Judicial Council *of* California

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PATRICIA GUERRERO
Chief Justice of California
Chair of the Judicial Council

MILLICENT TIDWELL
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September 20, 2023

Hon. Gavin Newsom
Governor of California
1021 O Street, Suite 9000
Sacramento, California 95814

Subject: Assembly Bill 1032 (Pacheco)—Request for Signature

Dear Governor Newsom:

The Judicial Council respectfully requests your signature on Assembly Bill 1032 which makes significant changes and improvements to the Trial Court Interpreter Employment and Labor Relations Act ("Interpreter Act"). Implemented in 2003, the Interpreter Act established procedures governing the employment and compensation of certified and registered trial court interpreters and court interpreters pro tempore employed by the courts.

We have worked closely with the author as well as the bill sponsor and legislative committee staff on many helpful amendments to provide appropriate flexibility and avoid any unintended negative impacts to language access in the courts.

We very much appreciate the hard work of everyone involved in crafting amendments to address outstanding concerns as well as make improvements to the Interpreter Act. This includes the following important provisions:

(1) inserts new and updated terminology and definitions to clarify confusing language in the statute;
(2) clarifies that new calendar limits on the use of provisionally qualified interpreters may be extended subject to judicial discretion;
(3) provides discretion to individual courts to offer local retention bonuses or other one-time stipends to interpreter employees just like other local court employees;
(4) clarifies the role of the regional committee in bargaining hourly rates of pay;
(5) delays implementation until January 1, 2025 to give courts adequate time to prepare and for the Judicial Council to revise rules and forms; and

(6) requires the Judicial Council to conduct a workforce study and provide recommendations to the Legislature regarding court interpreter availability and the future court interpreter workforce.

With over 200 languages[1] spoken in the courts, California's judicial branch serves an increasingly diverse population. Goal I of the Strategic Plan for the California Judicial Branch is Access, Fairness, Diversity, and Inclusion. All persons will have equal access to the courts and court proceedings and programs. Court interpreters play a critical role in ensuring court proceedings are accessible and understandable to court users.

One of the major goals of the Strategic Plan for Language Access in the California Courts is to expand high quality language access through the recruitment and training of interpreters. As stated in the Language Access Plan; "Without meaningful language access, Californians who speak limited English are effectively denied access to the very laws created to protect them."

We are committed to expanding high quality language access through the training and recruitment of interpreters. For these reasons, the Judicial Council supports AB 1032 as amended.

Should you have any questions or require additional information, please contact me at 916-323-3121.

Sincerely,

Cory T. Jasperson
Director, Governmental Affairs

CTJ/SR/lmm
cc: Hon. Blanca Pacheco, Member of the Assembly, 64th District
Ms. Jessica Devencenzi, Deputy Legislative Secretary, Office of the Governor
Ms. Millicent Tidwell, Acting Administrative Director, Judicial Council of California
Ms. Shelley Curran, Chief Policy & Research Officer, Judicial Council of California

[1] The top ten most commonly interpreted languages in the courts are (in order of prevalence) Spanish, Vietnamese, American Sign Language, Mandarin, Cantonese, Korean, Punjabi, Russian, Arabic, and Farsi (2020 Language Need and Interpreter Use Study).

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August 23, 2023

Hon. Anthony J. Portantino, Chair
Senate Appropriations Committee
1021 O Street, Suite 7630
Sacramento, California 95814

Subject: Assembly Bill 1032 (Pacheco), as amended July 13, 2023—Oppose unless amended
Hearing: Senate Appropriations Suspense File

Dear Senator Portantino:

The Judicial Council has adopted an oppose unless amended position on Assembly Bill 1032 which makes substantial changes to the Trial Court Interpreter Employment and Labor Relations Act ("Interpreter Act"). Implemented in 2003, the Interpreter Act established procedures governing the employment and compensation of certified and registered trial court interpreters and court interpreters pro tempore employed by the courts.

We have been working with the author and bill sponsor as well as committee staff and while recent amendments are helpful, more work remains to provide appropriate flexibility and avoid unintended negative impacts to language access in the courts. We very much appreciate the hard work of everyone involved and look forward to continuing discussions to make the bill work for all Californians.

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court proceedings and programs. Court interpreters play a critical role in ensuring court proceedings are accessible and understandable to court users.

One of the major goals of the Strategic Plan for Language Access in the California Courts is to expand high quality language access through the recruitment and training of interpreters. As stated in the Language Access Plan; "Without meaningful language access, Californians who speak limited English are effectively denied access to the very laws created to protect them."

In 2001, the Judicial Council supported the Interpreter Act (SB 371, Escutia, Stats. 2001, ch. 1047), as it provided for employee status for court interpreters while maintaining appropriate flexibility for the use of independent contractors, which enabled the courts to better manage this important service.

Unfortunately, the proposed changes to the Interpreter Act contained in AB 1032 will exacerbate, rather than alleviate, access to qualified interpreters. These proposed changes will have the following significant negative impacts:

(1) limit the use of provisionally qualified interpreters for certified languages to 45 days in a calendar year, thereby reducing the available interpreter pool;
(2) unnecessarily restrict who parties can use as direct-pay interpreters in civil proceedings, and eliminates their use in criminal proceedings (also reducing the interpreter pool);
(3) create an entirely new concept of "binding mediation" not found in other public sector labor statutes;
(4) impose factfinding in the negotiation process, which has never been applied to the trial courts;
(5) interfere with existing collective bargaining provisions by introducing problematic lump-sum and pay mandates which go far beyond other public-sector labor statutes; and
(6) include contract interpreters in compensation-related provisions of collective bargaining agreements, even though contractors are not bargaining unit members.

The Judicial Council and trial courts are committed to expanding high quality language access through the training and recruitment of interpreters. While AB 1032 assumes that there is a pool of independent contractor interpreters that are available and willing to become court employees, this is a seriously flawed assumption given the large number of interpreter vacancies in trial courts. For reference, currently 56 percent of court interpreters work as contractors with the remaining 44 percent working as employees of the court. It is important to note that contractors typically work part-time and only represent about 20 percent of total interpreter expenditures statewide. Contract interpreters are a critical component in providing language access in the courts, particularly in languages other than Spanish.

Under current law, non-opt out independent contractors must be offered court employment after being appointed for 45 court days by the same court during the same calendar year. Once a contractor reaches the 100-day ceiling, they cannot be used by that court for the remainder of the calendar year unless they agree to become employees. This provision has been in effect for more than twenty years and has not appreciably increased the number of interpreter employees. The real impact of this ceiling is a loss of interpreter resources as contractors must stop providing services for the remainder of the year. This results in end-of-year continuances and/or courts being compelled to bring in contractors from further and further away at greater public expense in order to conduct hearings. Adding more restrictions to an interpreter pool that is already too small will further hamstring the courts, limiting access to justice for limited-English proficient court users.

At a minimum, before making changes to the Interpreter Act that would have such detrimental unintended impacts to language access in the courts, it would be prudent to conduct additional research and perform an interpreter workforce study to determine how many independent contractor interpreters would like to become court employees under the proposed statutory changes, and the resulting impact on interpreter supply. Moreover, research is needed on the current use of provisionally-qualified interpreters, to determine how any proposed new limitations would impact interpreter supply and the ability to timely conduct court hearings. It would also be critical to allow for adequate time to transition to any major changes to the system to avoid unintended negative consequences.

Finally, AB 1032 would nullify portions of the regional bargaining structure that was a hallmark of the original statute and would affect the courts' collective bargaining relationships with all other recognized employee organizations. The bill would bypass regional bargaining by automatically entitling interpreter employees to any bonuses negotiated by courts with any other bargaining unit.

For these reasons, the Judicial Council opposes AB 1032 unless amended to ensure courts have the flexibility to meet the needs of LEP parties and witnesses, and to remove provisions that would undermine current collective bargaining relationships.

Should you have any questions or require additional information, please contact me at 916-323-3121.

Sincerely,

Cory T. Jasperson
Director, Governmental Affairs

CTJ/ML/lmm
Enclosures
cc: Members, Senate Appropriations Committee
Hon. Blanca Pacheco, Member of the Assembly, 64th District
Ms. Allison Meredith, Counsel, Senate Judiciary Committee
Mr. Morgan Branch, Policy Consultant, Senate Republican Office of Policy
Ms. Jessica Devencenzi, Deputy Legislative Affairs Secretary, Office of the Governor
Ms. Millicent Tidwell, Acting Administrative Director, Judicial Council of California
Ms. Shelley Curran, Chief Policy & Research Officer, Judicial Council of California

AB-1032 Courts: court interpreters.

As Amends the Law [July 13, 2023, amendments are highlighted]

SECTION 1. Section 71801 of the Government Code is amended to read:

71801. For purposes of this chapter, the following definitions shall apply:

(a) "Certified interpreter" and "registered interpreter" have the same meanings as in Article 4 (commencing with Section 68560) of Chapter 2. This chapter does not apply to sign language interpreters.

(b) "Court proceedings" has the same meaning as subdivision (a) of Section 68560.5.

~~(b)~~ *(c)* "Cross-assign" and "cross-assignment" refer to the appointment of a court interpreter employed by a trial court to perform spoken language interpretation services in another trial court, pursuant to Section 71810.

~~(c)~~ *(d)* "Employee organization" means a labor organization that has as one of its purposes representing employees in their relations with the trial courts.

(e) "Interpreter pro tempore" is a court interpreter who works as an intermittent employee on a day-by-day basis as described in Section 71803.

> [**Comments:**
> Interpreter pro tempore is a confusing term that should no longer be used, given that the term "Pro Tempore" is most commonly used when referring to independent contractor court reporters. Using the same word with two diametrically opposed meanings – one is an employee (interpreter), the other a contractor (reporter) – is confusing and should be avoided.
>
> Recommend replacing "Court Interpreter Pro Tempore" with "Intermittent, Part-Time Interpreter," which is defined as an interpreter employee classification that is not guaranteed any hours of work, has no set schedule, and may make themselves available to work for the courts on an "as needed" basis.]

(f) "Language of lesser diffusion" means a language for which there is no bilingual interpreting examination (BIE) or oral proficiency examination (OPE).

> [**Comments:**
> This definition is problematic in that it makes a presumptive connection between exam availability and languages of lesser diffusion. While there may be some correlation, the existence or lack of an exam does not always correlate to languages of lesser diffusion (since there are different geographic areas, like Los Angeles as compared to Shasta,

where the relative size of a particular language population can vary significantly and there may or may not be a BIE or OPE) and this may have unintended consequences.

Possible alternative definition: "…means a language for which no BIE or OPE is scheduled to be administered in the next calendar year. The Judicial Council shall issue an update to this list on the first business day of the calendar year."

Note: Only spoken certified languages in California are licensed via a Bilingual Interpreting Exam (BIE). Those 15 languages are: Arabic, Armenian (Eastern), Armenian (Western), Cantonese, Farsi (Persian), Filipino (Tagalog), Japanese, Khmer, Korean, Mandarin, Portuguese, Punjabi (Indian), Russian, Spanish, and Vietnamese. (www.prometric.com/test-takers/search/cacourtint/california-certified-court-interpreter) All other languages are considered registered and do NOT have a BIE.

Interpreters who wish to be registered must take a written exam in English, and an Oral Proficiency Exam (OPE). (www.prometric.com/test-takers/search/cacourtint/california-registered-court-interpreter)

If the intent is to say that "languages of lesser diffusion" (LLD) are registered languages, just skip the definition and just call them "registered" languages.]

~~(d)~~ *(g)* "Mediation" means effort by an impartial third party to assist in reconciling a dispute regarding wages, hours, and other terms and conditions of employment between representatives of the trial court or regional court interpreter committee and the recognized employee organization through interpretation, suggestion, and advice.

[**Comments:**
This definition is inconsistent with the proposed amendment to Section 71820, which calls for "binding mediation" to resolve impasses. Binding mediation is unheard of, since by definition mediation is a voluntary process by which a neutral seeks to assist the parties in resolving a dispute.

It seems unlikely that the California State Mediation & Conciliation Service (SMCS) would oversee such a process. What is the position of SMCS on this proposal?]

~~(e)~~ *(h)* "Meet and confer in good faith" means that a trial court or regional court interpreter committee or those representatives it may designate, and representatives of a recognized employee organization, shall have the mutual obligation personally to meet and confer promptly upon request by either party and continue for a reasonable period of time in order to exchange freely information, opinions, and proposals, and to endeavor to reach agreement on matters within the scope of representation. The process shall include adequate time for the resolution of impasses where specific procedures for resolution are contained in this chapter, or when the procedures are used by mutual consent.

~~(f)~~ *(i)* "Personnel rules," "personnel policies, procedures, and plans," and "rules and regulations" mean policies, procedures, plans, rules, or regulations adopted by a trial court or its designee pertaining to conditions of employment of trial court employees, subject to meet and confer in good faith.

~~(g)~~ *(j)* "Recognized employee organization" means an employee organization that has been formally acknowledged to represent the court interpreters employed by the trial courts in a region, pursuant to this chapter.

~~(h)~~ *(k)* "Regional court interpreter employment relations committee" means the committee established pursuant to Section 71807.

~~(i)~~ *(l)* "Regional transition period" means the period from January 1, 2003, to July 1, 2005, inclusive, except that the transition period for the region may be terminated earlier by a memorandum of understanding or agreement between the regional court interpreter employment relations committee and a recognized employee organization.

(m) "Relay interpreting" is interpretation wherein an additional interpreter of a registered or certified language is needed to communicate between the language of lesser diffusion and English.

> [**Comments:**
> A relay interpreter is often someone who is not fluent in English. In this scenario, they interpret from Language A (Mixteco) to Language B (Spanish), and a second interpreter converts the spoken words from Language B (Spanish) to English. But this isn't always the case. See link for explanation. www.accreditedlanguage.com/interpreting/what-is-relay-interpreting/
>
> Also see above comments re language of lesser diffusion … it might be best to avoid specifying registered, certified or language of lesser diffusion since this is relative to each local court.
>
> Alternative definition: "Relay interpreting is the process by which two interpreters with different language pairs work in tandem to communicate between the target language and English."]

~~(j)~~ *(n)* "Transfer" means transfer within the trial court as defined in the trial court's personnel policies, procedures, and plans, subject to meet and confer in good faith.

~~(k)~~ *(o)* "Trial court" means the superior court in each county.

SEC. 2. Section 71802 of the Government Code is amended to read:

71802. (a) ~~On and after July 1, 2003, trial~~ *Trial* courts shall appoint trial court employees, rather than independent contractors, to perform spoken language interpretation of trial court proceedings.

An interpreter ~~may~~ *shall* be an employee of the trial court or an employee of another trial court on cross-assignment.

(b) Notwithstanding subdivision (a), a trial court may appoint an independent contractor to perform spoken language interpretation of trial court proceedings if one or more of the following circumstances exists:

(1) An interpreter ~~who is not registered or certified~~ *of a language of lesser diffusion* is appointed on a temporary basis pursuant to Rule ~~984.2~~ *2.893* of the California Rules of Court.

> [**Comments:**
> The July 13 amendment does NOT address the concerns. With this language, if we can't find a certified Japanese interpreter, we can't have one provisionally qualified. Remove the term language of lessor diffusion, or change the definition. Let Rule 2.893 govern here.]

(2) The interpreter is over 60 years of age on January 1, 2003, or the sum of the interpreter's age in years on January 1, 2003, and the number of years the interpreter has provided services to the trial courts as an independent contractor prior to January 1, 2003, is equal to or greater than 70, the interpreter has provided services to the trial courts as an independent contractor prior to January 1, 2003, and the interpreter requests in writing prior to June 1, 2003, the opportunity to perform services for the trial court as an independent contractor rather than as an employee.

(3) The interpreter is *certified or registered and* paid directly by the parties ~~to the~~ *in a civil* proceeding.

> [**Comments:**
> Unduly limits who parties can use as direct-pay interpreters. Also appears to eliminate the use of direct-pay interpreters in criminal proceedings by adding the clause, "in a civil" proceeding.]

(4) The interpreter has performed services for the trial courts as an independent contractor prior to January 1, 2003, the interpreter notifies the trial court in writing prior to June 1, 2003, that the interpreter is precluded from accepting employment because of the terms of an employment contract with a public agency or the terms of a public employee retirement program, the interpreter provides supporting documentation, and the interpreter requests in writing the opportunity to perform services for the trial court as an independent contractor rather than an employee.

(c) Notwithstanding subdivisions (a) and (b), and unless otherwise provided in a memorandum of understanding or agreement with a recognized employee organization, a trial court may also appoint an independent contractor on a day-to-day basis to perform spoken language interpretation of trial court proceedings if all of the following circumstances exist:

(1) The trial court has assigned all the available employees and independent contractors appointed pursuant to paragraphs (2) and (4) of subdivision (b) in the same language pair and has need for

additional interpreters. Employees and independent contractors who are appointed pursuant to paragraphs (2) and (4) of subdivision (b) shall be given priority for assignments *and court locations* over independent contractors who are appointed pursuant to this subdivision.

[**Comments:**
This is a collective bargaining issue.

Currently, employees and opt-outs are given priority for assignments. Courts have difficulties getting employees to go to less favorable branch court locations, but court management currently directs the interpreter employees to go where the court needs them. Courts are being pressed in bargaining to give up the right to direct employees to interpret at a location specified by management.

This change would mandate that employees could refuse to work at a non-preferred location (as they would choose the better locations) and force the court to try and use contractors at the non-preferred location. The problem is that contractors can simply decline the assignment leaving no interpreter being available to work in a non-preferred location, creating a shortage of interpreter services.]

(2) The interpreter has not previously been appointed as an independent contractor by the same trial court on more than 100 court days or parts of court days during the same calendar year, except that the trial court may continue to appoint an independent contractor on a day-to-day basis to complete a single court proceeding, if the trial court determines that the use of the same interpreter to complete that proceeding is necessary to provide continuity. An interpreter who has been appointed by a trial court as an independent contractor pursuant to this subdivision on more than 45 court days or parts of court days during the same calendar year shall be entitled to apply for employment by that trial court as a court interpreter pro tempore and the trial court ~~may~~ *shall* not refuse to offer employment to the interpreter, except for cause. For purposes of this section, "for cause" means a fair and honest cause or reason regulated by good faith on the part of the party exercising the power.

[**Comments:**
Independent contractors must be offered court employment after being appointed for 45 court days by the same court during the same calendar year. Once a contractor reaches the 100-day ceiling, they cannot be used by that court for the remainder of the calendar year unless they agree to become employees. This provision has been in effect for more than twenty years and has not appreciably reduced the contractor ranks.

The real impact is a loss of interpreter resources, as interpreter contractors must stop providing services during the year. This results in end-of-year continuances and/or courts being compelled to bring in contractors from further and further away at greater public expense in order to conduct hearings. Adding more restrictions to an interpreter pool that is already too small further hamstrings the courts and is very detrimental to limited-English proficient court users.]

(3) The trial court does not provide independent contractors appointed pursuant to this subdivision with lesser duties or more favorable working conditions than those ~~to which~~ *of* a court interpreter ~~pro tempore~~ employed by that trial ~~court would be subject for the purpose of discouraging interpreters from applying for pro tempore employment with the trial~~ court. The trial court is not required to apply the employee training, disciplinary, supervisory, and evaluation procedures of the trial court to any independent contractor. *Trial courts shall not offer premiums to independent contractors unless the same offer has been made to pro tempore employees or part-time and full-time employees on cross-assignment.*

[**Comments:**
This isn't workable. Pay rates are part of collective bargaining. Also, independent contractors do not receive health care and retirement benefits like regular court employees, and thus they expect to be paid at a higher hourly or per diem rate. Limiting independent contractors to the same rates paid to court employees would unduly limit the number of available interpreters.]

(d) Only registered and certified interpreters may be hired by a trial court as employees to perform spoken language interpretation of trial court proceedings. Interpreters who are not certified or registered may be assigned to provide services as independent contractors only when certified and registered interpreters are unavailable and the good cause and qualification procedures and guidelines adopted by the Judicial Council pursuant to subdivision (c) of Section 68561 have been followed. *Interpreters who are not certified in languages for which there is a BIE shall not be assigned to provide services as independent contractors in those languages for more than 45 court days or parts of court days within a calendar year.*

[**Comments:**
The provisional qualification reduction from 6 months (under Rule 2.893) to 45 days for languages that have a BIE (under these revisions) is very problematic and will further hamstring the court's ability to meet ongoing case needs, even for simple matters, resulting in delays and continuances until a certified interpreter can be found. These provisions only make sense if there are contractors who are ready and willing to become court employees. Twenty years of experience with the Interpreter Act has shown that individuals who remain as contractors do so because they like the flexibility and have chosen not to become employees. This provision will reduce the interpreter pool and inhibits language access. If an independent contractor speaks a certified language but is not certified, then they cannot work more than 45 days. Ex. of issue: There is a certification exam for Farsi, but not enough people pass it. If provisionally qualified Farsi interpreters cannot work more than 45 days, people will go without a Farsi interpreter, or their matters will be continued multiple times. Suggest limiting this 45-day cap to only Spanish.]

(e) A trial court that has appointed independent contractors pursuant to paragraph (1) of subdivision (b) or to subdivision (c) for a language pair on more than 60 court days or parts of court days in the prior 180 days shall provide public notice that the court is accepting applications

for the position of court interpreter pro tempore for that language pair and shall offer employment to qualified applicants.

(f) Unless the parties to the dispute agree upon other procedures after the dispute arises, or other procedures are provided in a memorandum of understanding or agreement with a recognized employee organization, disputes concerning a violation of this section shall be submitted for binding arbitration to the California State Mediation and Conciliation Service.

SEC. 3. Section 71803 of the Government Code is amended to read:

71803. (a) In each trial court, there shall be ~~a new~~ *an* employee classification entitled "court interpreter pro tempore" to perform simultaneous and consecutive interpretation and sight translation in spoken languages for the trial courts. Unless otherwise provided in a memorandum of understanding or agreement with a recognized employee organization, all of the following applies to employees in this classification:

> [**Comments:**
> As discussed above, the "pro tempore" terminology is problematic and this seems redundant here if other sections also explain court employment. The definition isn't needed here if section 71801(e) is properly defined in the first place as intermittent, part-time interpreter.]

(1) They shall be appointed by the trial court to perform work on an as needed basis.

(2) They shall be appointed on a one-half day or full day per diem basis as needed.

> [**Comments:**
> This is a collective bargaining issue. Also, how does this work with (3) below? What if the interpreter makes themselves unavailable after the proceeding is finished and isn't available for the remainder of the day or half-day?
>
> The per diem language is confusing. Regional MOUs already provide the 4-hour or 8-hour guarantee. Courts are experiencing problems with employees who do not want to make themselves available for the entire 4 or 8 hours, but still want to be paid the full per diem. This is inappropriate and can be addressed with language that would absolve the court of needing to pay the full shift if the employee wants to go home early … with something like "Intermittent, part-time employees shall be paid on an hourly basis, with a guarantee of either four (4) hours (half day) or eight (8) hours (full day) of pay, provided that the employee makes their services available throughout their entire four (4) hour or eight (8) hour shift. If an employee does not remain available to the court to work their complete shift, they will only be paid for their actual hours worked."]

~~(2)~~ *(3)* They shall be paid on a per diem basis for work performed.

~~(3)~~ *(4)* They are not required to receive health, pension, or paid leave benefits.

(b) Court interpreters pro tempore may accept appointments to provide services in other trial courts pursuant to Section 71810.

(c) A trial court may hire employees as interpreters of languages of lesser diffusion to perform relay interpretation.

[**Comments:**
Courts can already hire interpreter employees in registered languages, but registered status requires proficiency in English. Hiring interpreters of "languages of lesser diffusion" as employees is problematic. It would be difficult if not impossible for courts to manage persons who don't speak English. Under current law, interpreters must be certified or registered to be eligible for employment. (And currently, for those languages that don't have an OPE, the interpreter must still pass the Written Examination in English and the OPE in English before they can enroll with the council to become registered. This new language creates an exception to those requirements and gives favor to one group of interpreters over others.]

~~(c)~~ *(d)* Unless otherwise provided in a memorandum of understanding or agreement with a recognized employee organization, no rules and regulations or personnel rules shall limit the number of hours or days court interpreters pro tempore are permitted to work.

SEC. 4. *Section 71804 of the Government Code is repealed.*

~~**71804.** (a) Each trial court shall offer to employ as a court interpreter pro tempore each interpreter who meets all of the following criteria:~~
~~(1) The interpreter is certified or registered.~~
~~(2)The interpreter has provided services to the same trial court as an independent contractor on at least either:~~
~~(A) Thirty court days or parts of court days in both calendar year 2001 and calendar year 2002.~~
~~(B) Sixty court days or parts of court days in calendar year 2002.~~
~~(3) The interpreter has applied for the position of court interpreter pro tempore prior to July 1, 2003, and has complied with reasonable requirements for submitting an application and providing documentation.~~
~~(4) The interpreter's application is not rejected by the trial court for cause.~~
~~(b) Each trial court shall begin accepting applications for court interpreters pro tempore by no later than May 1, 2003. Court interpreters who qualify for employment pursuant to this section shall receive offers of employment within 30 days after an application is submitted. Applicants shall have at least 15 days to accept or reject an offer of employment. The hiring process for applicants who accept the offer of employment shall be completed within 30 days after acceptance, but the trial court need not set employment to commence prior to July 1, 2003.~~
~~(c) For purposes of this section, "for cause" means a fair and honest cause or reason regulated by good faith on the part of the party exercising the power.~~
~~(d) Unless the parties to a dispute agree upon other procedures after the dispute arises, or other procedures are provided in a memorandum of understanding or agreement with a recognized~~

~~employee organization, disputes about whether this section has been violated during the regional transition period shall be resolved by binding arbitration through the California State Mediation and Conciliation Service.~~

SEC. 5. Section 71804.5 of the Government Code is amended to read:

71804.5. ~~(a) After a trial court has considered applications under Section 71804, the trial court may hire additional court interpreters pro tempore pursuant to the personnel rules of the trial court. (b)~~ A court interpreter pro tempore may not be an employee of more than one trial court, but may accept appointments to provide services to more than one trial court through cross-assignments.

[**Comments:**
This section really isn't necessary and should be moved up to 71802.

It's important to maintain that interpreter employees may only be employed by one court at a time to avoid employment by multiple courts and obviating the cross-assignment system.]

SEC. 6. Section 71805 of the Government Code is amended to read:

[**Comments:**
This section was put into place during the transition to the Interpreter Act and should be repealed as it is no longer necessary. The "regional transition period" no longer exists and these amendments make things more confusing. These issues are addressed in collective bargaining and the regional MOUs deal with pay rates. These amendments add confusion and interfere with the collective bargaining process.]

71805. ~~(a) Until the conclusion of the regional transition period, all interpreters who are employed by a trial court shall be classified as court interpreters pro tempore, except as provided in Section 71828, unless otherwise provided in a memorandum of understanding or agreement with a recognized employee organization.~~

~~(b) This chapter does not require trial courts to alter their past practices regarding the assignment of interpreters. If an interpreter had a regular assignment for the trial court as an independent contractor prior to the effective date of this chapter, nothing in this chapter shall prohibit the trial court from continuing to appoint the same interpreter to the same assignment as a court interpreter pro tempore during the regional transition period.~~

~~(c)~~ *(a)* ~~During the regional transition period, the existing statewide per diem pay rate may not be reduced, and the existing statewide compensation policies set by the Judicial Council shall be maintained, unless otherwise provided in a memorandum of understanding or agreement with a recognized employee organization. The per diem pay~~ *Contractor per diem rates and other compensation policies shall also apply to court interpreters pro tempore. Per diem* rate and compensation policies shall ~~apply to court interpreters pro tempore.~~ *be a separate article within*

the memorandum of understanding and shall be bargained at a higher rate than that of regular full-time and part-time.

[**Comments:** This is a collective bargaining issue and should be left for the parties to resolve through the meet and confer process. It is unprecedented for a labor relations statute to specify relative rates of pay to be included in a collective bargaining agreement, and moreover to dictate where the terms of a collective bargaining agreement may be located.

This language appears to tie pro tem employee payrates to independent contractor rates. It is untenable to include independent contractor rates in an MOU. Independent contractors are not in the bargaining unit and cannot be governed by any provision of the MOU. This would not be workable.

This is very confusing. There is no existing statewide per diem rate. There are currently four regional MOUs, with different pay rates. What is the intent here?

The MOU pay rates apply to all employee classifications, not just intermittent part-time employees.

PERB is supportive of a robust bargaining process … dictating terms and contents of an MOU in statute is inconsistent with this.]

~~(d) Court interpreters pro tempore are not subject to disciplinary action during the regional transition period, except for cause.~~

~~(e) For purposes of this section, "for cause" means a fair and honest cause or reason regulated by good faith on the part of the party exercising the power.~~

~~(f)~~ *(b)* ~~During the regional transition period, a~~ *A* trial court may not retaliate or threaten to retaliate against a court interpreter or applicant for interpreter employment because of the individual's membership in an interpreter association or employee organization, participation in any grievance, complaint, or meet and confer activities, or exercise of rights under this chapter, including by changing past practices regarding assignments, refusing to offer work to an interpreter, altering working conditions, or otherwise coercing, harassing, or discriminating against an applicant or interpreter.

~~(g)~~ *(c)* Unless the parties to a dispute agree upon other procedures after the dispute arises, or other procedures are provided in a memorandum of understanding or agreement with a recognized employee organization, disputes about whether this section has been violated shall be resolved by binding arbitration through the California State Mediation and Conciliation Service.

SEC. 7. Section 71806 of the Government Code is amended to read:

71806. (a) ~~At the conclusion of the regional transition period, trial~~ *Trial* courts in the region may employ certified and registered interpreters to perform spoken language interpretation for the trial courts in ~~full-time or part-time~~ *full-time, part-time, or pro tempore* court interpreter positions created by the trial ~~courts with the authorization of the regional committee and subject to meet and confer in good faith. The courts may also continue to employ court interpreters pro tempore.~~ *courts.*

(b) For purposes of hiring interpreters for ~~positions other than court interpreters pro tempore,~~ *full-time or part-time positions,* unless otherwise provided in a memorandum of understanding or agreement with a recognized employee organization, trial courts shall consider ~~applicants~~ *applicants, who shall be eligible for full-time or part-time positions,* in the following order of priority:

(1) Court interpreters pro tempore in the same language who have performed work for that trial court for at least 150 court days or parts of court days during ~~each of the past five years,~~ *any calendar year,* including time spent performing work for the trial court as an independent contractor.

(2) Court interpreters pro tempore in the same language who have performed work for that trial court for at least 60 court days or parts of court days ~~in each of the past five years,~~ *during any calendar year,* including time spent performing work for the trial court as an independent contractor.

~~(3) Court interpreters pro tempore in the same language who have performed work for that trial court for at least 60 court days or parts of court days in at least two of the past four years, including time spent as an independent contractor.~~

~~(4)~~ *(3)* Other applicants.

(c) A trial court may not reject an applicant in favor of an applicant with lower priority except for cause.

(d) For purposes of this section, "for cause" means a fair and honest cause or reason regulated by good faith on the part of the party exercising the power.

(e) Applicants may be required to provide sufficient documentation to establish that they are entitled to priority in hiring. Trial courts shall make their records of past assignments available to interpreters for ~~purposes~~ *the purpose* of obtaining that documentation.

[**Comments:**
This whole priority order provision is overly complicated and impinges on a trial court's discretion to hire an applicant who will be the best fit for a job. If the court had prior experience with the applicant as a contractor and found them unreliable, difficult to work with, or other issues, the court should have the discretion to move on to a better candidate.]

(f) Unless the parties to a dispute agree upon other procedures after the dispute arises, or other procedures are provided in a memorandum of understanding or agreement with a recognized employee organization, disputes about whether this section has been violated shall be resolved by binding arbitration through the California State Mediation and Conciliation Service.

[**Comments:**
See above comments re "binding arbitration."]

~~(g) Subdivision (b) shall become inoperative on January 1, 2007, unless otherwise provided by a memorandum of understanding or agreement with a recognized employee organization, and on and after that time hiring shall be in accordance with the personnel rules of the trial court.~~

[**Comments:**
Some of the language identifying who may be hired is redundant with 71802.

This entire section should be repealed since the regional transition period is over and should be stricken as it was originally set to sunset.]

SEC. 8. Section 71808 of the Government Code is amended to read:

71808. The regional court interpreter employment relations committee shall set terms and conditions of employment for court interpreters within the region, subject to meet and confer in good faith. These terms and conditions of employment, when adopted by the regional committee, shall be binding on the trial courts within the region. Compensation shall be uniform throughout the region. Unless otherwise provided in a memorandum of understanding or agreement with a recognized employee organization, other terms and conditions of employment shall be uniform throughout the region, except that health and welfare and pension benefits may be the same as those provided to other employees of the same trial court. *Trial courts may incentivize recruitment and retention of court interpreter employees by offering at the local trial court any of the following: cost-of-living adjustments, bonuses, stipends, or any other additional benefits. Unless otherwise stated, interpreters shall be included in bonuses extended to all other bargaining units of the local court.*

[**Comments:**
This language basically negates the regional bargaining process and is unworkable. Requiring courts to provide bonuses from other bargaining units to interpreters would eliminate the concept of shared regional bargaining, since it would create variable costs to be calculated individually by each court in a region. It would also negatively affect other represented employees, by creating a disincentive for courts to offer bonuses to other bargaining units. This would negatively impact the ability of courts to negotiate with other employee organizations.

Unions negotiate one-time lump sum bonuses for a variety of reasons. Often, they make concessions in exchange for the employer offering a bonus. For example, a one-time

lump sum bonus paid to an SEIU-represented bargaining unit, which conceded certain key MOU language to the employer in exchange for that bonus, does not merit application to an interpreter bargaining unit. The interpreter unit did not provide those same concessions. If a Court negotiates to pay a bonus to court reporters to retain their services, should the court clerks at that court receive that same bonus? Arguably no. Should the interpreters receive that same bonus regardless?

The two added sentences conflict with language in this same section saying that "Compensation shall be uniform throughout the region."

One of the chief purposes of the Interpreter Act is to reduce the number of places that a union would need to bargain, by requiring regional, multi-employer bargaining with interpreters in four different regions. If the prevailing sentiment is to bargain wages and terms & conditions of employment locally in all 58 courts, the Act should specify that the MOUs ought to be bargained individually by each court, eliminating regional multi-employer bargaining. It does not make sense to have regional bargaining, but also mandate local bargaining for pay and benefits.]

SEC. 9. Section 71812.5 of the Government Code is amended to read:

71812.5. (a) Court interpreters employed by the trial courts shall be permitted to engage in outside employment or enterprises, except where that activity would violate the professional conduct requirements set forth in Rule ~~984.4~~ *2.893* of the California Rules of Court, would interfere with the employee's performance of ~~his or her~~ *their* duties for the trial courts, or would be incompatible, inconsistent, or in conflict with the duties performed by the employee for the trial courts.

(b) Unless the parties consent, an interpreter may not be appointed by the trial court to interpret in a proceeding after having previously interpreted on behalf of one of the parties, rather than on behalf of the court, in that same matter. An interpreter shall disclose that type of prior involvement to the trial court.

(c) An interpreter employed by a trial court is prohibited from doing any of the following:

(1) Receiving or accepting, directly or indirectly, a gift, including money, service, gratuity, favor, entertainment, hospitality, loan, or any other thing of value from anyone who is doing or seeking to do business of any kind with the trial court or whose activities are regulated or controlled in any way by the trial court, under circumstances from which it reasonably could be inferred that the gift was intended to influence the employee in the performance of ~~his or her~~ *their* official duties or was intended as a reward for official action of the employee.

(2) Using confidential information acquired by virtue of trial court employment for the employee's private gain or advantage, or for the private gain or advantage of another, or to the employer's detriment.

(3) Using trial court facilities, equipment, or supplies for personal gain or advantage or for the private gain or advantage of another.

(4) Using the prestige or influence of trial court office or employment for personal gain or advantage or advantage of another.

(5) Using the trial court's electronic mail facilities to communicate or promote personal causes or gain.

SEC. 10. Section 71816 of the Government Code is amended to read:

71816. (a) The scope of representation shall include all matters relating to employment conditions and employer-employee relations, including, but not limited to, wages, hours, and other terms and conditions of employment. However, the scope of representation may not include consideration of the merits, necessity, or organization of any service or activity provided by law or executive order.

(b) In view of the unique and special responsibilities of the trial courts in the administration of justice, decisions regarding any of the following matters may not be included within the scope of representation:

(1) The merits and administration of the trial court system.

(2) ~~Coordination, consolidation,~~ *Consolidation* and merger of trial courts and support staff.

> [**Comments:**
> Why is this necessary? There may be unintended consequences that could expand the scope of collective bargaining or give rise to disputes over the scope of collective bargaining.
>
> The original intent refers to the "coordination" between the municipal and superior courts as they were still unifying at the time of the original Interpreter Act.
>
> Is the intent to expand collective bargaining to include court interpreter coordinator duties and actions? This would be problematic as this should remain a management right, excluded from bargaining.]

(3) Automation, including, but not limited to, fax filing, electronic recording, and implementation of information systems.

(4) Design, construction, and location of court facilities.

(5) Delivery of court services.

(6) Hours of operation of the trial courts and trial court system.

(c) The impact from matters in subdivision (b) shall be included within the scope of representation as those matters affect wages, hours, and terms and conditions of employment of court interpreters. The regional court interpreter employment relations committee shall be required to meet and confer in good faith with respect to that impact.

(d) The trial courts have the right to determine assignments and transfers of court interpreters, provided that the process, procedures, and criteria for assignments and transfers are included within the scope of representation.

SEC. 11. Section 71820 of the Government Code is amended to read:

71820. If after a reasonable period of time, representatives of the regional court interpreter employment relations committee and the recognized employee organization fail to reach agreement, the regional court interpreter employment relations committee and the recognized employee organization together ~~may agree upon the appointment of a mediator mutually agreeable to the parties. Costs of mediation,~~ *shall engage in either binding mediation or factfinding through the California State Mediation and Conciliation Service. Factfinding shall be modeled to the process outlined in Section 3505.4. Costs,* if any, shall be divided one-half to the trial courts within the region and one-half to the recognized employee organization.

[**Comments:**
There are some definitional problems with the terminology here. "Binding mediation" is a contradiction in terms because mediation is by definition voluntary. See also section 71801(g).

Factfinding is also not binding, as the process is delineated in Section 3505.4.

Courts currently do not have factfinding because of concern over separation of powers. The Legislature only applied this to the MMBA employers; they did not want to impose factfinding on judicial branch entities. It should not start now.

Rather than stating that the process is to be "modeled to" that process, why not specify the process in the statute?

In either case, these mandatory impasse resolution processes would needlessly extend the bargaining process. Existing law allows the parties to select the best impasse resolution processes for their needs, and there is no clear evidence that the current process is not working.]

SEC. 12. Section 71828 of the Government Code is amended to read:

71828. (a) This chapter does not apply to trial courts in Solano and Ventura Counties. Labor and employment relations for court interpreters employed by trial courts in Solano and Ventura Counties shall remain subject to the Trial Court Employment Protection and Governance Act

(Chapter 7 (commencing with Section 71600)), and nothing in this chapter shall be construed to affect the application of that act to court interpreters employed by those counties.

(b) If an interpreter employed by a trial court in a different county accepts a temporary appointment to perform services for a trial court in Solano or Ventura County, the interpreter shall be treated for purposes of compensation, employee benefits, seniority, and discipline and grievance procedures, as having performed the services in the trial court in which the interpreter is employed.

(c) If an interpreter employed by a trial court in Solano or Ventura County accepts a temporary appointment to perform services for another trial court, the interpreter shall be treated for purposes of compensation, employee benefits, seniority, and discipline and grievance procedures, as having performed the services in the trial court in which the interpreter is employed.

(d) This chapter also does not apply to court interpreters who have been continuously employed by a trial court in any county beginning prior to September 1, 2002, and who are covered by a memorandum of understanding or agreement entered into pursuant to the Trial Court Employment Protection and Governance Act (Chapter 7 (commencing with Section 71600)), and to future employees hired in the same positions as replacements for those ~~employees.~~ *employees unless the position has remained vacant for one year or more.* For any other certified or registered interpreters hired by trial courts as employees prior to December 31, 2002, the trial courts may not change existing job classifications and may not reduce their wages and benefits during the regional transition period or during the term of an existing contract, whichever is longer.

[**Comments:**
This deals with interpreters who have been historically represented by SEIU and other unions in Imperial (Imperial County Court Employees Association), Kern (SEIU Local 521), Orange (Orange County Employees' Association), Riverside (SEIU Local 721), and San Diego (San Diego County Court Employees' Association, now replaced by the Laborers' International Union of North America / LIUNA). Changing this language could result in disputes between CFI and unions representing other interpreters. It is unclear what problem the proposed change is intended to address.

There is a recent PERB unfair practice charge settlement agreement that was executed by the Kern Court and CFI covering this issue for a Kern employee. This language would affect that deal. The settlement is attached.]

SEC. 13. Section 71829 of the Government Code is repealed.

~~**71829.** The trial courts shall provide to the Judicial Council on or before March 1, 2003, a list of certified and registered court interpreters appointed by the trial courts as independent contractors between January 1, 2002, and January 1, 2003, including the number of court days or parts of court days those interpreters have been appointed by each trial court during that year and each of the prior four years. The Judicial Council shall provide this list to registered employee organizations.~~

AGREEMENT

WHEREAS, Service Employees Local 521 represents employees in the Court Services and Court Services Supervisor bargaining units of Kern County Superior Court ("Court"), and

WHEREAS, the California Federation of Interpreters, CWA Local 39000, represents the Court Interpreters who provider interpreter services in the Kern County Superior Court, and

WHEREAS, a dispute has arisen between them as to the placement of Timothy Brandon. Court Interpreter II, in the SEIU Local 521-represented Court Services bargaining unit; and

WHEREAS, Service Employees Local 521 and the California Federation of Interpreters have a good working relationship in this Court, and other courts.

IT IS HEREBY AGREED AS FOLLOWS:

1. Timothy Brandon, Court Interpreter III, is currently in the Court Services bargaining unit represented by SEIU Local 521;

2. The incumbent Timothy Brandon, Court Interpreter III, will remain in Local 521 bargaining unit for so long as he remains a Kern County Superior Court employee;

3. Upon Timothy Brandon's retirement or leaving the Kern County Superior Court, his position and interpreting duties will be moved into the bargaining unit of the California Federation of Interpreters and the California Federation of Interpreters shall thereafter be the exclusive representative of the individual(s) in that position;

4. The California Federation of Interpreters will withdraw with prejudice the pending Unfair Practice Charge No. SF-CE-18-I. The California Federation of Interpreters will not pursue any future grievances, charges or claims relating to the placement of Timothy Brandon in the SEIU Local 521-represented Court Services bargaining unit.

APPROVED:

DATED: March 21, 2023

KERN COUNTY SUPERIOR COURT

By: _____ Tamarah Harber-Pickens

Its: Court Executive Officer

DATED: March 21, 2023

_____

By: Carla Ortega

Its: Managing Attorney

DATED: March 22, 2023

SERVICE EMPLOYEES, LOCAL 521

By: Yvonne Davila

Its: Regional Director - Region 5

DATED: March 20, 2023

CALIFORNIA FEDERATION OF INTERPRETERS, LOCAL 3900

By: [signature]

Its: Secretary-treasurer

Judicial Council *of* California

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PATRICIA GUERRERO
Chief Justice of California
Chair of the Judicial Council

MILLICENT TIDWELL
Acting Administrative Director

July 4, 2023

Hon. Thomas J. Umberg, Chair
Senate Judiciary Committee
1021 O Street, Suite 6530
Sacramento, California 95814

Subject: Assembly Bill 1032 (Pacheco), as amended July 3, 2023—Oppose unless amended
Hearing: Senate Judiciary Committee—July 11, 2023

Dear Senator Umberg:

The Judicial Council has adopted an oppose unless amended position on Assembly Bill 1032 which makes extensive changes to the Trial Court Interpreter Employment and Labor Relations Act ("Interpreter Act"). Implemented in 2003, the Interpreter Act established procedures governing the employment and compensation of certified and registered trial court interpreters and court interpreters pro tempore employed by the courts.

With over 200 languages[1] spoken in the courts, California's judicial branch serves an increasingly diverse population. Goal I of the Strategic Plan for the California Judicial Branch is Access, Fairness, Diversity, and Inclusion. All persons will have equal access to the courts and court proceedings and programs. Court interpreters play a critical role in ensuring court proceedings are accessible and understandable to court users.

One of the major goals of the Strategic Plan for Language Access in the California Courts is to expand high quality language access through the recruitment and training of interpreters. As stated in the Language Access Plan; "Without meaningful language access, Californians who speak limited English are effectively denied access to the very laws created to protect them."

[1] The top ten most commonly interpreted languages in the courts are (in order of prevalence) Spanish, Vietnamese, American Sign Language, Mandarin, Cantonese, Korean, Punjabi, Russian, Arabic, and Farsi (2020 Language Need and Interpreter Use Study).

In 2001, the Judicial Council supported the Interpreter Act (SB 371, Escutia, Stats. 2001, ch.1047), as it provided for employee status for court interpreters while maintaining appropriate flexibility for the use of independent contractors, which enabled the courts to better manage this important service.

The changes to the Interpreter Act contained in AB 1032 include the following significant impacts:

(1) eliminates the use of provisionally qualified interpreters in unspecified certified languages of lesser diffusion, thereby reducing the available interpreter pool;
(2) mandates the hiring of certified or registered interpreters where none may be needed, without the appropriate background checks and other usual pre-screening;
(3) unduly restricts who parties can use as direct-pay interpreters in civil proceedings, and eliminates their use in criminal proceedings (also reducing the interpreter pool);
(4) creates new concept of "binding mediation" not found in other public sector labor statutes;
(5) imposes factfinding, which has never been applied to the trial courts; and
(6) interferes with collective bargaining by introducing problematic lump-sum and pay mandates which go far beyond other public-sector labor statutes.

While we share the goal of expanding high quality language access through the recruitment and training of interpreters, AB 1032 assumes that there is a pool of independent contractor interpreters that are available and willing to become court employees. This is a flawed assumption. As reference, currently 56 percent of court interpreters work as contractors with the remaining 44 percent working as employees of the court. It is important to note that contractors typically work part-time and only represent about 20 percent of total interpreter expenditures statewide. Contract interpreters are a critical component in providing language access in the courts, particularly in languages other than Spanish.

Under current law, non-opt out independent contractors must be offered court employment after being appointed for 45 court days by the same court during the same calendar year. Once a contractor reaches the 100-day ceiling, they cannot be used by that court for the remainder of the calendar year unless they agree to become employees. This provision has been in effect for more than twenty (20) years and has not appreciably reduced the contractor ranks. The impact of this ceiling is a loss of interpreter resources, as interpreter contractors must stop providing services during the year. This results in end-of-year continuances and/or courts being compelled to bring in contractors from further and further away at greater public expense in order to conduct hearings. Adding more restrictions to an interpreter pool that is already too small will hamstring the courts, extremely limit and constrain access to justice, and be very detrimental to limited-English proficient court users.

At a minimum, before making changes to the Interpreter Act that would have such detrimental unintended impacts to language access at the courts, it would be prudent to conduct additional research and perform an interpreter workforce study to determine how many independent contractor interpreters would like to become court employees under the proposed statutory changes, and the impact on interpreter supply. Moreover, research is needed on the current use of provisionally-qualified interpreters, to determine how any proposed new limitations would impact supply and the ability to timely conduct court hearings. It would also be critical to allow for adequate time to transition to any major changes to the system to avoid any unintended negative consequences.

In addition, AB 1032 would nullify the regional bargaining structure that was a hallmark of the original statute, and would affect the courts' collective bargaining relationships with all other recognized employee organizations, by automatically entitling interpreter employees to bonuses negotiated by courts with any other bargaining unit.

For these reasons, the Judicial Council opposes AB 1032 unless amended to ensure courts have the flexibility to meet the needs of LEP parties and witnesses, and to remove provisions that would be destructive to current collective bargaining relationships

Should you have any questions or require additional information, please contact me at 916-323-3121.

Sincerely,

Cory T. Jasperson
Director, Governmental Affairs

CTJ/ML/lmm
cc: Members, Senate Judiciary Committee
Hon. Blanca Pacheco, Member of the Assembly, 64th District
Ms. Amanda Mattson, Counsel, Senate Judiciary Committee
Mr. Morgan Branch, Policy Consultant, Senate Republican Office of Policy
Ms. Jessica Devencenzi, Deputy Legislative Affairs Secretary, Office of the Governor
Ms. Millicent Tidwell, Acting Administrative Director, Judicial Council of California
Ms. Shelley Curran, Chief Policy & Research Officer, Judicial Council of California