



JUDICIAL COUNCIL OF CALIFORNIA

LANGUAGE ACCESS PLAN
IMPLEMENTATION TASK FORCE

www.courts.ca.gov/LAP.htm
LAP@jud.ca.gov

LANGUAGE ACCESS PLAN IMPLEMENTATION TASK FORCE

MINUTES OF OPEN MEETING

August 9, 2017

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

Business Meeting, via Conference Call

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

Advisory Body Members Absent: Ms. Naomi Adelson; Hon. Michelle Williams Court; Hon. Janet Gaard; Ms. Ana Maria Garcia; Ms. Susan Marie Gonzalez; Mr. Michael Roddy; and Ms. Jeanine Tucker

Others Present: Ms. Lisa Crownover; Mr. Douglas Denton; Mr. Scott Gardner; Ms. Diana Glick; Ms. Jennifer Kim; Ms. Mary Ann Koory; Ms. Olivia Lawrence; Mr. Bob Lowney; Ms. Susan McMullan; Ms. Jenny Phu; Mr. Victor Rodriguez; Ms. Christy Simons; and Ms. Elizabeth Tam-Helmuth.

OPEN MEETING

Call to Order and Roll Call

The Task Force Chair, 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 May 10, 2017 meeting minutes.

DISCUSSION AND POSSIBLE ACTION ITEMS

Revised Draft of Proposed Rules of Court, Rule 2.850 and Rule 2.851 [ACTION ITEM]

Justice Cuéllar updated the Task Force on public comments received and revisions made to proposed California Rules of Court, Rule 2.850 (Language Access Representative) and Rule 2.851 (Language Access Complaints).

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. Rule 2.851 requires each court to establish a complaint form and procedures to allow LEP court users to submit a complaint to the Language Access Representative about the court's provision of, or failure to provide, appropriate language access services, including issues related to locally produced translations.

Earlier this year, staff drafted the Invitation to Comment (ITC) for two new Rules of Court, Rule 2.850 and Rules 2.851. The Task Force approved the ITC on January 20, 2017 to go to the Judicial Council's Rules and Project Committee (RUPRO). At its February 24 meeting, RUPRO approved the ITC to go out for public comment. The public comment period was February 27 to April 28, 2017.

The Task Force did not receive any public comment to proposed Rule 2.850. 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.

Regarding proposed Rule 2.851, the Task Force received a total of 12 public comments from various stakeholders, including individual courts, legal services providers, the Joint Rules Subcommittee (JRS) of the Trial Court Presiding Judge Advisory Committee (TCPJAC) and the Court Interpreters Executive Advisory Committee (CEAC).

Judge Steve Austin provided a summary of the public comments received. In response to commentator suggestions, the following changes were made to Rule 2.851:

- The proposed 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 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;”
- The proposed rule has been modified to say that the form used by the court should, “Include the court’s mailing address and an e-mail contact to show court users how they may submit a language access complaint;”
- The proposed rule has been modified to say, “...Court user complaints regarding denial of court interpreter **for a courtroom proceeding for pending cases** should be...”
- 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.”

Legal services providers and other commentators provided a number of suggestions that will require clarification of the scope and intent of the rule and the language access complaint process:

- **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.** 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 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.
- Only 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.

Additional changes were made in response to comments and suggestions from the JRS, including adding language as follows:

- Courts must implement this rule as soon as reasonably possible but no later than December 31, 2018.
- We relaxed the time requirements for courts to respond to language access complaints.
- We added clarification language to the advisory body notes:
- 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.
- **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.

In addition to the above changes to Rule 2.851 and the model procedures, and in response to commentator suggestions, the following changes will also be made to the model complaint form:

- The model form will be revised to include more space for descriptions.
- Page two of the model complaint form will be modified as suggested to say, "Other problem with court staff related to language access:"

Some Task Force members expressed concern that the complaint rule did not strike the right balance, specifically with regard to the English-only provision and other concerns shared by legal services providers through the public comment process. Justice Cuellar pointed out that the rule does not require that complaints must be submitted in English only. The Judicial Council

plans to translate the model complaint form into the state's top eight languages. The courts may translate the complaint form into additional languages based on their local population needs.

Judge Austin emphasized that significant outreach efforts were made over the past several months and internal discussions were held with Justice Cuéllar, Judge Brian McCabe (Chair of the Court Interpreters Advisory Panel), the co-chairs of the JRS, and Judicial Council staff in order to be responsive to everyone's feedback and to revise the complaint rule accordingly. The goal is to maintain the purpose of the rule, which is to allow LEP court users or their advocates to submit a language access complaint to the courts in order to address any language access concerns. The new rule will provide a framework for consistent practices across all 58 superior courts and will ensure that each court must establish a complaint form and process by the end of 2018.

Justice Cuéllar shared the Task Force will need to approve the revised proposal before it is submitted to the Rules and Projects (RUPRO) Committee in September 2017 (and, if approved by RUPRO, the proposal will then be submitted to the Judicial Council in November 2017 for their review and approval.

Action Taken: The Task Force voted unanimously (19–0) in favor of Rule 2.850, and voted (16–3) in favor of Rule 2.851.

Judicial Council-Sponsored Legislative Proposal to Amend Government Code §68560.5(a) and Code of Civil Procedure §116.550 [ACTION ITEM]

Justice Cuéllar and Judge Manuel Covarrubias updated the Task Force on a revised Invitation to Comment (ITC) for a joint proposal between the Task Force and the Civil and Small Claims Advisory Committee to amend Government Code section 68560.5(a) and Code of Civil Procedure section 116.550 regarding the provision of court interpreters in small claims matters. The goal is to include this proposal in the Judicial Council-sponsored 2018 legislation, with an effective date of January 1, 2019.

Judge Covarrubias reported that in April 2016, the Task Force prepared a draft proposal/Invitation to Comment to amend Government Code section 68560.5(a) and Code of Civil Procedure section 116.550 regarding the provision of court interpreters in small claims matters. The Policy Coordination and Liaison Committee (PCLC) approved the Invitation to Comment to go out for public comment from April 14 to June 15, 2016. In October 2016, the Task Force approved a revised proposal to go on to PCLC; however, the Civil and Small Claims Advisory Committee requested that we postpone the proposal for one year, so that compromise language could be developed.

A small Task Force Working Group was formed with the Civil and Small Claims Advisory Committee to work towards resubmitting a proposal on the small claims legislation this fall, for 2018 legislation, to take effect January 1, 2019. At its July 13, 2017 meeting, members of the working group came to a consensus on revisions to Code of Civil Procedure section 116.550.

The agreed upon, revised text for CCP § 116.550 includes language that permits courts to use certified and registered interpreters in small claims, and recommends that courts follow the provisional qualification process if a certified or registered interpreter is not available. It allows

the court to use a temporary interpreter to assist during a small claims hearing if an attempt to secure a certified/registered or provisionally qualified interpreter is not available and the matter was postponed, or at the first hearing if the judge similarly determines that use of a temporary interpreter is appropriate, depending on the complexity of the case.

Separately, CIAP has worked on a revised Rule of Court, rule 2.893 that provides more guidance regarding the use of temporary interpreters. That rule change is scheduled to go into effect January 1, 2018. Once CCP § 116.550 goes into effect, there may be minor additional changes that need to be made to Rule 2.893 to ensure the rule conforms to the statute.

Next steps: If the Task Force approves the proposal today (and also, the Civil and Small Claims Advisory Committee approves the proposal at its meeting on August 16, 2017), then the Invitation to Comment will move forward to the PCLC for approval on September 14, 2017. If PCLC approves the proposal, it will go out for public comment, for one month, from September 15 to October 13, 2017. Staff will then respond to comments received and revise the proposal. The Task Force will have to approve the proposal again before it goes back to PCLC in November 2017, and then on to the Judicial Council in January 2018.

Action Taken: The proposal was unanimously approved by the Task Force to go to the Policy Coordination and Liaison Committee for approval to go out for public comment.

CLOSING AND ADJOURNMENT

Before concluding the meeting, Justice Cuéllar reminded everyone of the Task Force's three- to five-year charge to implement the Language Access Plan. To date, the Task Force has completed 24 out of 75 of the LAP's recommendations. Several more LAP recommendations are on track for completion by March 2018.

Justice Cuéllar has asked Judge Covarrubias to lead a new Working Group, with one member designated from each of our four subcommittees, to focus on addressing long-term and ongoing LAP recommendations — including those that we might not otherwise be able to fully implement in the next 12-24 months — and to advise the Task Force on any short-term solutions to help with implementation. He emphasized that this working group will complement the subcommittee work now taking place to finish its 2017 Annual Agenda projects, which remains a high priority.

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

Approved by the advisory body on January 30, 2018