



# JUDICIAL COUNCIL OF CALIFORNIA

LANGUAGE ACCESS PLAN  
IMPLEMENTATION TASK FORCE

[www.courts.ca.gov/LAP.htm](http://www.courts.ca.gov/LAP.htm)  
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## LANGUAGE ACCESS PLAN IMPLEMENTATION TASK FORCE

### MINUTES OF OPEN MEETING

May 10, 2017

12:00 p.m. to 1:00 p.m.

Business Meeting, via Conference Call

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**Advisory Body Members Present:** Hon. Mariano-Florentino Cuéllar; Chair; Hon. Manuel Covarrubias, Vice-Chair; Ms. Naomi Adelson; Hon. Steven Austin; Mr. Kevin Baker; Ms. Angie Birchfield; Ms. Tracy Clark; Hon. Jonathan Conklin; Hon. Dennis Hayashi; Ms. Janet Hudec; Ms. Joann Lee; Ms. Ivette Peña; Hon. Rosendo Peña; Hon. Jonathan Renner; Mr. José Varela; Hon. Brian Walsh; Mr. David Yamasaki; and Hon. Laurie Zelon

**Advisory Body Members Absent:** Hon. Terence Bruiniers; Hon. Michelle Williams Court; Hon. Janet Gaard; Ms. Ana Maria Garcia; Ms. Susan Marie Gonzalez; Mr. Michael Roddy; Dr. Guadalupe Valdés; and Ms. Jeanine Tucker

**Others Present:** Mr. Patrick Ballard; Ms. Lisa Crownover; Ms. Linda Foy; Ms. Diana Glick; Ms. Mary Ann Koory; Mr. Bob Lowney; Ms. Jenny Phu; Mr. Victor Rodriguez; and Ms. Elizabeth Tam-Helmuth.

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#### OPEN MEETING

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##### **Call to Order and Roll Call**

The Task Force Chair, Supreme Court Associate Justice Mariano-Florentino Cuéllar, called the meeting to order at 12:00 p.m. and welcomed everyone to the meeting of the Language Access Plan (LAP) Implementation Task Force (ITF or Task Force), including individuals from the public listening in. Roll was taken.

##### **Approval of Minutes**

The Task Force unanimously approved the January 30, 2017 meeting minutes. In addition, those Task Force members who were present at the March 14, 2017 Community Outreach meeting unanimously approved the March 14 meeting minutes.

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#### **POSSIBLE LANGUAGE ACCESS PLAN IMPLEMENTATION PRIORITIES FOR A BUDGET CHANGE PROPOSAL FOR FISCAL YEAR 2018-19 [POSSIBLE ACTION ITEM]**

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Justice Cuéllar shared that Task Force members, Subcommittee Chairs and other stakeholders have given critical input to help shape the draft Budget Change Proposal (BCP) for Fiscal Year 2018-19. He reminded everyone that the Governor's approved budget for FY 2016-17 includes

an additional \$7 million, ongoing, to support interpreter expansion into all civil matters. However, additional funding is still needed for courts to adequately fulfill the statewide expansion of language access services into all civil matters. Judicial Council staff has been working diligently to come up with cost estimates, utilizing court interpreter usage data, information from the January 2017 civil reporting form, and preliminary information from the March 2017 language access survey that was conducted by the National Center for State Courts (NCSC). There have been many meetings and conversations held in the past few months with the council’s Budget Services staff and with the Task Force’s Subcommittee Chairs.

Due to internal deadlines, including submission of a language access-related BCP to the Budget Services on May 16, we need to review and discuss the draft items for the FY 2018-19 BCP. In the coming months, our Task Force staff will work to incorporate each and every one of these items into the full BCP for FY 2018-19 (which, following approval by other internal advisory committees and ultimately, by the Judicial Council in August 2017, will be submitted to the Department of Finance in September 2017).

Justice Cuéllar identified the four language access BCP items, along with related program staffing, which total \$8,152,000:

Proposed Project	2018-2019	FTEs
Expansion of interpreter services into all civil proceedings	\$4,000,000	
Infrastructure support and non-VRI equipment to help support courts’ language access expansion	\$2,696,000	
Signage grant program for trial courts	\$1,000,000	
Continued development and maintenance of the web-based <i>Language Access Toolkit</i>	\$85,000	
Program staffing	\$371,000	2.0
<b>Total Requested</b>	<b>\$8,152,000</b>	<b>2.0</b>

Judge Austin reviewed the proposed BCP items:

**1. Expansion of Court Interpreter Services into all Civil Proceedings** [\$4,000,000 ongoing]

Expansion into civil cases has been gradual, but courts have made extensive progress since 2015. A recent survey was conducted to gather information regarding each court’s ability to provide interpreters as of December 31, 2016, in each of the eight priority levels under Evidence Code 756. Results indicate that significant expansion in the availability of interpreters in civil proceedings is underway: the average estimated interpreter coverage is 80%+ in each of the eight priority levels, and courts are embracing the Language Access Plan. To reach full expansion, additional funding is needed and Task Force staff has been working with Budget Services staff to develop projections for what

will be needed in the Trial Court Trust Fund (TCTF) 0150037 for upcoming fiscal years. We now have various new pieces of information that we didn't have for prior methodologies, such as detailed survey responses from the courts, and we're trying to figure out the best way to use all of that information together to come up with a solid projection. The preliminary estimate from Budget Services to cover further civil expansion is an additional \$4 million in ongoing monies for TCTF 0150037. Because two of the four interpreter regions are currently in salary negotiations, our request does not include potential wage increases that may result from negotiations in the regions. The Task Force can adjust the amount of funding requested to account for any negotiated wage increases in a Spring Finance Letter, to be sent to the Department of Finance in February 2018.

**2. Infrastructure Support and Non-VRI Equipment to Help Support Courts'**

**Language Access Expansion: Establishment of a *Language Access Infrastructure Reimbursement Fund*** [\$2,000,000 ongoing and \$696,000 one-time, and 0.5 FTE \$87,500]

Funding is requested to support courts' added infrastructure and oversight costs. With the courts' expansion of interpreter services into civil proceedings, the courts are now faced with increased volume of interpreter services to oversee and additional infrastructure expenses. As a general rule, courts do not receive reimbursements for administrative costs of interpreter services. As identified in the recent 2017 NCSC language access survey, in order for the courts to fully expand language access services and fully implement the Language Access Plan, additional funding is paramount for infrastructure support to pay for associated additional non-reimbursable services related to the language access expansion, such as court interpreter supervision, coordination or scheduling of staff, translation of key local documents for LEP court users, bilingual pay-differentials to hire and retain qualified bilingual staff, multi-lingual signage needs, and language access-related equipment. In addition, the current language access expansion effort taking place in the courts requires courts to have updated/upgraded quality interpreter wireless communication equipment and headsets, which enable court interpreters to work more efficiently with LEP parties and witnesses. In addition to the \$2,000,000 ongoing request for infrastructure support, we request a one-time funding augmentation of \$696,000 specifically to assist the courts with the purchase of upgraded wireless equipment and headsets for court interpreters statewide. A 0.5 FTE position ongoing will be included in the request to support the infrastructure reimbursement program.

**3. Establishment of a *Signage Grant Program for the Trial Courts*** [\$1,000,000 ongoing, and 0.5 FTE \$87,500]

This funding request for a signage grant program is tied to the recent report on wayfinding and signage strategies for courts ("Wayfinding and Signage Strategies for Language Access in the California Courts: Report and Recommendations"), which will be presented to the Judicial Council on May 18. Easy-to-understand signage is essential to help limited English proficient (LEP) court users navigate the courthouse and ensure they

receive appropriate services. The Signage Grant Program for the courts will prescribe guidance, consideration, and funding to courts that seek reimbursement for costs incurred in the development of easy-to-understand signage that is essential to help LEP court users navigate the courthouses and ensure they receive appropriate services. A 0.5 FTE position is requested to work collaboratively with the Budget Services office to manage and coordinate this grant program.

**4. Continued Development and Maintenance of the Web-based Language Access**

**Toolkit** [\$49,000 ongoing and 1.0 FTE \$175,000]

Funding is being requested for the further development, expansion, and maintenance of the online Language Access Toolkit, for disseminating the work of the Task Force and supporting local courts in their efforts to provide language access to LEP court users. The Task Force has generated a number of important tools for courts and has developed an initial framework for a centralized access point and repository for all language access resources and materials. The additional funding would be used to: (1) build out the site for full functionality for courts and add sections for LEP court users who speak one of the top eight languages in California to be connected with information available on the statewide and local levels in their language, including information sheets, videos and other resources; and (2) to support the production of multilingual outreach videos to be included in the Toolkit and other venues. A 1.0 FTE position is requested to continually manage the site's content, serve as subject matter expert for translated documents, and provide technical maintenance on the site.

**Action Taken:** Motion and second to accept and approve the four budget items for a FY 2018-19 BCP. The eighteen (18) Task Force members present were unanimously in favor; none opposed.

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**CLOSING AND ADJOURNMENT**

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Following our approval today, Judicial Council staff will prepare the language access-related BCP items for submittal to Budget Services. Later this month, the language access-related BCP items will be submitted to all applicable advisory committees for approval. The Judicial Branch Budget Committee will meet on June 16 to review, approve, and prioritize various BCPs for the branch. The Chairs will work with Judicial Council staff to prepare the language access-related items so the FY 2018-19 BCP can be approved through the council's BCP process over the next several months.

If Task Force members have any questions about the BCP process, they should feel free to contact the chairs or council staff.

There being no further business, the meeting was adjourned at 1:00 p.m.

Approved by the advisory body on [insert date].



## JUDICIAL COUNCIL OF CALIFORNIA

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on: November 17, 2017

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Title	Agenda Item Type
Language Access: Proposed Rules of Court, Rule 2.850: Language Access Representative, and Rule 2.851: Language Access Services Complaints	Action Required
	Effective Date
	January 1, 2018
Rules, Forms, Standards, or Statutes Affected	Date of Report
Adopt Rules 2.850 and 2.851	August 2, 2017
Submitted by	Contact
Language Access Plan Implementation Task Force	Douglas G. Denton, 415-865-7870 <a href="mailto:douglas.denton@jud.ca.gov">douglas.denton@jud.ca.gov</a>
Hon. Mariano-Florentino Cuéllar, Chair	Elizabeth Tam-Helmuth, 415-865-4604 <a href="mailto:elizabeth.tam@jud.ca.gov">elizabeth.tam@jud.ca.gov</a>
Hon. Manuel J. Covarrubias, Vice-Chair	

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### Executive Summary

The Language Access Plan Implementation Task Force recommends that the Judicial Council adopt rules 2.850 and 2.851 of the California Rules of Court to require each superior court to: (1) designate a Language Access Representative; and (2) adopt a language access services complaint form and complaint procedures. The new rules support Recommendations 25, 62 and 63 in the *Strategic Plan for Language Access in the California Courts*, adopted by the council in January 2015.

### Recommendation

The Language Access Plan Implementation Task Force (Task Force) recommends that the Judicial Council, effective January 1, 2018, adopt:

1. Rule 2.850 to require each superior court to designate a Language Access Representative.

2. Rule 2.851 to require each superior court 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 superior court- produced translations.

The text of the new rules is attached at pages X–X.

### **Previous Council Action**

On January 22, 2015, the Judicial Council adopted the *Strategic Plan for Language Access in the California Courts* (the Language Access Plan or LAP), which provides a consistent statewide approach to ensure language access for all LEP court users in California's 58 superior courts. The Language Access Plan includes the following Phase 1 recommendations,<sup>1</sup> which specifically address the importance of language access representatives as well as complaint procedures, and form the basis for the new proposed rules:

LAP Recommendation 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.

LAP Recommendation 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.

LAP Recommendation 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

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<sup>1</sup> Forty-seven (47) of the LAP recommendations are designated as Phase 1 recommendations, meaning that the recommendation should already be in place or work to implement it should have commenced in 2015. An additional 23 of the LAP recommendations are designated as Phase 2 recommendations, meaning that work to implement these recommendations should begin no later than 2016 or 2017.

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.

### **Rationale for Recommendation**

Consistent with LAP Recommendation 25, rule 2.850 requires that each superior court designate a Language Access Representative to serve as the language access resource for all court users, as well as court staff and judicial officers. As of January 2016, each of the 58 superior courts has already designated a Language Access Representative. The rule will make clear that this is an ongoing requirement for courts.

Rule 2.851 implements Recommendations 62 and 63 of the Language Access Plan. It requires each court to adopt a language access services complaint form and related procedures for the Language Access Representative to respond to complaints. The task force developed a model complaint form and procedures for LEP court users to register language access complaints, and individual courts may choose to adopt their form and process on the model form. Rule 2.851 will make clear that all courts must develop a complaint form and process. The rule preserves court flexibility by establishing minimum requirements for the complaint form. Under those requirements, the complaint form must be written in plain language; allow court users to specify that the complaint is related to a court interpreter, other staff, or local translation; and that it be available at the courthouse and online. The rule provides procedures for courts to receive and respond to complaints, and requires that complaints 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.

As long as an individual court's complaint form is consistent with the minimum requirements of rule 2.851(c), that court may continue to use its existing language access complaint form and procedures. A court may also decide to create a new complaint form and/or procedures after the rule, and may adopt the model form and recommended procedures that were developed by the task force. Adoption of rule 2.851 will benefit the judicial branch, justice partners, attorneys, self-represented litigants, and others by ensuring that LEP court users who may not have been provided a court interpreter will, as appropriate and needed, receive a court interpreter, and by alerting the court of any other language access services that may need to be provided, remedied, or improved upon.

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

#### **Comments**

This proposal was circulated for public comment from February 27 to April 28, 2017. The task force received twelve comments. Commenters included six superior courts; the State Bar of California, Office of Legal Affairs, Standing Committee on the Delivery of Legal Services; a local bar association; several legal services organizations; and the Joint Rules Subcommittee of the Trial Court Presiding Judges Advisory Committee and Court Executives Advisory Committee (JRS).

Specifically, there were no comments regarding rule 2.850. Three commenters (Los Angeles Superior Court, Orange Superior Court, and the Orange County Bar Association) agreed with proposed rules 2.850 and 2.851 with no modifications. The other nine commenters agreed with rule 2.851 if modifications were made. A chart with the full text of the comments received and the task force's responses is attached at pages XX—XX.

In response to commenters' suggestions, rule 2.851 has been modified to:

- Add the following language: “Language access complaints may be submitted orally or in other written formats; however, use of the court’s local form is encouraged to ensure tracking and that complainants provide full information to the court.”
- Indicate that the complaint form that is available in hard copy at the courthouse and online on the courts’ website must be free.
- Add that the form must include an e-mail contact to show court users how to submit a language access complaint.
- Add a provision that allows courts one year for implementation—up to December 31, 2018—to address court concerns regarding additional staff workload, including training, under the rule’s provisions.
- Provide that each court, through a preliminary review process, should strive to resolve language access complaints within 60 days. The rule also provides that courts should address court user complaints regarding denial of a court interpreter for a courtroom proceeding for pending cases promptly.

To address comments regarding implementation, the task force added an advisory committee comment to indicate that for simple language access-related complaints that can be resolved quickly, a written response to the complainant indicating that the complaint has been resolved will suffice as both acknowledgement of the complaint and notice of outcome. The advisory committee comments also provide that (1) courts should maintain the privacy of individuals named in the complaint, and (2) reporting to the Judicial Council regarding the overall numbers, kinds and disposition of language access-related complaints will not include the names of individuals or any other information that may compromise an individual’s privacy concerns.

To address reporting of language access complaints, the proposed rule has been modified to say: “The court must report to the Judicial Council on an *annual* basis the number and kinds 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*.” Judicial Council staff will provide guidance to courts regarding the kind of information concerning any language access complaints that will be requested on an annual basis following implementation of the rule.

Legal services providers and other commenters provided a number of suggestions that require clarification of the scope and intent of the rule and the language access complaint process. These



include the following clarifications, which are highlighted below and included in the comment chart:

- The language access complaint process is administrative in nature and complaints will not be included in case files. As with any court user complaint, courts will maintain court records and maintain the privacy of individuals who submitted a complaint outside the context of the complaint.
- Complaints must be submitted in English. Therefore, court responses to language access complaints will be in English. To assist court users, the Judicial Council plans to translate the model form into the state's top eight languages. It will be up to local courts to determine if the form should be translated into additional languages based on their local population needs.
- The proposed rule does not require court users to use the model complaint form; each court must have a form and establish procedures for submission of complaints. However, the rule does not provide that the form is the exclusive means of submitting a complaint (see also above for modification to rule 2.851).
- The language access complaint process is meant to be administrative in nature, not adjudicative. Because language access complaints are administrative in nature, they do not require judicial review. The task force does not recommend instituting a higher level of review or publishing outcomes of complaints.
- Courts may decide whether notices for court users should include language regarding submission of court user complaints on language access; however, this is not recommended to be a requirement of the proposed complaint form rule.
- When needed, additional information regarding language access complaint(s) will be limited to Judicial Council staff asking the court for clarification regarding the nature of the specific complaint(s) received.

### **Alternatives considered**

*Note: revise this paragraph as appropriate after August 9, 2017 task force phone call. The task force's role is to advise the Judicial Council on implementation of the LAP's recommendations. The task force leadership determined that any failure to adopt either of these rules may result in inconsistent practices across the state and would not support statewide implementation of LAP Recommendations 25, 62 and 63. At an open meeting on August 9, 2017, the task force discussed the public comments received and the proposed modifications to the rules described here. The task force voted X-X in support of this proposal.*

### **Policy implications**

Rule 2.851 addresses LAP Recommendations 62 and 63, which are Phase 1 recommendations. For Phase 2, pursuant to LAP Recommendation 64, the Professional Standards and Ethics Subcommittee of the Court Interpreters Advisory Panel (CIAP) is currently developing a process by which the quality and accuracy of an interpreter's skills and adherence to ethical requirements

can be reviewed.<sup>2</sup> The task force is partnering with the Professional Standards and Ethics Subcommittee of CIAP, as appropriate, to ensure consistency between (i) the model complaint form and proposed rules and (ii) CIAP’s development of related policies and procedures regarding interpreter review and discipline. The National Center for State Courts (NCSC) is working in consultation with the Judicial Council staff to assist the CIAP on LAP Recommendation 64, but their work is not anticipated to be completed, including any public comment and revision regarding new rules or procedures, until 2019 or 2020.

The task force also added an Advisory Committee Comment to the rule that states, “If a complaint alleges action against a court employee that could lead to discipline, the court will process the complaint consistent with the court’s applicable Memoranda of Understanding, personnel policies, and/or rules.”

Requiring each superior court to develop a language access complaint form and complaint process will support the successful monitoring and implementation of the LAP. Task force members (court staff and judicial officers) have informed us that several courts throughout the state, including several large courts, have already successfully implemented a language access complaint process; those courts receive relatively few complaints, and any complaints received are promptly addressed at the local court level. Pending completion of the court interpreter review and/or disciplinary process being undertaken by the CIAP, courts should continue to handle court interpreter complaints under their existing procedures and those to be adopted pursuant to the rule. Courts are encouraged to consult the Judicial Council’s Court Interpreters Program for guidance if a complaint rises to a level that may require corrective action, including revoking a court interpreter’s status as a certified or registered interpreter. Court interpreter complaints that rise to this level are rare, but a court should address and remedy such complaints following their existing procedures, working closely with the staff at the Judicial Council, as appropriate.

The task force views a language access-related complaint process as essential to overall LAP implementation success, since it assists in monitoring and remedying any language access-related issues, and provides a protocol for court users or their advocates to identify issues concerning the court’s provision of, or failure to provide, appropriate language access services, including issues related to locally produced translations.

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<sup>2</sup> LAP Recommendation 64 states, “The Judicial Council, 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. This process will allow for appropriate remedial action, where required, to ensure certified and registered interpreters meet all qualification standards. Development of the process should include determination of whether California Rule of Court 2.891 (regarding periodic review of court interpreter skills and professional conduct) should be amended, repealed, or remain in place. Once the review process is created, information regarding how it can be initiated must be clearly communicated to court staff, judicial officers, attorneys, and in plain language to court users (e.g., LEP persons and justice partners). (Phase 2)”

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

Commenters noted that rule 2.851 may result in additional training that will require the commitment of staff time and court resources. For example, court-assigned Language Access Representatives will require training on the use of the language access complaint form and procedures to ensure complaints are answered in a timely manner, and the handling of complaints may result in additional workload. The council's Language Access Services and Court Interpreters Program staff anticipate they will begin conducting regular meetings (via phone calls or WebEx) with the courts' Language Access Representatives to provide guidance and answer questions that will help all courts develop best practices regarding language access services, including handling any language access-related complaints. Following adoption of rule 2.851, Judicial Council staff plan to update the model language access complaint form and procedures, translate the model form into the state's top eight languages, and share the translations with the courts to use or adapt for their language access complaint form and/or process as appropriate. The council will also begin collecting information from courts on an annual basis regarding the numbers and kinds of language access-related complaints received to assist with ongoing monitoring and successful implementation of the LAP. In its implementation efforts, courts can choose to continue to use its existing language access complaint form and procedures, or it may model a new complaint form and/or procedures after the rule and the model form and recommended procedures that were developed by the task force.

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

The Language Access Plan recommendations furthered by this proposal support Goal I of the Judicial Council's 2006–2012 strategic plan—Access, Fairness, and Diversity—which sets forth that:

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

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

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

Finally, the LAP also aligns with the Chief Justice's Access 3D framework and enhances equal access to justice for court users with limited English proficiency.

## **Attachments and Links**

1. Cal. Rules of Court, rules 2.850 and 2.851, at pages XX–X
2. Chart of comments, at pages XX–XX

1 **Title 2. Trial Court Rules**

2  
3 **Chapter 4. Language Access**

4  
5 **Article 1. General Provisions**

6  
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

4  
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. Courts must implement this rule as soon as reasonably possible but no  
16 later than December 31, 2018.

17  
18 (b) Complaint form and procedures required

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

22  
23 (c) Minimum requirement for complaint form

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

- 27  
28 (1) Be written in plain language;  
29  
30 (2) Allow court users to submit complaints about how the court provided or  
31 failed to provide language services;  
32  
33 (3) Allow court users to specify whether the complaint relates to court  
34 interpreters, other staff or local translations;  
35  
36 (4) Include the court's mailing address and an e-mail contact to show court users  
37 how they may submit a language access complaint;  
38  
39 (5) Be made available for free both in hard copy at the courthouse and online on  
40 the courts' website, where court users can complete the form online and then  
41 submit to the court by hand, postal mail or e-mail; and  
42

1           (6) Be made available in the languages spoken by significant proportions of the  
2           county population.

3  
4   **(d) General requirements for complaint procedures**

5  
6           The complaint procedures adopted by the court must provide for the following:

7  
8           (1) Submission and referral of local language access complaints

- 9  
10           (A) Language access complaints may be submitted anonymously.  
11  
12           (B) Language access complaints may be submitted orally or in other written  
13           formats; however, use of the court’s local form is encouraged to ensure  
14           tracking and that complainants provide full information to the court.  
15  
16           (C) Language access complaints regarding local court services should be  
17           submitted to the court’s designated Language Access Representative.  
18  
19           (D) A complaint submitted to the improper entity must immediately be  
20           forwarded to the appropriate court, if that can be determined, or, where  
21           appropriate, to the Judicial Council.

22  
23           (2) Acknowledgment of complaint

24  
25           Except where the complaint is submitted anonymously, within 30 days after  
26           the complaint is submitted, the court’s Language Access Representative must  
27           send the complainant a written acknowledgment that the court has received  
28           the complaint.

29  
30           (3) Preliminary review and disposition of complaints

31  
32           Within 60 days, the court’s Language Access Representative should conduct  
33           a preliminary review of every complaint to determine whether the complaint  
34           can be informally resolved or closed, or whether the complaint warrants  
35           additional investigation. Court user complaints regarding denial of a court  
36           interpreter for a courtroom proceeding for pending cases should be addressed  
37           promptly.

38  
39           (4) Procedure for complaints not resolved through the preliminary review

40  
41           If a complaint cannot be resolved through the preliminary review process  
42           within 60 days, the court’s Language Access Representative should inform  
43           the complainant (if identified) that the complaint warrants additional review.

1  
2 (5) Notice of outcome

3  
4 Except where the complaint is submitted anonymously, the court must send  
5 the complainant notice of the outcome taken on the complaint.

6  
7 (6) Promptness

8  
9 The court must process complaints promptly.

10  
11 (7) Records of complaints

12  
13 The court should maintain information about each complaint and its  
14 disposition. The court must report to the Judicial Council on an annual basis  
15 the number and kinds of complaints received, the resolution status of all  
16 complaints, and any additional information about complaints requested by  
17 Judicial Council staff to facilitate the monitoring of the *Strategic Plan for*  
18 *Language Access in the California Courts.*

19  
20 (8) Disagreement (Disputing) Notice of Outcome

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

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35 **Advisory Committee Comment**

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37 **Subdivision (a)** Judicial Council staff have developed a model complaint form and model  
38 local complaint procedures, which are available in the Language Access Toolkit at  
39 [www.courts.ca.gov/33865.htm](http://www.courts.ca.gov/33865.htm). The model complaint form is posted in numerous languages.  
40 Courts are encouraged to base their complaint form and procedures on these models. If a  
41 complaint alleges action against a court employee that could lead to discipline, the court will  
42 process the complaint consistent with the court's applicable Memoranda of Understanding,  
43 personnel policies, and/or rules.



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

**Subdivision (d)(2) and (d)(5)** For non-complicated language access-related complaints that can be resolved quickly, a written response to complainant indicating that the complaint has been resolved will suffice as both acknowledgement of the complaint and notice of outcome.

**Subdivision (d)(5)** When appropriate, a written response to complainant indicating that the language access complaint has been resolved will suffice as notice of outcome. Courts should maintain the privacy of individuals named in the complaint.

**Subdivision (d)(7)** Reporting to the Judicial Council regarding the overall numbers, kinds and disposition of language access-related complaints will not include the names of individuals or any other information that may compromise an individual's privacy concerns.

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**Language Access: Designation of Language Access Representative and Handling Complaints** (Proposed Rule: Adopt California Rules of Court, Rules 2.850 and 2.851)

All comments are verbatim unless indicated by an asterisk (\*).

**FOR TASK FORCE CONSIDERATION**

<b>List of All Commenters, Overall Positions on the Proposal, and General Comments</b>				
	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
1.	Legal Services of Northern California by Stephen E. Goldberg, Regional Counsel	AM	See comments on specific provisions below.	
2.	National Housing Law Project by Renee Williams, Staff Attorney	AM	See comments on specific provisions below.	
3.	Orange County Bar Association by Michael L. Baroni, President	A	Yes, the proposal addresses the stated purpose.	No response required.
4.	Other Legal Services Providers (signed by several legal services organizations)	AM	See comments on specific provisions below.	
5.	State Bar of California Office of Legal Affairs, Standing Committee on the Delivery of Legal Services by Sharon Djemal, Chair, Standing Committee on the Delivery of Legal Services	AM	See comments on specific provisions below.	
6.	Superior Court of Los Angeles County (no name provided)	A	In 2016, the Los Angeles Superior Court implemented LAP Recommendations 25, 62 and 63. These requirements under proposed new rules 2.850 and 2.851 have been met.	No response required.
7.	Superior Court of Orange County (no name provided)	A		No response required.
8.	Superior Court of Placer County by Jake Chatters, Court Executive Officer	AM	See comments on specific provisions below.	
9.	Superior Court of Riverside County (no name provided)	AM	See comments on specific provisions below.	

Positions: A = Agree; AM = Agree if modified; N = Do not agree.

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<b>List of All Commenters, Overall Positions on the Proposal, and General Comments</b>				
	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
10.	Superior Court of San Bernardino County (no name provided)	AM	See comments on specific provisions below.	
11.	Superior Court of San Diego County by Mike Roddy, Court Executive Officer	AM	See comments on specific provisions below.	
12.	TCPJAC/CEAC Joint Rules Subcommittee (JRS) by Trial Court Presiding Judges Advisory Committee and Court Executives Advisory Committee	AM	See comments on specific provisions below.	

Positions: A = Agree; AM = Agree if modified; N = Do not agree.

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**Language Access: Designation of Language Access Representative and Handling Complaints (Proposed Rule: Adopt California Rules of Court, Rules 2.850 and 2.851)**

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**FOR TASK FORCE CONSIDERATION**

<b>Proposed Rule: Adopt California Rules of Court, Rules 2.850 and 2.851 — To require each superior court to: 1. Designate a Language Access Representative; and 2. Adopt a language access services complaint form and complaint procedures.</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
Legal Services of Northern California by Stephen E. Goldberg, Regional Counsel	<p>LSNC does have some concerns about the proposed Rules of Court.</p> <p>1. The proposed rules at least imply that the official form will be the only mechanism to file a formal language access complaint. While LSNC agrees there should be a standard complaint form, that form should not be the only mechanism to file a formal complaint. Any complaint about language access should be accepted and processed, even if that complaint is not on the complaint form. This is particularly important for this form because, while the proposed rule requires that the form be translated into languages spoken by a significant portion of the county population, there will be languages spoken by court users for which the complaint form has not been translated, and there will be court users who are unable to understand the form even in their primary language. These court users must be able to submit complaints in a manner other than the complaint form. In addition, court users who speak a language that the complaint form is not translated into must be allowed to submit the complaint in their primary language, and requiring use of the complaint form will prevent those court users from submitting complaints. Allowing alternative mechanisms was the approach taken for the interpreter request form by designating that form as a model form. The same approach should be used for the complaint form. LSNC acknowledges that the current complaint form is designated as a model form. However, the court rule should specify that the complaint form is exclusive and that a written complaint is not required.</p>	<p>The Task Force thanks the commenter for its comments and suggestions.</p> <p>Rule 2.851 has been modified to include the following language: “Language access complaints may be submitted orally or in other written formats; however, use of the court’s local form is encouraged to ensure tracking and that complainants provide full information to the court.”</p> <p>The proposed rule does not require that court users must use the model form for a complaint; each court must have a form and establish procedures for submission of complaints; the rule does not say that the form is the exclusive means of submitting a complaint.</p> <p>Complaints must be submitted in English. Therefore, court responses to language access complaints will be in English. To assist court users, the Judicial Council plans to translate the model form into the state’s top eight languages. It will be up to local courts to determine if the form should be translated into additional languages based on their local population needs.</p>

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<b>Proposed Rule: Adopt California Rules of Court, Rules 2.850 and 2.851 — To require each superior court to: 1. Designate a Language Access Representative; and 2. Adopt a language access services complaint form and complaint procedures.</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
	<p>2. The new rules should specify that the complaint form be made available at local courts free of charge. While the rule states that the form must be available both in paper and electronically, it does not specify that the paper form or a printout of the electronic version be available free of charge.</p> <p>3. The translation requirement for the complaint form is vague. The proposed rule states the complaint form should be translated into languages spoken by a “significant portion of the county population” without defining what a “significant portion” is. The translation requirement for the form should be the translation standard under Title VI of the Civil Rights Act of 1964, which requires translation for languages spoken by 5% of the population in the area served by the court branch, or 1,000 speakers in the area served by the court branch, whichever is less.</p> <p>4. The new rules should specify that the court signage stating the right to an interpreter include the right to file a complaint regarding interpreter access.</p> <p>5. The data gathering requirement should be more detailed. The rules should specify that the data to be gathered includes, at a minimum, the language at issue in the complaint, in order to track if there any particularly problematic languages; the subject of the complaint (courtroom services,</p>	<p>The rule has been modified to indicate that the complaint form should, “Be made available for free both in hard copy at the courthouse and online on the courts’ website, where court users can complete the form online and then submit to the court by hand, postal mail or e-mail;”</p> <p>To assist court users, the Judicial Council plans to translate the model form into the state’s top eight languages. It will be up to local courts to determine if the form should be translated into additional languages based on their local population needs.</p> <p>Courts may decide whether notices for court users should include language regarding court user complaints; however, this is not recommended to be a requirement of the proposed complaint form rule.</p> <p>The rule indicates that reporting to the Judicial Council will be limited to the numbers, kinds and disposition of language access-related complaints. To not overly burden courts, the rule has been modified to indicate that the Judicial Council will ask courts for this</p>

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**Language Access: Designation of Language Access Representative and Handling Complaints** (Proposed Rule: Adopt California Rules of Court, Rules 2.850 and 2.851)

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<b>Proposed Rule: Adopt California Rules of Court, Rules 2.850 and 2.851 — To require each superior court to: 1. Designate a Language Access Representative; and 2. Adopt a language access services complaint form and complaint procedures.</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
	<p>counter services, other court services such as family law facilitators etc.); the reason for the complaint; and the number and disposition of second level appeals. For the first two years, this data should be reviewed quarterly instead of semi-annually to ensure that the complaint process is proceeding in each court.</p> <p>6. The 90 day review time is too long. Given that there will be a designated court employee to review these complaints, it should be possible to investigate and respond to complaints in 30 to 45 days. In addition, there must be a mechanism to request an expedited resolution of a complaint when there is an upcoming hearing or an emergency need for court services such as the family law facilitator.</p> <p>7. The second level appeal should be to someone other than the court Language Access Representative because that is the person who already adversely decided the complaint. An appeal to the same person who already adversely decided the complaint is not an appropriate or impartial appeal. LSNC recommends that the second level appeal be to either a designated judge, or to the presiding judge who can either</p>	<p>information regarding language access-related complaints once a year (on an annual basis). The language access complaint process is meant to be administrative in nature, not adjudicative. The Task Force does not recommend instituting a higher level of review or publishing outcomes of complaints. Because language access complaints are administrative in nature, they do not require judicial review.</p> <p>The proposed rule has been modified to indicate that each court should respond to complaints within 60 days. Additional changes to the rule have been made to give courts more time to respond to language access-related complaints (see Rule 2.851(d)(2) and (d)(4)). An Advisory Committee Comment has also been added to the rule to indicate that for non-complicated language access-related complaints that can be resolved quickly, a written response to complainant indicating that the complaint has been resolved will suffice as both acknowledgement of the complaint and notice of outcome.</p> <p>The language access complaint process is meant to be administrative in nature, not adjudicative. The Task Force does not recommend instituting a higher level of review or publishing outcomes of complaints. Because language access complaints are administrative in nature, they do not require judicial review.</p>

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<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
	decide the complaint or delegate that decision to available judges on a case-by-case basis.	
National Housing Law Project by Renee Williams, Staff Attorney	Proposed rule 2.851 should include a provision mandating that all personally identifiable information regarding court users provided in the context of a language access complaint will be subject to strict confidentiality measures. Specifically, the rule should require that complainants’ personally identifiable information submitted as part of a court’s language access complaint procedures (such as name, address, phone number, and e-mail address) not be disclosed to a third party outside the context of the language access complaint procedures without the court user’s (complainant’s) consent. Personally identifiable information should be removed from written decisions, appeals, or reports issued by an individual court or the Judicial Council regarding language access complaints before such documents are made publicly available.	The Task Force thanks the commenter for its comments and suggestions. The language access complaint process is administrative in nature and complaints will not be included in case files. As with any court user complaint, courts will maintain court records and maintain the privacy of individuals who submitted a complaint outside the context of the complaint. An Advisory Committee Comment has been added to the rule to indicate that (1) courts should maintain the privacy of individuals named in the complaint, and (2) reporting to the Judicial Council regarding the overall numbers, kinds and disposition of language access-related complaints will not include the names of individuals or any other information that may compromise an individual’s privacy.
Other Legal Services Providers (signed by several legal services organizations)	(*Excerpt provided below)  We would like to highlight the recommendations below, which we believe will greatly enhance Proposed Rule of Court 2.851 in its efforts to establish a multifaceted complaint procedure and ensure the quality of language access services delivered.  <b>1. Complaints Should Be Accepted &amp; Processed in Other Languages</b> We recognize that that the proposed rule notes that the complaint form must be available in languages spoken by significant proportions of the county population. The proposed	The Task Force thanks the commenters for their comments and suggestions.  Rule 2.851 has been modified to include the following language: “Language access complaints may be submitted orally or in other written formats; however, use of the court’s local form is encouraged to ensure tracking and that complainants provide full information

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<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
	<p>rule should also make clear that the court must accept forms and any follow-up statements that complainants complete and submit in different languages. The court should translate the completed forms and other statements and process them accordingly and without undue delay.</p> <p>Further, complainants should be allowed to choose the language in which they prefer to receive the court’s written acknowledgement and the results of their complaint. All correspondence to complainants regarding their complaints should be in the preferred language and English.</p> <p><b>2. Clear Notice of Complaint Process Must Be Posted</b> Each court should be required to post multilingual notices, visibly and prominently, throughout the courthouse. The notices must contain information on the right to file a complaint if LEP court users are denied languages accessible services, or receive inadequate interpretation and translation services. An example of such a notice can be found here: <a href="http://www.lep.gov/resources/012314_NC_lang.Acc.Poster.pdf">http://www.lep.gov/resources/012314_NC_lang.Acc.Poster.pdf</a></p> <p><b>3. Review and Processing Period Should Be Much Shorter</b> The proposed rule’s 90-day period within which the court’s Language Access Representative must respond should be shortened due to the likelihood that any delay greater than 30</p>	<p>to the court.” The proposed rule does not require that court users must use the model form for a complaint; each court must have a form and establish procedures for submission of complaints; the rule does not say that the form is the exclusive means of submitting a complaint.</p> <p>Complaints must be submitted in English. Therefore, court responses to language access complaints will be in English. To assist court users, the Judicial Council plans to translate the model form into the state’s top eight languages. It will be up to local courts to determine if the form should be translated into additional languages based on their local population needs.</p> <p>Courts may decide whether notices for court users should include language regarding court user complaints; however, this is not recommended to be a requirement of the proposed complaint form rule.</p> <p>The proposed rule has been modified to indicate that each court should respond to complaints within 60 days. Additional changes to the rule have been made to give courts more time to respond to language access-related</p>



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<b>Proposed Rule: Adopt California Rules of Court, Rules 2.850 and 2.851 — To require each superior court to: 1. Designate a Language Access Representative; and 2. Adopt a language access services complaint form and complaint procedures.</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
	<p>days could negatively impact a complainant’s case. The period should be between 15 and 30 days, and there should be a method for requesting expedited review, ideally within 7 days, if there is an upcoming hearing where an interpreter is required or other critical deadline.</p> <p><b>4. There Must Be a Higher Level of Review for Appeals</b> In the proposed rule, the only mechanism to address an unsatisfactory outcome is to submit a written follow-up statement to the Language Access Representative. The court’s response is then the final action. This process is fundamentally unfair as the follow-up goes to the same individual who issued the initial unsatisfactory decision for resolution. There must be a higher level of review within the local court who will review the Language Access Representative’s decision upon appeal and issue a written decision in a timely manner. This addition is not only to provide an unbiased appeals process to the complainant, but to document systemic issues and potential problems with the court’s complaint process. Upon exhausting this higher level of review within the court, the complainant should have another opportunity to appeal at a statewide level. The Judicial Council should create or designate an existing entity to review such complaints and issue written decisions, which can serve as binding precedent.</p>	<p>complaints (see Rule 2.851(d)(2) and (d)(4)). An Advisory Committee Comment has also been added to the rule to indicate that for non-complicated language access-related complaints that can be resolved quickly, a written response to complainant indicating that the complaint has been resolved will suffice as both acknowledgement of the complaint and notice of outcome.</p> <p>The language access complaint process is meant to be administrative in nature, not adjudicative. The Task Force does not recommend instituting a higher level of review or publishing outcomes of complaints. Because language access complaints are administrative in nature, they do not require judicial review.</p>

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<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
	<p><b>5. Documentation of Complaint Process Data and Information</b> The proposed rule indicates that the court should maintain information on complaints and their dispositions and report information to the Judicial Council on a semiannual basis. This practice should be expanded to include quarterly reporting as well as more details regarding the bases for complaints, their specific resolutions, and any subsequent appeals or requests for further review. All of this information should be made available to the public. Further, with an expanded system for appeals as recommended above, the Judicial Council should publish written decisions of appeals on the Judicial Council website, available to the public. The Implementation Task Force or similar entity should review all records quarterly for the first two years of the administration, then annually to identify problems with implementation and corrective action.</p> <p><b>6. The Complaint Form Should Be Accessible and Complaints in Alternate Methods Must Also Be Accepted</b> The complaint form must also be available in paper at the courthouse because many low-income litigants may 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 it should be accepted in person, by mail, by fax, or electronically. Standard court charges for website searches and downloads must not apply to the complaint form because that will deprive low-income litigants of the right to file a complaint.</p>	<p>The rule indicates that reporting to the Judicial Council will be limited to the numbers, kinds and disposition of language access-related complaints. To not overly burden courts, the rule has been modified to indicate that the Judicial Council will ask courts for this information regarding language access-related complaints once a year (on an annual basis). The language access complaint process is meant to be administrative in nature, not adjudicative. The Task Force does not recommend instituting a higher level of review or publishing outcomes of complaints. Because language access complaints are administrative in nature, they do not require judicial review.</p> <p>The rule has been modified to include the following language: “Language access complaints may be submitted orally or in other written formats; however, use of the court’s local form is encouraged to ensure tracking and that complainants provide full information to the court.”</p>

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<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
	Further, the official 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 and processed, even if that complaint not conveyed via the complaint form.	
State Bar of California Office of Legal Affairs, Standing Committee on the Delivery of Legal Services by Sharon Djemal, Chair, Standing Committee on the Delivery of Legal Services	SCDLS offers the following suggestions regarding the language access services complaint form requirements and procedures contained in proposed new rule 2.851: <ul style="list-style-type: none"><li>- Add language to the rule that allows all complaints, even if submitted in languages other than English, so that the court can translate them and process them accordingly.</li><li>- Clarify what can be included in the complaint: (1) quality or accuracy of an interpreter’s skills and adherence to ethical requirements; (2) the quality of translations approved by the Judicial Council; or (3) provision of, or failure to provide, appropriate language access services.</li></ul>	The Task Force thanks the commenter for their comments and suggestions.  Complaints must be submitted in English. Therefore, court responses to language access complaints will be in English. To assist court users, the Judicial Council plans to translate the model form into the state’s top eight languages. It will be up to local courts to determine if the form should be translated into additional languages based on their local population needs.  Rule 2.851 indicates that the complaint form must allow court users to specify whether the complaint relates to court interpreters, other staff or local translations. See 2.851(c)(3). The task force declines to require specificity in the rule concerning the permissible types of complaints.

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<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
	<ul style="list-style-type: none"><li>- Make the official complaint form an optional vehicle for filing a complaint, rather than a mandatory one. Any complaint about language access should be accepted, even if it was not submitted on the complaint form.</li><li>- Add a higher level of review of local complaints where the outcome can be appealed to another centralized body (Judicial Council or Task Force), where there can be published decisions as binding precedent.</li><li>- The 90 day response period is too long. SCDLS suggests a priority system be in place. For example, if a person was denied an interpreter and has a hearing coming up, this should be given priority. Otherwise, the response period should be shortened to 30 days.</li></ul>	<p>The rule has been modified to include the following language: “Language access complaints may be submitted orally or in other written formats; however, use of the court’s local form is encouraged to ensure tracking and that complainants provide full information to the court.” The proposed rule does not require that court users must use the model form for a complaint; each court must have a form and establish procedures for submission of complaints; the rule does not say that the form is the exclusive means of submitting a complaint.</p> <p>The language access complaint process is meant to be administrative in nature, not adjudicative. The Task Force does not recommend instituting a higher level of review or publishing outcomes of complaints. Because language access complaints are administrative in nature, they do not require judicial review.</p> <p>The proposed rule has been modified to indicate that each court should respond to complaints within 60 days. Additional changes to the rule have been made to give courts more time to respond to language access-related complaints (see Rule 2.851(d)(2) and (d)(4)). An Advisory Committee Comment has also been added to the rule to indicate that for non-complicated language access-related complaints that can be resolved quickly, a written response to complainant indicating that the</p>

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<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
	<ul style="list-style-type: none"><li>- Monitor the complaint process and areas for improvement by storing appeal filings and decisions in a public database.</li> <li>- Add a requirement for each court to post a visible notification for LEP individuals on the right to file a complaint if they are denied language accessible services, or receive inadequate interpretation or translation services. Please see an example of a notice from North Carolina: <a href="http://www.lep.gov/resources/012314_NC_lang.Acc.Poster.pdf">http://www.lep.gov/resources/012314_NC_lang.Acc.Poster.pdf</a></li> <li>- It would be very helpful if courts could translate responses into the language of the original complaint, and maintain a resource list with local community based organizations or minority bar associations that may be able to assist with finding and/or vetting qualified interpreters.</li></ul>	<p>complaint has been resolved will suffice as both acknowledgement of the complaint and notice of outcome.</p> <p>The language access complaint process is meant to be administrative in nature, not adjudicative. The Task Force does not recommend instituting a higher level of review or publishing outcomes of complaints. Because language access complaints are administrative in nature, they do not require judicial review.</p> <p>Courts may decide whether notices for court users should include language regarding court user complaints; however, this is not recommended to be a requirement of the proposed complaint form rule.</p> <p>Complaints must be submitted in English. Therefore, court responses to language access complaints will be in English. To assist court users, the Judicial Council plans to translate the model form into the state's top eight languages. It will be up to local courts to determine if the form should be translated into additional languages based on their local population needs.</p>

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<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
Superior Court of Riverside County (no name provided)	<p>Will the proposed complaint form be mandatory or optional? If a complaint form has already been created can we continue to use our internal form?</p> <p>If the proposed form is a mandatory form, we would suggest more space be allotted to give a detailed descriptions as requested on the complaint form.</p>	<p>The Task Force thanks the commenter for its comments and suggestions. The model complaint form is for optional use. Each court may create its own form, as long the form complies with the requirements of this rule. Based on commenters’ suggestions, the model form will be revised to include more space for descriptions.</p>
Superior Court of Placer County by Jake Chatters, Court Executive Officer	<p>The court offers two comments for consideration by the Task Force:</p> <ol style="list-style-type: none"> <li>1. Request deletion of proposed CRC, rule 2.851 (c) (4).</li> </ol> <p>The requirement to include the contact information of the language access representative seems more detailed than necessary and could have unintended consequences. This requirement reduces flexibility for courts and may limit their ability to use a general feedback form that can be amended to accommodate language access complaints. This in turn creates an unnecessary requirement to have multiple feedback forms and procedures, which is particularly impactful for smaller courts.</p> <p>We would suggest deleting this requirement. The balance of the rule requires courts to route language access complaints to the Language Access Representative, which can be accomplished by the court without the need to identify the language access representative's information on the complaint form itself.</p>	<p>The Task Force thanks the commenter for its comments and suggestions.</p> <p>Contact information for the court is necessary to include on the form to ensure that complaints are properly routed. However, to address this commenter’s concern, the rule regarding form requirements has been modified as follows:</p> <p>“Include the court’s mailing address and an e-mail contact to show court users how they may submit a language access complaint;”</p> <p>Courts may use a non-identifying e-mail contact, such as “LanguageAccess@ XX.court.org”</p>

SPR17-21

**Language Access: Designation of Language Access Representative and Handling Complaints** (Proposed Rule: Adopt California Rules of Court, Rules 2.850 and 2.851)

All comments are verbatim unless indicated by an asterisk (\*).

**FOR TASK FORCE CONSIDERATION**

<b>Proposed Rule: Adopt California Rules of Court, Rules 2.850 and 2.851 — To require each superior court to: 1. Designate a Language Access Representative; and 2. Adopt a language access services complaint form and complaint procedures.</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
	<p>2. Request revisions to proposed CRC, rule 2.851 (d) (8).</p> <p>The court has two concerns with this rule as written. First, the proposed rule requires courts to report on the "status of all complaints" to the Judicial Council. While there may be interest in the number of complaints received throughout the state, the specific status of each complaint being addressed at the local level seems onerous. We would suggest this portion of the rule be removed. Second, the rule states that the court must provide "any additional information" to Judicial Council staff. This statement is subject to interpretation and is overly broad. The Task Force may wish to consider softening the language to encourage court participation in assessing statewide issues related to language access. Modifying the language may also avoid any inadvertent future interpretation that the rule grants unilateral rights to the Judicial Council staff to increase reporting requirements.</p>	<p>Only when needed, additional information regarding complaint(s) will be limited to Judicial Council staff asking the court for clarification regarding the nature of the specific complaint(s) received. The rule indicates that reporting to the Judicial Council will be limited to the numbers, kinds and disposition of language access-related complaints. The rule has also been modified to indicate that the Judicial Council will ask courts for this information regarding language access-related complaints once a year (on an annual basis).</p>
Superior Court of San Bernardino County (no name provided)	<p>Our court would request further information on what the Judicial Council audit would consist of in order to ensure that our tracking will be designed properly.</p>	<p>The Task Force thanks the commenter for its comments and suggestions. The rule indicates that reporting to the Judicial Council will be limited to the numbers, kinds and disposition of language access-related complaints. To ease the burden on courts, the rule has also been modified to indicate that the Judicial Council will ask courts for this information regarding language access-related complaints once a year (on an annual basis). Only when needed, additional information regarding</p>

SPR17-21

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<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
	<p>Our court also requests clarification about the requirement to submit complaints and respond in writing; will the courts have the option to accept verbal complaints and respond verbally, if a pre-translated form letter will not suffice?</p> <p>Generally, the model form suggested for the complaint should make better use of the white space and have more ample writing room between lines or more checkboxes to select whenever possible, as these may often be completed by hand. It should also clarify that it can be completed by somebody on behalf of the complainant.</p>	<p>complaint(s) will be limited to Judicial Council staff asking the court for clarification regarding the nature of the specific complaint(s) received.</p> <p>The Judicial Council’s Language Access Services and Court Interpreters Program staff anticipate they will begin conducting regular meetings (via phone calls or WebEx) with the courts’ Language Access Representatives to provide guidance and answer questions that will help all courts to develop best practices regarding language access services, including handling any language access-related complaints. It is fine for courts to respond verbally to spoken complaints, depending on the nature of the complaint. The rule has been modified to include the following language: “Language access complaints may be submitted orally or in other written formats; however, use of the court’s local form is encouraged to ensure tracking and that complainants provide full information to the court.”</p> <p>Based on commenters’ suggestions, the model form will be revised to include more space for descriptions.</p>



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**Language Access: Designation of Language Access Representative and Handling Complaints** (Proposed Rule: Adopt California Rules of Court, Rules 2.850 and 2.851)

All comments are verbatim unless indicated by an asterisk (\*).

**FOR TASK FORCE CONSIDERATION**

Proposed Rule: Adopt California Rules of Court, Rules 2.850 and 2.851 — To require each superior court to: 1. Designate a Language Access Representative; and 2. Adopt a language access services complaint form and complaint procedures.		
Commenter	Comment	Committee Response
<p>Superior Court of San Diego County by Mike Roddy, Court Executive Officer</p>	<ul style="list-style-type: none"> <li>• Agree with the option that each trial court create a local complaint form and process consistent with the rule (courts may utilize the Judicial Council model)</li> <li>• Rule 2.851(c)(6) requires that the complaint form be made available in the languages spoken by a significant proportion of the county population. This will be a hardship for most courts due to ongoing budget challenges and the fact that document translation is not a reimbursable cost under Program 0150037 (formerly Program 45.45)</li> <li>• Clarification is needed for Rule 2851(d)(3). It reads; “complaints regarding denial of a court interpreter for pending cases should be addressed promptly.” This may be interpreted to mean that a court interpreter (as opposed to a bilingual staff member or telephone/video interpreter, etc.) must be provided for court services outside of the courtroom (clerk’s office, mediation services, etc.) for pending cases. Our court proposes the following be reworded for clarity that “court interpreters for pending cases” pertains to <b>courtroom proceedings</b>. Proposed change to Rule 2.851(d)(3):”...Court user complaints regarding denial of court interpreter <b>for a courtroom proceeding</b> for pending cases should be...”</li> <li>• The requirement of acknowledgment of complaint in Rule 2851 (d)(2) outlines the Language Access Representative</li> </ul>	<p>The Task Force thanks the commenter for their comments and suggestions.</p> <p>The Judicial Council plans to translate the model form into the state’s top eight languages; it will be up to local courts to determine if the form should be translated into additional languages based on their local population needs.</p> <p>The Task Force agrees with the suggested language regarding “court proceedings” and has made this modification to the proposed rule.</p> <p>The proposed rule has been modified to indicate that each court should respond to complaints within 60 days. Additional changes to the rule have been made to give</p>

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**Language Access: Designation of Language Access Representative and Handling Complaints** (Proposed Rule: Adopt California Rules of Court, Rules 2.850 and 2.851)

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**FOR TASK FORCE CONSIDERATION**

<b>Proposed Rule: Adopt California Rules of Court, Rules 2.850 and 2.851 — To require each superior court to: 1. Designate a Language Access Representative; and 2. Adopt a language access services complaint form and complaint procedures.</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
	<p>must: send an acknowledgment within 10 days of receipt of complaint; send notice if complaint cannot be resolved within 90 days, send notice of outcome, and send notice if complainant submits a written disagreement to complaint outcome. This is excessive. The process should be streamlined and eliminate the requirement for the 90-day notice as outlined in the Judicial Council’s Best Practices – Superior Court Language Access Complaints.</p>	<p>courts more time to respond to language access-related complaints (see Rule 2.851(d)(2) and (d)(4)). An Advisory Committee Comment has also been added to the rule to indicate that for non-complicated language access-related complaints that can be resolved quickly, a written response to complainant indicating that the complaint has been resolved will suffice as both acknowledgement of the complaint and notice of outcome.</p>
<p>TCPJAC/CEAC Joint Rules Subcommittee (JRS) by Trial Court Presiding Judges Advisory Committee and Court Executives Advisory Committee</p>	<p>General Comment: The JRS agrees that the proposed changes provide a forum for the public for any complaints regarding interpreting services provided by the court that are of poor quality or involving bilingual staff, interpreter employees or when written translation is needed.</p> <p>The JRS notes the following impact to court operations:</p> <ul style="list-style-type: none"> <li>• Results in additional training, which requires the commitment of staff time and court resources – Court assigned language access representatives will require training on the use of and follow up of the complaint form to ensure complaints are answered timely.</li> <li>• Increases court staff workload – This proposal will result in additional workload.</li> </ul>	<p>The Task Force thanks the commenter for its comments and suggestions.</p> <p>To address concerns regarding additional staff workload, including training, proposed rule 2.851 has been modified to ease up on the final implementation date (court must implement provisions of the rule by December 31, 2018). Additional changes to rule 2.851 have been made to give courts more time to respond to language access-related complaints (see Rule 2.851(d)(2) and (d)(4)). Additionally, more guidance has been added to the Advisory Committee Comment section on how courts should respond to basic complaints in order to ease the administrative burden.</p>

SPR17-21

**Language Access: Designation of Language Access Representative and Handling Complaints** (Proposed Rule: Adopt California Rules of Court, Rules 2.850 and 2.851)

All comments are verbatim unless indicated by an asterisk (\*).

**FOR TASK FORCE CONSIDERATION**

<b>Proposed Rule: Adopt California Rules of Court, Rules 2.850 and 2.851 — To require each superior court to: 1. Designate a Language Access Representative; and 2. Adopt a language access services complaint form and complaint procedures.</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
	<p>The JRS agrees with the additional proposed revisions to rule 2.851 as provided in the version of the draft rule that was submitted to the JRS on July 5, 2017 for its additional review and feedback.</p> <p>Also, the JRS recommends adding clarification on the second page of the attached Model Statewide Complaint form. Please see the yellow highlighted area.</p>	<p>The current version of rule 2.851 was reviewed by JRS. Work by the CIAP on the interpreter review and disciplinary procedures is not anticipated to be completed until 2019 or 2020. Courts should continue to handle court interpreter complaints under their existing procedures, and may ask the Judicial Council’s Court Interpreters Program for guidance if the complaint rises to a level that may require corrective action, including revoking a court interpreter’s status as a certified or registered interpreter.</p> <p>Page two of the model complaint form will be modified as suggested to say, “Other problem with court staff related to language access:”</p>

# PCLC ACTION REQUEST FORM

PCLC Meeting: September 14, 2017

<b>Title:</b> Small Claims: Provision of Court Interpreters	<b>Code Section(s):</b> Amend Government Code section 68560.5(a) and Code of Civil Procedure section 116.550
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<b>Advisory Committee or other entity submitting the proposal:</b> Language Access Plan Implementation Task Force Hon. Mariano-Florentino Cuéllar, Chair Civil and Small Claims Advisory Committee Hon. Raymond M. Cadei, Chair	<b>Advisory Committee Staff:</b> Douglas G. Denton Elizabeth Tam-Helmuth Anne Ronan Christy Simons
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<b>GA Staff Recommendation:</b> Recirculate for public comment	<b>GA Staff:</b> Alan Herzfeld
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<b>Additional Information for PCLC:</b> On April 7, 2016, the PCLC approved an original proposal from the Language Access Plan Implementation Task Force (Task Force) to amend Government Code section 68560.5(a) and Code of Civil Procedure section 116.550. The proposal went out for public comment from April 15 to June 14, 2016. The Task Force then approved a revised proposal at its October 17, 2016, open meeting to go forward to PCLC for 2017 legislation. The Civil and Small Claims Advisory Committee subsequently requested that the Task Force proposal be delayed until the Task Force and the Civil and Small Claims Advisory Committee developed compromise language regarding proposed amendments to Code of Civil Procedure section 116.550. (When proposed changes to Government Code section 68560.5(a) circulated previously, no objections/negative comments were received.) In 2017, a joint working group comprised of three Task Force members and three Civil and Small Claims Advisory Committee members developed compromise language for Code of Civil Procedure section 116.550. <b>The attached proposal was subsequently approved by the Task Force on August 9, 2017, and by the Civil and Small Claims Advisory Committee on August 16, 2017, to go out for public comment.</b> The two advisory bodies now request that the new language for Code of Civil Procedure section 116.550 go out for recirculation/public comment for an abbreviated period of 30 days (September 15–October 13, 2017). Following this public comment period, the two advisory committees plan to submit a joint proposal to the PCLC and council to approve the proposed amendments for 2018 legislation (to be effective January 1, 2019).
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# JUDICIAL COUNCIL OF CALIFORNIA

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[www.courts.ca.gov/policyadmin-invitationstocomment.htm](http://www.courts.ca.gov/policyadmin-invitationstocomment.htm)

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## INVITATION TO COMMENT

[ITC prefix as assigned]-\_\_

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Title	Action Requested
Small Claims: Provision of Court Interpreters	Review and submit comments by October 13, 2017
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Government Code section 68560.5(a) and Code of Civil Procedure section 116.550	January 1, 2019
Proposed by	Contact
Language Access Plan Implementation Task Force	Douglas G. Denton, 415-865-7870 douglas.denton@jud.ca.gov
Hon. Mariano-Florentino Cuéllar, Chair	Elizabeth Tam-Helmuth, 415-865-4604 elizabeth.tam@jud.ca.gov
Civil and Small Claims Advisory Committee	
Hon. Raymond M. Cadei, Chair	

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### Executive Summary and Origin

On January 22, 2015, the Judicial Council adopted the *Strategic Plan for Language Access in the California Courts* (the Language Access Plan, or LAP). The plan provides a comprehensive set of 75 recommendations to help create a branchwide approach to providing language access services to court users throughout the state while accommodating an individual court's need for flexibility in implementing the plan recommendations. In order to complete the systematic expansion of language access services, including the provision of court interpreters in small claims actions when court resources allow, the Language Access Plan Implementation Task Force and Civil and Small Claims Advisory Committee recommend that the Judicial Council sponsor legislation to: (1) amend Government Code section 68560.5(a) to delete an exception stating that interpreters are not required in small claims proceedings; and (2) amend Code of Civil Procedure section 116.550 to generally require courts to appoint certified and registered interpreters in small claims proceedings. Revised Code of Civil Procedure section 116.550 also makes clear that courts should follow the provisional qualification process if a certified or registered interpreter is not available. It also provides judges with discretion to appoint a temporary interpreter to assist a court user during a small claims hearing if a certified/registered or provisionally qualified interpreter is not available even after a continuance, or at the first hearing if the judge makes a similar determination of unavailability, depending on the complexity of the case. These changes to the statute also conform to recent changes

recommended by the Court Interpreters Advisory Panel to California Rules of Court, Rule 2.893, regarding the appointment of noncertified interpreters in court proceedings.

## **Background**

In January 2015, following an extensive stakeholder participation process that included public hearings and public comment, the Judicial Council adopted the *Strategic Plan for Language Access for the California Courts*.<sup>1</sup> The LAP provides a comprehensive set of recommendations to help create a branchwide approach to providing language access services to court users throughout the state while accommodating an individual court's need for flexibility in implementing the plan recommendations. The plan set forth a goal that by 2017, and beginning immediately where resources permit, qualified interpreters will be provided in the California courts to limited English proficient (LEP) court users in all courtroom proceedings and in all court-ordered, court-operated events by 2020.

The Chief Justice established the Language Access Plan Implementation Task Force (Task Force) in March 2015, pursuant to recommendations in the LAP.<sup>2</sup> Chaired by Supreme Court Justice Mariano-Florentino Cuéllar, with Judge Manuel J. Covarrubias of the Superior Court of Ventura County serving as vice-chair, the Task Force has a three- to five-year charge and is overseen by the Judicial Council's Executive and Planning Committee.

Effective January 1, 2015, Evidence Code section 756 provides that qualified interpreters should be provided to LEP court users in all court proceedings, including small claims proceedings, at no cost to the parties, regardless of the income of the parties. If sufficient funding is not available to provide interpreters in all civil matters, the statute sets forth an order of priority for courts to follow in deploying interpreters. Small claims matters are in priority group 8, "all other civil matters," the lowest of the priority groups (Assembly Bill 1657, Stats. 2014, ch. 721.) Separate statutes currently exempt small claims cases from the definition of court proceedings in which qualified interpreters must be appointed and specifically authorize a court to permit an individual (other than an attorney) to assist an LEP party in small claims proceedings (Government Code section 68560.5(a) and Civil Code of Procedure section 116.550).

The LAP states that legislative action to amend, delete, or add statutory language, and Judicial Council action to create or revise court forms or rules of court will be necessary to fully and effectively implement the recommendations contained in this Language Access Plan. Such actions should include clarification of existing statutes. . ." (LAP, p. 78). Two specific LAP recommendations describe legislation necessary to ensure qualified interpreters, subject to court resources, are provided in small claims actions:

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<sup>1</sup> The full report, *Strategic Plan for Language Access in the California Courts*, may be viewed at [www.courts.ca.gov/documents/CLASP\\_report\\_060514.pdf](http://www.courts.ca.gov/documents/CLASP_report_060514.pdf).

<sup>2</sup> Information regarding the Language Access Plan Implementation Task Force is available at <http://www.courts.ca.gov/LAP.htm>.

LAP Recommendation #71. The Judicial Council should sponsor legislation to amend Government Code section 68560.5(a) to include small claims proceedings in the definition of court proceedings for which qualified interpreters must be provided.

LAP Recommendation #72. 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 certified or registered, or provisionally qualified where a credentialed interpreter is not available.

### **Prior Circulation**

On April 7, 2016, the PCLC approved an original proposal from the Task Force to amend Government Code section 68560.5(a) and Code of Civil Procedure section 116.550 to move forward for public comment. That original proposal would have deleted the provisions in these statutes identified by LAP Recommendations 71 and 72, effective January 1, 2018. The original proposal was out for public comment until June 14, 2016. Following this public comment period, the Civil and Small Claims Advisory Committee (the Committee) provided internal comments to the Task Force. These comments raised concerns about whether sufficient interpreter resources would be available by the effective date of the proposed legislation to fully address the language access needs in small claims cases and about the impact on small claims litigants and the courts if such resources were not available. (When proposed changes to Government Code section 68560.5(a) circulated previously, no objections/negative comments were submitted.)

Pursuant to LAP Recommendations 71 and 72, the Task Force subsequently approved a revised proposal at its October 17, 2016, open meeting to go forward to PCLC for 2017 legislation, but did not alter the proposal to address the Committee's concerns. The Committee then requested that the Task Force proposal for 2017 legislation be delayed until compromise language could be developed between the Task Force and the Committee regarding proposed amendments to Code of Civil Procedure section 116.550 to address the Committee's concerns.

In 2017, a joint working group comprised of three Task Force members and three Committee members developed compromise language for Code of Civil Procedure section 116.550. **The attached proposal was subsequently approved by the Task Force on August 9, 2017, and by the Civil and Small Claims Advisory Committee on August 16, 2017, to go out for public comment.**

### **The Proposal**

In order to complete the systematic expansion of language access services, including the provision of court interpreters in small claims actions when court resources allow, the Task Force and Civil and Small Claims Advisory Committee recommend that the Judicial Council sponsor legislation to: (1) amend Government Code section 68560.5(a) to delete an exception stating that interpreters are not required in small claims proceedings; and (2) amend Code of Civil Procedure section 116.550 to generally require courts to appoint certified and registered interpreters in small claims proceedings. The revised statute also makes clear that courts should

follow the provisional qualification process if a certified or registered interpreter is not available. To address the concerns raised by the Committee, the statute also provides judges with discretion to appoint a temporary interpreter to assist a court user during a small claims hearing if an attempt to secure a certified/registered or provisionally qualified interpreter was not successful either (1) after the matter was continued to allow for a further search or (2) at the first hearing if the judge determines that appointment of a temporary interpreter is appropriate without a further postponement, depending on the complexity of the case.

These changes to the statute also conform to recent changes recommended by the Court Interpreters Advisory Panel to California Rules of Court, Rule 2.893, regarding the appointment of noncertified interpreters in court proceedings.<sup>3</sup> That rule change is anticipated to go into effect on January 1, 2018. Once proposed changes to Code of Civil Procedure section 116.550 go into effect, there may be minor additional changes that need to be made to Rule 2.893 to ensure that the rule conforms to the amended statute.

Judicial Council-sponsored legislation to amend California Government Code section 68560.5(a) and Civil Code of Procedure section 116.550 as described below (to delete the exception for small claims proceedings, and permit courts to appoint qualified [certified and registered] interpreters for small claims, respectively) will ensure that, when resources allow, qualified and adequate interpreter services are provided in small claims proceedings. Proposed revisions to the Code of Civil Procedure section 116.550 to include small claims proceedings would generally require the appointment of qualified (certified/registered) interpreters in small claims matters, similar to the requirements for all other court proceedings, which benefits California's LEP court users. The revisions would also require courts to follow the steps for provisionally qualifying interpreters (California Rules of Court, Rule 2.893) when there is no qualified (certified/registered) interpreter available. Judges will have discretion to appoint a temporary interpreter to assist a court user during a small claims hearing only if an attempt to secure a certified/registered or provisionally qualified interpreter was not successful after the matter was postponed, or at the first hearing if the judge similarly determines that appointment of a temporary interpreter is appropriate, depending on the complexity of the case.

### **Alternatives Considered**

As noted above in the Prior Circulation section, the Task Force proposed and previously circulated for public comment a different proposal. That proposal did not move forward because of Committee concerns about that proposal's impact on small claims litigants and courts.

In response to the prior circulation, one commenter suggested that the proposed revision for Code of Civil Procedure section 116.550 should say "may appoint" an interpreter rather than "shall appoint," to ensure that it is consistent with Government Code § 68092.1(b), and the priority order established by Evidence Code section 756 (where small claims matters fall under Priority 8). The proposed revision to Code of Civil Procedure section 116.550 that has been

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<sup>3</sup> The proposed revision of CA Rule of Court 2.893 is available at [\(add link to JC report when available\)](#).



approved by the Task Force and Committee for recirculation incorporates this suggested change (see attached).

The Task Force did not consider the option of not recommending any change to these statutes. Failure to amend the above-referenced statutes will result in confusion and is contrary to provisions in both the LAP and the newly enacted provisions of Evidence Code section 756, which provides that qualified interpreters should be provided to LEP court users in all court proceedings, subject to available resources, including small claims proceedings.

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

Two of the six commenters who submitted public comment on the prior proposal shared the need to train judicial officers and court staff regarding the proper appointment of certified and registered interpreters, and provisionally qualified interpreters, in accordance with California Rules of Court. Further, one commenter suggested that court websites will need to be updated, court signage should be posted to inform court users regarding the availability of court interpreters, and notice to attorneys and the public should be posted on the Judicial Council website and individual court websites. In terms of outreach, courts may need to inform all interested stakeholders regarding the changes. One commenter suggested local bar associations be informed about the changes so they are able to inform their attorney members.

The proposed amendments (effective January 1, 2019) continue the expansion of language services in the courts, including the provision of court interpreters in small claims actions when court resources allow. This will require that more qualified interpreters in more languages be made available for parties and witnesses. The Governor's budget for fiscal year 2016–2017 appropriated an additional \$7 million, ongoing, for the expansion of court interpreter services in civil proceedings. An additional ongoing amount up to \$4 million for continued expansion will also be requested by the Judicial Council for fiscal year 2018–2019. If approved, trial courts throughout the state should have funding available to address and meet increased costs necessary to provide interpreter services. To the extent funding is not yet sufficient to provide interpreters in all civil matters, courts may not be able to provide interpreters immediately in small claims matters, which are contained within the lowest priority group.

## **Request for Specific Comments**

In addition to comments on the proposal as a whole, the Task Force and Committee are interested in comments on the following:

- If the proposed amendments regarding the provision of interpreters in small claims matters become law, what operational changes for the courts may be necessary (e.g., training, updating forms, updating court web pages, or interpreter scheduling)?
- If the proposed amendments are made to the California Code, what are some recommended steps to help inform attorneys, judicial officers, court staff, and/or court interpreters regarding the changes?

### **Attachments and Links**

1. Text of Government Code section 68560.5(a), at page **X**
2. Text of Code of Civil Procedure section 116.550, at page **X**

Government Code section 68560.5(a) would be amended, effective January 1, 2019, to read:

- 1 (a) “Court proceeding” means a civil, criminal, or juvenile proceeding, or a deposition in a
- 2 civil case filed in a court of record. ~~However, “court proceeding” does not include a small~~
- 3 ~~claims proceeding.~~

Code of Civil Procedure section 116.550 would be amended, effective January 1, 2019, to read:

- 1 (a) If the court determines that a party does not speak or understand English sufficiently to  
2 comprehend the proceedings or give testimony, and needs assistance in so doing, the  
3 court may *appoint an interpreter* ~~permit another individual (other than an attorney) to~~  
4 ~~assist to interpret for that party. The requirements of Government Code section 68561~~  
5 *apply to the appointment of interpreters in small claims matters.*  
6
- 7 ~~(b) Each small claims court shall make a reasonable effort to maintain and make available to~~  
8 ~~the parties a list of interpreters who are able and willing to aid parties in small claims~~  
9 ~~actions either for no fee, or for a fee which is reasonable considering the nature and~~  
10 ~~complexity of the claims. The list shall include interpreters for all languages that require~~  
11 ~~interpretation before the court, as determined by the court in its discretion and in view of~~  
12 ~~the court's experience.~~
- 13
- 14 ~~(c) Failure to maintain a list of interpreters, or failure to include an interpreter for a particular~~  
15 ~~language, shall not invalidate any proceedings before the court.~~
- 16
- 17 ~~(d) If a court interpreter or other competent interpreter is not available to aid a party in a~~  
18 ~~small claims action, at the first hearing of the case the court shall postpone the hearing~~  
19 ~~one time only to allow the party the opportunity to obtain another individual (other than~~  
20 ~~an attorney) to assist that party. Any additional continuances shall be at the discretion of~~  
21 ~~the court.~~
- 22
- 23 ~~(d)~~ *(b) Notwithstanding the provisions of Government Code section 68651, if a court makes a*  
24 *finding that a certified or registered court interpreter or an interpreter provisionally*  
25 *qualified under the Rules of Court is not available to aid a party in a small claims action,*  
26 *at the first hearing of the case the court should consider postponing the hearing,*  
27 *depending on the complexity of the matter, in order to attempt to obtain a certified or*  
28 *registered court interpreter or an interpreter that has been provisionally qualified. If at*  
29 *the next court hearing the court makes a similar finding of unavailability, or upon such a*  
30 *finding at the original hearing if it is not continued, the court may allow use of an*  
31 *individual as a "temporary interpreter" under the provisions of the Rules of Court to*  
32 *assist as an interpreter during the hearing. Any other continuances shall be at the*  
33 *discretion of the court.*
- 34
- 35 (c) *The Judicial Council shall adopt Rules of Court to implement this statute.*

Rule 2.893 of the California Rules of Court is repealed and adopted, effective January 1, 2018, to read:

1 **Rule 2.893. Appointment of interpreters in court proceedings**

2  
3 **(a) Application**

4  
5 This rule applies to all trial court proceedings in which the court appoints an  
6 interpreter for a Limited English Proficient (LEP) person. This rule applies to  
7 spoken language interpreters in languages designated and not designated by the  
8 Judicial Council.

9  
10 **(b) Definitions**

11  
12 As used in this rule:

- 13  
14 (1) “Designated language” means a language selected by the Judicial Council for  
15 the development of a certification program under Government Code section  
16 68562;  
17  
18 (2) “Certified interpreter” means an interpreter who is certified by the Judicial  
19 Council to interpret a language designated by the Judicial Council under  
20 Government Code section 68560 et seq.;  
21  
22 (3) “Registered interpreter” means an interpreter in a language not designated by  
23 the Judicial Council, who is qualified by the court under the qualification  
24 procedures and guidelines adopted by the Judicial Council, and who has  
25 passed a minimum of an English fluency examination offered by a testing  
26 entity approved by the Judicial Council under Government Code section  
27 68560 et seq.;  
28  
29 (4) “Noncertified interpreter” means an interpreter who is not certified by the  
30 Judicial Council to interpret a language designated by the Judicial Council  
31 under Government Code section 68560 et seq.;  
32  
33 (5) “Nonregistered interpreter” means an interpreter in a language not designated  
34 by the Judicial Council who has not been qualified under the qualification  
35 procedures and guidelines adopted by the Judicial Council under Government  
36 Code section 68560 et seq.;  
37  
38 (6) “Provisionally qualified” means an interpreter who is neither certified nor  
39 registered but has been qualified under the good cause and qualification  
40 procedures and guidelines adopted by the Judicial Council under Government  
41 Code section 68560 et seq.;  
42

1           (7) “Temporary interpreter” means an interpreter who is not certified, registered,  
2           or provisionally qualified, but is used one time, in a brief, routine matter.

3  
4           **(c) Appointment of certified or registered interpreters**

5  
6           If a court appoints a certified or registered court interpreter, the judge in the  
7           proceeding must require the following to be stated on the record:

- 8  
9           (1) The language to be interpreted;  
10  
11          (2) The name of the interpreter;  
12  
13          (3) The interpreter’s current certification or registration number;  
14  
15          (4) A statement that the interpreter’s identification has been verified as required  
16          by statute;  
17  
18          (5) A statement that the interpreter is certified or registered to interpret in the  
19          language to be interpreted; and  
20  
21          (6) A statement that the interpreter was administered the interpreter’s oath or that  
22          he or she has an oath on file with the court.

23  
24          **(d) Appointment or use of noncertified or nonregistered interpreters**

25  
26          (1) *When permissible*  
27          If after a diligent search a certified or registered interpreter is not available,  
28          the judge in the proceeding may either appoint a noncertified or nonregistered  
29          interpreter who has been provisionally qualified under (d)(3) or, in the  
30          limited circumstances specified in (d)(4), may use a noncertified or  
31          nonregistered interpreter who is not provisionally qualified.

32  
33          (2) *Required record*  
34          In all cases in which a noncertified or nonregistered interpreter is appointed  
35          or used, the judge in the proceeding must require the following to be stated  
36          on the record:

- 37  
38          (A) The language to be interpreted;  
39  
40          (B) A finding that a certified or registered interpreter is not available and a  
41          statement regarding whether a *Certification of Unavailability of*  
42          *Certified or Registered Interpreter* (form INT-120) for the language to  
43          be interpreted is on file for this date with the court administrator;

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- (C) A finding that good cause exists to appoint a noncertified or nonregistered interpreter;
- (D) The name of the interpreter;
- (E) A statement that the interpreter is not certified or registered to interpret in the language to be interpreted;
- (F) A finding that the interpreter is qualified to interpret in the proceeding as required in (d)(3) or (d)(4); and
- (G) A statement that the interpreter was administered the interpreter’s oath.

(3) Provisional qualification

- (A) A noncertified or nonregistered interpreter is provisionally qualified if the presiding judge of the court or other judicial officer designated by the presiding judge:
  - (i) Finds the noncertified or nonregistered interpreter to be provisionally qualified following the *Procedures to Appoint a Noncertified or Nonregistered Spoken Language Interpreter as Either Provisionally Qualified or Temporary* (form INT-100-INFO); and
  - (ii) Signs an order allowing the interpreter to be considered for appointment on *Qualifications of a Noncertified or Nonregistered Spoken Language Interpreter* (form INT-110). The period covered by this order may not exceed a maximum of six months.
- (B) To appoint a provisionally qualified interpreter, in addition to the matters that must be stated on the record under (d)(2), the judge in the proceeding must state on the record:
  - (i) A finding that the interpreter is qualified to interpret the proceeding, following procedures adopted by the Judicial Council (see forms INT-100-INFO, INT-110, and INT-120);
  - (ii) A finding, if applicable, that good cause exists under (f)(1)(B) for the court to appoint the interpreter beyond the time ordinarily allowed in (f); and

1 (iii) If a party has objected to the appointment of the proposed  
2 interpreter or has waived the appointment of a certified or  
3 registered interpreter.

4  
5 (4) Temporary use

6 At the request of an LEP person, a temporary interpreter may be used to  
7 prevent burdensome delay or in other unusual circumstances if:

8  
9 (A) The judge in the proceeding finds on the record that:

10  
11 (i) The LEP person has been informed of their right to an  
12 interpreter and has waived the appointment of a certified or  
13 registered interpreter or an interpreter who could be  
14 provisionally qualified by the presiding judge as provided in  
15 (d)(3);

16  
17 (ii) Good cause exists to appoint an interpreter who is not certified,  
18 registered, or provisionally qualified; and

19  
20 (iii) The interpreter is qualified to interpret that proceeding,  
21 following procedures adopted by the Judicial Council (see  
22 forms INT-100-INFO and INT-140).

23  
24 (B) The use of an interpreter under this subdivision is limited to a single  
25 brief, routine matter before the court. The use of the interpreter in this  
26 circumstance may not be extended to subsequent proceedings without  
27 again following the procedure set forth in this subdivision.

28  
29 **(e) Appointment of intermediary interpreters working between two languages**  
30 **that do not include English**

31  
32 An interpreter who works as an intermediary between two languages that do not  
33 include English (a relay interpreter) is not eligible to become certified or registered.  
34 However, a relay interpreter can become provisionally qualified if the judge finds  
35 that he or she is qualified to interpret the proceeding following procedures adopted  
36 by the Judicial Council (see forms INT-100-INFO, INT-110, and INT-120). The  
37 limitations in (f) below do not apply to relay interpreters.  
38



1 **(f) Limit on appointment of provisionally qualified noncertified and**  
2 **nonregistered interpreters**

- 3
- 4 (1) A noncertified or nonregistered interpreter who is provisionally qualified  
5 under (d)(3) may not interpret in any trial court for more than any four  
6 six-month periods, except in the following circumstances:
- 7
- 8 (A) A noncertified interpreter of Spanish may be allowed to interpret for no  
9 more than any two six-month periods in counties with a population  
10 greater than 80,000.
- 11
- 12 (B) A noncertified or nonregistered interpreter may be allowed to interpret  
13 more than any four six-month periods, or any two six-month periods  
14 for an interpreter of Spanish under (f)(1)(A), if the judge in the  
15 proceeding makes a specific finding on the record in each case in which  
16 the interpreter is sworn that good cause exists to appoint the interpreter,  
17 notwithstanding the interpreter’s failure to achieve Judicial Council  
18 certification.
- 19
- 20 (2) Except as provided in (f)(3), each six-month period under (f)(1) begins on the  
21 date a presiding judge signs an order under (d)(3)(A)(ii) allowing the  
22 noncertified or nonregistered interpreter to be considered for appointment.
- 23
- 24 (3) If an interpreter is provisionally qualified under (d)(3) in more than one court  
25 at the same time, each six-month period runs concurrently for purposes of  
26 determining the maximum periods allowed in this subdivision.
- 27
- 28 (4) Beginning with the second six-month period under (f)(1), a noncertified or  
29 nonregistered interpreter may be appointed if he or she meets all of the  
30 following conditions:
- 31
- 32 (A) The interpreter has taken the State of California Court Interpreter  
33 Written Exam at least once during the 12 calendar months before the  
34 appointment;
- 35
- 36 (B) The interpreter has taken the State of California’s court interpreter  
37 ethics course for interpreters seeking appointment as a noncertified or  
38 nonregistered interpreter, or is certified or registered in a different  
39 language from the one in which he or she is being appointed; and  
40  
41

1 (C) The interpreter has taken the State of California’s online court  
2 interpreter orientation course, or is certified or registered in a different  
3 language from the one in which he or she is being appointed.  
4

5 (5) Beginning with the third six-month period under (f)(1), a noncertified or  
6 nonregistered interpreter may be appointed if he or she meets all of the  
7 following conditions:  
8

9 (A) The interpreter has taken and passed the State of California Court  
10 Interpreter Written Exam with such timing that he or she is eligible to  
11 take a Bilingual Interpreting Exam; and  
12

13 (B) The interpreter has taken either the Bilingual Interpreting Exam or the  
14 relevant Oral Proficiency Exam(s) for his or her language pairing at  
15 least once during the 12 calendar months before the appointment.  
16

17 (6) The restrictions in (f)(5)(B) do not apply to any interpreter who seeks  
18 appointment in a language pairing for which no exam is available.  
19

20 (7) The restrictions in (f)(4) and (5) may be waived by the presiding judge for  
21 good cause whenever there are fewer than 25 certified or registered  
22 interpreters enrolled on the Judicial Council’s statewide roster for the  
23 language requiring interpretation.  
24

25 **Advisory Committee Comment**  
26

27 **Subdivisions (c) and (d)(2).** When a court reporter is transcribing the proceedings, or an  
28 electronic recording is being made of the proceedings, a judge may satisfy the “on the record”  
29 requirement by stating the required details of the interpreter appointment in open court. If there is  
30 no court reporter and no electronic recording is being made, the “on the record” requirement may  
31 be satisfied by stating the required details of the interpreter appointment and documenting them in  
32 writing—such as in a minute order, the official clerk’s minutes, a formal order, or even a  
33 handwritten document—that is entered in the case file.  
34

35 **Subdivision (d)(4).** This provision is intended to allow for the one-time use of a noncertified or  
36 nonregistered interpreter who is not provisionally qualified to interpret for an LEP person in a  
37 courtroom event. This provision is not intended to be used to meet the extended or ongoing  
38 interpretation needs of LEP court users.  
39

40 **Subdivision (b)(7) and (d)(4).** When determining whether the matter before the court is a “brief,  
41 routine matter” for which a noncertified or nonregistered interpreter who has not been  
42 provisionally qualified may be used, the judicial officer should consider the complexity of the  
43 matter at issue and likelihood of potential impacts on the LEP person’s substantive rights,  
44 keeping in mind the consequences that could flow from inaccurate or incomplete interpretation of  
45 the proceedings.