

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

SP20-05

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| Title | Action Requested |
| Court Interpreters: Payment Policies for Contract Court Interpreters | Review and submit comments by October 14, 2020 |
| Proposed Rules, Forms, Standards, or Statutes | Proposed Effective Date |
| Revise <i>Payment Policies for Contract Court Interpreters</i> | January 22, 2021 |
| Proposed by | Contact |
| Court Executives Advisory Committee Nancy Eberhardt, Chair | Corey Rada, 916-643-7044 corey.rada@jud.ca.gov |

Executive Summary and Origin

The annual Budget Act specifies that the Judicial Council sets compensation rates and policies for court interpreters. In April 2018, the Court Executives Advisory Committee (CEAC) voted to form a working group to review and update the *Payment Policies for Contract Court Interpreters*. The Judicial Council's Executive and Planning Committee approved the formation of the CEAC Ad Hoc Working Group on Interpreter Payment Policy in December 2018. The policies have not been updated since 2007, and the CEAC recognized the need to update these policies due to continuing challenges in contracting with court interpreters. The CEAC is recommending an increase to the daily compensation rates, standardized travel reimbursements rates in accordance with the Judicial Council Financial Policies and Procedures Manual, a change to the policy title, as well as other changes.

Background

In February 2000, the Judicial Council approved the *Payment Policies for Contract Court Interpreters* (policies), which set forth uniform policies in several areas of contract court interpreter compensation, including daily compensation rates. Effective July 1, 2000, the daily compensation rate for certified and registered independent contractor interpreters was set at \$265 for a full day and \$147 for a half day. The daily compensation rate for noncertified and nonregistered independent contractor interpreters was set at no more than \$175 for a full day and \$92 for a half day. In August 2007, the Judicial Council approved an increase in the daily compensation rate for certified and registered independent contractor interpreters to \$282 for a full day and \$156 for a half day. The Judicial Council did not increase the rate for noncertified

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and nonregistered independent contractor interpreters. There have been no other increases in the policies since 2007.

The Proposal

Consistent with the annual Budget Act, the CEAC recommends that the Judicial Council, effective January 2021, adopt revisions to the *Payment Policies for Contract Court Interpreters* as follows:

1. Revise the title of the current policy to *Payment Policies for Independent Contractor Interpreters*.
2. Establish the requirement of a written agreement between the court and an independent contractor interpreter.
3. Increase and standardize the daily compensation rate for certified and registered independent contractor interpreters as follows:
 - Half-day: \$175
 - Full-day: \$350
 - Hourly: \$44
4. Increase and standardize the daily compensation rate for noncertified and nonregistered independent contractor interpreters as follows:
 - Half-day: \$110
 - Full-day: \$220
 - Hourly: \$28
5. Establish a standard hourly compensation rate if an independent contractor interpreter is required to work between the hours of 12:15 p.m. and 1:00 p.m. or after 5:15 p.m. until the conclusion of the afternoon session:
 - Certified/registered: \$44
 - Noncertified/nonregistered: \$28
6. Clarify that business-related travel expenses must be addressed in a written agreement between the court and the independent contractor interpreter. Approved business-related travel expenses must be made in accordance with the judicial branch travel guidelines (see FIN 8.03) with the exception of sign language interpreters.
7. Clarify requirements for negotiating compensation rates above those established by the policy.
8. Provide the optional *Independent Contractor Interpreter–Payment Rate Authorization Form* (Attachment B) to document efforts to locate available interpreters and the court’s approval of a higher payment rate prior to the commencement of work.

9. Incorporate minor revisions to language and formatting.

The *Payment Policies for Independent Contractor Interpreters*, reflecting the updated name and the revisions recommended above, is attached as Attachment A.

Independent contractor interpreters play a vital and integral role in the public's access to justice. To ensure that there are sufficient interpreters to work in the courts at a fair market rate, there is a need to modify the daily compensation rate, as the daily rates for independent contractor interpreters have not increased in 13 years. The recommended changes reflect rates that are closer to the federal rates for court interpreters and provide more flexibility for courts to attract and retain independent contractor interpreters.

The revised policies require that a written agreement defining the cost, schedule, scope of work, and terms and conditions, is in place when contracting with court interpreters. The CEAC believes that these agreements are essential in ensuring that the contracting process follows the policy guidelines and creates a standard of documentation throughout the judicial branch. The *Independent Contractor Interpreter–Payment Rate Authorization Form* is available to assist the courts in documenting the approval of a higher payment rate for independent contractor interpreters.

The CEAC proposes that payment of business-related travel expenses for independent contractor interpreters should be done in accordance with the judicial branch travel guidelines. This revision is intended to clarify and standardize the travel reimbursement paid to contract court interpreters. This section of the policies includes an exception for reimbursement limits for sign language interpreters. Evidence Code section 754 states that sign language interpreters must be paid actual travel expenses and, therefore, reimbursement limits outlined in Finance memos do not apply.

Alternatives Considered

The CEAC considered not revising the *Payment Policies for Contract Court Interpreters*. Due to the current shortage of independent contractor interpreters, there is a need driven by the marketplace to increase the daily compensation rate in order to attract and retain individuals in the court interpreter profession.

The CEAC considered continuing with a regional approach to setting compensation rates as outlined in the 2007 proposal to the Judicial Council. Although the regional approach was originally intended to allow for courts to recommend rates that reflected local markets, this approach has caused issues with many courts' ability to attract interpreters. Some courts are unable to match the rates of courts from neighboring counties, which puts them at a disadvantage when seeking independent contractor interpreters. As a result, courts are competing with one another in an effort to attract independent contractor interpreters within their county. A standard approach, while still allowing for negotiation in unusual circumstances, ensures that all courts are on an equal footing.

Fiscal and Operational Impacts

The proposal advocates raising the daily rate for independent contractor interpreters, which would result in increased costs for the courts. Courts currently have the option to negotiate above the daily rate in unusual circumstances; however, this option has become common rather than unusual due to issues in securing independent contractor interpreters. The proposal could provide cost savings with standard increased rates and travel reimbursement rates, lessening competition between courts and reducing negotiations above the daily rate limits set in the policies.

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?

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

- Would the proposal provide cost savings? If so, please quantify.
- What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?
- Does the effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Attachment A: *Payment Policies for Independent Contractor Interpreters*
Attachment B: *Independent Contractor Interpreter–Payment Rate Authorization Form*



Payment Policies for Independent Contractor Interpreters

I. Purpose

Originally adopted February 1, 2000, this policy establishes standard compensation rates and policies for payment for independent contractor interpreters retained by California trial courts.

II. Authority

The annual Budget Act provides the judicial branch with spending authority from the Trial Court Trust Fund to pay independent contractor interpreters to provide services during court proceedings, and for services related to pending court proceedings, including services provided outside a courtroom. Through provisional language in the Budget Act, the Legislature requires the judicial branch to set statewide or regional payment rates and to establish payment policies that do not exceed the rate paid to certified interpreters in the federal court system.

III. Policy

A. Written Agreement

A written agreement, defining the cost, schedule, scope of work, and terms and conditions, must be in place between the court and independent contractor interpreter (hereinafter referred to as “interpreter”) before service is provided.

B. Compensation Rates

1. Interpreters will be compensated for services at a half-day, full-day, or hourly rate.
 - a. Half-day Rate: Paid when services are provided for any portion of a consecutive four-hour period during either of the following:
 - A morning court session, defined as beginning no earlier than 8:00 a.m. and ending by 12:15 p.m.
 - An afternoon court session, defined as beginning no earlier than 1:00 p.m. and ending by 5:15 p.m.
 - b. Full-day Rate: Paid when services are provided in both a morning and afternoon court session in a single day.
 - c. Hourly Rate: Paid when services are provided via Video Remote Interpreting or during a night session (defined as beginning no earlier than 5:15 p.m. and ending by 10:00 p.m.).
2. If an interpreter is required to work between the hours of 12:15 p.m. and 1:00 p.m. or after 5:15 p.m. until the conclusion of the afternoon session, the interpreter is entitled to hourly compensation in addition to other compensation received for the day.
3. The compensation rates for interpreters are as follows:
 - a. Certified/Registered Interpreters
 - Half-day: \$175
 - Full-day: \$350
 - Hourly: \$44
 - b. Noncertified/Nonregistered Interpreters (provisionally qualified [Cal. Rules of Court, rule 2.893])

- Half-day: \$110
 - Full-day: \$220
 - Hourly: \$28
- c. Oral, Sign Language, and Deaf-Blind Interpreters (hereinafter referred to as “sign language interpreters”)
- In accordance with Evidence Code section 754(i), sign language interpreters will be paid the prevailing rate paid to persons employed by the court to provide interpreter services.
- C. Cancellation fee
1. A cancellation fee, not to exceed the half-day or full-day compensation rates included in this policy, may be paid if the court entered into an agreement with an interpreter more than 24 hours or one business day in advance of the assignment, and either of the following occurs:
 - The court cancels the assignment with less than 24-hour notice.
 - The court cancels an assignment that begins on the first business day of the workweek without one business day’s notice.
 2. Paying a cancellation fee under any other circumstances, or negotiating a fee that exceeds that of the half-day or full-day compensation rates included in this policy, requires written approval by the Executive Officer or designee.
 3. The rate and terms of paying a cancellation fee must be included in the written agreement between the court and interpreter.
- D. Business-Related Travel Expenses
- Business-related travel expenses may be reimbursed for interpreter travel to and from an assignment, as follows:
1. Reimbursement of travel expenses such as air transportation, lodging, meals, personal vehicle usage, and rental vehicle usage, for interpreters must be made in accordance with the judicial branch travel guidelines (see FIN 8.03).
 2. If travel expenses, including travel time, are to be reimbursed, they must be addressed in the written agreement between the court and interpreter.
 - a. Travel expense reimbursement limits are outlined in Finance Memos and guidelines located on the Judicial Resources Network and Government Code section 71810(f).
 - b. Rates, with the exception of lodging (see FIN 8.03), may not be negotiated higher than the upper limits that are in effect at the time the agreement is signed.
 - c. If the interpreter will be required to travel outside of the half-day or full-day time frame, and travel time is negotiated as part of the agreement, the rate may not exceed the hourly compensation rate included in this policy. The rate and method for calculating travel time must be included in the written agreement between the court and interpreter and the determination of travel time must be validated by relevant travel conditions.
 3. Copies of receipts and invoices must be submitted for reimbursement of travel expenses that have been incurred and that are in accordance with the written agreement between the court and interpreter. Travel expenses that have not been authorized in writing will not be paid.

Exception for Reimbursement Limits for Sign Language Interpreters: Evidence Code section 754 provides that sign language interpreters will be paid actual travel expenses. Therefore, reimbursement limits outlined in Finance Memos are not applicable to sign language interpreters. Reimbursement rates must be negotiated and provided for in the written agreement.

E. Costs Exceeding Normal Rates

1. Courts have the discretion to negotiate compensation rates above those established by this policy in order to obtain services in extraordinary circumstances.
2. Before a higher compensation rate may be authorized, the following procedures must be followed:
 - a. The court must make a reasonable effort to contact a minimum of three independent contractor interpreters. If contacting three is not feasible in a given circumstance, the reason(s)/rationale and what attempts were made must be documented.
 - b. Each interpreter who is contacted must be unwilling to accept the applicable maximum rate and/or be unavailable to provide service to the court on the requested date(s).
 - c. The court must make a determination that the only alternative, other than to pay a compensation rate that exceeds the maximum rate included in this policy, is to continue the proceeding.
 - d. The trial court's Executive Officer or designee must approve the higher rate for the specific case and date(s) requested prior to the commencement of work.
3. Efforts to locate available interpreters and the court's approval of a higher payment rate prior to the commencement of work must be documented. Courts may use the Judicial Council's *Independent Contractor Interpreter–Payment Rate Authorization Form* or an alternative method of documentation. All documentation, including the specific case, date(s), rate, and approval, must be kept with the claim.
4. If fewer than three interpreters in a given language are available to a court, with the approval of the Executive Officer or designee, a compensation rate that is above that which is included in this policy may be negotiated and be valid for one year without the need to renegotiate and document each time the services of one of those interpreters are retained. A copy of the documentation with the initial research and approval of the Executive Officer or designee must be kept with each claim.

Note: The discretion to negotiate a higher rate in extraordinary circumstances does not apply to business-related travel expenses. Travel expenses may not be negotiated to a rate higher than that permitted in the judicial branch travel guidelines. (See section III.D. above for more information.)

INDEPENDENT CONTRACTOR INTERPRETER—PAYMENT RATE AUTHORIZATION FORM

(NEW **XX/XX**)

BACKGROUND: The Judicial Council's Payment Policies for Independent Contractor Interpreters establishes maximum compensation rates for independent contractor interpreters. The policy also allows courts the discretion to negotiate compensation rates above those rates when ***all of the following conditions apply:***

- The court must make a reasonable effort to contact a minimum of three independent contractor interpreters. If contacting three is not feasible in a given circumstance, the reason(s)/rationale and what attempts were made must be documented below.
- Each interpreter contacted must be unwilling to accept the applicable maximum rate and/or must be unavailable on the requested date(s).
- The court must make a determination that the only alternative, other than to pay a higher compensation rate, is to continue the proceeding.
- The trial court's Executive Officer or designee must approve the higher rate.

INSTRUCTIONS: Courts may use this form to document its good-faith effort to find an independent contractor interpreter at the applicable maximum rate (see Judicial Council's Payment Policies for Independent Contractor Interpreters), and to document the court's Executive Officer's approval of the higher rate (Section C).

SECTION A: IDENTIFY WHERE INTERPRETER SERVICES ARE NEEDED

| | | | |
|--------------------------|--------------------------|---|--|
| DEPARTMENT | JUDICIAL OFFICER / JUDGE | | |
| CASE NUMBER / PROCEEDING | REQUIRED LANGUAGE | DATE(S) INTERPRETER NEEDED (Required Field) | |

SECTION B: GOOD FAITH EFFORT TO FIND INTERPRETER AT APPLICABLE MAXIMUM RATE

| | | | |
|---------------------------------------|---------------------------------|--------------------------------------|------------------------------|
| INTERPRETER #1 | NAME | | |
| CERTIFIED INTERPRETER (YES/NO) | REGISTERED INTERPRETER (YES/NO) | DATE CONTACTED (VIA PHONE OR EMAIL) | PHONE NUMBER / E-MAIL |
| AVAILABLE ON DATES REQUESTED (YES/NO) | | | RATE REQUIRED BY INTERPRETER |
| INTERPRETER #2 | NAME | | |
| CERTIFIED INTERPRETER (YES/NO) | REGISTERED INTERPRETER (YES/NO) | DATE CONTACTED (VIA PHONE OR EMAIL) | PHONE NUMBER / E-MAIL |
| AVAILABLE ON DATES REQUESTED (YES/NO) | | | RATE REQUIRED BY INTERPRETER |
| INTERPRETER #3 | NAME | | |
| CERTIFIED INTERPRETER (YES/NO) | REGISTERED INTERPRETER (YES/NO) | DATE CONTACTED (VIA PHONE OR E-MAIL) | PHONE NUMBER / E-MAIL |
| AVAILABLE ON DATES REQUESTED | | | RATE REQUIRED BY INTERPRETER |

SECTION C: COURT EXECUTIVE OFFICER'S AUTHORIZATION OF HIGHER RATE

For the specific court proceeding and dates referenced in Section A above, I have reviewed my court's good faith efforts—as documented in Section B—to secure an independent contractor interpreter at the applicable maximum rate pursuant to the Judicial Council's Payment Policy for Independent Contractor Interpreters. Based on the due diligence performed, I am authorizing a rate above the maximum given the extraordinary circumstances as noted on this form. Specifically, I hereby authorize the superior court to pay the following independent contractor interpreter the indicated rate for the specific case and dates referenced in Section A.

Interpreter: _____ Compensation Rate: _____ (half-day/full day/hourly)

Other Unique Costs: _____

SIGNATURE (Court Executive Officer)

DATE (Prior to commencement of work)