Judicial Council of California · Administrative Office of the Courts

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: January 23, 2014

Title
Judicial Council-Sponsored Legislation: Providing Interpreters in Civil Matters

Rules, Forms, Standards, or Statutes Affected
Add Government Code section 68092.1

Recommended by
Policy Coordination and Liaison Committee
Hon. Kenneth K. So, Chair
Ad Hoc Joint Working Group to Address Court Interpreter Issues
Hon. Steven K. Austin, Chair

Agenda Item Type
Action Required

Effective Date
January 23, 2014

Date of Report
December 11, 2013

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Executive Summary

The Policy Coordination and Liaison Committee and the Ad Hoc Joint Working Group to Address Court Interpreter Issues recommend that the Judicial Council sponsor legislation to add a section to the Government Code to authorize courts, subject to available funding, to provide interpreters to parties in civil actions at no cost to the parties, regardless of the income of the parties.

Recommendation

The Policy Coordination and Liaison Committee (PCLC) and the Ad Hoc Joint Working Group to Address Court Interpreter Issues recommend the Judicial Council sponsor legislation in 2014 to add a new section to the Government Code to allow courts the discretion to provide interpreters in civil actions, regardless of the income of the parties to the case. The proposed new section clarifies that existing Government Code sections—which provide that the cost of

interpreters shall be paid by the parties—are not a bar to the court opting, on its own authority, to provide interpreter services at no cost to the parties.

Previous Council Action

The Judicial Council has worked to expand access to interpreters in civil cases for many years. In 2008, the council sponsored Assembly Bill 3050 (Jones) which would have created a pilot program to provide interpreters in specified civil cases with funding from a new fee on telephonic appearances. That legislation was vetoed by Governor Schwarzenegger. In 2009, the council sponsored a nearly identical bill, Assembly Bill 663 (Jones), which was held in the Senate Appropriations Committee because the funding source for the pilot had been redirected in the budget act to backfill cuts to the trial courts. In 2013, the council took a "Support if Amended and Funded" position on Senate Bill 597 (Lara), which was similar to the prior council-sponsored pilot legislation but that bill was also held in the Senate Appropriations Committee. The council opted not to take a position on Assembly Bill 1127 (Chau) in 2013 because it failed to address the Government Code issue that is the subject of this proposal, and because it did not offer trial courts sufficient flexibility in allocating limited resources to provide civil interpreters. AB 1127 was vetoed by Governor Brown who provided the following veto message:

> This bill requires the Judicial Council to establish a working group to develop what are being termed "best practices" for providing interpreters in civil court proceedings and further to conduct a pilot project to implement those practices. The Judicial Council already has authority to establish a pilot project and has two excellent advisory committees working to develop a language access plan for our courts.

In January 2013, the Executive and Planning Committee (E&P) on behalf of the council approved items for the annual agendas of the Access and Fairness Advisory Committee and the Court Interpreters Advisory Panel requiring them to work together to develop a statewide language access plan for California as part of their work for 2012–2013. At the October 25 council meeting, the Joint Working Group for California's Language Access Plan presented a status report on that initiative and described their plans to complete California's Language Access Plan by December 2014.

In May 2013, E&P on behalf of the council approved the formation of a limited-term Ad Hoc Joint Working Group to Address Court Interpreter Issues with representatives from each of the civil law subject matter advisory committees as well as the Trial Court Presiding Judges Advisory Committee, the Court Executives Advisory Committee, the Access and Fairness Advisory Committee, the Court Interpreters Advisory Panel, and the PCLC. This working group was directed to make recommendations to the council on options for utilizing surplus funds appropriated for interpreter services, and to ensure coordination of any efforts to expand language access in California.

Rationale for Recommendation

Existing law on the allocation of the cost of a court interpreter in a civil matter was enacted before the implementation of state trial court funding and follows the typical pattern for such cost statutes in assigning the cost of interpreters in criminal proceedings to the court, with civil interpreter costs being the responsibility of the parties. These statutes also precede the implementation of the Trial Court Interpreter Employment and Labor Relations Act, which limited the ability of the trial courts to use contract interpreters and put in place a process for interpreters to become court employees. This change expanded courts' ability to provide interpreter services on a more flexible basis. As a result, some courts have used their existing interpreter employees to provide services in civil matters without requiring the parties to pay because the cost of those interpreters was largely incidental to the cost of providing them in criminal proceedings.

The Ad Hoc Joint Working Group to Address Court Interpreter Issues was formed to provide recommendations to the council on the use of surplus funds appropriated for interpreter services in the budget act. At the end of fiscal year 2012–2013, the amount of surplus interpreter funds was just under $13 million. The working group considered making recommendations to the council to use those funds to expand services for civil litigants, but believed strongly that it could not make such a recommendation without a statutory clarification giving courts clear discretion to provide these services in civil matters. There appears to be a strong legal argument that courts can provide interpreters in civil cases to indigent litigants who have limited English proficiency, but existing law is at best ambiguous as to whether or not a court may assign interpreters in *all* civil cases at no cost to the parties. (See Attachment A, "Opinion of AOC Legal Services Office.")

The Ad Hoc Joint Working Group to Address Court Interpreter Issues recommends adding Government Code section 68092.1 to clarify that courts have the express authority to assign interpreters in all civil cases, at the court's expense, regardless of the income of the parties. With this discretion available, the council will then be in a position to take action on expansion of language access services into civil matters with the surplus funds available, and courts that are currently providing these services within their existing resources will have clear authority to continue this practice. The Ad Hoc Joint Working Group will return at a future council meeting with recommendations for the use of the surplus funds referenced above.

Comments, Alternatives Considered, and Policy Implications

This proposal has not been circulated for public comment. The United States Department of Justice (DOJ) has taken the position that all state courts are obligated to provide full language access services to all litigants at no cost if those courts receive any federal funding. Relying on this policy, as well as reading the statutory framework to dispute the Administrative Office of the Courts (AOC) legal opinion that California law does not currently permit the use of court funds to provide interpreters in civil cases, it is anticipated that some stakeholder groups will argue that

a statutory change is unnecessary. However, it is not expected that any group would oppose providing the courts with this discretion.

The DOJ is currently investigating both the Superior Court of Los Angeles County and the AOC based on a complaint filed with regard to the Los Angeles court's failure to provide interpreters to Korean-speaking litigants in civil matters. The DOJ submitted some findings and recommendations to the AOC and the Superior Court of Los Angeles County earlier this year (see Attachment B) recommending the AOC inform the trial courts that they may expend funds appropriated for interpreter services for civil litigants as well as for criminal and juvenile matters. The AOC leadership has met with the DOJ and explained the dilemma that we face given the state statutory ambiguity, and they have expressed support for clarifying this point.

Implementation Requirements, Costs, and Operational Impacts

The proposed addition to the Government Code will allow the courts to more efficiently and fully use the 45.45 funds designated for interpreter services, including the surplus funds that have been accruing. Because interpreters will only be provided subject to already available funding, either through regular allocations or already existing surplus funds, there are no anticipated implementation costs or additional funding allocations necessary.

Relevant Strategic Plan Goals and Operational Plan Objectives

The proposal advances the judicial branch's strategic Goal I, Access, Fairness, and Diversity and Goal IV, Quality of Justice and Service to the Public by granting courts the ability to provide interpreters in all civil cases, regardless of the income of the parties. This will increase language access, allowing for the efficient and effective administration of justice by the courts.

Attachments

1. Proposed Government Code section 68092.1, at page 5
2. Attachment A: Opinion of AOC Legal Services Office
3. Attachment B: U.S. Department of Justice letter, May 22, 2013

Government Code section 68092.1 would be added to read:

Section 68092.1.

Notwithstanding Government Code sections 26806 or 68092, or any other section of law, a court may provide interpreters in any civil matter at no cost to the parties regardless of the income of the parties.

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MEMORANDUM

Date
August 6, 2013

To
Hon. Steven K. Austin, Chair
Court Interpreters Advisory Panel
Judicial Council of California

From
Mary M. Roberts, Chief Counsel
Charles Perkins, Senior Attorney CP
Legal Services Office

Subject
In-courtroom Interpreter Costs

Action Requested
None; for your information

Deadline
N/A

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Question Presented

May court funds be spent on in-courtroom interpreter costs in the following case types:

- Traffic
- Juvenile dependency
- Small claims
- Family law
- General civil
- Unlawful detainer
- Guardianships/conservatorships

Short Answer

- Traffic proceedings are criminal matters, and court-funded interpreters are constitutionally required in those cases.

- The other case categories constitute civil matters.
    - A specific statute or case authority may authorize or require some level of court-funded interpreters in the following case types under particular circumstances:
        - juvenile dependency,
        - small claims, and
        - certain family law cases.
    - Other statutes expressly *mandate* that the parties to civil proceedings pay for needed interpreters, with no stated exceptions, and these statutes arguably act as a general prohibition on using court funds for that purpose.
    - More likely, however, the statutes requiring the parties to pay for interpreters in civil actions do not prohibit the discretionary spending of court funds on these interpreters at least when the parties are indigent, with such expenditures being an appropriate court operations expense. This conclusion applies to civil interpreters generally, but is most compelling with regard to interpreters needed by witnesses giving testimony.

Discussion

A. Defining Terms

In connection with actual court proceedings, "[i]nterpreters play three different but essential roles . . . : (1) They make the questioning of a non-English-speaking witness possible; (2) they facilitate the non-English-speaking defendant's understanding of the colloquy between the attorneys, the witness, and the judge; and (3) they enable the non-English speaking defendant and his English-speaking attorney to communicate . . . ." (*People v. Aguilar* (1984) 35 Cal.3d 785, 790, internal quotations omitted.) For purposes of the analysis that follows, a distinction will sometimes be drawn between interpreters engaged to help litigants communicate with their attorneys or understand what is being said in a court proceeding (sometimes referred to as "party interpreters"), and interpreters who interpret questions asked to and answers given by witnesses while testifying (sometimes referred to as "witness interpreters").

B. Traffic Cases: Non-English-Speaking Defendants Are Entitled To Court-Funded Interpreters During Court Proceedings.

Traffic offenses are crimes, whether charged as a felony, misdemeanor, or infraction. (*People v. Cortez* (2010) 189 Cal.App.4th 1436, 1442–1443 [traffic offenses, including infractions, are crimes under California law]; see Pen. Code, § 16.) Article I, section 14 of the California Constitution states in part: "A person unable to understand English who is charged with a crime

has a right to an interpreter throughout the proceedings." This constitutional right of a criminal defendant is broad (see *Aguilar*, *supra*, 35 Cal.3d at pp. 790–791), and the constitutional provision does not exclude any specific type of criminal proceeding from its ambit. (Contra *In re Dung T.* (1984) 160 Cal.App.3d 697, 708–709 [constitutional right to interpreter applies in delinquency proceedings]; *People v. Superior Court (Almaraz)* (2001) 89 Cal.App.4th 1353, 1356, 1360 [acknowledging the same; misdemeanor proceedings].) Thus, defendants in traffic cases who do not understand English are entitled to an appointed interpreter to assist throughout the proceedings. In criminal cases, the fees of an interpreter, whether needed by a party or a witness, are paid by the court. (Gov. Code, § 68092(a); Evid. Code, § 752(a)(1).) It therefore is proper to use court funds to pay interpreter costs in traffic cases.

C. Civil Cases: In Several Instances, Statutes Or Case Authorities Authorize Or Require The Expenditure Of Court Funds For In-Courtroom Interpreters.

The remaining case types in question are civil in nature. In several instances, statutes or case authorities appear to authorize or require using court funds on interpreters under particular circumstances, as set forth below.

1. Witness interpreters in juvenile dependency cases

Government Code section 68092 provides that courts must pay interpreter costs in criminal cases and the litigants must pay in civil actions. The Law Revision Commission Comments to that section note, however, that as to compensation of an interpreter for *a witness*, Evidence Code section 752 is applicable. (*Bonanno v. Central Contra Costa Transit Authority* (2003) 30 Cal.4th 139, 148 ["the official comments of the California Law Revision Commission 'are declarative of the intent not only of the draftsman of the code but also of the legislators who subsequently enacted it' " and are persuasive indicators of legislative intent].) Section 752(b), in turn, reaffirms that generally speaking, courts must pay for witness interpreters in criminal cases, but also requires the same in "*juvenile court proceedings*."[1] (Evid. Code, § 752(b)(1), emphasis added.) Juvenile court typically handles two types of cases: dependency (see Welf. & Inst. Code, § 300 et seq.) and delinquency (see *id*., § 602 et seq.). Delinquency cases are ones in which a juvenile is accused of committing a crime (*id*., § 602), and just as criminal defendants have a constitutional right to interpreter assistance, "[a] juvenile accused of a crime . . . is no less in need of an interpreter throughout the proceedings to ensure a fair hearing [and is] entitled to an interpreter at his side throughout the proceedings . . . ." (*In re Dung T.*, *supra*, 160 Cal.App.3d at pp. 708–709.) But as indicated, Evidence Code section 752(b)(1) does not distinguish between delinquency and dependency. Taking the broad language of the statutory directive on its face, courts likely must provide and pay for witness interpreters in all juvenile

[1] That section states: "In all criminal actions and juvenile court proceedings, the compensation for an interpreter under this section [interpreters for witnesses] shall be a charge against the court." (Evid. Code, § 752(b)(1).)

proceedings, including dependency cases. This obligation presumably would extend to witness testimony provided by parties.

2. Counties having populations of 900,000 or more: Party interpreters in juvenile dependency cases

Government Code section 26806 provides that in counties having populations of 900,000 or more, a court may employ as many language interpreters as necessary to interpret in criminal and juvenile cases. (Gov. Code, § 26806(a).) "The clerk of the superior court, *shall*, when interpreters are needed, assign the interpreters so employed to interpret in criminal *and juvenile* cases in the superior court."[2] (*Id*., subd. (b), emphasis added.)

Like Evidence Code section 752(b)(1), Government Code section 26806(a) does not distinguish between juvenile court proceedings, i.e., it does not limit the obligation to assign interpreters to delinquency matters. Notably, and unlike Evidence Code section 752(b)(1), the code section does not limit the covered interpreter services to witness interpreters. Thus, under the seemingly clear statutory language, court-employed party interpreters must be assigned to interpret in juvenile cases in counties with populations of 900,000 or more, including dependency proceedings.[3] (*People v. Dyer* (2002) 95 Cal.App.4th 448, 453 [statutory language is generally the most reliable indicator of legislative intent, and where the plain language of a statute is clear and unambiguous, the court's inquiry ends and there is no need for judicial construction].)

3. Possibly when necessary to allow effective representation by constitutionally-required appointed counsel in juvenile dependency cases

Generally speaking, only criminal defendants, and not civil litigants, have a constitutional right to effective assistance of counsel.[4] (See U.S. Const., 6th Amend. ["[i]n all criminal prosecutions, the accused shall . . . have the assistance of counsel"]; Cal. Const., art. I, § 15 ["defendant in a criminal cause has the right . . . to have the assistance of counsel for the defendant's defense"]; see also *Strickland v. Washington* (1984) 466 U.S. 668, 686 [6th Amendment right to counsel in criminal prosecution encompasses the right to effective assistance of counsel].) In some situations, however, a civil litigant in a juvenile dependency matter may have a constitutional right to appointed counsel. (*In re Emilye A.* (1992) 9

[2] Subdivision (c) of Government Code section 26806 states that the clerk may assign court-employed interpreters to general civil proceedings when not needed in criminal or juvenile cases, with the civil litigants assessed a fee for the interpreter services. The statute does not authorize the assessment of a fee when a court-employed interpreter is assigned to a juvenile case.

[3] Assembly Bill number 810 (2011-2012 Reg. Sess.) would have revised and recast various statutory provisions related to interpreters, including a repeal of Government Code sections 26806 and 69894.5, and the addition of a new section requiring assignment of interpreters to criminal and, specifically, *juvenile delinquency* cases. The bill failed, and Government Code section 26806(b) therefore continues to authorize court-funded interpreters in *all* juvenile proceedings in counties having populations of 900,000 or more.

[4] Where a civil litigant believes counsel's efforts were legally inadequate, the typical recourse is to pursue a separate claim for legal malpractice. (See *Coscia v. McKenna & Cuneo* (2001) 25 Cal.4th 1194, 1199-1200.)

Cal.App.4th 1695, 1707 [a parent facing loss of a child; "[w]e agree with those authorities that hold that a parent has not only a statutory right but also, under certain circumstances, a constitutional right to counsel in dependency proceedings, particularly, as in this case, where the petition contained an allegation of sexual abuse by father, which could result in criminal charges against him"].) And where a constitutional right to appointed counsel exists, a concomitant right to *effective counsel* does as well. (*Ibid*.)

Where a dependency litigant having a constitutional right to appointed counsel does not speak English, he or she arguably is entitled to a party interpreter during court proceedings to render the representation effective. In the criminal context: "Various courts and commentators have noted denial of interpreter services impairs not only the defendant's due process rights, but also his rights to confront adverse witnesses, *to the effective assistance of counsel*, and to be present at his own trial." (*People v. Carreon* (1984) 151 Cal.App.3d 559, 567, emphasis added, and see authorities cited.) Criminal case law also recognizes that the right to appointed counsel can encompass a right to ancillary defense services reasonably necessary to effective representation. (*Corenevsky v. Superior Court* (1984) 36 Cal.3d 307, 319-320.) Although no case authorities have addressed the question, by analogy, dependency litigants having a constitutional right to appointed, effective counsel also may have a right to reasonably necessary ancillary services, which could include a party interpreter during court proceedings. (But see *Jara v. Municipal Court* (1978) 21 Cal.3d 181, 184–185 [generally speaking, an attorney can adequately represent a non-English-speaking civil litigant's interests during court proceedings and, hence, civil litigants generally are not entitled to appointed interpreters].)

The cost of appointed counsel in dependency proceedings is a court operations expense (Gov. Code, § 77003(a)(4)), paid with court funds. (See *id*., § 77200.) If a dependency litigant is entitled to a party interpreter in order to render appointed counsel's representation effective, those same funds likely would be the appropriate source of payment. (See *Corenevsky*, *supra*, 36 Cal.3d at pp. 319-320; cf. *Waltz v. Zumwalt* (1985) 167 Cal.App.3d 835, 838 [an indigent party entitled to appointed counsel in an involuntary civil commitment appeal also is entitled to free transcript of proceedings below so that appellate representation is effective].)

4. As a last resort, a court most likely may appoint a party interpreter to assist an indigent small claims litigant, and pay the resulting costs.

a. Case law holds that when volunteer interpreters are not available to assist indigent small claims litigants, courts have inherent power to direct that public funds be spent on interpretation assistance.

In *Gardiana v. Small Claims Court* (1976) 59 Cal.App.3d 412, several non-English-speaking small claims litigants sought writ relief, contending that a small claims court must appoint publicly compensated court-employed interpreters, or interpreters properly qualified for competency under expert witness standards (not simply informal volunteers), to assist indigent

litigants. The small claims court in question refused to appoint such interpreters—on the ground that it lacked statutory or inherent authority to do so—and instead followed a practice of informally seeking a volunteer from the community (often a friend or relative of the litigant) who was versed in the litigant's language to assist during the proceedings. (*Id*. at p. 416.)

The Court of Appeal ultimately held that given the informal, expedient, and low-stakes nature of small claims, the use of volunteer interpreters is consistent with the purpose and functioning of a small claims court and is proper. (59 Cal.App.3d at pp. 417–420.) The court also ruled, however, that it would be an abuse of discretion for a court *not* to appoint an interpreter for a witness who does not speak or understand English, and noted that volunteer, free interpreters may not always be available. Under those circumstances, a court has inherent power to appoint interpreters to assist small claims litigants whenever the due administration of justice so dictates. (*Id*. at pp. 418–419, 423–424.) In addition, rejecting the argument "that in situations where the court cannot secure the services of a volunteer to interpret for an indigent non-English-speaking litigant, the case will have to proceed without any interpreter at all," the Court of Appeal further held that where a court has exercised statutory or inherent authority to appoint an interpreter for an indigent party, the court may exercise that same inherent power to order payment to the interpreter from public funds. (*Id*. at pp. 423–424.) An order of the lower court directing payment from the county treasury to interpreters appointed in small claims cases was therefore affirmed as proper. (*Id*. at pp. 423–425.)

In *Jara*, *supra*, 21 Cal.3d 181, a party contended that the rule of *Gardiana*—that courts may appoint interpreters to assist indigent small claims litigants at public expense—should apply to civil actions generally. Rather than overruling *Gardiana*, the Supreme Court effectively affirmed its applicability in small claims actions, but distinguished it as to other civil cases.[5]

b. A court should order expenditures of public monies on interpreters in small claims cases only after other efforts to secure free interpretation assistance have been exhausted.

Code of Civil Procedure section 116.550, in subdivisions (a) and (b), provides that courts may permit non-attorney individuals to assist non-English-speaking small claims litigants, and that courts must endeavor to maintain and furnish to such litigants a list of interpreters who are willing to assist them at little or no charge. In 1993, the Legislature added subdivision (d) to section 116.550 (Stats. 1993, ch. 1191, § 2), which states:

> If a court interpreter or other competent interpreter is not available to aid a party in a small claims action, at the first hearing of the case the court shall postpone

[5] *Jara* found that in contrast to small claims litigants, general civil litigants who do not speak or understand English may have an attorney to represent their interests in court, in addition to having access to interpretation assistance through friends, family, and community organizations. (21 Cal.3d at pp. 184–185.)

> the hearing one time only to allow the party the opportunity to obtain another individual (other than an attorney) to assist that party. Any additional continuances shall be at the discretion of the court.

Largely as a result of having inherent power to ensure the due administration of justice, *Gardiana* found that courts can appoint interpreters at public expense to assist indigent small claims litigants. (59 Cal.App.3d at pp. 423–424.) Generally speaking, however, the Legislature may place reasonable restrictions on the constitutional operations of the judiciary without usurping a court's inherent authority, and may prescribe procedures by which jurisdiction is to be exercised. (See *Superior Court v. County of Mendocino* (1996) 13 Cal.4th 45, 55–60; Code Civ. Proc., § 187 [recognizing a court's inherent power to act in furtherance of its jurisdiction *where a statute does not govern*].) In section 116.550, the Legislature prescribed protocols designed to facilitate the use of volunteer or low-cost interpreters by small claims litigants. In light of this, a court most likely *lacks* authority to appoint a publicly-financed interpreter to assist an indigent small claims litigant without first granting a continuance at the initial hearing to allow the party the opportunity to seek free assistance. (Code Civ. Proc., § 116.550(d).) Essentially then, a court may order the expenditure of public funds on interpreters for small claims litigants, but should do so only after reasonable efforts to secure free assistance are exhausted.

c. Where a publicly funded interpreter is required in a small claims case, court funds would be the appropriate source of payment.

When the expenditure of public funds to pay for party interpreters for indigent small claims litigants is appropriate, court funds should be used. The court in *Gardiana* ordered the county to pay the interpreter costs, but that case was decided in 1976, before the enactment of the Trial Court Funding Act. To the extent public monies are used now to pay for interpreters in small claims actions, state funds would be the appropriate source. (Cf. Cal. Rules of Court, rule 3.55(5) [*court* fees and costs to which indigent litigants are entitled to waiver include court-appointed interpreters in small claims cases].)

5. Indigent parties in specified family law cases, when federal or other non-state funds are available

Under Evidence Code section 755(a), and except as otherwise specified in subdivision (c) of that section, a court must appoint a party interpreter for a litigant who "does not proficiently speak or understand the English language" in several types of family law cases. Specifically, party interpreters are mandatory "[i]n any action or proceeding under Division 10 (commencing with Section 6200) of the Family Code, and in any action or proceeding under the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12 of the Family Code) or for dissolution or nullity of marriage or legal separation of the parties in which a protective order has been granted or is being sought pursuant to Section 6221 of the Family Code . . . ." (Evid. Code, § 755(a).)

Interpreters appointed in these cases are to be paid by the parties, if not indigent.[6] With regard to parties proceeding in forma pauperis, however, "the fees of an interpreter shall be waived . . . ." (Evid. Code, § 755(b).) Thus, when party interpreters are appointed in the family law proceedings specified in Evidence Code section 755(a) and the parties are indigent, court funds should be used to pay the costs.

This obligation is subject to a substantial qualification, however. Subdivision (e) of Evidence Code section 755 provides that a local entity may, and the Judicial Council must, seek federal funds authorized pursuant to the federal Violence Against Women Act, "or funds from sources other than the state to implement this section." The subdivision continues: "A local public entity and the Judicial Council *shall comply with the requirements of this section only to the extent that any of these funds are made available*." (Evid. Code, § 755(e), emphasis added.) The meaning of the emphasized language is somewhat perplexing, as section 755 does not appear to require anything of local public entities, and the only requirements imposed on the council appear minimal.[7] The section's primary "requirements"—to appoint party interpreters in various family law proceedings and pay for those interpreters when the parties are indigent—are imposed on courts. But because the provision references only requirements imposed on local entities and the Judicial Council, courts arguably are not relieved of their obligations to appoint and sometimes pay for interpreters in these cases regardless of whether federal or other non-state funds are available to cover the costs.

The more compelling interpretation of the statute's funding condition—and the one supported by the legislative history—however, is that Evidence Code section 755, *in its entirety*, must be given effect only if non-state monies are secured to pay for the primary resulting costs (free interpreters for indigent litigants). Section 755 was enacted in 1995 through Senate Bill number 982. (Stats. 1995, ch. 888, §§ 1-2.) An analysis of the bill prepared by the Assembly Committee on Appropriations sets forth the Legislature's understanding that any resulting costs to the Judicial Council would be minor and absorbable, and that the prospective federal funding would be used to pay the interpreter costs for which courts would be responsible. In describing the "fiscal effect" of the bill, the analysis states: "Minor absorbable General Fund costs to the Judicial Council for the drafting of rules and forms relating to court interpreters and for the application for federal funds. Unknown, *potentially major costs to courts, offset by any federal funds received for reimbursement of interpreter's costs*." (Assem. Com. on Appropriations, Analysis of Sen. Bill No. 982 (1995-1996 Reg. Sess.) as amended July 18, 1995, p. 2, emphasis

[6] Evidence Code section 755(b) states in part: "The fees of interpreters utilized under this section *shall* be paid as provided in subdivision (b) of Section 68092 of the Government Code" (emphasis added), and as will be discussed at length *post*, the Legislature had mandated in Government Code section 68092(b) that the *parties* in civil cases *shall* pay interpreter costs.

[7] Subdivision (f) of Evidence Code section 755 directs the council to draft rules and modify forms as necessary to implement the section.

added; see also Sen. Third Reading, Analysis of Sen. Bill No. 982 (1995–1996 Reg. Sess.) as amended Sept. 15, 1995, pp. 2-3 [same].)

It is clear that the Legislature intended that any federal and non-state funds secured pursuant to Evidence Code section 755, subdivision (e) would be used to reimburse *courts* for costs incurred as a result of the section's requirements. In the absence of such funds, the "requirements" that are excused by that same subdivision most logically and rationally would include, at minimum, those imposed on the intended beneficiary of the funds, i.e., the courts. (See *Robson v. Upper San Gabriel Valley Municipal Water District* (2006) 142 Cal.App.4th 877, 881, 884-885, 888 [adopting "a logical and reasonable construction" of a statute, which harmonizes its parts internally "in a manner that carries out the purpose of the statute"]; *Board of Retirement v. Santa Barbara County Grand Jury* (1997) 58 Cal.App.4th 1185, 1189 [in construing statutes, courts "avoid interpretations and constructions which defy common sense . . . , including literal meanings which would lead to a result not intended by the Legislature"].) Those requirements are set forth throughout section 755. Accordingly, to the extent federal or other non-state funds are available, courts must appoint party interpreters when appropriate in the family law proceedings described in Evidence Code section 755(a), and must pay for those interpreters for indigent parties. In the absence of such funds, however, section 755 most likely is inapplicable in its entirety. (See *Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554, 567 [statutes should be given "a reasonable and commonsense interpretation consistent with the apparent purpose and intention of the lawmakers"] [internal quotations omitted].)

D. <u>Civil Cases</u>: As To Proceedings Not Specifically Addressed By Other Law, General Statutes Requiring Parties To Pay For Interpreters In Civil Actions Arguably Prohibit Court Funds From Being Spent For That Purpose; Under The More Persuasive Analysis, However, Court Funds May Be Spent On Needed In-Courtroom Interpreters—All Interpreters, But Most Clearly Witness Interpreters—When The Parties Are Indigent.

Putting aside the situations discussed above in which statute or case law addresses payment responsibility for civil interpreters in specific contexts, certain statutes provide that the *parties <u>shall</u>* bear the costs of interpreters needed in civil proceedings. Arguably, this means that *only* the parties can properly spend money on interpreters in civil cases, and court funds cannot be used for that purpose. More likely, however, it is proper to spend court monies on civil interpreters at least when the parties are indigent. This conclusion is strongest with regard to witness interpreters because courts have a statutory duty to appoint interpreters for witnesses and, arguably, the associated costs are more reasonably characterized as "court operations" expenses.

1. Various statutes direct that litigants shall pay for interpreters in civil proceedings, and this arguably constitutes an implicit prohibition on using court funds for that purpose.[8]

The Legislature has directed that generally speaking, parties must pay for interpreters needed in civil proceedings. Government Code section 68092(b) clearly states that in civil cases, interpreters' fees and compensation *shall* be paid "by the litigants, in proportions as the court may direct, to be taxed and collected as other costs." Similarly, Evidence Code section 752, which requires courts to appoint witness interpreters when needed, provides that in civil actions, the interpreter's compensation *shall* be apportioned to the parties in the first instance, who may thereafter claim the expense as a cost of suit. (Evid. Code, § 752(b)(2).) And case law confirms that courts lack authority to *order* a public entity to pay for needed interpreters in general civil actions. As discussed, in *Jara, supra*, 21 Cal.3d 181, the Supreme Court refused to extend to all civil actions the holding of *Gardiana, supra*, 59 Cal.App.3d 412, that in small claims cases, courts have inherent power to appoint party interpreters to assist indigent litigants, *and to order the county to pay the costs*.

Thus, the Legislature has directed that parties *shall* pay for interpreters in civil cases, and if the parties cannot afford to pay, a court likely lacks power to *order* payment from public sources. Does this mean that a court may not *elect* to authorize the expenditure of court funds for civil interpreters? Arguably it does; the dictates of Government Code section 68092(b) and Evidence Code section 752(b)(2) that parties "shall" pay for party and witness interpreters, respectively, appear clear, and in contrast, there is no clear legislative authorization to spend court funds for civil interpreters.

Typically, "[u]se of the mandatory language 'shall' indicates a legislative intent to impose a mandatory duty; no discretion is granted." (*In re Luis B.* (2006) 142 Cal.App.4th 1117, 1123.) Arguably then, the Legislature has imposed a mandatory duty to pay for needed interpreters in civil cases squarely on the parties, and no discretion to deviate from that legislative directive is

[8] No separate provisions of law were found specifically addressing payment responsibility for interpreters in unlawful detainer, guardianship, or conservatorship proceedings, and these cases therefore appear covered by the law governing civil cases generally. (See Code Civ. Proc., §§ 24, 30–31 [civil actions are prosecuted by one party against another to enforce or protect a right, or redress a wrong, and criminal actions are defined and provided for by the Penal Code]; *Coberly v. Superior Court* (1965) 231 Cal.App.2d 685, 690 [matters under the Probate Code are special proceedings of a civil nature]; Prob. Code, §§ 1000–1001 [except where otherwise prescribed by the code or rule of court, rules of practice and procedure governing civil actions apply to proceedings under the Probate Code].) To the extent Evidence Code section 755 does not apply, the same is true of family law cases generally, as the Judicial Council has not addressed interpreter requirements in family law proceedings. (Fam. Code, § 210 [except where a statute or Judicial Council rule otherwise provide, "the rules of practice and procedure applicable to civil actions generally" apply to proceedings under the Family Code]; Cal. Rules of Court, rule 5.2(d) [except as otherwise provided in the rules of court, "all provisions of law applicable to civil actions generally apply to a proceeding under the Family Code if they would otherwise apply to such proceeding without reference to this rule"]; *Elkins v. Superior Court* (2007) 41 Cal.4th 1337, 1354 [generally speaking, "the same statutory rules of evidence and procedure that apply in other civil actions" govern family law matters].)

granted. And this would be true even if the parties cannot pay; a court may not voluntarily elect to expend court funds for this purpose. (See *post*, fn. 10.) In addition, generally speaking, a public entity may not spend taxpayer dollars on a particular cost absent statutory authority. (*Stanson v. Mott* (1976) 17 Cal.3d 206, 213; *County of Los Angeles v. Superior Court* (1980) 102 Cal.App.3d 926, 930–931.) The United States Supreme Court has stated not only this rule—public funds may be spent only when authorized by Congress—but also the corollary: "Where Congress has addressed [a] subject and authorized expenditures where a condition is met, the clear implication is that where the condition is not met, the expenditure is not authorized." (*United States v. MacCollom* (1976) 426 U.S. 317, 321.) Although California's Legislature has addressed public funding of interpreters in other contexts (see, e.g., Gov. Code, § 68092(a) [court pays interpreter compensation in criminal cases]; Evid. Code, §§ 752(b)(1) [court pays interpreter compensation in criminal and juvenile proceedings], 755(b) [interpreter fees must be waived for indigent litigants in certain family law proceedings when specified funding is available]), no statute clearly allows court funds to be spent on interpreters for indigent civil litigants generally, and doing so arguably would be a prohibited expenditure of public funds.

Finally, the Legislature has demonstrated in other contexts that it knows how to specify an exception for indigent litigants under which public funds may be spent, when that is the Legislature's intent. Under Welfare and Institutions Code section 366.26(f)(3), for example, appointed counsel in certain dependency cases "shall be paid by the real parties in interest, other than the child, in any proportions the court deems just." If those parties cannot afford counsel, however, "the amount shall be paid out of the general fund of the county." (*Ibid.*; see also Prob. Code, § 1470(c)(2), (3); Fam. Code, § 3153.) The Legislature has not similarly authorized the expenditure of public funds on interpreters when civil litigants are indigent, which further supports the argument that it would be improper for courts to do so. (See *Blakely v. Superior Court* (2010) 182 Cal.App.4th 1445, 1454 [finding no implicit "good cause" exception to a particular statutory rule, noting that "the Legislature knows how to create a good cause exception when it wants one," as evidenced by having done so in related statutes]; see also *Beaty v. Truck Ins. Exchange* (1992) 6 Cal.App.4th 1455, 1463 ["[c]learly the Legislature knows how to designate marital status as a prohibited category of discrimination when inclined to do so [and because] it has not done so in the Unruh Act, we refuse to do so on our own accord"].)

2. Most likely, the statutes requiring parties to pay for civil interpreters do not prohibit the discretionary expenditure of court funds for this "court operations" expense where the parties are indigent.

If the Legislature's directive that litigants must pay for interpreters in civil proceedings prohibits court funds from being spent for that purpose, a "legal void" can exist in some instances; a party or witness may require interpreter assistance, the indigent parties cannot afford to pay for one, and a court cannot order another entity to pay or use court monies. The problem is particularly pronounced in the case of witness interpreters. *Jara* recognizes that civil litigants may have

access to interpretation assistance through friends, family, and community organizations, and in any event, may have an attorney to represent their interests in court. (21 Cal.3d at pp. 184–185.) Where an indigent civil litigant seeks to call a non-English-speaking witness to testify in open court, however, the fact that *the litigant* may be represented by counsel or may have a bilingual friend available to provide informal translation will be of no help in presenting the witness's testimony. In that instance, the party may have to forego calling a witness whose testimony is critical to the party's case. (See Code Civ. Proc., § 185(a) [all court proceedings shall be conducted in the English language and in no other].) But even as to parties, attorney assistance may not be an option,[9] and there can be situations where volunteer interpreters are not available. (See *Gardiana*, *supra*, 59 Cal.App.3d at p. 423 [courts may not always be able to "secure the services of a volunteer to interpret for an indigent non-English-speaking litigant"].)

This may be the legally compelled result under *Jara*; i.e., some witnesses requiring interpreter assistance may not be able to testify in civil proceedings where the parties are unable to pay the cost, and some non-English-speaking litigants may be forced to proceed with no interpreter.[10] More likely, however, the mandatory statutory language that civil litigants pay interpreter costs does not prohibit the discretionary spending of court funds on necessary civil interpreters, and especially witness interpreters, when the parties are indigent.

a. An exception to the mandatory requirement that parties pay for interpreters in civil proceedings may be implied when the parties are indigent.

The relevant statutes expressly require that civil litigants bear the cost of witness and party interpreters, and in light of these legislative commands, it is difficult to justify the voluntary use of court funds for this purpose when the parties are able to pay. It may be impossible for indigent parties to pay for needed interpreters, however. No statute clearly states that court funds *may not* be used to pay for civil interpreters when that impossibility arises, and an ambiguity arguably exists as to whether the statutes requiring the parties to pay for civil interpreters preclude courts from electing to spend court funds for that purpose when the parties are indigent. (*Langsam v. City of Sausalito* (1987) 190 Cal.App.3d 871, 877 [ambiguity is a prerequisite to statutory interpretation].)

[9] For example, an indigent civil defendant with no potential for affirmative monetary recovery would not be able to retain counsel under a contingency fee arrangement, and would be without counsel absent pro bono representation.

[10] In his dissenting opinion in *Jara*, Justice Tobriner observed: "At issue here is the question whether our judicial system will allow an indigent defendant in a civil case who does not speak nor understand the English language to be deprived of his interest in his property (including future earnings), which he may desperately need in order to survive, in a proceeding that he does not, and, because of his indigency, cannot hope to understand. I believe this issue raises basic constitutional and human questions that the majority does not begin to confront. . . . [¶] The majority argues that the absence of an interpreter for the non-English-speaking defendant has not been shown to constitute a 'substantial burden.' I cannot agree with the majority's assessment of the confusion, the despair, and the cynicism suffered by those who in intellectual isolation must stand by as their possessions and dignity are stripped from them by a Kafka-esque ritual deemed by the majority to constitute, nonetheless, a fair trial." (*Jara*, *supra*, 21 Cal.3d at pp. 187, 188 (dis. opn. of Tobriner, J.).)

In general, statutes should be interpreted " 'so as to make them workable and reasonable' " (*Regents of University of California v. Superior Court* (1970) 3 Cal.3d 529, 537), and a statute should be harmonized, when possible, "with the body of law to which it belongs." (*Hood v. Compton Community College District* (2005) 127 Cal.App.4th 954, 964; see also *DuBois v. Workers' Compensation Appeals Board* (1993) 5 Cal.4th 382, 388 [a court should consider the language of a statute in the context of the entire statutory scheme of which it is a part].) Interpretations that would recognize a right yet deny a remedy, or lead to mischief or absurdity, should be avoided. (*Board of Retirement v. Terry* (1974) 40 Cal.App.3d 1091, 1096; *Board of Retirement v. Santa Barbara County Grand Jury* (1997) 58 Cal.App.4th 1185, 1189.)

Courts have a statutory duty to appoint interpreters for witnesses who cannot understand or express themselves in English. (Evid. Code, § 752(a).) In addition, courts have inherent power to swear interpreters when necessary for the due administration of justice, and "the power may be exercised to supplement existing statutes the provisions of which do not extend to all cases in which such a necessity appears."[11] (*People v. Walker* (1924) 69 Cal.App. 475, 486, internal citations omitted.) If the "parties pay" provisions of Government Code section 68092(b) and Evidence Code section 752(b)(2) are interpreted to prohibit public funds being spent on civil interpreters when the parties are indigent, this would render a court's duty to appoint interpreters, at least for witnesses, unworkable if not impossible to fulfill.[12] This is because a court cannot force an interpreter to work for free (cf. *Cunningham v. Superior Court* (1986) 177 Cal.App.3d 336, 347–352 [involuntary conscription of attorney to provide free legal representation for indigent litigant is unconstitutional]) and cannot order some other entity to pay for an interpreter in general civil cases. (*Jara, supra*, 21 Cal.3d at pp. 184–185; see *Payne, supra*, 17 Cal.3d at p. 920, fn. 6.) Therefore, the more rational interpretation of the statutes, and one that would best harmonize the various provisions of law and legal requirements, arguably would be to read the "parties shall pay" language as *not* barring a different source of payment—court funds—*when the parties are unable to pay*.[13] (See *In re M.F.* (2008) 161 Cal.App.4th 673 ["shall" as used in a

[11] At least with regard to witnesses, courts have a *duty* to exercise this inherent power to swear interpreters when needed to elicit testimony. (*People v. Holtzclaw* (1926) 76 Cal.App. 168, 171 ["[i]n every court there also rests the inherent power to call interpreters for witnesses under proper circumstances (citation); and it is, of course, the duty of a court to call an interpreter whenever such circumstances arise"].)

[12] Although courts do not have a statutory duty to appoint party interpreters, they do, as indicated, have inherent power to swear interpreters as necessary to assure the due administration of justice. Some civil cases can be of even greater import than certain criminal matters (*People v. Engram* (2010) 50 Cal.4th 1131, 1151-1152), and situations may exist where a court concludes that the due administration of justice mandates the appointment of a party interpreter in a civil case. Should that occur and the party is indigent, a court would face a dilemma similar to that presented in the context of witness interpreters if the statutes are interpreted to prohibit the expenditure of court funds on civil interpreters in all instances.

[13] An affirmative command of law (such as the parties "shall pay" for civil interpreters) does not always imply the converse. (See, e.g., *In re Marriage of Khera and Sameer* (2012) 206 Cal.App.4th 1467, 1484; *Tract Development Services, Inc. v. Kepler* (1988) 199 Cal.App.3d 1374, 1382.) Thus, the converse in this case—that no entity except the parties shall pay for civil interpreters (under any circumstances)—is not necessarily compelled.

statute need not always be interpreted as being mandatory, and may be deemed directory in some situations].) And notably, where compliance with a statute is impossible, implied exceptions to its requirements may be found. (*Looney v. Superior Court* (1993) 16 Cal.App.4th 521, 536 ["judicial recognition of an implied exception to an otherwise mandatory statute is not without precedent where, in a particular case, enforcement of the literal language would require performance of an impossible, impracticable or futile act"]; but see *An Independent Home Support Service, Inc. v. Superior Court* (2006) 145 Cal.App.4th 1418, 1436 [courts are " 'not authorized in the construction of a statute, to create exceptions not specifically made [and if] the statute announces a general rule and makes no exception thereto, the courts can make none' "].) An implied exception appears justified here: The parties shall pay for interpreters in civil proceedings, *except, when they cannot afford to do so*, court funds may be used if the a court has determined that an appointed interpreter is necessary and appropriate.[14]

b. The voluntary expenditure of court funds on interpreters in civil proceedings when the parties are indigent arguably would be an authorized court operations expenditure.

As noted previously, generally speaking, public funds may be spent only where the expenditure is authorized by statute, and no statute expressly allows tax dollars to be spent on interpreters in general civil proceedings when the parties are indigent. Nonetheless, a fairly convincing argument exists that such cost would be a legislatively authorized court operations expense—particularly in the case of witness interpreters—for which court funds may be spent when the parties are unable to pay.[15]

Costs of "court operations" generally must be paid with state monies (see Gov. Code, § 77200), but in rare instances in criminal cases, and more commonly in civil actions, the Legislature properly may shift the cost of court operations to the litigants. (*People v. Superior Court (Laff)* (2001) 25 Cal.4th 703, 737–738.) The costs of needed interpreters in civil cases—particularly

[14] If only one party can afford to pay an interpreter, a court may order that party to pay the entire cost. (Gov. Code, § 68092(b) [civil litigants pay interpreters in proportions directed by the court]; Evid. Code, § 752(b)(2) [same; witness interpreters].)

[15] The budgetary appropriation language sheds little light on whether court monies spent on civil interpreters when the parties are indigent would be a proper expenditure. The Legislature typically appropriates money for court interpreters as a line item appropriation into program 45.45 of the Trial Court Trust Fund. Through 2009, the appropriation language typically stated simply that the funds "shall be used for the services of [court interpreters] . . . ." (See Budget Act of 2009, item 0250-101-0932, schedule 4, provision 4.) Beginning in 2010, the language was modified to state that the funds "shall be for payments to [court interpreters] for services provided during court proceedings and other services related to pending court proceedings, including services provided outside a courtroom . . . ." (Budget Act of 2010, item 0250-101-0932, schedule 4, provision 4.) The genesis or purpose of this language change is not clear, although the Legislature appears to have been clarifying or establishing that paying interpreters to assist with matters occurring outside of actual court proceedings can be proper. But as to interpretation of court proceedings, neither the previous nor current appropriations language provides guidance on whether court funds may be spent on interpretation services in any court proceeding—criminal or civil—under any circumstance, or only where the expenditure is otherwise required, such as in criminal hearings.

witness interpreters—most likely should be treated as a court operations expense, responsibility for which the Legislature has shifted to the parties. Arguably, where it is determined that the parties cannot pay the expense, it remains a cost of court operations, and it would be appropriate to spend court funds at that point.

"Court operations" includes those matters set forth in rule 10.810 of the California Rules of Court ("rule 10.810"). (Gov. Code, § 77200.) Under function 4 of that rule, entitled "Court Interpreters," the "[s]alaries, wages, and benefits of courtroom interpreters" are proper court operations expenses. The drafters of this rule presumably were aware that courts are required by the Constitution to pay for interpreters in criminal and juvenile delinquency cases (cf. *Singh v. Superior Court* (2006) 140 Cal.App.4th 387, 400 [Legislature presumed to know the law]), and it may be only these cases that they had in mind when defining "court operations" to include court interpreters. On its face, however, the rule does not qualify itself in any way (compare rule 10.810(d), function 10 [costs of appointed experts is a proper court operations expense, but only where the expert is appointed for the court's needs or use]), and it therefore can be argued that the cost of interpreters in civil proceedings, be they witness or party interpreters, is a court operations expense that the Legislature has shifted to the parties. (See *Laff*, *supra*, 25 Cal.4th at pp. 737–738.)

The Law Revision Commission Comments to a 2010 amendment to Government Code section 68092 support this conclusion. (*Bonanno*, *supra*, 30 Cal.4th at p. 148 [Law Revision Commission's comments are persuasive evidence of legislative intent].) As noted previously, that section states that interpreter fees are to be paid by the court in criminal cases, and the parties in civil cases. The comments observe:

> Interpretation by a court interpreter for a court proceeding is a court operation and therefore payable by the court and ultimately by the state. See Cal. R. Ct. 810, Function 4 (court interpreters). In contrast, interpretation beyond the court context (e.g., during a client interview), or for a coroner's case, is not a court operation and thus remains payable by the county. See Cal. R. Ct. 810 (listing matters classified as court operations).

Thus, although section 68092(b) expressly states that civil litigants must pay for interpreters, the Legislature appeared to consider *all* in-court interpretation to be a matter of court operations—with the comments distinguishing not between interpretation in criminal and civil cases, but between court proceedings and non-court settings—and elected to shift this court operations expense to the parties in civil cases. Trial court funding may be spent on court operations. (See Gov. Code, §§ 77200, 77003.) If an interpreter is required in a civil proceeding, and the parties cannot afford to pay despite the statutory directive, it would seem appropriate to spend court funds on this court operations expense.

The conclusion that court funds may be spent on civil interpreters when the parties are indigent is particularly powerful in the case of witness interpreters. As discussed, courts have a clear *statutory duty* to appoint interpreters for civil witnesses. If the parties cannot pay for those interpreters, then it becomes nearly impossible for a court to fulfill its legal duty. The expenditure of court funds for this purpose would certainly advance the court's interests, as it would allow a court to comply with its legal duty.

The expenditure of court funds on party interpreters in civil cases stands on slightly more tenuous legal footing. Witness interpreters function largely to ensure a clear presentation of the testimony before a court, and courts consequently have a duty to appoint interpreters for witnesses. Conversely, courts do not have a general statutory duty to appoint party interpreters. (But see *ante*, fn. 12 [circumstances may exist under which a court finds that the due administration of justice mandates that a party interpreter be appointed in a civil case].) And arguably, party interpreters function more to advance the parties' private interests in prosecuting or defending their cases, as opposed to the court's interest in receiving testimony. Thus, the propriety of spending court funds on party interpreters for indigent civil litigants is somewhat less certain. (Cf. rule 10.810(d), function 10 [only those appointed experts and court-ordered forensic examinations serving a court's needs or use are included in court operations]; 87 Ops.Cal.Atty.Gen. 62, 65, 67 (2004) [under "needs/use" test of rule 10.810, an expert who "assists the court in performing its judicial role" is an element of court operations paid for by the court, while an expert appointed to assist the prosecution or defense in performing their duties, or to render service to or on behalf of a party to a proceeding, is not].) Nonetheless, the Legislature has indicated its view that *all* in-court interpretation services are an element of court operations, and function 4 of rule 10.810 is to the same effect. But the discretionary spending of court funds on party interpreters could be said to advance the private interests of the parties primarily, rather than the interests of the court, and could be more vulnerable to legal challenge.[16]

Conclusion

Traffic cases are criminal in nature, and traffic defendants who do not understand English are entitled to court-funded interpreters during these proceedings. Various statutes and cases indicate that court-funded interpreters also are required or appropriate: 1) for all witnesses testifying in juvenile court; 2) for parties in juvenile cases in counties have populations of 900,000 or more; 3) possibly for indigent parties in dependency proceedings if necessary to

[16] Rule 3.56 of the California Rules of Court expressly validates the conclusion that court funds may be spent on witness interpreters when the parties are indigent. That rule lists particular court fees and costs that a court *has discretion* to waive upon the granting of a fee waiver (rule 3.55 lists fees and costs that *must* be waived). Included in the list is: "Court-appointed interpreter's fees for witnesses." (Cal. Rules of Court, rule 3.56(2).) Rule 3.56's list of fees and costs that a court has discretion to waive is non-exhaustive, however, and subdivision (6) of that rule recognizes that indigent parties may seek to have "[o]ther fees or expenses" waived as well. Presumably, if a court finds that the appointment of a party interpreter is necessary in the interests of justice, an indigent civil litigant could seek waiver of the costs under this catch-all provision.

render appointed counsel's representation effective; 4) as a last resort, for parties in small claims proceedings; and 5) for indigent parties in certain family law proceedings when funds secured from non-state sources are available.

With regard to all other civil proceedings, various statutes provide that parties shall pay for both witness and party interpreters, and this may mean that use of court funds for this purpose is prohibited. For the reasons discussed *ante*, more likely, however, if the parties to a civil proceeding are indigent, using court funds to pay for witness interpreters would be an authorized court operations expense. Use of court funds to pay for party interpreters for indigent civil litigants would be more vulnerable to legal challenge, but also may be proper.

CP/dag
cc: Curtis L. Child, Chief Operating Officer, AOC Judicial and Court Operations Services Division

U.S. Department of Justice
Civil Rights Division

Federal Coordination and Compliance Section-NWB
950 Pennsylvania Ave, NW
Washington, DC 20530

May 22, 2013

CERTIFIED, RETURN-RECEIPT REQUESTED

Honorable Tani G. Cantil-Sakauye
Chief Justice
California Supreme Court
350 McAllister Street
San Francisco, CA 94102

Honorable Steven Jahr
Administrative Director of the Courts
Administrative Office of the Courts
455 Golden Gate Avenue
San Francisco, CA 94102

Honorable David S. Wesley
Presiding Judge
Los Angeles County Superior Court
111 North Hill Street
Los Angeles, CA 90012

Re: Complaint No. 171-12C-31
Investigation of the Superior Court of California, Los Angeles County and Judicial Council of California

Dear Chief Justice Cantil-Sakauye, Judge Jahr, and Presiding Judge Wesley:

We write to provide a summary of our observations and recommendations based on our review to date of an investigation of the Superior Court of California, Los Angeles County (LASC) and the Judicial Council of California. In doing so, we seek a dialogue aimed at achieving voluntary compliance. Our investigation to date indicates that several current policies, practices, and procedures regarding the provision of language assistance services in LASC appear to be inconsistent with Title VI of the Civil Rights Act of 1964 and its implementing regulations. This letter describes these inconsistencies, which should be addressed to ensure that limited English proficient (LEP) individuals have meaningful access to court proceedings and court operations.

In February 2011, the Civil Rights Division of the United States Department of Justice (DOJ) initiated an investigation of the LASC and the Judicial Council of California. The Civil Rights Division and the United States Attorney's Office for the Central District of California are

jointly investigating this matter. DOJ's investigation was prompted by a complaint filed by the Legal Aid Foundation of Los Angeles that alleged discrimination against LEP individuals on the basis of national origin. Specifically, the complainants alleged that LASC fails to provide LEP individuals with meaningful access to its court services, including civil proceedings and court operations. While our investigation is focused on LASC, the structure of the California judicial system requires us to review mandates and policies that are promulgated and enforced at the state level through the Judicial Council and its staff agency, the California Administrative Office of the Courts (AOC). We appreciate the cooperation and continued dialogue that our offices have shared during this investigation.

Legal Background

The Civil Rights Division is responsible for investigating complaints against recipients of federal financial assistance under Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d to 2000d-7, and the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. § 3789d(c). Together, these statutes and their implementing regulations prohibit discrimination on the basis of race, color, national origin, sex, or religion by recipients of federal financial assistance. *See* 42 U.S.C. §§ 2000d, 3789d(c); 28 C.F.R. Part 42, Subparts C and D. LASC, the AOC, and the Judicial Council are subject to the requirements of Title VI and the Safe Streets Act because these entities are part of the unified state court system of California, which receives federal financial assistance, including from DOJ.

In order to comply with Title VI, the Safe Streets Act, and their implementing regulations, recipients of federal financial assistance must provide meaningful access to LEP individuals. The Supreme Court decided over three decades ago that a federally funded recipient's denial of education to a group of non-English speakers violated Title VI and its implementing regulations. *Lau v. Nichols*, 414 U.S. 563, 568- 69 (1974). As the Court explained, "[i]t seems obvious that the Chinese-speaking minority receive fewer benefits than the English-speaking majority from respondents' school system which denies them a meaningful opportunity to participate in the educational program—all earmarks of the discrimination banned by" Title VI regulations.[1] *Id.* at 568. Title VI regulations also require recipients to translate

[1] Since the Supreme Court's decision in *Lau*, other courts have found that the failure by a recipient to provide meaningful access to LEP individuals can violate Title VI's prohibition of national origin discrimination. *See, e.g., Sandoval v. Hagan*, 197 F.3d 484, 510-11 (11th Cir. 1999) (holding that English-only policy for driver's license applications constituted national origin discrimination under Title VI), *rev'd on other grounds sub nom. Alexander v. Sandoval*, 532 U.S. 275 (2001); *Cabrera v Alvarez*, C 12-04890 SI, 2013 WL 1283445 at *5-6 (N.D. Cal. Mar. 27, 2013) (quoting 28 C.F.R. § 42.405(d)(1)) (Title VI intent claim properly alleged when public housing project failed to provide language assistance services); *Nat'l Multi Housing Council v. Jackson*, 539 F. Supp. 2d 425, 430 (D.D.C. 2008) (citing 28 C.F.R. § 42.405(d)) ("Longstanding Justice Department regulations also expressly require communication between funding recipients and program beneficiaries in languages other than English to ensure Title VI compliance."); *Almendares v. Palmer*, 284 F. Supp. 2d 799, 808 (N.D. Ohio 2003) (holding that plaintiff sufficiently alleged Title VI violation based on Defendant's failure to ensure bilingual services in a food stamp program); *Pabon v. Levine*, 70 F.R.D. 674, 677 (S.D.N.Y. 1976) (summary judgment for defendants denied in case alleging failure to provide unemployment insurance information in Spanish violated Title VI); *accord, Ling v. State*, 702 S.E. 2d 881, 884 (Ga. 2010) ("as a recipient of federal funding, the court system in this State is obligated to provide persons who are 'limited English proficient' with meaningful access to the courts in order to comply with Title VI . . . and the Safe Streets Act . . . . [V]igilance in protecting the rights of non-English speakers is required in all of our courts.").

written materials for LEP individuals. *Colwell v. Dep't of Health and Human Services*, 558 F.3d 1112, 1126 (9th Cir. 2009) (citing 28 C.F.R. § 42.405(d)(1)) ("[W]ritten translation is mandated . . . by the 1976 DOJ regulation . . .").

Under Executive Order 13166, each federal agency that extends financial assistance is required to issue guidance explaining the obligations of their recipients to ensure meaningful access by LEP persons to their federally assisted programs and activities. *See* 65 Fed. Reg. 50,121 (Aug. 16, 2000). The DOJ Guidance issued pursuant to this requirement states that recipients of financial assistance from DOJ should take "every effort . . . to ensure competent interpretation for LEP individuals during all hearings, trials, and motions." Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons. 67 Fed. Reg. 41,455, 41,471 (June 18, 2002) (DOJ Guidance). Since that time, DOJ has provided substantial additional guidance[2] and technical assistance regarding the application of Title VI and the Title VI regulations to recipient courts and court systems.

Every application for federal financial assistance is also accompanied by a contractual assurance that the program will be conducted in compliance with all of the requirements set forth in Title VI, the Safe Streets Act, and their implementing regulations. For example, the assurance for grants from DOJ's Office of Justice Programs states, in part, that the applicant must assure and certify that it will comply with "all applicable Federal statutes, regulations, policies, guidelines, and requirements" and specifically enumerates several statutorily-imposed nondiscrimination requirements including the Safe Streets Act and the Civil Rights Act of 1964, which includes Title VI. Thus, DOJ has the authority to enforce the contractual obligations attendant to receipt of its federal financial assistance. *See Guardians Ass'n v. Civil Serv. Comm'n*, 463 U.S. 582, 603 n.24 (1983). The United States also may attach conditions to a grant of federal assistance, and the recipient of the grant is obligated to perform the conditions, creating an inherent right on the part of the United States to sue for enforcement of the recipient's obligation in court. *See Rex Trailer Co. v. United States*, 350 U.S. 148, 151 (1956); *United States v. City and Cnty. of San Francisco*, 310 U.S. 16, 30-31 (1940).

Current Investigation: Observations and Recommendations

During the course of this investigation, attorneys from the Civil Rights Division and the United States Attorney's Office for the Central District of California have: (i) requested documents and data from the AOC and the LASC relating to their policies and practices for providing LEP litigants with access to court proceedings and operations; (ii) conducted on-site

[2] The Assistant Attorney General for the Civil Rights Division issued a letter in August 2010 to all Chief Justices and State Court Administrators describing the obligation of state courts under Title VI and the Safe Streets Act to provide LEP individuals with meaningful access to court proceedings, notwithstanding any conflicting state or local laws or court rules. The letter also described several practices "that significantly and unreasonably impede, hinder, or restrict participation in court proceedings and access to court operations based upon a person's English language ability," including denying LEP parties access to court interpreters in civil proceedings and charging LEP parties for the cost of interpreter services. *See also, United States v Maricopa County, Ariz.*, CV-12-00981-PHX-ROS, 2012 WL 6742314 at *4 (D. Ariz. Dec. 12, 2012), citing *Auer v. Robbins*, 519 U.S. 452, 461 (1997) (explaining that the DOJ's interpretation of Title VI regulations is "controlling" and entitled to deference so long as not plainly erroneous or inconsistent with the regulations).

visits in Los Angeles County with judges, administrators, court staff, court interpreters, public interest advocates, and attorneys in September 2011, September 2012, and December 2012; (iii) conducted on-site visits in the San Francisco Bay area with AOC staff and other stakeholders in December 2012; (iv) met with members of the Court Interpreter Advisory Panel and Access and Fairness Committee to the Judicial Council, as well as AOC leadership including Curt Child, Chad Finke, and Mary Roberts; and (v) held numerous telephonic conferences with staff at the California Department of Finance, interpreter union representatives, California State Assembly Judiciary Committee counsel staff, and former employees of the California Judicial Branch, among others.

As noted at the beginning of this letter, our investigation to date indicates that several current policies, practices, and procedures of LASC, the AOC, and the Judicial Council appear to be inconsistent with Title VI and DOJ's Title VI implementing regulations. These inconsistencies should be addressed in order to ensure that LEP individuals have meaningful access to court proceedings and court operations. We provide the following summary of some of the major areas of concern with the expectation that it will assist in ensuring a dialogue that will result in voluntary compliance.[3]

1. Title VI requires that interpreter services in court proceedings be provided free of charge.

The limitation on providing free court-certified or qualified interpreters for LEP litigants in non-criminal/non-juvenile proceedings is codified by state law, Rules of Court, and AOC guidelines and policy.[4] The lack of free and certified or qualified language services in court proceedings disproportionately and negatively impacts national origin minorities, resulting in, among other things, greater costs, delays, and lack of full participation because of the use of family and friends, or similar volunteers, with untested language and interpreting skills serving as interpreters. Latinos, Chinese, Koreans, and Armenians alone make up over 86% of the LEP population in Los Angeles County.[5] 48% of Spanish speakers, 50% of Armenian speakers, 59% of Chinese speakers, and 64% of Korean speakers in the County are LEP.[6] DOJ's LEP Guidance makes clear that the requirement to provide meaningful access extends to all national origin groups, but the numbers represented by these groups demonstrates a striking impact of the language access policies on the basis of national origin.

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[3] DOJ seeks to resolve concerns through voluntary means when possible. *See* 28 C.F.R. § 42.108(d)(1).

[4] *See, e.g.,* Government Code §§ 26806(c), 68092, 71802(b)(3); Los Angeles County Superior Court Rules of Court 3.105, 3.230, 3.258; Administrative Office of the Courts, "Use of Court-Appointed Interpreters and Payment of Interpreter Fees in Court Proceedings" (Jan. 2012). Interpreters are also provided at no cost to litigants in a limited number of family matters that involve an underlying protective order, but only when there is funding available pursuant to the Domestic Violence-Family Law Interpreter Program. If a party is indigent, an interpreter may be provided free of charge in small claims matters but the AOC has advised that a non-certified volunteer may be used. We found the use of family and friends serving in an interpreter role to be common practice in small claims matters in LASC. We also interviewed many practitioners who stated that the likelihood of obtaining a fee waiver for a court-provided interpreter varied significantly based on the judicial official presiding over the matter and/or the judicial assistant assigned to a particular Department.

[5] *See*, American U.S. Census Bureau, 2007-2011 American Community Survey 5-Year Estimates, Table B16001; using American Factfinder, http://factfinder.census.gov.

[6] *Id.*

2. Incompetent interpreter services provided through the use of non-interpreters in court proceedings, including by family and friends.

DOJ has explained that the need for a competent interpreter is particularly great in a court proceeding where "credibility and accuracy are important to protect an individual's rights."[7] Competency requires "more than self-identification as bilingual."[8] An interpreter must demonstrate "proficiency in and ability to communicate information accurately in both English and in the other language and identify and employ the appropriate mode of interpreting."[9] The obligation to ensure competent interpretation is why the use of non-interpreter volunteers, family members, or friends is not appropriate in the context of court proceedings.

On-site interviews indicate that LEP litigants commonly receive interpreting services from non-interpreters (*e.g.*, family, friends, waiting litigants in other cases). For example, LASC judicial officials and staff we interviewed overwhelmingly stated they allowed family and friends to interpret in order to avoid delays and cost to the LEP individual. However, even where a language assessment was attempted, the judicial official often does not have sufficient language capabilities to assess an individual's ability to communicate in both English and the other language. Our staff personally witnessed or reviewed transcripts demonstrating the use of non-interpreters in non-mandated matters and problematic practices including the failure to question the non-interpreter regarding their language abilities, inappropriate interjections by the non-interpreter during proceedings, and the use of witnesses to interpret for parties and the court.

3. Non-Spanish-speaking LEP litigants suffer even greater barriers to access due to substantial deficits in the availability of language services.

Although there are fewer LEP individuals in language groups that speak a language other than Spanish, courts are still required to provide meaningful access to all LEP individuals. DOJ's search of the California Judicial Branch's forms website, for example, yielded only Spanish translations of the mandatory fee waiver forms. During interviews, judges, court staff, and practitioners explained that long wait times for non-Spanish interpreters led to a much greater likelihood that a proceeding will move forward with a family member, friend, or similar volunteer acting as an interpreter for the court in those matters to avoid delay. These delays are exacerbated by the long distances that non-Spanish interpreters often must travel to meet the needs of non-Spanish speaking litigants. Due to their smaller numbers, non-Spanish interpreters are less available than Spanish interpreters to provide incidental services in non-mandated proceedings to LEP individuals during periods when those interpreters are not providing services in mandated proceedings.

With respect to court operations, we understand that LASC has recently instituted some positive changes to improve language services provided by that court such as hiring an LEP coordinator and working to provide signage translated into languages other than English and Spanish. We also understand that LASC has considered the use of video remote interpreting,

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[7] DOJ Guidance at 41462.

[8] *Id.* at 41461.

[9] *Id.*

which we identify later in this letter as a possible tool for improving and increasing language services. We encourage innovations and attempts to better serve the diverse language groups within Los Angeles County, but additional and formal changes in these areas are still needed.

4. Unclear budgetary guidance from AOC regarding reimbursement of interpreter costs for non-mandated cases.

Staff members for the AOC confirmed that, as a practical matter, if the court chooses within its discretion to provide an interpreter free of charge, all court requests for reimbursement for interpreter costs were honored, regardless of whether the costs were incurred for mandated (*e.g.*, criminal and juvenile) or non-mandated (*e.g.*, most civil) cases. However, the AOC has not provided any official written guidance to Superior Courts that interpreter costs for non-mandated cases would be reimbursed. It is our understanding that LASC has requested formal guidance on this matter, but the AOC has not confirmed that such costs, if incurred, would be reimbursed. The AOC has widely distributed a document to Superior Courts entitled "Use of Court Appointed Interpreters and Payment of Fees in Court Proceedings" that appears to contrast with the AOC's willingness to reimburse courts for their interpreter expenditures in non-mandated cases. The document specifies that the LEP party is responsible for the cost of an interpreter in non-mandated cases and instructs that the court will only pay for those matters listed as mandated. DOJ is further informed that without confirmation, LASC will not expand the use of court-certified interpreters for non-mandated cases.[10]

Underutilization of Trial Court Trust Fund 45.45

An area of great concern for DOJ has been the underutilization and transfer of funds appropriated for Trial Court Trust Fund ("TCTF") 45.45, which provides state-based funding for all court interpreters and limited supervisory staff. Since Fiscal Year 2009-2010, TCTF 45.45 has been appropriated $92.794 million annually as part of the California state budget. However, for each of the past three fiscal years, TCTF 45.45 has consistently failed to use the total amount of its expenditure authority, even as LEP litigants in non-mandated cases were refused court-provided interpretation services.

As shown in the table below, the millions in unused expenditure authority in TCTF 45.45 could have made a positive difference in ensuring expanded access to the courts. Each year, millions of dollars remained unspent. These funds could have been used to cover thousands of hours of interpreter services without cost to LEP litigants. Instead, in July 2011, the Judicial Council diverted $3.0 million of the unused TCTF 45.45 funds to fund trial court operations. Moreover, in July 2012, the Judicial Council considered a recommendation to transfer another $6.5 million of the unused TCTF 45.45 funds for other uses. This recommendation was tabled, and later withdrawn. While DOJ recognizes the Judicial Council's recent efforts to protect TCTF 45.45 funds from another transfer, it appears that TCTF 45.45 funds have been – and

[10] Judges, court staff, and practitioners across the state have informed us that counties are inconsistently providing language services in some civil matters and some counties, such as Los Angeles and San Diego, appear to be providing fewer interpreters in civil matters per incidental usage than in recent years. We have been unable to ascertain the exact reason for this other than a general connection to budgetary concerns even though the fund for the majority of interpreter services has had a surplus for several years. *See discussion infra.*

continue to be – at risk of being diverted to uses other than the interpreter services for which they were intended.

TCTF 45.45	Total Appropriation	Total Expenditures	Unused Appropriation
FY 2009-2010	$92.794 million	$87.955 million[11]	$4.839 million
FY 2010-2011	$92.794 million	$89.952 million[12]	$2.842 million
FY 2011-2012	$92.794 million	$89.187 million[13]	$3.607 million (est.)
FY 2012-2013	$92.794 million	---	---
	CUMULATIVE UNUSED APPROPRIATION FOR FY 2009-2010 to FY[14]2011-2012		$8.282 million

At present, approximately $8.282 million from past unused TCTF 45.45 appropriations remain unspent and available in the general Trial Court Trust Fund. This fund may be designated by the Judicial Council for any purpose within its statutory mandate. However, DOJ understands that the Judicial Council's spending authority is bound by the expenditure limits as set forth in the state budget, although the Judicial Council may seek permission from the California Department of Finance to exceed expenditure authority as set forth in the state budget.

In the instant situation, the California Governor's proposed FY 2013-2014 budget preserves the current appropriation for TCTF 45.45 at $92.794 million. The language of the California Budget Act (FY 2012-2013) for TCTF 45.45[15] broadly provides that the fund "shall be for payments to contractual court interpreters, and certified and registered court interpreters employed by the courts for services provided during court proceedings and other services related to pending court proceedings, including services provided outside a courtroom, ..." DOJ interprets this language of the California Budget Act expansively to allow spending of the TCTF 45.45 appropriation on any type of proceeding (mandated or non-mandated) or technology to assist interpreters in their work (*e.g.*, headsets, video conference equipment).

Recognition of the Importance of Language Services

Notwithstanding the unused expenditures in TCTF 45.45, DOJ is keenly aware of the budget cuts that have faced the California state courts over the last several years, including the cuts LASC is currently addressing. However, we also recognize that California has indicated an interest in providing meaningful access to LEP individuals in all proceedings and court operations. We have reviewed many California state court-sponsored or supported studies over

[11] *Trial Court Interpreters Programs Expenditure Report for 2009-2010,* Ca. Admin. Office of the Courts at 2 (Dec. 10, 2010).

[12] *Trial Court Interpreters Programs Expenditures Report for 2011-2012,* Ca. Admin. Office of the Courts at 2 (Feb. 2013).

[13] *Id.*

[14] This total unused allocation, which is an approximate number, deducts the $3.0 million that was transferred in 2011 to fund trial court operations.

[15] There is no indication that the language for the California Budget Act (FY 2013-2014) will materially differ from the previously approved language.

the years addressing various aspects of increasing language services[16] and recognize the Judicial Council's support for AB 3050 and similar legislation, which would have provided for expanded language services and greater access to the courts for LEP individuals. The text of AB 3050 highlights many of the issues we identify in this letter, recognizing, among other things, that court interpreter services are a "core court function," that reliance on family members to serve as interpreters can threaten a court's ability to dispense justice, and that the "inability to respond to language needs of parties in court impairs trust and confidence in the judicial system and undermines efforts to secure justice for all." A.B. 3050 §1, reg. Sess. (Cal. 2008) (vetoed on September 27, 2008). These barriers to access existed before current budget challenges and they remain now but we are hopeful that we may work cooperatively with LASC, the AOC, and the Judicial Council to meet the common goal of ensuring meaningful access for LEP individuals to court proceedings and operations in LASC.

Proposed Steps towards Voluntary Compliance

DOJ would like to work collaboratively with the Judicial Council, the AOC, and LASC in ensuring meaningful access for LEP individuals to LASC. Information from the AOC and LASC, interviews with court staff, judges, and others, including those who have worked on this issue in the California courts for many years, suggest that the California judicial branch is supportive of expanding language services and fully complying with Title VI. Full compliance will require a commitment to providing language services free of charge in all proceedings and court operations in LASC. However, to further our mutual interests and because we understand that full compliance will take time, DOJ offers the following recommendations for discussion and as voluntary steps toward compliance that may be taken immediately pending broader resolution of this matter:

1. The Judicial Council should refrain from taking any actions to re-allocate the unspent appropriations from the TCTF 45.45 funds (currently $8.282 million).

2. The AOC should immediately and formally notify LASC that there is no statutory impediment or Judicial Council authority that prevents the AOC from reimbursing the court for eligible expenditures as defined within Section 2 of the Budget Act of 2012 (Assem. Bill No. 1464 (2011-2012 Reg. Session)). To the extent there are concerns about exceeding expenditure authority, under TCTF 45.45, the AOC and LASC may want to consider initially prioritizing those sensitive matters where consequences of ineffective communication are particularly onerous, including matters involving civil

[16] *See e.g.,* UC Hastings College of the Law, Public Law Research Institute, Enhancing Language Access Services for LEP Court Users (2013) (developed pursuant to a grant to the AOC and recognizing that the California courts are subject to the requirements of Title VI); National Center for State Courts, The Provision of Court Interpreter Services in Civil Court in California: An Exploratory Study (2008); California Commission on Access to Justice, Language Barriers to Justice in California (2005).

harassment, domestic violence[17], family law—including in mandatory mediation proceedings[18]—and unlawful detainers.

3. The AOC should consider efficiencies and practices that, when implemented appropriately, can improve and increase language services in proceedings and operations, such as identifying LEP litigants as early as possible and ensuring that information is captured on court files; greater utilization of staff interpreters;[19] and appropriately utilizing technology, such as video remote interpreting.[20]

4. The Judicial Council should renew and expand its efforts to provide interpreter services for all LEP litigants across the state. In the past, the Judicial Council has supported efforts to expand interpreters services piecemeal (*e.g.*, by covering all family law matters) and by supporting legislation to pay for interpreters through telephonic appearance fees.

5. While working to ensure that interpreters are provided to litigants in all civil matters in LASC, the AOC and the LASC should clarify the ability to waive interpreter fees for indigent litigants with, and ensure training on this issue for, judicial officials and court staff. The AOC should also arrange for translation of fee waiver forms into the most common languages other than English and Spanish, including Chinese,[21] Korean, Armenian, and Vietnamese.

6. The AOC should implement a statewide complaint process to help identify language assistance issues and specific areas in need of improvement.

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[17] DOJ understands that family law matters involving domestic violence cases are provided a court-certified interpreter based on the availability of Family Law Interpreter Program funding until those funds are exhausted.

[18] According to interviews with LASC's Supervising Family Court Judge and the Senior Administrator for Family Law, the court provides an interpreter free of charge in mandatory mediations although this practice could change at any time as it is permissible under California law for the court to charge for this service.

[19] LASC's courtroom reorganization plans currently reduce the number of courthouses where certain matters will be heard and may create additional opportunities to increase the effectiveness of interpreter usage.

[20] The AOC indicated that the video remote interpreting pilot program currently underway in other county courts for American Sign Language interpretation has been very successful. DOJ is aware of the challenges that a video remote interpreting program may raise with respect to the interpreters' union, California Federation of Interpreters (CFI). DOJ has spoken with CFI representatives numerous times in an effort to understand their potential objections to video remote interpreting. We intend to continue these discussions to provide our perspective on the appropriate use of video remote interpreting. We strongly suggest that the AOC and LASC seek interpreter input in any efforts to develop a video remote interpreter program. We have been informed that the National Association of Judicial Interpreters and Translators and the National Center for State Courts are both working toward identifying official positions and standards in support of video remote interpreting, although the specifics of their respective positions and standards may differ.

[21] Though Mandarin and Cantonese speakers use the same written language, we recommend consulting with appropriate community organizations to determine whether to translate into simplified or traditional Chinese or both.

7. Identify a statewide language access coordinator.[22]

8. Identify appropriate ways to estimate the cost of expansion of language services to all civil proceedings in order to facilitate and support legislative changes and budgetary requests to fund an expansion of language services.[23]

DOJ is committed to working cooperatively with LASC, the Judicial Council, and the AOC to voluntarily resolve this investigation. To support that effort, the Federal Coordination and Compliance Section of the Civil Rights Division is available to provide technical assistance and to identify potential sources of information and promising practices in other states and organizations that would be helpful to the judiciary.

We anticipate that a collaborative approach will be most effective in addressing the inconsistencies with full Title VI compliance that we have identified to date. In the event that efforts toward voluntary resolution are unsuccessful, we may be required to pursue additional efforts. These efforts may include, in the event that we reach a finding of noncompliance with Title VI or the Safe Streets Act, the issuance of a public findings letter that details any violations of the law, as well as administrative enforcement efforts or civil litigation if warranted to achieve injunctive relief and the termination of federal financial assistance.[24]

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[22] AOC documentation and interviews with AOC staff suggest that the Court Interpreter Program (CIP) seems to largely be focused on recruitment, certification, and registration of interpreters. Efforts toward providing greater language access generally in the courts do not appear to have a central management location. CIP, staff in the Center for Children and Families in the Court, Access and Fairness Advisory Committee, Court Interpreter Advisory Panel, local courts, Task Force on Self-Represented Litigants, among others, all have an interest in this issue, and would benefit from a management position that could facilitate communication and coordination amongst these groups.

[23] We understand that the AOC is considering conducting a survey of local courts to ascertain potential need in civil matters. We recently provided Linda Foy, Supervising Attorney, Labor and Employment Unit at the AOC, with contact information for the individual in Colorado who helped to design their survey and has offered to speak with AOC staff about the process, including lessons learned. We also suggested to AOC leadership that they consider working with the National Center for State Courts to identify a reliable way to create an estimate of the cost of providing language services in all proceedings and contacting states like New York, which currently provides language services in all proceedings. In addition, we noted to AOC leadership that providing language services in all civil matters in LASC, which accounts for over 30% of the interpreter budget for the state, will provide a significant and reliable data set by which to plan for full compliance in the rest of the state.

[24] DOJ also notifies other federal agencies of our findings so that they can consider what actions may be appropriate by their agencies, which may include termination of their federal financial assistance. The United States Department of Health and Human Services also provides federal financial assistance to the California judicial branch and is aware of DOJ's investigation into this matter.

In order to facilitate voluntary resolution of this investigation, please contact Ms. Anna Medina, one of the attorneys assigned to this investigation, at (202) 353-3936 or anna.medina@usdoj.gov by Thursday, June 6, 2013 to discuss the recommendations in this letter and steps to proceed. You may also direct any correspondence to Ms. Medina at the above-captioned address and reference Complaint No. 171-12C-31. We appreciate your continued cooperation in this matter.

Sincerely,

Deeana Jang

Deeana Jang
Chief,
Federal Coordination and Compliance Section
Civil Rights Division

cc: Ivette Peña, Counsel for Los Angeles County Superior Court
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