, Senior Staff Attorney with the ACLU of Northern California, at _____ if you have any questions.

Sincerely,

American Civil Liberties Union of California

California Public Defenders Association

Centro Legal de la Raza

Chinese for Affirmative Action

Immigrant Legal Resource Center

La Raza Centro Legal

Lawyers' Committee for Civil Rights of the San Francisco Bay Area

Legal Aid Society-Employment Law Center

Mujeres Unidas y Activas

Molly O'Neal, Santa Clara County Public Defender

Pangea Legal Services



THE STATE BAR OF CALIFORNIA

OFFICE OF LEGAL SERVICES
Standing Committee on the Delivery of Legal Services
2014-2015 Chair, Maria C. Livingston, Orange

180 Howard Street, San Francisco, California 94105

September 26, 2014

Joint Working Group for California's Language Access Plan
Judicial Council of California
455 Golden Gate Avenue
San Francisco, CA 94102
Attention: Douglas Denton

Dear Members of the Joint Working Group:

The Standing Committee on the Delivery of Legal Services (SCDLS) appreciates the opportunity to comment on SP14-05, the "Strategic Plan for Language Access in the California Courts." SCDLS strongly supports a commitment to make language access a core and routine component of the California justice system, recognizing that language access is critical to access to justice for limited English proficient Californians.

Low- and moderate-income litigants constitute a significant portion of the limited English proficient ("LEP") community navigating the California courts. Removing language barriers and improving language access in all court proceedings and other points of contact with the courts is critical to providing meaningful access to such litigants, who are also often unrepresented by counsel. While the plan aims, through goals and recommendations, to develop a consistent and comprehensive statewide approach to ensure language access to LEP court users, the following are some additional suggestions with special consideration to the delivery of legal services to low- and moderate-income litigants.

Goal I: Improve Early Identification of and Data Collection on Language Needs.

In addition to the seven recommendations identified in support of this goal, SCDLS urges the Judicial Council to create an optional form to collect information from litigants at the time of their respective initial filings or first appearances regarding whether there is a need for an interpreter and in what language. The form should be translated in every language spoken by 5 percent or more of any county's population within California. The clerk can then input the need for language services in the case system, thereby identifying the need for such services while promoting a more coordinated system for the provision of interpreters. The optional form would give the courts one method of early identification of language needs thereby facilitating the coordination of interpreters.

Goal II: Provide Language Access Services in all Judicial Proceedings

The plan provides for a phase-in approach for the provision of interpreters by case type where "immediate expansion of language access in all civil proceedings overtaxes a court's resources, either in terms of availability of appropriately qualified interpreters or availability of funding for interpreting services." SCDLS prefers an immediate implementation of this goal no

matter the case type given the implications that language barriers have on access to justice, but if not feasible, then priority should be given to litigants that have identified themselves as indigent. SCDLS also points out that many litigants in family law proceedings are unrepresented and encourages a plan that would immediately phase in interpreters for all such proceedings.

SCDLS agrees with Recommendation 11 that the use of in-person interpreters must be the preferred method of interpretation in court proceedings and court-ordered/court-operated events. While video interpreting may be more reliable than telephone interpreting, neither of these two methods should be used in most courtroom proceedings in the absence of exigent circumstances and/or without further evaluation of these modes of interpretation in courtroom proceedings or other court-connected proceedings, such as mediations. Before investing in video interpreting uniformly throughout the state, a pilot program could be developed in courts both in the urban and rural setting.

The plan appropriately points out that the quality of interpreter services is critical to providing meaningful access to LEP court users, and through Goal VIII addresses the development of an evaluative and complaint process for all aspects of language access, including interpreter quality.

Goal III: Provide Language Access Services at all Points of Contact Outside Judicial Proceedings

As acknowledged by the plan, the needs of LEP litigants extend to all points of contact. We suggest that for the sake of uniformity, Recommendation 25 be modified to give more direction to courts about which points of contact are “critical” for LEP users. For example, critical points of contact should include clerk’s offices, self-help centers, family law facilitator’s offices, and areas where information on fee waivers would be accessed. The development of written protocols or procedures by all courts will help ensure LEP litigants have language access (Recommendation 28) at all points of contact. Also, SCDLS supports the plan’s encouragement of the hiring of bilingual staff.

Goal IV: Provide High Quality Multilingual Translation and Signage

We support the plan’s recommendation for the multilanguage translation of critical Judicial Council forms and the development of signage to help LEP litigants physically navigate the courts. SCDLS suggests that the plan create a timeline for translation of crucial forms. We also suggest that the signage be translated as soon as practical for language access resources already being provided by courts. Recommendation 42 should also be implemented for all language services already provided by courts.

Goal V: Expand High Quality Language Access Through the Recruitment And Training of Language Access Providers

SCDLS commends the courts and the Judicial Council’s commitment to recruit and train language access providers and to support the development of proficiency standards to ensure that language services are high quality. SCDLS agrees that both recruiting and training

prospective interpreters are essential to help fulfill the demand for increased numbers of high quality interpreters in the years to come as the Language Access plan is implemented.

We also support Recommendation 45, which acknowledges the importance of courts and community partners to work together to examine strategies to help prospective interpreters pass the credentialing exam. However, beyond developing initial strategies, this recommendation does not address specifically how the courts and the Judicial Council can work with these partners, or the roles they should play to effectively carry out the strategies to ensure that prospective interpreters are able to prepare for and pass the credentialing exam. Furthermore, Recommendation 46, which generally encourages collaboration, does not specify how the Judicial Council and interpreter groups should collaborate to develop trainings for interpreters who interpret in civil cases and remotely. Recommendations 45 and 46 would be improved by including an actual action plan or process that will help ensure that the recommendations result in positive changes in the future.

SCDLS feels that having a pre-determined structure (perhaps involving an official sub-committee, working group, development of court supported pilot projects or training programs) to institute the collaborated strategies on a statewide level would help with these efforts. Beyond collaboration, the recommendations should require the Judicial Council, courts and interested partners to develop specific project goals, objectives, activities, and perhaps an evaluation plan to help further improve and increase the number of highly trained and certified interpreters that are physically and remotely available to LEPs in California.

Thank you again for the opportunity to provide these comments. For questions, please contact SCDLS Member Angélica Millán at _____ or SCDLS Staff Liaison Sharon Ngim at _____

Disclaimer

This position is only that of the State Bar of California's Standing Committee on the Delivery of Legal Services. 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.

Sincerely,



Maria C. Livingston, Chair
Standing Committee on the Delivery of Legal Services
The State Bar of California

Cc: Saul Bercovitch

September 26, 2014

Honorable Justice Maria Rivera & Honorable Manuel Covarrubias
Co-Chairs, Language Access Plan Working Group

Dear Justice Rivera and Judge Covarrubias:

The trial courts in Region 3, comprised of 32 counties in the central valley from Kern in the south to Sacramento and points north, will soon begin using Video Remote Interpreting (VRI) rather than the current practice of using in-person, on-site interpreters.

CFI recently reached an agreement with Region 3, and the courts are moving ahead with implementation. The courts have certain rights with regard to use of technology and our rights are limited with respect to those decisions. The Region 3 agreement came only after we reached impasse and the Region was unwilling to make further changes that we proposed were important and necessary to ensure quality interpreting. The fact that we reached a contract settlement does not mean, in any way, that we agree the plans for VRI in Region 3 are appropriate.

We continue to have serious concerns about how VRI will affect limited-English proficient (LEP) court users, judges, interpreters, and attorneys because of the adverse impacts on access and on the quality of interpretation that, we assert are inevitable, based on our expertise as interpreters.

The Superior Court of Fresno has pressed for use of video remote interpreting in a way that is remarkably ill advised. The spokesperson for the courts made clear that some Region 3 court administrators will use VRI for all languages as a cost-cutting measure, without giving priority to use of in-person interpreters. There are a number of serious problems with the plan:

- The equipment and conferencing solution is of such low quality that it will compromise the integrity of communications and LEP access.
- VRI is not limited to situations where no in-person interpreter is available, a widely recognized standard included in ASL and other VRI guidelines.
- The Region plans to use VRI for evidentiary proceedings and rejected setting clear and strict limitations on its use for non-evidentiary, non-complex hearings.

This drastic change in the way interpreter services are provided has been pushed through without a pilot project or rigorous testing, without a responsible cost-benefit analysis, and without due consideration of the adverse impacts on due process and equal access for LEP communities. Courts around the state and the Judicial Council appear to be accepting this unquestioningly, citing local discretion and "innovation," without due concern or analysis of the risks to due process rights for LEP communities.

We urge the working group to include strong recommendations in the LAP to ensure that VRI use is approached responsibly, with strict limitations that clearly define appropriate use. This is absolutely necessary to avoid adverse impacts on LEP court users and on the public perception of the judiciary that will result if VRI is implemented irresponsibly, as is already happening in Region 3.

Considering the fundamental role interpreters play in protecting court users' rights and in the fair administration of justice, the reckless approach regional administrators are taking is alarming. Responding to concerns about how remote interpreting will limit an interpreter's ability to interpret completely and accurately, the Region's spokesperson actually took the position that as long as we make our best efforts, *interpreters are not required to provide a complete and accurate interpretation.*

Providing a complete, accurate and impartial interpretation for the court and all parties is a core requirement of our training and code of ethics. We take an oath to interpret accurately and completely we take these responsibilities seriously.

We do not believe that judges would want us to compromise these standards; yet these standards are being seriously threatened by the regional administrators' plans to implement VRI. Use of VRI under conditions proposed in Region 3 will mean that judges cannot rely on accurate testimony through interpreters, as is necessary to make sound decisions, or make orders with confidence that they are being relayed and understood. The issues and rights at stake are too fundamental to be subjected to the kind of experimentation being proposed here.

We discussed these issues over several months in Region 3 and saw a demonstration of the proposed equipment. It is clear that the system has barely been tested and is grossly inadequate for the sensitive and challenging job we perform. We conducted our own research and consulted with a video-conferencing expert who confirmed the proposed equipment and networking solution is not designed for interpretation in court proceedings and will provide subpar quality of service. Our expert was shocked at how totally inadequate the equipment is for the task. The audio and video are very low resolution and are not synced. As a result, interpreters will not have the visual and auditory information they need; the sound and video will be choppy and unreliable, subject to delays, echoes and interference.

Not only is the proposed equipment unworkable, but regional administrators have clearly stated their interest in using VRI far beyond the scope of what is considered appropriate in existing guidelines and standards. While the language of the final agreement is not as sweeping as originally proposed by the courts, the agreement gives judges broad discretion to use VRI, and the Region has made it clear it intends to use it as broadly as possible, and even when in-person interpreters are available.

Even the best equipment and conferencing software available to date is inadequate in a courtroom for all but the most basic and limited communications, and using in-person, qualified interpreters is the best option to protect due process and civil liberties for *any* court proceeding. Because of this, we propose strictly limiting VRI to situations where no in-person interpreter is available such as for rare languages and, in those limited instances, to allow VRI use only for short, non-evidentiary proceedings, such as initial appearances or bail review hearings. We also propose that VRI (with high-quality equipment) is appropriate for out-of-court matters such as in self-help centers or one-on-one conversations, situations where interpreter services can be expanded without compromising the quality of access and scope of services that are so critical in courtroom proceedings.

VRI proceedings will provide second-rate services to LEP communities and compromise the interpreter's ability to provide meaningful access, as well as our ability to provide the speed and scope of services judges have come to rely on from skilled in-person interpreters.

VRI proceedings cannot be conducted in simultaneous mode; only consecutive mode is feasible with turn taking and pauses for interpretation. This alone, without considering technical logistics and challenges, will double the time it takes to process cases.

Providing language access in the legal setting is a highly specialized area of professional interpreting practice, and must be handled with great care given the fundamental rights at stake for LEP communities.

The purpose of the LAP is to make language access practices in state courts consistent with Title VI of the Civil Rights Act of 1964 and associated regulations that prohibit discrimination based on national origin. We urge you to include a recommendation in the LAP that clear, statewide rules be adopted to appropriately limit VRI use, and that these include an unambiguous preference and priority for the use of in-person interpreters.

The VRI experiment in Region 3 demonstrates that local discretion is not an effective way to approach language access. It is irresponsible to implement VRI in this manner, and before statewide rules and standards are adopted. The LAP should address this with recommendations that carefully restrict VRI use and safeguard against misuse that will compromise the rights of LEP communities.

Sincerely,

A handwritten signature in black ink that reads "Ariel Torrone". The signature is written in a cursive style with a large, sweeping initial "A".

Ariel Torrone, President

"The Unified Voice of Legal Services"



September 29, 2014

Attn: Invitations to Comment
Judicial Council
455 Golden Gate Ave.
San Francisco, CA 94102
invitations@jud.ca.gov

**Re: Public Comment on Item SP14-05,
Strategic Plan for Language Access in the California Courts**

To Whom It May Concern:

I am writing on behalf of the Legal Aid Association of California (LAAC) to provide public comment to the Judicial Council as it considers the Strategic Plan for Language Access in the California Courts (LAP), released on July 31, 2014.

Founded in 1983, LAAC is a non-profit organization created for the purpose of ensuring the effective delivery of legal services to low-income and underserved people and families throughout California. LAAC is the statewide membership organization for almost 100 legal services nonprofits in the state, and in this capacity, we frequently partner with the State Bar, the staff of the Judicial Council, and other stakeholders committed to preserving access to justice in California.

We are grateful for the multiple opportunities to help shape this plan, both through public comment periods and through our testimony at the public hearing held in San Francisco on February 24, 2014. We applaud the commitment and vision of the Working Group as it crafts a plan to fit all California courts. We also thank the Chief Justice for her leadership by continually communicating the importance of language access as part of "Access 3D."

We have joined many of our member organizations in a collaborative comment also submitted to this body. We would like to comment separately here to reiterate three key issues included in that comment: 1) there must be no unnecessary delay in creating the statewide Language Access Implementation Advisory Committee; 2) the plan must require statewide and local or regional Language Access Oversight Committees; 3) legal services representatives must have dedicated membership on all committees with implementation and monitoring roles for the LAP.

There must be no unnecessary delay in creating the statewide Language Access Implementation Advisory Committee

LAAC is concerned, as stated in the collaborative comments, that there is no deadline for the creation of the Language Access Implementation Advisory Committee (LAIAC). We urge the Judicial Council to adopt a firm and immediate deadline so that no further work is delayed by the process of creating the LAIAC. The LAP has overly generous deadlines and includes in later phases many recommendations that we believe should be implemented in Phase I. In addition, even the Phase I recommendations could be unnecessarily delayed if local courts wait to act until the LAIAC is created, meets, and makes specific recommendations or requirements.

The LAP must require statewide and local or regional Language Access Oversight Committees

As written, the plan requires an implementation committee, but not a committee that would oversee ongoing policies and procedures in action after the implementation plan is adopted by the LAIAC. LAAC believes that separate bodies are necessary to monitor local court procedures and make local recommendations to meet the specific needs of their constituents. Legal services organizations will be instrumental in helping to identify additional manuals, documents, and other resources for those needing interpreters to access court services. The local Language Access Oversight Committees (LAOC) should monitor the complaints received to identify larger systemic problems submitted by court users via the complaints.

Legal services representatives must have dedicated membership on all committees with implementation and monitoring roles for the LAP

Having committee members who are knowledgeable about the challenges faced by low-income LEP Californians attempting to access the courts is extremely important. LAAC believes that the easiest way to ensure this is to have legal services representation on the LAIAC and statewide and local LAOCs. LAAC believes it is important to have at least two representatives so that a richer set of perspectives are represented in the committees. Additionally, legal services representatives, as shown by the collaborative comment, are extremely knowledgeable about availability of data, potential sources of additional funding, and the importance of the ultimate long-term success of the goals of this plan.

Thank you for your consideration of our comments,



Salena Copeland
Executive Director
Legal Aid Association of California



California Association of Family Court Services Directors

In the Children's Best Interest

These Comments are submitted in relation to **Appendix A: Phase-In Recommendation #8 Expansion of court interpreters to all civil proceedings.**

The California Association of Family Court Services Directors **Agree as Modified.**

Comments:

The Issue Description for Goal IIb uses Family Court Services mediation to illustrate the need for Interpreters in Court-Ordered/Court-Operated Proceedings. It is very difficult to reconcile this clear and strong statement with the failure to explicitly include Family Court Services mediation in Phase I of Phase-In Recommendation #8 in Appendix A.

Family Law Mediation is a critical stage in the life of the child and the family. Family Code section 3170 requires that all actions to obtain or modify a custody or visitation order utilize Court-connected mediation services. Statewide, more than half the cases in Family Law Mediation result in agreements about child custody and visitation which become orders of the Court. In 34 of the 58 counties, if no agreement is reached the mediator makes a recommendation to the Court. Mediators are mandated to help effect a settlement of issues, or make a recommendation, in the best interest of the child. They cannot do this with LEP litigants without adequate interpreter services.

The Phase-In Recommendation gives priority to Domestic Violence cases brought under Division 10 and where DV protective orders have been or sought or granted, but it overlooks the fact that FCS mediators must address Domestic Violence issues even if they have not been the subject of formal court action. Pursuant to Family Code sections 3011 and 3170(b), and the extensive protocol in Rule of Court Rule 2.215, mediators are mandated to screen for and address DV in all Family Law cases. It is reasonable to suspect that LEP parents are less likely to avail themselves of the statutory protections for Domestic Violence, and are the most in need of interpreters for clear communication with a FCS mediator who is screening for these issues.

The Phase-In Recommendation gives priority to cases involving Determination and Termination of Parental Rights, but when read in conjunction with the category "Other Family Law" in Phase II, this language implies the issues are limited to those in Division 12 of the Family Code. This overlooks the fact that a determination of paternity will almost always result in Family Court Services mediation of the issues of custody and visitation under Division 8. In a Family Law case under Division 8, when FCS mediation contributes to an order for



California Association of Family Court Services Directors

In the Children's Best Interest

sole legal and physical custody to one parent, the result is a de facto temporary termination of parental rights.

The Phase-In Recommendation gives priority to Guardianship cases, but overlooks the fact that the issues in Family Law mediation are, from the child's standpoint, identical.

Custody, visitation, and domestic violence issues addressed in court-connected Family Law mediation are coequal with and essential components of the issues and actions in three of the four categories that are included in Phase I of Phase-In Recommendation #8. The cost of including FCS mediation in Phase I will be relatively small because Family Court Services departments use mediators who are bi-lingual in Spanish to a great extent. When they aren't available, and for other languages, providing interpreters for LEP parties in FCS mediation is essential and deserves the highest priority. Family Court Services mediation should be explicitly included in Phase I of Phase-In Recommendation #8 in Appendix A.

Submitted on Behalf of California Association of Family Court Services Directors
by:

Robert J. Bayer
Manager, Family Court Services
Vice-President, CAFCS D
Ventura Superior Court
800 South Victoria Avenue
Ventura, CA 93009



September 29, 2014

Via Electronic Mail to lap@jud.ca.gov

Attn: Invitation to Comment

Judicial Council of California

Administrative Office of the Courts

455 Golden Gate Avenue

San Francisco, CA 94102

**Re: Strategic Plan for Language Access in the California Courts
Item Number: SP14-05**

Dear Members of the Judicial Council and Joint Working Group:

California Rural Legal Assistance, Inc. (CRLA) is a legal services organization founded in 1966 which serves over 29,000 low-income people annually in rural areas throughout California. For the last 20 years, CRLA's Indigenous Program has provided legal advocacy and educational outreach to California's rural indigenous Mexican and Central American communities, many of whom speak indigenous languages and experience unique challenges in accessing the justice system. CRLA applauds the Joint Working Group's efforts to improve access to justice for Limited English Proficient community members through the development of the draft Strategic Plan for Language Access in the California Courts (the Plan) and welcomes the opportunity to provide our comments on the draft Plan.

CRLA has signed onto the comments on the draft Plan submitted by a broad-based group of legal services and community organizations. However, given the unique language needs of our indigenous client communities and the heightened barriers they face in accessing the courts, we write to provide additional comments that more specifically address the Plan as it affects these marginalized communities.

Goal I: Early Identification of and Data Collection on Language Needs

CRLA supports the Plan's goal of collecting improved data on the language needs of LEP Californians and identifying LEP court users' needs as early as possible in their interactions with the courts. However, the Plan should place greater emphasis on improved data collection earlier in the Plan's implementation, especially with regard to data on underserved languages.¹

- **Recommendation 7: Use of sources beyond the US Census**

We appreciate the Plan's acknowledgement, in Recommendation 7, of the importance of using other sources of data beyond the US Census in assessing language needs. However, we echo the concern raised in the comments submitted by legal services organizations that the placement of Recommendation 7 in Phase II of the Plan's implementation would cause problematic delays in the achievement of the Plan's broader goals.

¹ We use the term "underserved languages" to refer to any languages for which the demand for language services exceeds the supply of available, qualified language service providers.

In order for the Judicial Council and the courts to understand the extent and diversity of the indigenous language speaking population in California, it is essential that they consider sources beyond the US Census. As we pointed out in the legal services organizations' comments on the draft outline for the Plan, the Census does not provide meaningful data on indigenous language speakers, identifying most indigenous languages only by broad language families, which does not help in determining the actual language needs of court users. Under the draft Plan, no meaningful information would be gathered on the indigenous language speaking populations in California until 2016 or later, hampering the courts' and the Judicial Council's ability to adequately plan for and meet these needs.

Much work is needed to build the capacity of indigenous interpreters and establish procedures for serving indigenous language speakers outside the courtroom. These efforts must be informed by a more accurate understanding of indigenous language needs on a court-by-court basis. A number of California-based researchers who have extensive experience with indigenous communities could be enlisted to assist in gathering this data. This work should begin immediately and be included in Phase I of the Plan.

Goal II: Language Access Services in All Judicial Proceedings

We strongly support the Plan's goal of providing language access services in all judicial proceedings and court-ordered and operated events. We echo the concerns expressed in the comments on behalf of legal services organizations about the Plan's lack of urgency, and we urge the Joint Working Group and the Judicial Council to establish a shorter timeline for achieving this central goal of the Plan. If interpretation in civil proceedings must be phased in, we also strongly urge that the Plan give first priority to the provision of interpreters for fee waiver litigants in all case types, for the reasons detailed in the legal services organizations' comments. Regarding the use of remote interpreting (RI) technologies to provide language access in judicial proceedings, as described in Recommendations 11-13, we provide the following comments:

- **Recommendations 11 and 12: Use of remote interpreting in judicial proceedings**

We cautiously support the use of remote interpreting (RI) technology in judicial proceedings, particularly when it is impossible to find a qualified interpreter able to attend proceedings in person. An LEP individual would benefit from the use of a qualified interpreter through RI technology if – as may frequently be the case for underserved languages – the alternative is having no interpreter at all or excessively delaying proceedings until an in-person interpreter can be provided.

Our support for the use of RI comes with reservations, however, as we have heard comments from indigenous language speakers and indigenous interpreters that some indigenous individuals' cultural background and lack of familiarity with technology would render RI a far less effective means of communication for them than for an average LEP court user. Nonetheless, our current position is that RI, judiciously employed, could be a powerful tool in ensuring language access for speakers of indigenous and other underserved languages.

The Plan should use clearer language regarding when RI is allowable, specifying that RI should only be used if an in-person interpreter is not available. The Plan could call for the creation and use of a form or list of steps similar the INT-120 form, to be used prior to employing RI, to certify that a qualified in-person interpreter is unavailable. Alternatively, the Plan could incorporate those steps into Appendix B, as additional necessary factors and considerations for RI.

- **Recommendation 13: Use of video, enhanced audio, and telephone interpreting**

The Plan currently states that courts should “strive to provide” video plus enhanced audio interpretation as opposed to relying on telephonic interpretation. Because of the near unanimous complaints we have heard among indigenous language interpreters and indigenous community members regarding the limited effectiveness of interpretation by telephone, we recommend that the Plan adopt an even stronger policy against this practice. The words “strive to” should be eliminated from Recommendation 13 so that the Plan requires the use of video, used in conjunction with enhanced audio equipment, whenever RI is provided.

Goal III: Language Access Services Outside of Judicial Proceedings

The Plan outlines important steps the Judicial Council and local courts must follow to ensure that LEP court users have access to language services outside judicial proceedings. Two of the Recommendations merit additional comments, however, for their impact on indigenous language speakers and interpreters.

- **Recommendation 28: Language services outside judicial proceedings when bilingual staff are not available**

Recommendation 28 states that courts will develop protocols or procedures for providing language services outside judicial proceedings when bilingual staff persons are not available. This is an essential step for ensuring clerk’s office and self-help center access for indigenous language speakers, since as far as we know, no California court currently employs *any* bilingual indigenous language speaking staff. Recommendation 28 is currently placed in Phase II and should be moved to Phase I. Courts should start immediately outlining the procedures to be followed for providing outside-the-courtroom access to indigenous language speakers. There is no benefit to waiting until policies for placement of bilingual staff have been developed and implemented, since current bilingual staffing will not be of assistance to indigenous language speakers.

- **Recommendation 33: Use of bilingual volunteers**

We strongly oppose the adoption of Recommendation 33 because the use of volunteers to provide language services has a disproportionate negative effect on indigenous language speakers’ access to adequate language services. Our work with indigenous interpreters and indigenous language speakers throughout California has revealed that many agencies rely heavily on “volunteer” indigenous interpreters who are most often high school students without adequate training. In addition to providing unreliable language service to indigenous language speakers, this practice undermines the efforts of indigenous interpreters to make a career out of professional-level interpreting. If public institutions continue to make use of unpaid indigenous interpreters, there will be no incentive for those with the necessary language skills to invest in training, and the current dearth of qualified and available indigenous interpreters will continue. Paying indigenous language interpreters fair compensation to provide language services outside the courtroom will help support the development of an indigenous interpreting profession that can provide the same level of service that speakers of Spanish and other languages already receive.

Goal V: Recruitment and Training of Language Access Providers

CRLA supports the Plan's goal of ensuring that all language access providers in the court system deliver high quality services. This goal is especially important for indigenous language speaking communities, since there is much work to be done in professionalizing the delivery of indigenous language access services in the courts. The Plan should address the issue of standards for indigenous language interpretation directly. In addition, several of the Recommendations in this section should include more concrete action, as well as a specific focus on meeting the needs of speakers of languages for which there is currently a lack of qualified language service providers.

- **Recommendation 43: Standards for qualification of interpreters**

The Plan states that existing standards for qualifying court interpreters will remain in effect and will be regularly reviewed by the Court Interpreters Advisory Panel (CIAP). While current standards may be adequate to ensure the competency of interpreters in certified languages, indigenous language interpretation, for which there are no certification exams, is lacking any meaningful quality control. The fact that many indigenous language interpreters are only fluent in an indigenous language and Spanish (not English) creates additional challenges for ensuring high quality indigenous language interpreting. The majority of indigenous interpreters in the courts are not fluent enough in English to pass the oral proficiency exam required to become registered, and judges are ill-equipped to determine indigenous interpreters' competency under the existing provisional qualification rules.

The Judicial Council, the courts, and the CIAP should confront these challenges through collaboration with indigenous language interpreters. The Plan should direct the Judicial Council and the CIAP to form a special advisory committee or working group, including indigenous language interpreters and representatives of indigenous interpreter organizations, tasked with the development of qualification standards for indigenous language interpreters in the courts. A collaboration among CRLA, the Legal Aid Association of California, and the Ventura and Santa Barbara County Superior Courts has already resulted in two highly productive meetings with interpreters and indigenous community organizations to discuss indigenous language access in the courts; this group could form the basis of such a working group or committee.

- **Recommendations 45 and 46: Training for prospective interpreters to pass credentialing exams, interpret in civil cases, and interpret remotely**

Any standards developed for qualifying indigenous language interpreters should be supported by training programs that will ensure enough indigenous interpreters are able to meet those standards. Recommendations 45 and 46 suggest that the Judicial Council collaborate with educational institutions and interpreter organizations to better prepare prospective interpreters to pass the credentialing exam and provide interpretation in civil cases and via remote technology. The Plan must do more than suggest collaboration, particularly with respect to meeting the training needs of indigenous language interpreters. It should call for the development of concrete training programs to train a reliable, qualified supply of interpreters in underserved languages, including indigenous languages. The same indigenous interpreter advisory committee or working group mentioned in our comments on Recommendation 43 could assist the Judicial Council in developing and implementing a training plan for indigenous interpreters to prepare them to meet whatever credentialing standards are put in place.

Goal VI: Judicial Branch Training

We appreciate the Plan's recognition of the need for training for judges and court staff, not only in

newly established language access policies and procedures, but also in providing culturally competent language access services. However, the Plan should be more specific in detailing a number of training needs related to improving access for indigenous language speakers.

- **Recommendation 50**

Recommendation 50 should include training for judicial officers and court staff on how to best identify the language needs of indigenous language speaking court users. As we have previously mentioned, the diversity of regional variations within indigenous language groups often leads to an individual being provided an interpreter whom he or she does not understand, and indigenous language speakers are often erroneously provided interpretation in Spanish. The Plan should state that the Judicial Council will consult with indigenous interpreters and community groups (possibly the group mentioned above in comments on Recommendations 43, 45 and 46) to develop protocols for identifying indigenous languages (i.e. what questions court staff must ask in order to determine the language and regional variant spoken by an indigenous court user) and ensuring the correct interpreter is provided. The plan should require that court staff be trained in these protocols and provided continually updated information on the indigenous interpreter resources available to them.

We hope to continue to serve as a resource for the Joint Working Group and the Judicial Council as you finalize and implement this tremendously important document. Please do not hesitate to contact us if there is any further information we can provide on the above comments or our work with indigenous language speakers. Thank you for the opportunity to provide our comments.

Sincerely,

CALIFORNIA RURAL LEGAL ASSISTANCE, INC.

Maureen Keffer
Indigenous Program Director



**Superior Court of California
County of Fresno**

Sheran L. Morton
Executive Officer/Clerk/Jury Commissioner
Patty Wallace-Rixman
Assistant Executive Officer

DATE: September 29, 2014
TO: LAP@jud.ca.gov
FROM: Sheran L. Morton, Court Executive Officer, Fresno Superior Court
SUBJECT: Public Comment re. Strategic Plan for Language Access in California Courts

PHASE III – 64. Complaints regarding court interpreters

Recommendation: begin developing a process to evaluate interpreters immediately

Currently there is no standardized process to evaluate the quality and the accuracy of an interpreter's skills. This makes it extremely difficult – almost impossible - to handle a complaint regarding an interpreter. In the past, when a complaint was made regarding an interpreter's inaccurate interpretation of what was said in the courtroom, the Judicial Council staff attorneys were unable to help with any type of solution or even a viable recommendation. The interpreters are the only court employees that do not have an evaluation process in place. This opens up courts for grievances, PERB charges, and general distrust by our employees and the very people we are working so hard to provide quality access to our courts.

PHASE I – 8. Preference for in-person interpreters

Recommendation: delete from the Language Access Plan (LAP)

Throughout our recent bargaining over Video Remote Interpreting (VRI), the interpreter's union California Federation of Interpreters (CFI) representatives continually requested to insert this language in the Memorandum of Understanding (MOU). The Region continuously rejected this language for the following reasons:

- In Region 3 (made up of 32 courts), during the calendar year of 2013, we were only able to fill approximately 38% of all requests for an interpreter. Now that the Governor has signed AB 1657 (Gomez) which allows for expansion of interpreter services, we need all possible means available to meet the demand for interpreter services if we are truly going to provide quality and therefore meaningful access.
- A preference for in-person interpreting is also counterproductive to implement Phase II – 14: *Pilot for central pool of remote interpreters*. If we are able to create this pool of highly qualified certified and registered interpreters, to maximize their availability, we will want to utilize VRI, to maximize services to courts and limited English proficient (LEP) court users.
- A preference for in-person interpreting is also counterproductive to implement Phase II – 30: *Pilot for Remote assistance and self-help centers*. We have already begun to envision how we can utilize our interpreter resources for our self-help centers. To maximize quality talent, we need to be able to utilize VRI, without adverse actions by CFI.

In August of 2013 the Chief Justice announced her vision of for improving access to justice for

Californians, “Access 3D.” including remote and electronic access.¹ The LAP does not need to set forth an in-person preference. We need to remain neutral, and focus on the most qualified – certified and registered interpreters to ensure the most meaningful access possible.

Phase I – 50. Judicial Branch training regarding language access plan

Recommendation: Modify the second bullet to read, “Review the *Professional Standards and Ethics for California Court Interpreters*, Fifth Edition, May 2013.”

The second bullet of this section currently reads:

“The interpreter’s ‘ethical duty to clarify issues’ during interpretation and to report impediments to performance.

It is unclear what the interpreter’s ‘ethical duty to clarify issues’ really means. California Rules of Court Rule 2.890 sets forth the requirements for the professional conduct for interpreters. Additionally, the *Professional Standards and Ethics for California Court Interpreters*, Fifth Edition, May 2013 goes into depth regarding the appropriate role of the interpreter. As the staff of the Judicial Council develop curricula for statewide and regional training, in addition to resource materials both the court and the interpreters need one document to specify the expectations so everyone has a chance for success.

This also ties back to the critical need as currently set forth in **Phase III number 64, Complaints regarding court interpreters**, and the need for evaluations. Everyone needs to know and understand the expectations to allow us to reach our goal for fair and consistent service for LEP court users.

1 Cantil-Sakauye, Tani G., Letter from the Chief Justice of California, Strategic Plan for Language Access in the California Courts, Draft July 29, 2014, page 4.

September 29, 2014

Via email to: lap@jud.ca.gov

California Judicial Council

Joint Working Group for California's Language Access Plan

**Re: Strategic Plan for Language Access in the California Courts,
Item Number: SP14-05**

Dear Joint Working Group members:

We are a group of indigenous language interpreters and community organizations, and we are writing to submit our comments on the Strategic Plan for Language Access in the California Courts (the Plan). As individual interpreters and organizations, we have decades of combined experience working with indigenous community members in California, and we understand the unique challenges indigenous communities face when trying to access the courts. On August 20, 2014, we met in Santa Barbara to discuss the unique barriers to language access for indigenous language speakers in the courts, and on September 22, 2014, we met again in Oakland to analyze the Plan and develop our recommendations, which are as follows:

Recommendation 1

We agree that the courts should identify the language needs of each person at the earliest possible point of contact with the court system. However, the Plan does not consider how court staff will determine what each person's language needs are. Indigenous languages have many different regional variations, and if court staff do not ask the right questions, an indigenous language speaker may be provided an interpreter who speaks a variation that he or she does not understand. The Plan should specify how court staff will identify an indigenous language speaker's language needs, specifically by asking the court user what his or her community of origin is, since this is the best way to ensure the correct interpreter is provided.

It is also important that the Plan state who will be responsible for collecting this information. In addition to the interpreter coordinator or other court staff, Spanish language interpreters can be an important source of this information, because they often encounter indigenous language speakers who have been mistakenly identified as Spanish speakers. Spanish interpreters should be trained in how to identify indigenous language needs and report this information to court staff immediately.

On the issue of data collection, it is also important that the courts gather data on the number of interpreters available to interpret in indigenous languages, including the specific regional variations that each interpreter speaks. The courts should be aware of what language needs exist in the community, but they should also understand what interpreter resources exist in indigenous languages to determine what languages should be prioritized for developing additional trained interpreters. Collecting this information in one centralized database for the entire state will also

help court staff to locate available interpreters to meet the needs of indigenous language speakers.

Recommendation 3

“Justice partners” should include indigenous community organizations, since they are most likely to have direct connections with indigenous language speakers whom government and other community agencies often fail to reach. In addition, there should be clear protocols for how justice partners can communicate an individual’s language needs to the court.

If an individual is detained, he or she should be given the opportunity to self-identify as in need of an interpreter, and this need should be communicated to the court.

Recommendations 4 and 5

The interpreter coordinator or language access coordinator for each court should be in charge of ensuring that LEP persons are given the opportunity to self-identify as needing an interpreter. However, “I Speak” cards and written notices will not be useful to many indigenous language speakers, since the majority do not know how to read or write in their native language. The courts should partner with indigenous community organizations in conducting outreach to ensure that indigenous language speakers understand their right to an interpreter before they ever arrive at the courthouse and know how to self-identify as in need of language assistance. Audio and video materials in indigenous languages introducing individuals to the courts should also include information on the right to a language assistance and how one can request an interpreter

Recommendation 6

The Plan should specifically direct the Judicial Council and the courts to gather data on language service needs in each case, including at a minimum the language(s) needed and the type of case or proceeding. This data should be made public in order to inform development of policies and also to determine how best to invest resources in training for interpreters and courts.

Recommendation 8

We support the expansion of access to interpreters in all case types. However, the courts should also understand the importance of access to interpreters before individuals arrive at the courthouse and use their role to influence other agencies to provide interpreters as well. For example, social workers should always use interpreters in working with indigenous language speaking children and families to ensure accurate communication and avoid negative consequences once families get to court.

Recommendation 11

The Spanish translation of this recommendation states that “courts may consider the use of remote interpreting where it is appropriate **or advantageous** for a particular proceeding.”

However, the English version does not contain the words “or advantageous.” The words “or advantageous” should not be included in the final Plan, since allowing courts to use remote interpreting when “advantageous” would allow for too much freedom to use technology when in-person interpreting would be far superior.

Recommendation 12

Remote interpreting in indigenous languages presents many problems because it does not allow for a full in-person interaction between the interpreter and the individual. This interaction contains important cultural information that cannot easily be conveyed by video, and is impossible to convey by telephone. It is always preferable to have an in-person interpreter for an indigenous language speaker. However, we understand that there are currently not enough qualified indigenous language interpreters to meet the needs of all indigenous language court users. We recommend that the Plan require courts only use remote interpreting technology once a diligent search for an in-person interpreter has failed.

Recommendation 24

We strongly support the designation of a language access coordinator for each county court. It is essential that every court have a person in charge of coordinating language services. That person should be trained in the unique needs of indigenous language speakers, including the diversity of indigenous languages and how to identify the correct interpreter.

Recommendation 27

We support the recruitment of bilingual staff persons to work in the courts. However, the courts should ensure that bilingual staff, particularly indigenous language speakers, are not used to interpret in the courtroom unless they are also trained and meet the necessary requirements to serve as interpreters. Indigenous language speaking staff at other agencies are often called on to serve as interpreters even when that is not a part of their job description and they have not received adequate training to interpret. This is something that the courts must avoid.

Recommendation 33

We do not support this recommendation and believe it should be removed from the Plan. Volunteers should not be relied on to provide language services. Indigenous language interpreters have long been treated by many agencies and service providers as “second class interpreters,” and they are paid little or nothing for their services. The vast majority of indigenous interpreters are unable to dedicate themselves to interpreting full time (and to investing in ongoing training) in part because they receive such little pay. Allowing courts the possibility of using volunteer interpreters will have a disproportionate effect on indigenous language speakers and interpreters, because it will interfere with efforts to professionalize indigenous interpreting and make it a viable career option. Courts should not be permitted to engage indigenous interpreters (or any interpreters) without providing them fair compensation.

Recommendation 36

The development of glossaries should not be limited to certified languages, but should include indigenous languages as well, as these can serve as important training tools and reference materials for indigenous language interpreters.

Recommendation 37

In addition to creating and sharing informational and educational materials in writing, the courts should also develop and share informational and educational videos in indigenous languages because, as noted above, written materials will not meet the needs of most low-literacy indigenous language speakers.

Recommendation 43

We agree that it is important for the courts to ensure that interpreters are qualified and competent. However, the courts and the Court Interpreters Advisory Panel (CIAP) must also consider the unique challenges in determining the qualifications and competency of indigenous language interpreters (for example, the wide variety of regional differences within languages, the lack of standardized written versions of indigenous languages, and the fact that many indigenous interpreters are not fluent in English and must work together in relay with Spanish-English interpreters). The Plan should require that the CIAP include as a member at least one indigenous language interpreter, and ideally, one for each of the major indigenous languages spoken in California. The indigenous language interpreters on the CIAP should consult with other indigenous interpreters, including the organizations collaborating on these comments, to gain insight and provide accurate representation. With the support and input of these interpreters and organizations, the CIAP should develop standards for qualifying indigenous language interpreters, both those who interpret from their indigenous language directly to English as well as those who interpret from their indigenous language to Spanish.

Recommendations 44 - 46

It is essential for the court system to invest in training for indigenous language interpreters, and the Plan should include a specific mandate to do so. The vast majority of indigenous language interpreters only interpret occasionally and are unable, because of the expense of training, the lack of work (though not necessarily the lack of need for their services), and poor pay, to sustain a career as interpreters. Providing high-quality free or low-cost training is the first step toward creating a more qualified and readily available group of indigenous interpreters. The Plan should direct the Judicial Council to collaborate with existing indigenous interpreters and interpreter organizations to develop a comprehensive free or low-cost interpreter training program to ensure there are sufficient qualified interpreters to meet the needs of currently underserved indigenous language speaking populations.

Recommendation 50

The Plan should state that training for judges and court staff will include cultural sensitivity and competency training for working with indigenous court users. As stated above in Recommendation 1, this should also include training for court staff in how to properly identify indigenous languages and find the correct interpreter match. Spanish-English court interpreters should also receive this training as part of their continuing education requirements, because they are often in a position to recognize when an indigenous language speaker has been erroneously provided with Spanish interpretation. Mandated cultural sensitivity training for Spanish interpreters will also assist them to better cooperate with indigenous interpreters in relay interpreting settings, where some understanding of indigenous cultural norms, formal education levels, and linguistic differences would allow for better quality relay interpretation.

Recommendation 52

Bench cards and other language used by judges when explaining an individual's language access rights should be conveyed in plain, understandable language. While the use of more accessible language is important throughout court proceedings, given the inherent communication challenges faced by LEP litigants, it is especially necessary to ensure that they understand their right to language assistance.

Recommendations 57 - 60

The court system's efforts to obtain sufficient funding to support the expansion of language access services should include funding allocated specifically for indigenous interpreter training. If this is not considered a budget priority, courts will continue to struggle to find qualified indigenous language interpreters and indigenous court users will continue to suffer from unequal access to the courts.

Recommendation 61

The Language Access Implementation Advisory Committee should include representation of indigenous language interpreters as well as indigenous community organizations to ensure that the particular needs of indigenous language speakers are understood and addressed throughout implementation of the Plan.

Recommendation 62 - 67

The compliance and monitoring system should include provision of clear information to the public. Any complaint forms or processes should be designed to be as simple, streamlined, and user-friendly as possible in order to be accessible to all court users, including indigenous language speakers.

Recommendation 76

Because of cultural norms and historical experience making do with only Spanish language interpretation, many indigenous language speakers could be easily swayed to waive their right to an interpreter in their language by the mere suggestion that they are permitted to do so. In

developing a rule of court to allow for waiver of an LEP person's right to an interpreter, the Judicial Council should explicitly ensure that the option to waive the right to an interpreter must always be presented to an LEP person in his or her preferred language. In enforcing such a rule, judges, court staff, and interpreters should be sensitive to the risk of unintentionally persuading an indigenous language speaker to waive his or her right to an indigenous language interpreter and receive training on how to avoid such an outcome.

We are pleased to have the opportunity to provide our input on the Plan, and we appreciate your consideration of our comments. In addition, we would be glad to offer our assistance to the Joint Working Group, the Judicial Council, and the courts to help ensure that indigenous language speakers gain full access to the justice system. Please do not hesitate to reach out to us.

Sincerely,

Asociación MAYAB

Naomi Adelson, Instructor/Trainer, Mayan Languages Interpreter Program

Centro Binacional para el Desarrollo Indígena Oaxaqueño (CBDIO)

Leoncio Vasquez, Executive Director

Familia Indígena Unida

Valentina Torres, Mixteco Interpreter

Frente Indígena de Organizaciones Binacionales (FIOB)

José González, Binational Vice-Coordinator

Jesús Estrada, California State Coordinator

Just Communities/Language Justice Network

Samuel Duarte, Language Justice Coordinator

Maya Visión

Policarpo Chaj, Executive Director

Mixteco Indígena Community Organizing Project (MICOP)

Arcenio López, Executive Director

Vanessa Terán, Program Manager

Irene Gómez, Program Manager

Elvia Vásquez, Mixteco Interpreter

Celso Guevara, Mixteco Interpreter

Raúl Gómez, Mixtec Board Member

Celia Méndez, Mixteco Interpreter

Leonor Gómez, Mixteco Interpreter

Gaspar Rivera Salgado, UCLA Labor Center

Odilia Romero, Zapoteco Interpreter

Juan Santiago, Language Skilled Interpreter, Zapoteco from Coatecas Altas

Victor Sosa, Certified Court Interpreter & CMI Program Director, Indigenous Interpreting +

Angelina Trujillo, Mixteco Interpreter

Item SP14-05 Response Form

TITLE: Strategic Plan for Language Access in the California Courts

- Agree with proposed changes
XX Agree with proposed changes **only if modified**
Do not agree with proposed changes

Please see attached comments.

Organization: LOS ANGELES SUPERIOR COURT
Address: 111 N. Hill Street, Los Angeles, California 90012

Please write, or respond using the Internet to:

Address: Mr. Douglas Denton
Judicial Council, 455 Golden Gate Avenue, San Francisco, CA 94102

DEADLINE FOR COMMENT: 5:00 p.m., Monday, September 29, 2014

Your comments may be written on this Response Form or a s a letter. Make sure your letter includes all of the above identifying information. All comments will become part of the public record for this proposal.

Circulation for comment does not imply endorsement by the Judicial Council.

Comments on SP14-05:

Despite the fact that the California trial courts have suffered some of the worst funding cuts of any court system in the nation throughout the past six years, the Los Angeles Superior Court (LASC) has preserved access to justice in all case types across a populous and geographically spread jurisdiction. Throughout the budget crisis, the Court's commitment to language access did not waver. Not only did the Court continue to maintain pre-crisis levels of interpreter support, it also continued to expand language services (for instance, through its JusticeCorps program).

As LASC emerges from budget disaster, the proposed *Strategic Plan for Language Access in the California Courts* (Plan) will provide a crucial strategic element in the Court's rebuilding plan. As a key participant in its formulation, the Court wholeheartedly supports this strategy for moving forward on this important issue. Many of the Plan's goals are already parts of the Court's operating strategies. Others are currently being pursued as LASC takes advantage of recent policy changes allowing it to expand interpreter coverage. Yet others remain aspirational, as the Plan recognizes, as LASC struggles (as do all California trial courts) to fulfill all of its constitutional and statutory mandates in a grossly under-resourced situation.

The size, scale, scope and diversity of the language needs of those who use the Los Angeles Superior Court are unmatched in any other trial court. Regardless, LASC has already begun to expand courtroom interpreters in domestic violence cases, unlawful detainers, cases involving termination of parental rights, and probate conservatorships and guardianships. Further progress in this direction will of necessity be slowed by significant challenges in several areas. In each area LASC is aggressively working on solutions, but in none of these areas are solutions solely within the Court's power.

The first challenge is that under-funded courts face competing obligations to restore access to justice in a number of areas. Insofar as availability of interpreter funding will continue to be a major challenge, courts will face a balancing act as to which obligations they can fulfill. Similarly, enhancement of currently provided translation, signage and video services will require the balancing of competing needs in the Court's provision of access to justice across the board. LASC will support legislative efforts to provide permanent funding for needed services.

The Court will also continue to explore more efficient ways of delivering interpreter services. To get the most out of scarce resources, training for LASC's "front-line" staff, from the doorway of the courthouse, to the well of the courtroom, is another important prerequisite that is underway. As the Court's current business process improvement efforts continue, they will improve its ability to deploy the language resources already possessed by court employees.

Second, even upon solving these funding problems, the courts will still face an absolute shortage of certified interpreters in many languages in many areas throughout the state. LASC is finding creative ways to recruit interpreters – for instance, providing opportunities

for people who are studying to become an interpreter to interpret for Teen Court participants, giving the interpreter students a positive experience of court interpretation.

Third, automated solutions are required for many of strategies in the Plan and building those new technologies require both time and money. For instance, knowing the needs of court users, and capturing that knowledge for planning purposes, are important parts of the plan. Automated solutions are absolute necessities and are being integrated into the Court's current efforts to automate its case management systems and other business processes.

The aggressive timing of Phase II and III initiatives must be tempered by the realities that large-scale changes in courts' core technologies, a significant shift in legislative funding priorities, and fundamental changes in people's views of court interpretation as a career, will all take time and are beyond the control of any one court. LASC is, nonetheless, pursuing strategies such as those outlined in the Plan to overcome these challenges.

As demonstrated above, LASC shares many of the strategic directions laid out in the Plan. However, we have a significant disagreement with the following: "The Judicial Council should develop a rule of court establishing a procedure by which LEP persons may, at any point, be allowed to waive the services of an interpreter so long as the waiver is knowing, intelligent, and voluntary; is made after the person has consulted with counsel (if any); and is approved by the appropriate judicial officer, exercising his or her discretion. At any later point in the proceedings, the LEP person may, by a showing of good cause, request an order vacating the waiver and appointing an interpreter." This decision is best made by the judge assigned to the case in light of case law and the facts of the case, rather than through court rule.

Overall, the Plan captures well the challenges of this crucial facet of providing access to justice in Los Angeles and across California. We look forward to working with the council and other trial courts in continuing to make progress toward these goals.



Superior Court of the State of California
In and For The County of Placer
Roseville, California

10820 JUSTICE CENTER DRIVE, ROSEVILLE, CALIFORNIA 95678
P.O. BOX 619072, ROSEVILLE, CALIFORNIA 95661

JAKE CHATTERS
COURT EXECUTIVE OFFICER
AND CLERK OF THE SUPERIOR COURT/
JURY COMMISSIONER

September 29, 2014

Hon. Maria P. Rivera, Co-Chair
Hon. Manuel J. Covarrubias, Co-Chair
Joint Working Group for California's Language Access Plan
Submitted via email to: LAP@jud.ca.gov

Re: Comment on Strategic Plan for Language Access in the California Courts (Draft),
[Request for Public Comment SP14-05]

Justice Rivera, Judge Covarrubias and Members of the Joint Working Group for
California's Language Access Plan:

On behalf of the Superior Court of Placer County, thank you for the opportunity to
comment on the Joint Working Group for California's Language Access Plan's (Working
Group) draft Strategic Plan for Language Access in the California Courts (Strategic
Plan).

Your Working Group should be commended for drafting a Strategic Plan that is
remarkably concise while still providing the reasoning behind stated recommendations.
The plan leaves us with a clear challenge - we can and should do better. It does this
while balancing the fiscal and practical realities facing our courts.

We support the balance of the Strategic Plan drafted by your Working Group. We would
offer some specific comments for your consideration:

1. Recommendation 10 (Page 35) – The Working Group recommends that courts
provide qualified interpreters at all “court ordered/court-operated proceedings” by
2020.

We would suggest separating this recommendation into two parts. The first
recommendation could focus on court-operated proceedings and retain your 2020
implementation date. Further, the narrative prior to the recommendation suggests
that these types of proceedings may use modes of language access other than

certified interpreters, but the recommendation itself is worded to limit the language access to certified interpreters. Allowing for varied modes, dependent on the service or program, would be consistent with the balance of the Strategic Plan and may allow for more rapid, but still appropriate, implementation within the stated timeframe.

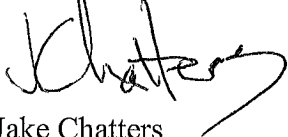
The second recommendation could then focus on court-ordered proceedings. A simple read of the existing text seems to suggest the Working Group is recommending court funded and provided interpreters for any program ordered by the court in any case type. The scope of this recommendation is daunting and, in contrast to the great care taken by the Working Group on other recommendations, is so large as to create a feeling of paralysis. It would be helpful if the Working Group would give some priority to types of programs or case types to allow the implementation to be evaluated and, if approved, implemented in stages. For example, is it more important to provide these services in family law to ensure access to supervised visitation or in criminal to those sentenced to probation and ordered to attend drug and alcohol programs? Both present interesting challenges as courts would face potential complications related to hours of work, safety, and equity for interpreters assigned to these non-court offered programs.

2. Recommendation 11 (page 39) – We support the Working Group’s recommendations for use of technology to expand language access. In particular, we wish to support your well crafted proposal to expand access through technology while maintaining in-person language services where vitally important.
 3. Recommendation 35 (page 51) – The Working Group recommends providing information on language access services in the top five languages used in the County and any language that is spoke by more than 5% of the County. We would suggest rewording this recommendation to match the language used in Recommendations 39 and 42 (“court community’s top five languages or, if more appropriate, into any languages spoken by 5 percent or more of the population served by the court. At the minimum, all such materials should be available in English and Spanish.”).
 4. Recommendation 39 (page 57) – The Working Group recommends providing sight and written translation of orders in all situations. We would suggest dividing this recommendation into one for sight translation and a second for written translation to better support implementation efforts. Striving to provide sight translation as part of Phase II of your implementation plan is a reasonable, if challenging, goal. As indicated in your Strategic Plan, the written translation of documents is substantially more complicated and therefore, may be more appropriately slated for Phase III.
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5. Bi-lingual staff discussion (page 51) – The narrative of the report makes a statement that bi-lingual staff should receive a higher salary. We would suggest that this language be softened to encourage the evaluation of whether staff in a particular position should receive higher pay if they are bi-lingual.

Thank you again for the opportunity to comment. We want to reiterate our support for the efforts articulated in the Strategic Plan and are committed to improving access to justice for all in our community.

Thank you for your consideration,



Jake Chatters
Court Executive Officer

September 29, 2014

Joint Working Group for California's Language Access Plan
Judicial Council of California
LAP@jud.ca.gov

Re: Comment on Draft Strategic Plan for Language Access in the California Courts
dated July 29, 2014

These comments supplement our April 15, 2014 comments submitted during the public comment period.

Chief Justice Tani G. Cantil-Sakauye has identified language access as one of her highest priorities, and tasked the LAP Working Group with developing a comprehensive, statewide Language Access Plan (LAP). The Chief Justice describes the purpose of the plan is to provide "a consistent statewide approach" that ensures "full, meaningful, fair, and equal access to justice for all Californians."

We commend the Chief Justice for her commitment to language access and the working group for the quality and scope of this work. We want to acknowledge as a starting point that we are in agreement with and supportive of many aspects of the plan and that many of the recommendations are sound and will be useful and practical as the Judicial Council and courts move to improve and expand language access in the California court system.

We strongly support the need for a consistent, statewide approach, and our comments are aimed at strengthening the plan toward that end. Our focus in these comments is on areas that we submit need adjustment, and changes that will make the plan effective and ensure that language access services are meaningful and consistently available throughout the court system.

1. Consistent, statewide, and mandatory standards are needed to achieve the goals of the LAP.

Providing comprehensive, consistent and meaningful language access is a complex and demanding goal. It is unrealistic to expect local courts to prioritize and implement this plan absent clear and mandatory guidelines and timelines. The bottom line is that things get done when it's clear to all concerned that they have to get done. Achieving consistent and high quality services will require consistent standards and a shared commitment to those standards from the local courts, the Judicial Council and the legislature.

We recommend a general revision throughout the document so that the LAP discusses what courts "shall" or "will" do rather than stating what they "should consider" or "should" accomplish. We also recommend that the Judicial Council adopt rules of court to support and strengthen the plan by making it enforceable and making the courts' responsibilities unambiguous.

Making language access standards mandatory will provide the clear guidance that judges and court staff need to ensure implementation is effective. It was gratifying to hear this expressed in the public comments and listening sessions by a few court administrators, who stated administrators and judicial officers need clear rules to follow, and recognized their job actually will be easier if the LAP requires compliance and provides clear guidelines that courts must follow.

Many judges, administrators and management personnel in local courts understandably do not have the expertise and knowledge needed to implement comprehensive and effective language access services or to correct long-standing practices that are contrary to the goals of the LAP. Historically, without clear mandates, courts have not prioritized language access when faced with competing challenges.

The current state of affairs, as reported in public comment and listening sessions, demonstrates that local discretion results in varying degrees of access and quality of service, and has allowed practices that deny language access to LEP court users to continue, with great variation from county to county and even within a county. Providing discretion to local courts and making the plan a set of guidelines rather than requirements will predictably result in uneven implementation and in some courts failing to adequately prioritize language access.

Establishing language access standards as requirements in the statewide LAP, with corresponding rules of court, will ensure language access goals are met. This will also provide the momentum required to get necessary support and resources courts will need, and ensure the level of attention and urgency that will be needed to go from good intentions on language access to actual provision of full and meaningful access to LEP court users to the broadest extent possible.

2. Phase in by 2020 and Introductory Discussion

We are concerned with the five-year time frame for the phased-in implementation and we would submit that a three-year process is feasible. We also find the discussion of the plan and the challenges posed in the introduction (section a) to be somewhat counterproductive.

The Department of Justice notified the state courts in 2010 that Title VI of the Civil Rights Act of 1964 requires courts receiving federal funding to provide competent interpreters in all court proceedings and to provide language access services at all points of contact. Lack of funding, or fear of impacts on competing needs is not a valid reason to continue violating the civil rights of Limited-English Proficient Californians whose rights are at risk as they seek justice in the courts system.

Courts have delayed this process too long already in favor of other priorities. Courts should be directed to continue covering all case types they have been covering, to begin immediately providing services in as many additional case types as possible, and to document unmet needs and obstacles to full compliance.

A priority list for case types should be provided as a guide, but local courts should be directed to do as much as they can without delay. We believe that by taking this approach, many courts will discover they are able to cover all civil cases in a much shorter time frame.

See CFI public comments dated April 15, 2014 (pp. 5-9) for facts and discussion supporting our suggestion that courts can do more with existing resources and that the concerns about funding and the supply of interpreters do not justify delays in the implementation of changes.

We also recommend a revision of the introductory section (a) and the beginning of section (b) of the plan to communicate a more proactive and less qualified commitment to achieving the goal of full and meaningful access (pp. 8-11).

The very first sentence of the introduction's *Summary of the Plan*, section (b) communicates a tentative posture toward the plan goals:

California's Language Access Plan proposes a measured, incremental process to expand and enhance language access [...]. (p. 11)

This sentence and the discussion of challenges that precedes it in section (a) do not communicate a sense of necessity and commitment to achieve the plan goals. These sections should be revised to shift the focus to the diversity of the state's population, the impacts on communities and the judicial branch of not providing access, and the importance of implementing a comprehensive and effective language access plan to protect fundamental rights and fairness in our judicial branch.

We would also recommend adding some discussion of the Department of Justice investigation and Title VI requirements to the introduction as factors that support a strong commitment to the plan. Finally, we suggest it may also be helpful to add information about historical public support for language access as necessary to ensure the fair administration of justice in California.

3. Discussion of Funding and Challenges to Expansion

We are concerned with the focus in the LAP document, starting with the introduction and continuing in sections throughout, on the challenges posed by expansion and the repeated suggestion that the goal of providing language access is in competition with other needs and priorities in the courts. Following are a number of excerpts to illustrate:

Courts must confront these challenges with limited resources, having endured severe budget cuts during the past several years that have crippled their ability to maintain adequate levels of service, much less increase language access services to meet the growing need.
(Emphasis added, p.9)

Fundamental to California's Language Access Plan is the principle that the plan's implementation will be adequately funded so the expansion of language access services will take place without impairing other court services. (Emphasis added, p.11)

The recommendations in the plan also set the framework for identifying 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. (Emphasis added, p. 14)

Expansion of language services [...] poses fiscal demands that must be satisfied by efficiencies in the provision of language services and, most importantly, by additional funding appropriated for that purpose and not by shifting already scarce resources from other court services. (Emphasis added, p.18)

In order to complete the systematic expansion of language access services, the Judicial Council will (1) secure adequate funding that does not result in a reduction of other court services [...]. (Emphasis, added p. 73)

The repeated framing of funding concerns in this way creates the impression that providing language access, as required by law, poses a threat to other court services. While this is an understandable and valid concern, the point should be made once, and should not color every mention of funding needs. We recommend reducing this emphasis by deleting the underlined text above.

This narrative, the idea that providing language access takes away from other court needs and priorities, does not contribute to achieving the LAP goals. This way of thinking has long led courts to defer language access needs. The result that we have commented on many times is that LEP parties continue to be denied access to the courts even when funds and interpreters are available.

Moreover, this framing invites doubt about the feasibility of the goals, and may be used to justify continuing delays in reaching the goals of the LAP. This focus could also be perceived by stakeholders and other interested parties as a lack of commitment to carry out the goals of the plan. This narrative does not convey confidence in the plan, or urgency for legislators to provide additional funding or for courts to implement changes.

The purpose of the LAP is to identify how courts will expand and improve language access. We urge the LAP working group and the Judicial Council to reject the perspective that qualifies the commitment to language access by focusing on challenges and the need to avoid impacts on other court needs. This line of thinking has kept language access too low on the list of priorities and failed to ensure the courts are fully accessible to LEP court users. The LAP should mark a clear departure from this way of thinking.

We appreciated the public comments of legal aid providers who said that, despite their own funding challenges and deficits, they have come to treat language access as something that is simply not optional. It is as fundamental as paying the electric bill. It must be done or the operation is not functional and not serving its purpose. This is the adjustment in thinking that is crucial if the courts are to achieve the goals of the plan and satisfy the requirements of Title VI, and the LAP should reflect this attitude.

The courts should seek increased funding for interpreter services because this is an area the legislature has not cut and has historically been sympathetic to funding. The need to comply with Title VI and the actual expansion of services as required by law make a compelling case for new funding.

We note the LAP document emphasizes in numerous comments that courts have suffered cuts and funding deficits, without mentioning that the budget for interpreter services has not been cut, or that the courts have had surpluses in the interpreter budget for nearly a decade and chose for many years to divert those funds to other priorities. See CFI Public Comments dated April 15, 2014, p. 5 for more detail.

The first quote above (p. 9 in the LAP) likewise gives the impression that there has been a shortage of funding for language access services, which is not the case in terms of the interpreter budget. The LAP document thus gives the inaccurate impression that there has been a chronic shortage of funding to provide language access. This should be corrected.

The LAP describes the intent of the plan is to "set forth useable standards for the provision of language access services across the superior courts statewide, *while allowing local courts to retain a measure of control over the allocation of their internal resources and the terms of their labor agreements.*" (Emphasis added, p. 11)

Interpreter services are funded through a distinct line item (Program 45:45) in the judicial branch budget that is specifically allocated by the legislature and restricted for reimbursement of interpreter services. This budget can thus be clearly distinguished from other court needs and operations. The plan does not mention that the interpreter services budget is not part of the individual courts' operating budgets, but is funded on a reimbursement basis from the statewide fund. This should be clarified so that it does not give the impression that all language access services will have to be paid from local court budgets.

Perhaps all language access improvement costs should be funded on a reimbursement basis, and the plan should recommend that the Judicial Council establish a separate budget item for support of language access initiatives in the branch, in addition to Program 45:45 that funds interpreter services. The council could fund a new budget item through general funds, modernization and improvement funds, new funding from the legislature, and grants sought for this purpose. This would avoid courts seeing the costs for language access as competing with other demands within their local operating budgets. Courts could develop local plans for necessary changes and improvements and apply for grants from the Judicial Council. The Judicial Council could also develop centralized projects to provide language access support to all the courts in areas where a centralized approach would create efficiencies and consistent quality, such as training, informational materials and kiosks, and translations.

4. Include and involve interpreters and their organizations as partners in language access management and the implementation of the plan.

We appreciate the fact that the working group included interpreters and that a consultant to the working group is an interpreter and attorney. We also commend the working group for the inclusive nature of the process, including public hearings and listening sessions with stakeholders.

At the same time, we note that in three public hearings discussing many aspects of language access, there was only one interpreter among the approximately 29 panelists invited to participate (the fourth bullet point on page 16 should be corrected to remove “and representatives”). This illustrates what we see as an ongoing challenge: the system does not fully appreciate the value of our expertise or see interpreters as key contributors in the process of identifying solutions and realizing language access goals.

The LAP does not recognize the role interpreters can play, beyond the courtroom, in the expansion and improvement of language access. It does not include recommendations to integrate the expertise of interpreters to develop language access solutions and implement and manage language access services.

The plan does recognize the high level of expertise required to interpret in court proceedings and strongly promotes the use of certified interpreters. Beyond that, however, the LAP primarily recommends seeking alternative methods of delivering language access outside of courtrooms, rather than recommending broadening the areas in which certified interpreters can contribute to language access in the court system.

Interpreters' expertise can be applied, however, to meet a number of other needs identified in the language access plan, including:

- training judges and other court staff on working with interpreters and language access generally;
- language specific training for bilingual staff;
- translation work (by those interpreters with appropriate qualifications);
- remote interpreting for services and points of contact outside of court proceedings;
- managing and administering interpreter services;
- implementing the language access plan;
- work with the Judicial Council to develop agreed-upon glossaries of legal terms;
- mentoring and supervising interns in formal training programs; and
- development of best practices and efficiencies.

Although not all certified interpreters are trained translators, many are, as noted in the draft plan. The LAP should recommend that courts develop interpreter/translator positions, and hire or promote properly qualified individuals to those positions.

More fully utilizing the services and expertise of the existing workforce of trained professionals would create efficiencies and better use of existing resources, in keeping with the goal of limiting the need for new funding.

5. Language Access Outside of Courtrooms: the role of bilingual staff, interpreters, and volunteers

Goal III. Provide Language Access Services at All Points of Contact Outside Judicial Proceedings. (p.45-51) and Goal V: Expand High Quality Language Access Through the Recruitment and Training of Language Access Providers. (p. 58-66)

Although the plan includes recommendations to use certified and registered staff interpreters for some out-of-court interpreting (recommendations 28 and 29), the focus of the overall discussion and

recommendations is on using alternatives to professional interpreters for contacts outside of court proceedings, such as self help centers and public counters.

The court should provide qualified interpreters for all court proceedings. However, a majority of interactions LEP court users have with the courtroom will be outside the courtroom and will be handled by bilingual staff or volunteers. (p. 59)

We do not believe this approach is in keeping with the LAP goal of providing consistently available and competent services to LAP court users. While we agree that volunteer programs can be helpful as supplemental services where available, we do not think this is a practical or realistic solution to provide consistent services that are *reliably* available.

Volunteer programs by their very nature rely on whoever volunteers (choice of languages will be limited) and when these individuals are available. While the Justice Corps program has reportedly been successful in providing language access at self-help centers, the program is currently in place only in San Diego, Los Angeles and the Bay Area. This model will not be practical for courts statewide and does not provide a *regularly available* resource in all languages required.

The plan also notes the importance of ensuring volunteers are competent:

At the core, it is vital that there be appropriate screening, monitoring, supervision, and training of staff and volunteers to ensure the quality and competency of the services provided. (p. 48)

The resources needed to recruit, train and manage volunteers on a court-by-court basis, as would be necessary to ensure adequate quality of assistance, would be better spent to provide in-house services. A combination of bilingual staff and in-person and remote staff interpreters will better ensure reliably available, quality services, and can be managed and deployed with greater predictability and potential efficiencies.

Given the volume of need for language access in California, we suggest that less emphasis should be placed on using volunteers, and the focus should instead be on integrating staff interpreters and bilingual employees into a systematic and institutional approach to ensuring courts statewide are accessible to LEP court users. This could be accomplished at a modest cost by having staff interpreters available to provide remote interpreting statewide for out-of court needs (recommendation 30). We also recommend that language access at self-help centers should be provided on-call by in-person staff interpreters in the top five languages that a court serves, and remotely in other languages.

Court personnel should be trained to understand the range of options for providing language access in a variety of situations (from the metal detector to traffic windows to self-help) and should know how to seek assistance depending on the language and communication need. In addition to providing more reliable language access, a systematic plan for these services would yield greater efficiencies as well, and would not require as many resources or as much administration at the local court level.

6. Use of Family Members and Friends

Goal II: Provide Language Access in all Judicial Proceedings
D. Considerations when appointing interpreters (page 40-45)

We strongly oppose the recommendation related to use of family members and friends in court proceedings (17, p. 43). The last paragraph of the issue discussion does a good job of describing the reasons family members should not be used (p. 43). Elsewhere the LAP describes family members and

friends as “unqualified” and “entirely inappropriate” interpreters (p. 35). Recommendation 17 is not consistent with the goals of the LAP and would appear to condone the use of family members and friends. See additional concerns and recommended revision below in Section 13: Additional Comments on Specific Recommendations.

7. Mentoring

Mentoring programs are recommended in the plan as a recruitment method (recommendation 45). CFI agrees that mentoring programs should be implemented as a training and recruitment tool for individuals seriously preparing for certification and a career in interpreting. Participants should be selected and screened based on standardized criteria. They should receive formal training, and should have opportunities for observation and increasing levels of practice with careful supervision and feedback.

Mentoring programs should not be used to fill basic language access needs in the court system or as a source of free labor. Language access services need to be of predictable quality and regularly available; mentoring and volunteer programs are not suited to provide the necessary level of reliability and service.

In our experience, courts have not implemented appropriate training programs, but instead have sought to put “interns” to work as free labor covering in-court proceedings in civil matters, without appropriate training, mentoring and supervision by a certified interpreter. We are receptive to working with the courts to establish appropriate mentoring programs with the features described above, for the purpose of increasing the ability of prospective interpreters to become certified and increase the pool of qualified interpreters.

8. Recruitment

Goal V: Expand High Quality Language Access Through the Recruitment and Training of Language Access Providers (pp. 58-66)

The California Federation of Interpreters agrees that recruitment is necessary to ensure that adequate numbers of interpreters are available in future years. We also agree with recommendations to recruit more bilingual employees and place these employees at key points of contact where they can serve as a valuable resource.

The draft plan mentions CFI’s position on interpreter availability in a manner that is oversimplified and out of context (at p. 62, Recruitment, paragraph 1). We request that this be revised. As written, the plan could give the false impression that we do not think recruitment is necessary.

To clarify our position, we recognize there is a shortage of interpreters in some languages and in some geographic areas. The focus of our analysis on interpreter availability (see April 15, 2014 Public comments, pp. 3-5) is that the shortage of interpreters has been steadily improving as the employment system has created greater job opportunities and benefits, and the use of non-certified, non-registered interpreters has declined significantly. We have expressed the concern that the shortage of interpreters has tended to be overstated and assumed, and not based on an analysis of actual numbers, changes over time, or the marketplace of supply and demand by language. We have also made the point that this perception of a persistent, generalized shortage is not conducive to sound policy-making, and should not be used as an excuse for replacing in-person interpreters with remote interpreters.

While we are in general agreement with the recommendations in the plan for recruitment, we note that completely absent from the recommendations is any mention of the need to provide attractive job opportunities and a career path for interpreters in order to attract skilled individuals to this work.

In 2000 the Judicial Council included in its strategic planning the goal of increasing interpreter pay to match the federal rate (currently 37% higher for the same work). Once the employment system was put into place in 2003, interpreter salaries were subject to collective bargaining, with the Judicial Council setting rates for contract interpreters. In the past decade interpreter pay has lagged, however, and the council should renew the goal of increasing pay to federal levels.

The regional collective bargaining process has proven to be impractical, expensive and unproductive. Parties on all sides of the process have expressed dissatisfaction with regional bargaining. It has not been a forum for making collaborative improvements in language access services. For example, proposals from both sides of the table to expand services to include translation work, or to make the cross assignment system more functional, have not yielded results and have been tabled. Additionally, the courts have not created promotional opportunities or implemented salary steps for interpreters, changes that would help the courts to attract and retain highly skilled interpreters.

The LAP should include additional recommendations to:

- Improve interpreter compensation for independent contractors and employees, using the federal per diem rate and salary levels as a point of comparison;
- Conduct a salary study of the interpreter market place in California, and the level of education, skills and training required to achieve certification.
- Establish higher pay levels for languages that are in high demand with a limited supply of interpreters.
- Establish full time regional positions, including mandatory cross assignments as allowed under Govt. Code 71810(c), at a higher salary in languages that are in high demand with a limited supply of interpreters.

9. Video Remote Interpreting

Goal II: Provide Language Access in All Judicial Proceedings, Section C: Use of Technology for Providing Access in Courtroom Proceedings (p. 36) & Appendices B and D

We agree with the following objective in the plan with regard to technology:

Technologies such as video remote interpreting (VRI), telephonic interpretation, web-based access, multilingual audiovisual tools, and others have an important role to play in the statewide provision of language access. However, court must exercise care to ensure that the use of technology is appropriate for the setting involved, that safeguards are in place for ensuring access without deprivation of due process rights, and that high quality is maintained. (Emphasis added, p. 19-20)

The overall message on remote interpreting in the LAP does not support the intent of the underlined text, however. The draft LAP provides far too much discretion for use of video remote interpreting and experimentation by local courts, and does not adequately define appropriate use of VRI. It does not adequately safeguard LEP rights.

The LAP should recommend that the Judicial Council adopt statewide, mandatory standards for VRI, with stakeholder input and participation, prior to implementation of VRI use. The LAP should also recommend that VRI use for court proceedings be tested in a pilot program and subject to rigorous review before it is expanded for broader use.

These standards must include:

- strong minimum technology requirements that provide for high quality audio and video and adequate bandwidth;
- an unambiguous preference and priority for providing in-person interpreters;
- clearly defined limitations on the proceedings and circumstances appropriate for remote interpreting, limited to matters where providing competent language access is otherwise impossible.

The recommendations also do not state explicitly the intent that VRI be provided using staff interpreters primarily. A statement or recommendation should be added to ensure courts understand that interpreter services using VRI are subject to all provisions of the Interpreter Act and the regional MOUs.

As written, the appendices and recommendations on VRI in the draft LAP are grossly inadequate to ensure careful and responsible implementation of VRI and will not safeguard LEP rights by ensuring VRI use is appropriately limited.

Proceeding in this fashion will allow misuse of VRI and will not advance the fundamental goals of the LAP, nor is this approach in keeping with the Department of Justice's strong suggestion that VRI be implemented responsibly in consultation with interpreter organizations. Moreover, this approach risks repeating mistakes that have led to harsh criticism of the judicial branch for failing to effectively manage technology needs and moving ahead with ineffective technology initiatives that waste resources and delay more appropriate solutions.

The discussion of remote interpreting in courtroom proceedings does not provide a balanced description of the pros and cons of remote interpreting. Consistently, statements about the perceived benefits of remote interpreting are stated as factual and definite, whereas statements about perceived harms or limitations are described as opinions that may or many not be valid. For example:

PRO: The use of remote interpreters in courtroom proceedings can be particularly effective in expanding language access. Among the benefits of remote interpreting are the fact that remote interpreting facilitates the prompt availability of language access for litigants by providing certified and registered interpreter services with less waiting time and fewer postponements, saving both the court user's and the court's valuable time. In addition, having qualified interpreters more readily available through remote interpreting can decrease dismissals for failure to meet court deadlines and decrease the frequency of attorneys or parties waiving interpreter services or proceeding as if the LEP person is no present, in order to avoid delays. By decreasing interpreter travel time between venues and increasing the number of events being interpreted by individual interpreters, remote interpreting allows more LEP litigants to be served, in more areas, with the same interpreter and financial resources, thereby greatly expanding language access. [...] Short proceedings like arraignments can also be done remotely, saving travel time and costs. (Emphasis added, pp. 36-37).

The benefits described in the above passage are theoretical and to our knowledge there is no empirical evidence or study to back up these statements, yet they are expressed as factual, and in the most positive terms. There is no evidence that there is an actual problem with dismissals in criminal matters due to a lack of interpreters, or a basis for the predicted efficiencies.

The potential downsides to remote interpreting, on the other hand, are expressed as opinions help by some that may or may not be valid. For example:

CON: *On the other hand, as explained by many in the listening session, there are disadvantages to remote interpreting as well. Remote interpreting may be perceived, accurately or not, as providing second-tier language access services while also potentially compromising the accuracy and precision of the interpretation. Some studies have shown that interpreter accuracy and level of fatigue is affected when providing services remotely, particularly where an event exceeds 15-20 minutes in length. Additionally, remote interpreting can dilute the control an interpreter is able to exercise in ensuring accurate interpretation and removes the important visual context of the setting and, potentially, the nonverbal cues of both the LEP speaker and others in the courtroom. All of these are factors for consideration when remote interpreting is being used to facilitate language access in the courtroom. All these are factors for consideration when remote interpreting is being used to facilitate language access in the courtroom (pp 37-38).*

There is empirical evidence that remote interpreting has serious limitations and can adversely impact access. We are not aware of empirical evidence that supports the great efficiencies the LAP forecasts as facts, and we are not aware of validated research to support the position that VRI provides access equal to the use of in-person interpretation *without compromising participation and communication needs of LEP court users.* As discussed in our April 15, 2014 public comments (pp. 10-13) VRI has not been adequately tested or proven to provide language access at the level required to protect LEP rights.

Given these uncertainties, courts should not experiment with VRI with cost savings in mind. Standards for VRI must ensure that it is used only in unusual circumstances when providing a competent interpreter is otherwise impossible. Standards for VRI use typically include a clear preference and priority for in-person interpreters, with remote interpreting being used only in circumstances where an in-person interpreter is not available. The LAP discussion of VRI and recommendations are weak on this point and should be strengthened.

The assumptions in the benefits portion of the discussion also do not take into account the fact that- using currently available technology- remote interpreting must generally be done in the consecutive mode. The assumptions also do not take into account potential delays and logistical issues associated with trying to use remote interpreters and still provide a range of services inside and outside of courtrooms during proceedings, nor impediments to the same level and ease of attorney-client confidential communications, and case preparation and processing that occurs in hallways and lock ups.

We are very concerned that the incomplete analysis in the LAP, and the unrealistic and positive spin on remote interpreting benefits, will have the effect of encouraging VRI use to cut costs, without due consideration for the risks to due process and the decrease in quality of access that LEP court users will receive.

We recommend a revision to the discussion at pages 36-38 to provide a more balanced and neutral description of perspectives on VRI use and the potential role of remote interpretation in providing language access. Projections of efficiencies that are not based on specific data or studies should be removed or stated as theoretical rather than factual, and VRI should not be couched as a solution to a problem that has not in fact occurred with any significant frequency as implied (i.e. a significant number of dismissals that could be decreased).

We suggest the following revisions to address these issues:

The use of remote interpreters in courtroom proceedings can be particularly effective ~~in expanding language access~~ for accessing the services of qualified interpreters when such services would otherwise not be available. Proponents of remote interpreting also cite other potential ~~Among the benefits of remote interpreting are the fact that remote interpreting facilitates~~ including, the prompt availability of language access for litigants by providing certified and registered interpreter services with less waiting time and

fewer postponements, ~~saving both the court user's and the court's valuable time.~~ In addition, having qualified interpreters more readily available through remote interpreting ~~can decrease dismissals for failure to meet court deadlines and~~ may decrease the frequency of attorneys or parties waiving interpreter services or proceeding as if the LEP person is not present, in order to avoid delays. By decreasing interpreter travel time between venues and increasing the number of events being interpreted by individual interpreters, remote interpreting has the potential to allow more LEP litigants to be served, in more areas, with the same interpreter and financial resources, ~~thereby greatly expanding language access.~~ [...] Short proceedings like arraignments can also be done remotely, saving travel time and costs. [...]

CON: On the other hand, as explained by many in the listening sessions, there are disadvantages to remote interpreting as well. Remote interpreting ~~may be~~ is perceived by many, accurately or not, as providing second-tier language access services while also potentially compromising the accuracy and ~~precision~~ completeness of the interpretation. ~~Some~~ Studies have shown that interpreter accuracy and level of fatigue is affected when providing services remotely, particularly where an event exceeds 15-20 minutes in length. Additionally, remote interpreting can dilute the control an interpreter is able to exercise in ensuring accurate interpretation and removes the important visual context of the setting and, potentially, the nonverbal cues of both the LEP speaker and others in the courtroom. Proponents of prioritizing in-person interpreting also cite the lack of empirical evidence that VRI adequately protects LEP court user's language access throughout the proceedings, the potential risks to LEP rights, and the need for more information about how remote interpreting affects communications and LEP participation in court proceedings. All these are factors for consideration when determining whether remote interpreting is ~~being used~~ appropriate to facilitate language access in the courtroom.

We provide further comments on specific recommendations and the appendices in Section 13 below.

See also: CFI Public Comments, April 15, 2014 (p. 10-13); and
CFI letter re: Region 3 VRI system, September 25, 2014

10. Court Rules, Forms, and Legislation for Plan Implementation

a. Recommendation to consider changes to the Interpreter Act.

The contracting out limitations in the Interpreter Act allow significant use of contractors and should not be changed. These restrictions support the employment system. If the courts have difficulty attracting and retaining enough interpreters this can better be addressed by creating a career path for young interpreters and improving working conditions and pay.

We do not agree that the 100-day rule (limiting contractor use to 100 days per calendar per county) has a negative impact on courts' access to certified interpreters. In languages other than Spanish this is not an issue because the volume of work is such that contract interpreters will rarely hit that limit. Individual contractors can work in multiple counties and work full time for the courts by working in only three counties (241 work days per year). Moreover, a contractor who works 100 days in a single trial court is working nearly 50% time. These individuals do not have to stop working for the trial court; they have the option instead, under the law, to become as-needed employees and continue working in a manner that is very similar to contracting. They can continue working only as available, and the courts are not obligated to use them if there is not work. This flexibility in the employment system makes this a non-issue.

The courts have not raised this as a problem in collective bargaining. To the extent that there is a demonstrable problem with this limitation that affects the courts ability to access needed interpreters, however, the courts could seek relief on this issue in collective bargaining.

b. The Good Cause Clause, G.C. Section 68561(c)

CFI's position is that only certified and registered interpreters should be used in court proceedings, and courts should strive to recruit and retain sufficient interpreters to make the good cause clause unnecessary. The good cause clause should be an exception rarely used and strictly followed. The good cause clause instead has been used as a huge loophole that has allowed courts to get by without making adequate investments in recruitment, training and improved management and coordination of interpreter services.

We are not aware of any other example in the courts where qualified professionals are routinely replaced with individuals who lack minimum qualifications established by law. Considering the very sensitive work that interpreters perform, and the legal and ethical issues at stake, the goal of all concerned should be to eliminate the good cause clause that allows appointment of less qualified interpreters.

In our experience, the good cause clause and related rules and procedures are not being followed in most courts that appoint non-certified interpreters. Courts routinely appoint unqualified interpreters without making findings or a record as required by existing rules and procedures. It is common for judicial officers to be unaware of the qualifications of interpreters who appear in their cases.

Judges need training and a real understanding of interpreter skills and standards of accuracy, so that they seriously review and consider whether non-certified interpreters are acceptable candidates, rather than routinely accepting any interpreter sent by the interpreter coordinator.

The same standard for determining good cause, and the existing Rule of Court 2.893 that applies to appointment of non-certified interpreters in criminal and juvenile proceedings should be adopted and applied to all court proceedings (recommendations #70 and #71). There is no difference in the skills and abilities required to interpret completely and accurately in different proceeding types. If anything, interpreting in civil proceedings can be more challenging. Therefore, the standard in civil matters should be the same, and if any changes are made to existing standards, these should be focused on making the rules more effective at ensuring that the good cause and qualification standards are taken seriously and only competent interpreters are used.

One change that we would recommend would be to add the requirement that the judicial officer inform the LEP court user that the appointed interpreter is not certified (or not registered) and invite the LEP court user to notify the court should there be any issues with comprehension or if they would prefer to postpone the case until a certified or registered interpreter is available.

c. Waivers

In our experience, judges routinely accept interpreter waivers in criminal matters without an understanding that having an LEP person proceed in a case without an interpreter has serious due process implications. Attorneys regularly waive their client's right to an interpreter without knowledge or understanding of case law that requires waiver of the constitutional right to an interpreter in criminal matters must be personal, knowing, intelligent and voluntary.

Waiving the right to an interpreter without an interpreter to take the waiver begs the question as to how a knowing and personal waiver can be made without an interpreter to ensure the LEP court user fully understands.

We are concerned about institutionalizing this practice by providing procedures that, similar to the good cause clause, may become a routine method of circumventing language access requirements. LEP persons generally do not understand their language access rights in the first place, and can easily feel pressured to "cooperate" with authorities and proceed without full understanding. In reality, judicial officers and attorneys often place greater value on expediency and convenience than on protecting language access

rights. LEP persons likewise may value convenience or wish to avoid delays and may be willing to sacrifice full understanding or participation. This is not necessarily in the interest of the other parties or the court itself, since all parties have an interest in sound decisions being made based on a clear understanding of the facts and evaluation of the credibility of all information provided to the court.

11. Comments on Appendix B: Factors and Considerations for Remote Interpreting

- a. The preference for using in-person interpreters should be included at the beginning of this Appendix and should be stated unambiguously.
- b. The courts' obligation to make diligent efforts to find and schedule an in-person interpreter should be included following (a).
- c. Minimum Technology Requirements must be set at a high level on a statewide basis and be mandatory.
- d. The Factors and Considerations in Appendix B should be revised to define appropriate use more narrowly and to make the guidelines mandatory.
- e. Section D should be revised to disallow evidentiary proceedings rather than saying that proceedings involving "more than simple evidence" are not appropriate for RI. As written it does not provide clear guidance and is subject to interpretation and abuse. The word "typically" should be removed to make the definition of inappropriate events unambiguous.
- f. The first bullet point under Section D should be removed. This appears to imply that cost issues and efficiencies are justifications to use RI. This is contrary to the LAP's statement that use of in-person interpreters is preferred whenever possible and the controlling goal of providing consistent services and meaningful access.
- g. It is unclear what the intention is of the 7th bullet point under Section D. The factors under D should make clear that proceedings should involve limited speakers overall. RI is not appropriate to serve multiple LEP speakers in a proceeding through one remote interpreter. Moreover, a remote interpreter always serves all speakers in a proceeding by facilitating communication in all directions (remove 7th bullet point).
- h. The appendix should include that the court must consider whether the proceeding is sufficiently short and simple to be conducted in the consecutive mode and establish that the consecutive mode is required.
- i. Use of RI for relay interpreting between two foreign languages into English presents a series of problems. This is most often used for indigenous languages that present unique issues and complexities.
- j. In Section J: provisionally qualified interpreters should not be appointed using RI. The point of using RI rather than in-person interpreters is to allow access to certified interpreters when an in-person interpreter is not available. The good cause loophole should not be applicable in RI. Certified and registered interpreters only.
- k. In Section K: revise b to state: add: For purposes of ensuring LEP rights are protected and monitoring the effectiveness of RI, courts should conduct regular follow-up with RI participants, including LEP parties, and track technical difficulties, delays and continuances or complaints associated with RI.

12. Comments on Appendix D: Visual/Auditory Issues, Confidentiality, and Modes of Interpreting When Working Remotely

- a. Section 1 is taken from the sign language interpreter guidelines and is not appropriate for spoken language interpreting. A clear view of the LEP speaker is most essential for sign language but is not more important than views of other speakers for spoken language interpreters. Views of all speakers are essential for spoken language interpreters.
- b. Section 2 does not provide adequate guidelines or safeguards to protect attorney-client communications, confidentiality and avoid logistical interference with natural opportunities for

attorneys to communicate with their clients spontaneously during proceedings as well outside the courtroom for case preparation.

- c. Section 3 creates an unrealistic expectation that RI will be possible in simultaneous mode. Equipment currently being used for VRI in sign language is not capable of use simultaneously in spoken language. Systems with duplex audio that are capable of being used in simultaneous mode are much more highly sophisticated and very expensive. Courts are likely to expect spoken language interpreters to provide simultaneous interpretation using technical solutions that are not adequate to this task. For this reason we recommend that the court recognize in this appendix and Appendix B that only very short proceedings that can be handled in simultaneous mode are appropriate for VRI.
- d. Section 4 accepts the idea that courts will experiment with VRI technology solutions and the state will not have a single, responsible and reliable technology solution for VRI. This is misguided, inefficient and not conducive to the goals of the LAP. We highly recommend that the working group reconsider this approach in light of the way this approach to “innovation” has demonstrated, in Region 3, that courts are not equipped to establish VRI in a manner that meets the LAP goal of ensuring “high quality communication” and protects meaningful access. See CFI letter dated September 26, 2014 on issues with Region 3 VRI plan.
- e. Sections 5, 6 and 7 do not provide adequate guidelines for courts to follow in order to ensure that LEP rights are protected and that interpreters can perform at the level required to protect access and participation. For example, there is no mention of the need to provide basic information to the interpreter in advance or at the start of the proceeding. Much more specific procedures would need to be developed to ensure VRI does not compromise communications.

13. Additional Comments on Specific LAP Recommendations:

Recommendation 1. Language access needs identification. Language access needs must be clearly and consistently documented in the case management system and in court records.

The courts currently have very poor systems for tracking language access needs. It is imperative that courts prioritize including language access needs into the electronic case management systems. CFI has been talking to courts about this for years, because it would greatly assist interpreters in managing their time to know which cases on calendar need interpreters. For years courts have said that they have other priorities in terms of programming changes to their existing systems. Any new case management systems must include electronic recording and tracking of language needs. Such a system should include a way to note, when known, whether witnesses in a case require an interpreter, and the language.

Current processes (including interpreter daily activity logs, interpreter request protocols and the CIDCS reporting system) are inefficient and unreliable. In most courts the computerized calendaring systems cannot track and search for interpreter needs. This makes it difficult if not impossible for interpreter coordinators to efficiently manage interpreter resources. The goal should be for an interpreter coordinator to be able to electronically search for and produce a list of all pre-scheduled cases in need of an interpreter by date or other timeframes.

Recommendation 4. Mechanisms for LEP court users to self-identify. *Add to recommendation: Court staff will be trained to include a notice that free language access services are available in general announcements given to court users at the beginning of calendars.*

Recommendation 8. Expansion of interpreters to all civil proceedings. The term "qualified interpreters" should be defined throughout the document to mean certified or registered. Although this information is included in a footnote, it is not clear throughout the document what “qualified” means and this may not be understood by readers who do not see the footnote.

As noted in our general comments, we do not believe it is necessary to wait until 2020 to provide interpreters in all court proceedings. This recommendation should make clear that the intent is for courts to provide interpreters in all court proceedings as quickly as possible, and that it is not the intent of this recommendation, or the phase in recommendations, for courts to stop providing services in areas where they are already providing interpreters. Many courts are already providing interpreters in Phase 2 cases, such as general family law and civil harassment. It would be important to clarify this to avoid a court determining that in order to expand to Phase 1 unlawful detainers, they will stop providing interpreters in family law matter, which are designated as Phase 2 in the LAP.

The recommendation to give priority to in-court proceedings over court-ordered events may be impractical and counterproductive. For example, court-ordered mediations are often critical for a family law case to proceed efficiently in court. It does not make sense to provide an interpreter for a proceeding but not for the mediation. This approach may well result in the proceeding being continued at a cost to the court and the parties if they cannot proceed with the mediation due to lack of an interpreter.

Additionally, court-ordered mediations are currently included as part of the bargaining unit work of staff interpreters and are covered routinely in many courts. It would not be appropriate for courts to stop providing interpreters for such events as a result of the LAP's phase in schedule, and if as a result parties had to bring their own interpreters, this would violate the interpreter MOU's.

Recommendation 10. The meaning of "court-ordered/court-operated events" should be defined with examples.

Recommendation 11. Preference for in-person interpreters.

See CFI comments on VRI in our LAP Public comments (pp. 10-13). Any use of remote interpreting in court proceedings must be carefully and strictly limited to ensure its use does not compromise LEP rights.

This recommendation should be amended to reflect a strict preference and priority for use of in-person interpreters in court proceedings. The phrase, "... but courts may consider the use of remote interpreting where it is appropriate and advantageous for a particular proceeding" is vague; it is unclear what "appropriate and advantageous" means. This phrase creates a loophole you can drive a truck through, rendering the preference for in-person interpreters meaningless.

Suggestion for revised recommendation:

The use of in-person, certified and registered court interpreters is preferred for court proceedings and court-ordered/court-operated events. ~~but courts may consider the use of remote interpreting where it is appropriate and advantageous for a particular proceeding.~~

The following recommendations (12 & 13) and Appendix B address the use of remote interpreting and it is thus unnecessary to include the language that is stricken above.

Recommendation 12. Rather than stating that courts should "consider" factors in Appendix B before using remote interpreting in the courtroom, this recommendation should refer courts to required factors that must be met before using remote interpreting. Appendix B should provide required steps and circumstances that clearly define when VRI is and is not appropriate.

Recommendation 13. This recommendation should reference another Appendix to include mandatory minimum technology that must be used for courtroom interpretation.

Recommendation 14. CFI is open to the idea of having a centralized hub where certified and registered staff interpreters are available to courts statewide to provide language access using remote interpreting, provided adequate equipment is used, and provided that VRI is appropriately limited for events outside of courtrooms and in short, non-complex proceedings only where competent language access would otherwise be impossible.

Recommendations 16-23—Add recommendation in this section.

This section pertains to considerations when appointing an interpreter. Although the discussion preceding these recommendations briefly mentions good cause findings and procedures, the need to comply with these steps is not reflected in the recommendations.

The same good cause and qualification rules that apply in criminal proceedings should be adopted in civil proceedings, as is suggested by recommendations 9, 70 and 71. We recommend adding a recommendation at the beginning of this section to clarify conditions that must be met before appointing a non-certified or non-registered interpreter.

Suggested additional recommendation to precede recommendation 16:

Courts will only appoint a non-certified, non-registered interpreter to interpret in a court proceedings when:

- 1) no certified or registered interpreter is available;
- 2) a finding of good cause is made on the record and other diligent search and qualification procedures have been followed; and
- 3) the judge in the proceeding determines the individual is provisionally qualified.

Recommendation 16. This recommendation should be reworded to state this more clearly as a prohibition. Replace, “must avoid appointing” to “shall not appoint.”

Recommendation 17. This recommendation is highly problematic for a number of reasons.

- a. It is highly unlikely that family members or friends have the requisite skills, knowledge and proficiency in two languages to be qualified to interpret in any court proceeding.
- b. Family members and friends have a conflict of interest and cannot be relied upon to be impartial. Using them as interpreters could impact a judge’s ability to determine the facts or fairly adjudicate a matter.
- c. The same reasoning for not appointing opposing parties and others cited in recommendation 16 applies to family members and friends.
- d. Using family members and friends to interpret violates the regional MOU provisions that only bargaining unit members (certified and registered staff interpreters) may perform bargaining unit work.

We recommend revising this recommendation to prohibit use of an LEP court user’s family members or friends to interpret in court proceedings, as follows:

17. Family members or friends of the LEP court user will not be appointed to interpret for courtroom proceedings. This recommendation does not prohibit family members and friends of an LEP court user from providing informal assistance in order to determine the language needed or to inform the court user of a continuance or other basic instructions related to their matter.

Recommendation 18. We agree with the recommendation to prohibit the use of minors to interpret for their LEP family members.

Recommendation 19. This recommendation appears to give significant and inappropriate discretion to courts to use of bilingual staff to interpret in courtroom proceedings. This is contrary to the overall goals of the LAP, and contrary to other recommendations. As written, this recommendation will create confusion and blur lines that need to be clear with respect to who is qualified and competent to interpret in court proceedings. This recommendation is problematic for the following reasons:

- a. Bilingual staff are not tested for the requisite skills, knowledge and proficiency in two languages to interpret in court proceedings (unless they are also certified or registered court interpreters).
- b. As acknowledged in the discussion of this section, and reported in public hearings, use of bilingual staff presents problems related to impartiality, and can become a convenient substitute for hiring needed, fully qualified interpreters.
- c. Using bilingual staff in court proceedings violates the regional MOUs that provide only bargaining unit members (certified and registered staff interpreters) may perform bargaining unit work and that contracting out will follow G.C. 71802. It also may violate G.C. 71802(d) of the Interpreter Act that requires courts to follow good cause and qualification rules adopted pursuant to G.C. 68561 before appointing any non-certified, or non-registered interpreters

We recommend revision of this recommendation as follows:

19. Bilingual staff will not be appointed to interpret in courtroom proceedings except in extraordinary circumstances; if the court does appoint bilingual staff, the bilingual staff person must meet all the provisional qualification requirements, and the court must find good cause in accordance with Rule of Court 2.893.

Recommendation 20. This recommendation should be reviewed and revised to reference AB2370 (Chau) which was signed by the governor and will become law in January 2015.

Recommendation 22. A portion of this recommendation needs clarification or examples. As written, the intent of the recommendation is unclear: [...] and identifying situations where justice partners have the responsibility or capacity to provide additional certified or registered interpreters for their clients or witnesses.

Recommendation 23. See 20 above. This section again references “justice partners who will be providing interpreters.” This is unclear and also raises questions about compliance with the Interpreter Act.

Recommendation 50. We recommend adding a bullet point to this description of what training should include, as follows: • The interpreter’s need for basic information, preparation time, and pre-appearance interviews in some proceedings such as trials and other evidentiary hearings.

Recommendations 62, 65 and 66. We support the concept of a complaint form related to language access issues, and assessment of interpreter skills and adherence to ethical requirements. These processes should be developed with interpreter organizations, and should include peer review and an opportunity for interpreters to be informed of and respond to any issues that arise.

Recommendations 70, 71. Good cause and qualification procedures should be the same for civil as criminal. There should not be a different standard.

Thank you for your hard work and for your consideration of these comments.

Please do not hesitate to contact Mary Lou Aranguren, CFI Legislative Committee Chair,

, if you have any questions or we can provide clarification on any aspect of these comments.

September 29, 2014

Attn: Invitation to Comment
Judicial Council of California
Administrative Office of the Courts
455 Golden Gate Avenue
San Francisco, CA 94102

Re: Strategic Plan for Language Access in the California Courts
Item Number: SP14-05

Submitted via Electronic Mail to lap@jud.ca.gov

To the Judicial Council of California and the Joint Working Group for California's Language Access Plan:

We write on behalf of the undersigned groups to provide public comments to the Judicial Council and the Joint Working Group for California's Language Access Plan, as it considers the Strategic Plan for Language Access in the California Courts (LAP), released on July 31, 2014. This document continues the dialogue between California-based legal services and community organizations and the Judicial Council, and builds upon the comments submitted by legal services and community organizations on April 9, 2014 (Comments) (attached as Appendix 1). We will first provide general comments on the LAP as a whole, before turning to specific comments on the eight goals espoused in the LAP. We appreciate the breadth of issues covered in the LAP and the planned implementation of the Plan in a phased timeline.

While the LAP is an important step in the right direction, it still has several significant flaws. Broadly, our comments address these shortcomings: 1) failing to fully recognize the concrete legal obligations to provide interpretation services imposed on the courts by Title VI and other laws; 2) failing to include meaningful detail or mandates regarding local efforts to satisfy language access obligations; 3) using an insufficient timeline that will unnecessarily delay and thereby deny justice to many LEP litigants; and 4) failing to substantively integrate community shareholders and legal aid groups in the development, coordination, overall implementation, and monitoring of the LAP. The LAP is a significant step toward ensuring language access, and we hope that the feedback proposed in this document helps guide necessary revisions.

GENERAL COMMENTS

I. Embrace Language Access as a Core Court Function by Assuring Compliance with Both California *and* Federal Laws

The LAP does not acknowledge federal and state civil rights mandates that prohibit language discrimination. Instead, the LAP denies that under California law, courts must provide

interpreters in all civil cases.¹ In our previous comments to the Judicial Council, we pointed to both California Government Code §11135 *et seq.* and Title VI of the Civil Rights Act of 1964 as California and Federal laws that require that equal access be provided to limited-English proficient (LEP) litigants.²

Under Title VI and its implementing regulations, recipients of federal funds, including California's courts, must provide "meaningful access" to their services for LEP individuals.³ For courts, this includes, at a minimum, competent interpretation during hearings, trials, and motions.⁴ Likewise, under California law, no program conducted, operated, or funded by the state may discriminate on the basis of linguistic characteristics.⁵ In addition to California law, the United States Department of Justice has explicitly noted that "the federal requirement to provide language access to LEP individuals applies notwithstanding conflicting state or local laws or court rules."⁶ Language access is not therefore a matter of the courts' largesse or discretion. Rather, both state and federal law compel the courts to provide language access services — **an adequate LAP must acknowledge and affirm this obligation as a fundamental first principle.**

Providing language access is a necessary core court function. The courts must treat language access as a "basic and essential operating expense, not as an ancillary cost."⁷ The LAP cites lack of funding,⁸ insufficient data,⁹ restrictive labor union contracts, and other reasons to delay or altogether neglect salient language access issues.¹⁰ While we acknowledge these challenges and difficulties, we invite the courts to instead embrace language access as a critical civil rights issue in California.

In embracing its obligation to provide interpretive services in all civil cases and at all critical points of contact, the California courts would be taking a significant step towards increasing access to justice. We are confident that taking affirmative steps to increase LEP

¹ California Judicial Branch, Strategic Plan for Language Access in the California Courts (Proposal SP14-05), Draft, July 31, 2014 (LAP), at 29.

² See Legal Services & Community Organizations Comments submitted to the Judicial Council, April 9, 2014 (Comments) (located at Appendix 1), at 4 - 5.

³ See *id.*; 42 U.S.C. § 2000d (2004); 67 Fed. Reg. 41455-41471 (2002).

⁴ *Id.*

⁵ *Id.*; Cal. Gov. Code §§ 11135, 11139; Cal. Code Regs. Title 22, Section 98210(b).); See also Dymally-Alatorre Bilingual Services Act, Cal. Gov. Code § 7290 *et seq.*

⁶ Letter from Thomas Perez, Assistant Attorney General, U.S. Department of Justice, Civil Rights Division to Chief Justice/State Court Administrator (August 16, 2010) (Perez Letter), available at www.lep.gov/final_courts_ltr_081610.pdf.

⁷ Comments at 5, Perez Letter.

⁸ The LAP suggests turning to one-time sources of funding to implement certain parts of its plan. Legal services and community-based organizations currently rely on such funds.

⁹ As discussed below, advocates have argued to no avail that current data can already assist the Judicial Council in making LEP-sensitive determinations useful to implementing the LAP. The LAP fails to acknowledge these sources of data in a meaningful manner.

¹⁰ The LAP also includes an assertion that California is a leader in language access services on page 10. A study by the National Center for Access to Justice scored and ranked California among the very worst in the nation in assuring access to justice. In comparison, New York, with a similarly diverse LEP population, scored and ranked among the best. The study can be found at <http://www.justiceindex.org/findings/language-assistance/>.

individuals' access to the courts is something the legislature will support by providing the necessary funding to ensure adequate interpretive services.

Affording language services in judicial proceedings and at critical points of contact opens the doors of the courts to LEP litigants to participate more fully in the judicial process through an increased understanding of the judicial system and the law. This in turn leads to more just outcomes in court. Providing these services will also ensure smoother court operations by preventing delays that result from inadequate availability of interpretation. Given the approximately 7 million LEP residents and potential court users in California,¹¹ these are not hollow or insignificant gains for the people of California and the courts.

II. California Courts Must Include More Specific Language Access Requirements

The LAP goals are ambitious but lack precision. Its commitment to gathering more data and engaging the state legislature to increase funds¹² is commendable, but in our view those suggested actions are too general and not likely to produce real results for LEP litigants. Instead, we ask that the courts substantiate this stance by introducing more robust, specific measures into the LAP as detailed in the individual sections below. The LAP should serve as a compliance guide; currently, it instead reads like a “best practices” manual.

The LAP presents many of its measures as suggestions,¹³ framing compliance with the LAP as voluntary. Much to the contrary, the LAP must, as noted above, provide that failure to comply with the LAP constitutes a violation of federal and state law. The LAP, as currently written, does not properly address the severity of such a failure to the individuals implementing the plan – court administrators, judges, interpreters, and staff. We acknowledge that the courts must balance the need to follow the law with the need to grant discretion to local courts to best resolve language access issues on the ground level, but the LAP as written favors the latter too heavily. The language of the LAP should reflect the urgency of following the law and ensure implementation of the LAP by detailing measures and safeguards that mandate, rather than suggest, change. The LAP must inform those tasked with implementing it – court administrators, judges, interpreters, and staff – of the concrete steps courts need to take to follow the law. Similarly, it must unambiguously convey that failure to comply with the LAP constitutes a civil rights violation.

Clear standards and benchmarks will assist the court in calculating expected costs and elevate the overall effectiveness of the LAP. Such strong and specific measures will also assist the court in raising funds through the legislature by creating identifiable demands within a civil rights framework.

¹¹ See LAP at 8.

¹² See LAP, Recommendation 58, at 75-76.

¹³ See LAP, Recommendations 3, 6, 7, 13, 14, 15, 19, 21, 23, 25, 27, 29, 30, 31, 32, 33, 34, 38, 40, 45, 46, 51, 52, 53, 54, 55, 56, 58, 59, 60, 68, 70, 72, 73, 74, 75, 76. The most common phrase in the LAP as a whole is that the courts (or the Judicial Council) “should consider” a given recommendation or measure. This does not signal strong commitment. Such language should be removed from the LAP.

III. Language Access Is an Urgent Issue that Must Be Addressed Now

The LAP must convey urgency. Currently, the LAP's lack of urgency is reflected in a proposed timeline that provides overly generous deadlines. On its face, the LAP commits to providing interpreters in certain types of cases, such as domestic violence and unlawful detainers, in its Phase I, with a deadline of 2015.¹⁴ The LAP provides for expansion of interpreters to all civil cases by Phase II, in 2016-17.¹⁵ However, the timeline to implement and enforce this goal is at odds with this commitment. For example, the LAP calls for the creation of an "implementation committee" to develop a "phased implementation plan" to "phase in the LAP recommendations."¹⁶ This implies that the LAP will not be implemented until the committee creates the plan.¹⁷ Moreover, the courts' commitment to advocating for funding is based on the incremental phasing; therefore, any delays in creating an implementation plan hinder the ability to raise funds as well. Finally, creation of local complaint procedures on LAP implementation, interpretation, and translations is pushed into Phase III, with a 2020 deadline.¹⁸ Compliance with the LAP before such processes are created is unlikely at best, and while waiting for such compliance, LEP communities will remain effectively shut out of the courts.

The LAP consistently provides "suggestions" or "recommendations" instead of mandates. Coupled with the use of vague phases that impose only unspecific deadlines, the overall tenor of the LAP is overly cautious and will result in unnecessary delay. We urge the Judicial Council to replace the precatory language with clear mandates that have specific deadlines.

IV. Community and Legal Services Stakeholders Should Have More Significant Involvement

Notably absent from the LAP is community stakeholder involvement. The LAP mentions several committees and processes that will be determined, such as: the Language Access Implementation Advisory Committee,¹⁹ Translations Advisory Committee,²⁰ developing a pipeline of potential interpreters,²¹ develop strategies for early identification of LEP users,²² and state and local complaint processes.²³ However, the LAP does not require courts to include stakeholders in the aforementioned committees, which will play a large role in developing and implementing local LEP policies.

There must be continuing, significant and meaningful community stakeholder input and involvement as the LAP is developed and implemented. Such stakeholders have unique experience working with diverse LEP populations that provides a depth of knowledge that

¹⁴ See LAP, Recommendation 8, at 33.

¹⁵ See *id.*

¹⁶ See LAP, Recommendation 61, at 78-79, 89.

¹⁷ The LAP's use of the term "recommendations" demonstrates a lack of urgency.

¹⁸ See LAP, Recommendations 64, 65, 66, at 96.

¹⁹ LAP, Recommendation 61, at 78

²⁰ LAP, Recommendation 36, at 55.

²¹ LAP, at 20.

²² LAP, at 26 – 27.

²³ LAP, Recommendations 64, 66, at 79 – 80.

should be tapped. In addition, these stakeholders' experiences in various advocacy efforts have included discussions and analyses of a wide range of approaches and solutions to enhance court access for LEP individuals.

We urge the court to require that stakeholders, including legal aid groups, be given a more active role in the development, coordination, overall implementation, and monitoring of the LAP.

SPECIFIC COMMENTS ON GOALS I - VIII

Goal I: Improve Early Identification of and Data Collection on Language Needs

Introduction

1. General Comments

The recommendations concerning Goal I are too broad, do not give sufficient direction, and do not adequately address the guidelines governing the courts' obligations under Title VI of the Civil Rights Act of 1964.

Pursuant to the federal Department of Justice guidelines, courts must assess the number or proportion of LEP persons served or encountered in their eligible services population. This straightforward process is key in determining what resources are required to address the language needs of a court's eligible population for the purpose of compliance with federal law. If executed properly, every county should be able to identify most, if not all, of the language groups in their eligible service area, including the top five languages, in a relatively short period of time.

The current plan points to other data sources and strongly suggests, but does not direct, that the courts go beyond the U.S. Census and American Community Survey (ACS) when determining the possible language groups to be served. In our previously submitted Comments, we discussed, in detail, why Census data is insufficient for the purpose of adequately identifying language groups to be served.²⁴ One of the main concerns we raised was based on the fact that the ACS collapses data into broad language groups (*i.e.* Asian/Pacific Islander, African, and Indigenous languages). Thus, in the case of the Asian/Pacific Islander group, widely disparate language groups such as Korean, Mandarin, Tagalog, Japanese, Vietnamese, Khmer, and Thai are not always separately identified.

At first glance, it would appear that some of our recommendations were considered, since the current plan correctly states in reference to the Census data that the language needs of a court's:

“ . . . local information that courts need to identify the language needs of their constituents is not adequately captured by these more traditional methods of demographic data collection. Further, many ethnic and linguistic minorities and

²⁴ See Comments, at 6-12.

emerging LEP communities are underreported in these sources of data, as was commented by community-based organizations during the public hearings.”²⁵

However, in the LAP’s “Phase-in Recommendations” section, the review of other data beyond the U.S. Census is listed under Phase II, those recommendations which are characterized as “less urgent or require completion of Phase I tasks.”²⁶ According to this section, the review of other data beyond the Census need not begin until 2016-2017, if at all.²⁷

We strongly disagree with this recommendation. It is perplexing that the LAP acknowledges the deficiencies in the Census data, identifies more reliable sources, and then fails to direct that the superior sources be utilized in a timely manner. These more reliable sources include: enrollment data collected by the California Department of Education; data collected by local welfare agencies; data collected by the Migration Policy Institute; and a study conducted by California Rural Legal Assistance regarding indigenous languages spoken in California rural communities.

As discussed in prior comments, local welfare agencies are required by the Dymally-Alatorre Bilingual Services Act to collect data regarding the languages primarily spoken by recipients of various benefits programs.²⁸ While much of this data is not published publicly, it is collected and retained by welfare agencies. Such data provides direct, robust information about the language needs of benefits recipients, who will automatically qualify for fee waivers under the law. The LAP should, at minimum, instruct local courts to rely on this data immediately to develop an accurate allocation of interpreter services based on local needs.

With respect to juvenile courts, we contend that they should be specifically directed to the data maintained by the California Department of Education. Limited English Proficient (LEP) or English Learner (EL) student enrollment data is currently available by county on the California Department of Education’s DataQuest website at <http://data1.cde.ca.gov/dataquest/>. In addition, DataQuest includes enrollment data for those students who are fluent English proficient (FEP), which refers to students who may not be LEP, but who come from homes where English is not the primary language. This data alone would be more than sufficient to provide a juvenile court with a sound assessment concerning the number of LEP persons who reside in their eligible service area.

Attached in Appendix 2 are two charts, one for Santa Barbara County and one for Imperial County, that are readily available on DataQuest. These charts reveal the total county enrollment, the total number of EL students, and the total number of FEP students by language group and the percentage of total enrollment that is EL and FEP by language group.

²⁵ See LAP, at 26.

²⁶ See LAP, at 90 (Appendix A).

²⁷ It should also be noted that a review of Census data is not included in the Phase I recommendations (See LAP, at 85-90). We assume that this is merely an oversight and should be corrected.

²⁸ See Cal. Gov. Code §§ 7290 *et seq.*

2. Suggested Changes

All courts should be directed, not merely encouraged, to thoroughly assess the number or proportion of LEP persons served or encountered in their eligible services population using Census data *and* the other resources identified in our previously submitted Comments and mentioned in the current plan. The final plan should also direct courts to consult with community based and refugee services organizations to obtain at least anecdotal information on the languages (*e.g.* indigenous languages) that may not be adequately captured by any of the data sources. Such an assessment should be conducted within the first three-month period of implementation, as it should inform all further steps in this process. All of these data sources are readily available now.

Below is proposed language to modify or replace the existing language in the LAP's recommendations for Goal I.

6. The Judicial Council and the courts must immediately expand and improve data collection on interpreter services, and immediately expand language services cost reporting to include amounts spent on other language access services and tools such as translations, interpreters or language services coordination, bilingual pay differential for staff, and multilingual signage or technologies. This information is critical in supporting funding requests as the courts expand language access services into civil cases.
7. The Judicial Council and the courts must look at other sources of data beyond the U.S. Census to ensure that a court is effectively capturing the anticipated language needs for court programs and court proceedings. Courts should rely on data provided by the local school systems, health departments, and welfare agencies, in addition to consulting with community-based organization, refugee services organizations and any other local groups that works with LEP populations.

3. Proposed Revised Timeline

Recommendation 7, listed above, is currently categorized under "Phase II," treated as a recommendation that is "less urgent or require completion of Phase I tasks. As emphasized above, however, Recommendation 7 must be included in Phase I so as to ensure that courts are adequately anticipating their language needs.

Goal II: Provide Language Access Services in All Judicial Proceedings

1. General Comments

Although we agree with Goal II's recommendation that qualified interpreters be provided to all LEP court users in courtroom proceedings, we disagree with the Goal's implementation timeline, the priorities outlined in the phases, and the overall tone with respect to existing federal and state law requirements concerning language access.

Goal II consistently repeats that no law requires provision of interpreters for civil litigants. As discussed in our introduction, the repetition of this position is flatly contradicted by federal and state law, as well as the considered opinion of the Department of Justice.

Furthermore, the LAP's timeline to provide interpreters for all civil litigants by 2020 is simply too long and unjustified. Several phases elaborated upon in the LAP have already begun or should have begun. We agree that interpreters should be provided to all litigants, regardless of economic status. However, we are concerned that the LAP not only fails to include fee-waiver litigants in Phase I, but also fails to mention such litigants *at all*.

Finally, we find the LAP's subcategories confusing and inconsistent (e.g. courtroom proceedings, court-ordered, court-operated). Footnote 9 at page 12 defines "court-operated" programs or events as "any service or activity operated or managed by the court." On page 34, the LAP references "court-ordered proceedings" as including mediation and other activities that are mandated by the court. Footnote 25 on page 36 combines "court-ordered/court-operated proceedings" which distinguishes between in-court events and out-of-court events. We recommend that the LAP clearly define the different categories of court-ordered, court-operated, and court-managed proceedings, services, and activities. Most important, qualified court interpreters must be provided for all activities ordered or mandated by the court.

2. Suggested Changes

We believe that the language should be changed throughout this section to reflect the necessity and urgency of providing meaningful language access to ensure access to justice, and remove all language suggesting interpretive services are not required by law. Specifically, on page 29, the first sentence in the second paragraph, "Under California law, courts are not required to provide interpreters in civil matters," should be deleted, and the state and federal mandates referenced above should be inserted.

In our previous comments, we suggested that in the initial stages, the following cases be provided with language services: "fee waiver litigants, non-mandated restraining order hearings, family law custody and visitation hearings, unlawful detainer hearings, guardianship hearings and conservatorship hearings. This shall include the provision of language services for mediation and other vital ancillary court services."²⁹ **Although we still feel strongly that this occur, we are willing to work within the LAP's phased framework to suggest an immediate implementation phase, in which fee waiver litigants, as a group, should immediately be provided interpreters, in addition to currently mandated cases under California Evidence Code 755.** We believe that the courts currently have the resources, discretion and authority to provide services for all fee waiver litigants, and as such, they should immediately be provided with language services, without having to wait for Phase I.

The introduction, under "Goal Statement" on page 28 of the LAP, should include the following: "For immediate implementation, a policy shall be put into place for the provision of

²⁹ See Comments, at 14.

interpreters for indigent LEP litigants, in addition to currently mandated cases.” Additionally, we also suggest that the remaining case types, as articulated in our previous Comments: non-mandated restraining order hearings, non-fee waiver family law custody and visitation hearings, non-fee waiver unlawful detainer hearings, non-fee waiver guardianship hearings and non-fee waiver conservatorship hearings, all be part of Phase I.

On page 34, the LAP should clearly define the different kinds of court proceedings and ensure the consistent use of such terms. More specifically, we reference page 20 of our previously submitted Comments under “Court and Ancillary Court Proceedings”:

A certified or registered court interpreter must be provided for all courtroom proceedings *and* activities that are ancillary to courtroom proceedings but nevertheless mandatory for litigants. This includes, but is not limited to, trials, mandated mediation, settlement conferences, and parental interpretation in juvenile matters.

Specific issues have arisen in unlawful detainer (UD) proceedings, in which judges often require the parties to meet-and-confer outside the courtroom on the day of trial before they are permitted to be heard. Courts generally do not provide interpreters for this mandated process. As a result, litigants often enter into settlement agreements, which may be extremely unfavorable, without understanding their terms. Courts must provide interpretation for these mandated and other similar activities in order to ensure meaningful language access. Simultaneous interpretation is not required in these settings, thus courts may utilize other qualified interpreters if certified or registered interpreters are unavailable.

Regarding Recommendation 18, courts must be instructed that minors, regardless of their relation to the LEP litigant, should not be used as interpreters in courtroom proceedings under *any* circumstances. The use of a minor as an interpreter exacerbates concerns regarding competency, confidentiality, and conflicts of interest.

Regarding Recommendations 22 and 23, it is essential that the LAP should make explicit that justice partners are not responsible for providing interpretation or language services to litigants. This obligation lies with the courts under both state and federal law. It is, as we articulated above, a key, core court function. On the other hand, we do recognize that there are instances where justice partners participate in aspects of coordination, recruitment, training, and identification of appropriate interpreters and translation services.

We suggest that the subcategories of this Goal be reorganized. We recommend the following subcategories:

- a) Interpreters in Courtroom Proceedings (including the use of technology);
- b) Training Regarding the Appointment of Interpreters;
- c) Recommended Processes for Providing Interpreters.

Below is proposed language to modify or replace the existing language in the LAP's recommendations for Goal II.

17. Family members and friends of the LEP court user may be appointed for courtroom proceedings only if: a) they meet the provisional qualification requirements, (b) an admonition regarding real or perceived conflicts of interest is provided, (c) the court informs the litigants that language services and interpreters are available at no cost to the litigant, and (d) all parties knowingly and voluntarily consent to that person as the interpreter.
18. Minors will not be appointed to interpret in neither courtroom proceeding nor court-appointed, court-operated or court-managed proceeding.

See below in the "Proposed Revised Timeline" section, additional suggested language incorporated into the revised timeline for Recommendations 8 and 10.

3. Proposed Revised Timeline

See below our suggested changes to the timeline with the new subcategories.

a. Interpreters in Courtroom Proceedings (including the use of technology)

8. Qualified interpreters will be provided in the California courts to LEP court users in all courtroom proceedings in all court-ordered/court-operated events. Where immediate expansion of language access into all civil proceedings overtaxes a court's resources, either in terms of availability of appropriately qualified interpreters or availability of funding for interpreting services, language access will be phased in as outlined below.

For Immediate Implementation:

- Domestic Violence (including actions and proceedings under Division 10) commencing with Section 6200 of the Family Code, as well as actions and proceedings in the following matters in which a protective order has been granted or is being sought: (1) the Uniform Parentage Act; (2) dissolution, nullity, or legal separation [these are already mandated cases];
- All cases brought by fee waiver litigants

Phase I (begin year 1, 2015): Language services shall be provided for all required mediation and other required ancillary court services.

- Physical abuse or neglect under the Elder Abuse and Dependent Adult Civil Protection Act, commencing with Section 15600 of the Welfare and Institutions Code).
- Unlawful Detainers
- Determination and Termination of Parental Rights
- Conservatorships/Guardianships
- Family Law Proceedings involving issues of custody or visitation of minor children

- Civil Harassment Proceedings

Phase II (begin year 2, 2016):

Where resources permit providing qualified interpreters in additional case types, courts will provide interpreters in the following cases, in order:

- Other Family Law
- Other Civil

b. Training Regarding the Appointment of Interpreters

10. Beginning immediately, as resources are available, but in no event later than 2016, courts will provide qualified court interpreters in all court-ordered/court-operated proceedings to all LEP litigants, witnesses, and persons with a significant interest in the case. Immediate implementation shall prioritize: fee waiver litigants and mandated cases under current Evidence Code 755. Phase I shall include other non-mandated restraining order hearings, family law custody and visitation hearings, unlawful detainer hearings, guardianship hearings and conservatorship hearings. This shall include the provision of language services for mediation and other required ancillary court services.

Goal III: Provide Language Access Services at All Points of Contact Outside Judicial Proceedings

1. General Comments

The California Judicial Branch properly recognized that “it is the courts’ responsibility to provide language access throughout the continuum of services, from the first time an individual tries to access the court’s website, or walks in the door of the courthouse.”³⁰ Yet, the LAP lacks specificity on what steps courts must take to effectuate language access at all points of contact with LEP litigants.

For instance, the Issue Description in Goal III references the use of “community volunteers” to increase services to LEP litigants outside the courtroom, but does not further elaborate on how and when these volunteers could stand in for bilingual court staff. The LAP should provide additional examples of the effective use of community volunteers, including which capacities courts could use these volunteers, and how courts would properly screen for and supervise them.

The key to providing language access for LEP court users outside the courtroom is to effectively and efficiently utilize qualified interpreters and bilingual court staff. In the event that neither a qualified interpreter nor bilingual staff member is available, courts, at a minimum, can make use of technology through remote interpretation to ensure that the LEP court user does not leave the courthouse unable to access needed information.

³⁰ LAP, at 45.

2. Suggested Changes

Below is proposed language to modify or replace the existing language in the LAP's recommendations for Goal III, much of which incorporates suggestions previously submitted through the Comments (at Appendix 1). The proposed language retains significant flexibility for local courts, while also importing more consistent standards, so that all LEP Californians can attain access to the courts.

24. The court in each county will designate a person that serves as a language access coordinator for court staff, judicial officers, and recipients of the court's services. The person must be able to describe the court's language access policy and know where to access the court's multilingual written materials to disseminate them as needed. This person must also be well versed in how to use language line and other interpretation mechanisms, and in how to help facilitate an interpreter for court staff and judicial officers. This person will be designated the point person to help court staff provide interpretive services to LEP litigants at all points of contact, both inside and outside courtroom proceedings.
25. Courts will have qualified bilingual staff available at the clerk's office, filing window, information counters, intake or filing offices, cashiers, records rooms, *pro se* clinics, family law facilitator and other self help centers, and other public contact locations. At least one language spoken by the bilingual staff at each public contact location will be one of the top five languages spoken in the court's community. The minimum level of qualification for the designation of bilingual staff member should be at least Level 3 on the Interagency Language Roundtable Skill Level descriptions for Listening and Speaking.³¹ Bilingual staff members designated for use as interpreters should be able to interpret at a skill level of at least Level 3 on the ILR scale for interpretation performance. As defined on the ILR website, a Level 3 interpreter is "[a]ble to interpret consistently in the mode (simultaneous, consecutive, and sight) required by the setting, provide renditions of informal as well as some colloquial and formal speech with adequate accuracy, and normally meet unpredictable complications successfully. Can convey many nuances, cultural allusions, and idioms, though expression may not always reflect target language conventions. Adequate delivery, with pleasant voice quality. Hesitations, repetitions or corrections may be noticeable but do not hinder successful communication of the message. Can handle some specialized subject matter with preparation. Performance reflects high standards of professional conduct and ethics."
26. All court staff that engage with the public shall be responsible for identifying the need for language services. At the point of contact, the court staff shall notify the court user of their right to an interpreter and also provide him/her with brochures, instructions, or other information in the appropriate language. Court staff should also have access to language assistance tools, such as translated materials and resources, as well as multi-language

³¹ See Interagency Language Roundtable ("ILR"), "ILR Skill Level Descriptions," available at <http://www.govtilr.org/>. If the court chooses to use the definitions provided by the American Council on the Teaching of Foreign Languages ("ACTFL"), Appendix F of the LAP, the court should require a minimum level of Superior. ACTFL has determined that ILR level 3 is equal to ACTFL Superior level. The ACTFL definitions are available at: <http://www.actfl.org/sites/default/files/pdfs/public/Guidelinespeak.pdf>.

glossaries. If a court user speaks a language other than English and the court staff does not speak that language, the court staff will use a language identification card to determine the court user's primary language and particular dialect, and any other languages she/he may speak fluently. If the court staff is not able to determine the court user's primary language, the court staff will use a telephonic interpreter service to identify the court user's language.

In each filing window and courtroom the court must prominently display "I Speak" posters.³² This display will give court staff the ability to easily identify the LEP individual's language. In addition, at each location, brochures explaining language services, which list dozens of other languages, must be available allowing the LEP individual to point to their language to identify it for the court staff.

The court should have "I Speak" cards readily available for LEP litigants to pick up at the clerk's office.³³ Handing them out to litigants will ensure that no matter where in the courthouse a litigant is, s/he will be able to inform court staff of the language the litigant speaks.

27. Moving forward, the court should require bilingual ability for future court hiring for all positions involving public contact. These positions should require proficiency in languages commensurate with the needs of the local communities.

Courts should conduct outreach to educational providers in the community, such as local high schools, community colleges, and universities, to promote career opportunities available to bilingual individuals in the courts and thereby increase the bilingual applicant pool.

28. Once court staff determines the LEP language and that LEP services are needed, the court must utilize the Department of Justice's hierarchy of language services³⁴ to provide interpretive services outside the courtroom setting. In accordance with this hierarchy:
 - The first choice is always to use bilingual staff to provide services directly in the preferred language.
 - If bilingual staff is unavailable at a particular location, court staff from another location should be brought in to assist as a second choice.
 - While the court must strive to provide in person interpretation, the third choice is to use VRI to draw on interpreters from other courts.
 - If all the options above are exhausted, the fourth choice is to use a *qualified* volunteer.
 - Finally, if all other options are unavailable, telephonic or language line service may be used as the last resort. The minimum level of qualification for the designation of telephonic interpreter should be at least Level 3 on the Interagency Language Roundtable

³² Samples posters are available at: <http://www.dhs.gov/xlibrary/assets/crcl/crcl-i-speak-poster.pdf>, or <http://www.lep.gov/ISpeakCards2004.pdf>, <http://www.courts.alaska.gov/language/poster-flags.pdf>.

³³ Sample cards are available at: <http://www.dss.cahwnet.gov/civilrights/PG584.htm> or <http://www.cultureconnectinc.org/ispeak.html>.

³⁴ For sample LAPs that use the Department of Justice's hierarchy, available at: <http://lri.lsc.gov/engaging-clients/language-access/planning-evaluation/sample-plans>.

Skill Level descriptions for Interpretation Performance.³⁵ See description in Recommendation 25.

30. Before implementing the use of remote interpreter services outside the courtroom through a pilot program, courts and the Judicial Council should develop a well-designed protocol, consistent with Recommendation 28, and all court staff should receive proper training. The pilot should be limited in scope and focused on a specific situation such as a self-help center, taking into consideration surrounding noise, limited space, and privacy issues.
31. Before initiating an inter-court pilot to utilize technology for workshops, training, or information nights, courts must develop proper protocol and training for all court staff. The pilot should not expand to cover different court services until the program can be evaluated and revised to address issues that arise.
32. Courts must ensure that court-appointed professionals, such as psychologists, mediators, social workers, and guardians, can provide linguistically accessible services. As with court staff that engage with the public, courts should prioritize hiring professionals with bilingual ability and at a minimum use qualified interpreters so LEP litigants can properly access these services to the same degree as English speakers.
33. Courts should only utilize qualified bilingual volunteers when no other alternatives are available, such as bilingual staff in person, staff brought in from another location, or interpreters via VRI. Before making use of any volunteers, courts must conduct careful screening/testing of qualifications and provide extensive training of potential volunteers.
35. Courts must provide notice of the availability of language access services and related language access policies at all points of contact with the court in English, the top five languages spoken in that court's county, and, if applicable, in every other language spoken by either five percent or more of the county's population or 500 persons or more in a specific courthouse's service area.

Courts must provide visible signage indicating the litigant's right to language services.³⁶ This should be placed in all public areas and in each courtroom. Courts must post signs throughout the court that indicate "the court serves all people. It does not matter where you were born or what language you speak."

For each notice the court sends out to litigants, the court must include language that indicates the court's obligation to provide free interpretation services. The notice should also include the LEP coordinator's number as well as the LEP specific call-in numbers (described below).

³⁵ If the court chooses to use the definitions provided by the American Council on the Teaching of Foreign Languages ("ACTFL"), Appendix F of the LAP, the court should require a minimum level of Superior. ACTFL has determined that ILR level 3 is equal to ACTFL Superior level. The ACTFL definitions are available at: <http://www.actfl.org/sites/default/files/pdfs/public/Guidelinespeak.pdf>.

³⁶ See <http://www.masslegalservices.org/content/your-right-interpreter-poster-editable-version>, which allows for the creation of a customized sign.

35.1 (*new*) All bilingual staff must be tested through a standardized process before being instructed to utilize their language skills with court users. Such testing should include various levels designating oral and written proficiency. Staff shall be compensated accordingly with corresponding pay differentials. Utilization of language skills shall be made part of all job duties for staff with public contact.

Qualified bilingual staff shall be designated on the court-wide phone list to be called upon to assist in appropriate situations. Guidelines and protocols shall be developed and trainings provided to all staff.

All bilingual staff shall be required to attend regular trainings regarding how to appropriately utilize their language skills with court users. The Office of Language Access shall develop standardized training curriculum and language resources, such as glossaries and other language-specific resources.

3. Proposed Revised Timeline

All recommendations in Goal III should be moved to Phase I.

Recommendation 26 should be moved to Phase I because it is urgent and easy to implement. Additionally, Recommendation 26 (Court staff will have access to language access tools to direct LEP individuals) is directly related to Recommendation 4 (the court will establish mechanisms through which LEP individuals can identify themselves as such), which will be implemented in Phase I.

Recommendation 27 should be moved to Phase I. Given the pressing need for bilingual staff, the court should not continue to hire staff that is inconsistent with the LAP.

Recommendation 28 should be moved from Phase II to Phase I. This is a critical item that cannot wait to be implemented. The court has acknowledged that there is not sufficient bilingual staff to accommodate the vast array of languages spoken by California's LEP population. As such, having in place a protocol on what to do when a bilingual staff is unavailable is critical.

Recommendation 30 should be moved to Phase I because it will help the court draw down the excess funding. This is key to securing more funding for future access to court services including language access services.

Recommendation 31 should be moved to Phase I because it will help the court draw down the excess funding.

Recommendation 35 should be moved to Phase I because it is urgent and easy to implement but will have a tremendous impact on LEP litigants. For too long, litigants have been denied interpretive services. For this reason, it is key that litigants be properly informed of the

courts' language access services in order for LEP individuals to have true meaningful access to the courts. Additionally, Recommendation 35 is directly related to Recommendation 5.

Goal IV: Provide High Quality Multilingual Translation and Signage

1. General Comments

Although the LAP emphasizes the importance of providing quality translations and signage, the strategic plan must *require* that local courts translate vital court forms in the languages spoken by at least five percent or 500 persons, whichever is less, of the non-English speaking litigants in the court's service area (if not already translated by the Judicial Council). Furthermore, courts must *immediately* provide multilingual forms and signage informing litigants of the availability of free language services and explaining the processes by which to obtain such services so as to ensure that LEP litigants can access necessary services. Finally, the LAP must provide instructions and guidelines to local courts on accepting multilingual forms submitted by LEP litigants.

Goal IV appropriately begins by recognizing the importance of quality translations and signage to ensure actual access for LEP litigants, and we commend the inclusion of various delivery systems for languages that may not have written components. Likewise, we agree with the creation of the Translation Advisory Committee and their role in overseeing and ensuring the statewide coordination of translations, which will ensure consistency and quality across the state when providing language services.

We are concerned, however, that the LAP suggests, rather than requires, that local courts commence the translation of court forms and signage; federal and state law already require courts to provide such translations. As mentioned in our previous Comments, the LAP fails to include the legal mandates provided by Title VI, California's Government Code § 11135, and the Dymally-Alatorre Bilingual Services Act, California Government Code § 7290 *et seq.*

Specifically, Dymally-Alatorre requires local branches of state agencies³⁷ to provide multilingual translations in the non-English languages spoken by a substantial number of the public served by the agency.³⁸ As defined by the statute, a "substantial number" of non-English speaking people constitutes five percent or more of the people serviced by the local state agency.³⁹ Although Dymally-Alatorre does not require the translation of all forms, it does explicitly require the translation of forms that explain services available to the public.⁴⁰ It further requires that translations (or alternative translation "aids and guides") be provided when the agency is furnishing information from an individual *or* providing information to an individual that could "affect the individual's rights, duties, or privileges with regard to that agency's

³⁷ See *Greater Los Angeles Council on Deafness v. Zolin*, 812 F.2d 1103, 1110 (9th Cir. 1987) (defining the local courts as being part of a state agency). As such, the local courts are covered by the state agency mandates under the Dymally-Alatorre Bilingual Services Act.

³⁸ Cal. Govt. Code § 7295.

³⁹ Cal. Govt. Code § 7296.2.

⁴⁰ Cal. Govt. Code § 7295.2.

services or benefits.”⁴¹ Given the specific mandates outlined in state law, we urge that the LAP require local courts to satisfy their legal obligation to provide translated materials in languages spoken by five percent or more of the population. Also, given the extraordinary diversity and large numbers of LEP communities in California, we also urge that local courts also be required to provide translated materials in other languages spoken by at least 500 persons in the area serviced by a specific courthouse.

Even when local courts provide LEP litigants with translated forms, applications, cover sheets, and other materials, the LAP does not discuss the processes local courts should implement when litigants *submit or return* such forms filled out in their native language. Without such guidelines, the process by which litigants submit non-English forms will vary drastically from county to county. In fact, the likely consequence is that non-English forms submitted by litigants will be rejected, as is already happening in counties that provide translated forms but do not have a system for receiving such forms. The provision of translated forms is of little use to LEP litigants if they are uniformly rejected after completion. We strongly suggest that this challenge be addressed in the LAP so that a uniform, statewide process can be used for the submission of non-English forms. At a minimum, the LAP should make clear that the courts must both accept and, if necessary, translate all completed forms provided in threshold languages pursuant to Dymally-Alatorre. Any process that is contrary would vitiate the guarantees to translated materials that Dymally-Alatorre provides.

In all cases, the courts should make a thorough attempt to accept submitted documents in the litigant's native language and translate it internally, rather than place the onus on the litigant herself. Such a burden placed only on LEP litigants is inconsistent with the court's mandate to provide full and equally access to justice. If the courts are unable to accept submitted documents in non-Dymally threshold languages, the courts should time-stamp forms as received, and litigants should be given an opportunity to submit it in English within a specific period. Court staff should promptly refer LEP litigants to self-help centers and legal aid organizations, and all of this information should be provided to them in their languages.

Finally, advocates previously provided several examples of language identification posters, brochures, and “I Speak” cards created by organizations, language line services, and government agencies. We recommend that the LAP incorporate these specific examples and require that courts make such posters visible and available in public spaces of the courthouse as part of a local court's “wayfinding” strategy.

2. Suggested Changes

We agree that the LAP should include the creation of the Translation Advisory Committee in Phase I of the implementation plan. However, given the necessity of informing court users of both their right to language access services and the information needed to obtain such services, such recommendations must absolutely be included in Phase I and not Phase II.

⁴¹ Cal. Govt. Code § 7295.4.

This is especially true where the creation of a multi-lingual “tagline” has already been used in local courts.⁴²

Furthermore, the creation of the Translation Advisory Committee and the statewide coordination of the multilingual translation of court forms and signage explaining court services, forms that implicate a litigant’s rights, duties, or privileges to their civil case, or forms explaining the availability of free language services must be provided **immediately** and not in Phase II as currently outlined.

Below is proposed language to modify or replace the existing language in the LAP’s recommendations for Goal IV.

39. Courts will provide sight translation of court orders and *must* provide written translation of an order to LEP litigants when the LEP litigant’s language is a language spoken by either at least five percent or more of the county’s population or at least 500 persons in a specific courthouse’s service area. Where the Judicial Council has already provided a translated version of any court form in a litigant’s preferred language (e.g. on the California Courts website), the court must provide that translated version of that form to the LEP litigant *even if* the litigant’s language is not one covered under the five percent or 500 persons threshold.

39.1(*new*) Courts must identify a process by which to handle the submission of non-English forms submitted by LEP litigants. Courts must not outright reject such forms without providing alternative processes by which an LEP litigant can submit forms either in English or non-English language.

3. Proposed Revised Timeline

Recommendation 35, regarding the notice of available language access services, *must* be included in Phase I in order to ensure that LEP litigants are able to access needed language access services. Lack of awareness of the right to an interpreter or assistance is especially true in counties where the policy has long been that it is the LEP litigant’s obligation, and not the court, to ensure language access.

Goal V: Expand High Quality Language Access Through the Recruitment and Training of Language Access Providers

1. General Comments

We strongly support the courts taking the necessary steps to ensure that language needs are consistently met with the highest quality interpreters. We agree that the existing standards

⁴² Los Angeles Superior Court currently provides a multilingual form to fee-waiver litigants that includes the following information in English, Spanish, Korean, Armenian, Chinese, and Vietnamese: “If you are requesting to have all or part of your court fees waived, you may also request to waive additional court fees, including jury fees and the cost for a Certified/Registered Court Interpreter. If you require the services of a court interpreter, please provide your case number and requested language below.”

for interpreters who interpret directly between English and the target language are adequate and should be continually reviewed by the Court Interpreters Advisory Panel (CIAP). This section overall, however, requires more concrete goals, substantive action items, and higher standards in order to ensure that the recruitment and training of prospective interpreters sufficiently meets the demand for high quality interpreters as the LAP is implemented.

One notable omission from the existing standards is the qualification of relay interpreters, who interpret from the litigant's language to an intermediate language, relying on a second interpreter to interpret from the intermediate language to English. Relay interpreters are frequently used to interpret in indigenous and other less common languages for which interpreters fluent in English are scarce. Although this need constitutes a small portion of the overall LEP population, relay interpreting should be acknowledged in the LAP. Relay interpreting poses unique challenges that courts should understand in order to provide fair, quality language services. The current standards do not provide any minimum requirements for relay interpreters. The Judicial Council should create standards to ensure that relay interpreters possess proficiency in the intermediate language, comply with the code of ethics, and understand legal terms and proceedings.

Recommendation 45 addresses the need for assistance for prospective interpreters to pass the credentialing exam, suggesting that the Judicial Council and the courts partner with others to examine strategies for collaboration. However, the recommendation does not address what should happen after the courts and the Judicial Council have worked with partners to identify strategies. The recommendation should set out tangible action items the courts and Judicial Council will pursue.

Similarly, Recommendation 46 falls short of detailing any substantive action in order to ensure that interpreters are trained to interpret in civil cases and to provide remote interpreting. This recommendation must do more than suggest collaboration as a solution. The LAP should require courts and the Judicial Council to create effective training programs. It should establish benchmarks, beginning with the collaboration phase and ending with the creation and execution of training programs.

The minimum standard of Intermediate Mid for bilingual court staff is too low to ensure adequate communication with LEP court users at the majority of contact points. The Intermediate Mid level only requires minimal skills in providing instruction and direction. The example given in the description says that a person with Intermediate Mid proficiency may be able to count money but would not be able to describe or respond in unpredictable situations. An Intermediate Mid level speaker does not possess the skills necessary to explain complex issues, nor can the speaker use circumlocution to explain an idea, which is a necessary skill in most legal contexts. Setting the standard of proficiency as Intermediate Mid to qualify a staff member as "bilingual" will limit the quality of language services courts provide.

Although Recommendation 48 directs the Judicial Council and the courts to identify proficiency standards for bilingual staff at different points of public contact, it does not require that the courts actually staff the point of contact with a bilingual speaker possessing the designated proficiency. Further, the recommendation should specify what the online training's

purpose is and how often the training will be required to ensure quality language access services are being provided.

The recruitment efforts for interpreters and bilingual staff referenced in Recommendation 49 must be stronger. The Judicial Council needs to identify strategies via collaboration, but it also needs to act on those strategies. Additionally, the courts and Judicial Council should develop a strategy to target recruitment efforts at languages with the greatest unmet need for services. The Judicial Council and courts must dedicate time and resources to implement the identified strategies, and the Judicial Council should set a benchmark for recruitment and assess whether the target is being achieved.⁴³

2. Suggested Changes

Below is proposed language to modify or replace the existing language in the LAP's recommendations for Goal V.

43. Courts and the Judicial Council should provide training and mentoring programs to prepare relay interpreters to meet the standards established. Many relay interpreters lack formal education and training and may require assistance in the form of ethics and other trainings and reference materials in the intermediate language.

Courts should ensure that interpreters are competent in the language(s) in which they interpret. In addition to the existing standards for qualification, courts should establish a comprehensive system for credentialing or registering relay interpreters that includes pre-screening, ethics training, an orientation program, continuing education, and a system to *voir dire* language services providers' qualifications in all settings for which they are used.⁴⁴

45. The Judicial Council and the courts should work with interpreter organizations and educational providers (including community colleges and state universities) to examine ways to better prepare prospective interpreters to pass the credentialing exam. Once these strategies have been identified, the courts and Judicial Council will allocate the necessary resources to implementing the strategies. The Judicial Council and courts will:
- Create and make available standardized training materials to prepare individuals for the qualification exams.
 - Partner with community organizations and education providers to develop exam preparation courses/tests.

⁴³ The Judicial Council should consider developing its own programs to achieve these goals. As an example, the New Mexico Administrative Office of Courts established the New Mexico Center for Language Access, which provides training on interpretation, taking the certification exam, and ongoing education and training for certified interpreters. See <http://nmcenterforlanguageaccess.org/cms/en/>.

⁴⁴ American Bar Association, Standards for Language Access in Courts, February 2012, at 99 – 100.

(http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_standards_for_language_access_proposal.authcheckdam.pdf).

- Create internship and mentorship opportunities in the courts and in related legal settings (such as work with legal services providers or other legal professionals) to help train and prepare prospective interpreters in all legal areas.
46. The Judicial Council should collaborate with interpreter organizations and educational groups to create training programs for those who will be interpreting in civil cases and those who will be providing remote interpreting. The goal of this collaboration will be to produce effective, standardized training materials for current and future interpreters working with civil cases and remote interpreting technologies. Trainings should incorporate:
- Reference materials containing standardized explanations of legal terminology and court procedures for civil cases
 - Remote interpreting trainings should educate current and future interpreters on effectively providing quality interpretation using technology
47. At a minimum, courts should require bilingual staff to possess a Superior proficiency level. Speakers with Superior proficiency are capable of assisting LEP speakers at access points that Intermediate Mid speakers are not. The LAP should require courts hire and retain a minimum number of staff with Superior proficiency in the languages most frequently encountered in the court's service area.
48. Courts must ensure that the staff member at the point of contact possesses the language proficiency designated by the Judicial Council. This should be done in a standardized format, such as requiring staff members claiming to be bilingual take the OPE.
49. The Judicial Council staff will work with educational providers, community-based organizations, and interpreter organizations to identify recruitment strategies to encourage bilingual individuals to pursue the interpreting profession or employment opportunities in the courts as bilingual staff. This includes identifying bilingual individuals and tailoring programs to fit their needs. Once these strategies have been identified, the Judicial Council will dedicate the resources necessary to implementing them.

Courts and the Judicial Council must implement an accountability mechanism to assess annual recruitment and retention.

Action items as part of this recommendation include:

- The Judicial Council will build coalitions with community organizations, local colleges and training centers to provide outreach on careers within the court system requiring language skills. The Judicial Council should work with career centers, attend job fairs, and develop an online presence, as well as other media strategies to promote opportunities.
- The Judicial Council will implement mentor programs and training programs for individuals interested in becoming interpreters or working for the courts.
- The Judicial Council will make the certification and examination process more accessible by offering scholarships or other assistance to prospective interpreters and bilingual staff who speak under served languages.

3. Proposed Revised Timeline

All of Section V's recommendations, except for Recommendation 49 on recruitment, are in the first phase and should remain there. Parts of Recommendation 49, such as building relationships with community networks, should occur immediately to ensure a qualified resource pool of future bilingual staff and interpreters. However, this is partially accounted for in Recommendation 45 on training. Additionally, several recommendations must be implemented if a serious recruitment initiative is to be effective, so it is less urgent to move recruitment to Phase I.

Goal VI: Provide Judicial Branch Training on Language Access Policies & Procedures

1. General Comments

The LAP appropriately raises concerns regarding inconsistent language access policies and procedures among different courts and even within a single courthouse. There is therefore a critical need for regular trainings for judges, clerks, court administrators, staff, and other court-appointed professionals. This section should also incorporate specific programs on the courts' requirements and mandates under state law, federal law, and the LAP; individual courts' policies and procedures; and language access services available. It should also include general timelines for such programs and the frequency with which certain key trainings should occur.

This section should further elaborate on specific programs and guidelines that courts must follow. For instance, a critical piece of ensuring comprehensive access to the courts is training court staff on obligations to provide language services to LEP court users and how to identify such users in need of services within the courthouse. These standards and practices should not vary widely from courthouse to courthouse, so the LAP should articulate these items explicitly wherever possible.

Part of providing language access services is to have a meaningful appreciation and knowledge of cultural differences that may affect an LEP litigant's understanding and behavior, particularly in certain settings, such as domestic violence proceedings. Although the description in Goal VI makes mention of the need for trainings on cultural competency, it does not elaborate on guidelines and standards that all courts should follow.

In addition to the Judicial Council's Court Language Access Support Program (CLASP) unit and Language Access Coordinator proposed in the LAP, each court should have a designated point person that coordinates mandatory trainings and educational efforts with the statewide office.

2. Suggested Changes

Below is proposed language to modify or replace the existing language in the LAP's recommendations for Goal IV. The objective here is to provide local courts with necessary

guidance as they develop their own programs to ensure consistency and compliance with language access laws.

50. Judicial officers, court administrators, court staff, and court-appointed professionals will receive systematic training regarding the requirements and mandates under state and federal law, the judicial branch's language access policies and requirements as delineated in California's LAP, as well as the policies and procedures of their individual courts. Courts will schedule such trainings at regular intervals, at least every two years, and incorporate this information into written materials available to all staff and reviewed with new hires. Courts must also schedule additional trainings when policies are updated or changed. Each court's designated trainings coordinator must report to the state office the following information: (a) number of trainings their staff attended; (b) who led the trainings; and (c) materials reviewed at such trainings.

At a minimum, the mandatory training topic areas include:

- Background on language access issues, including review of legal requirements, mandates and policies⁴⁵
- Review of California's LAP
- Processes for identifying LEP court users and for identifying the language spoken (including for indigenous and other languages with high degrees of regional variation)
- Language access services available to LEP litigants, including technological assistance (interpreters, bilingual staff, translated materials, websites, VRI, headphones, kiosks)
- Processes for appointment of interpreters and methods for verifying interpreter's credentials
- Role of interpreters inside and outside the courtroom
- Interpreter code of ethics, including duty to clarify issues during interpretation and to report impediments to performance
- Legal services and community-based organizations that court staff can refer to for more information on how to better serve LEP individuals
- Cultural competency and awareness trainings on working with specific populations
- How to work effectively with interpreters
 - (For judicial officers) Optimal methods for managing court proceedings involving interpreters, including the challenges of interpreter fatigue and the need to control rapid rates of speech and dialogue
 - (For qualified, non-certified bilingual court staff) How to work as an interpreter
- Available technologies and minimal technical and operational standards for providing remote interpreting
- Role of the court's language access coordinator

52. Judicial Council staff should develop bench cards that summarize salient language access policies and procedures and available resources to assist bench officers in addressing language issues that arise in the courtroom. Each individual court's language access coordinator should be responsible for memorializing local policies and procedures in an easy-

⁴⁵ See Comments, at 3-5.

to-read format that should be regularly updated and distributed to all court staff, community members, and local agencies and organizations that serve LEP populations.

3. Proposed Revised Timeline

The LAP correctly includes Recommendations 50 and 52 in the initial phase of the LAP's implementation. It is our position that Recommendation 51 should also be incorporated into the initial phase of the LAP's implementation given the extended timeline and that many if not all of the key resources would be available at an earlier point.

Goal VII: Conduct Outreach to Communities Regarding Language Access Services

1. General Comments

As the LAP points out, effective outreach is imperative to dispel the mistrust with which many LEP individuals view courts. Meaningful outreach to LEP communities will build a more open, and ultimately more just, court system. We agree that any successful approach must be multifaceted, as the needs of LEP individuals vary both within and across the language communities, and we applaud the emphasis on partnerships with community stakeholders and service providers.

Nonetheless, this section could be strengthened and further developed. First, as a general matter, the LAP does not specify in its discussion of Goal VII the threshold for providing outreach services to specific LEP populations. For written outreach materials, courts must provide materials translated in the languages spoken by either five percent or more of the county's population or 500 persons or more in a specific courthouse's service area.

A comprehensive and effective outreach strategy requires planning and coordination among the Judicial Council, courts, and various community stakeholders. Yet Goal VII speaks about the courts conducting outreach, without designating which court personnel would be responsible for ensuring that effective outreach is not only initially accomplished, but sustained over time. Therefore, the LAP should consider charging the local courts' individual person or office that is the language access resource (referenced in Recommendation 24)⁴⁶ with the responsibilities of coordinating and spearheading outreach coordination efforts. This person or office is in the best position to understand the structure of a given court's language services, and would therefore be an ideal liaison to LEP community members, other stakeholders, and outreach partners (e.g. lawyer referral services, local bar associations). In turn, these organizations can increase awareness among LEP communities about the availability of courthouse language services.

Additionally, the liaison can ensure that accurate and consistent outreach information is being distributed in the appropriate languages over time. A dedicated person or office within the Judicial Council should similarly coordinate statewide outreach efforts. In our previously submitted Comments, we urged the creation of independent, local language access court

⁴⁶ LAP, at 48.

offices.⁴⁷ Such offices would be particularly well-suited to coordinate outreach with local LEP communities.

Outreach materials must provide *specific* information regarding the provision of language services. This includes, but is not limited to: what an interpreter does and cannot do; the availability of free interpretation services; acknowledgement of improvements in language access over past practices; federal and state rights that guarantee meaningful language access; how to use and access self-help centers; basic, key requirements of the LAP; Alternative Dispute Resolution programs; the potential use of video remote interpretation; and the availability of a complaint process regarding the quality of language assistance. Including specific information in a variety of non-English languages will help further understanding among LEP litigants of the court system generally, as well as provide a better sense of the language assistance services available to them.

Furthermore, courts should utilize an array of media platforms to ensure that all segments of a given LEP community are able to access information about the courts. The LAP should reference a diverse selection of specific media platforms for outreach activities, including non-English ethnic media such as television, radio, newspapers, in-person community meetings, community-oriented websites, as well as video and online resources for LEP court users. While utilizing technology is an efficient, cost-effective means of reaching large numbers of people (including those individuals who have low literacy in their native languages, or for speakers of non-written languages), the LAP should be cognizant of the reality that some LEP individuals, particularly elderly and low-income persons, may not have sufficient comfort, familiarity, or regular access to certain technologies such that these platforms would not convey information as effectively as, say, a translated Q&A pamphlet or radio announcement.

In addition, the LAP should emphasize the need to conduct outreach with smaller language groups, including indigenous language speakers, particularly in areas where there are other non-English languages that are more widely spoken. Outreach is particularly critical for smaller language groups, as those communities are more likely to have had prior difficulties in obtaining adequate language assistance. As we noted in our previously submitted comments, community organizations “provide more detailed information about the extent of the demand for language services among the various language subgroups.”⁴⁸ Thus, locating service providers and other community organizations that serve smaller language populations can provide valuable insights into what types of language assistance are most needed. While the LAP rightly notes that general outreach efforts should also be used to recruit potential language assistance providers,⁴⁹ these efforts should be especially focused among smaller and underrepresented language groups, such as among bilingual indigenous language speakers who possess highly valuable language skills.

Finally, as part of outreach activities, courts must engage their partners to collect more reliable data sets that more accurately reflect language need. As noted elsewhere in the LAP and

⁴⁷ Comments, at 2.

⁴⁸ Comments, at 11.

⁴⁹ LAP at 72.

in our previous comments,⁵⁰ reliance on Census data alone is insufficient to truly evaluate and plan for demand for language services. Thus, courts should include surveys of their community-based partners to gain a better sense of the relative size of language groups, as well as the proportion of language communities that are LEP. Utilizing such surveys may help corroborate or provide more accurate snapshots than existing data sources such as Census/American Communities Survey data.⁵¹ For example, surveying a local housing authority, school district, or hospital about the number of LEP individuals it serves may help anticipate staffing needs for various language groups.

2. Suggested Changes

Below is proposed language to modify or replace the existing language in the LAP's recommendations for Goal VII.

53. Courts should establish partnerships with local community-based organizations, including social service providers, legal services organizations, government agencies, and minority bar associations to gather feedback to improve court services for LEP court users and disseminate court information and education throughout the community. Gathering such feedback should include, but is not limited to, a survey of local partners to determine current language needs, as a supplement to existing data sources.
54. Courts should take affirmative steps to inform the public with specific information about language access services available in the courts by, among other means, ongoing communication with community-based organizations and other stakeholders. Such specific information disseminated to the public should include, but is not limited to: what an interpreter does and cannot do; the availability of free interpretation services; acknowledgement of improvements in language access over past practices; federal and state rights that guarantee meaningful language access; how to use and access self-help centers; basic, key requirements of the final LAP; information about Alternative Dispute Resolution programs; the potential use of video remote interpretation; and the availability of a complaint process regarding the quality of language assistance.
55. To maximize both access and efficiency, multilingual audio and/or video recordings should be used to provide important general information and answers to frequently asked questions when possible; however, courts should also utilize alternative non-English language resources both in courthouses and in outside community outreach efforts, out of recognition that certain LEP individuals, including elderly and low-income persons, may not have sufficient comfort, familiarity, or regular access to certain technologies such that newer platforms would not convey information as effectively as more traditional methods.
56. Courts should collaborate with a diverse selection of local media providers (including non-English television stations, local websites, newspapers, and radio stations) and leverage the

⁵⁰ For a more in-depth discussion on issues with Census/American Community Survey data, see Comments at 6-8; *see also* LAP at 26.

⁵¹ *See* Comments at 10-12.

resources of media outlets—including ethnic media that communicate with consumers in their language—as a means of disseminating information throughout the community about language access services, the court process, and available court resources.

56.1. (*new*) Courts should designate an individual or office responsible for overseeing and coordinating outreach efforts within a court’s service area to ensure that information communicated to the public is accurate and consistent over time, as well as to foster long-term working relationships with various community groups and other stakeholders. Similarly, centralized coordination should take place at the state level.

56.2. (*new*) Where applicable, courts should place special emphasis on conducting outreach activities with smaller, less-widely spoken language groups and underserved languages, including indigenous language communities, both in terms of informing these groups about the availability of court services, but also with respect to potential recruitment of bilingual/multilingual language assistance providers.

3. Proposed Revised Timeline

It is unacceptable that all of the recommendations under this section fall under Phase III. Courts should begin implementing these recommendations as quickly as possible, particularly those concerning the formation of partnerships with community groups and other stakeholders. Such partnerships will provide crucial feedback and avenues through which to distribute vital information to the public, and will inform much of the implementation of the LAP.

Partnerships with the local community and disseminating information regarding language access services are critical in providing meaningful access to justice. Not taking steps to appropriately outreach to the community immediately paralyzes the effectiveness of the policies themselves. At a minimum, Recommendations 53, 54, and 56.1 should be moved into Phase I, and the remaining recommendations should be moved into Phase II.

Goal VIII, Part a: Increased Funding

1. General Comments

As discussed in the introductory General Comments, language access is a core court function and costs relating to language access are, to use the LAP’s language, part of a court user’s “most basic needs.”⁵² The LAP’s imperative that funding for language access not be obtained at the expense of reductions in other branch funding is therefore misguided. Language access measures are not additional measures on top of the “most basic needs” provided by the court, and they must be integrated into other basic needs the court meets. The LAP’s rhetoric implies that should funding efforts fail, no more funds, whether additionally supplied or from the existing budget, will be allocated to language access efforts. Assuming that California courts currently do not meet state and federal language access mandates, this stance would ensure that

⁵² See LAP, at 74.

the courts continue to fail to comply until additional funds are procured. This is an untenable position.

In addition, the LAP should specify where, when, and how the existing Program 45.45 funds will be exhausted. This is crucial for future legislative efforts, and until such funds are exhausted the legislature will likely balk at requests for additional funding.

Finally, we commend the LAP for recognizing the urgency of seeking funding from the legislature by placing the items in this section in Phase I of its timeline. We also ask the courts to bolster these efforts by providing more specifics into the LAP and guaranteeing certain benchmarks so as to substantiate such funding requests.

2. Suggested Changes

Below is proposed language to modify or replace the existing language in the LAP's recommendations for Goal VIII, Part a.

57. The judicial branch will advocate for sufficient funding to provide comprehensive language access services as a core function and necessary cost of business. The funding request should reflect the incremental phasing in of the language access plan.
58. Funding requests for comprehensive language access services must be premised on the best available data that identifies the resources necessary to effectuate the recommendations of California's Language Access Plan. This may include information being gathered in connection with the recent Judicial Council decision to expand the use of Program 45.45 funds for civil cases where parties are indigent; information being gathered for the 2015 Language Need and Interpreter use Report; already-available data through the Department of Education and local welfare agencies such as the Department of Public Social Services; and information that can be extrapolated from the Resource Assessment Study (which looks at court staff workload), as well as other court records (e.g., self-help center records regarding LEP court users).
59. Judicial Council staff will pursue other funding opportunities from federal, state, or nonprofit entities, such as the National Center for State Courts, which are particularly suitable for one-time projects such as translation of documents or production of videos.
60. Courts will pursue other funding opportunities at the national, state, or local level to support the provision of language access services. Courts should seek, for example, one-time or ongoing grants from federal, state, or local governments, and others.

Goal VIII, Part b: Language Access Plan Management

1. General Comments

We appreciate that the LAP includes a complaint procedure as expressed in Recommendations 63-66. The LAP, however, does not provide much specificity as to what the

procedures will entail. Respecting local court autonomy and efficiency must not be at the expense of enforcing baseline, uniform standards across all California courts. The LAP strays too far in favor of the former. For example, the LAP leaves entirely to local courts to create a complaint procedure for failure to carry out the LAP. In addition, there is no mention of a monitoring mechanism other than that the Implementation Committee will create it.

As previously stated, the LAP lacks urgency: the creation of local complaint procedures on LAP implementation, interpretation, and translations is pushed into Phase III, with a 2020 deadline. Given how integral the complaint mechanism will be in troubleshooting implementation of the LAP, delay in creating a complaint procedure will only increase inefficiencies and burdens involved with the vagueness and inconsistencies in LAP implementation.

Further, the LAP fails to mandate that the resolution of a complaint be followed by the court. The complaint procedure must include that all court personnel and functions impacted by the complaint be required to follow the resolution of the complaint. The complaint resolution cannot be advisory. The plan must include a mechanism to ensure that result of a complaint is implemented.

There is legitimate concern that courts will not abide by the result of a complaint. Evidence of this is with courts' ADA complaint process which mirrors the language in the LAP. In at least one case, a court civil rights coordinator agreed that the court's family law facilitator office was violating the Americans with Disabilities Act by failing to accommodate persons with disabilities in appointment scheduling. However, the family law facilitator refused to comply with the civil rights coordinator, and the civil rights coordinator said she had no authority to compel the family law facilitator to comply. The plan must ensure that this does not happen with language access complaints. The plan should specify that LEP litigants must be given notice of the complaint resolution process for LEP issues.

The LAP must create a Language Access Oversight Committee (LAOC) both statewide and in local courts to ensure implementation of the plan. Such LAOCs must include legal services providers and perform various monitoring functions.⁵³

Additionally, the Court of Appeal and the Supreme Court have the same Title VI and Government Code 11135 language access obligations as the Superior Courts. The complaint procedure for those courts should not be optional.

Moreover, the LAP fails to specify who will comprise the "Implementation Committee" and what role, if any, key stakeholders, including legal services providers and community-based organizations will play on such a committee.

The LAP must also require that courts record all proceedings involving LEP litigants. This would allow for a recorded and potentially written record that aggrieved parties may refer to when they file complaints, and therefore serves a key monitoring purpose. In addition, recording

⁵³ See Comments, at 31-32.

unlawful detainer proceedings would benefit both litigants and the appellate courts. Currently, many unlawful detainer cases come before the Court of Appeal without a transcript of proceedings below, making it difficult for litigants to argue their positions and for the courts to determine the proper disposition on appeal. In addition to its benefits in allowing oversight of interpreters, instituting mandatory recording of such proceedings would enable the creation of transcripts that would assist both litigants and the courts on appeal.

In addition, the complaint form should be an optional vehicle for filing a complaint, rather than the mandatory procedure for doing so. Any complaint about language access should be accepted, even if that complaint not conveyed via the complaint form.

Finally, the complaint form must also be available in paper at the courthouse because many low-income litigants do not have internet access. The complaint form must be available free of charge both in person at the courthouse and when downloaded from court websites, and should be accepted in person, by mail, by fax, or electronically. Standard court charges for website searches and downloads cannot be applied to the complaint form because that will deprive low-income litigants of the right to file a complaint. This complaint form should be available in multiple languages commensurate with local need.

2. Suggested Changes

Below is proposed language to modify or replace the existing language in the LAP's recommendations for Goal VIII, Part b. For this section, we would like to reference and incorporate our previously submitted Comments, specifically the section entitled "Monitoring: Complaint Processes", at pages 33-38, attached as Appendix 1.

61. The Judicial Council will create a Language Access Implementation Advisory Committee (name TBD) to develop a phased implementation plan for presentation to the council. As part of its implementation plan, the committee will identify the yearly costs required to phase in the LAP recommendations. Legal services and community organizations must be included in this Implementation Committee as stakeholders.
62. The Implementation Committee will develop a single form available free of charge either online or at the courts that is available statewide as a mechanism for monitoring all concerns related to language access at the local or state level. The form should be used as part of multiple processes identified in the following recommendations of this plan. However, completion of such form is not necessary to raise a complaint.
- 63.5. (*new*) The courts will create both a statewide Language Access Oversight Committee (LAOC) and local LAOCs to ensure implementation of the language access plan on a statewide and local level. Such LAOCs must include legal services providers and provide monitoring functions.⁵⁴

⁵⁴ Such functions can be found on pages 31-32 of the Legal Services & Community Organizations Comments submitted to the Judicial Council, April 9, 2014 (Comments).

64. The Judicial Council, together with stakeholders, will develop a complaint process by which the quality and accuracy of an interpreter's skills and adherence to ethical requirements can be reviewed.⁵⁵
66. Individual courts and their Language Access Coordinators will develop a process by which LEP court users, their advocates and attorneys, or other interested persons may seek review of a court's provision of, or failure to provide, appropriate language access services, including issues related to locally produced translations. The process must consider local labor agreements. "Local courts must follow the local baseline procedures offered in this plan and further developed by the Implementation Committee. The Language Access Coordinator must serve as a point-person to receive and administer complaints, and also to adjudicate complaints.
67. The Implementation Committee will develop a process by which a litigant or his or her legal representative may request a review of the outcome of any complaint submitted to a court regarding (1) quality or accuracy of an interpreter's skills and adherence to ethical requirements as described in Recommendation 64; (2) the quality of translations approved by the judicial Council as described in Recommendation 65; or (3) provision of, or failure to provide, appropriate language access services, as described in Recommendation 66. The Implementation Committee or another centralized body will adjudicate appeals, with published decisions as binding precedent. Filing and decisions shall be stored in a database to monitor progress and areas for improvement.
68. The Judicial Council will create a statewide repository of language access resources, whether existing or to be developed, that includes translated materials, audiovisual tools, and appeal decisions on complaints pertaining to implementation of the LAP Plan, interpretation, or translation. The statewide LAOC shall have discretion to determine whether certain appellate decisions shall serve as binding precedent on implementation of the LAP statewide.
69. The California Courts of Appeal and the Supreme Court of California will discuss and adopt applicable parts of California's Language Access Plan with necessary modifications.
- 69.1. (*new*) The Implementation Committee will meet with the statewide LAOC at least quarterly and more often as needed to ensure implementation of the LAP.
- 69.2. (*new*) The Implementation Committee, along with the statewide LAOC, shall conduct public hearings throughout the state after Phases I, II, and III to assess the ongoing needs, and as often thereafter as deemed necessary by the committee.
- 69.3. (*new*) The courts must record proceedings involving LEP litigants. Transcripts from such proceedings may be used in the complaint process or for monitoring purposes, and

⁵⁵ Further suggestions for the specific procedures involved can be found on pages 37-38 of the Legal Services & Community Organizations Comments submitted to the Judicial Council, April 9, 2014 (Comments).

may also be used for appeals. Courts must notify LEP litigants of their right to have proceedings recorded or reported, subject to fee waiver rules.

3. Proposed Revised Timeline

We propose one of these two options:

- Recommendation 63 be moved from Phase II to Phase I; move Recommendations 64-67 to Phase I, OR
- Include specific baseline procedural safeguards in the LAP itself or to be developed by the Implementation in Phase I; move Recommendations 64-67 to Phase II.

Goal VIII, Part c: Necessary Court Rules, Forms, and Legislation for Plan Implementation

1. General Comments

Under Recommendations 70 and 73, “good cause” for appointing a non-certified interpreter should be narrowly defined. As written, the description of the issue and the recommendation leave the impression that court labor issues, without more, can be good cause for using non-credentialed interpreters. This cannot be the case, because that exception would give any court good cause for not using credentialed interpreters at any time. We believe using current Rule 2.893 would prevent this from happening. However, the LAP should specify that court labor issues cannot be an independent basis for used non-credentialed interpreters.

Under Recommendation 76, the LAP should not require good cause or a request to “vacate the waiver” for a litigant to change his or her mind and request an interpreter following a waiver. LEP litigants have a right to an interpreter and that must be allowed at any time regardless of any prior waiver, especially given the possibility that a litigant may not realize the severity of the need for an interpreter until actively trying to navigate proceedings without one.

2. Suggested Changes

Below is proposed language to modify or replace the existing language in the LAP’s recommendations for Goal VIII, Part c.

70. The Judicial Council should, under Government Code section 68564, establish procedures and guidelines for determining “good cause” to appoint non-credentialed court interpreters in civil matters. “Good cause” should be narrowly defined as extenuating circumstances in non-priority cases where the court must demonstrate in writing to the Language Access Coordinator an inability to provide a certified interpreter. The Implementation Committee and/or the LAOC must review these statements periodically to determine where courts are failing to provide certified interpreters.
73. The judicial council should sponsor legislation to amend Code of Civil Procedure section 116.50 dealing with small claims actions to reflect that interpreters in small claims cases must, as with other matters, be credentialed except for a finding of good cause to appoint

a non-credentialed interpreter. “Good cause” should be narrowly defined as extenuating circumstances in non-priority cases where the court must demonstrate in writing to the Language Access Coordinator an inability to provide a certified interpreter.

76. The Judicial Council should develop a rule of court establishing a procedure by which LEP persons may, at any point, be allowed to waive the services of an interpreter so long as the waiver is knowing, intelligent, and voluntary; is made after the person has consulted with counsel (if any); and is approved by the appropriate judicial officer, exercising his or her discretion. At any point later in the proceedings, the LEP person may rescind the waiver and request an interpreter.

We appreciate the opportunity to provide these comments. We look forward to working collaboratively with you to make the LAP a meaningful reality in California and to provide access to justice for all Californians.

Thank you very much for your time and consideration in reviewing our comments. If you have any questions, please feel free to contact Joann Lee at [redacted] or any of the undersigned organizations.

Respectfully submitted,

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Appendix 1

Legal Services & Community Organizations Comments, Submitted to the Judicial Council April 9, 2014

**California Courts Statewide Language Access Plan
Legal Services & Community Organizations
Comments to Draft Outline of December 11, 2013**

The undersigned organizations write to present detailed comments, recommendations, and draft language regarding the California Courts Statewide Language Access Plan (LAP). This document elaborates upon the Court Language Access Letter submitted by over 40 organizations on March 4, 2014. We begin by stating some guiding principles we believe are critical as the Judicial Council moves forward in developing, finalizing, and implementing the LAP. We thank you for the opportunity to provide these comments and look forward to working with you to make the LAP a reality in California.

GUIDING PRINCIPLES

Ensure Equality. The experiences of limited-English proficient (LEP) individuals both inside and outside the courtroom must be the same as those of English speakers. That is the very purpose of language access and must be the overarching principle that guides all efforts. There are many means by which this goal may be achieved, including those listed below. But no matter the method, the end result must be *equivalence*, meaning that the subjective experiences of both groups are the same so that they can make informed choices based on their understanding of what is conveyed.

Follow the Beacon of Poverty. Poverty is the beacon; the priority must be to help those LEP individuals eligible for fee waivers with a focus on case types that impact fundamental rights. As a starting point, funds should **be spent on indigent individuals** with fee waivers. As services are developed and new funds secured, incremental expansion should also occur based on economic need. Courts should:

- **Begin by Immediately Providing Interpreters in Certain Proceedings:** Although interpreters are required by law to be provided in all civil courtrooms, proceedings with the most significant consequences for litigants should be given priority, even while more comprehensive plans are being developed. As an interim measure, fee waiver litigants, non-mandated restraining orders, family law custody and visitation, unlawful detainees, guardianship, and conservatorship matters should be prioritized. In addition, current delays in providing interpreters in mandated cases must be eliminated.
- **Include More Legal Services Providers on a New Language Access Oversight Committee:** With their decades of experience representing the populations suffering most acutely under current policy, legal services will prove invaluable in devising solutions to the language access crisis.

Language Access Must Be Routine. Language access should be viewed as just another cost of doing business, such as utilities or other essential operating expenses. As recipients of federal and state funds, the law requires no less. While we support increased funding for interpreters,

the culture must be changed so that language access is seen as an integral and routine part of every budget, rather than an extraordinary expense unjustified by the cost.

The following measures can help:

- **Increase Bilingual Staffing:** Make bilingual ability a *sine qua non* of all future court hiring of all positions involving public contact — these positions should require proficiency in languages commensurate with the needs of local communities.
- **Hire More Interpreters:** Increase the numbers of interpreters available and retain quality by qualifying a new level of interpreters with consecutive interpretation skills for certain non-courtroom settings.
- **Create a Language Access Office:** Create an independent language access office in each court, like the current Americans with Disabilities Act compliance offices, which would maximize efficiency and utilize all available interpreters and translators.
- **Train Court Staff & Judges:** Create and provide an annual training on the Language Access Plan, working with interpreters, and on how to be an effective interpreter for bilingual staff.

Develop and Implement a Language Access Plan Consistent with Legal Mandates. Courts receive federal and state funds with important strings attached that can no longer be ignored. Instead, the courts must develop and implement a plan that meets or exceeds all statutory and regulatory requirements. It should:

- **Adhere to the U.S. Department of Justice’s (DOJ) LEP Guidance:** Implement DOJ’s hierarchy of oral language services and safe harbors for written translation to improve language access at all points of contact.
- **Identify and Address All Language Needs in the Community Working with Local Language Access Oversight Committees:** Although Spanish-speakers are the largest LEP group in California, courts should engage in robust data collection, analysis, and enhanced staffing to meet the needs of all LEP court users.
- **Create a Statewide Office of Language Access:** A statewide office can help to ensure the coordination and enforcement required to achieve success of the Language Access Plan.
- **Utilize Technology:** Secure separate, additional new funding for technology to help provide cost-effective and efficient language access services.

I. Legal Background and Importance of Providing Full Coverage for All

We believe that the LAP should contain strong language concerning legal background and mandates, as well as a clear commitment to providing full access for all Californians. As stated in our guiding principles, we believe that a culture change must occur throughout the court system, including the Administrative Office of the Courts (AOC), judicial officers, court staff/personnel, and independent contractors. This message must be made clear to all court users. All those who are part of the court system must be trained to understand the court's expanded commitment to language access and their own role in effectuating that commitment. It is critical for the LAP to also address the importance of training court staff on language access services and requirements to ensure a standardized delivery of language services across court locations.

PROPOSED LAP LANGUAGE: Relevant parts of the LAP draft outline include Section II, Part A; Section III, Part C; Section IV, Parts A, B.

Introduction

California is among the most racially, ethnically, and linguistically diverse states in the nation. Over 27 percent of Californians are foreign-born, compared to nearly 13 percent nationally.¹ In fact, 40 percent of Latinos and 59 percent of Asians in California are foreign-born.² Californians speak over 220 languages³, and 43 percent of Californians speak a language other than English in their homes.⁴ This wide variety of backgrounds and languages provides great cultural enrichment for California. Many individuals, however, who speak other languages are also limited-English proficient (LEP) and face tremendous barriers. The top five primary languages spoken in California after English include:

- Spanish – 9,961,284 speakers, of which 46% are LEP;
- Chinese – 1,036,982 speakers, of which 56% are LEP;
- Tagalog – 765,033 speakers, of which 33% are LEP;
- Vietnamese – 512,456 speakers, of which 60% are LEP; and
- Korean – 375,383 speakers, of which 59% are LEP.⁵

¹ See U.S. Census Bureau, *State & County QuickFacts*, available at: <http://quickfacts.census.gov/qfd/states/06000.html> (listing 2008-2012 figures for foreign-born individuals).

² Asian American Center for Advancing Justice, *A Community of Contrasts: Asian Americans, Native Hawaiians and Pacific Islanders in California* (2013), at 14, available at http://advancingjustice-la.org/system/files/Communities_of_Contrast_California_2013.pdf.

³ See California Commission on Access to Justice, *Language Barriers to Justice in California*, at 1 (2005), available at: <http://www.calbar.ca.gov/LinkClick.aspx?fileticket=79bAIYydnho%3D&tabid=216>.

⁴ See U.S. Census Bureau, *State & County QuickFacts*, available at: <http://quickfacts.census.gov/qfd/states/06000.html> (listing percentage of people over age 5 speaking language other than English at home, 2008-2012).

⁵ U.S. Census Bureau, American Fact Finder, *Table B16001, Language Spoken at Home by Ability to Speak English, 2008 – 2012, American Community Survey 5 Year Estimates*, available at: http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_12_5YR_B16001&prodType=table.

Limited-English proficiency impacts one’s “ability to access fundamental necessities such as employment, police protection, and healthcare.”⁶ While underrepresented groups among native English speakers often face similar challenges, these challenges are compounded for LEP individuals who must also contend with often insurmountable language barriers. Unsurprisingly, access to the courts has proven difficult for LEP individuals, who have higher rates of poverty than the general population in California.⁷

As the California Commission on Access to Justice observed in its 2005 report, “[f]or Californians not proficient in English, the prospect of navigating the legal system is daunting, especially for the growing number of litigants who have no choice but to represent themselves in court and therefore cannot rely on an attorney to ensure they understand the proceedings.”⁸ The report notes that approximately 7 million Californians “cannot access the courts without significant language assistance, cannot understand pleadings, forms or other legal documents and cannot participate meaningfully in court proceedings without a qualified interpreter.”⁹

Legal Background and Mandates

Both state and federal statutes provide significant protections to limited-English proficient individuals in accessing the courts. California Government Code §§ 11135 *et seq.* and its accompanying regulations provide that no one shall be “denied full and equal access to benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state,” on the basis of “linguistic characteristics.”¹⁰ As entities funded and operated by the state, California’s courts are thus prohibited by state law from discriminating against LEP individuals.

Federally, Title VI of the Civil Rights Act of 1964 (Title VI) and its implementing regulations prohibit direct and indirect recipients of federal financial assistance from discriminating on the basis of national origin.¹¹ The Supreme Court and executive branch have interpreted this prohibition as requiring federal funds recipients to provide LEP individuals with meaningful access to their services.¹² As recipients of federal financial assistance, California courts are subject to the mandates of Title VI and its implementing regulations to ensure equal access to the courts by providing necessary language assistance services. The Department of

⁶Asian Pacific American Legal Center of Southern California and APIAHF, *California Speaks: Language Diversity and English Proficiency by Legislative District*, at 2 (2009), available at: http://www.apiahf.org/sites/default/files/APIAHF_Report05_2009.pdf.

⁷See U.S. Census Bureau, American Fact Finder, available at: http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_11_1YR_S1603&prodType=table (listing characteristics of people by language spoken at home, 2011 American Community Survey 1-Year Estimates).

⁸California Commission on Access to Justice, *supra* note 3, at 1.

⁹*Id.*

¹⁰Cal. Gov. Code §§ 11135, 11139; Cal. Code Regs. Title 22, Section 98210(b).

¹¹42 U.S.C. § 2000d (2004).

¹²*Lau v. Nichols*, 414 U.S. 563, 568-569 (1974) (“Chinese-speaking minority receive fewer benefits than the English-speaking majority from respondents’ school system which denies them a meaningful opportunity to participate in the educational program—all earmarks of the discrimination banned by the [Title VI] regulations.”); see Executive Order 13166.

Justice (DOJ), the federal agency that enforces Title VI requirements, provides financial assistance to California courts, and on June 18, 2002, issued guidance to recipients of such funding detailing these mandates.

The DOJ's guidance is clear that language access to litigants be provided both inside and outside the courtroom.¹³ In particular, the guidance directs recipients to apply a four-factor analysis in determining the "reasonable steps they should take to ensure meaningful access for LEP persons."¹⁴ This analysis should include evaluation of: (1) the "number or proportion of LEP persons" served, (2) frequency of contact with LEP individuals, (3) the "nature and importance" of the services the recipient provides, and (4) implementation costs and available resources.¹⁵ The four factors should be used to develop and implement a "mix" of LEP services based on what is reasonable and necessary.¹⁶ Both oral interpretation and written translation services may be used, and the comprehensiveness of a given service can range widely depending on the importance of a particular program component.¹⁷ There is a clear mandate that oral interpretation services must not be subject to any thresholds for when they should be offered but be available on demand and free of charge. The DOJ makes clear in its guidance that in the courts, "at a minimum, every effort should be taken to ensure competent interpretation for LEP individuals during all hearings, trials, and motions during which the LEP individual must and/or may be present."¹⁸ A DOJ guidance letter dated August 16, 2010, elaborates on these requirements, explaining its view that all court proceedings are of critical importance, whether civil, criminal, or administrative in nature. Further, there is a "need to provide interpretation free of cost," and that language assistance should not be restricted only to courtroom proceedings.¹⁹

Thus, both state and federal laws require significant steps be taken to ensure that competent language access be provided free of charge inside and outside the courtroom. The DOJ has stressed that the overall goal is to ensure that language access expenses "be treated as a basic and essential operating expense, not as an ancillary cost."²⁰ Through the Statewide Language Access Plan, the California state court system will promote justice for all Californians regardless of language ability.

¹³ 67 Fed. Reg. 41455-41471 (2002).

¹⁴ 67 Fed. Reg. 41459.

¹⁵ *Id.*

¹⁶ *Id.* at 41460.

¹⁷ *Id.* at 41461-64.

¹⁸ *Id.* at 41471.

¹⁹ Thomas E. Perez, Assistant Attorney General, U.S. Department of Justice, Civil Rights Division, *Letter to State Courts*, August 16, 2010, available at: www.lep.gov/final_courts_ltr_081610.pdf.

²⁰ *Id.*

II. Robust Data Collection, Assessment, and Analysis

In order to ensure that language access is a reality for all LEP litigants, the LAP must prioritize the need for ongoing and thorough data collection of local language needs. The plan must provide the courts with the data resources and guidelines to assess the language needs of their local population. As a result of the cultural and linguistic diversity of California, however, the plan should not provide a “one size fits all” mechanism for collecting data. Instead, the courts should be required to develop their own mechanisms to ensure that they are accurately capturing the language needs of their local LEP litigants. The following covers a few of the resources upon which courts should rely to identify language needs.

Helpful resources courts may rely on for data resources include: the U.S. Census, the American Community Survey (ACS), the California Department of Education (CDE), Migration Policy Institute,²¹ local welfare agencies, and local community-based partners. It should be noted that one concern we have is that the courts may rely solely on information provided by the U.S. Census and the ACS. Although the ACS provides invaluable information of the state’s language needs, it does not effectively provide the detailed, local information courts need to adequately identify their litigants’ language needs. Thus, we ask that the LAP require courts to supplement ACS results with data collected by sources that have proven to provide a more detailed and accurate portrayal of the language needs in any given county. As discussed in further detail below, suggested reliable sources include the CDE and local welfare agencies, which are required by state and federal law to collect data on language needs. These localized data collection efforts are a source of robust data, particularly regarding indigent populations. Finally, courts must engage with local partners, ranging from legal services partners to refugee organizations to local media, to ensure that less-popular or emerging languages are properly identified. We recommend the creation of at least one local language access committees in each county for this purpose (*See Part VI below*). By relying on a variety of sources, courts will have a more comprehensive understanding of the language needs of their communities and thus will be better able to ensure they have the adequate resources to effectively provide language access services to all of its users.

Background

Nationally, the U.S. Census Bureau, which conducts the ongoing ACS, remains the primary source of language data.²² Although the ACS should remain a resource that courts use, ACS data is simply not detailed enough to accurately reflect the language needs at the local level, which is the type of information the courts require to adequately prepare for LEP litigants. One reason that the ACS alone is insufficient is that, for the purposes of reporting English proficiency among survey participants, the ACS broadly collapses languages into broader sets of language groups.²³

²¹ The Migration Policy Institute (MPI) offers resources on various language access services and projects. An example of one of their reports is available at: <http://www.migrationpolicy.org/research/limited-english-proficient-individuals-united-states-number-share-growth-and-linguistic>.

²² Legal Services Corporation (LSC) Resource Information, *Language Access Data Sources*, available at: <http://lri.lsc.gov/engaging-clients/language-access/language-data-sources>.

²³ U.S. Census Bureau, American Community Survey Reports, *Language Use in the United States: 2011*, 2 (2013), available at: <http://www.census.gov/prod/2013pubs/acs-22.pdf>.

The language portion of the ACS consists of three questions.²⁴ The first asks if the person speaks a language *other than* English at home.²⁵ If the answer is “Yes,” the person is then asked to report the language they use.²⁶ The third question asks how well the person speaks English, with answer categories of “very well,” “well,” “not well,” and “not at all.”²⁷ As of the 2011 ACS, the Census Bureau “coded” 381 detailed languages nationally.²⁸ Of these 381 languages, however, data tabulations are generally not available because the ACS further collapses these languages into 39 languages and language *groups*. Finally, for the purposes of reporting English proficiency, the ACS collapses these 39 languages into four broad categories: Spanish, Indo-European languages, Asian and Pacific Islander languages, and Other Languages.

As a result, the ACS reports that in California, for example, 19.8% of the population that speaks an Asian/Pacific Islander language self-identifies as speaking English less than “very well” without providing further detail on how English proficiency varies among the various Asian/Pacific Islander languages.²⁹ This remains true for data collected by the ACS at the local level. In Los Angeles County, for example, the ACS provides that 5.6% of the population that identifies as LEP speaks an Asian/Pacific Islander language. Only by looking at other sources of information, such as data collected by the local entities, including the welfare agency, and community-based organizations, can a Los Angeles County court identify the priority needs among the Asian/Pacific Islander LEP population, which in this case would include Korean, Cantonese, Mandarin, Tagalog, Japanese, Vietnamese, Khmer, and Thai.³⁰

Moreover, the ACS captures no language-specific data at all for some languages spoken by a significant number of California residents. The Census Bureau classifies a number of indigenous Mexican languages, which according to some researchers’ estimates are spoken by over 100,000 California farmworkers alone³¹, only by language family, not specific languages, providing no meaningful data on which to base courts’ planning for language assistance needs. “Oto-manguen languages,” for example, are counted as only one of the 381 languages coded by the Census Bureau,³² while this family is comparable in its diversity to the Indo-European language family (whose members include languages as disparate as English, Hindi, Russian,

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.* The 381 languages coded by the Bureau were reduced from a list of 6,909 languages identified globally

²⁹ The Asian/Pacific Islander language group includes Chinese, Korean, Japanese, Vietnamese, Hmong, Khmer, Lao, Thai, Tagalog or Pilipino, Telugu, Tamil, Malayalam, and other languages of Asia and the Pacific, including the Philippine, Polynesian, and Micronesian languages.

³⁰ As identified by the Legal Aid Foundation of Los Angeles (LAFLA), in addition to Spanish. *See also* Asian Americans Advancing Justice – Los Angeles, *A Community of Contrasts: Asian Americans, Native Hawaiians and Pacific Islanders in Los Angeles* (2013), at 14 – 15, available at http://advancingjustice-la.org/system/files/CommunityofContrasts_LACounty2013.pdf.

³¹ Mines, Richard et al, *California’s Indigenous Farmworkers, Final Report of the Indigenous Farmworker Study (IFS) to the California Endowment* (2010) at 40, available at: <http://www.indigenousfarmworkers.org/IFS%20Full%20Report%20Jan2010.pdf>.

³² See U.S. Census Bureau, *About Language Use*, Appendix A: Primary Language Code List, available at: https://www.census.gov/hhes/socdemo/language/about/02_Primary_list.pdf.

Greek, and German). Oto-manguen languages include Mixteco and Triqui, two of the three languages most commonly spoken among indigenous farmworkers in California.³³

As discussed in further detail below, courts must supplement U.S. Census data in order to accurately assess the language needs of their local litigants. National data sources such as the ACS and the Migration Policy Institute provide a strong starting point, but state and local governmental agencies are collecting more detailed information that the courts should use.

California Department of Education

Language data for all students enrolled in California schools is collected by school districts and is made available to the public on the CDE's DataQuest website.³⁴ Under state and federal law, school districts are required to properly identify, assess, and report all students who have a primary language other than English. All students, upon initial enrollment, are given a Home Language Survey, which may trigger additional and more formal language assessments.³⁵ Through this formal assessment process school districts are able to properly identify students who are English Learners (EL). According to the CDE, an EL is a student "for whom there is a report of a primary language other than English on the state-approved Home Language Survey and who, on the basis of the state approved oral language (grades kindergarten through grade twelve) assessment procedures and literacy (grades three through twelve only), have been determined to lack the clearly defined English language skills of listening comprehension, speaking, reading, and writing necessary to succeed in the school's regular instructional programs."³⁶

According to data posted on the CDE's DataQuest website, there were approximately 1.3 million EL/LEP students enrolled in California schools during the 2012-13 school year. EL students comprised 21.6% of total state enrollment. Although some 60 EL language groups are listed, Spanish is the primary language for 85% of all California EL students. The other top five language groups include: Vietnamese (2.3%); Tagalog (1.4%); Cantonese (1.3%); Mandarin (1.1%); and Arabic (1.0%).³⁷

In addition to identifying the total number of EL students by language group, the CDE website also provides data concerning another language-related student category referred to as Fluent English Proficient (FEP). According to the CDE, FEP students "are the students whose primary language is other than English and who have met the district criteria for determining proficiency in English (i.e., those students who were identified as FEP on initial identification and students redesignated from limited-English-proficient [LEP] or English learner [EL] to

³³ Mines, *supra* note 31, at 40.

³⁴ The CDE's DataQuest website can be found at: <http://data1.cde.ca.gov/dataquest/>.

³⁵ See, Education Code §§ 52164.1. 313; 5 CCR §§ 11307(a), 11511; Equal Educational Opportunities Act (20 U.S.C. §§ 1701 et seq.; Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d); *Castaneda v. Pickard* (5th Cir. 1981) 648 F.2d 989.

³⁶ See, definition of "English Learner (EL) Students (Formerly Known as Limited-English-Proficient or LEP)" under the CDE's Glossary of Terms at: <http://www.cde.ca.gov/ds/sd/cb/glossary.asp#f>.

³⁷ See, DataQuest Report, *English Learner Students by Language by Grade 2012-13*, available at: <http://data1.cde.ca.gov/dataquest/SpringData/StudentsByLanguage.aspx?Level=State&TheYear=2012-13&SubGroup=All&ShortYear=1213&GenderGroup=B&CDSCode=00000000000000&RecordType=EL>.

FEP).³⁸ This category is important because it is used by the CDE and school districts to determine the primary language spoken at home and to what extent students come from homes where English is not the primary language, thus triggering the obligation to provide notices translated in a language a parent or guardian understands. In California, 21.5% of all students are identified as FEP and 43.1% (combined EL/FEP) of all students enrolled in California schools come from homes where English is not the primary language. Spanish remains the largest FEP language group at 72.6%. Following Spanish is: Vietnamese at 3.9%, Tagalog at 3.0%, Cantonese at 2.8%, Mandarin at 2.8%, and Korean at 2.1%.³⁹

EL/LEP and FEP data by language group is readily available for all counties through the CDE's DataQuest website.⁴⁰ This is important to note, because some counties are more heavily EL/FEP impacted than others. The following is a list of some of the more heavily EL/FEP impacted counties and includes the total percentage of EL/FEP enrollment:

- Colusa – 61.7%
- Imperial – 66.8%
- Los Angeles – 52.4%
- Merced – 50.9%
- Monterey – 62%
- Orange – 48%
- San Francisco – 55.8%
- Santa Clara – 52.2%

The CDE DataQuest website provides a reliable source for obtaining both EL and FEP language data for the courts and is especially relevant for the juvenile court divisions. It is important to stress that the FEP data is equally as important as the EL data, in that it provides relevant information concerning the language status of parent and guardians.⁴¹

³⁸ See Definition of “Fluent English Proficient (FEP)” under the CDE’s Glossary of Terms at:

<http://www.cde.ca.gov/ds/sd/cb/glossary.asp#f>.

³⁹ See DataQuest Report, *Fluent-English-Proficient Students by Language by Grade 2012-13*, available at:

<http://data1.cde.ca.gov/dataquest/SpringData/StudentsByLanguage.aspx?Level=State&TheYear=2012-13&SubGroup=All&ShortYear=1213&GenderGroup=B&CDSCode=0000000000000&RecordType=FEP>.

⁴⁰ See DataQuest Report, *Selected Statewide Data Summarized by County for the Year 2012-13*, available at:

<http://data1.cde.ca.gov/dataquest/Cbeds1.asp?Enroll=on&PctEL=on&PctFEP=on&cChoice=StatProf2&cYear=2012-13&cLevel=State&cTopic=Profile&myTimeFrame=S&submit1=Submit>.

⁴¹ It should be noted that the Department of Justice conducted a compliance review of language services of Santa Clara County’s juvenile justice system, which included the Santa Clara County Superior Court. In conducting its review, the DOJ noted with respect to the juvenile justice system, that it was particularly concerned about how critical pre-adjudication decisions were made with respect to LEP stakeholders and “was especially interested in assessing whether language barriers faced by parents affect these key decisions.” U.S. Department of Justice-Office of Justice Programs, Office for Civil Rights, *Compliance Review of the San Jose Police Department* (10-OCR-0109); Santa Clara County Probation Dep’t (10-OCR-0110); Santa Clara County Office of the District Attorney (10-OCR-0111); Santa Clara Office of the Pub. Defender (10-OCR-0112); Santa Clara County Super. Ct. of Cal. (10-OCR-0113); and Santa Clara County Dep’t. of Alcohol and Drug. Servs. (10-OCR-0114)(May 12, 2011).

Local Welfare Agencies

The courts should develop their own mechanisms for data collection regarding LEP litigants and the languages they speak. However, until those mechanisms are fully operational, the courts can and should also look to LEP data collected by welfare agencies. The Dymally-Alatorre Bilingual Services Act requires all local public agencies to determine and maintain statistics regarding the “number and percentage of non-English-speaking people served by each local office, broken down by native language.”⁴² This data should therefore be available from all county welfare agencies.

By way of example, the website of the Los Angeles Department of Public Social Services provides quarterly reports of “caseload characteristics” going back to the year 2003, and up through the third quarter in 2013.⁴³ Each report indicates the primary language of every distinct population receiving different benefits for all of Los Angeles County. For example, the most recent quarter of data available shows that of 562,498 persons receiving CalFresh, or food stamp benefits, 169,991 spoke Spanish, 8,314 spoke Armenian, and 3,691 spoke Chinese as their primary language.⁴⁴ This same data is available for the ten most commonly-spoken languages for LEP recipients of California Work Opportunity and Responsibility to Kids (CalWORKs), General Relief, In Home Supportive Services, and Cash Assistance Program for Immigrants. Importantly, any litigant who receives these benefits will automatically qualify for a court fee waiver.⁴⁵

While the data provided here is from Los Angeles County, all county agencies are required to collect it. The California Department of Social Services (CDSS) collects the county data, by language and program. This report, the ABCD 350, is updated annually in July. It can be found on the CDSS website.⁴⁶ Additionally, all counties are required to provide an annual Civil Rights Plan⁴⁷ to the CDSS. In this plan, counties are asked to determine if there are emerging language populations, to prepare for new immigrants who are likely to be LEP. Courts can obtain these county plans from the local county, or from the CDSS Civil Rights Bureau. This data provides the California courts with a very robust estimate of the language needs of litigants who will qualify for fee waivers based on their receipt of public benefits. Experience indicates that most litigants who do qualify for fee waivers will do so based on receiving such benefits.

⁴² Cal. Gov. Code § 7299.4(b)(4). The data is based on self-reporting by benefits recipients, and therefore may lead to a slight undercount vis-à-vis litigants in the court system due to various factors. For example, undocumented immigrants are prohibited from receiving many of these benefits, but will be litigants in court proceedings.

Similarly, some persons may choose to report English as their primary language so long as they have a child who can interpret when interacting with case workers, but that interpretation would be insufficient in court proceedings.

⁴³ Los Angeles County Department of Social Services, *Information & Statistical Services*, available at: http://www.ladpss.org/dpss/ISS/archives_characteristics_rpts.cfm.

⁴⁴ *Id.*

⁴⁵ Cal. Gov. Code § 68632(a).

⁴⁶ <http://www.dss.cahwnet.gov/research/PG369.htm>.

⁴⁷ <http://www.cdss.ca.gov/civilrights/res/pdf/CR28ANNUALPLAN.pdf>.

Some litigants will instead qualify for fee waivers because their income falls under 125% of the federal poverty line.⁴⁸ While no strict equivalent to this threshold exists to qualify for a particular benefit, a close analog can be found in the Medi-Cal data that is currently being collected pursuant to the Medi-Cal expansion under the Patient Protection and Affordable Care Act. Under those new rules, adults between the ages of 19 and 64 are generally eligible for Medi-Cal if their income is below 138% of the federal poverty line.⁴⁹ This data will likely track similar numbers to those who qualify for fee waivers due to falling under the 125% threshold. This data also must be collected by county welfare agencies, and should be available either via public websites of, or upon request to, those agencies. Other Medi-Cal programs may also provide useful data pursuant to future expansion of interpreter services to higher-income groups, since some Medi-Cal programs have income thresholds as high as 250% of the federal poverty line.

In short, publicly collected data available from local welfare agencies can provide strong estimates of LEP needs in the courts. The LAP can and must include a provision to rely upon this data to ensure that language access needs are met in the most efficient way possible.

Other Local Resources

Courts should also work closely with advocacy organizations and community-based groups, particularly those that are serving refugee/immigrant populations, in order to ensure that courts properly identify and service emerging languages, indigenous languages, and other languages of lesser diffusion. Local organizations provide more detailed information about the *extent* of the demand for language services among the various language subgroups in addition to the particular barriers these individuals face in their efforts to access the courts. Such organizations can also identify or provide the necessary interpreters for these lesser-spoken languages.

PROPOSED LAP LANGUAGE: Relevant parts of the LAP Outline include Section III, Parts A, B, D2.

Each county court system shall immediately create and adopt a plan to develop its own local data regarding LEP litigants and the language they speak. Within a year from the date of this plan's effective date, courts shall publish their initial language assessment and data methodology for feedback by stakeholders.

Until each court is able to rely upon data of its own collection, it shall utilize data provided by such sources as the U.S. Census and the American Community Survey (ACS). Local courts must also supplement Census data with data collected by the California Department of Education (CDE). Federal and state laws require CDE to properly identify, assess, and report all students who have a primary language other than English. Relying on this data, school districts are able to provide school notices in the language a parent or guardian understand. Thus CDE data is another valuable source for accurate reflection of a community's language needs.

⁴⁸ Cal. Gov. Code § 68632(b). While useful now, older Medi-Cal data reflects other variables and thresholds so may not be as precise as the Medi-Cal numbers tracked under the ACA.

⁴⁹ 42 U.S.C. § 1396a(a)(10)(A)(i)(VIII).

Courts shall also rely upon data collected pursuant to the Dymally-Alatorre Bilingual Services Act, Gov. Code § 7299.4(b)(4), by local public agencies that administer public benefits programs. This data provides the languages spoken by most or all county residents who will qualify for fee waivers by virtue of their receipt of a qualifying benefit program pursuant to Cal. Gov. Code § 68632(a). All available data shall be collected for each benefits program referenced in § 68632(a). This data should be the primary factor informing the provision of interpretative services in each language in county courts.

Courts shall also rely upon data collected pursuant to the administration of Medi-Cal. Medi-Cal data provides the languages spoken by all adult county residents who will qualify for Medi-Cal services by virtue of their income falling below 138% of the federal poverty line. It shall be used to determine estimates of the languages spoken by LEP litigants who will qualify for fee waivers by virtue of their income falling below 125% of the federal poverty line. In all cases, local court systems should utilize data that is publicly available through local welfare agencies *or* by working with those agencies to obtain data that may not be posted publicly. Local court systems should exert all reasonable efforts to obtain information by county agencies regardless of whether the data is publicly available. In no case shall a local court system fail to collect such data based upon a conclusion that the data is not publicly posted on a county agency's website.

Even after a court has data of its own collection to rely upon, it must also utilize welfare and Medi-Cal data to ensure that it is accurately collecting its own data and to identify language needs. Finally, local courts shall ensure that they update any data upon which they rely no less than once per year.

Data collection efforts shall be in conjunction with and complement the Judicial Council's requirement to report to the California State Legislature on the use of interpreter services in the courts and to report annual statewide court interpreter expenditures (<http://www.courts.ca.gov/2686.htm>).

III. Clear Policies and Procedures for Identifying Language Needs and Providing Interpreters throughout Court Proceedings

We request that the Judicial Council and local courts create a clear process to facilitate the appointment of interpreters in civil cases. Currently, the provision of interpreters is inconsistent and unpredictable. It differs even from one courtroom within the same courthouse to the next and is highly dependent on the judicial officer and court staff. When requesting an interpreter, litigants are often provided with conflicting information at every turn. Litigants are instructed to make requests in various places – the filing room, the specific department, the interpreter’s office directly, sometimes looping around in circles until they give up. These requests are sometimes granted and sometimes denied without any standards or consistency. Even when granted, interpreters often do not appear, either because the departments do not call for one, or one is unavailable, according to the interpreter’s office.

As consistently documented in testimony and written comments submitted to the Judicial Council, there are often long delays while litigants and attorneys wait for someone to be reassigned from a criminal courtroom. Delays of hours, days, even months are not uncommon even with Spanish-speaking litigants and in domestic violence cases where interpreters are mandated under California Evidence Code section 755. Courts must address these current problems immediately. In some departments, however, we consistently obtain interpreters so we do know it is possible. The process laid out in the plan should include identification of language needs up front and a clear process for providing interpreters without placing the burden on the litigants to follow-up repeatedly and remind the court.

Further, there should be an interim policy put into place immediately for the provision of interpreters for indigent LEP litigants. The current \$13 million Trial Court Trust Fund surplus should be used to begin this process while the LAP is developed. This is well within judicial discretion and must include appropriate training for all court staff and judicial officers. Although our position is that *all* LEP litigants should be provided interpreters for all proceedings, we believe that creating a process for indigent litigants and specific case types is an immediate attainable step as the California Language Access Plan is developed and implemented.

As part of these interim measures, all courts should be required to hire new and/or utilize additional certified (or registered) interpreters for prioritized cases. Prioritized cases should include fee waiver litigants, non-mandated restraining orders, family law custody and visitation, unlawful detainers, guardianship, and conservatorship matters. As mediation may be required in restraining order and related family-law cases, qualified bilingual mediators or certified interpreters should be assigned to handle the related services as well. Utilizing current funds, courts must also eliminate the unreasonable delays of hours, days, or weeks that presently exist in providing interpreters in mandated cases.

Our suggestions for language for an interim policy and for the LAP are detailed below.

PROPOSED INTERIM POLICY LANGUAGE (to be implemented immediately)

1. Identifying Language Needs at Case Inception
 - a. For immediate implementation:
 - i. Revise existing FW-001 Request to Waive Court Fees to include the following line under #1, "Your Information":
"Interpreter needed? yes no
If yes, language(s) requested: _____"
 - ii. Allow for the grant of the initial fee waiver to cover waiving interpreter fees and costs. As such, amend California Rule of Court 3.55 to include interpreter fees and costs as waived by granting the initial fee waiver and revise existing FW-003 Order on Court Fee Waiver to include under #4(a)(1) a bullet point stating, "Court-appointed interpreter fees for party."
2. Ensuring language needs are met throughout the duration of court proceedings
 - a. Scheduling
 - i. Upon scheduling a court proceeding, the scheduling clerk shall immediately check the court file or the case status system for the language needs of the litigants. Accordingly, that clerk shall immediately request an interpreter(s) for the parties.
 - ii. Clerks shall make efforts to schedule interpreters to maximize efficiency.
 1. *NOTE: As a general matter, we do not support the utilization of Spanish-speaking or single language calendars. Although this concept might seem appealing, it could have disastrous consequences and should be avoided. It has the potential of creating separate and different standards, expectations, and results for certain language groups, which could have discriminatory effects. We have also heard accounts that immigration officers have come to court in certain counties where such "language calendars" occur and questioned litigants. If this occurs, it will discourage immigrants from accessing courts and defending their rights. For this reason, we believe that courts should avoid such language calendars.*
 - iii. Also, to increase efficiency in the interim, certain cases requiring interpreters shall be prioritized, including: fee waiver litigants, non-mandated restraining order hearings, family law custody and visitation hearings, unlawful detainer hearings, guardianship hearings and conservatorship hearings. This shall include the provision of language services for mediation and other required ancillary court services.
 - iv. The list above assumes that mandated domestic violence-related cases are already prioritized and interpreters should be provided in these proceedings and ancillary court services without delay.
3. Courts shall transfer, reassign, hire and/or contract with certified (or registered) interpreters to meet the needs and priorities in this section.
4. Training for all clerks and court staff on policy and procedure on interpreter requests
 - a. Courts shall provide immediate training to all court staff on current changes to procedures

- b. Court shall also provide regular language access training and policy updates to all court staff as other changes are implemented.
5. Oversight & Monitoring: an interim complaint and monitoring process shall be created to ensure and evaluate implementation.

PROPOSED LAP LANGUAGE: Relevant parts of the LAP Outline include Section III, Part D1; Section IV, Part A; Section V, Part A.

1. Address Language Needs at the Earliest Points of Court Contact
 - a. Signage located both inside and outside courthouses must be translated and displayed in the top five primary languages spoken in the service area of the particular courthouse. Based on data collected, each county shall provide additional translation(s) for each language spoken by more than 5% or 500 persons, whichever is less, of the population of persons in the service area.
 - b. Courts to prominently display signage notifying litigants of their right to an interpreter. Signs should be displayed in the top five primary languages, as well as any other predominantly spoken languages in that county. Signage to be placed at filing windows, self-help centers, and clerk's/bailiff's desks within individual courtrooms.
 - c. Access to interpreters must be ensured at points of contact outside of the courtroom, including, but not limited to: filing windows, records rooms, self-help centers, family court services, and probate investigators (*See also* Part IV below).
 - i. At aforementioned points of contact, when interpreters are not available to be personally present or the court staff does not speak the litigant's language, the court shall provide language access through remote telephonic or video interpretation.
2. Identifying Language Needs at Case Inception
 - a. Creation of Language Needs Form:
 - i. Create language needs form to be completed at inception of case, along with both the Petition and Response. This form shall be translated into the five primarily spoken languages in the state of California. The first page of the form will gather information on whether the litigant requires an interpreter and in what language. The first page shall be filed with the court. The second page of the form will give the litigant notice of his/her right to an interpreter and provide practical information on where and how he/she can file a complaint regarding language access. The litigant will keep this second page of the form.
 - ii. Upon receipt of a language needs form that requests an interpreter, the court clerk shall place a brightly colored sticker, filling in the language needed, in a prominent location on the court file.
 - iii. The court clerk shall also immediately input into the case status system that the litigant requires an interpreter, and what language is needed.
3. Ensuring language needs are met throughout the duration of court proceedings
 - a. Scheduling
 - i. Upon scheduling a court proceeding, the scheduling clerk shall

immediately check the court file or the case status system for the language needs of the litigants. Accordingly, that clerk shall immediately request an interpreter(s) for the parties.

ii. Clerks shall make to efforts schedule interpreters to maximize efficiency.

1. NOTE: *As a general matter, we do not support the utilization of Spanish-speaking or single language calendars. Although this concept might seem appealing, it could have disastrous consequences and should be avoided. It has the potential of creating separate and different standards, expectations, and results for certain language groups, which could have discriminatory effects. We have also heard accounts that immigration officers have come to court in certain counties where such “language calendars” occur and questioned litigants. If this occurs it will discourage immigrants from accessing courts and defending their rights. For this reason, we believe that courts should avoid such language calendars.*

4. Courts shall transfer, reassign, hire and/or contract with certified (or registered) interpreters to meet the needs and priorities in this section.
5. Training for all clerks and court staff on policy and procedure on interpreter requests
 - a. Courts shall provide immediate training to all court staff on current changes to procedures
 - b. Court shall also provide regular language access training and policy updates to all court staff as other changes are implemented
6. Oversight & Monitoring
 - a. A robust complaint process shall be developed, advertised and made widely available to litigants (*See Parts VI and VII below*).
 - b. The Language Access Oversight Committee shall, amongst other duties, monitor the courts’ written policies and websites (*See Parts VI and VII below*).

IV. Use of Interpreters and Translated Materials Inside and Outside of Courtroom Proceedings

Providing interpreters beyond the courtroom is integral for a litigant to have equal access to the legal system. Failing to do so presents an insurmountable bar to LEP litigants, which effectively shuts them out of their day in court. To remove these barriers, the courts must provide some form of interpretation at all points of contact with LEP litigants.

There should be proper staffing and language services available for LEP litigants throughout the course of their judicial proceedings. The DOJ has articulated that statutory mandates include services outside the courtroom:

Examples of such court-managed offices, operations, and programs can include information counters; intake or filing offices; cashiers; records rooms; sheriffs offices; probation and parole offices; alternative dispute resolution programs; *pro se* clinics; criminal diversion programs; anger management classes; detention facilities; and other similar offices, operations, and programs. Access to these points of public contact is essential to the fair administration of justice, especially for unrepresented LEP persons. DOJ expects courts to provide meaningful access for LEP persons to such court operated or managed points of public contact in the judicial process, whether the contact at issue occurs inside or outside the courtroom.⁵⁰

Although funding is a critical component, it cannot be cited as a barrier to implementing these policies and services. As stated above, the DOJ has made it clear that language access expenses “be treated as a basic and essential operating expense, not as an ancillary cost.”⁵¹ Some other state plans reference “external funding” for language access, and the Judicial Council should explore such opportunities.⁵² One seemingly unique approach is mentioned in Wisconsin’s LAP—the use of workforce money available through the State’s Office of Refugees to create an interpreter training program.⁵³

In carrying out these functions, all courts should work with a local Language Access Oversight Committee (*See* Part VI below).

Translated Documents

The proper translation of state court materials, notices, and forms is also essential to bridging the language divide between the California court system and the LEP populations it serves. All vital documents must be translated for any language spoken by 5% or 500 persons,

⁵⁰Perez, *supra* note 19.

⁵¹*Id.*

⁵² See Office of Language Access, Colorado Judicial Department, *Strategic Plan for Implementing Enhanced Language Access in the Colorado state courts: Blueprint for providing Full access to Justice for Colorado’s Limited English Proficient Court Users* (Colorado LAP) (March 2012), at 5; Wisconsin Director of State Courts Language Access Plan (Wisconsin LAP)(rev. version 11/25/2013), at 7-8, available at: <http://www.wicourts.gov/services/interpreter/docs/laplan.pdf>.

⁵³ Wisconsin LAP at 7.

whichever is less, of the population in the service area of each courthouse. These thresholds for written translations should be established to meet the needs of the extraordinarily diverse populations within California.

Tiered Approach to Language Services

We believe that for certain activities outside the courtroom, courts can and should utilize non-certified interpreters with different tiers of qualifications to meet the needs of litigants. The American Bar Association Standards for Language Access in Courts (ABA Standards) recognize the acceptability of a tiered approach to interpretation and bilingual staffing.⁵⁴ This has been recommended for the California Courts in past reports as well.⁵⁵ As noted in the ABA Standards, some positions may not require the highest level of certification that is needed in a courtroom because simultaneous interpretation and an understanding of complex terminology may not be necessary at those points of contact.⁵⁶ The ABA Standards do, however, recommend that courts assess and identify the language proficiency needed at various points of contact.⁵⁷ They also recommend testing of all bilingual staff and identify the “Interagency Language Roundtable (ILR)” tool, which we cite to, as a best practice.⁵⁸ Alternatively, they list two testing agencies that are commonly used: Alta Language Services and Language Testing International.⁵⁹ The Migration Policy Institute, referenced above in Part II, also has a Language Access: Translation and Interpretation Policies and Practices project that offers some useful resources.⁶⁰ As noted below, courts should work with their local Language Access Oversight Committee, including a variety of stakeholders, to identify the language needs and skills necessary at the various points of contact in the local court (*See* Part VII below).

Hiring of Bilingual Staff

The recruiting and retention of bilingual staff is critical in providing improved language access to LEP court users. This was highlighted in the Findings and Recommendations of the 2008 study of interpreter services in civil cases in California.⁶¹ Bilingual ability should be a *sine qua non* of all future court hiring of all positions involving public contact — these positions should require proficiency in languages commensurate with the needs of local communities. If the Judicial Council believes such an absolute mandate on bilingual hiring is not possible, then

⁵⁴ American Bar Association Standing Committee on Legal Aid and Indigent Defendants, *ABA Standards for Language Access in Courts* (February 2012) (ABA Standards), at 100-2, available at: http://www.americanbar.org/groups/legal_aid_indigent_defendants/initiatives/language_access.html.

⁵⁵ See National Center for State Courts, Research Services, *The Provision of Court Interpreter Services in Civil Cases in California: An Exploratory Study, Final Report* (January 31, 2008), at 6-7, available at: <http://www.courts.ca.gov/documents/ncsc-report.pdf>.

⁵⁶ American Bar Association, *supra* note 54, at 100.

⁵⁷ *Id.* at 101-2.

⁵⁸ *Id.* at 101. The Interagency Language Roundtable (ILR) is a Federal interagency organization that works on addressing language access, language testing, interpretation and translation performance, and other language-related activities. The ILR website is available at: <http://www.govtilr.org/index.htm>.

⁵⁹ *Id.* at 102, footnote 49.

⁶⁰ <http://www.migrationpolicy.org/programs/language-access-translation-and-interpretation-policies-and-practices>.

⁶¹ See National Center for State Courts, Research Services, *The Provision of Court Interpreter Services in Civil Cases in California: An Exploratory Study, Final Report* (January 31, 2008), at 4, available at: <http://www.courts.ca.gov/documents/ncsc-report.pdf>.

we recommend the approach Delaware has adopted. First, Delaware identifies positions where bilingual capacity is required and will list that as a mandatory requirement of the job. In other positions, there is a hiring preference for bilingual staff.⁶² Local courts should work with the stakeholders and committees recommended in Part VI of these comments to identify where language capacity is essential and for what languages.

Assessment, Transfer, and Training of Existing Qualified Bilingual Court Staff

Until sufficient staff can be hired, all courts should do an assessment of the language capacity already available in the courthouse, especially in Spanish. While California is a very diverse state, we know that the majority of LEP individuals are Spanish speakers. We believe courts may already have Spanish or other language capacity that is not being utilized to the fullest. For instance, we have observed criminal courtrooms where staff, such as bailiffs and judicial assistants, speak Spanish. These same courtrooms have Spanish-speaking interpreters assigned to them and available to assist with introductory remarks and other preliminary communication. Down the hall, however, restraining order and unlawful detainer courtrooms have no staff who can communicate with Spanish speakers and other LEP individuals.

Courts should survey, test, and identify bilingual staff and transfer them to civil courts, clerk's offices, and other public contact locations to increase language access immediately. The assessment of language ability should be standardized, thorough, and extensive. Some resources for testing as recommended by the ABA Standards are noted above in this section. Different levels of oral and written ability should be tested and tiered with pay differentials. The court may also want to explore encouraging current court staff to improve and develop language skills by offering language classes and other incentives for professional growth. Staff should be placed strategically and utilization of language skills should be part of their job duties and expectations. Bilingual staff should be designated on court-wide phone lists to assist court users as needed. Standardized resources, including glossaries and training curriculum to be administered on a regularly basis, should be developed and updated.

Utilizing Technology and Translated Materials for Introductory Remarks and General Information

Courts should utilize technology to provide assistance with introductory remarks and court instructions in the courtroom and the hallway. The simplest approach might be to translate instructions into other languages and provide them to all litigants. However, many litigants may not be literate in their native language, so courts should also use other technology. Headsets can be used in courtrooms without disrupting proceedings. Video remote or videos can also be used with or without headsets for interpretation. By utilizing various applications, courts could provide or play pre-recorded messages on a variety of devices.

⁶² State of Delaware Administrative Office of the Court, Court Interpreter Office, *Language Access Plan* (Delaware LAP) (August 2013), at 9, available at: <http://courts.delaware.gov/forms/download.aspx?id=64928>.

Language Posters and Cards in Courtrooms

All filing rooms, courtrooms, and other public areas should have the means to identify less easily recognized languages. To identify such languages, these areas should have language line posters and brochures available that allow a person to point to their language when court staff cannot identify the language. Various language line services provide their customers with posters and brochures that list a variety of languages. For instance, LanguageLine Solutions' (LLS) poster has a tag line that says a free interpreter will be provided in the 20 most common languages. In addition, LLS provides a brochure that has over a hundred languages listed. LEP individuals can simply point to the line that reflects their language. Court personnel will then know the language as it is listed in English next to the tag line. All courtrooms should post and have available such tools at the judicial assistant's desk.

To increase language access beyond the courtroom, we recommend the following be incorporated into the LAP.

PROPOSED LAP LANGUAGE: Relevant parts of the LAP Outline include Section V, Parts A, B; Section VI, Parts A, B, C, E; Section VII, Parts A, B, C.

The Court shall adopt a tiered language services system based on the knowledge, skills, and abilities needed at each point of contact, as follows:

Court and Ancillary Court Proceedings

(See Appendix Below for Interpreter Qualification Levels)

1. A certified or registered court interpreter must be provided for all courtroom proceedings *and* activities that are ancillary to courtroom proceedings but nevertheless mandatory for litigants. This includes, but is not limited to, trials, mandated mediation, settlement conferences, and parental interpretation in juvenile matters.
2. If a certified or registered interpreter cannot be obtained within a reasonable amount of time, then the court may contract with a qualified non-certified/registered interpreter. The minimum qualification level should be at least Level 3 plus on the Interagency Language Roundtable Skill Level descriptions for Interpretation Performance. *See* <http://www.govtilr.org/>.
3. If none of the interpreters above can be obtained, Video Remote Interpreting (VRI) may be utilized in specific circumstances only. VRI must be used in accordance with a well-designed protocol, similar to the limitations prescribed in <http://courts.ca.gov/documents/CIP-ASL-VRI-Guidelines.pdf>. VRI must be limited to non-trial or evidence-gathering settings.
4. Where a live interpreter is unavailable, courts must provide language assistance with introductory remarks, court instructions, and pre and post-proceeding instructions through translated written materials and/or utilizing available technology
 - a. Through the local Language Access Oversight Committees, local courts should meet with stakeholders, including legal services providers, self-help staff, and

others to develop a plan to provide such services and identify appropriate ways to use technology (*See* Part VI below).

Interpreters Outside the Courtroom

1. Outside of the courtroom, the court will provide certified or *qualified* uncertified interpreters at all points of contact with LEP litigants. Unlike translations of written documents, oral interpretation services should not be subject to any thresholds for when they should be offered but be available “on demand” and free of charge.
2. The court must utilize the Department of Justice’s hierarchy of language services⁶³ to provide interpretive services outside the courtroom setting. In accordance with this hierarchy:
 - a. The first choice is always to use bilingual staff to provide services directly in the preferred language.
 - b. If bilingual staff is unavailable at a particular location, court staff from another location should be brought in to assist as a second choice.
 - c. While the court must strive to provide in person interpretation, the third choice is to use VRI to draw on interpreters from other courts.
 - d. If all the options above are exhausted, the fourth choice is to use a *qualified* volunteer.
 - e. Finally, if all other options are unavailable, telephonic or language line service may be used as the last resort.
3. Qualified bilingual staff will be located at all filing windows and self-help centers. Additionally, in each of the civil courtrooms either or both the bailiff and clerk should be bilingual whenever possible.
4. The use of friends or relatives as interpreters should be highly discouraged, and minors should never be used.
5. The minimum level of qualification for interpretation outside of courtroom proceedings should be at least Level 3 on the Interagency Language Roundtable Skill Level descriptions for Interpretation Performance. *See* <http://www.govtirl.org/>. A Level 3 interpreter is able to interpret consistently in the mode required by the setting, provide renditions of informal as well as some colloquial and formal speech with adequate accuracy, and normally meet unpredictable complications successfully. Be able to convey many nuances, cultural allusions, and idioms, though expression may not always reflect target language conventions. Adequately deliver with pleasant voice quality. Hesitations, repetitions or corrections may be noticeable but do not hinder successful communication of the message. Performance reflects high standards of professional conduct and ethics.

⁶³ For sample LAP Plans that use the Department of Justice’s hierarchy, available at: <http://iri.lsc.gov/engaging-clients/language-access/planning-evaluation/sample-plans>.

Placement of Bilingual Staff

Moving forward, the court should only hire staff that is bilingual in positions requiring public contact commensurate with the needs of local communities. This should dramatically increase capacity for interpretation while reducing the need to rely on costly interpretation services by non-court personnel. Additionally, bilingual staff should be prioritized in civil proceedings and pulled from the criminal courts if necessary. In criminal court bilingual staff is less essential as all individuals are represented by counsel and provided with interpreters.

Assessment and Training of Bilingual Staff

1. All bilingual staff must be tested through a standardized process before being instructed to utilize their language skills with court users. Such testing should include various levels designating oral and written proficiency. Staff shall be compensated accordingly with corresponding pay differentials. Utilization of language skills shall be made part of all job duties for staff with public contact.
2. Qualified bilingual staff shall be designated on the court-wide phone list to be called upon to assist in appropriate situations. Guidelines and protocols shall be developed and trainings provided to all staff.
3. All bilingual staff shall be required to attend regular trainings regarding how to appropriately utilize their language skills with court users. The Office of Language Access shall develop standardized training curriculum and language resources, such as glossaries and other language-specific resources (*See* Part VI below).

How to Determine when Language Services Are Needed

1. The court shall be responsible for identifying the need for language services. At the point of contact, the court employee shall notify the court user of their right to an interpreter. If a court user speaks a language other than English, the court will use a language identification card to determine the litigant's primary language and particular dialect, and any other languages she/he may speak fluently. If the court is not able to determine the client's primary language, the court will use a telephonic interpreter service to identify the litigant's language.
2. In each filing window and courtroom the court must put up "I Speak" posters.⁶⁴ This will give court staff the ability to easily identify the LEP individual's language. In addition, at each location brochures explaining language services, which list dozens of other languages, must be available allowing the LEP individual to point to their language to

⁶⁴ Samples of these posters available at: <http://www.dhs.gov/xlibrary/assets/crcl/crcl-i-speak-poster.pdf>, or <http://www.lep.gov/ISpeakCards2004.pdf>, <http://www.courts.alaska.gov/language/poster-flags.pdf>.

identify it for the court staff.

3. The court should have “I Speak” cards readily available for LEP litigants to pick up at the clerk’s office.⁶⁵ Handing them out to litigants will ensure that no matter where in the courthouse a litigant is, s/he will be able to let court staff know the language the litigant speaks.

Centralized Quality Control

Certified court interpreters must be able to provide simultaneous interpretation. Staff and court volunteers should be qualified to provide consecutive translation at a minimum. The Federal Court Interpreter manual provides detailed guidelines on certification and qualifications for interpreters.⁶⁶ Quality control for all California courts should lie within the Office of Language Access, discussed below. This will ensure the same standard is being applied across all California courts. Along the same lines, a centralized resources and training curriculum should be developed and maintained. Attached are a number sample word banks and glossaries for reference.

Translation and Signage

The court must prioritize the translation of all signs that let LEP litigants know that they have a right to an interpreter.

Multilingual Court Information and Signage

Notification of Court-Provided Language Services

1. Courts must provide visible signage indicating the litigant’s right to language services.⁶⁷ The following website <http://www.masslegalservices.org/content/your-right-interpreter-poster-editable-version>, allows for the creation of a customized sign. This should be placed in all public areas and in each courtroom
2. Courts must post signs throughout the court that indicate “the court serves all people. It does not matter where you were born or what language you speak.”
3. For each notice the court sends out to litigants, the court must include language that indicates the court’s obligation to provide free interpretation services. The notice should also include the LEP coordinator’s number as well as the LEP specific call-in numbers (described below).

⁶⁵ A sample of these can be found at: <http://www.dss.cahwnet.gov/civilrights/PG584.htm> or <http://www.cultureconnectinc.org/ispeak.html>.

⁶⁶ See <http://www.uscourts.gov/uscourts/FederalCourts/Interpreter/federal-court-interpreter-orientation-manual.pdf> and <http://lri.lsc.gov/engaging-clients/language-access/language-assistance/oral/staff-language-skill>.

⁶⁷ See <http://www.masslegalservices.org/content/your-right-interpreter-poster-editable-version>, which allows for the creation of a customized sign.

Dissemination of Multilingual Courtroom Instructions

Many courtrooms have standard instructions they provide litigants daily at the initiation of proceedings. It is critical for LEP litigants to understand these instructions to be able to proceed with their cases. For these sorts of courtroom instructions, the court should pre-record the instructions in multiple LEP languages, starting with those in highest demand, and make the interpreted instructions available either through the use of headsets or kiosks.

Multilingual signage providing direction to LEP court users to courtrooms, programs, and services

Multilingual posting signs should be provided in intake areas and other entry points providing direction to LEP persons to courtrooms, programs, and services.

Multilingual court information phone numbers

The court should identify the languages in the highest demand locally and set up specialized numbers that a litigant can call to get information, such as their trial date or case status, other than the general court numbers. This will increase LEP access and reduce the time staff spends identifying the language. This will also allow for early identification of language needs.

Translation of Documents

The court should at the very least translate all vital documents for each LEP language group that comprises at least 5% or 500, whichever is less, of persons eligible for or likely to be directly affected by the court's services. A sample translation process manual can be found at <http://www.kingcounty.gov/operations/policies/executive/itao/inf142aao.aspx>.

A document should be considered vital and need to be translated if it contains information critical for obtaining access to court or it is required by law. Some examples of vital documents that courts may need to translate to ensure that LEP individuals are provided meaningful access can include applications, court forms, consent or complaint forms, notices of rights, and letters or notices that require a response.⁶⁸ In translating forms, translated text should be written alongside the original English text, thus facilitating litigants understanding and completing forms in English. The statewide Language Access Oversight Committee in conjunction with the local Language Access Oversight Committees should identify and prioritize translation.

Vital documents for the court must include fee waiver and supplemental fee waiver forms and hearing notices. For all other languages, the court must make sight translation available.⁶⁹ Court forms in areas of law that have a high number of pro per litigants, such as family law and

⁶⁸ U.S. Department of Justice, *Language Access Planning and Technical Assistance Tools for Courts*, February 2014, available at: http://www.lep.gov/resources/courts/022814_Planning_Tool/February_2014_Language_Access_Planning_and_Technical_Assistance_Tool_for_Courts_508_Version.pdf.

⁶⁹ Dymally-Alatorre Act, Gov. Code §§ 7290, 7294.5, and 7295.

unlawful detainees, should also be translated as a priority. Any material explaining services available, such as self-help services, must be translated into any non-English language spoken by 5% or 500 persons, whichever is less, in the service area of the specific courthouse. The court should also accept for filing all pleadings completed in non-English languages.

With the balance of interests at play in the current definition of “vital documents” and to this end, the inclusion of in-language “taglines” in at least 15 languages should be utilized for some documents and notices. Taglines are a low-cost way to inform litigants of the availability of language services.

Work with Local Language Access Oversight Committees

In carrying out all these functions local courts should work with a local language access oversight committee comprised of stakeholders including legal service providers, community-based organizations and representatives of local ethnic communities (*See Part VI below*).

APPENDIX – Interpreter Qualifications

1. Certified Court Interpreters – Interpreters that have successfully passed the Bilingual Court Interpreter Certification Exam or the exam for American Sign Language and have met all requirements as prescribed the Judicial Council and Administrative Office of Courts. Court interpreter certification exams are administered: American Sign Language, Arabic, Eastern Armenian, Cantonese, Khmer, Korean, Mandarin, Portuguese, Punjabi, Russian, Spanish, Tagalog, and Vietnamese.
2. Registered and non-certified qualified interpreters – Interpreters in languages spoken for which there is no state-certifying exam, or have not passed the Bilingual Court Interpreter Certification Exam. These interpreters have passed the Written Exam and Oral Proficiency Exams in both English and their non-English language and have demonstrated the ability to interpret at a Level 3 plus interpreter performance level on the Interagency Language Roundtable Skill Level descriptions for Interpretation Performance. See <http://www.govtilr.org/>. And have successfully passed an exam on interpreter ethics.

Level 3+ (Professional Performance Plus): Able to interpret accurately and consistently in the mode (simultaneous, consecutive, and sight) required by the setting and provide generally accurate renditions of complex, colloquial and formal speech, conveying most but not all details and nuances. Expression will generally reflect target language conventions. Demonstrates competence in the skills required for interpretation, including command of both working languages, their cultural context, and terminology in those specialized fields in which the interpreter has developed expertise. Good delivery, with pleasant voice quality, and few hesitations, repetitions, or corrections. Performance reflects high standards of professional conduct and ethics.

<http://www.govtilr.org/Skills/interpretationSLDsapproved.htm>

3. Lesser skilled interpreters – Interpreters that demonstrate the ability to interpret at the Level 3 performance level on the Interagency Language Roundtable.

Level 3 (Professional Performance): Able to interpret consistently in the mode (simultaneous, consecutive, and sight) required by the setting, provide renditions of informal as well as some colloquial and formal speech with adequate accuracy, and normally meet unpredictable complications successfully. Can convey many nuances, cultural allusions, and idioms, though expression may not always reflect target language conventions. Adequate delivery, with pleasant voice quality. Hesitations, repetitions or corrections may be noticeable but do not hinder successful communication of the message. Can handle some specialized subject matter with preparation. Performance reflects high standards of professional conduct and ethics.

<http://www.govtilr.org/Skills/interpretationSLDsapproved.htm>

4. Bilingual – Language skilled individuals that do not meet the interpreter performance requirements of a Level 3 interpreter on the Interagency Language Roundtable.

V. **Training of Court Staff** [Section IX of LAP Outline]

To ensure statewide compliance with the legal requirements, the language access plan must do more than lay out the law and requirements that govern language access; the plan must also establish the programs and guidelines to be used for the training of court staff on language access services, requirements, and mandates in order to ensure the delivery of high-quality and timely language services to LEP litigants. Oftentimes, judges, clerks, court administrators, staff, and other court-appointed professionals want to help the LEP litigant that comes to their courthouse, but they do not have the proper tools or knowledge. At the 2012 National Center for State Court Summit (NCSC) on Language Access in the Courts, “Training Judges, Clerks, and Interpreters” was chosen the most often as a priority area by the various judicial leaders present at the summit from across the nation.⁷⁰

Ongoing training on language access ensures that court staff receives the support they need to properly serve LEP litigants while also identifying areas where additional education or guidance is necessary. In its March “Access Brief,” the Center on Court Access to Justice for All reinforced the importance of training court staff about language access services, noting that “judges and court staff need education about, for example, identifying individuals in need of language access services, appropriately assisting LEP self-represented litigants with their cases, and cultural differences that may affect an LEP self-represented litigant’s understanding and behavior.”⁷¹ We also anticipate that technology will be a means of providing language services, whether it is through the use of headsets, audio recording, or video remote interpreting. Education on the use of this technology is critical to ensuring its effective use, particularly for court staff that has little to no experience with these tools.

Furthermore, training on cultural sensitivity and norms will better prepare court staff for the expected culture change that will result as language access becomes routine. The burden of acquiring language services should not fall on the LEP litigant. Instead, court staff should be proactive about identifying the needs of LEP litigants and providing the necessary services. To ensure that this happens, training should encourage court staff to actively approach LEP litigants who may feel intimidated by the court process or unaware of the options to seek language services. Any training should emphasize customer service and the importance of being cordial and patient with LEP litigants.

Below are topic areas that the training and education efforts should include, although it is not an exhaustive list:

- Background on language access issues, including review of legal requirements, mandates and policies (identified above);
- Review of California’s language access plan;

⁷⁰ See National Center for State Courts, *A National Call to Action: Access to Justice for Limited English Proficient Litigants, Creating Solutions to Language Barriers in State Courts*, (2012), at 16, available at: http://www.ncsc.org/services-and-experts/areas-of-expertise/language-access/~/_media/files/pdf/services%20and%20experts/areas%20of%20expertise/language%20access/call-to-action.ashx.

⁷¹ See Center on Court Access to Justice for All, *Access Brief 5: Language Access & Self-Represented Litigants*, available at: <http://ncsc.contentdm.oclc.org/cdm/ref/collection/accessfair/id/339>.

- Processes for identifying LEP court users;
- The various services that are available to LEP litigants, including technological assistance (interpreters, bilingual staff, translated materials, websites, video remote interpreting, headphones);
- Processes for the appointment of interpreters;
- Review of the role of interpreters;
- Review of interpreter code of ethics;
- Legal services and community-based organizations that court staff can refer to for more information on how to serve LEP individuals;
- Cultural competency and awareness trainings on working with specific populations;
- Training on how to effectively work with interpreters for all staff;
- For non-certified bilingual court staff, training on how to effectively work as an interpreter

In addition to highlighting the importance of providing training to court staff, the language access plan must also establish the standards by which courts will have to comply with to ensure that staff is being adequately and consistently trained. This includes that there be mandatory trainings provided on a regular basis to court staff and a requirement that courts report the number of trainings their staff attended, who led the trainings, and the materials that were reviewed at such trainings. Such oversight will not only ensure that court staff is complying with the requirements of the language access plan, but also that court staff is receiving all the support that it needs in providing language services.

VI. Language Access Management

A. Creation of an Office of Language Access (OLA)

The Judicial Council should create an Office of Language Access (OLA) to ensure implementation of the LAP. The process of making language access a reality will take time and will certainly be a challenge. Without an office at the state level with power to enforce the plan sufficient progress may not happen. The OLA would expand, complement, and integrate with the existing work and functions of the Court Interpreters Program and Court Interpreters Advisory Panel. The OLA should also have significant input from community stakeholders. Some OLA functions can include identifying language needs, providing technical assistance in assigning and calendaring interpreters for court proceedings, coordinating translations of court forms and other “vital” documents, providing trainings, developing training curriculum, methods and standards for VRI and other technology, and monitoring progress and funding needs. It could also help coordinate expanded testing, certification and scheduling of different tiers of interpreters, court staff and independent contractors.

Further, the LAP will require extensive training for all court staff and court-appointed professionals. Training topics include implementation of the new plan, how to be an effective interpreter, how to work with an interpreter, and cultural competency. Cultural differences and how they might impact such interactions may need to be explored for various ethnic groups. As a statewide centralized office, the OLA could develop training curriculum and make materials available throughout the state. This would prevent each court from having to develop such trainings independently.

It is also worth noting that other state courts have developed similar entities to assist with these functions. For example, Colorado has a centralized coordinating office that oversees language access services.⁷² In addition, they rely on a language access committee to provide feedback and guidance to the office.

B. Language Access Oversight Committee (LAOC)

The Judicial Council should also create a new statewide Language Access Oversight Committee (LAOC), which would provide critical support to the OLA. It would include legal service providers and others with experience in court services and civil rights. The current working group has very limited representation from the legal services community. The legal services community has extensive experience representing clients in court and assisting indigent litigants in court-based self-help centers. In addition, these same organizations have attorneys with substantial experience in civil rights law, especially in the area of language access. The LAOC must be expanded to include more individuals with such experience. As mentioned above, Colorado and Wisconsin have used these types of diverse committees to provide input on their language access efforts. Colorado’s committee includes judges, court personnel, and external

⁷² Office of Language Access, Colorado Judicial Department, *Strategic Plan for Implementing Enhanced Language Access in the Colorado State Courts: Blueprint for providing Full access to Justice for Colorado’s Limited English Proficient Court Users* (Colorado LAP) (March 2012), at 5.

stakeholders.⁷³ Wisconsin notes that their “Committee to Improve Court Interpreting” also included members of the “Hispanic, Hmong, and Deaf and hard of hearing communities.”⁷⁴ This type of approach—including impacted communities on committees—is critical to success and community buy-in.

In addition, the committee should be used to monitor and ensure compliance with the new plan. We recommend quarterly meetings for the first two years, then annual hearings to discuss successes and failures, annual reports to highlight progress and offer recommendations, assignment of monitors to observe compliance in the courts, and implementation of a questionnaire or survey to LEP litigants for direct feedback. There should also be extensive data collection to provide quantitative analysis of the effectiveness of the plan.

C. Creation of Local Language Access Oversight Committees

Local courts should also set up their own oversight committees to develop and implement language services consisting of court staff, self-help center staff, interpreters, and community stakeholders including legal services providers, and other organizations working with various ethnic communities. This committee could help local courts adapt the AOC’s Language Access Plan to the needs of their specific counties. The tasks of such a committee would include identifying local language needs and emerging languages, identifying critical points of contact and the level of language proficiency needed at each point, providing feedback on the plan implementation and creating a bridge to various ethnic communities. The activities of such local LAP committees would mirror the statewide committee but with a local county focus.

PROPOSED LAP LANGUAGE: Relevant parts of the LAP draft outline include Section XI, Parts A, B, E.

1. The Judicial Council shall create a new statewide Office of Language Access (OLA) and provide adequate staff responsible for ensuring that local courts and the state meet the requirements of civil rights laws with regards to language access for LEP individuals and that LEP individuals receive high quality service and equal access in all programs and services throughout the state.
 - a. The OLA would expand, complement, and integrate with the existing work and functions of the Court Interpreters Program and Court Interpreters Advisory Panel.
 - b. The duties of the State OLA shall include, but are not limited, to:
 - i. Implementation of the Judicial Council’s adopted statewide Language Access Plan
 - ii. Monitoring local courts and their services to LEP individuals
 1. Annually reviewing LEP services and publishing a report (working with the Language Access Oversight Committee)
 2. Handling and resolving complaints regarding language access

⁷³ *Id.*

⁷⁴ Wisconsin Director of State Courts, *Language Access Plan* (Wisconsin LAP)(rev. version 11/25/2013), at 7, available at: <http://www.wicourts.gov/services/interpreter/docs/laplan.pdf>.

- iii. Providing technical assistance and training to all court personnel on language access
- iv. Coordinating the provision of interpreter services throughout the state, including:
 1. Testing & certification
 2. Scheduling
 3. Coordinating use of technology, including video remote services
- v. Ensuring the adequacy of bilingual court staff and volunteers
- vi. Working with stakeholders, including legal services providers, to identify the language needs of public contact positions
- vii. Testing and certification of the bilingual capacity of employees by:
 1. Developing tools
 2. Contracting with certification agencies such as those recommended in the ABA Standards⁷⁵
- viii. Working with stakeholders, including legal services providers, to identify “vital” documents and ensuring translation of all such documents as expeditiously as possible
 1. Coordinating and providing translations of other documents
- ix. Explore funding opportunities for language access

2. Language Access Oversight Committee (LAOC)

- a. The committee shall meet at least quarterly and more often as needed to ensure implementation of the language access plan.
- b. The committee shall include a substantial number of legal services providers from throughout the state.
- c. The committee shall conduct public hearings throughout the state a year after implementation begins to assess the ongoing needs and as often thereafter as deemed necessary by the committee.
- d. After such hearings, the committee shall annually update the plan and identify areas of need or improvement and publish a report with recommendations.
- e. The committee shall work with the Court Interpreters Program and Court Interpreters Advisory Panel to enhance data collection and reporting to assess the effectiveness of the statewide Language Access Plan.

3. Local Language Access Oversight Committees

- a. Local courts must also set up committees to help plan and monitor language access implementation.

⁷⁵ American Bar Association, *supra* note 54, at 100-2.

- i. Tasks include identifying local language needs and emerging languages, identifying critical points of contact and the level of language proficiency needed at each point, providing feedback on the plan implementation and creating a bridge to various ethnic communities.
 - ii. Activities will mirror the statewide committee but with a local county focus.
- b. The committee should include court personnel including interpreters, legal services providers, self-help center staff, and other community-based organizations that serve LEP individuals.

VII. Monitoring: Complaint Processes

In addition to the committees and proposed structure noted above, the AOC should consider a variety of mechanisms used by other states to monitor compliance. Colorado has adopted several interesting features: an interpreter discipline policy⁷⁶, a complaint process⁷⁷, an “audit unit” that monitors compliance, and “managing interpreters”⁷⁸, which appear to be similar to language access coordinators. Washington State has adopted a very thorough process for handling complaints against interpreters. Ohio has posted a one page outline of its complaint process for denial of language access and a complaint form in 13 languages on its website.⁷⁹

A consistent, transparent, and efficient statewide complaint mechanism will provide individual litigants with the means to ensure language-sensitive services in their matters. Moreover, transparency, through publication of results, will help clarify standards for interpreters, translators, and the courts. Such mechanisms should also be time and cost-efficient to ensure rapid resolution of language barriers in the court in a way that allows litigants to promptly resume court matters while not administratively or financially overburdening the courts. Overall, this should lead LEP litigants to expect and receive consistent language access services across all California courthouses, regardless of location or type of case.

Both users and providers of language access services in the courts should expect predictable, transparent, and prompt resolution of language access problems. Language access services should be included as part of court employee duties and should be written into employee manuals. Failure to provide proper services should be reviewed in a complaint process, and adverse decisions should lead to verbal or written warnings, and ultimately cause for misconduct.

The Judicial Council should appoint at least one Language Access Coordinator in each court, as done in Colorado, to work with the OLA to maximize efficiency and fully utilize available interpreters. Language Access Coordinators should have the power to make assignments and transfers as needed, and determine the roster of interpreters in a given court. This is analogous to the court’s current treatment of ADA services, which are no less mandated than language access services. Language Access Coordinators should manage and oversee interpreter services, particularly compliance with standards of interpretation and fulfillment of training, certification requirements, and maintenance of a roster of interpreters for the courthouse. Language Access Coordinators should also keep a log of complaints and decisions and cooperate with the OLA in investigating complaints. The Language Access Coordinator must have the authority to order corrective action that must be followed when finding a violation of language access rights under the Language Access Plan.

⁷⁶Office of Language Access, Colorado Judicial Department, *supra* note 52, at 8.

⁷⁷*Id.* at 9.

⁷⁸*Id.* at 14.

⁷⁹ Ohio’s complaint forms, available at:

<http://www.supremecourt.ohio.gov/JCS/interpreterSvcs/compliance/forms/default.asp> and resolution process, available at: <http://www.supremecourt.ohio.gov/JCS/interpreterSvcs/compliance/Process.pdf>.

The Complaint Process

Local courts should handle all complaints relating to language access in the courts with an appeal to the AOC. If a party wants to complain about local court-wide practices or policies then original jurisdiction would lie with the state level OLA. The AOC should create parallel complaint processes: one for complaints about the quality of interpreters and another about the denial of language services. These processes should be implemented uniformly statewide. The state should create a simple, easy to use form (translated into multiple languages) that can be used by all courts to track and handle complaints in their court. Each local court's LAOC should accept, investigate and resolve all such complaints.

Litigants, lawyers, mediators, court staff, and judges should be allowed to file complaints. The Judicial Council and local courts should provide forms both in paper and online. The complainants should be able to specify information such as the case number, courtroom, the parties involved, and when they experienced the problem.

Complaints Regarding Quality of Interpretation or Translation

For complaints filed against interpreters or translators for inadequate services, the OLA should then review the written complaint, personally interview the interpreter/translator and/or the complainant, then consult with the Language Access Coordinator. Any interview with the complainant will include court-provided interpretation, and can be either in person or via phone, at the complainant's request. Following investigation the OLA should issue a written decision of (1) No offense, (2) Inadequate/unprofessional service, (3) Grossly inadequate/unprofessional, or repeat offense of (2), or (4) Repeat offense of (3). The decision should be issued within 14 days of the filing of the complaint. The decision should indicate the finding, remedies for the complainant, and punishment imposed on the interpreter, if applicable. The decision should be translated into the complainant's language and mailed to the litigant; complainants should receive the decision within 21 days of filing the complaint. Appeal should be available if filed within 14 days. The AOC will handle the appeals of OLA decisions in a hearing that complainant may attend. Complainant has a right to a court-provided interpreter in these hearings.

Remedies should include replacing the interpreter or translator for the matter concerned. The interpreter/translator should be replaced regardless of the outcome of the investigation, unless no other interpreter/translator is available in the complainant's language. If the OLA finds that the interpreter/translator offered inadequate services, he should warn the interpreter/translator. If the OLA finds that the interpreter/translator provided grossly inadequate services, or has been found to provide inadequate services for a second time, he should order the Language Access Coordinator to temporarily remove the interpreter/translator's name from the court roster until the interpreter/translator completes a re-training program or otherwise demonstrates cure. If an interpreter/translator is found to have again provided grossly inadequate services, or is found a third time to have provided inadequate services, the OLA should order permanent removal of the interpreter/translator from the court roster.

If a complainant is not satisfied with the results of the investigation, they should be advised of their right to appeal the finding to the AOC for investigation and also other civil rights

enforcement tools, such as the right to file a discrimination complaint with the U.S. Department of Justice.

Washington State has a very thorough process for handling these types of complaints which can serve as a model. Complaints are handled by the Washington Court Interpreter Commission,⁸⁰ which investigates and disposes of the complaints,⁸¹ and can impose a range of sanctions on interpreters from an advisory letter to termination.⁸²

Complaints Regarding Denied or Untimely Provision of Language Access Services

The AOC should create a separate complaint process to enforce adequate provision of language access needs in the courts. The process to file the complaint should mirror the one described above.

The Office of Language Access in a given court should then interview both the court person responsible for providing service and/or the complainant. Any interview with the complainant will include court-provided interpretation, and can be either in person or via phone, at the complainant's request. Following the interview, the OLA should issue a written decision of (1) No offense, (2) Inadequate and/or discriminatory service, (3) Grossly inadequate/discriminatory, or repeat offense of (2), or (4) Repeat offense of (3). The decision should be issued within 14 days of the filing of the complaint. The decision should indicate the finding, remedies for the complainant, and punishment imposed on the court person, if applicable, and a corrective action plan. The decision should be translated into the complainant's language. Appeal should be available if filed within 14 days. The AOC will adjudicate the appeals of OLA decisions.

Remedies should include immediate provision or repetition of service and should be applied regardless of the decision of the OLA. If the OLA finds inadequate or discriminatory provision of services, the court person will be issued a warning. If gross inadequacy or discriminatory service or a second finding of inadequate or discriminatory service applies, the person will receive a written reprimand and must attend language access training. If a second finding of gross inadequacy/discrimination or a third finding of inadequacy/ discrimination applies, the court will have grounds for terminating that employee for misconduct.

If a complainant is not satisfied with the results of the investigation, they should be advised of their right to appeal the finding to the AOC for investigation and also other civil rights enforcement tools, such as the right to file a discrimination complaint with the U.S. Department of Justice.

⁸⁰ *Washington Court Interpreter Disciplinary Process*, Washington Court Interpreter Commission, May 2012, available at:

http://www.courts.wa.gov/programs_orgs/pos_interpret/content/pdf/InterpDiscRules%20Final%20Aprvrd%20May%202012.pdf.

⁸¹ *Id.* at 7-8.

⁸² *Id.* at 17-8 (an advisory letter is not a "sanction"); 25-9.

Complaints Against Courts for Systemic Denial of Language Access

The AOC should also allow for complaints against a court's systemic failure to provide language access services. The AOC's Statewide OLA should review, investigate, and adjudicate such complaints. We recommend a public hearing be held within 30 days of the filing of the complaint, and interpreters should be provided for complainants. Complainants must show a policy or practice of denying language access services. Following the hearing, the Administrative Director should issue a written decision ruling (1) No offense, (2) Systemic violation of language access plan provisions, (3) Repeated systemic violation of language access provisions. The decision should be issued within 14 days of the filing of the complaint. The decision should indicate the finding, remedies, and punishment imposed on the OLA, if applicable, and a corrective action plan. The decision will be translated in the complainant's language and mailed to the complainant within 7 days of the decision.

If a violation or gross violation is found, remedies should include immediate provision or repetition of service. An OLA found to have violated the language access plan should be required to attend training, and the AOC should appoint an independent observer to monitor the court periodically for the next 180 days. A repeat violation should result in removal of the Language Access Coordinator from that position.

Appeals of AOC Decisions

A complainant should be advised in writing of any AOC decision. Complainants should also be given instructions of their rights generally to file other complaints of discrimination, such as with the U.S. Department of Justice.

Complaint Process Data and Information

The AOC should keep a written record of complaints filed, decisions, and appeals. Written decisions should be published on the AOC website for public view. All records should be reviewed quarterly for the first two years of the administration of the language plan, then annually to identify problems with implementation and corrective action.

PROPOSED LAP LANGUAGE: Relevant parts of the LAP draft outline include Section VIII, Parts A, B, C; Section XI, Parts A, B, C, D.

Language Access Services Complaints

LEP Court Users Notification on Right to Complain

1. Each court shall post visible notification to LEP individuals on the right to file a complaint if they are denied languages accessible services, or receive inadequate interpretation and translation services.

(example - http://www.lep.gov/resources/012314_NC_lang.Acc.Poster.pdf)

Initiating a Complaint

1. Any person or entity, including litigants, mediators, court staff, and judges, may file a complaint with the Office of Language Access (OLA) for denial or inadequate language access services, including complaints against interpreters employed by the court, and/or certified or registered by the AOC.
2. To file a complaint, litigants may:
 - a. Contact the Office of Language Access at (xxx)xxx-xxxx;
 - b. Complete and submit the Language Access Services complaint form to the Language Access Coordinator or the OLA. Online complaints will be directly submitted to the OLA. Paper copies may be submitted directly to the Language Access Coordinator, or mailed to the OLA. The complaint form should specify complaints for:
 - i. Inadequate interpretation or translation
 - ii. Denial of language access services
3. Review of Complaint
 - a. Complaints Regarding Quality of Interpretation or Translation
 - i. The OLA will respond with 5 business days by letter or email acknowledging the receipt of the complaint.
 - ii. The OLA shall investigate the complaint and issue a decision within 14 days of the filing of the complaint.
 - iii. Notification to Complainant - Complainant shall receive the OLA's decision indicating the findings, remedies, and disciplinary action imposed on the interpreter or translator, translated into the complainant's language of preference within 21 days of filing a complaint.
 - iv. Appeal – Complainant may appeal the OLA's decision to the Administrative Director of the Courts within 14 days of receiving the OLA's decision in writing.
 - b. Complaints Regarding Denial of Language Accessible Services
 - i. The OLA will respond with 72 hours by email or telephone acknowledging receipt of the complaint, and determining if the litigant still requires language assistance.
 - ii. If the complainant requires language assistance, the OLA will contact the court Language Access Coordinator to coordinate appropriate language resources to address the language needs of the complainant, and instruct the complainant on who to contact and next steps
 - c. Systemic Denial of Language Access Services Complaints
 - i. Complaints against an OLA will be received by the AOC Administrative Director directly.
 - ii. Complainants must show a policy or practice of denying language access services.
 - iii. The Administrative Director shall investigate the complaint and issue a decision within 30 days of the filing of the complaint.
 - iv. Notification to Complainant - Complainant shall receive the decision

indicating the findings and remedies translated into the complainant's language of preference within 7 days of the decision.

4. Appeal of Administrative Director Decision

- a. A complainant should be advised in writing in any decision that if they are dissatisfied with a decision by the AOC Administrative Director, they have the right to file civil rights complaint of discrimination with other bodies, such as the U.S. Department of Justice.

5. Rights of Complainant

- a. To all rights specified in the Language Access Plan;
 - i. Remedies should include immediate provision or repetition of service and should be applied regardless of the decision of the OLA
- b. To be notified of the receipt of the complaint, and of the name, address, and office phone number of the person assigned to its investigation if such an assignment is made;
- c. To speak with the person assigned to the complaint, by telephone or in person, about the substance of the complaint or its status;
- d. To submit additional supplemental written information or documentation;
- e. To written decisions of the complaint;
- f. To appeal with the Administrative Director;
- g. To file civil rights complaints with other bodies, such as the U.S. Department of Justice.

VIII. Technology Generally [Section V, Parts A4, B2; Section VI, Part D; various other parts in trainings of LAP Outline]

We recognize the importance of the use of technology in enhancing language access for LEP court users. We believe that any implementation around the use of technology, specifically Video Remote Interpreting (VRI), should be carefully explored and discussed with a wide range of stakeholders, including judicial officers, court staff, interpreters, legal services providers, community-based organizations, and court users themselves. Based on this research and exploration, there should be standards and protocols developed on the use of technology. For now, we offer some general comments on the use of VRI and other technology.

Video Remote Interpreting

As discussed in some of the sections above, we believe that VRI may be appropriate in certain settings and specific circumstances only where there is no live interpreter available. VRI must be used in accordance with a well-designed protocol, similar to the limitations prescribed in <http://courts.ca.gov/documents/CIP-ASL-VRI-Guidelines.pdf>. VRI must be limited to non-trial or evidence-gathering settings. Other than training court staff and others regarding the technology, there should be considerations regarding how to proceed in the event of a technology failure.

Use of Headsets and Video/Audio Recordings

This again is not meant to be a replacement for live interpreters, but use of headset technology could be very helpful and important in proceedings where multiple interpreters are unavailable. We often see scenarios where both parties are required to share one interpreter. In certain cases where there is sharing of an interpreter, the following physical configurations have deeply impacted and negatively affected our client and their ability to get proper protection from the process:

- Interpreter sits between client and abuser; so they are sitting very near each other; abuser has been able to glare/make threatening looks at client with physical presence;
- Abuser sits in front of interpreter, client sits behind interpreter; our client feels like her needs are placed last;
- Interpreter ends up sitting closer to abuser

The use of headsets would allow the interpreter to be more neutral and allow some of these physical configurations to be ameliorated. It may also allow for interpretation for individuals beyond the two main parties that may be important to the case, where their understanding of what is being said could be critical. Multiple headsets could be handed out to all those who require it.

As stated in Part III above, the use of headsets, with or without additional visual tools, could also help with the introduction and/or preface that the judge or other court staff give as general instructions to the court. We have many examples of bailiffs “shushing” and getting upset with interpreters who interpret the judge's general introduction of what to expect during the

proceedings. With the use of headset technology, the interpreter could be situated in a more private area and interpret to multiple people without disrupting the flow of the introduction or other comments. Accommodations would be required for those who are hearing impaired or have other disabilities, but this is an initial suggestion that would be cost-effective. Some of this type of information, as appropriate, could be pre-recorded in various languages to be played through headsets with video as well, if available.

California Court and Local Court Websites

The California courts and local court websites should explore ways to offer online services or video/audio recordings to LEP court users. The content can include instructions in various languages for filling out forms, self-help centers, filing instructions, directions, and procedures in other languages where court users can listen at home or through headphones at self-help centers or kiosks. Again, these services should complement and not replace services provided by live persons in the courts.

Suggestions on Using Equipment in Certain Settings, such as Self-Help, Counters, Kiosks

In addition to the language identification posters, brochures, and cards mentioned on other sections above, there are also spoken audio language buttons available for those who are not literate in their spoken language. The use of computers or tablets may also facilitate both the written and audio identification services with minimal cost.

The use of video or telephonic services in public settings should include various types of equipment, such as the use of dual headphones, dual receivers, or jack splitters to allow two phones use the same phone line. The use of speakerphone is not feasible or appropriate at public counters or self-help centers due to the surrounding noise, lack of space, and discomfort of court users having to state personal information loudly into a speakerphone microphone. Companies such as LanguageLine Solutions and other interpretation agencies offer such equipment, but we do not endorse any particular product.

IX. Conclusion

Thank you for taking the time to review our comments as the Judicial Council takes these critical steps to develop, finalize, and implement the LAP. We look forward to working collaboratively with you to provide access to justice for all Californians.

Respectfully submitted:

Asian Americans Advancing Justice – Los Angeles
Asian Law Alliance
Asian Pacific American Bar Association of Los Angeles County
Asian Pacific Islander Institute on Domestic Violence
Asian Pacific Islander Legal Outreach
Bay Area Legal Aid
California Rural Legal Assistance, Inc.
Center for the Pacific Asian Family
Disability Rights Legal Center
Inner City Law Center
Korean American Bar Association of Southern California
Korean American Family Services
Korean Resource Center
Legal Aid Foundation of Los Angeles
Legal Services of Northern California
Los Angeles Center for Law and Justice
Los Angeles Community Action Network
Mexican American Bar Association
Neighborhood Legal Services of Los Angeles County
Public Counsel
South Asian Bar Association of Southern California
Thai Community Development Center
Western Center on Law and Poverty
Youth Law Center

APPENDIX – Referenced and Additional Resources

Limited English Proficiency (LEP): A Federal Intra-agency Website

<http://www.lep.gov>

Social Security Administration, For Persons with Limited English Proficiency

<http://www.ssa.gov/multilanguage/LEPPlan2.htm>

Interagency Language Roundtable (ILR)

<http://www.govtilr.org>

Migration Policy Institute

<http://www.migrationpolicy.org/topics/language-access>

California Department of Education (CDE) DataQuest

<http://data1.cde.ca.gov/dataquest/>

Legal Services Corporation (LSC) Resource Information

<http://lri.lsc.gov/engaging-clients/language-access>

U.S. Census Bureau

<https://www.census.gov/>

Asian and Pacific Islander American Health Forum

<http://www.apiahf.org/>

Asian Pacific Islander Institute on Domestic Violence

<http://www.apiidv.org/>

State Bar of California, Center on Access to Justice

<http://www.calbar.ca.gov/AboutUs/CenteronAccesstoJustice.aspx>

Indigenous Mexicans in California Agriculture

<http://www.indigenousfarmworkers.org/>

A Community of Contrasts: Asian Americans, Native Hawaiians and Pacific Islanders in California

http://advancingjustice-la.org/system/files/Communities_of_Contrast_California_2013.pdf

A Community of Contrasts: Asian Americans, Native Hawaiians and Pacific Islanders in Los Angeles

http://advancingjustice-la.org/system/files/CommunityofContrasts_LACounty2013.pdf

American Bar Association Standing Committee on Legal Aid and Indigent Defendants

http://www.americanbar.org/groups/legal_aid_indigent_defendants.html

National Center for State Courts (NCSC)

<http://www.ncsc.org/>

Mass Legal Services, Online Resource for Massachusetts Poverty Law Advocates

<http://www.masslegalservices.org/library-directory/language-access>

Federal Court Interpreter Orientation Manual and Glossary

<http://www.uscourts.gov/uscourts/FederalCourts/Interpreter/federal-court-interpreter-orientation-manual.pdf>

Sacramento Superior Court Legal Glossaries

<http://www.saccourt.ca.gov/general/legal-glossaries/legal-glossaries.aspx>

Culture Connect, Inc.

<http://www.cultureconnectinc.org/>

State-Specific Language Access Plans and Resources

Strategic Plan for Implementing Enhanced Language Access in the Colorado State Courts

http://www.courts.state.co.us/userfiles/file/Interpreters/Program_Information/Colorado%20Language%20Access%20Plan%203_15_12%20FINAL.pdf

Wisconsin Director of State Courts, Language Access Plan

<http://www.wicourts.gov/services/interpreter/docs/laplan.pdf>

State of Delaware Administrative Office of the Courts, *Language Access Plan*

<http://courts.delaware.gov/forms/download.aspx?id=64928>

Supreme Court of Ohio and The Ohio Judicial System, Language Services Program

<http://www.supremecourt.ohio.gov/JCS/interpreterSvcs/default.asp>

Washington Court Interpreter Commission, Interpreter Disciplinary Process

http://www.courts.wa.gov/programs_orgs/pos_interpret/content/pdf/InterpDiscRules%20Final%20Apprvd%20May%202012.pdf

Appendix 2

Santa Barbara and Imperial Counties Language Group Data - Countywide for 2013 - 14

**Santa Barbara County
 Language Group Data - Countywide
 for 2013 - 14**

Language	Total Enrollment	Number of English Learners (EL)	Number of Fluent English Proficient (FEP) Students	Total Number of EL and FEP Students	Percent of Total Enrollment that is EL and FEP
Spanish		21,680	9,408	31,088	45.93%
Mixteco		1,002	100	1,102	1.63%
Other non-English languages		178	161	339	0.50%
Filipino (Pilipino or Tagalog)		114	132	246	0.36%
Vietnamese		41	79	120	0.18%
Arabic		78	30	108	0.16%
Hmong		57	35	92	0.14%
German		37	53	90	0.13%
Korean		24	63	87	0.13%
Mandarin (Putonghua)		24	61	85	0.13%
French		26	47	73	0.11%
Russian		26	30	56	0.08%
Japanese		28	24	52	0.08%
Portuguese		21	29	50	0.07%
Ilocano		32	12	44	0.07%
Cantonese		7	36	43	0.06%
Italian		12	24	36	0.05%
Farsi (Persian)		14	20	34	0.05%
Thai		17	11	28	0.04%
Punjabi		14	8	22	0.03%
Hindi		7	13	20	0.03%
Dutch		3	14	17	0.03%
Indonesian		7	9	16	0.02%
Urdu		6	10	16	0.02%
Lao		9	5	14	0.02%
Hebrew		7	7	14	0.02%
Turkish		2	9	11	0.02%

Ukrainian		1	9	10	0.01%
Khmer (Cambodian)		5	5	10	0.01%
Polish		3	4	7	0.01%
Gujarati		1	6	7	0.01%
Armenian		1	6	7	0.01%
Serbo-Croatian (Bosnian, Croatian, Serbian)		3	4	7	0.01%
Bengali		2	4	6	0.01%
Rumanian		2	4	6	0.01%
Hungarian		1	4	5	0.01%
Pashto		1	3	4	0.01%
Cebuano (Visayan)		1	2	3	0.00%
Taiwanese			3	3	0.00%
Greek			2	2	0.00%
Burmese			1	1	0.00%
Tamil			1	1	0.00%
Telugu		1		1	0.00%
Samoan			1	1	0.00%
Tigrinya					0.00%
Tongan					0.00%
Marshallese					0.00%
Santa Barbara County Total	67,686	23,495	10,489	33,984	50.21%
California State Total	6,236,672	1,413,549	1,273,561	2,687,110	43.09%

**Imperial County
 Language Group Data - Countywide
 for 2013 - 14**

Language	Total Enrollment	Number of English Learners (EL)	Number of Fluent English Proficient (FEP) Students	Total Number of EL and FEP Students	Percent of Total Enrollment that is EL and FEP
Spanish		15,572	8,563	24,135	65.27%
Korean		18	50	68	0.18%
Arabic		15	18	33	0.09%
Filipino (Pilipino or Tagalog)		13	15	28	0.08%
Cantonese		10	13	23	0.06%
Vietnamese		10	10	20	0.05%
Other non-English languages		8	10	18	0.05%
Mandarin (Putonghua)		6	10	16	0.04%
Hindi		1	8	9	0.02%
Gujarati		2	6	8	0.02%
Urdu		2	4	6	0.02%
Khmer (Cambodian)		2	2	4	0.01%
Chaldean		3	1	4	0.01%
Cebuano (Visayan)		3		3	0.01%
Japanese		2	1	3	0.01%
Punjabi		1	2	3	0.01%
Polish			2	2	0.01%
Dutch		2		2	0.01%
Farsi (Persian)			2	2	0.01%
German			1	1	0.00%
Italian		1		1	0.00%
Pashto		1		1	0.00%
Russian			1	1	0.00%
Samoan					0.00%
French					0.00%
Imperial County Total	36,976	15,672	8,719	24,391	65.96%
California State Total	6,236,672	1,413,549	1,273,561	2,687,110	43.09%



Superior Court
State of California

COUNTY OF ALAMEDA

EXECUTIVE OFFICE, ROOM 209

LEAH T. WILSON
EXECUTIVE OFFICER
JURY COMMISSIONER AND
CLERK OF THE SUPERIOR COURT
1225 FALLON STREET
OAKLAND, CA 94612

September 29, 2014

Mr. Douglas Denton
Judicial Council of California
455 Golden Gate Avenue
San Francisco, CA 94102

Sent Via Email Only

Dear Mr. Denton:

Please see attached the Alameda County Superior Court's comments on the Strategic Plan for Language Access in the California Courts. The Court appreciates the comprehensive and ambitious nature of the recommendations and is generally in agreement with all; comments provided are geared towards their effective and realistic implementation.

As noted in the attachment, the Court agrees with modification to recommendations:

Phase I
1, 2, 4, 5, 8

The Court disagrees with recommendation:

Phase I
60

Please feel free to contact me with any questions.

Sincerely,

A handwritten signature in black ink that reads "Leah T. Wilson".

Leah T. Wilson

Attachment

Strategic Plan for Language Access in the California Courts

Phase-in Recommendations

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Recommendations #2 and # 8 will be repeated through all three phases of implementation. It is the intent of California’s Language Access Plan that the phase-in of interpreter services in civil proceedings, per Goal II of providing qualified interpreters in all court proceedings by 2020, and the documentation of language access needs and actual provision of services be instituted immediately and be ongoing throughout the process of implementation of full language access.

PHASE I: These recommendations are urgent or should already be in place. Actions to begin implementation of these recommendations should begin by year 1 (2015).

	Recommendation	Comments
1	<p>Language access needs identification. Courts will identify the language access needs of their LEP court users at the earliest possible point of contact with the LEP person; the language needs will be clearly and consistently documented in the case management system and in court records.</p>	<p>Identification of language access needs <i>at the earliest possible point of contact</i> would most practically be effectuated by modifying virtually all Judicial Council forms, including the fee waiver request form, to include a self-indication of language access needs. Absent an approach that is based in large part on modification of mandatory court forms, there is no way to practically and consistently ensure identification of such needs. Inclusion of this aspect of the recommendation in Phase 1 should be dependent on the timing of form modification.</p> <p>Documentation of needs in the CMS assumes that a court has a CMS for all case types. Most courts, including the Alameda Superior Court, do not. While CMS’ will be more widespread in the future as court spend-down processes are realized, this recommendation should not be included in Phase 1.</p>

Strategic Plan for Language Access in the California Courts

Phase-in Recommendations

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<p>2 Requests for language services. Courts will consistently document the need for language services by any of the parties, witnesses, or other persons with a significant interest in a case, and should track whether the services were provided or the request was denied.</p>	<p>This recommendation will be difficult to implement, particularly absent a definition of persons with a significant interest in a case. Further, absent a CMS, there is no meaningful way to track granting or denial of requests – other than hand notation in the case file.</p>
<p>3 Protocol for justice partners to communicate language needs. Courts should establish protocols by which justice partners can indicate to the court that an individual requires a spoken language interpreter at the earliest possible point of contact with the court system.</p>	
<p>4 Mechanisms for LEP court users to self-identify. Courts will establish mechanisms that invite LEP persons to self-identify as needing language access services upon contact with any part of the court system (using, for example, “I speak” cards [see page 47 for a sample card]). In the absence of self-identification, judicial officers and court staff will also proactively seek to ascertain a court user’s language needs.</p>	<p>As noted in the comment to #1 above, achieving this goal best involves a statewide approach.</p>
<p>5 Information for court users about availability of language access services. Courts will inform court users about the availability of language access services at the earliest points of contact between court users and the court. Courts should take into account that the need for language access services may occur earlier or later in the court process, so information about available services must be available throughout the duration of a case. (See also, Recommendation 35, regarding notice.)</p>	<p>Clarity regarding how, at a minimum, courts are to notify users about available language access services throughout the duration of the case, is needed. Without specificity and some parameters, this recommendation cannot be meaningfully implemented.</p>
<p>6 Expansion of language services cost reporting. The Judicial Council and the courts should expand and improve data collection on interpretation services, and expand language services cost reporting to include amounts spent on other language access services and tools such as translations, interpreter or language services coordination, bilingual pay differential for staff, and multilingual signage or technologies. This information will be critical in supporting funding requests as the courts expand language access services into civil cases.</p>	
<p>8 Expansion of court interpreters to all civil proceedings. Qualified interpreters will be provided in the California courts to LEP court users in all courtroom proceedings and in all court-ordered/court-operated events. Where immediate expansion of language access into all civil proceedings overtaxes a court’s resources, either in terms of availability of appropriately qualified interpreters or availability of funding for interpreting services, language access will</p>	<p>Further clarity regarding the scope of “all court-ordered/court-operated events” is needed. This aspect of the recommendation potentially impacts a broad array of services including mediation (in family law, juvenile</p>

Strategic Plan for Language Access in the California Courts

Phase-in Recommendations

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	<p>be phased in by case type as follows:</p> <p>Phase I (begin by year 1, 2015):</p> <ul style="list-style-type: none"> • Domestic Violence (including actions and proceedings under Division 10 (commencing with Section 6200) of the Family Code, as well as actions and proceedings in the following matters in which a protective order has been granted or is being sought: (1) the Uniform Parentage Act; (2) dissolution, nullity, or legal separation; and (3) physical abuse or neglect under the Elder Abuse and Dependent Adult Civil Protection Act, commencing with Section 15600 of the Welfare and Institutions Code). • Unlawful Detainers • Determination and Termination of Parental Rights • Conservatorships/Guardianships <p>Phase II (begin by years 2-3, 2016–2017):</p> <p>Where resources permit providing qualified interpreters in additional case types, courts will provide interpreters in the following cases, in order:</p> <ul style="list-style-type: none"> • Other Family Law • Civil Harassment • Other Civil <p>In deploying resources, the provision of interpreters in courtroom proceedings should take priority over the provision of interpreters in court-ordered/court-operated proceedings, the goal being to provide interpreters in all courtroom proceedings well before 2020.</p>	<p>and civil settings), self-help center workshops, and those resulting from collaborative court processes; using a broad definition of events, this recommendation would be extremely difficult to implement, particularly in Phase I.</p>
11	<p>Preference for in-person interpreters. The use of in-person, certified and registered court interpreters is preferred for court proceedings and court-ordered/court-operated events, but courts may consider the use of remote interpreting where it is appropriate and advantageous for a particular proceeding.</p>	
12	<p>Remote interpreting in the courtroom. Remote interpreting in the courtroom should be used only after the court has considered, at a minimum, the specific factors set forth in Appendix B, “Factors and Considerations for Remote Interpreting,” or other factors that may develop as the technology evolves.</p>	
13	<p>Use of video for remote interpreting. Courts using remote interpreting should strive to provide video, used in conjunction with enhanced audio equipment, for courtroom interpretations, rather than relying on telephonic interpreting.</p>	

Strategic Plan for Language Access in the California Courts

Phase-in Recommendations

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16	Avoiding conflicts of interest. When appointing a noncertified, nonregistered interpreter, courts must avoid appointing persons with a clear or perceived conflict of interest such as opposing parties or witnesses, or family members of opposing parties, or attorneys.	
17	Appointment of family and friends to interpret. Family members and friends of the LEP court user may be appointed for courtroom proceedings only if (a) they meet the provisional qualification requirements, (b) an admonition regarding real or perceived conflicts of interest is provided, and (c) all parties knowingly and voluntarily consent to that person as the interpreter.	
18	Appointment of minors to interpret. Minors who are family members of the LEP court user will not be appointed to interpret for courtroom proceedings.	
20	Verifying credentials of interpreters. Judicial officers, in conjunction with court administrative personnel, must ensure that the interpreters being appointed are qualified, are not misrepresenting their credentials, and have filed with the court their interpreter oaths. (See Recommendation 50, which discusses training of judicial officers and court staff on these subjects.)	
22	Considerations regarding appointment of interpreters. Court staff and judicial officers must understand and consider the mental exertion and concentration required for courtroom interpreting when scheduling interpreting events, for example, by appointing a team of interpreters for long proceedings, appointing multiple interpreters for multiple parties, and identifying situations where justice partners have the responsibility or capacity to provide additional certified or registered interpreters for their clients or witnesses.	
24	Designation of language access office or representative. The court in each county will designate an office or person that serves as a language access resource for court staff and judicial officers. This person or persons should be able to describe all services the court provides, and what services it does not provide, and should be able to disseminate all of the court's multilingual written information as requested.	
25	Identification of critical points of contact. Courts should identify which points of contact are most critical for LEP court users, and, whenever possible, should place qualified bilingual staff at these locations. (See Recommendation 47, which discusses possible standards for the appropriate qualification level of bilingual staff at these locations.)	
33	Use of bilingual volunteers. Courts should consider the use of bilingual volunteers to provide language access services where appropriate. Bilingual JusticeCorps volunteers and legal interns, who are extensively trained and properly supervised in court self-help centers, are a	

Strategic Plan for Language Access in the California Courts

Phase-in Recommendations

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	reliable resource for expanding language access, so long as their use does not conflict with any memoranda of understanding.	
36	Establishment of Translation Committee. The Judicial Council will create a Translation Committee to develop and formalize a translation protocol for Judicial Council translations of forms, written materials, and audiovisual tools. The committee should collaborate with interpreter organizations and courts to develop a legal glossary in all certified languages, taking into account regional differences, to maintain consistency in the translation of legal terms. The committee’s responsibilities will also include identifying qualifications for translators, and the prioritization, coordination, and oversight of the translation of materials. The qualification of translators should include a requirement to have a court or legal specialization and be accredited by the American Translators Association (ATA), or to have been determined qualified to provide the translations based on experience, education, and references. Once the Judicial Council’s translation protocol is established, individual courts should establish similar quality control and translation procedures for local forms, informational materials, recordings, and videos aimed at providing information to the public. Local court website information should use similarly qualified translators. Courts are encouraged to partner with local community organizations to accomplish this recommendation.	
37	Posting of translations on web. The Judicial Council’s staff will post on the California Courts website written translations of forms and informational and educational materials for the public as they become available and will send notice to the courts of their availability so that courts can link to these postings from their own websites.	
43	Standards for qualifications of interpreters. Courts, the Judicial Council, and the Court Interpreters Advisory Panel (CIAP) will ensure that all interpreters providing language access services to limited English proficient court users are qualified and competent. Existing standards for qualifications should remain in effect and will be reviewed regularly by the CIAP.	
44	Online orientation for new interpreters. The online statewide orientation program for new interpreters will continue to be available to facilitate orientation training immediately upon passage of the credentialing examination.	
45	Training for prospective interpreters. The Judicial Council and the courts should work with interpreter organizations and educational providers (including the California community college and state university systems) to examine ways to better prepare prospective	

Strategic Plan for Language Access in the California Courts

Phase-in Recommendations

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	<p>interpreters to pass the credentialing examination. These efforts should include:</p> <ul style="list-style-type: none"> • Partnering to develop possible exam preparation courses and tests, and • Creating internship and mentorship opportunities in the courts and in related legal settings (such as work with legal services providers or other legal professionals) to help train and prepare prospective interpreters in all legal areas. 	
46	<p>Training for interpreters on civil cases and remote interpreting. The Judicial Council, interpreter organizations, and educational groups should collaborate to create training programs for those who will be interpreting in civil cases and those who will be providing remote interpreting.</p>	
47	<p>Language proficiency standards for bilingual staff. Courts must ensure that bilingual staff providing information to LEP court users are proficient in the languages in which they communicate. All staff designated as bilingual staff by courts must at a minimum meet standards corresponding to "Intermediate mid" as defined under the Oral Proficiency Exam guidelines. (See Appendix F.) The existing Oral Proficiency Exam available through the Judicial Council's Court Language Access Support Program (CLASP) unit may be used by courts to establish foreign-language proficiency of staff. Courts should not rely on self-evaluation by bilingual staff in determining their language proficiency.</p>	
48	<p>Standards and online training for bilingual staff. Beyond the specified minimum, the Judicial Council staff will work with the courts to (a) identify standards of language proficiency for specific points of public contact within the courthouse, and (b) develop and implement an online training for bilingual staff.</p>	
50	<p>Judicial branch training regarding language access plan. Judicial officers, including temporary judges, court administrators, and court staff will receive systematic training regarding the judicial branch's language access policies and requirements as delineated in California's Language Access Plan, as well as the policies and procedures of their individual courts. Courts should schedule additional training when policies are updated or changed. These trainings should include:</p> <ul style="list-style-type: none"> • Optimal methods for managing court proceedings involving interpreters, including the challenges of interpreter fatigue and the need to control rapid rates of speech and dialogue; • The interpreter's ethical duty to clarify issues during interpretation and to report impediments to performance; • Required procedures for the appointment and use of a provisionally qualified interpreter and for an LEP court user's waiver, if requested, of interpreter services; 	

Strategic Plan for Language Access in the California Courts

Phase-in Recommendations

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	<ul style="list-style-type: none"> • Methods for verifying the credentials of an interpreter; • Available technologies and minimum technical and operational standards for providing remote interpreting; and • Working with LEP court users in a culturally competent manner. <p>The staff of the Judicial Council will develop curricula for statewide and regional trainings, as well as resource manuals that address all training</p>	
52	<p>Benchcards on language access. Judicial Council staff should develop bench cards that summarize salient language access policies and procedures and available resources to assist bench officers in addressing language issues that arise in the courtroom.</p>	
57	<p>Advocacy for sufficient funding. The judicial branch will advocate for sufficient funding to provide comprehensive language access services without jeopardizing funding for any other court services or operations. The funding requests should reflect the incremental phasing in of the language access plan.</p>	
58	<p>Use of data for funding requests. Funding requests for comprehensive language access services should be premised on the best available data that identifies the resources necessary to effectuate the recommendations of California’s Language Access Plan. This may include information being gathered in connection with the recent Judicial Council decision to expand the use of Program 45.45 funds for civil cases where parties are indigent; information being gathered for the 2015 Language Need and Interpreter Use Report; and information that can be extrapolated from the Resource Assessment Study (which looks at court staff workload), as well as other court records (e.g., self-help center records regarding LEP court users).</p>	
59	<p>Pursuit by the Judicial Council of other funding opportunities. The Judicial Council should pursue other funding opportunities from federal, state, or nonprofit entities, such as the National Center for State Courts, which are particularly suitable for one-time projects such as translation of documents or production of videos.</p>	
60	<p>Pursuit by courts of other funding opportunities. Courts should pursue other funding opportunities at the national, state, or local level to support the provision of language access services. Courts should seek, for example, one-time or ongoing grants from public interest foundations, state or local bar associations, federal, state, or local governments, and others.</p>	<p>The pursuit of grant funding does not seem like a realistic strategy for systemic and structural expanded language access. Grant funds are limited-term, and are often tied to specific deliverables/objectives, which may or may not align with the statewide strategies outlined in this Plan. Reliance on grant funds</p>

Strategic Plan for Language Access in the California Courts

Phase-in Recommendations

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		can lead organizations down a path of chasing funding, rather than implementing policy consistently. Further, any significant reliance on this funding source will result in disparate service levels from court to court, which in and of itself will raise access and equity concerns.
61	Language Access Implementation Committee. The Judicial Council’s staff will create a Language Access Advisory Implementation Committee (name TBD) to develop a phased implementation plan for presentation to the council. As part of its implementation plan, the committee will identify the yearly costs required to phase in the LAP recommendations.	
62	Single complaint form. The implementation committee will develop a single online complaint form, capable of being completed electronically or downloaded for printing and completion in writing that is available statewide as a mechanism for monitoring all concerns related to language access at the local or statewide level. The form should be used as part of multiple processes identified in the following recommendations of this plan.	
68	Statewide repository of language access resources. The Judicial Council will create a statewide repository of language access resources, whether existing or to be developed, that includes translated materials, audiovisual tools, and other materials identified in this plan in order to assist courts in efforts to expand language access.	
69	Adoption of plan by the California Courts of Appeal and California Supreme Court. The California Courts of Appeal and the Supreme Court of California should discuss and adopt applicable parts of California’s Language Access Plan with necessary modifications.	
70	Procedures and guidelines for good cause. The Judicial Council should, under Government Code section 68564, establish procedures and guidelines for determining “good cause” to appoint non-credentialed court interpreters in civil matters.	
71	New rule of court for appointment of interpreters in civil proceedings. The Judicial Council should add a new rule of court (similar to rule 2.893 addressing criminal and juvenile delinquency matters) to address the appointment of non-credentialed interpreters in civil proceedings.	
76	New rule of court regarding waiver of interpreter. The Judicial Council should develop a rule of court establishing a procedure by which LEP persons may, at any point, be allowed to waive the services of an interpreter so long as the waiver is knowing, intelligent, and	

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	voluntary; is made after the person has consulted with counsel (if any); and is approved by the appropriate judicial officer, exercising his or her discretion. At any later point in the proceedings, the LEP person may, by a showing of good cause, request an order vacating the waiver and appointing an interpreter.	
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PHASE II: These recommendations are less urgent or require completion of Phase I tasks. Actions to carry out these recommendations may commence immediately and should commence by years 2–3 (2016–2017).

2	<p>Requests for language services. Courts will consistently document the need for language services by any of the parties, witnesses, or other persons with a significant interest in a case, and should track whether the services were provided or the request was denied.</p>	
7	<p>Review of other data beyond the U.S. Census. The Judicial Council and the courts should look at other sources of data beyond the U.S. Census, such as school systems, health departments, and local community-based agencies, to assist in anticipating language needs for court programs and proceedings.</p>	
8	<p>Expansion of court interpreters to all civil proceedings. Qualified interpreters will be provided in the California courts to LEP court users in all courtroom proceedings and in all court-ordered/court-operated events. Where immediate expansion of language access into all civil proceedings overtaxes a court’s resources, either in terms of availability of appropriately qualified interpreters or availability of funding for interpreting services, language access will be phased in by case type as follows: Phase I (begin by year 1, 2015):</p> <ul style="list-style-type: none"> • Domestic Violence (including actions and proceedings under Division 10 (commencing with Section 6200) of the Family Code, as well as actions and proceedings in the following matters in which a protective order has been granted or is being sought: (1) the Uniform Parentage Act; (2) dissolution, nullity, or legal separation; and (3) physical abuse or neglect under the Elder Abuse and Dependent Adult Civil Protection Act, commencing with Section 15600 of the Welfare and Institutions Code). • Unlawful Detainers • Determination and Termination of Parental Rights • Conservatorships/Guardianships 	

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	<p>Phase II (begin by years 2-3, 2016–2017): Where resources permit providing qualified interpreters in additional case types, courts will provide interpreters in the following cases, in order:</p> <ul style="list-style-type: none"> • Other Family Law • Civil Harassment • Other Civil <p>In deploying resources, the provision of interpreters in courtroom proceedings should take priority over the provision of interpreters in court-ordered/court-operated proceedings, the goal being to provide interpreters in all courtroom proceedings well before 2020.</p>	
<p>9</p>	<p>Provisional qualification requirements. Pending adoption of a rule of court for civil matters similar to California Rules of Court rule 2.893, when good cause exists (as originally referenced in Gov. Code, § 68561(c), and as specified in the INT-120 form), a noncertified or nonregistered court interpreter may be appointed in a court proceeding in any matter, civil or criminal, only after he or she is determined to be qualified by following the procedures for provisional qualification. These procedures are currently set forth, for criminal and juvenile delinquency matters, in rule 2.893 (and, for civil matters, will be set forth in the recommended new rule of court). (See Recommendation 50, on training for judicial officers and court staff regarding the provisional qualification procedures, and Recommendation 71 to add a rule of court for civil cases.)</p>	
<p>10</p>	<p>Provision of qualified interpreters in all court-ordered/court-operated proceedings. Beginning in 2015, as resources are available, but in any event no later than 2020, courts will provide qualified court interpreters in all court-ordered/court-operated proceedings to all LEP litigants, witnesses, and persons with a significant interest in the case. If a judge does not order the services due to language capacity, there should be some consideration of the impact of that determination.</p>	
<p>14</p>	<p>Pilot for central pool of remote interpreters. In order to maximize the use and availability of California’s highly qualified certified and registered interpreters, the Judicial Council should consider creating a pilot program through which certified and registered interpreters in high frequency languages would be available to all courts on a short-notice basis to provide remote interpreting services, subject to local labor agreements.</p>	
<p>19</p>	<p>Appointment of bilingual staff. Courts should avoid appointing bilingual court staff to interpret in courtroom proceedings; if the court does appoint staff, he or she must meet all of the</p>	

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	provisional qualification requirements.	
21	Expansion of regional coordination system. The Judicial Council should expand the existing formal regional coordination system to improve efficiencies in interpreter scheduling for court proceedings and cross-assignments between courts throughout the state, consistent with applicable labor agreements. (See Recommendation 29, addressing coordination for bilingual staff and interpreters for non-courtroom events.)	
23	Methods for calendaring and coordination of court interpreters. Courts should develop methods for using interpreters more efficiently and effectively, for example, by use of calendar coordination, and coordination with justice partners who will be providing interpreters.	
26	Provision of language access tools to court personnel. All court staff who engage with the public will have access to language assistance tools, such as translated materials and resources, multi-language glossaries or “I speak” cards, to determine a court user’s native language, direct him or her to the designated location for language services, and/or provide the LEP individual with brochures, instructions, or other information in the appropriate language.	
27	Recruitment of bilingual staff. Courts should strive to recruit bilingual staff fluent in the languages most common in that county. In order to increase the bilingual applicant pool, courts should conduct outreach to educational providers in the community, such as local high schools, community colleges, and universities, to promote the career opportunities available to bilingual individuals in the courts.	
28	Development of protocols for where bilingual staff are not available. Courts will develop written protocols or procedures to ensure LEP court users obtain adequate language access services where bilingual staff are not available. For example, subject to applicable local labor agreements, the court’s interpreter coordinator could be on call to identify which interpreters or staff are available to provide services in the clerk’s office or self-help center. Additionally, the use of remote technologies such as telephone access to bilingual staff persons in another location or remote interpreting could be instituted.	
29	Policies that promote sharing of bilingual staff and interpreters among courts. The Judicial Council should consider adopting policies that promote sharing of bilingual staff and certified and registered court interpreters among courts, using remote technologies, for language assistance outside of court proceedings, while being mindful of regional memoranda of understanding.	
30	Pilot for remote assistance at counters and in self-help centers. The courts and the Judicial Council should consider creating a pilot to implement the use of remote interpreter services for	

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	counter help and at self-help centers, incorporating different solutions, including cloud-based fee-for-service models or a court/- centralized bank of bilingual professionals.	
31	Pilot for remote assistance for workshops. The courts should consider a pilot to implement inter-court, remote attendance at workshops, trainings, or “information nights” conducted in non-English languages using a variety of equipment including telephone, video-conferencing (WebEx, Skype), or other technologies.	
32	Qualifications of court-appointed professionals. In matters with LEP litigants, courts should ensure that court-appointed professionals, such as psychologists, mediators, social workers, and guardians, can provide linguistically accessible services to the same degree that their services are provided to English speakers. Where no such language capability exists, subject to local labor agreements, courts should make reasonable efforts to identify or enter into contracts with providers able to offer such language capabilities, either as bilingual professionals who can provide the service directly in another language or via qualified interpreters.	Not clear how this recommendation can feasibly be implemented. How are courts to ensure equivalent services? By audit? Self-report?
35	Notice of available language access services. Courts must provide notice of the availability of language access services and related language access policies at all points of contact with the court in English, the top five languages spoken in that court’s county, and, if applicable, in every language spoken by 5 percent or more of the county’s population. Notice should be provided to the public, and to community-based organizations, justice partners, legal services offices, and other entities working with LEP populations. (See also Recommendation 54.) For, example, notices should be posted on the court’s website, in the courthouse at information counters, in court brochures, in a document included with initial service of process, at court-community events, in public service notices and announcements in the media, ethnic media, and in any embassies or consulates located in the county. To address low literacy populations and speakers of languages that do not have a written component, video and audio recordings should be developed to provide this notice.	
38	Signage throughout courthouse. The staff of the Judicial Council should assist courts by providing plain-language translations of the most common and relevant signs likely to be used in a courthouse, and provide guidance on the use of internationally recognized icons, symbols, and displays to limit the need for text and, therefore, translation. Where more localized signage is required, courts should have all public signs translated into that court community’s top five languages or, if more appropriate, into any languages spoken by 5 percent or more of the population served by the court. At the minimum, all such materials should be available in English and Spanish.	

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39	Translation of court orders. Courts will provide sight translation of court orders and should consider providing written translations of those orders to LEP persons when needed. At a minimum, courts should provide the translated version of the relevant Judicial Council form to help litigants compare their specific court order to the translated template form.	
40	Accessible courthouses. The Judicial Council, partnering with courts, should ensure that new courthouse construction efforts, as well as redesign of existing courthouse space, are undertaken with a focus on making courthouses more easily navigable to all LEP persons.	
41	Wayfinding strategies. The Judicial Council’s staff will provide information to courts interested in better wayfinding strategies, multilingual (static and dynamic) signage, and other design strategies that focus on assisting LEP court users.	
49	Recruitment strategies for language access providers. The Judicial Council staff will work with educational providers, community-based organizations, and interpreter organizations to identify recruitment strategies to encourage bilingual individuals to pursue the interpreting profession or employment opportunities in the courts as bilingual staff.	
63	Compliance and monitoring system. The [language access] implementation committee will develop a compliance and monitoring system for California’s Language Access Plan. This system will include the oversight of the plan’s effects on language access statewide and at the individual court level, and a mechanism for assessing the need for ongoing adjustments and improvements to the plan.	
72	Legislation to delete exception for small claims proceedings. The Judicial Council should sponsor legislation to amend Government Code section 68560.5(a) to delete the exception for small claims proceedings.	
73	Legislation to require credentialed interpreters for small claims. The Judicial Council should sponsor legislation to amend Code of Civil Procedure section 116.550 dealing with small claims actions to reflect that interpreters in small claims cases should, as with other matters, be credentialed except for a finding of good cause to appoint a non-credentialed interpreter.	
74	Updating of interpreter-related forms. The Judicial Council should update the interpreter-related court forms (INT-100-INFO, INT-110, INT-120, and INT-200) as necessary to be consistent with this plan.	
75	Evaluation of Trial Court Interpreter Employment and Labor Relations Act. The implementation committee should evaluate existing law, including a study of any negative impacts of the Trial Court Interpreter Employment and Labor Relations Act on the provision of appropriate language access services. The evaluation should include, but not be limited to,	

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	whether any modifications should be proposed for existing requirements and limitations on hiring independent contractors beyond a specified number of days.	
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PHASE III: These recommendations are not urgent, or are complex and will require significant foundational steps, time, and resources to be completed by 2020. Actions to carry out these recommendations may be put into place immediately (2015), or over time as the necessary foundational steps are put in place.

2	Requests for language services. Courts will consistently document the need for language services by any of the parties, witnesses, or other persons with a significant interest in a case, and should track whether the services were provided or the request was denied.	
8	<p>Expansion of court interpreters to all civil proceedings. Qualified interpreters will be provided in the California courts to LEP court users in all courtroom proceedings and in all court-ordered/court-operated events. Where immediate expansion of language access into all civil proceedings overtaxes a court’s resources, either in terms of availability of appropriately qualified interpreters or availability of funding for interpreting services, language access will be phased in by case type as follows:</p> <p>Phase I (begin by year 1, 2015):</p> <ul style="list-style-type: none"> • Domestic Violence (including actions and proceedings under Division 10 (commencing with Section 6200) of the Family Code, as well as actions and proceedings in the following matters in which a protective order has been granted or is being sought: (1) the Uniform Parentage Act; (2) dissolution, nullity, or legal separation; and (3) physical abuse or neglect under the Elder Abuse and Dependent Adult Civil Protection Act, commencing with Section 15600 of the Welfare and Institutions Code). • Unlawful Detainers • Determination and Termination of Parental Rights • Conservatorships/Guardianships <p>Phase II (begin by years 2-3, 2016–2017):</p> <p>Where resources permit providing qualified interpreters in additional case types, courts will provide interpreters in the following cases, in order:</p> <ul style="list-style-type: none"> • Other Family Law • Civil Harassment • Other Civil 	

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	In deploying resources, the provision of interpreters in courtroom proceedings should take priority over the provision of interpreters in court-ordered/court-operated proceedings, the goal being to provide interpreters in all courtroom proceedings well before 2020.	
15	Creation of multilingual standardized videos. The Judicial Council should explore the feasibility of creating multilingual standardized videos for certain case types that lend themselves to generalized, not localized, legal information, and provide them to courts in the state’s top eight languages and captioned in other languages.	
34	Pilot programs for language access kiosks. The courts should consider creating pilot programs to implement the use of language access kiosks in lobbies or other public waiting areas to provide a variety of information electronically, such as on a computer or tablet platform, in the court area’s top five spoken languages.	
42	Signage and brochures. Courts will provide signage and brochures throughout the courthouse and in court-operated programs to inform LEP users of the ability to request language access services. The signage and brochures should be in the top five languages spoken in that court’s community, or at least every language spoken by 5 percent or more of the population.	
51	Language access resources on intranet. Information on local and statewide language access resources, training and educational components identified throughout this plan, glossaries, signage, and other tools for providing language access should be readily available to all court staff through individual courts’ intranets.	
53	Partnerships to disseminate information. Courts should establish partnerships with local community-based organizations, including social services providers, legal services organizations, government agencies, and minority bar associations to gather feedback to improve court services for LEP court users and to disseminate court information and education throughout the community.	
54	Affirmative steps to inform public. Courts should take affirmative steps to inform the public about language access services available in the courts by, among other means, ongoing communication with community-based organizations and other stakeholders.	
55	Multilingual audio or video recordings to inform public. To maximize both access and efficiency, multilingual audio and/or video recordings should be used to provide important general information and answers to frequently asked questions.	
56	Collaboration with media. Courts should collaborate with local media and leverage the resources of media outlets, including ethnic media that communicate with their consumers in	

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	their language, as a means of disseminating information throughout the community about language access services, the court process, and available court resources.	
64	Complaints regarding court interpreters. The AOC, together with stakeholders, will develop a process by which the quality and accuracy of an interpreter’s skills and adherence to ethical requirements can be reviewed. The system that is developed will be clearly communicated to court staff, judicial officers, attorneys, and in plain language to court users (e.g., LEP persons and justice partners).	
65	Complaints regarding statewide translations. The Translation Committee (as described in Recommendation 36 above), in consultation with the implementation committee, will develop a process to address complaints about the quality of Judicial Council–approved translations, including translation of Judicial Council forms, the California Courts Online Self-Help Center, and other Judicial Council–issued publications and information.	
66	Complaints at local level regarding language access services. Individual courts will develop a process by which LEP court users, their advocates and attorneys, or other interested persons may seek review of a court’s provision of, or failure to provide, appropriate language access services, including issues related to locally produced translations. The process must consider and avoid any conflicts with local labor agreements. Local courts may choose to model their local procedures after those developed by the Judicial Council or by the implementation committee. Absent extraordinary or unusual circumstances, complaints must first be filed with the court at issue and referred to the Judicial Council only upon a failure by the court to adequately respond to the LEP court user’s complaint.	
67	Requesting review of local complaint outcome. The implementation committee will develop a complaint process by which a litigant or his or her legal representative may request a review of the outcome of any complaint submitted to a court regarding provision of, or failure to provide, appropriate language access services, as described in Recommendation 66 above.	

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GENERAL COMMENTS:

USE OF THE TERM “WILL” IN RECOMMENDATIONS: Several of the recommendations use the term ‘will’ in describing what the branch or courts are to do. Although these are recommendations to the Judicial Council and not (yet) rules of court, there should be a discussion before recommendations are made about the use of the term “will.” Without this, there will be a reaction to the use of the term even before getting to the substance of the idea. The discussion would be most constructive if it included the theory of why “will” was used in some instances, and “should” in others. For example, this would also help clarify when the Joint Working Group felt an activity was required by law, supporting use of the term “will,” as opposed to a policy preference, suggesting the use of the term “should.”

USE OF THE TERM CIVIL TO REFER TO CASE TYPES: Since the impetus for the report is in large part the expansion of the mandatory use of interpreters beyond criminal and juvenile cases, there needs to be an early discussion of the term “civil” when describing classes of cases. To the average reader, “civil” probably means personal injury cases like auto accidents, contract cases, etc. Not everyone is aware of the legal definitions of “civil” to essentially be everything except criminal cases (see CCP sections 22 *et seq.*). This could be addressed with a short paragraph in the beginning (see first paragraph on page 10, or at footnote 19 on page 29) indicating that the use of the term “civil” is meant to include all cases other than criminal and juvenile, including family law, probate, mental health, etc., so that the reader starts out knowing “civil” includes a wide range of cases not normally associated with “civil.”

UNDUE DEFERENCE TO REGIONAL AGREEMENTS: MOU’s between courts in a region and the representatives of interpreters are negotiated agreements. They are not statutes or rules of court. If provisions in an MOU are impediments to providing language services, the recommendation should say the agreements should be renegotiated, not treated as inviolate. This is a language access plan for litigants and people coming in contact with the courts, not a full employment act for court interpreters. See recommendations 28 on page 49, 29 on page 50, 32 on page 50, 33 on pages 50-51, footnote 28 on page 48, and recommendation 66 on page 80.

PHASE I: These recommendations are urgent or should already be in place. Actions to begin implementation of these recommendations should begin by year 1 (2015).

	Recommendation	Comments
1	Language access needs identification. Courts will identify the language access needs of their LEP court users at the earliest possible point of contact with the LEP person; the language needs will be clearly and consistently documented in the case management system	While the concept of early identification of language needs seems obvious, it needs to be balanced against the cost effective delivery of language assistance. For example, OC allows parties to self-identify language needs on traffic and collection matters through a Reserve A Court Date (RACD)

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	<p>and in court records.</p>	<p>online system before their first appearance. While this gives the court advance notice of language needs, there are two problematic aspects: no-show rate and actual English speaking ability. Some parties select a foreign language even though they speak English as well and may not need an interpreter. A high no-show rate means interpreters are scheduled for appearances, but are not needed, wasting a scarce resource.</p> <p>Absent a pre-appearance self-identification of language need, the first appearance is when need becomes known and should be captured. Once identified, the CMS can document the use and need of interpreters as long as the proper action codes are used and quality assurance in place to ensure the correct language is encoded and changes are made as needed.</p>
<p>2</p>	<p>Requests for language services. Courts will consistently document the need for language services by any of the parties, witnesses, or other persons with a significant interest in a case, and should track whether the services were provided or the request was denied.</p>	<p>Historically, this has only been done for defendants and witnesses on traffic, misdemeanor, and felony cases.</p> <p>“Other persons with a significant interest in the case” is an overly broad term, and needs to be more clearly defined. For example, is a member of the media reporting a person with a significant interest in the case? What about a family member?</p> <p>Courts will have to develop/modify procedures for tracking requests that were denied and / or use of privately retained interpreters in other case types, and must modify procedures and case management systems as needed to capture the additional data.</p>
<p>3</p>	<p>Protocol for justice partners to communicate language needs. Courts should establish protocols by which justice partners can indicate to the court that an individual requires a spoken language interpreter at the earliest possible point of contact with the court system.</p>	<p>In many cases, the first contact with an individual needing language assistance is a justice partner, not the court. The recommendation should not be stated as if it is only the court’s responsibility to do this. It should state the courts should work WITH justice partners to develop protocols. Some concerns regarding this recommendation include:</p> <ul style="list-style-type: none"> - Incorrect language identification by justice partners (for example, Chinese instead of Mandarin or Cantonese); - Defendant cited and released, but a complaint is filed and the appearance date is changed; and - High volume of failure to appear cases, especially in misdemeanors.

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<p>4</p>	<p>Mechanisms for LEP court users to self-identify. Courts will establish mechanisms that invite LEP persons to self-identify as needing language access services upon contact with any part of the court system (using, for example, “I speak” cards [see page 47 for a sample card]). In the absence of self-identification, judicial officers and court staff will also proactively seek to ascertain a court user’s language needs.</p>	<p>As interpreter use is expanded into other case types, information sheets, forms, web-sites, procedures, etc. will need to be modified to contain information notifying parties how to request an interpreter. Ideally, once a request is identified and entered into a CMS, the interpreter office would receive a report or notification so that an interpreter could be scheduled / ordered in advance.</p> <p>Early self-identification of language needs represents a departure from past practice of waiting for the court user to appear before a Judicial Officer before ordering an interpreter, thus shifting the authority down to line staff to identify the need for an interpreter based on early identification by the court user. This is a culture shift that will require wide stakeholder acceptance. Also, inevitably there will be some no-shows, and individuals who decide they understand and speak English well enough that an interpreter is not needed resulting in some unnecessary added expenses.</p> <p>Early identification raises the issue of how much responsibility the court has to anticipate problems and overtly act to avoid. The court does not currently seek to identify litigants needing counsel, even though the need for counsel may be as critical as the need for an interpreter. It is not clear where the balance is, which suggests more thought needs to be put into when and where it is appropriate for the court to anticipate and intervene.</p>
<p>5</p>	<p>Information for court users about availability of language access services. Courts will inform court users about the availability of language access services at the earliest points of contact between court users and the court. Courts should take into account that the need for language access services may occur earlier or later in the court process, so information about available services must be available throughout the duration of a case. (See also, Recommendation 35, regarding notice.)</p>	<p>As interpreter use is expanded into other case types, information sheets, forms, web-sites, procedures, etc., will need to be developed or modified to contain information notifying parties how to request an interpreter. Since all courts will need this, it seems appropriate for the development of these materials to occur at the state level.</p>
<p>6</p>	<p>Expansion of language services cost reporting. The Judicial Council and the courts should expand and improve data collection on interpretation services, and expand language services cost reporting to include amounts spent on other language access services and tools such</p>	<p>Currently under way under new Judicial Council reporting requirements. Some trial courts will require additional resources in order to meet these requirements fully. Until courts can develop more robust systems for collecting this data routinely, an effort needs to be made to sample or</p>

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	<p>as translations, interpreter or language services coordination, bilingual pay differential for staff, and multilingual signage or technologies. This information will be critical in supporting funding requests as the courts expand language access services into civil cases.</p>	<p>otherwise begin to get estimates of the need and costs without waiting for every court to begin reporting.</p>
<p>8</p>	<p>Expansion of court interpreters to all civil proceedings. Qualified interpreters will be provided in the California courts to LEP court users in all courtroom proceedings and in all court-ordered/court-operated events. Where immediate expansion of language access into all civil proceedings overtaxes a court’s resources, either in terms of availability of appropriately qualified interpreters or availability of funding for interpreting services, language access will be phased in by case type as follows:</p> <p>Phase I (begin by year 1, 2015):</p> <ul style="list-style-type: none"> • Domestic Violence (including actions and proceedings under Division 10 (commencing with Section 6200) of the Family Code, as well as actions and proceedings in the following matters in which a protective order has been granted or is being sought: (1) the Uniform Parentage Act; (2) dissolution, nullity, or legal separation; and (3) physical abuse or neglect under the Elder Abuse and Dependent Adult Civil Protection Act, commencing with Section 15600 of the Welfare and Institutions Code). • Unlawful Detainers • Determination and Termination of Parental Rights • Conservatorships/Guardianships <p>Phase II (begin by years 2-3, 2016–2017):</p> <p>Where resources permit providing qualified interpreters in additional case types, courts will provide interpreters in the following cases, in order:</p> <ul style="list-style-type: none"> • Other Family Law • Civil Harassment • Other Civil <p>In deploying resources, the provision of interpreters in courtroom proceedings should take priority over the provision of interpreters in</p>	<p>Recommend each trial court consult with HR Employment Relations staff and regional counterparts prior to implementation of expanded language access.</p> <p>Since accurate data is unavailable in most trial court’s case management systems it is not known what the impact of full expansion would be on the budget or interpreter resources.</p> <p>Recommend that the Judicial Council provide answer forms for Unlawful Detainers and other civil causes of action in the most frequently used languages, or that the forms have a space for early identification of language needs so that interpreter coordinators may receive advance notice.</p> <p>Recommend that the Judicial Council review and modify Family Law and other forms to include space for self-identification in matters that would require an interpreter.</p> <p>Recommend that when expanded language access is provided to new civil areas, courts should utilize calendar models that optimize use of interpreter resources.</p>

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	court-ordered/court-operated proceedings, the goal being to provide interpreters in all courtroom proceedings well before 2020.	
11	Preference for in-person interpreters. The use of in-person, certified and registered court interpreters is preferred for court proceedings and court-ordered/court-operated events, but courts may consider the use of remote interpreting where it is appropriate and advantageous for a particular proceeding.	
12	Remote interpreting in the courtroom. Remote interpreting in the courtroom should be used only after the court has considered, at a minimum, the specific factors set forth in Appendix B, “Factors and Considerations for Remote Interpreting,” or other factors that may develop as the technology evolves.	The report and recommendations do not mention, and thus appear to intentionally ignore, the very successful experiences of video remote interpreting for American Sign Language in recent years. The use of VRI was piloted in several courts and, after demonstrating success, has expanded to many courts. Rather than throwing restrictions over a new technology, however reasonable the factors listed, the recommendation should encourage pilot programs to find out when it works best and when it does not.
13	Use of video for remote interpreting. Courts using remote interpreting should strive to provide video, used in conjunction with enhanced audio equipment, for courtroom interpretations, rather than relying on telephonic interpreting.	This is an example of the perfect pushing aside the adequate. The recommendation should instead recommend pilot projects or other efforts to find out when use of audio is adequate and when it is not. See, for example, the recent project funded by SJI for NCSC and CPPS to establish a national VRI service. It is worthy to note that many lawyers are regularly opting for audio appearances at law and motion hearings or other proceedings. The decision to do so reflects a balancing of effectiveness and cost that is equally relevant to interpreting. As the quality of video conferencing improves, there are now options for video appearances. It will be relevant to observe which form is preferred by litigants in which types of proceedings.
16	Avoiding conflicts of interest. When appointing a noncertified, nonregistered interpreter, courts must avoid appointing persons with a clear or perceived conflict of interest such as opposing parties or witnesses, or family members of opposing parties, or attorneys.	
17	Appointment of family and friends to interpret. Family members	In light of the recommendation regarding qualification, it would be useful

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	<p>and friends of the LEP court user may be appointed for courtroom proceedings only if (a) they meet the provisional qualification requirements, (b) an admonition regarding real or perceived conflicts of interest is provided, and (c) all parties knowingly and voluntarily consent to that person as the interpreter.</p>	<p>to say all requests must go through the interpreter office, and provisional qualifications must be prepared for review by the office. A non-interpreter should be used only for a continuance in order to obtain a certified/registered/provisionally qualified interpreter. Note: There may need to be an exception for Protective Order cases.</p> <p>What admonition? For consistency, should one be drafted for use by all judicial officers? Should this be done at the local or state level?</p>
<p>18</p>	<p>Appointment of minors to interpret. Minors who are family members of the LEP court user will not be appointed to interpret for courtroom proceedings.</p>	<p>Need judicial education/ethics training on proper use of interpreters at a state level.</p> <p>Currently, new judges receive some information about working with interpreters at new judge orientation. Recommend that refresher training be included as part of the ethics training.</p>
<p>20</p>	<p>Verifying credentials of interpreters. Judicial officers, in conjunction with court administrative personnel, must ensure that the interpreters being appointed are qualified, are not misrepresenting their credentials, and have filed with the court their interpreter oaths. (See Recommendation 50, which discusses training of judicial officers and court staff on these subjects.)</p>	<p>Recommend each trial court centralize process of administering and filing the interpreter oath with the interpreter office. Recommend sanctions for those who misrepresent their qualifications.</p> <p>Interpreters who have been certified/registered in multiple languages currently do not have to renew in all languages. For example a certified Spanish interpreter who was once registered in Italian will continue to be registered in both languages. Recommend that the Judicial Council implement a renewal process that requires interpreters to document interpretations in all certified/registered languages, and requires the interpreter to list the languages they are renewing the certification/registration for.</p>
<p>22</p>	<p>Considerations regarding appointment of interpreters. Court staff and judicial officers must understand and consider the mental exertion and concentration required for courtroom interpreting when scheduling interpreting events, for example, by appointing a team of interpreters for long proceedings, appointing multiple interpreters for multiple parties, and identifying situations where justice partners have the responsibility or capacity to provide additional certified or registered interpreters for their clients or witnesses.</p>	<p>The interpreter office should make every effort to utilize team interpreting for lengthy proceedings where the nature of the testimony or extent of interpreting needed suggests interpreting will be even more difficult than usual. It is not clear team interpreting is always necessary, therefore some effort should be made to identify when it may not be necessary and when it should be used. Recommend education and stricter guidelines from the Judicial Council regarding the best practice of team interpreting. A culture of resistance to this practice remains prevalent among some interpreters</p>

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		and judicial officers. Recommend additional education about the legal requirement on the use of interpreters where multiple parties are involved.
24	Designation of language access office or representative. The court in each county will designate an office or person that serves as a language access resource for court staff and judicial officers. This person or persons should be able to describe all services the court provides, and what services it does not provide, and should be able to disseminate all of the court’s multilingual written information as requested.	Recommend contact information to the designated language access office be clearly posted at public facing points of contact. It is unreasonable to think there is one person who will know every service a court provides in a large court with multiple locations. Identifying a person in each branch court, and one who knows who to ask about a service, would meet the need implied by this recommendation.
25	Identification of critical points of contact. Courts should identify which points of contact are most critical for LEP court users, and, whenever possible, should place qualified bilingual staff at these locations. (See Recommendation 47, which discusses possible standards for the appropriate qualification level of bilingual staff at these locations.)	Recommend that the language access office designee conduct a thorough walk-through of points of contact to document current practice and make recommendations as needed. It is obviously ideal to have bilingual staff at key points of contact. However, this is not practical for most courts and for the less frequently spoken languages. In a county with multiple common languages, either staff would have to be multi-lingual, or there would need to be several staff, each bilingual in a different language. Obviously, this is not possible in most courts, particularly in small courts. Other options need to be identified, either in the recommendation and called for as part of implementation.
33	Use of bilingual volunteers. Courts should consider the use of bilingual volunteers to provide language access services where appropriate. Bilingual JusticeCorps volunteers and legal interns, who are extensively trained and properly supervised in court self-help centers, are a reliable resource for expanding language access, so long as their use does not conflict with any memoranda of understanding.	Justice Corps volunteers and interns would be great but require that our court hire additional staff to run the program, including determining whether the volunteers are qualified. The recommendation assumes volunteers are available. It is unlikely they are available in sufficient numbers to have much impact on the total need. Moreover, it is unlikely the unions will agree to very extensive use of volunteers.
36	Establishment of Translation Committee. The Judicial Council will create a Translation Committee to develop and formalize a translation protocol for Judicial Council translations of forms, written materials, and audiovisual tools. The committee should collaborate with interpreter organizations and courts to develop a legal glossary in all	Orange County already has a protocol for local translations. The translators are qualified court interpreter employees who receive premium pay for translating per the MOU. For larger jobs, an outside vendor is used.

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	<p>certified languages, taking into account regional differences, to maintain consistency in the translation of legal terms. The committee’s responsibilities will also include identifying qualifications for translators, and the prioritization, coordination, and oversight of the translation of materials. The qualification of translators should include a requirement to have a court or legal specialization and be accredited by the American Translators Association (ATA), or to have been determined qualified to provide the translations based on experience, education, and references. Once the Judicial Council’s translation protocol is established, individual courts should establish similar quality control and translation procedures for local forms, informational materials, recordings, and videos aimed at providing information to the public. Local court website information should use similarly qualified translators. Courts are encouraged to partner with local community organizations to accomplish this recommendation.</p>	
<p>37</p>	<p>Posting of translations on web. The Judicial Council’s staff will post on the California Courts website written translations of forms and informational and educational materials for the public as they become available and will send notice to the courts of their availability so that courts can link to these postings from their own websites.</p>	
<p>page 61</p>	<p>From page 61: “Various legal services providers and LEP users have observed that court staff and written materials sometimes use different translated words or phrases to refer to the same legal or technical term. Bilingual staff and volunteers must be trained in legal terminology so that terms are used consistently by all persons having contact with the public. The Judicial Council and the courts should therefore collaborate on an agreed-upon glossary of legal terms. This glossary should take into account differences in usage due to the country of origin and linguistic background of the LEP communities served by a given court’s community.”</p>	<p>The notion that an “agreed-upon glossary of terms” can be developed is quite idealistic. One of the roles of the appellate courts is to tell us what terms mean when there is a disagreement. It might be more realistic to develop a glossary which indicates the different terms people might use in English and in another language, and what the differences in nuances are. It is not unusual to have interpreters disagree about which term to use, especially where there is no comparable word or concept in another language and culture.</p>
<p>43</p>	<p>Standards for qualifications of interpreters. Courts, the Judicial Council, and the Court Interpreters Advisory Panel (CIAP) will ensure</p>	<p>The Judicial Council should continue to oversee qualifying interpreters.</p>

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	<p>that all interpreters providing language access services to limited English proficient court users are qualified and competent. Existing standards for qualifications should remain in effect and will be reviewed regularly by the CIAP.</p>	<p>Additionally, recommend that the Judicial Council background check and fingerprint all certified/registered interpreters to relieve each trial court of the cost, and also the interpreter of having to repeat the process in each court where they work. Often, contractors are used in multiple counties and each county conducts and pays for a background check.</p> <p>Also, recommend that the Judicial Council provide some sort of oversight for continuing certification that ensures that interpreters are still qualified.</p>
<p>44</p>	<p>Online orientation for new interpreters. The online statewide orientation program for new interpreters will continue to be available to facilitate orientation training immediately upon passage of the credentialing examination.</p>	
<p>45</p>	<p>Training for prospective interpreters. The Judicial Council and the courts should work with interpreter organizations and educational providers (including the California community college and state university systems) to examine ways to better prepare prospective interpreters to pass the credentialing examination. These efforts should include:</p> <ul style="list-style-type: none"> • Partnering to develop possible exam preparation courses and tests, and • Creating internship and mentorship opportunities in the courts and in related legal settings (such as work with legal services providers or other legal professionals) to help train and prepare prospective interpreters in all legal areas. 	<p>This is a good idea, but courts must consider the following:</p> <ol style="list-style-type: none"> 1) Interns may not be allowed by union contracts, especially if the union feels that everything is unit work; 2) Time to oversee, schedule, background check, and provide feedback may become too labor intensive, especially in courts with staff reductions; and 3) If the court chooses to do background checks, there is a fee.
<p>46</p>	<p>Training for interpreters on civil cases and remote interpreting. The Judicial Council, interpreter organizations, and educational groups should collaborate to create training programs for those who will be interpreting in civil cases and those who will be providing remote interpreting.</p>	<p>Recommend the Judicial Council Video Broadcasts be expanded and other instructor led training be developed to cover the various topics related to all case types.</p>
<p>47</p>	<p>Language proficiency standards for bilingual staff. Courts must ensure that bilingual staff providing information to LEP court users are proficient in the languages in which they communicate. All staff designated as bilingual staff by courts must at a minimum meet standards corresponding to "Intermediate mid" as defined under the</p>	<p>A bilingual standard is desirable, however, there is a cost of \$165 to take the Oral Proficiency Exam, as well as time involved. Will employees asking for bilingual pay be required to take the exam? Who will pay for it? If the court required the current 155 employees who receive bilingual pay take the test, it would cost \$25,575.00. Do the employees go to the test</p>

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	<p>Oral Proficiency Exam guidelines. (See Appendix F.) The existing Oral Proficiency Exam available through the Judicial Council’s Court Language Access Support Program (CLASP) unit may be used by courts to establish foreign-language proficiency of staff. Courts should not rely on self-evaluation by bilingual staff in determining their language proficiency.</p>	<p>center on our time or theirs? During a discussion at the Judicial Council it was thought that if the employees wanted the premium pay, they would do this on their own time and be required to pay. Would this discourage staff from asking for the premium pay and using their bilingual skills?</p> <p>Recommend the AOC determine a less expensive method of qualifying bilingual staff who will not be used in courtrooms.</p> <p>Recommend a higher level of proficiency be required for paralegals.</p> <p>Recommend trial courts check the local county HR to see if there is a less expensive method - piggy back.</p>
<p>48</p>	<p>Standards and online training for bilingual staff. Beyond the specified minimum, the Judicial Council staff will work with the courts to (a) identify standards of language proficiency for specific points of public contact within the courthouse, and (b) develop and implement an online training for bilingual staff.</p>	<p>On-line training is great. However, Judicial Council needs to keep in mind the length of training as it will pull critical staff from operations.</p>
<p>50</p>	<p>Judicial branch training regarding language access plan. Judicial officers, including temporary judges, court administrators, and court staff will receive systematic training regarding the judicial branch’s language access policies and requirements as delineated in California’s Language Access Plan, as well as the policies and procedures of their individual courts. Courts should schedule additional training when policies are updated or changed. These trainings should include:</p> <ul style="list-style-type: none"> • Optimal methods for managing court proceedings involving interpreters, including the challenges of interpreter fatigue and the need to control rapid rates of speech and dialogue; • The interpreter’s ethical duty to clarify issues during interpretation and to report impediments to performance; • Required procedures for the appointment and use of a provisionally qualified interpreter and for an LEP court user’s waiver, if requested, of interpreter services; 	<p>Recommend each trial court develop a communication plan for ensuring that the language access plan and policies are widely disseminated and appropriately applied.</p> <p>Local Orange County Interpreter Information Sheet distributed to judicial officers and court clerks, Spring 2014, and shared with the Judicial Council.</p> <p>It’s recommended that the Judicial Council send curriculum out for comment once it’s developed.</p> <p>Strongly recommend that temporary judges and judges sitting on assignment be included in the training.</p>

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	<ul style="list-style-type: none"> • Methods for verifying the credentials of an interpreter; • Available technologies and minimum technical and operational standards for providing remote interpreting; and • Working with LEP court users in a culturally competent manner. <p>The staff of the Judicial Council will develop curricula for statewide and regional trainings, as well as resource manuals that address all training</p>	
52	<p>Benchcards on language access. Judicial Council staff should develop bench cards that summarize salient language access policies and procedures and available resources to assist bench officers in addressing language issues that arise in the courtroom.</p>	<p>Orange County’s Interpreter Information Sheet has been submitted to CIAP as one example.</p>
57	<p>Advocacy for sufficient funding. The judicial branch will advocate for sufficient funding to provide comprehensive language access services without jeopardizing funding for any other court services or operations. The funding requests should reflect the incremental phasing in of the language access plan.</p>	<p>Funding needs to include money to cover coordinators and staff to support expanded language access and training.</p>
58	<p>Use of data for funding requests. Funding requests for comprehensive language access services should be premised on the best available data that identifies the resources necessary to effectuate the recommendations of California’s Language Access Plan. This may include information being gathered in connection with the recent Judicial Council decision to expand the use of Program 45.45 funds for civil cases where parties are indigent; information being gathered for the 2015 Language Need and Interpreter Use Report; and information that can be extrapolated from the Resource Assessment Study (which looks at court staff workload), as well as other court records (e.g., self-help center records regarding LEP court users).</p>	<p>Recommend the Judicial Council provide support and resources as needed to assist trial courts in capturing accurate cost data for funding requests.</p>
59	<p>Pursuit by the Judicial Council of other funding opportunities. The Judicial Council should pursue other funding opportunities from federal, state, or nonprofit entities, such as the National Center for State Courts, which are particularly suitable for one-time projects such as translation of documents or production of videos.</p>	<p>If other funding is available, courts should be made aware of it and requesting the funding should not be overly complicated. Generally, one-time funders are interested in new ideas or new approaches, not routine expenses, such as translation of documents or replication of videos where someone has already done something like what is being requested.</p>

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		The National Center for State Courts is not a funding source, although they may seek courts to engage in pilot projects with funding FROM the courts or other funders.
60	Pursuit by courts of other funding opportunities. Courts should pursue other funding opportunities at the national, state, or local level to support the provision of language access services. Courts should seek, for example, one-time or ongoing grants from public interest foundations, state or local bar associations, federal, state, or local governments, and others.	Recommend the Judicial Council provide guidance, support and coordination in this area to ensure trial courts are not competing against each other for these sources of funding. More fundamentally, one time funding will not solve the basic problems covered in this report, which are ongoing, and have existed for quite some time.
61	Language Access Implementation Committee. The Judicial Council’s staff will create a Language Access Advisory Implementation Committee (name TBD) to develop a phased implementation plan for presentation to the council. As part of its implementation plan, the committee will identify the yearly costs required to phase in the LAP recommendations.	Recommend trial courts be allowed flexibility to implement to meet local needs considering local resources and regional MOUs.
62	Single complaint form. The implementation committee will develop a single online complaint form, capable of being completed electronically or downloaded for printing and completion in writing that is available statewide as a mechanism for monitoring all concerns related to language access at the local or statewide level. The form should be used as part of multiple processes identified in the following recommendations of this plan.	Recommend local court involvement in order to address local issues. Recommend state oversight as it pertains to ruling as to certification/ registration status.
68	Statewide repository of language access resources. The Judicial Council will create a statewide repository of language access resources, whether existing or to be developed, that includes translated materials, audiovisual tools, and other materials identified in this plan in order to assist courts in efforts to expand language access.	Recommend translation committee oversight to ensure quality material is being posted.
69	Adoption of plan by the California Courts of Appeal and California Supreme Court. The California Courts of Appeal and the Supreme Court of California should discuss and adopt applicable parts of California’s Language Access Plan with necessary modifications.	
70	Procedures and guidelines for good cause. The Judicial Council should, under Government Code section 68564, establish procedures and guidelines for determining “good cause” to appoint non-	Recommend civil case types adopt the same rules of court that apply to criminal and juvenile matters for making a finding of good cause.

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	<p>credentialed court interpreters in civil matters.</p>	<p>Recommend these rules be updated for all case types.</p> <p>Concerns: What if NO interpreter is available – credentialed or not? Can the courts deny a request for an interpreter?</p> <p>If the court advertises that interpreters are available in civil and small claims and can't meet the demand, what are the expectations?</p>
<p>71</p>	<p>New rule of court for appointment of interpreters in civil proceedings. The Judicial Council should add a new rule of court (similar to rule 2.893 addressing criminal and juvenile delinquency matters) to address the appointment of non-credentialed interpreters in civil proceedings.</p>	<p>See #70 above.</p>
<p>76</p>	<p>New rule of court regarding waiver of interpreter. The Judicial Council should develop a rule of court establishing a procedure by which LEP persons may, at any point, be allowed to waive the services of an interpreter so long as the waiver is knowing, intelligent, and voluntary; is made after the person has consulted with counsel (if any); and is approved by the appropriate judicial officer, exercising his or her discretion. At any later point in the proceedings, the LEP person may, by a showing of good cause, request an order vacating the waiver and appointing an interpreter.</p>	<p>Questions: Who has determined that the person is LEP? The court? A clerk? Is this only for instances when an LEP party has asked for an interpreter and then changes their mind and the court wants to ensure that they are knowingly giving up their rights?</p> <p>Why would you need an order vacating the waiver? Wouldn't the minutes indicate the party requests an interpreter, and one would be appointed? From then on, the case would be flagged for an interpreter, unless the person waives one again.</p> <p>For consistency should the waiver be drafted so that all judicial officers use the same wording? Would this be at a state or local level?</p> <p>There was no discussion of waiver in the body of the report.</p>

PHASE II: These recommendations are less urgent or require completion of Phase I tasks. Actions to carry out these recommendations may commence immediately and should commence by years 2–3 (2016–2017).

<p>2</p>	<p>Requests for language services. Courts will consistently document the need for language</p>	<p>See response to # 2 above.</p>
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	<p>services by any of the parties, witnesses, or other persons with a significant interest in a case, and should track whether the services were provided or the request was denied.</p>	
<p>7</p>	<p>Review of other data beyond the U.S. Census. The Judicial Council and the courts should look at other sources of data beyond the U.S. Census, such as school systems, health departments, and local community-based agencies, to assist in anticipating language needs for court programs and proceedings.</p>	<p>Recommend local courts report and consider local need only. It is not clear how knowing population characteristics will help a court with planning for either the general need for interpreters or the need for interpreters on specific days. At best, the type of information listed should be used at the state level to identify where there may be a need for language assistance that is unlikely to be met with existing resources, thus suggesting the efforts described in the outreach recommendations be focused on specific languages.</p>
<p>8</p>	<p>Expansion of court interpreters to all civil proceedings. Qualified interpreters will be provided in the California courts to LEP court users in all courtroom proceedings and in all court-ordered/court-operated events. Where immediate expansion of language access into all civil proceedings overtaxes a court’s resources, either in terms of availability of appropriately qualified interpreters or availability of funding for interpreting services, language access will be phased in by case type as follows: Phase I (begin by year 1, 2015):</p> <ul style="list-style-type: none"> • Domestic Violence (including actions and proceedings under Division 10 (commencing with Section 6200) of the Family Code, as well as actions and proceedings in the following matters in which a protective order has been granted or is being sought: (1) the Uniform Parentage Act; (2) dissolution, nullity, or legal separation; and (3) physical abuse or neglect under the Elder Abuse and Dependent Adult Civil Protection Act, commencing with Section 15600 of the Welfare and Institutions Code). • Unlawful Detainers • Determination and Termination of Parental Rights • Conservatorships/Guardianships <p>Phase II (begin by years 2-3, 2016–2017): Where resources permit providing qualified interpreters in additional case types, courts will provide interpreters in the following cases, in order:</p> <ul style="list-style-type: none"> • Other Family Law 	<p>See comments re #8 on pages 4-5 above</p>

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	<ul style="list-style-type: none"> • Civil Harassment • Other Civil <p>In deploying resources, the provision of interpreters in courtroom proceedings should take priority over the provision of interpreters in court-ordered/court-operated proceedings, the goal being to provide interpreters in all courtroom proceedings well before 2020.</p>	
<p>9</p>	<p>Provisional qualification requirements. Pending adoption of a rule of court for civil matters similar to California Rules of Court rule 2.893, when good cause exists (as originally referenced in Gov. Code, § 68561(c), and as specified in the INT-120 form), a noncertified or nonregistered court interpreter may be appointed in a court proceeding in any matter, civil or criminal, only after he or she is determined to be qualified by following the procedures for provisional qualification. These procedures are currently set forth, for criminal and juvenile delinquency matters, in rule 2.893 (and, for civil matters, will be set forth in the recommended new rule of court). (See Recommendation 50, on training for judicial officers and court staff regarding the provisional qualification procedures, and Recommendation 71 to add a rule of court for civil cases.)</p>	<p>Recommend INT120 be modified or eliminated. Onerous duty for each case. Recommend alternatives to the process and/or updating the form. (Administrative Hearing interpreters are no longer an active class of interpreter.) Consider a single form for difficult to find languages such as – Portuguese, Tagalog, and Japanese.</p>
<p>10</p>	<p>Provision of qualified interpreters in all court-ordered/court-operated proceedings. Beginning in 2015, as resources are available, but in any event no later than 2020, courts will provide qualified court interpreters in all court-ordered/court-operated proceedings to all LEP litigants, witnesses, and persons with a significant interest in the case. If a judge does not order the services due to language capacity, there should be some consideration of the impact of that determination.</p>	<p>CIAP and the Joint Working Group have had a lot of discussion regarding this recommendation. The wording is vague, but it was the general consensus that this should include ALL court ordered proceedings including traffic school, batterer’s programs, Cal Trans, etc.; and that if the court cannot contract with a provider that provides the services in the required language, the court should arrange for an interpreter. There are a few members – those of us more administratively inclined – that have argued that this recommendation should read courthouse proceedings or court-ordered/operated proceedings in the courthouse during normal business hours.</p> <p>What level of “qualified” court interpreter? Certified and registered for ALL programs?</p>

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		<p>Recommend consideration must be given for using interpreters with oral proficiency level qualifications.</p> <p>This would mean scheduling interpreters on weekends? Would this be employee interpreters on OT? What if there is a problem and the interpreter doesn't show up – does a coordinator need to be on call? How many more coordinators would be required to arrange interpreter services for weekend/evening proceedings?</p> <p>If interpreter offices are to supply interpreters during business hours to travel to an outside facility for an evaluation other than the jail, this would increase work for coordinators and more interpreters (and coordinators) would be needed. For example, the court may authorize an interpreter for any service needed (investigation, visitation or any participation in services).</p>
<p>14</p>	<p>Pilot for central pool of remote interpreters. In order to maximize the use and availability of California's highly qualified certified and registered interpreters, the Judicial Council should consider creating a pilot program through which certified and registered interpreters in high frequency languages would be available to all courts on a short-notice basis to provide remote interpreting services, subject to local labor agreements.</p>	<p>This may be easier to implement or pilot with less union resistance if we started with <u>lower frequency languages</u> that are intermittent employees or independent contractors and not regular employees.</p> <p>For example, if a county in Northern California wanted a Russian interpreter and the only way they could get one was to fly them up, the Russian interpreter could go to their local courthouse and appear in Northern California via VRI – thus saving the state travel costs. Also, the appearance may end up being only ½ day pay instead of 1 day +.</p>

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		Alternatively, it could be set up that if the court could not get a certified/registered interpreter, then VRI could be use. This demonstrates to the union that we are “protecting” their employees by not using non-certified, non-registered interpreters to provide the services.
19	Appointment of bilingual staff. Courts should avoid appointing bilingual court staff to interpret in courtroom proceedings; if the court does appoint staff, he or she must meet all of the provisional qualification requirements.	Agreed. It should be avoided.
21	Expansion of regional coordination system. The Judicial Council should expand the existing formal regional coordination system to improve efficiencies in interpreter scheduling for court proceedings and cross-assignments between courts throughout the state, consistent with applicable labor agreements. (See Recommendation 29, addressing coordination for bilingual staff and interpreters for non-courtroom events.)	Recommend implementing better automation to manage regional coordination.
23	Methods for calendaring and coordination of court interpreters. Courts should develop methods for using interpreters more efficiently and effectively, for example, by use of calendar coordination, and coordination with justice partners who will be providing interpreters.	CRIS regularly reviews interpreter use and makes recommendations/modifications on staffing to maximize use of interpreters. Not sure what justice partner may be providing “interpreters.” Most do not have certified/registered staff – so does this refer to bilingual staff or some other level of interpreter?
26	Provision of language access tools to court personnel. All court staff who engage with the public will have access to language assistance tools, such as translated materials and resources, multi-language glossaries or “I speak” cards, to determine a court user’s native language, direct him or her to the designated location for language services, and/or provide the LEP individual with brochures, instructions, or other information in the appropriate language.	In the interest of consistency and not ‘reinventing the wheel,’ the recommendation should direct the Judicial Council to develop “I speak” cards for those languages for which they do not already exist.
27	Recruitment of bilingual staff. Courts should strive to recruit bilingual staff fluent in the languages most common in that county. In order to increase the bilingual applicant pool, courts should conduct outreach to educational providers in the community, such as local high schools, community colleges, and universities, to promote the career opportunities available to bilingual individuals in the courts.	See issues/questions under recommendation #47 above. This recommendation, and others below, seek to impose upon trial courts an obligation to promote career opportunities and develop education associated with interpreting. While there is

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		<p>obviously a need to increase the number of people who can provide language assistance, it is not clear that it is an appropriate role of the court to go out and develop solutions to the shortage. The courts are not expected to do that for other professions, for example, attorneys or court reporters, so it is not clear they should do so for interpreters. A more productive approach would be to ask the Judicial Council to engage with the education world to alert them to the need and provide assistance regarding programs. The recommendation implies that courts should solve the problem on their own.</p>
<p>28</p>	<p>Development of protocols for where bilingual staff are not available. Courts will develop written protocols or procedures to ensure LEP court users obtain adequate language access services where bilingual staff are not available. For example, subject to applicable local labor agreements, the court’s interpreter coordinator could be on call to identify which interpreters or staff are available to provide services in the clerk’s office or self-help center. Additionally, the use of remote technologies such as telephone access to bilingual staff persons in another location or remote interpreting could be instituted.</p>	<p>Recommend regular reminders and training for court staff.</p>
<p>29</p>	<p>Policies that promote sharing of bilingual staff and interpreters among courts. The Judicial Council should consider adopting policies that promote sharing of bilingual staff and certified and registered court interpreters among courts, using remote technologies, for language assistance outside of court proceedings, while being mindful of regional memoranda of understanding.</p>	<p>Recommend building stakeholder buy-in from all represented court staff.</p>
<p>30</p>	<p>Pilot for remote assistance at counters and in self-help centers. The courts and the Judicial Council should consider creating a pilot to implement the use of remote interpreter services for counter help and at self-help centers, incorporating different solutions, including cloud-based fee-for-service models or a court/- centralized bank of bilingual professionals.</p>	<p>This is a great idea. To the extent that the centralized bank of bilingual professionals are court employees (interpreters and bilingual staff) the court would optimize resources and reduce third party fee-for-service costs.</p>
<p>31</p>	<p>Pilot for remote assistance for workshops. The courts should consider a pilot to implement inter-court, remote attendance at workshops, trainings, or “information nights” conducted in non-English languages using a variety of equipment including telephone, video-conferencing (WebEx, Skype), or other technologies.</p>	

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<p>32</p>	<p>Qualifications of court-appointed professionals. In matters with LEP litigants, courts should ensure that court-appointed professionals, such as psychologists, mediators, social workers, and guardians, can provide linguistically accessible services to the same degree that their services are provided to English speakers. Where no such language capability exists, subject to local labor agreements, courts should make reasonable efforts to identify or enter into contracts with providers able to offer such language capabilities, either as bilingual professionals who can provide the service directly in another language or via qualified interpreters.</p>	<p>Orange County does provide interpreters for psych evaluations in jail during normal work hours. If after-work hours or off-site, the evaluator is advised to hire their own interpreter.</p> <p>There have been instances where we have sent an interpreter off site or after hours – for example: When the case is in alternate defense and the court is paying all the fees.</p> <p>We get a lot of questions about this process as well. Recent examples include a father being evaluated during business hours, off site, with short notice. The evaluator requested a Vietnamese interpreter and one was sent.</p> <p>If a court interpreter is not provided, the evaluators sometimes have a hard time getting an interpreter. The agencies may request a full-day rate for a two hour interview. CRIS uses their best judgment in covering these requests.</p> <p>Contracting with bilingual professionals would be great, but I’m not sure it is feasible – especially with the variety of languages and the limited hours that many evaluators are available for court work.</p> <p>If CRIS is to supply interpreters during business hours to travel to an outside facility for an evaluation other than the jail, this would increase work for coordinators and more interpreters (and coordinators) could be needed. For example, the court may authorize an interpreter for any service needed (investigation, visitation or any</p>
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<p>35</p>	<p>Notice of available language access services. Courts must provide notice of the availability of language access services and related language access policies at all points of contact with the court in English, the top five languages spoken in that court’s county, and, if applicable, in every language spoken by 5 percent or more of the county’s population. Notice should be provided to the public, and to community-based organizations, justice partners, legal services offices, and other entities working with LEP populations. (See also Recommendation 54.) For, example, notices should be posted on the court’s website, in the courthouse at information counters, in court brochures, in a document included with initial service of process, at court-community events, in public service notices and announcements in the media, ethnic media, and in any embassies or consulates located in the county. To address low literacy populations and speakers of languages that do not have a written component, video and audio recordings should be developed to provide this notice.</p>	<p>participation in services).</p> <p>The reference to “top five” and “5 percent or more” seems overbroad. It is unclear whether the “top five” would include a language which is spoken by under 1% of the population in some counties. Maybe better to have one standard, such as any language spoken by more than 10%, or some reasonable level based on actual experience in counties. For example, the top five language requests in Orange in 2013 in criminal/traffic cases were:</p> <ul style="list-style-type: none"> • Spanish 82.4% • Vietnamese 9.6% • Korean 1.9% • Farsi 0.8% • Mandarin 0.7% <p>Only the top two languages involved more than 5% of need (a better measure than population), so preparing materials for the very low usage may not be cost effective, and might be better handled some other way.</p> <p>Additional efforts will be required to comply with this depending on the final recommendation.</p>
<p>38</p>	<p>Signage throughout courthouse. The staff of the Judicial Council should assist courts by providing plain-language translations of the most common and relevant signs likely to be used in a courthouse, and provide guidance on the use of internationally recognized icons, symbols, and displays to limit the need for text and, therefore, translation. Where more localized signage is required, courts should have all public signs translated into that court community’s top five languages or, if more appropriate, into any languages spoken by 5 percent or more of the population served by the court. At the minimum, all such materials should be available in English and Spanish.</p>	<p>Determine where this has been done, and what signs may need to have created.</p> <p>Do signs need to be approved by Facilities? How often should the signs/languages be reviewed? The top five can change from year to year? Signs coming out of Facilities budget?</p> <p>As to the reference to “top five” and “5 percent or more”, see response to recommendation 35 above.</p>

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39	<p>Translation of court orders. Courts will provide sight translation of court orders and should consider providing written translations of those orders to LEP persons when needed. At a minimum, courts should provide the translated version of the relevant Judicial Council form to help litigants compare their specific court order to the translated template form.</p>	<p>Sight translation is provided. Providing written translations of court orders would be labor intensive, requires a translator rather than an interpreter, and cannot generally be a generic form since court orders vary from person to person. Most Judicial Council forms do not have a translated version. See #36 above – would these forms fall under Judicial Council translation? If it’s a Judicial Council form, then shouldn’t the Judicial Council translate it?</p>
40	<p>Accessible courthouses. The Judicial Council, partnering with courts, should ensure that new courthouse construction efforts, as well as redesign of existing courthouse space, are undertaken with a focus on making courthouses more easily navigable to all LEP persons.</p>	<p>Other than signage, I’m not sure what this means.</p>
41	<p>Wayfinding strategies. The Judicial Council’s staff will provide information to courts interested in better wayfinding strategies, multilingual (static and dynamic) signage, and other design strategies that focus on assisting LEP court users.</p>	
49	<p>Recruitment strategies for language access providers. The Judicial Council staff will work with educational providers, community-based organizations, and interpreter organizations to identify recruitment strategies to encourage bilingual individuals to pursue the interpreting profession or employment opportunities in the courts as bilingual staff.</p>	
63	<p>Compliance and monitoring system. The [language access] implementation committee will develop a compliance and monitoring system for California’s Language Access Plan. This system will include the oversight of the plan’s effects on language access statewide and at the individual court level, and a mechanism for assessing the need for ongoing adjustments and improvements to the plan.</p>	<p>Data collection requirements should be made known to courts well in advance of collection, so that the infrastructure to collect the data may be put in place. This often requires modification to CMSs, training of staff, etc.</p>
72	<p>Legislation to delete exception for small claims proceedings. The Judicial Council should sponsor legislation to amend Government Code section 68560.5(a) to delete the exception for small claims proceedings.</p>	
73	<p>Legislation to require credentialed interpreters for small claims. The Judicial Council should sponsor legislation to amend Code of Civil Procedure section 116.550 dealing with small claims actions to reflect that interpreters in small claims cases should, as with other matters, be credentialed except for a finding of good cause to appoint a non-credentialed interpreter.</p> <p>Note from page 28 of plan: The term “qualified interpreter” for purposes of this language access</p>	<p>If the court advertises that interpreters are available in civil and small claims and can’t meet the demand, what are the expectations?</p> <p>Rather than confusing the language with credentialed/qualified, why not just say certified,</p>

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	<p>plan refers to: (1) certified and registered interpreters as credentialed by the Judicial Council and who are in compliance with the Professional Standards and Ethics for California Court Interpreters, and (2) “provisionally qualified” interpreters (non-certified and non-registered) who are determined to be qualified on a provisional basis.</p>	<p>registered, or provisionally qualified interpreters? Credentialed sounds like another level or classification of interpreter.</p>
74	<p>Updating of interpreter-related forms. The Judicial Council should update the interpreter-related court forms (INT-100-INFO, INT-110, INT-120, and INT-200) as necessary to be consistent with this plan.</p>	
75	<p>Evaluation of Trial Court Interpreter Employment and Labor Relations Act. The implementation committee should evaluate existing law, including a study of any negative impacts of the Trial Court Interpreter Employment and Labor Relations Act on the provision of appropriate language access services. The evaluation should include, but not be limited to, whether any modifications should be proposed for existing requirements and limitations on hiring independent contractors beyond a specified number of days.</p>	<p>The 100-day limit on contractors may lead to a shortage of interpreters. By 100 days, most of them have already received a 45-day intermittent offer and they don’t want to be an employee. At 100 days the court must stop using them. The contractor then accepts jobs in other counties – working anyway – and the other county often has to pay premium rates and/or mileage to get the interpreter. Overall it would be less expensive for the state if there were no limits. If someone doesn’t want to be an employee, let them work as a contractor as needed. Not clear why the recommendation is to repeal CCP 116.550 and GC 68560.5(a), but only study the impact of GC 71802? The special provisions for certain categories of interpreters are a problem, recommend repealing the special interest provisions of this section as well.</p>

PHASE III: These recommendations are not urgent, or are complex and will require significant foundational steps, time, and resources to be completed by 2020. Actions to carry out these recommendations may be put into place immediately (2015), or over time as the necessary foundational steps are put in place.

2	<p>Requests for language services. Courts will consistently document the need for language services by any of the parties, witnesses, or other persons with a significant interest in a case,</p>	<p>See response to # 2 above.</p>
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	<p>and should track whether the services were provided or the request was denied.</p>	
<p>8</p>	<p>Expansion of court interpreters to all civil proceedings. Qualified interpreters will be provided in the California courts to LEP court users in all courtroom proceedings and in all court-ordered/court-operated events. Where immediate expansion of language access into all civil proceedings overtaxes a court’s resources, either in terms of availability of appropriately qualified interpreters or availability of funding for interpreting services, language access will be phased in by case type as follows: Phase I (begin by year 1, 2015):</p> <ul style="list-style-type: none"> • Domestic Violence (including actions and proceedings under Division 10 (commencing with Section 6200) of the Family Code, as well as actions and proceedings in the following matters in which a protective order has been granted or is being sought: (1) the Uniform Parentage Act; (2) dissolution, nullity, or legal separation; and (3) physical abuse or neglect under the Elder Abuse and Dependent Adult Civil Protection Act, commencing with Section 15600 of the Welfare and Institutions Code). • Unlawful Detainers • Determination and Termination of Parental Rights • Conservatorships/Guardianships <p>Phase II (begin by years 2-3, 2016–2017): Where resources permit providing qualified interpreters in additional case types, courts will provide interpreters in the following cases, in order:</p> <ul style="list-style-type: none"> • Other Family Law • Civil Harassment • Other Civil <p>In deploying resources, the provision of interpreters in courtroom proceedings should take priority over the provision of interpreters in court-ordered/court-operated proceedings, the goal being to provide interpreters in all courtroom proceedings well before 2020.</p>	<p>See comments re #8 on pages 4-5 above.</p>
<p>15</p>	<p>Creation of multilingual standardized videos. The Judicial Council should explore the feasibility of creating multilingual standardized videos for certain case types that lend themselves to generalized, not localized, legal information, and provide them to courts in the state’s top eight languages and captioned in other languages.</p>	<p>Many courts may already have short videos for orientation in languages for traffic first appearance/arraignments or some other proceedings.</p> <p>There was a Self-Help Strategic Planning meeting at the Judicial Branch in 2012. This was one of</p>

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		<p>the issues raised. The Judicial Branch website has increased the number of general legal information videos which we can post on our website, but not yet in other languages.</p> <p>How to: Mediation videos Traffic arraignment video Small claims video Knowledge innovation</p>
34	<p>Pilot programs for language access kiosks. The courts should consider creating pilot programs to implement the use of language access kiosks in lobbies or other public waiting areas to provide a variety of information electronically, such as on a computer or tablet platform, in the court area’s top five spoken languages.</p>	<p>If information is available on our website in different languages, then a separate language access kiosk is not necessary. As to the reference to “top five” and “5 percent or more”, see response to recommendation 35 above.</p>
42	<p>Signage and brochures. Courts will provide signage and brochures throughout the courthouse and in court-operated programs to inform LEP users of the ability to request language access services. The signage and brochures should be in the top five languages spoken in that court’s community, or at least every language spoken by 5 percent or more of the population.</p>	<p>See #38 above</p> <p>Determine where this has been done, and what signs may need to be created.</p> <p>Do signs need to be approved by Facilities? How often should the signs/languages be reviewed? The top five can change from year to year? Signs coming out of Facilities budget?</p> <p>As to the reference to “top five” and “5 percent or more”, see response to recommendation 35 above.</p>
51	<p>Language access resources on intranet. Information on local and statewide language access resources, training and educational components identified throughout this plan, glossaries, signage, and other tools for providing language access should be readily available to all court staff through individual courts’ intranets.</p>	<p>This would be part of the training</p>
53	<p>Partnerships to disseminate information. Courts should establish partnerships with local community-based organizations, including social services providers, legal services</p>	<p>What does this look like? Is more needed than we have already done?</p>

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	<p>organizations, government agencies, and minority bar associations to gather feedback to improve court services for LEP court users and to disseminate court information and education throughout the community.</p>	<p>We have complaint/suggestion forms. We have received feedback from our Leadership Academy for community leaders, and the court has conducted various surveys over the years. Staff did reach out to all bar associations to offer training on working with court interpreters; and other than the attorneys at family law and juvenile, no one was very interested. There are probably ethical issues with courts “establish[ing] partnerships” with organizations, in particular when the organizations are engaged in advocacy or often appear in court. Providing a transparent means of accepting comments would be sufficient.</p>
<p>54</p>	<p>Affirmative steps to inform public. Courts should take affirmative steps to inform the public about language access services available in the courts by, among other means, ongoing communication with community-based organizations and other stakeholders.</p>	<p>LEP plan posted on website. Other suggestions? Press release?</p>
<p>55</p>	<p>Multilingual audio or video recordings to inform public. To maximize both access and efficiency, multilingual audio and/or video recordings should be used to provide important general information and answers to frequently asked questions.</p>	<p>This is a great idea where the information is not likely to change, or is not different depending on the judicial officer.</p>
<p>56</p>	<p>Collaboration with media. Courts should collaborate with local media and leverage the resources of media outlets, including ethnic media that communicate with their consumers in their language, as a means of disseminating information throughout the community about language access services, the court process, and available court resources.</p>	<p>See #53 and 54 above. These are all related.</p>
<p>64</p>	<p>Complaints regarding court interpreters. The AOC, together with stakeholders, will develop a process by which the quality and accuracy of an interpreter’s skills and adherence to ethical requirements can be reviewed. The system that is developed will be clearly communicated to court staff, judicial officers, attorneys, and in plain language to court users (e.g., LEP persons and justice partners).</p>	<p>This is long overdue and should be combined with recommendation 43 above.</p>
<p>65</p>	<p>Complaints regarding statewide translations. The Translation Committee (as described in Recommendation 36 above), in consultation with the implementation committee, will develop a process to address complaints about the quality of Judicial Council–approved translations, including translation of Judicial Council forms, the California Courts Online Self-Help Center,</p>	

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	and other Judicial Council–issued publications and information.	
66	<p>Complaints at local level regarding language access services. Individual courts will develop a process by which LEP court users, their advocates and attorneys, or other interested persons may seek review of a court’s provision of, or failure to provide, appropriate language access services, including issues related to locally produced translations. The process must consider and avoid any conflicts with local labor agreements. Local courts may choose to model their local procedures after those developed by the Judicial Council or by the implementation committee. Absent extraordinary or unusual circumstances, complaints must first be filed with the court at issue and referred to the Judicial Council only upon a failure by the court to adequately respond to the LEP court user’s complaint.</p>	<p>Orange County already has a feedback process available and any language related complaints are sent to the CRIS office for review. CRIS takes action if necessary, and responds to the complainant.</p>
67	<p>Requesting review of local complaint outcome. The implementation committee will develop a complaint process by which a litigant or his or her legal representative may request a review of the outcome of any complaint submitted to a court regarding provision of, or failure to provide, appropriate language access services, as described in Recommendation 66 above.</p>	<p>Why would a language access complaint be given any different treatment than another complaint? Does there really need to be a formal review process? Someone who is unhappy with the response they receive will find a way to elevate the complaint anyway.</p>