

Language Access in State Courts

California Summary

A. Provides interpreters free of charge to all LEP litigants and witnesses in all civil proceedings?

1. Ensures a statewide mandate is in place covering all civil proceedings? *No*

The California Rules of Court require the provision of an interpreter in cases in small claims court.¹ The California Family Code requires the provision of an interpreter in certain divorce and custody proceedings.² There is no statutory or other mandate requiring the appointment of interpreters in any other kind of civil case.³ Indeed, over the last few years the governor repeatedly has vetoed legislation that would have provided for interpreters in civil cases, including by vetoing legislation to create a civil interpreting pilot program.

2. Does not charge for interpreters in civil proceedings? *No*

The cost of an interpreter in a civil proceeding is paid by the litigants as costs in the proportion directed by the court.⁴ These fees are waived when the party requiring the interpreter is appearing in forma pauperis in small claims court⁵ or in certain custody or divorce proceedings.⁶

3. Ensures that all LEP individuals receive interpreters in civil proceedings: Has clear guidelines for appointment, or provides an interpreter whenever one is requested? *No*

California's Standards of Judicial Administration provide that

“An interpreter is needed if, after an examination of a party or witness, the court concludes that: (1) The party cannot understand and speak English well enough to participate fully in the proceedings and to assist counsel; or (2) The witness cannot speak English so as to be understood directly by counsel, court, and jury.”⁷

The standards enumerate several factors for a judge to consider in making the determination about whether a party requires interpretation.⁸ Pursuant to the standards, a party or counsel can request that the court make a determination of need for an interpreter.⁹ A judge may also act sua

¹ Cal. R. Ct. 3.61(5). See also *Gardiana v. Small Claims Court*, 59 Cal. App. 3d 412 (1976) (holding that the California Constitution requires the appointment of interpreters in small claims cases).

² Cal. Fam. Code § 3032; Calif. Jud. Council, Court Interpreters Fact Sheet, available at: <http://www.courtinfo.ca.gov/reference/documents/factsheets/ctinterp.pdf>.

³ National Center for State Courts, The Provision of Court Interpreter Services in Civil Cases in California: An Exploratory Study (Jan. 31, 2008), available at: <http://www.courtinfo.ca.gov/reference/documents/nscs-report.pdf>.

⁴ Cal. Govt. Code § 68092.

⁵ Cal. R. Ct. 3.61(5).

⁶ Cal. R. Evid. 755.

⁷ Cal. Std. of Jud. Admin. 2.10(a).

⁸ *Id.* 2.10(c).

⁹ *Id.* 2.10(b).

sponte to determine the need for an interpreter if “it appears to the court that the party or witness may not understand and speak English well enough to participate fully in the proceedings.”¹⁰ An interpreter request can be denied if the judge determines on the record that the party or witness does not need interpretation services.¹¹

The California Administrative Office of the Courts’ Center for Judicial Education and Research offers training for judges on assessing the need for and working with interpreters. However, the course is not mandatory, and not all judges know about it or avail themselves of it.¹²

B. Ensures that interpreters are competent by testing before appointing an interpreter in civil proceedings? *Yes, but for some cases uses the inadvisable practice of having individual judges conduct voir dire*

California distinguishes between “certified court interpreters” and “registered interpreters of nondesignated languages.” Currently, certification is available in 13 languages.¹³ Only those individuals who pass the Court Interpreter Certification Examination and meet 4 additional requirements set forth by the Judicial Council may be considered “certified” interpreters.¹⁴ The Examination consists of an initial written screening test comprised of multiple choice questions, followed by an oral examination designed to test an interpreter’s skills at sight translation and consecutive and simultaneous interpretation.¹⁵ The additional requirements include filing for certification with the Judicial Council, paying a \$100 annual fee, attending a Judicial Council Code of Ethics Workshop, and submitting “proof of 30 hours of continuing education and 40 assignments of recent professional interpreting experience every two years.”¹⁶

For languages for which California does not offer certification, status as a “registered” interpreter may be achieved by passing an English-only written screening exam and an oral English fluency exam administered by an approved testing facility, paying a \$100 annual fee, and attending a Court Interpreter Orientation Workshop and a Court Interpreter Ethics Workshop.¹⁷ Apparently, individuals can be listed as a “registered” interpreter without demonstrating fluency in the language to be interpreted, and without demonstrating any background or skill in interpreting.¹⁸ However, on April 25, 2008, the Judicial Council of

¹⁰ *Id.* 2.10(b)(2).

¹¹ *Id.* 2.10(c).

¹² National Center for State Courts, *The Provision of Court Interpreter Services in Civil Cases in California: An Exploratory Study* (Jan. 31, 2008), available at: <http://www.courtinfo.ca.gov/reference/documents/ncsc-report.pdf>.

¹³ These language include Arabic, Eastern Armenian, Western Armenian, Cantonese, Japanese, Korean, Mandarin, Portuguese, Russian, Spanish, Tagalog, Vietnamese, and American Sign Language.

¹⁴ Calif. Jud. Council, *Court Interpreters Fact Sheet*, available at <http://www.courtinfo.ca.gov/reference/documents/factsheets/ctinterp.pdf>.

¹⁵ Calif. Jud. Council, Admin. Office of the Cts., *Study of California’s Court Interpreter Certification and Registration Testing*, available at: <http://www.courtinfo.ca.gov/reference/documents/altafinalreport.pdf>.

¹⁶ Calif. Jud. Council, *Court Interpreters Fact Sheet*, available at <http://www.courtinfo.ca.gov/reference/documents/factsheets/ctinterp.pdf>.

¹⁷ Calif. Jud. Council, *Become an Interpreter: Frequently Asked Questions*, available at <http://www.courtinfo.ca.gov/programs/courtinterpreters/becoming-faq.htm#regreq>.

¹⁸ Calif. Jud. Council, *2005 Language Need and Interpreter Use Study: Report to the Legislature* (Feb. 2006), p. 4.

California adopted a recommendation to include an oral bilingual proficiency screening exam to test “registered” interpreters for bilingual proficiency in the future.¹⁹

Courts are required to appoint a “certified” interpreter for those languages in which certification is available, unless they find on the record that good cause exists to appoint a noncertified interpreter.²⁰ When appointing a non-certified interpreter, courts are instructed to follow the guidelines established by the Judicial Council.²¹ Those requirements involve a review of the interpreter’s qualifications, and the option for the court to further examine the interpreter.²²

Additionally, the Judicial Council maintains a roster of “certified” and “registered” interpreters that is available online.²³ California law also requires small claims courts to make a list of no cost or “reasonable fee” interpreters available to court users in need of interpretation services.²⁴

The Brennan Center for Justice report, Language Access in State Courts, contains guidelines for the provision of court interpreters in civil cases. It also contains aggregate information – in the form of United States maps – regarding the extent to which the 35 states with the highest proportion of limited English proficient people (as a percentage of population) comply with the guidelines regarding providing interpreters in all civil cases and providing them free of charge.

This series of “state summaries” contains additional, detailed information about the extent to which the 35 states comply with those guidelines, and with the guideline regarding ensuring that interpreters are competent.

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¹⁹ Calif. Jud. Council, Minutes of the April 25, 2008 Meeting, p. 16, available at <http://www.courtinfo.ca.gov/jc/documents/min0408.pdf>.

²⁰ Cal. Govt. Code § 68561. This provision apparently does not cover small claims courts. See Cal. Govt. Code § 68560 (defining a “court proceeding” for purposes of the section as “a civil, criminal, or juvenile proceeding, or a deposition in a civil case filed in a court of record” but not “a small claims proceeding”).

²¹ Cal. Govt. Code § 68561; Cal. R. Ct., Rule 2.893.

²² Calif. Jud. Council, Form IN-100, Procedures and Guidelines to Appoint a Noncertified Interpreter in Criminal and Juvenile Delinquency Proceedings (Designated Languages), available at: <http://forms.lp.findlaw.com/form/courtforms/state/ca/ca000449.pdf>; Form IN-110, Qualifications of a Noncertified Interpreter, available at: <http://forms.lp.findlaw.com/form/courtforms/state/ca/ca000450.pdf>.

²³ Calif. Jud. Council, Search for an Interpreter, available at: <http://www.courtinfo.ca.gov/programs/courtinterpreters/master.cfm>.

²⁴ Cal. Code Civ. Proc. § 116.550.