

Judicial Council of California

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INVITATION TO COMMENT

[ItC prefix as assigned]-__

Title

Language Access Representative and
Language Access Services Complaints

Action Requested

Review and submit comments by [deadline]

Proposed Rule

Add Rule 2.850: Language Access
Representative, and Rule 2.851: Language
access services complaints

Proposed Effective Date

January 1, 2018

Contact

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Proposed by

Language Access Plan Implementation Task
Force

Hon. Mariano-Florentino Cuéllar, Chair
Hon. Manuel J. Covarrubias, Vice-Chair

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Executive Summary and Origin

To support Recommendations Nos. 25, 62 and 63 in the *Strategic Plan for Language Access in the California Courts*, adopted by the Judicial Council in January 2015, the Language Access Plan (LAP) Implementation Task Force recommends that new Rules of Court be established to require each superior court to: (1) designate a Language Access Representative; and (2) adopt a language access services complaint form and complaint procedures. A new rule will require courts to designate a Language Access Representative to serve as a resource for all court users, as well as court staff and judicial officers, regarding language access issues. A separate new rule will require courts to establish a complaint form and procedures to allow limited English proficient (LEP) court users, their advocates and attorneys, or other interested persons, to submit a complaint to the Language Access Representative about the court's provision of, or failure to provide, appropriate language access services, including issues related to locally produced translations. The rule establishes minimum required procedures for courts to receive and respond to complaints, and clarifies that complaints must be submitted to the court at issue and reported to the Judicial Council to assist in the ongoing monitoring of the overall implementation and success of the Language Access Plan. Individual courts may choose to continue to use their existing language access complaint form and procedures, or model their new complaint form and/or procedures after the rule and model form and recommended procedures that were developed by the Task Force.

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

Background

The Judicial Council charged the Task Force with overseeing and ensuring implementation of the *Strategic Plan for Language Access in the California Courts* (LAP). The plan provides a comprehensive and systematic approach to expand language access in the California courts.

The LAP embraces the principle that it is the court's responsibility to provide language access throughout the continuum of court services, from the first time an individual tries to access the court's website, or walks in the door of the courthouse, to post-hearing events necessary to comply with court orders (LAP, p. 45). To help achieve this goal, the LAP recommends that each county designate an office or person that serves as the court's Language Access Representative:

25. The court in each county will designate an office or person that serves as a language access resource for all court users, as well as court staff and judicial officers. This person or persons should be able to: describe all the services the court provides and what services it does not provide, access and disseminate all of the court's multilingual written information as requested, and help LEP court users and court staff locate court language access resources.

In conjunction with LAP implementation, each of the 58 superior courts designated a Language Access Representative in January 2016.

The LAP also notes that a multifaceted complaint procedure is essential to ensure the quality of language access services delivered. The LAP states:

All participants in the court system, including LEP court users, attorneys, legal services providers, community-based organizations, interpreters, judicial officers, and other justice partners, must be able to register complaints if a court fails to provide adequate language access services, or if the services provided are of poor quality, whether the service involves bilingual staff, written translation, or interpreter employees or contractors. Any complaint procedure must be available to all, consistent and transparent, with procedures and forms, and should be utilized in a way that protects LEP court users or other interested persons from actual or perceived negative repercussions either to them personally or to the outcome of their case. (LAP, pp. 75-76)

To address the need to develop a complaint form and procedure, the LAP contains the following recommendations regarding development of statewide and local LAP-related complaint processes:

62. The Implementation Task Force will develop a single form, available statewide, on which to register a complaint about the provision of, or the failure to provide, language access. This form should be as simple, streamlined, and user-friendly as possible. The form will be available in both hard copy at the courthouse and online, and will be capable of being

completed electronically or downloaded for printing and completion in writing. The complaints will also serve as a mechanism to monitor 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.

63. Individual courts will develop a process by which LEP court users, their advocates and attorneys, or other interested persons may file a complaint about the court's provision of, or failure to provide, appropriate language access services, including issues related to locally produced translations. Local courts may choose to model their local procedures after those developed as part of the implementation process. Complaints must be filed with the court at issue and reported to the Judicial Council to assist in the ongoing monitoring of the overall implementation and success of the Language Access Plan.

At its June 6, 2016, meeting, the Task Force's Budget and LAP Monitoring Subcommittee voted to recommend that the Task Force approve a model complaint form, recommended procedures, and other materials in a packet for the superior courts. At its July 6, 2016, meeting, the full Task Force considered the packet and the subcommittee recommendation, and voted to approve the materials and to share the contents of the packet with the courts. In July 2016, the complaint packet was also shared with the Rules and Projects Committee as an informational item, including the Task Force's intention to develop a corresponding rule of court. In September 2016, the packet was distributed to the 58 superior courts and posted to the Language Access Toolkit (a link to the Toolkit is provided below). Subsequently, the Task Force worked to develop the new Rule of Court that is contained in this proposal. On X, 2017, the Task Force voted to approve this proposal to go out for public comment.

The Proposal

The Task Force recommends that new Rules of Court be added to: (1) require each superior court to designate a Language Access Representative that serves as the court's language access resource for all court users, as well as court staff and judicial officers; and (2) adopt a language access services complaint form and procedures to respond to language access complaints. Provisions of the proposed Rules of Court are described below, along with pertinent information to help support implementation of the rules.

- As of January 2016, each court has already identified a Language Access Representative.
- Pursuant to LAP Recommendation No. 25, a new Rule of Court will require that the court in each county is required to designate an office or person that serves as the courts' Language Access Representative. This person will serve as the language access resource for all court users, as well as court staff and judicial officers. The new rule will make clear that this is an ongoing requirement for courts.
- A new Rule of Court will also require each superior to adopt a language access services complaint form and related procedures for the Language Access Representative to respond to complaints.
- The rule will support implementation of Recommendations Nos. 62 and 63 in the *Strategic Plan for Language Access in the California Courts*, adopted by the Judicial

Council in January 2015. These recommendations address the need for superior courts to adopt a language access services complaint form and related complaint procedures.

- The complaint form required by the rule will allow limited English proficient (LEP) court users, their advocates and attorneys, or other interested persons, to submit a complaint to the court's Language Access Representative about the court's provision of, or failure to provide, appropriate language access services, including issues related to locally produced translations.
- The rule will also establish minimum required procedures for courts to receive and respond to complaints, and clarifies that complaints must be submitted to the court at issue and reported to the Judicial Council to assist in the ongoing monitoring of the overall implementation and success of the Language Access Plan.
- Individual courts may choose to continue to use their existing language access complaint form and procedures, or model their new complaint form and/or procedures after the rule and model form and recommended procedures that were developed by the Task Force.
- The Judicial Council will turn the existing model complaint form and court user instructions into a fillable PDF that is usable by any court, and will also translate the model form and court user instructions into at least eight languages for courts to use as appropriate in order to address the specific language needs of their county. The Task Force will share these documents with courts for posting on their websites.
- Adoption of the rule will benefit the judicial branch, justice partners, attorneys, self-represented litigants, and others by ensuring that LEP court users who may not have received a court interpreter will, as appropriate and needed, receive a court interpreter, and by alerting the court of any other language access issues that may need to be provided, remedied, or improved upon.

Alternatives Considered

Pursuant to LAP Recommendation No. 25, each court will designate a Language Access Representative who serves as the court's language access resource for all court users, as well as court staff and judicial officers. As of January 2016, each of the superior courts has designated a Language Access Representative. The new rule will clarify that this is an ongoing responsibility for courts. Pursuant to LAP Recommendations Nos. 62 and 63, an additional rule will make clear that all courts must adopt a language access services complaint form and complaint procedures. The new rules requiring all superior courts to designate a Language Access Representative and adopt a language access services complaint form and related procedures are designed to achieve consistent practices across the state.

Implementation Requirements, Costs, and Operational Impacts

As of January 2016, each of the superior courts has already designated a Language Access Representative. The new rule will make clear that this is an ongoing requirement for courts. The additional rule makes clear that the Language Access Representative will be responsible to review and respond to any language access services-related complaints. Adoption of a language access services complaint form and procedures as outlined in the rule should have minimal implementation requirements, costs and operational impacts on the courts. The LAP

Implementation Task Force has developed a model complaint form and court user instructions, which we have shared with all 58 superior courts. The Judicial Council will turn the existing model complaint form and court user instructions into a fillable PDF that is usable by any court, and will also translate the model form and court user instructions into at least eight languages for courts to use as appropriate in order to address the specific language needs of their county. The Task Force will share these documents with courts for posting on their websites. Depending on the nature of any language access complaints, courts may need to make appropriate operational changes to ensure that LEP court users receive appropriate language access services. Beginning in 2018, courts will be required to report to the Judicial Council on a semiannual basis the number and types of complaints received, the resolution status of all complaints, and any additional information about complaints requested by Judicial Council staff to facilitate the monitoring of the *Strategic Plan for Language Access in the California Courts*.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- What would additional implementation requirements be for courts? For example, costs, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), or modifying case management systems.

Attachments and Links

Attachment: Draft Rule 2.850: Language Access Representative

Attachment: Draft Rule 2.851: Language access services complaints

Links:

- *Strategic Plan for Language Access in the California Courts*:
http://www.courts.ca.gov/documents/CLASP_report_060514.pdf
- Language Access Toolkit: <http://www.courts.ca.gov/lap-toolkit-courts.htm>
- Model Complaint Form and Procedures:
<http://www.courts.ca.gov/documents/lap-Model-Procedures-and-Complaint-Form.pdf>

1 **Title 2. Trial Court Rules**

2
3 **Chapter 4. Language Access**

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5 **Article 1. General Provisions**

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7
8 **Rule 2.850. Language Access Representative**

9
10 **(a) Designation of Language Access Representative**

11
12 The court in each county will designate a Language Access Representative. That
13 function can be assigned to a specific job classification or office within the court.

14
15 **(b) Duties**

16
17 The Language Access Representative will serve as the court's language access
18 resource for all court users, as well as court staff and judicial officers, and should
19 be familiar with all the language access services the court provides; access and
20 disseminate all of the court's multilingual written information as requested; and
21 help limited English proficient (LEP) court users and court staff locate language
22 access resources.

23
24 **Advisory Committee Comment**

25
26 **Subdivision (a)** See Recommendation No. 25 of the [Strategic Plan for Language Access in the](#)
27 [California Courts](#), adopted by the Judicial Council on January 22, 2015.

1 Title 2. Trial Court Rules

2
3 Chapter 4. Language Access

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5 Article 1. General Provisions

6
7
8 Rule 2.851. Language access services complaints

9
10 (a) Purpose

11
12 The purpose of this rule is to ensure that each superior court makes available a form
13 on which court users may submit a complaint about the provision of, or the failure
14 to provide, language access and that each court has procedures for handling those
15 complaints.

16
17 (b) Complaint form and procedures required

18
19 Each superior court must adopt a language access services complaint form and
20 complaint procedures that are consistent with this rule.

21
22 (c) Minimum requirement for complaint form

23
24 The language access services complaint form adopted by the court must meet the
25 following minimum requirements:

- 26
27 (1) Be written in plain language;
28
29 (2) Allow court users to submit complaints about how the court provided or
30 failed to provide language services;
31
32 (3) Allow court users to specify whether the complaint relates to court
33 interpreters, other staff or local translations;
34
35 (4) Include the court's mailing address and the contact information for the
36 court's designated Language Access Representative;
37
38 (5) Be made available both in hard copy at the courthouse and online on the
39 courts' website, where court users can complete the form online and then
40 submit to the court by hand, postal mail or e-mail; and
41
42 (6) Be made available in the languages spoken by significant proportions of the
43 county population.

1
2 **(d) General requirements for complaint procedures**

3
4 The complaint procedures adopted by the court must provide for the following:

5
6 (1) Submission and referral of local language access complaints

7
8 (A) Language access complaints may be submitted anonymously.

9
10 (B) Language access complaints regarding local court services should be
11 submitted to the court's designated Language Access Representative.

12
13 (C) A complaint submitted to the improper entity must immediately be
14 forwarded to the appropriate court, if that can be determined, or, where
15 appropriate, to the Judicial Council.

16
17 (2) Acknowledgment of complaint

18
19 Except where the complaint is submitted anonymously, within 10 days after
20 the complaint is submitted, the court's Language Access Representative must
21 send the complainant a written acknowledgment that the court has received
22 the complaint.

23
24 (3) Preliminary review and disposition of complaints

25
26 Within 90 days, the court's Language Access Representative should conduct
27 a preliminary review of every complaint to determine whether the complaint
28 can be informally resolved or closed, or whether the complaint warrants
29 additional investigation. Court user complaints regarding denial of a court
30 interpreter for pending cases should be addressed promptly.

31
32 (4) Procedure for complaints not resolved through the preliminary review

33
34 If a complaint cannot be resolved through the preliminary review process
35 within 90 days, the court's Language Access Representative should inform
36 the complainant (if identified) that the complaint warrants additional review.

37
38 (5) Notice of outcome

39
40 Except where the complaint is submitted anonymously, the court must send
41 the complainant notice of the outcome taken on the complaint.

42
43 (6) Promptness

1
2 The court must process complaints promptly.

3
4 (7) *Records of complaints*

5
6 The court should maintain information about each complaint and its
7 disposition. The court must report to the Judicial Council on a semiannual
8 basis the number and kinds of complaints received, the resolution status of all
9 complaints, and any additional information about complaints requested by
10 Judicial Council staff to facilitate the monitoring of the *Strategic Plan for*
11 *Language Access in the California Courts.*

12
13 (8) *Disagreement (Disputing) Notice of Outcome*

14
15 If a complainant disagrees with the notice of the outcome taken on his or her
16 complaint, within 90 days, he or she may submit a written follow-up
17 statement to the Language Access Representative indicating that he or she
18 disagrees with the outcome of the complaint. The follow-up statement
19 should be brief, specify the basis of the disagreement, and describe the
20 reasons the complainant believes the court's action lacks merit. For example,
21 the follow-up statement should indicate why the complainant disagrees with
22 the notice of outcome or believes that he or she did not receive an adequate
23 explanation in the notice of outcome. The court's response to any follow-up
24 statement submitted by complainant after receipt of the notice of outcome
25 will be the final action taken by the court on the complaint.

26
27
28 **Advisory Committee Comment**

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30 **Subdivision (a)** Judicial Council staff have developed a model complaint form and model
31 local complaint procedures, which are available in the Language Access Toolkit at
32 www.courts.ca.gov/33865.htm. The model complaint form is posted in numerous languages.
33 Courts are encouraged to base their complaint form and procedures on these models.

34
35 **Subdivision (d)(1)** Court user complaints regarding language access that relate to Judicial
36 Council meetings, forms or other translated material hosted on www.courts.ca.gov, should
37 be submitted directly to the Judicial Council at www.courts.ca.gov/languageaccess.htm.