Judicial Council of California · Administrative Office of the Courts

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: January 23, 2014

Title
Court Interpreters: Expenditure of Unused Savings From Program 45.45

Rules, Forms, Standards, or Statutes Affected
None

Recommended by
Ad Hoc Joint Working Group to Address Court Interpreter Issues
Hon. Steven K. Austin, Chair

Agenda Item Type
Action Required

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Executive Summary

The Ad Hoc Joint Working Group to Address Court Interpreter Issues recommends that the Judicial Council make explicit that allowable expenses for court interpreter funds in the Trial Court Trust Fund (Program 45.45) funds, and the unused savings related to Program 45.45 funds, include expenditures on court interpreters for all appearances in domestic violence cases, family law cases in which there is a domestic violence issue, and elder or dependent abuse cases, thereby eliminating the $1.73 million cap currently in place for such expenditures. The working group also recommends that the council make explicit that allowable expenses for Program 45.45, and the unused savings related to Program 45.45, include expenditures on court interpreters for indigent parties in civil cases.

Recommendation

The Ad Hoc Joint Working Group to Address Court Interpreter Issues recommends that the Judicial Council expand the allowable use of the Program 45.45 appropriation and direct the use of the unused savings related to the Program 45.45 appropriation accumulated since fiscal year

2009–2010 in the following ways:

1. Authorize that trial courts can request reimbursement from the Trial Court Trust Fund Program 45.45 appropriation for costs related to court interpreters for all appearances in domestic violence cases, family law cases in which there is a domestic violence issue, and elder or dependent adult abuse cases, thereby eliminating the $1.73 million cap currently in place for such expenditures. Direct that if expenditures in Program 45.45 exceed the $92 million expenditure authority, any unused savings related to the Program 45.45 appropriation since fiscal year 2009–2010 may also be used for these purposes.

2. Clarify that trial courts can request reimbursement from the Trial Court Trust Fund Program 45.45 appropriation, and any unused savings from that appropriation, for expenditures on court interpreters for indigent parties in civil cases. Each court may determine how best to implement providing interpreters in civil matters based on varying court and community needs, resource limitations due to availability of funds, availability of interpreters, and other court operational needs. If a court elects to implement in some cases types only, suggested case types include family law, civil harassment, unlawful detainer, and probate conservatorship, and guardianship.

3. Direct Administrative Office of the Courts' staff to provide guidance to courts of the changes to what is reimbursable.

4. Direct the Civil and Small Claims Advisory Committee to create a new form for parties requesting interpreters in civil matters. The form should include space for the party to indicate the language in which an interpreter is required and to indicate whether a waiver of court fees and costs has been granted. The form should advise parties that interpreters are available in civil cases only for parties that are indigent.

5. Direct staff of the Center for Judiciary Education and Research to develop training resources, as appropriate, for court staff on how the new form may be used to assist in the calendaring of cases and scheduling of interpreters.

6. Direct the Trial Court Budget Advisory Committee (TCBAC) to provide recommendations to the council at the April 2014 council meeting on the maximum amount each court will be eligible to receive in reimbursement from the unused savings pursuant to recommendation number 2, above. The TCBAC's recommendations should be developed in a manner that will result in complete exhaustion of the unused savings by the end of fiscal year 2014–2015.

7. Direct that trial courts track the usage of interpreters in civil matters and report this information to the Administrative of the Office of the Courts (AOC) in the format and time frame specified by the AOC.

Previous Council Action

In October 2010, the Judicial Council approved a policy that the $4.84 million in savings from Program 45.45 for fiscal year 2009–2010, and any future savings, be set aside and made available to address future reimbursable court interpreter costs, including base funding.

In July 2011, the Judicial Council redirected $3 million of the $4.84 million savings in the fiscal year 2009–2010 Court Interpreters Program to support court operations, with the remaining $1.84 million to be for the use of the Court Interpreters Program.

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

Rationale for Recommendation

The Ad Hoc Joint Working Group to Address Court Interpreter Issues (working group) was charged with making recommendations to the Judicial Council about (a) options for using all or a portion of the accumulated Program 45.45 funds and (b) options for ensuring coordination of efforts designed to expand the provision of court interpreter services in California. This report makes recommendations for use of Program 45.45 funds, and the related unused savings, beginning immediately. Also at this January 2014 meeting, in a report from the Policy Coordination and Liaison Committee (PCLC), the council will hear PCLC's and the working group's recommendation for council-sponsored legislation to allow courts to provide interpreters in all civil matters at no cost to parties.

As of the close of fiscal year 2012–2013, there remains $12,924,795 in unused savings from the Trial Court Trust Fund Program 45.45 appropriation accumulated since 2009–2010. The working group was charged with making recommendations for the appropriate expenditure of those unused savings. The working group cannot recommend that the unused savings from Program 45.45 be used to fund interpreters in all civil cases without a statutory clarification giving courts discretion to provide these services in civil matters. While there appears to be a strong legal argument that courts can provide interpreters in civil cases to indigent litigants who have limited English proficiency, existing law is at best ambiguous on whether a court may assign interpreters in *all* civil cases at no cost to the parties.[1] The council will be considering a recommendation today from PCLC and the working group for sponsored legislation to provide that authority. As a result, at the earliest, it will be January 2015 before courts will have the legal authority to provide interpreters in all civil proceedings regardless of the income of the parties. The working

[1] August 6, 2013, legal opinion memorandum from the AOC Legal Services Office to Judge Steven K. Austin entitled "In Courtroom Interpreter Costs."

group therefore turned its attention to how it could expand access to interpreters in the interim, while waiting for a statutory fix.

Beginning in 2001 the Judicial Council authorized $1.6 million annually for courts to provide interpreters for litigants with limited English proficiency (LEP) in family law cases where domestic violence protective orders have been issued or are being sought. Starting in fiscal year 2005–2006, the program was expanded to encompass general family law cases and elder and dependent adult abuse protective order cases, and the funding amount was increased to $1.75 million ($20,000 of which is allocated to the AOC for translation of court forms). Courts may utilize program funds to provide interpreters in court hearings, family law facilitator sessions, court-connected self-help sessions, and family court services mediation sessions, as well as for related assistance at court public counters. Allocations are based on prior year expenditures and courts' stated expectations of need. Typically, about 45 courts apply for and receive funding.

Information suggests that elimination of the $1.73 million cap on interpreters for domestic violence cases, ancillary family law proceedings, and elder and dependent adult abuse cases will not cost a significant amount of money and that expenditures for these purposes should be able to be funded within the annual Program 45.45 allocation (which is approximately $92 million). The total request from courts for fiscal year 2013–2014 for domestic violence, elder and dependent adult abuse, and related family law matters was $3.2 million (only $1.47 million more than the $1.73 million currently expended). If the extent of the need surpasses the estimate, however, the working group recommends that the council allow the expenditure of not just the Program 45.45 allocation, but also the unused savings, for this purpose.

The cost to expand to civil cases when a party is indigent is not known. The 2015 Language Use and Interpreter Need Study will be examining, to the extent possible, the need for interpreters in civil cases. However, the data collection efforts for that study have not yet begun and thus cannot inform the working group's or the Judicial Council's decision. The working group concluded, however, that the ability of a court to meet the needs of indigent litigants for interpreters in civil cases will vary widely across the state. Some courts may be able to provide interpreters for indigent litigants in all civil cases; other courts may be forced to prioritize certain case types due to limited financial and personnel resources. Therefore, the working group recommends that each court be given the authority to determine how best to implement providing interpreters to indigent litigants in civil matters to address varying court and community needs, resource limitations, and other court operational needs. If a court elects to implement in some cases types only, the working group has provided its suggestion for case types courts may wish to prioritize: family law, civil harassment, unlawful detainer, and probate conservatorship and guardianship. These case types have been highlighted because they appear to have the highest percentage of self-represented litigants statewide.[2]

[2] According to the Judicial Council's *Statewide Action Plan for Assisting Self-Represented Litigants*, one study of 55 California trial courts found that in unlawful detainer cases, at least one party was self-represented 35 percent of the time; in family law, 67 percent; in probate, 22 percent; and in general civil, only 16 percent.

Some members of the working group expressed concern that courts would not be in a fiscal position to risk using their existing resources to provide interpreters for indigent litigants in civil matters without knowing if there would be funding remaining to reimburse them for these expenditures. As a result, the working group recommends that the Judicial Council direct the Trial Court Budget Advisory Committee to develop a formula to identify the maximum amount each court could be eligible to receive as reimbursement from the unused $12.9 million in savings. This is intended to provide courts the information they need to take the necessary steps to begin providing this service, to the extent interpreters are available. To ensure that courts expand interpreter services as much as is feasible within their existing resource limitations, the recommendation includes ensuring that the formula results in complete exhaustion of the unused savings by the end of fiscal year 2014–2015.

At the same time, the Judicial Council will be developing a language access plan for the judicial branch. The Joint Working Group for California's Language Access Plan has begun its work. In January 2014 it will be meeting with several key stakeholder groups to secure their input on necessary and appropriate content for California's language access plan. The joint working group is planning public hearings in late February and early March for broader public input. The joint working group will then develop a draft plan and send it out for public comment, with a goal of final adoption by the Judicial Council in December 2014. After adoption of the plan, it may be possible to seek additional resources for interpreter and other language access services in California's courts, including the resources needed to continue providing interpreters in civil cases.

Comments, Alternatives Considered, and Policy Implications

The Ad Hoc Working Group to Address Court Interpreter Issues considered waiting to change the reimbursement policies until the statutory amendment authorizing the expenditure of court resources for interpreters in civil matters is enacted. The working group believes that waiting is not consistent with the group's charge and the understanding that immediate action should be taken to expand access to interpreters in ways that the branch believes are legally permissible. Additionally, the U.S. Department of Justice has made recommendations that the branch expand access to interpreters. The U.S. DOJ believes that federal law preempts state law and that California has the statutory authority it needs to begin providing interpreters in civil cases regardless of the income of the parties. The U.S. DOJ understands that we do not share that opinion and has indicated support for us moving forward to secure the statutory fix. Nonetheless, it behooves the judicial branch to move forward as quickly as possible to expand interpreter services in civil cases for which we believe we have the legal authority to do so.

As noted above, the working group considered identifying certain civil case types and recommending the use of the unused funds only on those case types. This would have the benefit of statewide consistency. However, the working group speculated that some courts' needs for interpreters in civil matters with indigent litigants may be easily met within the maximum

allocation provided. The working group did not want to prevent those courts from meeting these needs by limiting the usage of the unused savings to certain civil case types.

Implementation Requirements, Costs, and Operational Impacts

As noted above, eliminating the $1.73 million cap for interpreters in domestic violence matters, ancillary family law cases, and elder and dependent adult abuse cases, can likely be accommodated within the existing Program 45.45 appropriation. At the request of the working group, the AOC Fiscal Services Office, with data provided by the Court Language Access Support Program, calculated the costs of recently negotiated salary increases in Court Interpreter Regions 2 and 3.[3] All other things being equal, those cost increases, plus the estimated $1.47 million increase derived by eliminating the cap, will result in full expenditure by the end of 2015–2016, or nearly complete expenditure of the Program 45.45 appropriation.

Courts wishing to provide interpreters for indigent parties in civil cases will likely need to devise a system for identifying cases in which both a fee waiver has been issued and the party requires an interpreter. The working group did not want to specify the procedures for doing so, to ensure each court the flexibility needed to alter its operational procedures, if necessary, in the most effective and efficient way. Creating a new form for requesting interpreters in civil matters that includes space for the party to indicate the language in which an interpreter is required and whether a waiver of court fees and costs has been granted will require action of the council's Civil and Small Claims Advisory Committee. The cost of providing interpreters in these cases is unknown. However, once the Trial Court Budget Advisory Committee makes a recommendation on the maximum allowable reimbursement from the unused savings for each court for providing these services, courts should be better able to plan how to provide these services without incurring additional expenses beyond what they are allocated from the unused savings.

Relevant Strategic Plan Goals and Operational Plan Objectives

The recommendations in this report are most closely allied to Goal I of the branch's strategic plan: Access, Fairness, and Diversity. That goal provides that "California's courts will treat everyone in a fair and just manner. All persons will have equal access to the courts and court proceedings and programs. Court procedures will be fair and understandable to court users. Members of the judicial branch community will strive to understand and be responsive to the needs of court users from diverse cultural backgrounds…." The operational plan leads directly to the recommendations in this report. Objective 5 relating to Goal I is to "[i]ncrease qualified interpreter services in mandated court proceedings and seek to expand services to additional court venues; increase the availability of language-assistance services to all court users." One of the desired outcomes of implementing this objective is to secure "[r]esources to expand interpreting services to civil cases."

[3] Region 2 includes all superior courts within the First and Sixth Appellate Districts except the Superior Court of Solano County, and Region 3 includes all superior courts within the Third and Fifth Appellate Districts.