



Judicial Council of California · Administrative Office of the Courts

455 Golden Gate Avenue · San Francisco, California 94102-3688

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on June 28, 2013

Title

Court Interpreters: Grace Period Policy for Registered Interpreters to Take and Pass Certification Exam in Newly Designated Languages

Agenda Item Type

Information Only

Date of Report

June 4, 2013

Submitted by

Court Interpreters Advisory Panel
Hon. Steven K. Austin, Chair
Sherri R. Carter, Vice-Chair

Contact

Chad Finke, 415-865-8925
chad.finke@jud.ca.gov

Executive Summary

On March 19, 2013, the Court Interpreters Advisory Panel (CIAP) voted to recommend no change to the grace period policy adopted by the Judicial Council in April 2004, which provides that registered interpreters be allowed three consecutive testing cycles over a period of 18 months to take and pass the bilingual interpreting exam in newly certified languages. The CIAP action followed a February 12, 2013, letter from the California Federation of Interpreters (CFI) requesting that CIAP take immediate action to extend the grace periods for Khmer and Punjabi. CIAP took no action to modify and/or extend either of the two grace periods. In December 2010, registered Khmer and Punjabi interpreters were provided notice that they would have to take and pass a certification exam.

Previous Council Action

In April 2004, the Executive and Planning Committee (E&P) on behalf of the Judicial Council adopted a grace period policy of 18 months for registered interpreters to take and pass exams for newly certified languages when exams become available.¹ The original grace period ended on

¹ See the April 14, 2004, memorandum from CIAP to E&P (Attachment A). Following the 2000 Language Need and Interpreter Use Study, the council designated Armenian, Russian, Mandarin, Cambodian (Khmer), and Punjabi for certification. Certification examinations for the languages of Eastern Armenian, Western Armenian, Mandarin, and

February 1, 2006, but was extended 12 months by E&P three additional times, the third time ending on February 1, 2009. Authorization of the extensions was based on information received from several courts that additional time was required to establish the necessary infrastructure and operational procedures to continue to effectively meet the public's interpreting needs in four languages (Eastern and Western Armenian, Mandarin, and Russian).

In April 2008, the Judicial Council voted not to further extend the grace period for registered interpreters of Eastern and Western Armenian, Mandarin, and Russian beyond the deadline of February 1, 2009.² The council also voted that individual interpreters be allowed to qualify for a one-year exemption (to February 1, 2010) if they could meet certain conditions, such as passing the written exam and taking Judicial Council-sponsored training. As of 2010, the grace period policy has remained unchanged (three consecutive testing cycles over 18 months).

Concerns of Stakeholders

To date, in contrast to the courts' previous requests to provide grace period extensions for Eastern and Western Armenian, Mandarin, and Russian, no court has expressed a desire to extend the recent grace periods for Khmer and Punjabi. Notification that Khmer and Punjabi certification exams were soon to be available took place in December 2010, six months before the start of the grace period, and training was offered before the grace period began. (See Table 1: Timeline for California Court Interpreter Grace Periods and Extensions, Attachment B.) This timing effectively gave courts and interpreters at least two years' notice of the end of the grace period. Courts were also notified following each exam administration. (Again, refer to Attachment B.)

CFI's letter of February 12, 2013, was received after the conclusion of the grace period for Khmer (December 31, 2012) and two and a half months before the end of the Punjabi grace period (the Punjabi grace period ended on May 31, 2013).³ During public comment at the February 26, 2013, Judicial Council meeting, CFI and two affected interpreters requested that the Judicial Council take specific actions related to Khmer and Punjabi. The council deferred to CIAP and its March 19, 2013, meeting.

Russian were subsequently developed and implemented in 2004. The 2004 proposal to allow 18 months and three consecutive testing cycles was supported by members of the interpreting community, including currently registered interpreters of newly certified languages and the California Federation of Interpreters. (See page 3 of the memo.) In December 2010, registered Khmer and Punjabi interpreters were provided notice that they would have to take and pass a certification exam.

² See the April 8, 2008, Judicial Council report, which is item 6 of the discussion agenda of the April 25, 2008, Judicial Council meeting (www.courts.ca.gov/documents/042508item6.pdf).

³ In its letter, CFI separately raised concerns regarding the integrity of the exam process. The National Center for State Courts (NCSC) was asked for a response regarding this issue and reiterated that the development of all exams by NCSC is in accordance with industry standards. (See Attachment C.) The NCSC response was shared with CIAP members.

CIAP also discussed the recent grace periods for Khmer and Punjabi but took no action to modify and/or extend either of the two grace periods. By a 4–3 vote, the CIAP members approved a motion to affirm the existing 18-month grace period policy. An alternative motion was introduced and considered that would generally add 6 months to the grace period policy moving forward (i.e., extend the policy from 18 months to 24 months). This motion failed to pass by a 3–4 vote. CIAP members and advisory members (including both registered and certified employee and contractor interpreters, and a public defender) cited the importance that the grace period remain at 18 months to protect litigants and ensure that quality interpretation takes place in the courts.

Policy and Cost Implications

California’s Government Code sections 68560–68566 direct the Judicial Council to adopt programs and standards to ensure that qualified interpreters are provided in the courts. When a language is newly certified, registered interpreters are (1) provided notice that they must pass a certification exam and (2) given three opportunities to take and pass the certification exam within an 18-month period, while maintaining their registered status. The council’s 18-month grace period policy allows sufficient time for registered interpreters to plan and compensate for unforeseen events, such as personal emergencies and the preparation that is necessary if an interpreter fails to pass the certification exam on the first attempt (see the April 14, 2004, memorandum from CIAP to E&P, Attachment A).

At its March 19, 2013, meeting, CIAP members reviewed the history and basis for the grace period policy, including impacts on the courts. (See Tables 1–4, Attachment B.) Data shows that each of the final one-year extensions in 2008–2009 and 2009–2010 (for Eastern and Western Armenian, Mandarin, and Russian) yielded a decreasing number of passers. (See Table 2, Attachment B.) As of January 2013, records indicate that 2 of the 14 Khmer interpreters and 10 of the 33 Punjabi interpreters never tested. As of the March 19 CIAP meeting, in both Khmer and Punjabi, 6 of 47 registered interpreters had passed the certification exam (approximately 12.77 percent). Members also reviewed the outcome of the *Chan* litigation against the Judicial Council following the expiration of the grace period and extensions for Eastern and Western Armenian, Mandarin, and Russian. On September 15, 2011, the Court of Appeal affirmed that no procedural due process violation exists where certification is required and proper notification of the grace period is given. (*Chan v. Judicial Council of California* (2011) 199 Cal.App.4th 194; the slip opinion is included as Attachment D.)

Because no action was taken by CIAP to modify and/or extend the Khmer or Punjabi grace periods, the last day of the Khmer grace period was December 31, 2012. Khmer interpreters who did not take and pass the bilingual interpreting exam in Khmer during the grace period were classified as noncertified in Khmer effective February 15, 2013, and removed from the Judicial Council’s Master List. The last day of the Punjabi grace period was May 31, 2013. Punjabi interpreters who did not pass the bilingual interpreting exam in Punjabi were reclassified as noncertified in Punjabi and removed from the Master List effective June 1, 2013.

No implementation requirements or costs result from the CIAP action to affirm the grace period policy. Under Government Code section 68561(c), courts may provisionally qualify court interpreters as needed. Impacted interpreters who did not pass the certification exam in Khmer or Punjabi may apply and retake the exam during future test administrations. Finally, California's reciprocity agreement with other states that also use NCSC exams allows out-of-state certified interpreters in Khmer and Punjabi to work in California courts as certified court interpreters.

Relevant Strategic Plan Goals and Operational Plan Objectives

The policy presented in this report fulfills operational Goal I, Access, Fairness, and Diversity, objective 5: "Increase qualified interpreter services in mandated court proceedings and seek to expand services to additional court venues; increase the availability of language-assistance services to all court users"; and Goal V, Education for Branchwide Professional Excellence, objective 2: "Promote public trust and confidence by establishing and maintaining high standards of professionalism and ethics."

Attachments

1. Attachment A: April 14, 2004, Memorandum from CIAP to E&P regarding Certification Exams for Previously Registered Languages
2. Attachment B: Tables 1–4
 - a. Table 1: Timeline for California Court Interpreter Grace Periods and Extensions (April 2004 to May 2013)
 - b. Table 2: Impacts of Grace Period Extensions: Eastern/Western Armenian, Mandarin, and Russian
 - c. Table 3: Impacts of Grace Period: Khmer and Punjabi
 - d. Table 4: Punjabi Employee Impacts
3. Attachment C: March 8, 2013, Response from NCSC regarding certification testing process and instruments
4. Attachment D: *Chan v. Judicial Council of California* (2011) 199 Cal.App.4th 194

Attachment A

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS
455 Golden Gate Avenue
San Francisco, California 94102-3688**

Report

TO: Members of the Executive and Planning Committee

FROM: Court Interpreters Advisory Panel
Hon. Eileen C. Moore, Chair
Ricardo Beacon, Court Interpreters Program Unit, 415-865-7759

DATE: April 14, 2004

SUBJECT: Certification Examinations for Previously Registered Languages:
Extend Grace Period (Action Required)

Issue Statement

Following the recommendation of the Court Interpreters Advisory Panel (CIAP), the Executive and Planning Committee established a policy that, when a registered language is given certification status by the Judicial Council, currently registered interpreters of that language have a grace period of two consecutive testing cycles to pass the certification examination. However, further analysis by the CIAP's Education and Testing Subcommittee and Court Interpreters Program (CIP) Unit staff reveals that this policy should be amended.

Recommendation

The Court Interpreters Advisory Panel recommends that the Executive and Planning Committee, acting on behalf of the Judicial Council, extend the grace period for currently registered interpreters of newly certified languages to three consecutive testing cycles over an 18-month period.

Rationale for Recommendation

After the Executive and Planning Committee approved the grace period policy at its April 1, 2004, meeting and before it was formally announced to the public, CIP Unit staff discussed the new policy with members of the CIAP's Education and Testing Subcommittee. These discussions revealed the concern that a grace period of two consecutive testing cycles over a 12-month period does not allow sufficient time to compensate for unforeseen events such as personal emergencies and the preparation that is necessary if an interpreter fails the certification examination on her first attempt.

Cooperative Personnel Services (CPS) develops and administers the certification and registration examinations on behalf of the Judicial Council/Administrative Office of the Courts. Interpreters of certified languages must pass written and oral examinations for English fluency and the foreign language. An interpreter first must pass the written portion, which is administered one month before the oral portion. CPS administers certification examinations for languages other than Spanish twice per calendar year—typically in March/April and September/October.

Under the approved policy, if a currently registered interpreter of a newly certified language fails the certification examination on her initial attempt, she has only one additional opportunity to pass. This policy does not allow exceptions to the grace period. Thus, if an interpreter has an event that conflicts with the second testing cycle, she will lose her employment status or be deemed an uncertified independent contractor who may be assigned to interpret only after a good cause determination (until she can take and pass a later examination).

The grace period policy should be amended to facilitate a smooth and fair transition for the courts and interpreters. Registered interpreters provide a valuable service by ensuring access to justice to monolingual and limited-English-speaking litigants, especially in judicial proceedings in which qualified interpreters are legislatively or constitutionally mandated. Extending the grace period for completing the examinations to three testing cycles over an 18-month period would enable currently registered interpreters to maintain their employment status with a court before becoming certified or to be assigned as independent contractors without a good cause determination.

Alternative Actions Considered

CIP Unit staff considered not extending the grace period. One drawback of extending the grace period is that some registered interpreters of newly designated languages might not currently meet the higher standard tested in certification examinations. Extending the grace period allows them an additional year-and-a-half to serve as court interpreters—even though they may not meet the higher standard—versus the one year that is sanctioned under the existing grace period policy.

However, without the extension, employer courts would need to terminate interpreter employees who failed the certification examinations after only two opportunities to pass—an event that could disrupt court operations in counties across the state. Moreover, courts would need to show good cause to appoint currently registered independent-contractor interpreters of languages that subsequently have become certified. This additional step in assigning an interpreter to a case might prove detrimental to the administration of justice for

individuals in judicial proceedings that legislatively or constitutionally require interpreting services at the state's expense. Therefore, staff favors the extension of the grace period.

Comments From Interested Parties

The members of the Court Interpreters Advisory Panel's Education and Testing Subcommittee and members of the interpreting community—such as currently registered interpreters of newly certified languages, the California Federation of Interpreters, the Bay Area Court Interpreters Association, and Cooperative Personnel Services—concur with the analysis contained in this proposal and with the recommendation.

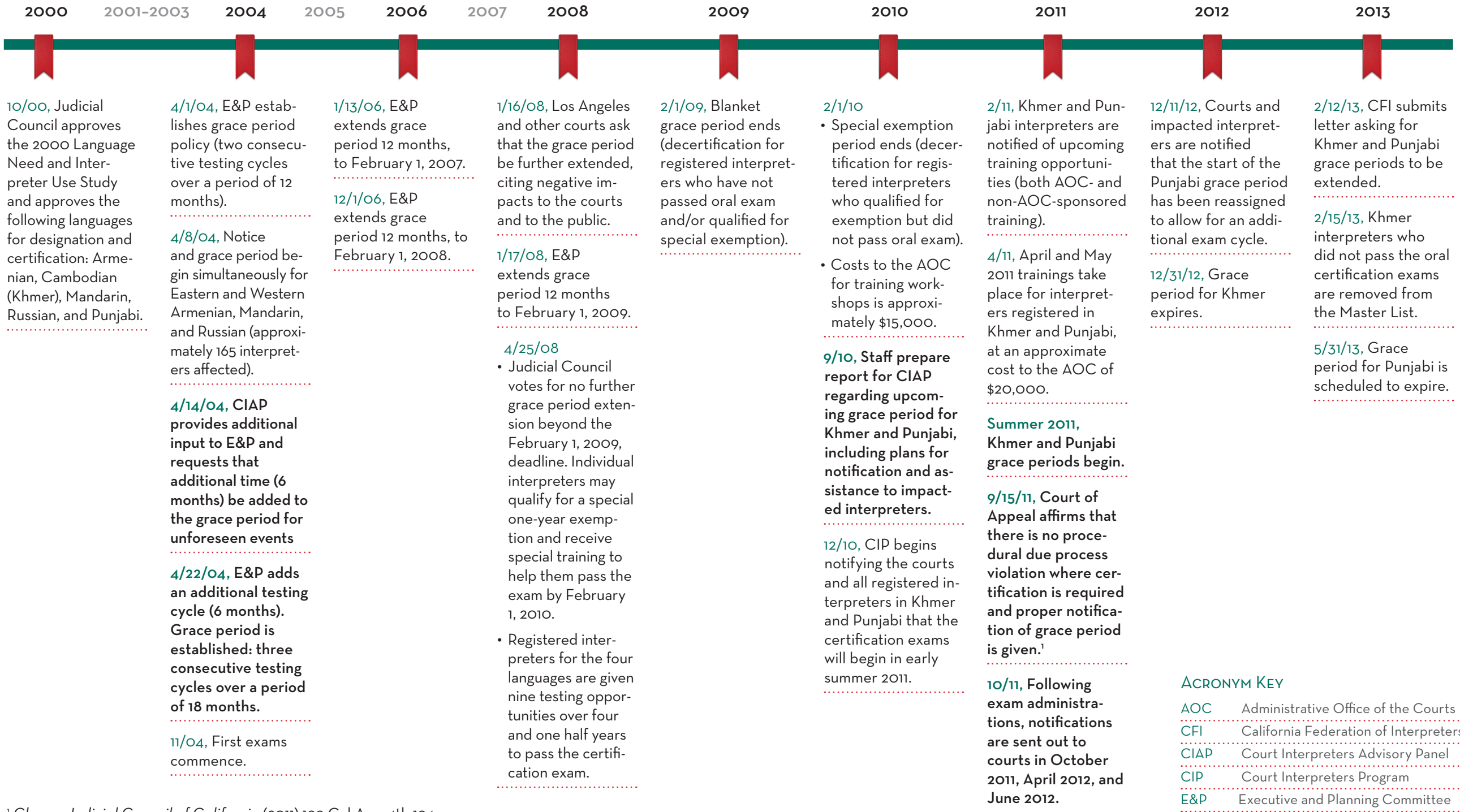
Implementation Requirements and Costs

The recommended change would not result in additional costs to the Judicial Council or the Administrative Office of the Courts. The Court Interpreters Program Unit would inform executive officers and staff at the trial courts, registered interpreters, and other interested parties about the change in policy.

Attachment B

Table 1: TIMELINE FOR CALIFORNIA COURT INTERPRETER GRACE PERIODS AND EXTENSIONS (APRIL 2004 TO MAY 2013)

Timeline not to scale



ACRONYM KEY

AOC	Administrative Office of the Courts
CFI	California Federation of Interpreters
CIAP	Court Interpreters Advisory Panel
CIP	Court Interpreters Program
E&P	Executive and Planning Committee

¹ Chan v. Judicial Council of California (2011) 199 Cal.App.4th 194.

Table 2: Impacts of Grace Period Extensions: Eastern/Western Armenian, Mandarin, and Russian

Grace Period	Total Registered Interpreters at Start of Grace Period	Total Passers (Certified)	Percentage of Original Group
2004-2008 ¹	165	75	45.0
2008-2009 (one-year extension)		6	3.6
2009-2010 (special exemption period)		5	3.0

Table 3: Impacts of Grace Period: Khmer and Punjabi

Language	Total Registered Interpreters at Start of Grace Period	Total Passers	Percentage of Original Group
Khmer	14	— ²	—
Punjabi	33	—	—
TOTAL	47	6	12.77

Comparison of Khmer and Punjabi Grace Period Pass Rates to Average Oral Exam Pass Rates of All Certified Languages

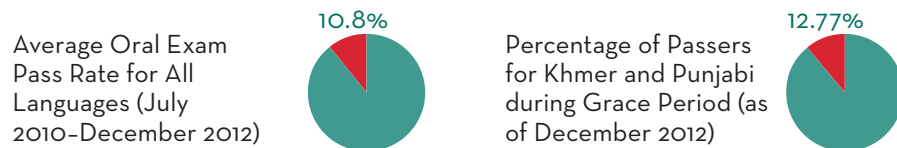


Table 4: Punjabi Employee Impacts

Remaining Number of Registered Punjabi Interpreters ³	Number Who Are Court Employees	Number of Employees With Only One Non-English Language	Percentage of Employees With a Required Negative Employment Impact
25	12	0	0

¹ Note: Data was presented to the Judicial Council regarding total numbers of registered and certified interpreters for the four languages as of April 2008, which included passers to date for the initial 18-month grace period plus two one-year extensions.

² The AOC does not publish language-specific pass rates.

³ As of May 31, 2013.

Attachment C

From: Vagenas, Konstantina [<mailto:kvagenas@ncsc.org>]
Sent: Friday, March 08, 2013 3:49 PM
To: Bolotte, Dianne
Subject: Response from NCSC

Dear Judge Austin:

This is in response to the March 7, 2013 email from Dianne Bolotte in which she, on your behalf, requested a written statement from the National Center for State Courts (NCSC) regarding the interpreter certification testing process and instruments. The development of all exams by NCSC is according to industry standards and in accordance with the NCSC Test Construction Manual (TCM). Exams developed in all languages follow the guidelines outlined in the TCM. NCSC follows the national process for recruitment of subject matter experts, and approval of test developers is based on criteria in the TCM. Complete information on the selection, training, classification, and management of raters is included in the Test Rating Manual.

As with all exams, NCSC undertakes regular review and maintenance of these instruments. This ensures that the exams are refined appropriately and continue in line with industry standards.

Please do not hesitate to contact us with any further questions.

Sincerely,

Konstantina Vagenas

*Konstantina Vagenas | Director and Chief Counsel
Language and Access to Justice Initiatives
National Center for State Courts | 2425 Wilson Boulevard, Suite 350 | Arlington,
VA 22201
t 703.841.5618 | f 703.841.5660 | kvagenas@ncsc.org | www.ncsc.org
♻️ Please print responsibly*

Attachment D

Filed 9/15/11

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

SAM CHAN et al.,

Plaintiffs and Appellants,

v.

THE JUDICIAL COUNCIL OF
CALIFORNIA,

Defendant and Respondent.

B224332

(Los Angeles County
Super. Ct. No. GC 042262)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Edward C. Simpson, Judge. Affirmed.

Scott Law Firm, John Houston Scott and Lizabeth N. de Vries for Plaintiffs and
Appellants.

Paul, Plevin, Sullivan & Connaughton, Sandra L. McDonough and Marie A.
Lavanier for Defendant and Respondent.

* * * * *

Appellants are previously licensed court interpreters in Mandarin, Russian, or Armenian who failed to comply with new licensing requirements. Prior to 2009, interpreters in those languages became eligible to interpret by passing English language proficiency examinations. Respondent the Judicial Council of California, beginning in 2009, required that appellants and other interpreters in certain languages pass bilingual proficiency exams. At the same time, respondent granted automatic eligibility to interpreters who had helped develop the new exams. Appellants appeal from the trial court's grant of a summary judgment to respondent. Appellants assert due process and equal protection claims. We affirm.

PROCEDURAL HISTORY

Appellants' complaint alleged: (1) respondent violated appellants' due process rights by requiring that they pass new rigorous certifying exams by February 1, 2009, in order to remain court interpreters; and (2) respondent violated appellants' equal protection rights by allowing certain interpreters to be grandfathered in or temporarily exempted from these new certifying exams without offering appellants the same opportunity. Appellants also sought a judicial determination as to whether the February 1, 2009 certification deadline applies to appellants and a permanent injunction preventing respondent from enforcing the current certification requirement against the affected court interpreters.

In response, respondent filed a motion for summary judgment. The trial court granted the motion, ruling that (1) appellants' due process cause of action cannot be established because there is no protectable property interest in being a certified interpreter; (2) appellants' equal protection cause of action cannot be established because they were neither similarly situated to the interpreters who were on a 1996 list of approved interpreters (there is no such list in the record) nor to the five subject matter experts who were certified without having to take the certification exams; and (3) appellants are not entitled to declaratory or injunctive relief. Appellants filed a timely appeal.

FACTS

The material facts in this case are undisputed. In 1990, the Chief Justice of California gave respondent control over the administration of California's court interpreter licensing regime.¹ (Gov. Code,² § 68560, subd. (d).) Respondent then contracted with the testing entity Cooperative Personnel Services (CPS) to help develop and administer licensing exams.

In 2000, respondent designated Mandarin, Russian, and Armenian (hereinafter affected languages) as languages requiring more rigorous court interpreter examinations.³ Accordingly, all court interpreters in the affected languages were subsequently required to pass a certification exam.⁴ CPS selected a number of interpreters, described as subject matter experts (SME's), to help develop certification exams. CPS did not select any of the appellants to serve as SME's. After developing the new exams, CPS recommended granting five of the SME's automatic certification because they helped create the exams. Respondent then granted these five SME's certification.

CPS finished creating the certification exams in 2004. Due to a number of grace periods and exemptions, however, five of the nine appellants were given until February 1, 2009, to obtain certification and four were given until February 1, 2010.⁵ Appellants failed to obtain certification and subsequently filed this suit.

¹ The Judicial Council is a statutory entity established by the California Constitution that sets policies and priorities for the judicial branch of government. (Cal. Const., art. VI, § 6; Cal. Rules of Court, rule 10.1(a)(1) & (2).)

² Unless otherwise specified, all further statutory references are to the Government Code.

³ Section 68562, subdivision (a) provides: "The language designations shall be based on (1) the courts' needs as determined by the language and interpreter use and need studies under Section 68563, (2) the language needs of non-English-speaking persons in the courts, and (3) other information the Judicial Council deems relevant."

⁴ See section 68561, subdivision (a).

⁵ Appellants filed their second amended complaint on September 24, 2009. As a result of these exemptions, four of the appellants were eligible to interpret at the time

STANDARD OF REVIEW

“In reviewing the summary judgment, we independently examine the supporting and opposing papers to determine whether they reveal any material issue of fact and whether the moving party was entitled to judgment as a matter of law.” (*Bernson v. Browning-Ferris Industries* (1994) 7 Cal.4th 926, 929; see also Code Civ. Proc., § 437c, subd. (c).) We strictly construe the moving party’s evidence and liberally construe the opponent’s evidence. (*Branco v. Kearny Moto Park, Inc.* (1995) 37 Cal.App.4th 184, 189.) The material issues must be set out in the complaint. (See *Keniston v. American Nat. Ins. Co.* (1973) 31 Cal.App.3d 803, 812.) The affidavits and declarations disclose whether there are triable issues of facts. (*Orange County Air Pollution Control Dist. v. Superior Court* (1972) 27 Cal.App.3d 109, 113.)

DISCUSSION

1. Due Process

A. Procedural Due Process

Appellants allege that respondent violated their procedural due process rights by requiring them to obtain certification by February 1, 2009, without giving them sufficient opportunity to comply with new certification procedures. Appellants further argue that they had protectable property interests in remaining certified court interpreters.

The federal and California Constitutions place procedural constraints on the deprivation of property interests. (U.S. Const., 14th Amend.; Cal. Const., art. I, §§ 7, 15.) “[P]roperty interests protected by procedural due process extend well beyond actual ownership of real estate, chattels, or money.” (*Board of Regents v. Roth* (1972) 408 U.S. 564, 571-572.) However, a “claimant must . . . identify a statutorily conferred benefit or interest of which he or she has been deprived.” (*Ryan v. California Interscholastic Federation-San Diego Section* (2001) 94 Cal.App.4th 1048, 1071.) Specifically, a party

they filed their complaint. Respondent mentioned this fact in a single introductory sentence without citation in its answer to the complaint. There is no other record of a discussion of this issue at the trial level. The parties have not raised the issue in their briefs, so we will not address it further.

must demonstrate a promise or guarantee of a specific benefit or right in the entity's policies or state law. (See *Roth, supra*, at pp. 577-578.) The question on appeal is whether court interpreters certified before 2009 who do not comply with new certification procedures nonetheless possess property interests in remaining certified interpreters. We do not think that they do.

Public employees generally do not possess property interests in continuing in employment contrary to or beyond the terms imposed by the relevant statute. (See, e.g., *Miller v. State of California* (1977) 18 Cal.3d 808, 813-814 [public employee required to retire at age 67, three years after a statute lowered the mandatory retirement age from 70, had no vested contractual right to remain employed until age 70].) The question of whether a statute creates an expectation of entitlement sufficient to create a property interest “will depend largely upon the extent to which the statute contains mandatory language that restricts the discretion of the [licensing authority] to deny licenses to applicants who claim to meet minimum eligibility requirements.” (*Jacobson v. Hannifin* (9th Cir. 1980) 627 F.2d 177, 180.)

“[A]n applicant does not have a property interest in the renewal of a license if the reviewing body has discretion to deny renewal or to impose licensing criteria of its own creation.” (*Thornton v. City of St. Helens* (9th Cir. 2005) 425 F.3d 1158, 1165.) In this case, the Court Interpreter Services Act expressly provides respondent with the discretion to adopt certification procedures.⁶

While the lack of a specific statute or contract that creates a property interest “does not necessarily foreclose the possibility that a property interest might have been created,” “the absence of such formal sources is ‘highly relevant’ to the due process question.” (*Doran v. Houle* (9th Cir. 1983) 721 F.2d 1182, 1185, citing *Perry v. Sindermann* (1972)

⁶ Section 68562, subdivision (d), provides that “[t]he Judicial Council shall adopt standards and requirements for interpreter proficiency, continuing education, certification renewal, and discipline.” (§ 68562, subd. (d).) The statute further states that “[i]nterpreters shall establish to the court that they meet the requirements of this section under procedures adopted by the Judicial Council.” (§ 68561, subd. (e).)

408 U.S. 593, 602.) However, even without the appropriate statutory language, a property interest can still be created “based on the conduct and representations of government officials when their actions lead to the creation of a ‘mutually explicit understanding’.” (*Doran, supra*, at p. 1185, citing *Perry, supra*, at p. 601.)

Without citing any supporting facts, appellants claim that respondent’s actions led to an understanding that appellants held a legitimate claim of entitlement. Appellants’ complaint states that they were told they were registered to interpret until 2010. Appellants may also have had court badges that had expiration dates of February 2010 or later. However, the record presents undisputed evidence that respondent did not guarantee appellants indefinite employment as court interpreters. Respondent gave notice to appellants that they would be unable to interpret if they did not comply with the new certification procedures. Appellants received clear notice that certification would be required after their respective languages were designated.

Appellants do not possess property interests in continued employment without successfully completing the appropriate certification procedures. The trial court’s grant of summary judgment as to appellants’ procedural due process claims was proper.

B. Substantive Due Process

Substantive due process “prevents government from enacting legislation that is ‘arbitrary’ or ‘discriminatory’ or lacks ‘a reasonable relation to a proper legislative purpose.’” (*Kavanau v. Santa Monica Rent Control Bd.* (1997) 16 Cal.4th 761, 771, quoting *Nebbia v. New York* (1934) 291 U.S. 502, 537.) “To establish a substantive due process claim, a plaintiff must, as a threshold matter, show a government deprivation of life, liberty, or property.” (*Nunez v. City of Los Angeles* (9th Cir. 1998) 147 F.3d 867, 871.)

As discussed earlier in this opinion, appellants do not have a property interest in remaining certified interpreters. (See *ante*, at pp. 4-6.) Thus, appellants have failed to meet the initial substantive due process threshold.

2. *Equal Protection*

Appellants allege that respondent violated appellants' equal protection rights by exempting certain interpreters from the certification requirements without providing the same opportunity to appellants. Appellants argue (1) they were similarly situated to the SME's who were certified without examination and (2) respondent had no rational basis to treat appellants differently from the SME's. The trial court held that appellants and the SME's were not similarly situated as appellants were not involved in developing the certification exams.

First, appellants argue that the trial court erred in holding that the interpreters chosen as SME's and appellants were not similarly situated in terms of their education and experience. Second, they argue that the trial court erred in holding that the SME's and appellants were not similarly situated at the time the SME's were granted certification without examination. Third, they argue, without factual or legal support, that they should have been included on a list of interpreters eligible to be certified without going through the official certification process.

A. *"Similarly Situated"*

The equal protection guarantees embodied in the United States Constitution and article I, section 7 of the California Constitution require that "persons similarly situated with respect to the legitimate purpose of the law receive like treatment." (*Purdy & Fitzpatrick v. State of California* (1969) 71 Cal.2d 566, 578; see also *Reed v. Reed* (1971) 404 U.S. 71, 75-76.) "This principle, of course, does not preclude the state from drawing any distinctions between different groups of individuals, but does require that, at a minimum, classifications which are created bear a rational relationship to a legitimate public purpose." (*In re King* (1970) 3 Cal.3d 226, 232.)

In order to sustain an equal protection claim, it must first be demonstrated "that the state has adopted a classification that affects two or more *similarly situated* groups in an unequal manner." (*In re Eric J.* (1979) 25 Cal.3d 522, 530.) Second, the plaintiff must demonstrate that the challenged classification does not pass the appropriate standard of review. (*Ibid.*) "Even if the challenger can show that the classification differently

affects similarly situated groups, ‘[i]n ordinary equal protection cases not involving suspect classifications or the alleged infringement of a fundamental interest,’ the classification is upheld unless it bears no rational relationship to a legitimate state purpose.” (*People v. Ranscht* (2009) 173 Cal.App.4th 1369, 1372, citing *Weber v. City Council* (1973) 9 Cal.3d 950, 958-959.)

With respect to their first argument, appellants claim that they, just like the SME’s, were experienced court interpreters who had interpreted for many years. It is undisputed that appellants and the SME’s were all court interpreters. Respondent argues, without citation to the record, that the SME’s were selected to develop the tests specifically because they had skills and abilities applicable to test development. However, there is no evidence in the record that the SME’s had particularized skills relevant to test development. Construing the record in favor of appellants, we must assume that appellants were similarly situated to the SME’s when the SME’s were chosen. (See *College Area Renters & Landlord Assn. v. City of San Diego* (1996) 43 Cal.App.4th 677, 686.) As a result, respondent’s decision to select certain interpreters to act as SME’s must survive rational basis review, which, as we discuss *post*, it does. (See *Weber v. City Council, supra*, 9 Cal.3d at pp. 958-959.)

Appellants also argue that they and the SME’s were similarly situated when the SME’s were granted certification without examination. This claim has no merit. The SME’s took part in developing the testing examinations. Respondent decided to grant them certification because it would not make sense for them to take the very examinations that they helped to develop. Appellants, on the other hand, did not help develop the testing examinations, and consequently were not similarly situated to the SME’s at that point.

Third, appellants argue that they should have been on a list of interpreters eligible to be certified pursuant to section 68561, subdivision (b).⁷ Appellants’ argument is

⁷ Section 68561, subdivision (b) provides as follows: “Interpreters named and maintained on the list of recommended court interpreters . . . shall be deemed certified

unpersuasive. First, there is no evidence that such a list exists. Second, the statute provides that interpreters on such a list shall be deemed certified only until January 1, 1996. (§ 68561, subd. (b).) After that date, any interpreters who obtained certification as a result of being on this list were subject to respondent's normal certification procedures. (§ 68561, subd. (b).)

B. Rational Relationship

Because appellants' second and third equal protection claims have no merit, we need only examine respondent's decision to choose certain interpreters, and not appellants, to act as SME's. "The conventional 'rational relationship' test is traditionally applied in cases involving occupational licensing." (*D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 17.) Courts have employed strict scrutiny in certain occupational licensing cases, but only when suspect classifications were involved. (See, e.g., *In re Griffiths* (1973) 413 U.S. 717, 721-722 [applying strict scrutiny to a classification based on alienage]; *Sail'er Inn, Inc. v. Kirby* (1971) 5 Cal.3d 1, 17 [applying strict scrutiny to a classification based on sex].) Appellants concede that respondent did not employ suspect classifications and that rational review is appropriate.

"In conducting rational-basis equal protection analysis, "a legislative choice is not subject to courtroom factfinding and may be based on rational speculation *unsupported by evidence or empirical data.*" (In *re Jenkins* (2010) 50 Cal.4th 1167, 1181, quoting *FCC v. Beach Communications, Inc.* (1993) 508 U.S. 307, 315.) Rational review requires merely that "distinctions drawn by a challenged statute bear some rational relationship to a conceivable legitimate state purpose." (*Westbrook v. Mihaly* (1970) 2 Cal.3d 765, 784, vacated on other grounds (1971) 403 U.S. 915.) "[T]he burden of demonstrating the invalidity of a classification under this standard rests squarely upon *the party who assails it.*" (*Lindsley v. Natural Carbonic Gas Co.* (1911) 220 U.S. 61, 78-79.)

under this article until January 1, 1996. After that date, those interpreters shall not be deemed certified unless they have complied with the procedures for certification adopted under subdivision (c) of Section 68562."

The burden thus is on appellants to demonstrate that the classification of certain interpreters as SME's and their subsequent certification without examination bears no rational relationship to any conceivable legitimate state purpose.

Appellants argue that respondent "presented no evidence to justify denying [appellants] the opportunity to apply for the SME position" and "excluded an entire class of seasoned interpreters." However, appellants do not proffer any legal authority to indicate that the CPS testing service was required to allow them to apply to be SME's. Respondent had discretion to contract with CPS to develop and implement certification examinations.⁸ (§ 68562, subd. (b).) CPS was an appropriate certification entity. (§ 68562, subd. (b).) Out of necessity, CPS selected certain individuals who were experienced in the field to develop these tests. Following industry guidelines, CPS recommended that the SME's be exempted from certification requirements. It is irrelevant that CPS selected some interpreters to serve as SME's and not others. Section 68560 et seq. does not detail specific processes by which new examinations must be developed.

Respondent's actions had a legitimate purpose pursuant to its legislative mandate: to develop certification examinations for the affected languages, and to choose a group of interpreters to help develop these examinations. Section 68560 et seq. gives respondent wide latitude in developing certification procedures for languages newly subject to certification. Respondent's actions pass the rational basis review.

3. Declaratory Judgment

Appellants sought a declaratory judgment as to whether the certification requirement applies to them and whether they are eligible for certification without reexamination. They also asked for a permanent injunction preventing respondent from enforcing the current certification deadline against plaintiffs and other interpreters. In

⁸ Section 68562, subdivision (b) provides, inter alia: "The Judicial Council shall adopt and publish guidelines, standards, and procedures to determine which certification entities will be approved to test and certify interpreters."

light of our foregoing analysis of appellants' due process and equal protection claims, we also affirm the trial court's judgment insofar as it denies appellants' claim for declaratory relief.

DISPOSITION

The judgment is affirmed. Respondent is to recover costs on appeal.

FLIER, J.

WE CONCUR:

RUBIN, Acting P. J.

GRIMES, J.