JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

W19-09

Title
Language Access: Language Services in Non-courtroom Programs and Services

Proposed Rules, Forms, Standards, or Statutes
Adopt Cal. Rules of Court, rule 1.300; approve forms LA-350, LA-400, and LA-450

Proposed by
Language Access Plan Implementation Task Force
Hon. Mariano-Florentino Cuéllar, Chair
Hon. Manuel J. Covarrubias, Vice-Chair

Action Requested
Review and submit comments by February 12, 2019

Proposed Effective Date
September 1, 2019

Contact
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Executive Summary and Origin

The Judicial Council has charged the Language Access Plan Implementation Task Force with overseeing and ensuring implementation of the *Strategic Plan for Language Access in the California Courts* (LAP). The plan provides a comprehensive and systematic approach to expanding language access in the California courts, in fulfillment of the courts' obligations under title VI of the Civil Rights Act of 1964. The Task Force proposes a new rule of court and three optional forms to satisfy a series of LAP recommendations focusing on the provision of language services outside the courtroom.

Background

The LAP, which was adopted by the Judicial Council on January 22, 2015, contains 75 recommendations for branchwide implementation to enhance language access for limited English proficient (LEP) court users.

LAP recommendations

Four recommendations specifically address the provision of language assistance in court-ordered services and programs—and the use of technology to achieve language access in activities that occur outside the courtroom:

This proposal has not been approved by the Judicial Council and is not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. It is circulated for comment purposes only.

- Recommendation 10 calls for the use of qualified court interpreters in all "court-ordered/court operated" programs;

- Recommendation 11 contains a statement indicating that LEP court users should not be required to participate in court-ordered programs and services if those programs are unavailable in the language of the court user or if language services are not provided to enable access to the programs;

- Recommendation 30 calls for the Judicial Council to "consider adopting policies" that will encourage the use of remote technologies to promote the sharing of bilingual human resources among courts to meet the needs of LEP court users in non-courtroom proceedings;[1] and

- Recommendation 33 requires courts to ascertain whether court-appointed professionals can provide "linguistically accessible services" before ordering court users to avail themselves of those programs, services, and professionals This recommendation also calls for courts to make reasonable efforts to enter into contracts with providers who can provide linguistically accessible services.

Appellate court finds abuse of discretion in ordering parent to participate in programs without language access

In 2017, the Second Appellate District of the Court of Appeal reversed a lower court's dispositional order requiring a father who had been denied custody of his children to participate in alcohol treatment and parenting classes that were not available in a language he spoke.

Factual and Procedural Background

The father in the case was a recent immigrant from Myanmar who spoke only Burmese or Karen. In May 2016, the Department of Children and Family Services (DCFS) removed his two children because his alcohol use rendered him unable to properly care for them. Father expressed a desire and willingness to participate in alcohol treatment in order to be reunified with his children. Over the course of several dependency hearings, DCFS reported back to the court that no residential alcohol treatment could be located that would provide language assistance and that Father struggled to comply with alcohol testing because of his communication barrier. At a later hearing, DCFS reported that the agency had been unable to identify any treatment options for Father that were offered in Burmese. At the disposition hearing, DCFS proposed a case plan that recommended a full alcohol treatment program, a 12-step program, and a parenting course. In June 2017, full legal and physical custody was granted to the mother and Father was allowed supervised visitation only. The lower court found that DCFS had made reasonable efforts to

[1] As an initial response to Recommendation 30, the Translation, Signage and Tools for Courts Subcommittee developed the report, *Technological Options for Providing and Sharing Court Language Access Services Outside the Courtroom*, which provides a survey of current practices in California courts and other courts across the country with respect to the use of technology to maximize existing human resources and enhance language services. This report was approved by the Task Force on January 30, 2018, for posting on the Language Access Toolkit, and is cited in the advisory committee comment in the proposed rule of court.

reunify Father with his children, but that Father's progress had been "minimal." (*In re J.P.* (2017) 14 Cal.App.5th 616, 619–623.)

Appellate Court Holding and Decision

The appellate court held that "the order that [Father] attend a drug treatment program, a 12-step program, and a parenting program, without any further detail as to how such programs could be attended, given his known language difficulties, constituted an abuse of discretion." (*Id.* at pp. 629–630.) The court reversed this portion of the dispositional order and remanded the case to the dependency court for reconsideration of its order terminating jurisdiction. (*Id.* at pp. 630–631.)

In addition to finding an abuse of discretion by the dependency court, the decision emphasized the dire consequences of failing to provide language assistance in conjunction with court-ordered services in a dependency case, not only for parents who risk being denied the care, custody, and control of their children, but for the children themselves, whose health and safety are at stake:

> The remedy is for DCFS and the court to provide language assistance of some sort. Our dependency laws require reasonable reunification services for parents (§ 361.5) but those services are fundamentally for the protection of the children. A dependent child is at risk if a parent with an untreated serious alcohol problem is given custody of, or visitation with, such child, without a program to address the problem. That DCFS could not easily arrange for services in a language a parent could understand is of no consolation to a child who has been abused or neglected.

(*In re J.P., supra*, 14 Cal.App.5th at p. 626.)

The Proposal

The Task Force proposes the adoption of new rule 1.300 (Access to programs, services, and professionals) and approval of three new forms: *Notice of Available Language Assistance—Service Provider* (form LA-350), *Service Not Available in My Language: Request to Change Court Order* (form LA-400), and *Service Not Available in My Language: Order* (form LA-450).

The proposed rule and forms were designed to assist courts with the operational challenges of connecting LEP litigants with court-ordered programs, services, and professionals offering services directly in the language spoken by the litigant or providing language assistance to facilitate access to their content.

Proposed rule 1.300

The rule would require courts, as soon as feasible, to adopt procedures to enable limited English proficient court litigants to access court-ordered and court-provided services to the same extent as persons who are proficient in English. The rule would discourage courts, to the extent feasible, from ordering an LEP litigant to access a private service or program that is not accessible in the litigant's language.

The rule would authorize an LEP litigant who is unable to timely comply with a court order to participate in a private service or program because of a language barrier to use proposed form

LA-400, *Service Not Available in My Language: Request to Change Court Order* to notify the court of the situation. In response, the court may modify its order or extend the deadline for compliance using form LA-450, *Service Not Available in My Language: Order*.

In addition, the rule would encourage courts to provide information to LEP court litigants about services, programs, and professionals offering language assistance. Courts may require private providers who would like to be included on a list maintained by the court to confirm annually with the court that they provide language services to LEP court litigants, using proposed form LA-350, *Notice of Available Language Assistance–Service Provider*.

The Task Force recommends placing new rule 1.300 in title 1 (Rules Applicable to All Courts). This title addresses issues such as court holidays, filing rules, and the format of papers, and contains rules for public access to court proceedings and accommodations for disability. The Task Force proposes to add a new chapter (Language Access Services), which in addition to housing proposed rule 1.300, would be an appropriate repository for any future rules of court developed to address general issues related to language access that are applicable to all courts.

Proposed forms and a Language Access forms category

The Task Force recommends the development of a new category of forms (LA) for language access–related resources. The council may consider, in a future rule proposal, consolidating Interpreter (INT) forms into this Language Access category. The numbers of the three forms in this proposal are intentionally high enough (350–450) to allow for the transfer of INT forms into this series by simply changing the first three letters of their name.

The current proposal includes three optional forms:

- Form LA-350, *Notice of Available Language Assistance—Service Provider* can be used by courts to receive information about providers that are geographically accessible to their court users and offer language assistance in conjunction with services that may be ordered by a court. The form can be filled out electronically and contains drop-down menus with common options for types of services, languages offered, and the format of language assistance. If none of the options is appropriate, the electronic form filler can simply type in information corresponding to his or her organization. The form can be filled out and submitted by service providers who wish to receive referrals from the court, and can be consulted by the court when there is a need to connect an LEP court user with a court-ordered service.

- Form LA-400, *Service Not Available in My Language: Request to Change Court Order* is intended for use by an LEP litigant who is unable to comply with a court order to participate in a private service or program because of a language barrier. The form is fillable and allows the user to describe the issue with accessing the service and to request that the court either modify its order or extend the deadline for participation.

- Form LA-450, *Service Not Available in My Language: Order* can be used by the court to respond to the *Request to Change Court Order* and contains fields for the court to enter an alternative order or extend the deadline for participation in the program or service. This form includes a Clerk's Certificate of Mailing, which will allow the court to notify the applicant and other interested parties if it modifies the order or extends the deadline.

Alternatives Considered

One alternative to this proposal would be not to develop a rule of court to address this issue; however, the Task Force determined that the courts would benefit from guidance and support with this issue, in part because of the appellate court decision in *In re J.P.*

Another alternative considered was a rule that would have had an implementation date of January 1, 2019. However, after input from numerous sources, including the Joint Rules Subcommittee of the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee, the Task Force determined that courts would benefit from additional time to ensure the development and implementation of appropriate processes to fully meet the objectives of the rule.

Fiscal and Operational Impacts

Implementation may require procedural changes in those courts that regularly order LEP parties to participate in programs or obtain services. The provision of language services should be accounted for in any new memoranda of understanding between the court and agencies or service providers and added to existing memoranda on the regular cycle of renewal of these documents. If a court chooses to compile information about language assistance available in conjunction with court-ordered services, it could develop a process for distribution, receipt, and processing of the *Notice of Available Language Assistance–Service Provider* forms it collects. If the court opts to manage the distribution and receipt of this form on paper, there will be photocopying costs and paper storage considerations; if the process is managed electronically, documents can be distributed, received, and stored using existing server capacity.

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?
- Will the proposed forms assist the courts in providing language assistance with non-courtroom services and programs?

The Task Force 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?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Cal. Rules of Court, rule 1.300, at pages 7–10
2. Forms LA-350, LA-400, and LA-450, at pp. 11–13
3. Link A: *Technological Options for Providing and Sharing Court Language Access Services Outside the Courtroom*, *www.courts.ca.gov/documents/lap-toolkit-technological-options-outside-the-courtroom.pdf*
4. Link B: *Strategic Plan for Language Access in the California Courts*, *www.courts.ca.gov/languageaccess.htm*

Rule 1.300 of the California Rules of Court is adopted, effective September 1, 2019, to read:

Chapter 8. Language Access Services

Rule 1.300. Access to programs, services, and professionals

(a) Definitions

As used in this chapter, unless the context or subject matter otherwise requires, the following definitions apply:

(1) "Court-provided programs, services, and professionals" are services offered and provided by court employees or by contractors or vendors under agreement with the court.

(2) "Court litigant" is a person who is a party in a court case or other legal proceeding.

(3) "Language services" are services designed to provide access to the legal system to limited English proficient court litigants and may include in-person interpretation, telephonic interpreter services, video remote interpreting services, and those provided by assigned bilingual employees and bilingual volunteers.

(4) "Limited English proficient" describes a person who speaks English "less than very well" and who, as a result, cannot understand or participate in a court proceeding.

(5) "Private programs, services, and professionals" are services provided by outside agencies, organizations, and persons, which court litigants may be required to access by court order.

(b) Provision of language services in court-ordered and court-provided programs, services, and professionals

As soon as feasible, each court must adopt procedures to enable limited English proficient court litigants to access court-ordered and court-provided programs, services, and professionals to the same extent as persons who are proficient in English.

(c) Provision of language services in private programs and services, and by private professionals

To the extent feasible, a court should avoid ordering a limited English proficient court litigant to a private program, service, or professional that is not language accessible.

(d) Delay in access to services

If a limited English proficient court litigant is unable to access a private program, service, or professional within the time period ordered by the court due to limitations in language service availability, the court litigant may submit a statement to the court indicating the reason for the delay and the court may, for good cause, enter an alternative order or extend the time for completion. Court litigants may use *Service Not Available in My Language: Request to Change Court Order* (form LA-400) for this purpose. The court may respond to the request using *Service Not Available in My Language: Order* (form LA-450).

(e) Use of technology

Courts should seek out opportunities to collaborate with each other and with community partners in the provision of language services and should employ technology to promote the sharing of bilingual staff and certified and registered court interpreters among courts, as appropriate.

Advisory Committee Comment

Subdivision (b). The goal of this rule is to connect limited English proficient court litigants ordered by courts to access programs or professionals with services in the languages spoken by the litigants. Recognizing that not all program providers will be willing or able to meet the language needs, the rule is intended to help courts become aware of those language services available in the community so that limited English proficient court litigants are not placed in a position where they are unable to comply with court orders because the required services are not available in a language they understand.

To facilitate equal access to justice, when courts order limited English proficient litigants to access court-provided programs, services, and professionals, to the greatest extent possible, courts should ensure that the services are language accessible.

To the extent feasible and as permitted by law, any memorandum of understanding or other written agreement for agency-referred programs, services, and professionals trial courts enter into or amend after the implementation date of this rule should include the goal of providing language services in the languages spoken by limited English proficient court users, and of notifying the

court in the event that the language needs of a limited English proficient court litigant referred to the program, service, or professional cannot be accommodated.

Subdivision (c). Courts are encouraged to offer neutral, non-endorsing information about private programs, services, and professionals providing multilingual services or language assistance to enable limited English proficient court litigants to access their programs. Private programs, services, and professionals that would like to be included on a court's informational list may confirm in writing to the court annually that they offer language services, indicating the languages covered by the program, service, or professional. Courts may require providers to use *Notice of Available Language Assistance—Service Provider* (form LA-350) for this purpose.

Subdivision (d). When a defendant is required to participate in a batterer intervention program under section 1203.097(a)(6) of the California Penal Code, the court may order "another appropriate counseling program" if a batterer's program is unavailable in the language spoken by the court litigant. In addition, a judge may, for good cause, excuse the requirement to complete the 52-week program within 18 months. The application of a similar standard to all orders to participate in non-courtroom services, whereby the unavailability of language assistance would constitute good cause to make an alternative order or to excuse delay in completion, would provide the court with flexibility to address situations in which a program or service is unavailable in the language spoken by a limited-English-proficient court user.

Two optional forms, *Service Not Available in My Language: Request to Change Court Order* (form LA-400) and *Service Not Available in My Language: Order* (form LA-450), were developed to facilitate communication between the court and a limited English proficient court litigant who is unable to comply with a court order because of a lack of language assistance.

Form LA-400 allows the court litigant to notify the court of the unavailability of language assistance in a court-ordered program, and to request a modified order or an extension of the time for completion of the program. Form LA-450 allows the court to issue a modified order or to extend the time for completion of a court-ordered program or service. A request may be denied if the court receives information that a program is available in the language of the court litigant, or that language assistance is available to help the court litigant access the program, and that the program or service may be accessed within the time mandated by the court for completion. If a request is denied on this basis, the court should provide contact information that will allow the court litigant to access the program. In addition, a request may be denied if the court finds there is good cause to believe that the request was brought for an improper purpose or that the court litigant knowingly provided false information on form LA-400.

Subdivision (e). It is the policy of the California courts to encourage the efficient and effective use of human and technological resources in the provision of language services while ensuring meaningful access for limited English proficient court users. For non-courtroom interpretation events, courts may consult the report, *Technological Options for Providing and Sharing Court Language Access Services Outside the Courtroom* (January

2018), for opportunities to collaborate with other courts and service providers to enhance language access for LEP court users.

LA-350 Notice of Available Language Assistance—Service Provider

Clerk stamps date here when form is received.

DRAFT
Not Approved by the Judicial Council

Use this form to:

- Tell the court that you are a service provider, program, or professional offering language assistance with services that may be ordered by a court; and
- Provide information about the services you provide, the languages and types of language assistance available, and your service area.

Fill in court name and address:

Superior Court of California, County of

1 This form should be filed with the court by January 31 of each year to indicate services that will be provided during the calendar year.

The information in this form describes services available during calendar year: _____

2 Name of service provider: _____

Address: _____

Telephone: _____ Web address: _____

Contact name: _____ E-mail: _____

3 Information about the services provided (*if you provide a service, language, or type of language assistance that does not appear in the drop-down box, or you provide more than one of the selections, please type in your answer)*:

Service	Languages Available	Type of Language Assistance	Service Area (county or region)

Other services or assistance provided: _____

Date: _____

_____ ▶ _____

Type or print your name *Sign your name*

LA-400 Service Not Available in My Language: Request to Change Court Order

Clerk stamps date here when form is filed.

DRAFT
Not Approved by the Judicial Council

Use this form if:

- The court has ordered you to participate in a program or service;

  AND

- The program or service is not available in a language you speak, and language assistance is not available or is delayed.

This form will allow you to explain your language need to the court and request a different order.

Fill in court name and address:

Superior Court of California, County of

Case Number:

(1) Your full name: _____

Address: _____

Telephone: _____ E-mail: _____

Language or languages you speak: _____

(2) Program or service ordered: _____

Date of the order: _____

Date the court ordered you to **complete** participation in the program or service: _____

(*Optional*) Describe your efforts to participate in the program or service:

_____

(3) Select one of the following options:

☐ I ask the court to modify the order because the program or service ordered is not available in a language I speak and no language assistance has been offered or provided to help me access the program or service.

☐ I ask the court to extend the deadline for participation in the program or service ordered by the court because there is a delay in providing language assistance.

Date when language assistance will be available *(if you know)*: _____

Date: _____

_____ ▶ _____

Type or print your name *Sign your name*

LA-450 Service Not Available in My Language: Order

Clerk stamps date here when form is filed.

DRAFT
Not Approved by the Judicial Council

1 The court received a request to change an order from:

Full Name: _____

Address: _____

Telephone: _____ E-mail: _____

Fill in court name and address:

Superior Court of California, County of

Case Number:

2 The court:

a. ☐ Makes the following alternative order, which replaces the order described in the request:

_____

b. ☐ Orders the required completion date of the program or service described in the request extended to: _____

c. ☐ Makes the following additional order or orders:

_____

d. ☐ Denies the request because:

(1) ☐ The service is available in the language spoken by the litigant and may be accessed by the required completion date.

The service may be accessed by contacting: _____

(2) ☐ Language assistance for this service is available and may be accessed by the required completion date.

Language assistance may be accessed by contacting: _____

(3) ☐ Other good cause (*specify*): _____

Date: _____

_____
JUDGE OF THE SUPERIOR COURT

CLERK'S CERTIFICATE OF MAILING

I am not a party to this action. I caused the *Request* and *Order* to be served by enclosing a copy in an envelope addressed as shown below and caused the envelope to be deposited with the U.S. Postal Service with first-class postage fully prepaid

on (*date*): _____ at (*city*): _____ , California.

I certify that the foregoing is true and correct.

Date:

Clerk, by _____, Deputy

APPLICANT *(name and address)*:

AGENCY, if applicable *(name and address)*:

OPPOSING PARTY *(name and address)*: