

September 29, 2014

Attn: Invitation to Comment
Judicial Council of California
Administrative Office of the Courts
455 Golden Gate Avenue
San Francisco, CA 94102

Re: Strategic Plan for Language Access in the California Courts
Item Number: SP14-05

Submitted via Electronic Mail to lap@jud.ca.gov

To the Judicial Council of California and the Joint Working Group for California's Language Access Plan:

We write on behalf of the undersigned groups to provide public comments to the Judicial Council and the Joint Working Group for California's Language Access Plan, as it considers the Strategic Plan for Language Access in the California Courts (LAP), released on July 31, 2014. This document continues the dialogue between California-based legal services and community organizations and the Judicial Council, and builds upon the comments submitted by legal services and community organizations on April 9, 2014 (Comments) (attached as Appendix 1). We will first provide general comments on the LAP as a whole, before turning to specific comments on the eight goals espoused in the LAP. We appreciate the breadth of issues covered in the LAP and the planned implementation of the Plan in a phased timeline.

While the LAP is an important step in the right direction, it still has several significant flaws. Broadly, our comments address these shortcomings: 1) failing to fully recognize the concrete legal obligations to provide interpretation services imposed on the courts by Title VI and other laws; 2) failing to include meaningful detail or mandates regarding local efforts to satisfy language access obligations; 3) using an insufficient timeline that will unnecessarily delay and thereby deny justice to many LEP litigants; and 4) failing to substantively integrate community shareholders and legal aid groups in the development, coordination, overall implementation, and monitoring of the LAP. The LAP is a significant step toward ensuring language access, and we hope that the feedback proposed in this document helps guide necessary revisions.

GENERAL COMMENTS

I. Embrace Language Access as a Core Court Function by Assuring Compliance with Both California *and* Federal Laws

The LAP does not acknowledge federal and state civil rights mandates that prohibit language discrimination. Instead, the LAP denies that under California law, courts must provide

interpreters in all civil cases.¹ In our previous comments to the Judicial Council, we pointed to both California Government Code §11135 *et seq.* and Title VI of the Civil Rights Act of 1964 as California and Federal laws that require that equal access be provided to limited-English proficient (LEP) litigants.²

Under Title VI and its implementing regulations, recipients of federal funds, including California's courts, must provide "meaningful access" to their services for LEP individuals.³ For courts, this includes, at a minimum, competent interpretation during hearings, trials, and motions.⁴ Likewise, under California law, no program conducted, operated, or funded by the state may discriminate on the basis of linguistic characteristics.⁵ In addition to California law, the United States Department of Justice has explicitly noted that "the federal requirement to provide language access to LEP individuals applies notwithstanding conflicting state or local laws or court rules."⁶ Language access is not therefore a matter of the courts' largesse or discretion. Rather, both state and federal law compel the courts to provide language access services — **an adequate LAP must acknowledge and affirm this obligation as a fundamental first principle.**

Providing language access is a necessary core court function. The courts must treat language access as a "basic and essential operating expense, not as an ancillary cost."⁷ The LAP cites lack of funding,⁸ insufficient data,⁹ restrictive labor union contracts, and other reasons to delay or altogether neglect salient language access issues.¹⁰ While we acknowledge these challenges and difficulties, we invite the courts to instead embrace language access as a critical civil rights issue in California.

In embracing its obligation to provide interpretive services in all civil cases and at all critical points of contact, the California courts would be taking a significant step towards increasing access to justice. We are confident that taking affirmative steps to increase LEP

¹ California Judicial Branch, Strategic Plan for Language Access in the California Courts (Proposal SP14-05), Draft, July 31, 2014 (LAP), at 29.

² See Legal Services & Community Organizations Comments submitted to the Judicial Council, April 9, 2014 (Comments) (located at Appendix 1), at 4 - 5.

³ See *id.*; 42 U.S.C. § 2000d (2004); 67 Fed. Reg. 41455-41471 (2002).

⁴ *Id.*

⁵ *Id.*; Cal. Gov. Code §§ 11135, 11139; Cal. Code Regs. Title 22, Section 98210(b).); See also Dymally-Alatorre Bilingual Services Act, Cal. Gov. Code § 7290 *et seq.*

⁶ Letter from Thomas Perez, Assistant Attorney General, U.S. Department of Justice, Civil Rights Division to Chief Justice/State Court Administrator (August 16, 2010) (Perez Letter), available at www.lep.gov/final_courts_ltr_081610.pdf.

⁷ Comments at 5, Perez Letter.

⁸ The LAP suggests turning to one-time sources of funding to implement certain parts of its plan. Legal services and community-based organizations currently rely on such funds.

⁹ As discussed below, advocates have argued to no avail that current data can already assist the Judicial Council in making LEP-sensitive determinations useful to implementing the LAP. The LAP fails to acknowledge these sources of data in a meaningful manner.

¹⁰ The LAP also includes an assertion that California is a leader in language access services on page 10. A study by the National Center for Access to Justice scored and ranked California among the very worst in the nation in assuring access to justice. In comparison, New York, with a similarly diverse LEP population, scored and ranked among the best. The study can be found at <http://www.justiceindex.org/findings/language-assistance/>.

individuals' access to the courts is something the legislature will support by providing the necessary funding to ensure adequate interpretive services.

Affording language services in judicial proceedings and at critical points of contact opens the doors of the courts to LEP litigants to participate more fully in the judicial process through an increased understanding of the judicial system and the law. This in turn leads to more just outcomes in court. Providing these services will also ensure smoother court operations by preventing delays that result from inadequate availability of interpretation. Given the approximately 7 million LEP residents and potential court users in California,¹¹ these are not hollow or insignificant gains for the people of California and the courts.

II. California Courts Must Include More Specific Language Access Requirements

The LAP goals are ambitious but lack precision. Its commitment to gathering more data and engaging the state legislature to increase funds¹² is commendable, but in our view those suggested actions are too general and not likely to produce real results for LEP litigants. Instead, we ask that the courts substantiate this stance by introducing more robust, specific measures into the LAP as detailed in the individual sections below. The LAP should serve as a compliance guide; currently, it instead reads like a “best practices” manual.

The LAP presents many of its measures as suggestions,¹³ framing compliance with the LAP as voluntary. Much to the contrary, the LAP must, as noted above, provide that failure to comply with the LAP constitutes a violation of federal and state law. The LAP, as currently written, does not properly address the severity of such a failure to the individuals implementing the plan – court administrators, judges, interpreters, and staff. We acknowledge that the courts must balance the need to follow the law with the need to grant discretion to local courts to best resolve language access issues on the ground level, but the LAP as written favors the latter too heavily. The language of the LAP should reflect the urgency of following the law and ensure implementation of the LAP by detailing measures and safeguards that mandate, rather than suggest, change. The LEP must inform those tasked with implementing it – court administrators, judges, interpreters, and staff – of the concrete steps courts need to take to follow the law. Similarly, it must unambiguously convey that failure to comply with the LAP constitutes a civil rights violation.

Clear standards and benchmarks will assist the court in calculating expected costs and elevate the overall effectiveness of the LAP. Such strong and specific measures will also assist the court in raising funds through the legislature by creating identifiable demands within a civil rights framework.

¹¹ See LAP at 8.

¹² See LAP, Recommendation 58, at 75-76.

¹³ See LAP, Recommendations 3, 6, 7, 13, 14, 15, 19, 21, 23, 25, 27, 29, 30, 31, 32, 33, 34, 38, 40, 45, 46, 51, 52, 53, 54, 55, 56, 58, 59, 60, 68, 70, 72, 73, 74, 75, 76. The most common phrase in the LAP as a whole is that the courts (or the Judicial Council) “should consider” a given recommendation or measure. This does not signal strong commitment. Such language should be removed from the LAP.

III. Language Access Is an Urgent Issue that Must Be Addressed Now

The LAP must convey urgency. Currently, the LAP's lack of urgency is reflected in a proposed timeline that provides overly generous deadlines. On its face, the LAP commits to providing interpreters in certain types of cases, such as domestic violence and unlawful detainers, in its Phase I, with a deadline of 2015.¹⁴ The LAP provides for expansion of interpreters to all civil cases by Phase II, in 2016-17.¹⁵ However, the timeline to implement and enforce this goal is at odds with this commitment. For example, the LAP calls for the creation of an "implementation committee" to develop a "phased implementation plan" to "phase in the LAP recommendations."¹⁶ This implies that the LAP will not be implemented until the committee creates the plan.¹⁷ Moreover, the courts' commitment to advocating for funding is based on the incremental phasing; therefore, any delays in creating an implementation plan hinder the ability to raise funds as well. Finally, creation of local complaint procedures on LAP implementation, interpretation, and translations is pushed into Phase III, with a 2020 deadline.¹⁸ Compliance with the LAP before such processes are created is unlikely at best, and while waiting for such compliance, LEP communities will remain effectively shut out of the courts.

The LAP consistently provides "suggestions" or "recommendations" instead of mandates. Coupled with the use of vague phases that impose only unspecific deadlines, the overall tenor of the LAP is overly cautious and will result in unnecessary delay. We urge the Judicial Council to replace the precatory language with clear mandates that have specific deadlines.

IV. Community and Legal Services Stakeholders Should Have More Significant Involvement

Notably absent from the LAP is community stakeholder involvement. The LAP mentions several committees and processes that will be determined, such as: the Language Access Implementation Advisory Committee,¹⁹ Translations Advisory Committee,²⁰ developing a pipeline of potential interpreters,²¹ develop strategies for early identification of LEP users,²² and state and local complaint processes.²³ However, the LAP does not require courts to include stakeholders in the aforementioned committees, which will play a large role in developing and implementing local LEP policies.

There must be continuing, significant and meaningful community stakeholder input and involvement as the LAP is developed and implemented. Such stakeholders have unique experience working with diverse LEP populations that provides a depth of knowledge that

¹⁴ See LAP, Recommendation 8, at 33.

¹⁵ See *id.*

¹⁶ See LAP, Recommendation 61, at 78-79, 89.

¹⁷ The LAP's use of the term "recommendations" demonstrates a lack of urgency.

¹⁸ See LAP, Recommendations 64, 65, 66, at 96.

¹⁹ LAP, Recommendation 61, at 78

²⁰ LAP, Recommendation 36, at 55.

²¹ LAP, at 20.

²² LAP, at 26 – 27.

²³ LAP, Recommendations 64, 66, at 79 – 80.

should be tapped. In addition, these stakeholders' experiences in various advocacy efforts have included discussions and analyses of a wide range of approaches and solutions to enhance court access for LEP individuals.

We urge the court to require that stakeholders, including legal aid groups, be given a more active role in the development, coordination, overall implementation, and monitoring of the LAP.

SPECIFIC COMMENTS ON GOALS I - VIII

Goal I: Improve Early Identification of and Data Collection on Language Needs

Introduction

1. General Comments

The recommendations concerning Goal I are too broad, do not give sufficient direction, and do not adequately address the guidelines governing the courts' obligations under Title VI of the Civil Rights Act of 1964.

Pursuant to the federal Department of Justice guidelines, courts must assess the number or proportion of LEP persons served or encountered in their eligible services population. This straightforward process is key in determining what resources are required to address the language needs of a court's eligible population for the purpose of compliance with federal law. If executed properly, every county should be able to identify most, if not all, of the language groups in their eligible service area, including the top five languages, in a relatively short period of time.

The current plan points to other data sources and strongly suggests, but does not direct, that the courts go beyond the U.S. Census and American Community Survey (ACS) when determining the possible language groups to be served. In our previously submitted Comments, we discussed, in detail, why Census data is insufficient for the purpose of adequately identifying language groups to be served.²⁴ One of the main concerns we raised was based on the fact that the ACS collapses data into broad language groups (*i.e.* Asian/Pacific Islander, African, and Indigenous languages). Thus, in the case of the Asian/Pacific Islander group, widely disparate language groups such as Korean, Mandarin, Tagalog, Japanese, Vietnamese, Khmer, and Thai are not always separately identified.

At first glance, it would appear that some of our recommendations were considered, since the current plan correctly states in reference to the Census data that the language needs of a court's:

“ . . . local information that courts need to identify the language needs of their constituents is not adequately captured by these more traditional methods of demographic data collection. Further, many ethnic and linguistic minorities and

²⁴ See Comments, at 6-12.

emerging LEP communities are underreported in these sources of data, as was commented by community-based organizations during the public hearings.”²⁵

However, in the LAP’s “Phase-in Recommendations” section, the review of other data beyond the U.S. Census is listed under Phase II, those recommendations which are characterized as “less urgent or require completion of Phase I tasks.”²⁶ According to this section, the review of other data beyond the Census need not begin until 2016-2017, if at all.²⁷

We strongly disagree with this recommendation. It is perplexing that the LAP acknowledges the deficiencies in the Census data, identifies more reliable sources, and then fails to direct that the superior sources be utilized in a timely manner. These more reliable sources include: enrollment data collected by the California Department of Education; data collected by local welfare agencies; data collected by the Migration Policy Institute; and a study conducted by California Rural Legal Assistance regarding indigenous languages spoken in California rural communities.

As discussed in prior comments, local welfare agencies are required by the Dymally-Alatorre Bilingual Services Act to collect data regarding the languages primarily spoken by recipients of various benefits programs.²⁸ While much of this data is not published publicly, it is collected and retained by welfare agencies. Such data provides direct, robust information about the language needs of benefits recipients, who will automatically qualify for fee waivers under the law. The LAP should, at minimum, instruct local courts to rely on this data immediately to develop an accurate allocation of interpreter services based on local needs.

With respect to juvenile courts, we contend that they should be specifically directed to the data maintained by the California Department of Education. Limited English Proficient (LEP) or English Learner (EL) student enrollment data is currently available by county on the California Department of Education’s DataQuest website at <http://data1.cde.ca.gov/dataquest/>. In addition, DataQuest includes enrollment data for those students who are fluent English proficient (FEP), which refers to students who may not be LEP, but who come from homes where English is not the primary language. This data alone would be more than sufficient to provide a juvenile court with a sound assessment concerning the number of LEP persons who reside in their eligible service area.

Attached in Appendix 2 are two charts, one for Santa Barbara County and one for Imperial County, that are readily available on DataQuest. These charts reveal the total county enrollment, the total number of EL students, and the total number of FEP students by language group and the percentage of total enrollment that is EL and FEP by language group.

²⁵ See LAP, at 26.

²⁶ See LAP, at 90 (Appendix A).

²⁷ It should also be noted that a review of Census data is not included in the Phase I recommendations (See LAP, at 85-90). We assume that this is merely an oversight and should be corrected.

²⁸ See Cal. Gov. Code §§ 7290 *et seq.*

2. Suggested Changes

All courts should be directed, not merely encouraged, to thoroughly assess the number or proportion of LEP persons served or encountered in their eligible services population using Census data *and* the other resources identified in our previously submitted Comments and mentioned in the current plan. The final plan should also direct courts to consult with community based and refugee services organizations to obtain at least anecdotal information on the languages (*e.g.* indigenous languages) that may not be adequately captured by any of the data sources. Such an assessment should be conducted within the first three-month period of implementation, as it should inform all further steps in this process. All of these data sources are readily available now.

Below is proposed language to modify or replace the existing language in the LAP's recommendations for Goal I.

6. The Judicial Council and the courts must immediately expand and improve data collection on interpreter services, and immediately expand language services cost reporting to include amounts spent on other language access services and tools such as translations, interpreters or language services coordination, bilingual pay differential for staff, and multilingual signage or technologies. This information is critical in supporting funding requests as the courts expand language access services into civil cases.
7. The Judicial Council and the courts must look at other sources of data beyond the U.S. Census to ensure that a court is effectively capturing the anticipated language needs for court programs and court proceedings. Courts should rely on data provided by the local school systems, health departments, and welfare agencies, in addition to consulting with community-based organization, refugee services organizations and any other local groups that works with LEP populations.

3. Proposed Revised Timeline

Recommendation 7, listed above, is currently categorized under "Phase II," treated as a recommendation that is "less urgent or require completion of Phase I tasks. As emphasized above, however, Recommendation 7 must be included in Phase I so as to ensure that courts are adequately anticipating their language needs.

Goal II: Provide Language Access Services in All Judicial Proceedings

1. General Comments

Although we agree with Goal II's recommendation that qualified interpreters be provided to all LEP court users in courtroom proceedings, we disagree with the Goal's implementation timeline, the priorities outlined in the phases, and the overall tone with respect to existing federal and state law requirements concerning language access.

Goal II consistently repeats that no law requires provision of interpreters for civil litigants. As discussed in our introduction, the repetition of this position is flatly contradicted by federal and state law, as well as the considered opinion of the Department of Justice.

Furthermore, the LAP's timeline to provide interpreters for all civil litigants by 2020 is simply too long and unjustified. Several phases elaborated upon in the LAP have already begun or should have begun. We agree that interpreters should be provided to all litigants, regardless of economic status. However, we are concerned that the LAP not only fails to include fee-waiver litigants in Phase I, but also fails to mention such litigants *at all*.

Finally, we find the LAP's subcategories confusing and inconsistent (e.g. courtroom proceedings, court-ordered, court-operated). Footnote 9 at page 12 defines "court-operated" programs or events as "any service or activity operated or managed by the court." On page 34, the LAP references "court-ordered proceedings" as including mediation and other activities that are mandated by the court. Footnote 25 on page 36 combines "court-ordered/court-operated proceedings" which distinguishes between in-court events and out-of-court events. We recommend that the LAP clearly define the different categories of court-ordered, court-operated, and court-managed proceedings, services, and activities. Most important, qualified court interpreters must be provided for all activities ordered or mandated by the court.

2. Suggested Changes

We believe that the language should be changed throughout this section to reflect the necessity and urgency of providing meaningful language access to ensure access to justice, and remove all language suggesting interpretive services are not required by law. Specifically, on page 29, the first sentence in the second paragraph, "Under California law, courts are not required to provide interpreters in civil matters," should be deleted, and the state and federal mandates referenced above should be inserted.

In our previous comments, we suggested that in the initial stages, the following cases be provided with language services: "fee waiver litigants, non-mandated restraining order hearings, family law custody and visitation hearings, unlawful detainer hearings, guardianship hearings and conservatorship hearings. This shall include the provision of language services for mediation and other vital ancillary court services."²⁹ **Although we still feel strongly that this occur, we are willing to work within the LAP's phased framework to suggest an immediate implementation phase, in which fee waiver litigants, as a group, should immediately be provided interpreters, in addition to currently mandated cases under California Evidence Code 755.** We believe that the courts currently have the resources, discretion and authority to provide services for all fee waiver litigants, and as such, they should immediately be provided with language services, without having to wait for Phase I.

The introduction, under "Goal Statement" on page 28 of the LAP, should include the following: "For immediate implementation, a policy shall be put into place for the provision of

²⁹ See Comments, at 14.

interpreters for indigent LEP litigants, in addition to currently mandated cases.” Additionally, we also suggest that the remaining case types, as articulated in our previous Comments: non-mandated restraining order hearings, non-fee waiver family law custody and visitation hearings, non-fee waiver unlawful detainer hearings, non-fee waiver guardianship hearings and non-fee waiver conservatorship hearings, all be part of Phase I.

On page 34, the LAP should clearly define the different kinds of court proceedings and ensure the consistent use of such terms. More specifically, we reference page 20 of our previously submitted Comments under “Court and Ancillary Court Proceedings”:

A certified or registered court interpreter must be provided for all courtroom proceedings *and* activities that are ancillary to courtroom proceedings but nevertheless mandatory for litigants. This includes, but is not limited to, trials, mandated mediation, settlement conferences, and parental interpretation in juvenile matters.

Specific issues have arisen in unlawful detainer (UD) proceedings, in which judges often require the parties to meet-and-confer outside the courtroom on the day of trial before they are permitted to be heard. Courts generally do not provide interpreters for this mandated process. As a result, litigants often enter into settlement agreements, which may be extremely unfavorable, without understanding their terms. Courts must provide interpretation for these mandated and other similar activities in order to ensure meaningful language access. Simultaneous interpretation is not required in these settings, thus courts may utilize other qualified interpreters if certified or registered interpreters are unavailable.

Regarding Recommendation 18, courts must be instructed that minors, regardless of their relation to the LEP litigant, should not be used as interpreters in courtroom proceedings under *any* circumstances. The use of a minor as an interpreter exacerbates concerns regarding competency, confidentiality, and conflicts of interest.

Regarding Recommendations 22 and 23, it is essential that the LAP should make explicit that justice partners are not responsible for providing interpretation or language services to litigants. This obligation lies with the courts under both state and federal law. It is, as we articulated above, a key, core court function. On the other hand, we do recognize that there are instances where justice partners participate in aspects of coordination, recruitment, training, and identification of appropriate interpreters and translation services.

We suggest that the subcategories of this Goal be reorganized. We recommend the following subcategories:

- a) Interpreters in Courtroom Proceedings (including the use of technology);
- b) Training Regarding the Appointment of Interpreters;
- c) Recommended Processes for Providing Interpreters.

Below is proposed language to modify or replace the existing language in the LAP's recommendations for Goal II.

17. Family members and friends of the LEP court user may be appointed for courtroom proceedings only if: a) they meet the provisional qualification requirements, (b) an admonition regarding real or perceived conflicts of interest is provided, (c) the court informs the litigants that language services and interpreters are available at no cost to the litigant, and (d) all parties knowingly and voluntarily consent to that person as the interpreter.
18. Minors will not be appointed to interpret in neither courtroom proceeding nor court-appointed, court-operated or court-managed proceeding.

See below in the "Proposed Revised Timeline" section, additional suggested language incorporated into the revised timeline for Recommendations 8 and 10.

3. Proposed Revised Timeline

See below our suggested changes to the timeline with the new subcategories.

a. Interpreters in Courtroom Proceedings (including the use of technology)

8. Qualified interpreters will be provided in the California courts to LEP court users in all courtroom proceedings in all court-ordered/court-operated events. Where immediate expansion of language access into all civil proceedings overtaxes a court's resources, either in terms of availability of appropriately qualified interpreters or availability of funding for interpreting services, language access will be phased in as outlined below.

For Immediate Implementation:

- Domestic Violence (including actions and proceedings under Division 10) commencing with Section 6200 of the Family Code, as well as actions and proceedings in the following matters in which a protective order has been granted or is being sought: (1) the Uniform Parentage Act; (2) dissolution, nullity, or legal separation [these are already mandated cases];
- All cases brought by fee waiver litigants

Phase I (begin year 1, 2015): Language services shall be provided for all required mediation and other required ancillary court services.

- Physical abuse or neglect under the Elder Abuse and Dependent Adult Civil Protection Act, commencing with Section 15600 of the Welfare and Institutions Code).
- Unlawful Detainers
- Determination and Termination of Parental Rights
- Conservatorships/Guardianships
- Family Law Proceedings involving issues of custody or visitation of minor children

- Civil Harassment Proceedings

Phase II (begin year 2, 2016):

Where resources permit providing qualified interpreters in additional case types, courts will provide interpreters in the following cases, in order:

- Other Family Law
- Other Civil

b. Training Regarding the Appointment of Interpreters

10. Beginning immediately, as resources are available, but in no event later than 2016, courts will provide qualified court interpreters in all court-ordered/court-operated proceedings to all LEP litigants, witnesses, and persons with a significant interest in the case. Immediate implementation shall prioritize: fee waiver litigants and mandated cases under current Evidence Code 755. Phase I shall include other non-mandated restraining order hearings, family law custody and visitation hearings, unlawful detainer hearings, guardianship hearings and conservatorship hearings. This shall include the provision of language services for mediation and other required ancillary court services.

Goal III: Provide Language Access Services at All Points of Contact Outside Judicial Proceedings

1. General Comments

The California Judicial Branch properly recognized that “it is the courts’ responsibility to provide language access throughout the continuum of services, from the first time an individual tries to access the court’s website, or walks in the door of the courthouse.”³⁰ Yet, the LAP lacks specificity on what steps courts must take to effectuate language access at all points of contact with LEP litigants.

For instance, the Issue Description in Goal III references the use of “community volunteers” to increase services to LEP litigants outside the courtroom, but does not further elaborate on how and when these volunteers could stand in for bilingual court staff. The LAP should provide additional examples of the effective use of community volunteers, including which capacities courts could use these volunteers, and how courts would properly screen for and supervise them.

The key to providing language access for LEP court users outside the courtroom is to effectively and efficiently utilize qualified interpreters and bilingual court staff. In the event that neither a qualified interpreter nor bilingual staff member is available, courts, at a minimum, can make use of technology through remote interpretation to ensure that the LEP court user does not leave the courthouse unable to access needed information.

³⁰ LAP, at 45.

2. Suggested Changes

Below is proposed language to modify or replace the existing language in the LAP's recommendations for Goal III, much of which incorporates suggestions previously submitted through the Comments (at Appendix 1). The proposed language retains significant flexibility for local courts, while also importing more consistent standards, so that all LEP Californians can attain access to the courts.

24. The court in each county will designate a person that serves as a language access coordinator for court staff, judicial officers, and recipients of the court's services. The person must be able to describe the court's language access policy and know where to access the court's multilingual written materials to disseminate them as needed. This person must also be well versed in how to use language line and other interpretation mechanisms, and in how to help facilitate an interpreter for court staff and judicial officers. This person will be designated the point person to help court staff provide interpretive services to LEP litigants at all points of contact, both inside and outside courtroom proceedings.
25. Courts will have qualified bilingual staff available at the clerk's office, filing window, information counters, intake or filing offices, cashiers, records rooms, *pro se* clinics, family law facilitator and other self help centers, and other public contact locations. At least one language spoken by the bilingual staff at each public contact location will be one of the top five languages spoken in the court's community. The minimum level of qualification for the designation of bilingual staff member should be at least Level 3 on the Interagency Language Roundtable Skill Level descriptions for Listening and Speaking.³¹ Bilingual staff members designated for use as interpreters should be able to interpret at a skill level of at least Level 3 on the ILR scale for interpretation performance. As defined on the ILR website, a Level 3 interpreter is "[a]ble to interpret consistently in the mode (simultaneous, consecutive, and sight) required by the setting, provide renditions of informal as well as some colloquial and formal speech with adequate accuracy, and normally meet unpredictable complications successfully. Can convey many nuances, cultural allusions, and idioms, though expression may not always reflect target language conventions. Adequate delivery, with pleasant voice quality. Hesitations, repetitions or corrections may be noticeable but do not hinder successful communication of the message. Can handle some specialized subject matter with preparation. Performance reflects high standards of professional conduct and ethics."
26. All court staff that engage with the public shall be responsible for identifying the need for language services. At the point of contact, the court staff shall notify the court user of their right to an interpreter and also provide him/her with brochures, instructions, or other information in the appropriate language. Court staff should also have access to language assistance tools, such as translated materials and resources, as well as multi-language

³¹ See Interagency Language Roundtable ("ILR"), "ILR Skill Level Descriptions," available at <http://www.govtilr.org/>. If the court chooses to use the definitions provided by the American Council on the Teaching of Foreign Languages ("ACTFL"), Appendix F of the LAP, the court should require a minimum level of Superior. ACTFL has determined that ILR level 3 is equal to ACTFL Superior level. The ACTFL definitions are available at: <http://www.actfl.org/sites/default/files/pdfs/public/Guidelinespeak.pdf>.

glossaries. If a court user speaks a language other than English and the court staff does not speak that language, the court staff will use a language identification card to determine the court user's primary language and particular dialect, and any other languages she/he may speak fluently. If the court staff is not able to determine the court user's primary language, the court staff will use a telephonic interpreter service to identify the court user's language.

In each filing window and courtroom the court must prominently display "I Speak" posters.³² This display will give court staff the ability to easily identify the LEP individual's language. In addition, at each location, brochures explaining language services, which list dozens of other languages, must be available allowing the LEP individual to point to their language to identify it for the court staff.

The court should have "I Speak" cards readily available for LEP litigants to pick up at the clerk's office.³³ Handing them out to litigants will ensure that no matter where in the courthouse a litigant is, s/he will be able to inform court staff of the language the litigant speaks.

27. Moving forward, the court should require bilingual ability for future court hiring for all positions involving public contact. These positions should require proficiency in languages commensurate with the needs of the local communities.

Courts should conduct outreach to educational providers in the community, such as local high schools, community colleges, and universities, to promote career opportunities available to bilingual individuals in the courts and thereby increase the bilingual applicant pool.

28. Once court staff determines the LEP language and that LEP services are needed, the court must utilize the Department of Justice's hierarchy of language services³⁴ to provide interpretive services outside the courtroom setting. In accordance with this hierarchy:
 - The first choice is always to use bilingual staff to provide services directly in the preferred language.
 - If bilingual staff is unavailable at a particular location, court staff from another location should be brought in to assist as a second choice.
 - While the court must strive to provide in person interpretation, the third choice is to use VRI to draw on interpreters from other courts.
 - If all the options above are exhausted, the fourth choice is to use a *qualified* volunteer.
 - Finally, if all other options are unavailable, telephonic or language line service may be used as the last resort. The minimum level of qualification for the designation of telephonic interpreter should be at least Level 3 on the Interagency Language Roundtable

³² Samples posters are available at: <http://www.dhs.gov/xlibrary/assets/crcl/crcl-i-speak-poster.pdf>, or <http://www.lep.gov/ISpeakCards2004.pdf>, <http://www.courts.alaska.gov/language/poster-flags.pdf>.

³³ Sample cards are available at: <http://www.dss.cahwnet.gov/civilrights/PG584.htm> or <http://www.cultureconnectinc.org/ispeak.html>.

³⁴ For sample LAPs that use the Department of Justice's hierarchy, available at: <http://lri.lsc.gov/engaging-clients/language-access/planning-evaluation/sample-plans>.

Skill Level descriptions for Interpretation Performance.³⁵ See description in Recommendation 25.

30. Before implementing the use of remote interpreter services outside the courtroom through a pilot program, courts and the Judicial Council should develop a well-designed protocol, consistent with Recommendation 28, and all court staff should receive proper training. The pilot should be limited in scope and focused on a specific situation such as a self-help center, taking into consideration surrounding noise, limited space, and privacy issues.
31. Before initiating an inter-court pilot to utilize technology for workshops, training, or information nights, courts must develop proper protocol and training for all court staff. The pilot should not expand to cover different court services until the program can be evaluated and revised to address issues that arise.
32. Courts must ensure that court-appointed professionals, such as psychologists, mediators, social workers, and guardians, can provide linguistically accessible services. As with court staff that engage with the public, courts should prioritize hiring professionals with bilingual ability and at a minimum use qualified interpreters so LEP litigants can properly access these services to the same degree as English speakers.
33. Courts should only utilize qualified bilingual volunteers when no other alternatives are available, such as bilingual staff in person, staff brought in from another location, or interpreters via VRI. Before making use of any volunteers, courts must conduct careful screening/testing of qualifications and provide extensive training of potential volunteers.
35. Courts must provide notice of the availability of language access services and related language access policies at all points of contact with the court in English, the top five languages spoken in that court's county, and, if applicable, in every other language spoken by either five percent or more of the county's population or 500 persons or more in a specific courthouse's service area.

Courts must provide visible signage indicating the litigant's right to language services.³⁶ This should be placed in all public areas and in each courtroom. Courts must post signs throughout the court that indicate "the court serves all people. It does not matter where you were born or what language you speak."

For each notice the court sends out to litigants, the court must include language that indicates the court's obligation to provide free interpretation services. The notice should also include the LEP coordinator's number as well as the LEP specific call-in numbers (described below).

³⁵ If the court chooses to use the definitions provided by the American Council on the Teaching of Foreign Languages ("ACTFL"), Appendix F of the LAP, the court should require a minimum level of Superior. ACTFL has determined that ILR level 3 is equal to ACTFL Superior level. The ACTFL definitions are available at: <http://www.actfl.org/sites/default/files/pdfs/public/Guidelinespeak.pdf>.

³⁶ See <http://www.masslegalservices.org/content/your-right-interpreter-poster-editable-version>, which allows for the creation of a customized sign.

35.1 (*new*) All bilingual staff must be tested through a standardized process before being instructed to utilize their language skills with court users. Such testing should include various levels designating oral and written proficiency. Staff shall be compensated accordingly with corresponding pay differentials. Utilization of language skills shall be made part of all job duties for staff with public contact.

Qualified bilingual staff shall be designated on the court-wide phone list to be called upon to assist in appropriate situations. Guidelines and protocols shall be developed and trainings provided to all staff.

All bilingual staff shall be required to attend regular trainings regarding how to appropriately utilize their language skills with court users. The Office of Language Access shall develop standardized training curriculum and language resources, such as glossaries and other language-specific resources.

3. Proposed Revised Timeline

All recommendations in Goal III should be moved to Phase I.

Recommendation 26 should be moved to Phase I because it is urgent and easy to implement. Additionally, Recommendation 26 (Court staff will have access to language access tools to direct LEP individuals) is directly related to Recommendation 4 (the court will establish mechanisms through which LEP individuals can identify themselves as such), which will be implemented in Phase I.

Recommendation 27 should be moved to Phase I. Given the pressing need for bilingual staff, the court should not continue to hire staff that is inconsistent with the LAP.

Recommendation 28 should be moved from Phase II to Phase I. This is a critical item that cannot wait to be implemented. The court has acknowledged that there is not sufficient bilingual staff to accommodate the vast array of languages spoken by California's LEP population. As such, having in place a protocol on what to do when a bilingual staff is unavailable is critical.

Recommendation 30 should be moved to Phase I because it will help the court draw down the excess funding. This is key to securing more funding for future access to court services including language access services.

Recommendation 31 should be moved to Phase I because it will help the court draw down the excess funding.

Recommendation 35 should be moved to Phase I because it is urgent and easy to implement but will have a tremendous impact on LEP litigants. For too long, litigants have been denied interpretive services. For this reason, it is key that litigants be properly informed of the

courts' language access services in order for LEP individuals to have true meaningful access to the courts. Additionally, Recommendation 35 is directly related to Recommendation 5.

Goal IV: Provide High Quality Multilingual Translation and Signage

1. General Comments

Although the LAP emphasizes the importance of providing quality translations and signage, the strategic plan must *require* that local courts translate vital court forms in the languages spoken by at least five percent or 500 persons, whichever is less, of the non-English speaking litigants in the court's service area (if not already translated by the Judicial Council). Furthermore, courts must *immediately* provide multilingual forms and signage informing litigants of the availability of free language services and explaining the processes by which to obtain such services so as to ensure that LEP litigants can access necessary services. Finally, the LAP must provide instructions and guidelines to local courts on accepting multilingual forms submitted by LEP litigants.

Goal IV appropriately begins by recognizing the importance of quality translations and signage to ensure actual access for LEP litigants, and we commend the inclusion of various delivery systems for languages that may not have written components. Likewise, we agree with the creation of the Translation Advisory Committee and their role in overseeing and ensuring the statewide coordination of translations, which will ensure consistency and quality across the state when providing language services.

We are concerned, however, that the LAP suggests, rather than requires, that local courts commence the translation of court forms and signage; federal and state law already require courts to provide such translations. As mentioned in our previous Comments, the LAP fails to include the legal mandates provided by Title VI, California's Government Code § 11135, and the Dymally-Alatorre Bilingual Services Act, California Government Code § 7290 *et seq.*

Specifically, Dymally-Alatorre requires local branches of state agencies³⁷ to provide multilingual translations in the non-English languages spoken by a substantial number of the public served by the agency.³⁸ As defined by the statute, a "substantial number" of non-English speaking people constitutes five percent or more of the people serviced by the local state agency.³⁹ Although Dymally-Alatorre does not require the translation of all forms, it does explicitly require the translation of forms that explain services available to the public.⁴⁰ It further requires that translations (or alternative translation "aids and guides") be provided when the agency is furnishing information from an individual *or* providing information to an individual that could "affect the individual's rights, duties, or privileges with regard to that agency's

³⁷ See *Greater Los Angeles Council on Deafness v. Zolin*, 812 F.2d 1103, 1110 (9th Cir. 1987) (defining the local courts as being part of a state agency). As such, the local courts are covered by the state agency mandates under the Dymally-Alatorre Bilingual Services Act.

³⁸ Cal. Govt. Code § 7295.

³⁹ Cal. Govt. Code § 7296.2.

⁴⁰ Cal. Govt. Code § 7295.2.

services or benefits.”⁴¹ Given the specific mandates outlined in state law, we urge that the LAP require local courts to satisfy their legal obligation to provide translated materials in languages spoken by five percent or more of the population. Also, given the extraordinary diversity and large numbers of LEP communities in California, we also urge that local courts also be required to provide translated materials in other languages spoken by at least 500 persons in the area serviced by a specific courthouse.

Even when local courts provide LEP litigants with translated forms, applications, cover sheets, and other materials, the LAP does not discuss the processes local courts should implement when litigants *submit or return* such forms filled out in their native language. Without such guidelines, the process by which litigants submit non-English forms will vary drastically from county to county. In fact, the likely consequence is that non-English forms submitted by litigants will be rejected, as is already happening in counties that provide translated forms but do not have a system for receiving such forms. The provision of translated forms is of little use to LEP litigants if they are uniformly rejected after completion. We strongly suggest that this challenge be addressed in the LAP so that a uniform, statewide process can be used for the submission of non-English forms. At a minimum, the LAP should make clear that the courts must both accept and, if necessary, translate all completed forms provided in threshold languages pursuant to Dymally-Alatorre. Any process that is contrary would vitiate the guarantees to translated materials that Dymally-Alatorre provides.

In all cases, the courts should make a thorough attempt to accept submitted documents in the litigant's native language and translate it internally, rather than place the onus on the litigant herself. Such a burden placed only on LEP litigants is inconsistent with the court's mandate to provide full and equally access to justice. If the courts are unable to accept submitted documents in non-Dymally threshold languages, the courts should time-stamp forms as received, and litigants should be given an opportunity to submit it in English within a specific period. Court staff should promptly refer LEP litigants to self-help centers and legal aid organizations, and all of this information should be provided to them in their languages.

Finally, advocates previously provided several examples of language identification posters, brochures, and “I Speak” cards created by organizations, language line services, and government agencies. We recommend that the LAP incorporate these specific examples and require that courts make such posters visible and available in public spaces of the courthouse as part of a local court’s “wayfinding” strategy.

2. Suggested Changes

We agree that the LAP should include the creation of the Translation Advisory Committee in Phase I of the implementation plan. However, given the necessity of informing court users of both their right to language access services and the information needed to obtain such services, such recommendations must absolutely be included in Phase I and not Phase II.

⁴¹ Cal. Govt. Code § 7295.4.

This is especially true where the creation of a multi-lingual “tagline” has already been used in local courts.⁴²

Furthermore, the creation of the Translation Advisory Committee and the statewide coordination of the multilingual translation of court forms and signage explaining court services, forms that implicate a litigant’s rights, duties, or privileges to their civil case, or forms explaining the availability of free language services must be provided **immediately** and not in Phase II as currently outlined.

Below is proposed language to modify or replace the existing language in the LAP’s recommendations for Goal IV.

39. Courts will provide sight translation of court orders and *must* provide written translation of an order to LEP litigants when the LEP litigant’s language is a language spoken by either at least five percent or more of the county’s population or at least 500 persons in a specific courthouse’s service area. Where the Judicial Council has already provided a translated version of any court form in a litigant’s preferred language (e.g. on the California Courts website), the court must provide that translated version of that form to the LEP litigant *even if* the litigant’s language is not one covered under the five percent or 500 persons threshold.

39.1(*new*) Courts must identify a process by which to handle the submission of non-English forms submitted by LEP litigants. Courts must not outright reject such forms without providing alternative processes by which an LEP litigant can submit forms either in English or non-English language.

3. Proposed Revised Timeline

Recommendation 35, regarding the notice of available language access services, *must* be included in Phase I in order to ensure that LEP litigants are able to access needed language access services. Lack of awareness of the right to an interpreter or assistance is especially true in counties where the policy has long been that it is the LEP litigant’s obligation, and not the court, to ensure language access.

Goal V: Expand High Quality Language Access Through the Recruitment and Training of Language Access Providers

1. General Comments

We strongly support the courts taking the necessary steps to ensure that language needs are consistently met with the highest quality interpreters. We agree that the existing standards

⁴² Los Angeles Superior Court currently provides a multilingual form to fee-waiver litigants that includes the following information in English, Spanish, Korean, Armenian, Chinese, and Vietnamese: “If you are requesting to have all or part of your court fees waived, you may also request to waive additional court fees, including jury fees and the cost for a Certified/Registered Court Interpreter. If you require the services of a court interpreter, please provide your case number and requested language below.”

for interpreters who interpret directly between English and the target language are adequate and should be continually reviewed by the Court Interpreters Advisory Panel (CIAP). This section overall, however, requires more concrete goals, substantive action items, and higher standards in order to ensure that the recruitment and training of prospective interpreters sufficiently meets the demand for high quality interpreters as the LAP is implemented.

One notable omission from the existing standards is the qualification of relay interpreters, who interpret from the litigant's language to an intermediate language, relying on a second interpreter to interpret from the intermediate language to English. Relay interpreters are frequently used to interpret in indigenous and other less common languages for which interpreters fluent in English are scarce. Although this need constitutes a small portion of the overall LEP population, relay interpreting should be acknowledged in the LAP. Relay interpreting poses unique challenges that courts should understand in order to provide fair, quality language services. The current standards do not provide any minimum requirements for relay interpreters. The Judicial Council should create standards to ensure that relay interpreters possess proficiency in the intermediate language, comply with the code of ethics, and understand legal terms and proceedings.

Recommendation 45 addresses the need for assistance for prospective interpreters to pass the credentialing exam, suggesting that the Judicial Council and the courts partner with others to examine strategies for collaboration. However, the recommendation does not address what should happen after the courts and the Judicial Council have worked with partners to identify strategies. The recommendation should set out tangible action items the courts and Judicial Council will pursue.

Similarly, Recommendation 46 falls short of detailing any substantive action in order to ensure that interpreters are trained to interpret in civil cases and to provide remote interpreting. This recommendation must do more than suggest collaboration as a solution. The LAP should require courts and the Judicial Council to create effective training programs. It should establish benchmarks, beginning with the collaboration phase and ending with the creation and execution of training programs.

The minimum standard of Intermediate Mid for bilingual court staff is too low to ensure adequate communication with LEP court users at the majority of contact points. The Intermediate Mid level only requires minimal skills in providing instruction and direction. The example given in the description says that a person with Intermediate Mid proficiency may be able to count money but would not be able to describe or respond in unpredictable situations. An Intermediate Mid level speaker does not possess the skills necessary to explain complex issues, nor can the speaker use circumlocution to explain an idea, which is a necessary skill in most legal contexts. Setting the standard of proficiency as Intermediate Mid to qualify a staff member as "bilingual" will limit the quality of language services courts provide.

Although Recommendation 48 directs the Judicial Council and the courts to identify proficiency standards for bilingual staff at different points of public contact, it does not require that the courts actually staff the point of contact with a bilingual speaker possessing the designated proficiency. Further, the recommendation should specify what the online training's

purpose is and how often the training will be required to ensure quality language access services are being provided.

The recruitment efforts for interpreters and bilingual staff referenced in Recommendation 49 must be stronger. The Judicial Council needs to identify strategies via collaboration, but it also needs to act on those strategies. Additionally, the courts and Judicial Council should develop a strategy to target recruitment efforts at languages with the greatest unmet need for services. The Judicial Council and courts must dedicate time and resources to implement the identified strategies, and the Judicial Council should set a benchmark for recruitment and assess whether the target is being achieved.⁴³

2. Suggested Changes

Below is proposed language to modify or replace the existing language in the LAP's recommendations for Goal V.

43. Courts and the Judicial Council should provide training and mentoring programs to prepare relay interpreters to meet the standards established. Many relay interpreters lack formal education and training and may require assistance in the form of ethics and other trainings and reference materials in the intermediate language.

Courts should ensure that interpreters are competent in the language(s) in which they interpret. In addition to the existing standards for qualification, courts should establish a comprehensive system for credentialing or registering relay interpreters that includes pre-screening, ethics training, an orientation program, continuing education, and a system to *voir dire* language services providers' qualifications in all settings for which they are used.⁴⁴

45. The Judicial Council and the courts should work with interpreter organizations and educational providers (including community colleges and state universities) to examine ways to better prepare prospective interpreters to pass the credentialing exam. Once these strategies have been identified, the courts and Judicial Council will allocate the necessary resources to implementing the strategies. The Judicial Council and courts will:
- Create and make available standardized training materials to prepare individuals for the qualification exams.
 - Partner with community organizations and education providers to develop exam preparation courses/tests.

⁴³ The Judicial Council should consider developing its own programs to achieve these goals. As an example, the New Mexico Administrative Office of Courts established the New Mexico Center for Language Access, which provides training on interpretation, taking the certification exam, and ongoing education and training for certified interpreters. See <http://nmcenterforlanguageaccess.org/cms/en/>.

⁴⁴ American Bar Association, Standards for Language Access in Courts, February 2012, at 99 – 100. (http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_standards_for_language_access_proposal.authcheckdam.pdf).

- Create internship and mentorship opportunities in the courts and in related legal settings (such as work with legal services providers or other legal professionals) to help train and prepare prospective interpreters in all legal areas.
46. The Judicial Council should collaborate with interpreter organizations and educational groups to create training programs for those who will be interpreting in civil cases and those who will be providing remote interpreting. The goal of this collaboration will be to produce effective, standardized training materials for current and future interpreters working with civil cases and remote interpreting technologies. Trainings should incorporate:
- Reference materials containing standardized explanations of legal terminology and court procedures for civil cases
 - Remote interpreting trainings should educate current and future interpreters on effectively providing quality interpretation using technology
47. At a minimum, courts should require bilingual staff to possess a Superior proficiency level. Speakers with Superior proficiency are capable of assisting LEP speakers at access points that Intermediate Mid speakers are not. The LAP should require courts hire and retain a minimum number of staff with Superior proficiency in the languages most frequently encountered in the court's service area.
48. Courts must ensure that the staff member at the point of contact possesses the language proficiency designated by the Judicial Council. This should be done in a standardized format, such as requiring staff members claiming to be bilingual take the OPE.
49. The Judicial Council staff will work with educational providers, community-based organizations, and interpreter organizations to identify recruitment strategies to encourage bilingual individuals to pursue the interpreting profession or employment opportunities in the courts as bilingual staff. This includes identifying bilingual individuals and tailoring programs to fit their needs. Once these strategies have been identified, the Judicial Council will dedicate the resources necessary to implementing them.

Courts and the Judicial Council must implement an accountability mechanism to assess annual recruitment and retention.

Action items as part of this recommendation include:

- The Judicial Council will build coalitions with community organizations, local colleges and training centers to provide outreach on careers within the court system requiring language skills. The Judicial Council should work with career centers, attend job fairs, and develop an online presence, as well as other media strategies to promote opportunities.
- The Judicial Council will implement mentor programs and training programs for individuals interested in becoming interpreters or working for the courts.
- The Judicial Council will make the certification and examination process more accessible by offering scholarships or other assistance to prospective interpreters and bilingual staff who speak under served languages.

3. Proposed Revised Timeline

All of Section V's recommendations, except for Recommendation 49 on recruitment, are in the first phase and should remain there. Parts of Recommendation 49, such as building relationships with community networks, should occur immediately to ensure a qualified resource pool of future bilingual staff and interpreters. However, this is partially accounted for in Recommendation 45 on training. Additionally, several recommendations must be implemented if a serious recruitment initiative is to be effective, so it is less urgent to move recruitment to Phase I.

Goal VI: Provide Judicial Branch Training on Language Access Policies & Procedures

1. General Comments

The LAP appropriately raises concerns regarding inconsistent language access policies and procedures among different courts and even within a single courthouse. There is therefore a critical need for regular trainings for judges, clerks, court administrators, staff, and other court-appointed professionals. This section should also incorporate specific programs on the courts' requirements and mandates under state law, federal law, and the LAP; individual courts' policies and procedures; and language access services available. It should also include general timelines for such programs and the frequency with which certain key trainings should occur.

This section should further elaborate on specific programs and guidelines that courts must follow. For instance, a critical piece of ensuring comprehensive access to the courts is training court staff on obligations to provide language services to LEP court users and how to identify such users in need of services within the courthouse. These standards and practices should not vary widely from courthouse to courthouse, so the LAP should articulate these items explicitly wherever possible.

Part of providing language access services is to have a meaningful appreciation and knowledge of cultural differences that may affect an LEP litigant's understanding and behavior, particularly in certain settings, such as domestic violence proceedings. Although the description in Goal VI makes mention of the need for trainings on cultural competency, it does not elaborate on guidelines and standards that all courts should follow.

In addition to the Judicial Council's Court Language Access Support Program (CLASP) unit and Language Access Coordinator proposed in the LAP, each court should have a designated point person that coordinates mandatory trainings and educational efforts with the statewide office.

2. Suggested Changes

Below is proposed language to modify or replace the existing language in the LAP's recommendations for Goal IV. The objective here is to provide local courts with necessary

guidance as they develop their own programs to ensure consistency and compliance with language access laws.

50. Judicial officers, court administrators, court staff, and court-appointed professionals will receive systematic training regarding the requirements and mandates under state and federal law, the judicial branch's language access policies and requirements as delineated in California's LAP, as well as the policies and procedures of their individual courts. Courts will schedule such trainings at regular intervals, at least every two years, and incorporate this information into written materials available to all staff and reviewed with new hires. Courts must also schedule additional trainings when policies are updated or changed. Each court's designated trainings coordinator must report to the state office the following information: (a) number of trainings their staff attended; (b) who led the trainings; and (c) materials reviewed at such trainings.

At a minimum, the mandatory training topic areas include:

- Background on language access issues, including review of legal requirements, mandates and policies⁴⁵
- Review of California's LAP
- Processes for identifying LEP court users and for identifying the language spoken (including for indigenous and other languages with high degrees of regional variation)
- Language access services available to LEP litigants, including technological assistance (interpreters, bilingual staff, translated materials, websites, VRI, headphones, kiosks)
- Processes for appointment of interpreters and methods for verifying interpreter's credentials
- Role of interpreters inside and outside the courtroom
- Interpreter code of ethics, including duty to clarify issues during interpretation and to report impediments to performance
- Legal services and community-based organizations that court staff can refer to for more information on how to better serve LEP individuals
- Cultural competency and awareness trainings on working with specific populations
- How to work effectively with interpreters
 - (For judicial officers) Optimal methods for managing court proceedings involving interpreters, including the challenges of interpreter fatigue and the need to control rapid rates of speech and dialogue
 - (For qualified, non-certified bilingual court staff) How to work as an interpreter
- Available technologies and minimal technical and operational standards for providing remote interpreting
- Role of the court's language access coordinator

52. Judicial Council staff should develop bench cards that summarize salient language access policies and procedures and available resources to assist bench officers in addressing language issues that arise in the courtroom. Each individual court's language access coordinator should be responsible for memorializing local policies and procedures in an easy-

⁴⁵ See Comments, at 3-5.

to-read format that should be regularly updated and distributed to all court staff, community members, and local agencies and organizations that serve LEP populations.

3. Proposed Revised Timeline

The LAP correctly includes Recommendations 50 and 52 in the initial phase of the LAP's implementation. It is our position that Recommendation 51 should also be incorporated into the initial phase of the LAP's implementation given the extended timeline and that many if not all of the key resources would be available at an earlier point.

Goal VII: Conduct Outreach to Communities Regarding Language Access Services

1. General Comments

As the LAP points out, effective outreach is imperative to dispel the mistrust with which many LEP individuals view courts. Meaningful outreach to LEP communities will build a more open, and ultimately more just, court system. We agree that any successful approach must be multifaceted, as the needs of LEP individuals vary both within and across the language communities, and we applaud the emphasis on partnerships with community stakeholders and service providers.

Nonetheless, this section could be strengthened and further developed. First, as a general matter, the LAP does not specify in its discussion of Goal VII the threshold for providing outreach services to specific LEP populations. For written outreach materials, courts must provide materials translated in the languages spoken by either five percent or more of the county's population or 500 persons or more in a specific courthouse's service area.

A comprehensive and effective outreach strategy requires planning and coordination among the Judicial Council, courts, and various community stakeholders. Yet Goal VII speaks about the courts conducting outreach, without designating which court personnel would be responsible for ensuring that effective outreach is not only initially accomplished, but sustained over time. Therefore, the LAP should consider charging the local courts' individual person or office that is the language access resource (referenced in Recommendation 24)⁴⁶ with the responsibilities of coordinating and spearheading outreach coordination efforts. This person or office is in the best position to understand the structure of a given court's language services, and would therefore be an ideal liaison to LEP community members, other stakeholders, and outreach partners (e.g. lawyer referral services, local bar associations). In turn, these organizations can increase awareness among LEP communities about the availability of courthouse language services.

Additionally, the liaison can ensure that accurate and consistent outreach information is being distributed in the appropriate languages over time. A dedicated person or office within the Judicial Council should similarly coordinate statewide outreach efforts. In our previously submitted Comments, we urged the creation of independent, local language access court

⁴⁶ LAP, at 48.

offices.⁴⁷ Such offices would be particularly well-suited to coordinate outreach with local LEP communities.

Outreach materials must provide *specific* information regarding the provision of language services. This includes, but is not limited to: what an interpreter does and cannot do; the availability of free interpretation services; acknowledgement of improvements in language access over past practices; federal and state rights that guarantee meaningful language access; how to use and access self-help centers; basic, key requirements of the LAP; Alternative Dispute Resolution programs; the potential use of video remote interpretation; and the availability of a complaint process regarding the quality of language assistance. Including specific information in a variety of non-English languages will help further understanding among LEP litigants of the court system generally, as well as provide a better sense of the language assistance services available to them.

Furthermore, courts should utilize an array of media platforms to ensure that all segments of a given LEP community are able to access information about the courts. The LAP should reference a diverse selection of specific media platforms for outreach activities, including non-English ethnic media such as television, radio, newspapers, in-person community meetings, community-oriented websites, as well as video and online resources for LEP court users. While utilizing technology is an efficient, cost-effective means of reaching large numbers of people (including those individuals who have low literacy in their native languages, or for speakers of non-written languages), the LAP should be cognizant of the reality that some LEP individuals, particularly elderly and low-income persons, may not have sufficient comfort, familiarity, or regular access to certain technologies such that these platforms would not convey information as effectively as, say, a translated Q&A pamphlet or radio announcement.

In addition, the LAP should emphasize the need to conduct outreach with smaller language groups, including indigenous language speakers, particularly in areas where there are other non-English languages that are more widely spoken. Outreach is particularly critical for smaller language groups, as those communities are more likely to have had prior difficulties in obtaining adequate language assistance. As we noted in our previously submitted comments, community organizations “provide more detailed information about the extent of the demand for language services among the various language subgroups.”⁴⁸ Thus, locating service providers and other community organizations that serve smaller language populations can provide valuable insights into what types of language assistance are most needed. While the LAP rightly notes that general outreach efforts should also be used to recruit potential language assistance providers,⁴⁹ these efforts should be especially focused among smaller and underrepresented language groups, such as among bilingual indigenous language speakers who possess highly valuable language skills.

Finally, as part of outreach activities, courts must engage their partners to collect more reliable data sets that more accurately reflect language need. As noted elsewhere in the LAP and

⁴⁷ Comments, at 2.

⁴⁸ Comments, at 11.

⁴⁹ LAP at 72.

in our previous comments,⁵⁰ reliance on Census data alone is insufficient to truly evaluate and plan for demand for language services. Thus, courts should include surveys of their community-based partners to gain a better sense of the relative size of language groups, as well as the proportion of language communities that are LEP. Utilizing such surveys may help corroborate or provide more accurate snapshots than existing data sources such as Census/American Communities Survey data.⁵¹ For example, surveying a local housing authority, school district, or hospital about the number of LEP individuals it serves may help anticipate staffing needs for various language groups.

2. Suggested Changes

Below is proposed language to modify or replace the existing language in the LAP's recommendations for Goal VII.

53. Courts should establish partnerships with local community-based organizations, including social service providers, legal services organizations, government agencies, and minority bar associations to gather feedback to improve court services for LEP court users and disseminate court information and education throughout the community. Gathering such feedback should include, but is not limited to, a survey of local partners to determine current language needs, as a supplement to existing data sources.
54. Courts should take affirmative steps to inform the public with specific information about language access services available in the courts by, among other means, ongoing communication with community-based organizations and other stakeholders. Such specific information disseminated to the public should include, but is not limited to: what an interpreter does and cannot do; the availability of free interpretation services; acknowledgement of improvements in language access over past practices; federal and state rights that guarantee meaningful language access; how to use and access self-help centers; basic, key requirements of the final LAP; information about Alternative Dispute Resolution programs; the potential use of video remote interpretation; and the availability of a complaint process regarding the quality of language assistance.
55. To maximize both access and efficiency, multilingual audio and/or video recordings should be used to provide important general information and answers to frequently asked questions when possible; however, courts should also utilize alternative non-English language resources both in courthouses and in outside community outreach efforts, out of recognition that certain LEP individuals, including elderly and low-income persons, may not have sufficient comfort, familiarity, or regular access to certain technologies such that newer platforms would not convey information as effectively as more traditional methods.
56. Courts should collaborate with a diverse selection of local media providers (including non-English television stations, local websites, newspapers, and radio stations) and leverage the

⁵⁰ For a more in-depth discussion on issues with Census/American Community Survey data, see Comments at 6-8; *see also* LAP at 26.

⁵¹ *See* Comments at 10-12.

resources of media outlets—including ethnic media that communicate with consumers in their language—as a means of disseminating information throughout the community about language access services, the court process, and available court resources.

56.1. (*new*) Courts should designate an individual or office responsible for overseeing and coordinating outreach efforts within a court’s service area to ensure that information communicated to the public is accurate and consistent over time, as well as to foster long-term working relationships with various community groups and other stakeholders. Similarly, centralized coordination should take place at the state level.

56.2. (*new*) Where applicable, courts should place special emphasis on conducting outreach activities with smaller, less-widely spoken language groups and underserved languages, including indigenous language communities, both in terms of informing these groups about the availability of court services, but also with respect to potential recruitment of bilingual/multilingual language assistance providers.

3. Proposed Revised Timeline

It is unacceptable that all of the recommendations under this section fall under Phase III. Courts should begin implementing these recommendations as quickly as possible, particularly those concerning the formation of partnerships with community groups and other stakeholders. Such partnerships will provide crucial feedback and avenues through which to distribute vital information to the public, and will inform much of the implementation of the LAP.

Partnerships with the local community and disseminating information regarding language access services are critical in providing meaningful access to justice. Not taking steps to appropriately outreach to the community immediately paralyzes the effectiveness of the policies themselves. At a minimum, Recommendations 53, 54, and 56.1 should be moved into Phase I, and the remaining recommendations should be moved into Phase II.

Goal VIII, Part a: Increased Funding

1. General Comments

As discussed in the introductory General Comments, language access is a core court function and costs relating to language access are, to use the LAP’s language, part of a court user’s “most basic needs.”⁵² The LAP’s imperative that funding for language access not be obtained at the expense of reductions in other branch funding is therefore misguided. Language access measures are not additional measures on top of the “most basic needs” provided by the court, and they must be integrated into other basic needs the court meets. The LAP’s rhetoric implies that should funding efforts fail, no more funds, whether additionally supplied or from the existing budget, will be allocated to language access efforts. Assuming that California courts currently do not meet state and federal language access mandates, this stance would ensure that

⁵² See LAP, at 74.

the courts continue to fail to comply until additional funds are procured. This is an untenable position.

In addition, the LAP should specify where, when, and how the existing Program 45.45 funds will be exhausted. This is crucial for future legislative efforts, and until such funds are exhausted the legislature will likely balk at requests for additional funding.

Finally, we commend the LAP for recognizing the urgency of seeking funding from the legislature by placing the items in this section in Phase I of its timeline. We also ask the courts to bolster these efforts by providing more specifics into the LAP and guaranteeing certain benchmarks so as to substantiate such funding requests.

2. Suggested Changes

Below is proposed language to modify or replace the existing language in the LAP's recommendations for Goal VIII, Part a.

57. The judicial branch will advocate for sufficient funding to provide comprehensive language access services as a core function and necessary cost of business. The funding request should reflect the incremental phasing in of the language access plan.
58. Funding requests for comprehensive language access services must be premised on the best available data that identifies the resources necessary to effectuate the recommendations of California's Language Access Plan. This may include information being gathered in connection with the recent Judicial Council decision to expand the use of Program 45.45 funds for civil cases where parties are indigent; information being gathered for the 2015 Language Need and Interpreter use Report; already-available data through the Department of Education and local welfare agencies such as the Department of Public Social Services; and information that can be extrapolated from the Resource Assessment Study (which looks at court staff workload), as well as other court records (e.g., self-help center records regarding LEP court users).
59. Judicial Council staff will pursue other funding opportunities from federal, state, or nonprofit entities, such as the National Center for State Courts, which are particularly suitable for one-time projects such as translation of documents or production of videos.
60. Courts will pursue other funding opportunities at the national, state, or local level to support the provision of language access services. Courts should seek, for example, one-time or ongoing grants from federal, state, or local governments, and others.

Goal VIII, Part b: Language Access Plan Management

1. General Comments

We appreciate that the LAP includes a complaint procedure as expressed in Recommendations 63-66. The LAP, however, does not provide much specificity as to what the

procedures will entail. Respecting local court autonomy and efficiency must not be at the expense of enforcing baseline, uniform standards across all California courts. The LAP strays too far in favor of the former. For example, the LAP leaves entirely to local courts to create a complaint procedure for failure to carry out the LAP. In addition, there is no mention of a monitoring mechanism other than that the Implementation Committee will create it.

As previously stated, the LAP lacks urgency: the creation of local complaint procedures on LAP implementation, interpretation, and translations is pushed into Phase III, with a 2020 deadline. Given how integral the complaint mechanism will be in troubleshooting implementation of the LAP, delay in creating a complaint procedure will only increase inefficiencies and burdens involved with the vagueness and inconsistencies in LAP implementation.

Further, the LAP fails to mandate that the resolution of a complaint be followed by the court. The complaint procedure must include that all court personnel and functions impacted by the complaint be required to follow the resolution of the complaint. The complaint resolution cannot be advisory. The plan must include a mechanism to ensure that result of a complaint is implemented.

There is legitimate concern that courts will not abide by the result of a complaint. Evidence of this is with courts' ADA complaint process which mirrors the language in the LAP. In at least one case, a court civil rights coordinator agreed that the court's family law facilitator office was violating the Americans with Disabilities Act by failing to accommodate persons with disabilities in appointment scheduling. However, the family law facilitator refused to comply with the civil rights coordinator, and the civil rights coordinator said she had no authority to compel the family law facilitator to comply. The plan must ensure that this does not happen with language access complaints. The plan should specify that LEP litigants must be given notice of the complaint resolution process for LEP issues.

The LAP must create a Language Access Oversight Committee (LAOC) both statewide and in local courts to ensure implementation of the plan. Such LAOCs must include legal services providers and perform various monitoring functions.⁵³

Additionally, the Court of Appeal and the Supreme Court have the same Title VI and Government Code 11135 language access obligations as the Superior Courts. The complaint procedure for those courts should not be optional.

Moreover, the LAP fails to specify who will comprise the "Implementation Committee" and what role, if any, key stakeholders, including legal services providers and community-based organizations will play on such a committee.

The LAP must also require that courts record all proceedings involving LEP litigants. This would allow for a recorded and potentially written record that aggrieved parties may refer to when they file complaints, and therefore serves a key monitoring purpose. In addition, recording

⁵³ See Comments, at 31-32.

unlawful detainer proceedings would benefit both litigants and the appellate courts. Currently, many unlawful detainer cases come before the Court of Appeal without a transcript of proceedings below, making it difficult for litigants to argue their positions and for the courts to determine the proper disposition on appeal. In addition to its benefits in allowing oversight of interpreters, instituting mandatory recording of such proceedings would enable the creation of transcripts that would assist both litigants and the courts on appeal.

In addition, the complaint form should be an optional vehicle for filing a complaint, rather than the mandatory procedure for doing so. Any complaint about language access should be accepted, even if that complaint not conveyed via the complaint form.

Finally, the complaint form must also be available in paper at the courthouse because many low-income litigants do not have internet access. The complaint form must be available free of charge both in person at the courthouse and when downloaded from court websites, and should be accepted in person, by mail, by fax, or electronically. Standard court charges for website searches and downloads cannot be applied to the complaint form because that will deprive low-income litigants of the right to file a complaint. This complaint form should be available in multiple languages commensurate with local need.

2. Suggested Changes

Below is proposed language to modify or replace the existing language in the LAP's recommendations for Goal VIII, Part b. For this section, we would like to reference and incorporate our previously submitted Comments, specifically the section entitled "Monitoring: Complaint Processes", at pages 33-38, attached as Appendix 1.

61. The Judicial Council will create a Language Access Implementation Advisory Committee (name TBD) to develop a phased implementation plan for presentation to the council. As part of its implementation plan, the committee will identify the yearly costs required to phase in the LAP recommendations. Legal services and community organizations must be included in this Implementation Committee as stakeholders.
62. The Implementation Committee will develop a single form available free of charge either online or at the courts that is available statewide as a mechanism for monitoring all concerns related to language access at the local or state level. The form should be used as part of multiple processes identified in the following recommendations of this plan. However, completion of such form is not necessary to raise a complaint.
- 63.5. (*new*) The courts will create both a statewide Language Access Oversight Committee (LAOC) and local LAOCs to ensure implementation of the language access plan on a statewide and local level. Such LAOCs must include legal services providers and provide monitoring functions.⁵⁴

⁵⁴ Such functions can be found on pages 31-32 of the Legal Services & Community Organizations Comments submitted to the Judicial Council, April 9, 2014 (Comments).

64. The Judicial Council, together with stakeholders, will develop a complaint process by which the quality and accuracy of an interpreter's skills and adherence to ethical requirements can be reviewed.⁵⁵
66. Individual courts and their Language Access Coordinators will develop a process by which LEP court users, their advocates and attorneys, or other interested persons may seek review of a court's provision of, or failure to provide, appropriate language access services, including issues related to locally produced translations. The process must consider local labor agreements. "Local courts must follow the local baseline procedures offered in this plan and further developed by the Implementation Committee. The Language Access Coordinator must serve as a point-person to receive and administer complaints, and also to adjudicate complaints.
67. The Implementation Committee will develop a process by which a litigant or his or her legal representative may request a review of the outcome of any complaint submitted to a court regarding (1) quality or accuracy of an interpreter's skills and adherence to ethical requirements as described in Recommendation 64; (2) the quality of translations approved by the judicial Council as described in Recommendation 65; or (3) provision of, or failure to provide, appropriate language access services, as described in Recommendation 66. The Implementation Committee or another centralized body will adjudicate appeals, with published decisions as binding precedent. Filing and decisions shall be stored in a database to monitor progress and areas for improvement.
68. The Judicial Council will create a statewide repository of language access resources, whether existing or to be developed, that includes translated materials, audiovisual tools, and appeal decisions on complaints pertaining to implementation of the LAP Plan, interpretation, or translation. The statewide LAOC shall have discretion to determine whether certain appellate decisions shall serve as binding precedent on implementation of the LAP statewide.
69. The California Courts of Appeal and the Supreme Court of California will discuss and adopt applicable parts of California's Language Access Plan with necessary modifications.
- 69.1. (*new*) The Implementation Committee will meet with the statewide LAOC at least quarterly and more often as needed to ensure implementation of the LAP.
- 69.2. (*new*) The Implementation Committee, along with the statewide LAOC, shall conduct public hearings throughout the state after Phases I, II, and III to assess the ongoing needs, and as often thereafter as deemed necessary by the committee.
- 69.3. (*new*) The courts must record proceedings involving LEP litigants. Transcripts from such proceedings may be used in the complaint process or for monitoring purposes, and

⁵⁵ Further suggestions for the specific procedures involved can be found on pages 37-38 of the Legal Services & Community Organizations Comments submitted to the Judicial Council, April 9, 2014 (Comments).

may also be used for appeals. Courts must notify LEP litigants of their right to have proceedings recorded or reported, subject to fee waiver rules.

3. Proposed Revised Timeline

We propose one of these two options:

- Recommendation 63 be moved from Phase II to Phase I; move Recommendations 64-67 to Phase I, OR
- Include specific baseline procedural safeguards in the LAP itself or to be developed by the Implementation in Phase I; move Recommendations 64-67 to Phase II.

Goal VIII, Part c: Necessary Court Rules, Forms, and Legislation for Plan Implementation

1. General Comments

Under Recommendations 70 and 73, “good cause” for appointing a non-certified interpreter should be narrowly defined. As written, the description of the issue and the recommendation leave the impression that court labor issues, without more, can be good cause for using non-credentialed interpreters. This cannot be the case, because that exception would give any court good cause for not using credentialed interpreters at any time. We believe using current Rule 2.893 would prevent this from happening. However, the LAP should specify that court labor issues cannot be an independent basis for used non-credentialed interpreters.

Under Recommendation 76, the LAP should not require good cause or a request to “vacate the waiver” for a litigant to change his or her mind and request an interpreter following a waiver. LEP litigants have a right to an interpreter and that must be allowed at any time regardless of any prior waiver, especially given the possibility that a litigant may not realize the severity of the need for an interpreter until actively trying to navigate proceedings without one.

2. Suggested Changes

Below is proposed language to modify or replace the existing language in the LAP’s recommendations for Goal VIII, Part c.

70. The Judicial Council should, under Government Code section 68564, establish procedures and guidelines for determining “good cause” to appoint non-credentialed court interpreters in civil matters. “Good cause” should be narrowly defined as extenuating circumstances in non-priority cases where the court must demonstrate in writing to the Language Access Coordinator an inability to provide a certified interpreter. The Implementation Committee and/or the LAOC must review these statements periodically to determine where courts are failing to provide certified interpreters.
73. The judicial council should sponsor legislation to amend Code of Civil Procedure section 116.50 dealing with small claims actions to reflect that interpreters in small claims cases must, as with other matters, be credentialed except for a finding of good cause to appoint

a non-credentialed interpreter. “Good cause” should be narrowly defined as extenuating circumstances in non-priority cases where the court must demonstrate in writing to the Language Access Coordinator an inability to provide a certified interpreter.

76. The Judicial Council should develop a rule of court establishing a procedure by which LEP persons may, at any point, be allowed to waive the services of an interpreter so long as the waiver is knowing, intelligent, and voluntary; is made after the person has consulted with counsel (if any); and is approved by the appropriate judicial officer, exercising his or her discretion. At any point later in the proceedings, the LEP person may rescind the waiver and request an interpreter.

We appreciate the opportunity to provide these comments. We look forward to working collaboratively with you to make the LAP a meaningful reality in California and to provide access to justice for all Californians.

Thank you very much for your time and consideration in reviewing our comments. If you have any questions, please feel free to contact Joann Lee at jlee@lafla.org or (323) 801-7976, or any of the undersigned organizations.

Respectfully submitted,

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Appendix 1

Legal Services & Community Organizations Comments, Submitted to the Judicial Council April 9, 2014

**California Courts Statewide Language Access Plan
Legal Services & Community Organizations
Comments to Draft Outline of December 11, 2013**

The undersigned organizations write to present detailed comments, recommendations, and draft language regarding the California Courts Statewide Language Access Plan (LAP). This document elaborates upon the Court Language Access Letter submitted by over 40 organizations on March 4, 2014. We begin by stating some guiding principles we believe are critical as the Judicial Council moves forward in developing, finalizing, and implementing the LAP. We thank you for the opportunity to provide these comments and look forward to working with you to make the LAP a reality in California.

GUIDING PRINCIPLES

Ensure Equality. The experiences of limited-English proficient (LEP) individuals both inside and outside the courtroom must be the same as those of English speakers. That is the very purpose of language access and must be the overarching principle that guides all efforts. There are many means by which this goal may be achieved, including those listed below. But no matter the method, the end result must be *equivalence*, meaning that the subjective experiences of both groups are the same so that they can make informed choices based on their understanding of what is conveyed.

Follow the Beacon of Poverty. Poverty is the beacon; the priority must be to help those LEP individuals eligible for fee waivers with a focus on case types that impact fundamental rights. As a starting point, funds should **be spent on indigent individuals** with fee waivers. As services are developed and new funds secured, incremental expansion should also occur based on economic need. Courts should:

- **Begin by Immediately Providing Interpreters in Certain Proceedings:** Although interpreters are required by law to be provided in all civil courtrooms, proceedings with the most significant consequences for litigants should be given priority, even while more comprehensive plans are being developed. As an interim measure, fee waiver litigants, non-mandated restraining orders, family law custody and visitation, unlawful detainers, guardianship, and conservatorship matters should be prioritized. In addition, current delays in providing interpreters in mandated cases must be eliminated.
- **Include More Legal Services Providers on a New Language Access Oversight Committee:** With their decades of experience representing the populations suffering most acutely under current policy, legal services will prove invaluable in devising solutions to the language access crisis.

Language Access Must Be Routine. Language access should be viewed as just another cost of doing business, such as utilities or other essential operating expenses. As recipients of federal and state funds, the law requires no less. While we support increased funding for interpreters,

the culture must be changed so that language access is seen as an integral and routine part of every budget, rather than an extraordinary expense unjustified by the cost.

The following measures can help:

- **Increase Bilingual Staffing:** Make bilingual ability a *sine qua non* of all future court hiring of all positions involving public contact — these positions should require proficiency in languages commensurate with the needs of local communities.
- **Hire More Interpreters:** Increase the numbers of interpreters available and retain quality by qualifying a new level of interpreters with consecutive interpretation skills for certain non-courtroom settings.
- **Create a Language Access Office:** Create an independent language access office in each court, like the current Americans with Disabilities Act compliance offices, which would maximize efficiency and utilize all available interpreters and translators.
- **Train Court Staff & Judges:** Create and provide an annual training on the Language Access Plan, working with interpreters, and on how to be an effective interpreter for bilingual staff.

Develop and Implement a Language Access Plan Consistent with Legal Mandates. Courts receive federal and state funds with important strings attached that can no longer be ignored. Instead, the courts must develop and implement a plan that meets or exceeds all statutory and regulatory requirements. It should:

- **Adhere to the U.S. Department of Justice’s (DOJ) LEP Guidance:** Implement DOJ’s hierarchy of oral language services and safe harbors for written translation to improve language access at all points of contact.
- **Identify and Address All Language Needs in the Community Working with Local Language Access Oversight Committees:** Although Spanish-speakers are the largest LEP group in California, courts should engage in robust data collection, analysis, and enhanced staffing to meet the needs of all LEP court users.
- **Create a Statewide Office of Language Access:** A statewide office can help to ensure the coordination and enforcement required to achieve success of the Language Access Plan.
- **Utilize Technology:** Secure separate, additional new funding for technology to help provide cost-effective and efficient language access services.

I. Legal Background and Importance of Providing Full Coverage for All

We believe that the LAP should contain strong language concerning legal background and mandates, as well as a clear commitment to providing full access for all Californians. As stated in our guiding principles, we believe that a culture change must occur throughout the court system, including the Administrative Office of the Courts (AOC), judicial officers, court staff/personnel, and independent contractors. This message must be made clear to all court users. All those who are part of the court system must be trained to understand the court's expanded commitment to language access and their own role in effectuating that commitment. It is critical for the LAP to also address the importance of training court staff on language access services and requirements to ensure a standardized delivery of language services across court locations.

PROPOSED LAP LANGUAGE: Relevant parts of the LAP draft outline include Section II, Part A; Section III, Part C; Section IV, Parts A, B.

Introduction

California is among the most racially, ethnically, and linguistically diverse states in the nation. Over 27 percent of Californians are foreign-born, compared to nearly 13 percent nationally.¹ In fact, 40 percent of Latinos and 59 percent of Asians in California are foreign-born.² Californians speak over 220 languages³, and 43 percent of Californians speak a language other than English in their homes.⁴ This wide variety of backgrounds and languages provides great cultural enrichment for California. Many individuals, however, who speak other languages are also limited-English proficient (LEP) and face tremendous barriers. The top five primary languages spoken in California after English include:

- Spanish – 9,961,284 speakers, of which 46% are LEP;
- Chinese – 1,036,982 speakers, of which 56% are LEP;
- Tagalog – 765,033 speakers, of which 33% are LEP;
- Vietnamese – 512,456 speakers, of which 60% are LEP; and
- Korean – 375,383 speakers, of which 59% are LEP.⁵

¹ See U.S. Census Bureau, *State & County QuickFacts*, available at: <http://quickfacts.census.gov/qfd/states/06000.html> (listing 2008-2012 figures for foreign-born individuals).

² Asian American Center for Advancing Justice, *A Community of Contrasts: Asian Americans, Native Hawaiians and Pacific Islanders in California* (2013), at 14, available at http://advancingjustice-la.org/system/files/Communities_of_Contrast_California_2013.pdf.

³ See California Commission on Access to Justice, *Language Barriers to Justice in California*, at 1 (2005), available at: <http://www.calbar.ca.gov/LinkClick.aspx?fileticket=79bAIYydnho%3D&tabid=216>.

⁴ See U.S. Census Bureau, *State & County QuickFacts*, available at: <http://quickfacts.census.gov/qfd/states/06000.html> (listing percentage of people over age 5 speaking language other than English at home, 2008-2012).

⁵ U.S. Census Bureau, American Fact Finder, *Table B16001, Language Spoken at Home by Ability to Speak English, 2008 – 2012, American Community Survey 5 Year Estimates*, available at: http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_12_5YR_B16001&prodType=table.

Limited-English proficiency impacts one’s “ability to access fundamental necessities such as employment, police protection, and healthcare.”⁶ While underrepresented groups among native English speakers often face similar challenges, these challenges are compounded for LEP individuals who must also contend with often insurmountable language barriers. Unsurprisingly, access to the courts has proven difficult for LEP individuals, who have higher rates of poverty than the general population in California.⁷

As the California Commission on Access to Justice observed in its 2005 report, “[f]or Californians not proficient in English, the prospect of navigating the legal system is daunting, especially for the growing number of litigants who have no choice but to represent themselves in court and therefore cannot rely on an attorney to ensure they understand the proceedings.”⁸ The report notes that approximately 7 million Californians “cannot access the courts without significant language assistance, cannot understand pleadings, forms or other legal documents and cannot participate meaningfully in court proceedings without a qualified interpreter.”⁹

Legal Background and Mandates

Both state and federal statutes provide significant protections to limited-English proficient individuals in accessing the courts. California Government Code §§ 11135 *et seq.* and its accompanying regulations provide that no one shall be “denied full and equal access to benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state,” on the basis of “linguistic characteristics.”¹⁰ As entities funded and operated by the state, California’s courts are thus prohibited by state law from discriminating against LEP individuals.

Federally, Title VI of the Civil Rights Act of 1964 (Title VI) and its implementing regulations prohibit direct and indirect recipients of federal financial assistance from discriminating on the basis of national origin.¹¹ The Supreme Court and executive branch have interpreted this prohibition as requiring federal funds recipients to provide LEP individuals with meaningful access to their services.¹² As recipients of federal financial assistance, California courts are subject to the mandates of Title VI and its implementing regulations to ensure equal access to the courts by providing necessary language assistance services. The Department of

⁶Asian Pacific American Legal Center of Southern California and APIAHF, *California Speaks: Language Diversity and English Proficiency by Legislative District*, at 2 (2009), available at: http://www.apiahf.org/sites/default/files/APIAHF_Report05_2009.pdf.

⁷See U.S. Census Bureau, American Fact Finder, available at: http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_11_1YR_S1603&prodType=table (listing characteristics of people by language spoken at home, 2011 American Community Survey 1-Year Estimates).

⁸California Commission on Access to Justice, *supra* note 3, at 1.

⁹*Id.*

¹⁰Cal. Gov. Code §§ 11135, 11139; Cal. Code Regs. Title 22, Section 98210(b).

¹¹42 U.S.C. § 2000d (2004).

¹²*Lau v. Nichols*, 414 U.S. 563, 568-569 (1974) (“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 the [Title VI] regulations.”); see Executive Order 13166.

Justice (DOJ), the federal agency that enforces Title VI requirements, provides financial assistance to California courts, and on June 18, 2002, issued guidance to recipients of such funding detailing these mandates.

The DOJ's guidance is clear that language access to litigants be provided both inside and outside the courtroom.¹³ In particular, the guidance directs recipients to apply a four-factor analysis in determining the "reasonable steps they should take to ensure meaningful access for LEP persons."¹⁴ This analysis should include evaluation of: (1) the "number or proportion of LEP persons" served, (2) frequency of contact with LEP individuals, (3) the "nature and importance" of the services the recipient provides, and (4) implementation costs and available resources.¹⁵ The four factors should be used to develop and implement a "mix" of LEP services based on what is reasonable and necessary.¹⁶ Both oral interpretation and written translation services may be used, and the comprehensiveness of a given service can range widely depending on the importance of a particular program component.¹⁷ There is a clear mandate that oral interpretation services must not be subject to any thresholds for when they should be offered but be available on demand and free of charge. The DOJ makes clear in its guidance that in the courts, "at a minimum, every effort should be taken to ensure competent interpretation for LEP individuals during all hearings, trials, and motions during which the LEP individual must and/or may be present."¹⁸ A DOJ guidance letter dated August 16, 2010, elaborates on these requirements, explaining its view that all court proceedings are of critical importance, whether civil, criminal, or administrative in nature. Further, there is a "need to provide interpretation free of cost," and that language assistance should not be restricted only to courtroom proceedings.¹⁹

Thus, both state and federal laws require significant steps be taken to ensure that competent language access be provided free of charge inside and outside the courtroom. The DOJ has stressed that the overall goal is to ensure that language access expenses "be treated as a basic and essential operating expense, not as an ancillary cost."²⁰ Through the Statewide Language Access Plan, the California state court system will promote justice for all Californians regardless of language ability.

¹³ 67 Fed. Reg. 41455-41471 (2002).

¹⁴ 67 Fed. Reg. 41459.

¹⁵ *Id.*

¹⁶ *Id.* at 41460.

¹⁷ *Id.* at 41461-64.

¹⁸ *Id.* at 41471.

¹⁹ Thomas E. Perez, Assistant Attorney General, U.S. Department of Justice, Civil Rights Division, *Letter to State Courts*, August 16, 2010, available at: www.lep.gov/final_courts_ltr_081610.pdf.

²⁰ *Id.*

II. Robust Data Collection, Assessment, and Analysis

In order to ensure that language access is a reality for all LEP litigants, the LAP must prioritize the need for ongoing and thorough data collection of local language needs. The plan must provide the courts with the data resources and guidelines to assess the language needs of their local population. As a result of the cultural and linguistic diversity of California, however, the plan should not provide a “one size fits all” mechanism for collecting data. Instead, the courts should be required to develop their own mechanisms to ensure that they are accurately capturing the language needs of their local LEP litigants. The following covers a few of the resources upon which courts should rely to identify language needs.

Helpful resources courts may rely on for data resources include: the U.S. Census, the American Community Survey (ACS), the California Department of Education (CDE), Migration Policy Institute,²¹ local welfare agencies, and local community-based partners. It should be noted that one concern we have is that the courts may rely solely on information provided by the U.S. Census and the ACS. Although the ACS provides invaluable information of the state’s language needs, it does not effectively provide the detailed, local information courts need to adequately identify their litigants’ language needs. Thus, we ask that the LAP require courts to supplement ACS results with data collected by sources that have proven to provide a more detailed and accurate portrayal of the language needs in any given county. As discussed in further detail below, suggested reliable sources include the CDE and local welfare agencies, which are required by state and federal law to collect data on language needs. These localized data collection efforts are a source of robust data, particularly regarding indigent populations. Finally, courts must engage with local partners, ranging from legal services partners to refugee organizations to local media, to ensure that less-popular or emerging languages are properly identified. We recommend the creation of at least one local language access committees in each county for this purpose (*See Part VI below*). By relying on a variety of sources, courts will have a more comprehensive understanding of the language needs of their communities and thus will be better able to ensure they have the adequate resources to effectively provide language access services to all of its users.

Background

Nationally, the U.S. Census Bureau, which conducts the ongoing ACS, remains the primary source of language data.²² Although the ACS should remain a resource that courts use, ACS data is simply not detailed enough to accurately reflect the language needs at the local level, which is the type of information the courts require to adequately prepare for LEP litigants. One reason that the ACS alone is insufficient is that, for the purposes of reporting English proficiency among survey participants, the ACS broadly collapses languages into broader sets of language groups.²³

²¹ The Migration Policy Institute (MPI) offers resources on various language access services and projects. An example of one of their reports is available at: <http://www.migrationpolicy.org/research/limited-english-proficient-individuals-united-states-number-share-growth-and-linguistic>.

²² Legal Services Corporation (LSC) Resource Information, *Language Access Data Sources*, available at: <http://lri.lsc.gov/engaging-clients/language-access/language-data-sources>.

²³ U.S. Census Bureau, American Community Survey Reports, *Language Use in the United States: 2011*, 2 (2013), available at: <http://www.census.gov/prod/2013pubs/acs-22.pdf>.

The language portion of the ACS consists of three questions.²⁴ The first asks if the person speaks a language *other than* English at home.²⁵ If the answer is “Yes,” the person is then asked to report the language they use.²⁶ The third question asks how well the person speaks English, with answer categories of “very well,” “well,” “not well,” and “not at all.”²⁷ As of the 2011 ACS, the Census Bureau “coded” 381 detailed languages nationally.²⁸ Of these 381 languages, however, data tabulations are generally not available because the ACS further collapses these languages into 39 languages and language *groups*. Finally, for the purposes of reporting English proficiency, the ACS collapses these 39 languages into four broad categories: Spanish, Indo-European languages, Asian and Pacific Islander languages, and Other Languages.

As a result, the ACS reports that in California, for example, 19.8% of the population that speaks an Asian/Pacific Islander language self-identifies as speaking English less than “very well” without providing further detail on how English proficiency varies among the various Asian/Pacific Islander languages.²⁹ This remains true for data collected by the ACS at the local level. In Los Angeles County, for example, the ACS provides that 5.6% of the population that identifies as LEP speaks an Asian/Pacific Islander language. Only by looking at other sources of information, such as data collected by the local entities, including the welfare agency, and community-based organizations, can a Los Angeles County court identify the priority needs among the Asian/Pacific Islander LEP population, which in this case would include Korean, Cantonese, Mandarin, Tagalog, Japanese, Vietnamese, Khmer, and Thai.³⁰

Moreover, the ACS captures no language-specific data at all for some languages spoken by a significant number of California residents. The Census Bureau classifies a number of indigenous Mexican languages, which according to some researchers’ estimates are spoken by over 100,000 California farmworkers alone³¹, only by language family, not specific languages, providing no meaningful data on which to base courts’ planning for language assistance needs. “Oto-manguen languages,” for example, are counted as only one of the 381 languages coded by the Census Bureau,³² while this family is comparable in its diversity to the Indo-European language family (whose members include languages as disparate as English, Hindi, Russian,

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.* The 381 languages coded by the Bureau were reduced from a list of 6,909 languages identified globally

²⁹ The Asian/Pacific Islander language group includes Chinese, Korean, Japanese, Vietnamese, Hmong, Khmer, Lao, Thai, Tagalog or Pilipino, Telugu, Tamil, Malayalam, and other languages of Asia and the Pacific, including the Philippine, Polynesian, and Micronesian languages.

³⁰ As identified by the Legal Aid Foundation of Los Angeles (LAFLA), in addition to Spanish. *See also* Asian Americans Advancing Justice – Los Angeles, *A Community of Contrasts: Asian Americans, Native Hawaiians and Pacific Islanders in Los Angeles* (2013), at 14 – 15, available at http://advancingjustice-la.org/system/files/CommunityofContrasts_LACounty2013.pdf.

³¹ Mines, Richard et al, *California’s Indigenous Farmworkers, Final Report of the Indigenous Farmworker Study (IFS) to the California Endowment* (2010) at 40, available at: <http://www.indigenousfarmworkers.org/IFS%20Full%20Report%20Jan2010.pdf>.

³² See U.S. Census Bureau, *About Language Use*, Appendix A: Primary Language Code List, available at: https://www.census.gov/hhes/socdemo/language/about/02_Primary_list.pdf.

Greek, and German). Oto-manguen languages include Mixteco and Triqui, two of the three languages most commonly spoken among indigenous farmworkers in California.³³

As discussed in further detail below, courts must supplement U.S. Census data in order to accurately assess the language needs of their local litigants. National data sources such as the ACS and the Migration Policy Institute provide a strong starting point, but state and local governmental agencies are collecting more detailed information that the courts should use.

California Department of Education

Language data for all students enrolled in California schools is collected by school districts and is made available to the public on the CDE's DataQuest website.³⁴ Under state and federal law, school districts are required to properly identify, assess, and report all students who have a primary language other than English. All students, upon initial enrollment, are given a Home Language Survey, which may trigger additional and more formal language assessments.³⁵ Through this formal assessment process school districts are able to properly identify students who are English Learners (EL). According to the CDE, an EL is a student "for whom there is a report of a primary language other than English on the state-approved Home Language Survey and who, on the basis of the state approved oral language (grades kindergarten through grade twelve) assessment procedures and literacy (grades three through twelve only), have been determined to lack the clearly defined English language skills of listening comprehension, speaking, reading, and writing necessary to succeed in the school's regular instructional programs."³⁶

According to data posted on the CDE's DataQuest website, there were approximately 1.3 million EL/LEP students enrolled in California schools during the 2012-13 school year. EL students comprised 21.6% of total state enrollment. Although some 60 EL language groups are listed, Spanish is the primary language for 85% of all California EL students. The other top five language groups include: Vietnamese (2.3%); Tagalog (1.4%); Cantonese (1.3%); Mandarin (1.1%); and Arabic (1.0%).³⁷

In addition to identifying the total number of EL students by language group, the CDE website also provides data concerning another language-related student category referred to as Fluent English Proficient (FEP). According to the CDE, FEP students "are the students whose primary language is other than English and who have met the district criteria for determining proficiency in English (i.e., those students who were identified as FEP on initial identification and students redesignated from limited-English-proficient [LEP] or English learner [EL] to

³³ Mines, *supra* note 31, at 40.

³⁴ The CDE's DataQuest website can be found at: <http://data1.cde.ca.gov/dataquest/>.

³⁵ See, Education Code §§ 52164.1. 313; 5 CCR §§ 11307(a), 11511; Equal Educational Opportunities Act (20 U.S.C. §§ 1701 et seq.; Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d); *Castaneda v. Pickard* (5th Cir. 1981) 648 F.2d 989.

³⁶ See, definition of "English Learner (EL) Students (Formerly Known as Limited-English-Proficient or LEP)" under the CDE's Glossary of Terms at: <http://www.cde.ca.gov/ds/sd/cb/glossary.asp#f>.

³⁷ See, DataQuest Report, *English Learner Students by Language by Grade 2012-13*, available at: <http://data1.cde.ca.gov/dataquest/SpringData/StudentsByLanguage.aspx?Level=State&TheYear=2012-13&SubGroup=All&ShortYear=1213&GenderGroup=B&CDSCode=00000000000000&RecordType=EL>.

FEP).³⁸ This category is important because it is used by the CDE and school districts to determine the primary language spoken at home and to what extent students come from homes where English is not the primary language, thus triggering the obligation to provide notices translated in a language a parent or guardian understands. In California, 21.5% of all students are identified as FEP and 43.1% (combined EL/FEP) of all students enrolled in California schools come from homes where English is not the primary language. Spanish remains the largest FEP language group at 72.6%. Following Spanish is: Vietnamese at 3.9%, Tagalog at 3.0%, Cantonese at 2.8%, Mandarin at 2.8%, and Korean at 2.1%.³⁹

EL/LEP and FEP data by language group is readily available for all counties through the CDE's DataQuest website.⁴⁰ This is important to note, because some counties are more heavily EL/FEP impacted than others. The following is a list of some of the more heavily EL/FEP impacted counties and includes the total percentage of EL/FEP enrollment:

- Colusa – 61.7%
- Imperial – 66.8%
- Los Angeles – 52.4%
- Merced – 50.9%
- Monterey – 62%
- Orange – 48%
- San Francisco – 55.8%
- Santa Clara – 52.2%

The CDE DataQuest website provides a reliable source for obtaining both EL and FEP language data for the courts and is especially relevant for the juvenile court divisions. It is important to stress that the FEP data is equally as important as the EL data, in that it provides relevant information concerning the language status of parent and guardians.⁴¹

³⁸ See Definition of “Fluent English Proficient (FEP)” under the CDE’s Glossary of Terms at:

<http://www.cde.ca.gov/ds/sd/cb/glossary.asp#f>.

³⁹ See DataQuest Report, *Fluent-English-Proficient Students by Language by Grade 2012-13*, available at:

<http://data1.cde.ca.gov/dataquest/SpringData/StudentsByLanguage.aspx?Level=State&TheYear=2012-13&SubGroup=All&ShortYear=1213&GenderGroup=B&CDSCode=0000000000000&RecordType=FEP>.

⁴⁰ See DataQuest Report, *Selected Statewide Data Summarized by County for the Year 2012-13*, available at:

<http://data1.cde.ca.gov/dataquest/Cbeds1.asp?Enroll=on&PctEL=on&PctFEP=on&cChoice=StatProf2&cYear=2012-13&cLevel=State&cTopic=Profile&myTimeFrame=S&submit1=Submit>.

⁴¹ It should be noted that the Department of Justice conducted a compliance review of language services of Santa Clara County’s juvenile justice system, which included the Santa Clara County Superior Court. In conducting its review, the DOJ noted with respect to the juvenile justice system, that it was particularly concerned about how critical pre-adjudication decisions were made with respect to LEP stakeholders and “was especially interested in assessing whether language barriers faced by parents affect these key decisions.” U.S. Department of Justice-Office of Justice Programs, Office for Civil Rights, *Compliance Review of the San Jose Police Department* (10-OCR-0109); Santa Clara County Probation Dep’t (10-OCR-0110); Santa Clara County Office of the District Attorney (10-OCR-0111); Santa Clara Office of the Pub. Defender (10-OCR-0112); Santa Clara County Super. Ct. of Cal. (10-OCR-0113); and Santa Clara County Dep’t. of Alcohol and Drug. Servs. (10-OCR-0114)(May 12, 2011).

Local Welfare Agencies

The courts should develop their own mechanisms for data collection regarding LEP litigants and the languages they speak. However, until those mechanisms are fully operational, the courts can and should also look to LEP data collected by welfare agencies. The Dymally-Alatorre Bilingual Services Act requires all local public agencies to determine and maintain statistics regarding the “number and percentage of non-English-speaking people served by each local office, broken down by native language.”⁴² This data should therefore be available from all county welfare agencies.

By way of example, the website of the Los Angeles Department of Public Social Services provides quarterly reports of “caseload characteristics” going back to the year 2003, and up through the third quarter in 2013.⁴³ Each report indicates the primary language of every distinct population receiving different benefits for all of Los Angeles County. For example, the most recent quarter of data available shows that of 562,498 persons receiving CalFresh, or food stamp benefits, 169,991 spoke Spanish, 8,314 spoke Armenian, and 3,691 spoke Chinese as their primary language.⁴⁴ This same data is available for the ten most commonly-spoken languages for LEP recipients of California Work Opportunity and Responsibility to Kids (CalWORKs), General Relief, In Home Supportive Services, and Cash Assistance Program for Immigrants. Importantly, any litigant who receives these benefits will automatically qualify for a court fee waiver.⁴⁵

While the data provided here is from Los Angeles County, all county agencies are required to collect it. The California Department of Social Services (CDSS) collects the county data, by language and program. This report, the ABCD 350, is updated annually in July. It can be found on the CDSS website.⁴⁶ Additionally, all counties are required to provide an annual Civil Rights Plan⁴⁷ to the CDSS. In this plan, counties are asked to determine if there are emerging language populations, to prepare for new immigrants who are likely to be LEP. Courts can obtain these county plans from the local county, or from the CDSS Civil Rights Bureau. This data provides the California courts with a very robust estimate of the language needs of litigants who will qualify for fee waivers based on their receipt of public benefits. Experience indicates that most litigants who do qualify for fee waivers will do so based on receiving such benefits.

⁴² Cal. Gov. Code § 7299.4(b)(4). The data is based on self-reporting by benefits recipients, and therefore may lead to a slight undercount vis-à-vis litigants in the court system due to various factors. For example, undocumented immigrants are prohibited from receiving many of these benefits, but will be litigants in court proceedings.

Similarly, some persons may choose to report English as their primary language so long as they have a child who can interpret when interacting with case workers, but that interpretation would be insufficient in court proceedings.

⁴³ Los Angeles County Department of Social Services, *Information & Statistical Services*, available at: http://www.ladpss.org/dpss/ISS/archives_characteristics_rpts.cfm.

⁴⁴ *Id.*

⁴⁵ Cal. Gov. Code § 68632(a).

⁴⁶ <http://www.dss.cahwnet.gov/research/PG369.htm>.

⁴⁷ <http://www.cdss.ca.gov/civilrights/res/pdf/CR28ANNUALPLAN.pdf>.

Some litigants will instead qualify for fee waivers because their income falls under 125% of the federal poverty line.⁴⁸ While no strict equivalent to this threshold exists to qualify for a particular benefit, a close analog can be found in the Medi-Cal data that is currently being collected pursuant to the Medi-Cal expansion under the Patient Protection and Affordable Care Act. Under those new rules, adults between the ages of 19 and 64 are generally eligible for Medi-Cal if their income is below 138% of the federal poverty line.⁴⁹ This data will likely track similar numbers to those who qualify for fee waivers due to falling under the 125% threshold. This data also must be collected by county welfare agencies, and should be available either via public websites of, or upon request to, those agencies. Other Medi-Cal programs may also provide useful data pursuant to future expansion of interpreter services to higher-income groups, since some Medi-Cal programs have income thresholds as high as 250% of the federal poverty line.

In short, publicly collected data available from local welfare agencies can provide strong estimates of LEP needs in the courts. The LAP can and must include a provision to rely upon this data to ensure that language access needs are met in the most efficient way possible.

Other Local Resources

Courts should also work closely with advocacy organizations and community-based groups, particularly those that are serving refugee/immigrant populations, in order to ensure that courts properly identify and service emerging languages, indigenous languages, and other languages of lesser diffusion. Local organizations provide more detailed information about the *extent* of the demand for language services among the various language subgroups in addition to the particular barriers these individuals face in their efforts to access the courts. Such organizations can also identify or provide the necessary interpreters for these lesser-spoken languages.

PROPOSED LAP LANGUAGE: Relevant parts of the LAP Outline include Section III, Parts A, B, D2.

Each county court system shall immediately create and adopt a plan to develop its own local data regarding LEP litigants and the language they speak. Within a year from the date of this plan's effective date, courts shall publish their initial language assessment and data methodology for feedback by stakeholders.

Until each court is able to rely upon data of its own collection, it shall utilize data provided by such sources as the U.S. Census and the American Community Survey (ACS). Local courts must also supplement Census data with data collected by the California Department of Education (CDE). Federal and state laws require CDE to properly identify, assess, and report all students who have a primary language other than English. Relying on this data, school districts are able to provide school notices in the language a parent or guardian understand. Thus CDE data is another valuable source for accurate reflection of a community's language needs.

⁴⁸ Cal. Gov. Code § 68632(b). While useful now, older Medi-Cal data reflects other variables and thresholds so may not be as precise as the Medi-Cal numbers tracked under the ACA.

⁴⁹ 42 U.S.C. § 1396a(a)(10)(A)(i)(VIII).

Courts shall also rely upon data collected pursuant to the Dymally-Alatorre Bilingual Services Act, Gov. Code § 7299.4(b)(4), by local public agencies that administer public benefits programs. This data provides the languages spoken by most or all county residents who will qualify for fee waivers by virtue of their receipt of a qualifying benefit program pursuant to Cal. Gov. Code § 68632(a). All available data shall be collected for each benefits program referenced in § 68632(a). This data should be the primary factor informing the provision of interpretative services in each language in county courts.

Courts shall also rely upon data collected pursuant to the administration of Medi-Cal. Medi-Cal data provides the languages spoken by all adult county residents who will qualify for Medi-Cal services by virtue of their income falling below 138% of the federal poverty line. It shall be used to determine estimates of the languages spoken by LEP litigants who will qualify for fee waivers by virtue of their income falling below 125% of the federal poverty line. In all cases, local court systems should utilize data that is publicly available through local welfare agencies *or* by working with those agencies to obtain data that may not be posted publicly. Local court systems should exert all reasonable efforts to obtain information by county agencies regardless of whether the data is publicly available. In no case shall a local court system fail to collect such data based upon a conclusion that the data is not publicly posted on a county agency's website.

Even after a court has data of its own collection to rely upon, it must also utilize welfare and Medi-Cal data to ensure that it is accurately collecting its own data and to identify language needs. Finally, local courts shall ensure that they update any data upon which they rely no less than once per year.

Data collection efforts shall be in conjunction with and complement the Judicial Council's requirement to report to the California State Legislature on the use of interpreter services in the courts and to report annual statewide court interpreter expenditures (<http://www.courts.ca.gov/2686.htm>).

III. Clear Policies and Procedures for Identifying Language Needs and Providing Interpreters throughout Court Proceedings

We request that the Judicial Council and local courts create a clear process to facilitate the appointment of interpreters in civil cases. Currently, the provision of interpreters is inconsistent and unpredictable. It differs even from one courtroom within the same courthouse to the next and is highly dependent on the judicial officer and court staff. When requesting an interpreter, litigants are often provided with conflicting information at every turn. Litigants are instructed to make requests in various places – the filing room, the specific department, the interpreter’s office directly, sometimes looping around in circles until they give up. These requests are sometimes granted and sometimes denied without any standards or consistency. Even when granted, interpreters often do not appear, either because the departments do not call for one, or one is unavailable, according to the interpreter’s office.

As consistently documented in testimony and written comments submitted to the Judicial Council, there are often long delays while litigants and attorneys wait for someone to be reassigned from a criminal courtroom. Delays of hours, days, even months are not uncommon even with Spanish-speaking litigants and in domestic violence cases where interpreters are mandated under California Evidence Code section 755. Courts must address these current problems immediately. In some departments, however, we consistently obtain interpreters so we do know it is possible. The process laid out in the plan should include identification of language needs up front and a clear process for providing interpreters without placing the burden on the litigants to follow-up repeatedly and remind the court.

Further, there should be an interim policy put into place immediately for the provision of interpreters for indigent LEP litigants. The current \$13 million Trial Court Trust Fund surplus should be used to begin this process while the LAP is developed. This is well within judicial discretion and must include appropriate training for all court staff and judicial officers. Although our position is that *all* LEP litigants should be provided interpreters for all proceedings, we believe that creating a process for indigent litigants and specific case types is an immediate attainable step as the California Language Access Plan is developed and implemented.

As part of these interim measures, all courts should be required to hire new and/or utilize additional certified (or registered) interpreters for prioritized cases. Prioritized cases should include fee waiver litigants, non-mandated restraining orders, family law custody and visitation, unlawful detainers, guardianship, and conservatorship matters. As mediation may be required in restraining order and related family-law cases, qualified bilingual mediators or certified interpreters should be assigned to handle the related services as well. Utilizing current funds, courts must also eliminate the unreasonable delays of hours, days, or weeks that presently exist in providing interpreters in mandated cases.

Our suggestions for language for an interim policy and for the LAP are detailed below.

PROPOSED INTERIM POLICY LANGUAGE (to be implemented immediately)

1. Identifying Language Needs at Case Inception
 - a. For immediate implementation:
 - i. Revise existing FW-001 Request to Waive Court Fees to include the following line under #1, "Your Information":

"Interpreter needed? yes no
If yes, language(s) requested: _____"
 - ii. Allow for the grant of the initial fee waiver to cover waiving interpreter fees and costs. As such, amend California Rule of Court 3.55 to include interpreter fees and costs as waived by granting the initial fee waiver and revise existing FW-003 Order on Court Fee Waiver to include under #4(a)(1) a bullet point stating, "Court-appointed interpreter fees for party."
2. Ensuring language needs are met throughout the duration of court proceedings
 - a. Scheduling
 - i. Upon scheduling a court proceeding, the scheduling clerk shall immediately check the court file or the case status system for the language needs of the litigants. Accordingly, that clerk shall immediately request an interpreter(s) for the parties.
 - ii. Clerks shall make efforts to schedule interpreters to maximize efficiency.
 1. *NOTE: As a general matter, we do not support the utilization of Spanish-speaking or single language calendars. Although this concept might seem appealing, it could have disastrous consequences and should be avoided. It has the potential of creating separate and different standards, expectations, and results for certain language groups, which could have discriminatory effects. We have also heard accounts that immigration officers have come to court in certain counties where such "language calendars" occur and questioned litigants. If this occurs, it will discourage immigrants from accessing courts and defending their rights. For this reason, we believe that courts should avoid such language calendars.*
 - iii. Also, to increase efficiency in the interim, certain cases requiring interpreters shall be prioritized, including: fee waiver litigants, non-mandated restraining order hearings, family law custody and visitation hearings, unlawful detainer hearings, guardianship hearings and conservatorship hearings. This shall include the provision of language services for mediation and other required ancillary court services.
 - iv. The list above assumes that mandated domestic violence-related cases are already prioritized and interpreters should be provided in these proceedings and ancillary court services without delay.
3. Courts shall transfer, reassign, hire and/or contract with certified (or registered) interpreters to meet the needs and priorities in this section.
4. Training for all clerks and court staff on policy and procedure on interpreter requests
 - a. Courts shall provide immediate training to all court staff on current changes to procedures

- b. Court shall also provide regular language access training and policy updates to all court staff as other changes are implemented.
5. Oversight & Monitoring: an interim complaint and monitoring process shall be created to ensure and evaluate implementation.

PROPOSED LAP LANGUAGE: Relevant parts of the LAP Outline include Section III, Part D1; Section IV, Part A; Section V, Part A.

1. Address Language Needs at the Earliest Points of Court Contact
 - a. Signage located both inside and outside courthouses must be translated and displayed in the top five primary languages spoken in the service area of the particular courthouse. Based on data collected, each county shall provide additional translation(s) for each language spoken by more than 5% or 500 persons, whichever is less, of the population of persons in the service area.
 - b. Courts to prominently display signage notifying litigants of their right to an interpreter. Signs should be displayed in the top five primary languages, as well as any other predominantly spoken languages in that county. Signage to be placed at filing windows, self-help centers, and clerk's/bailiff's desks within individual courtrooms.
 - c. Access to interpreters must be ensured at points of contact outside of the courtroom, including, but not limited to: filing windows, records rooms, self-help centers, family court services, and probate investigators (*See also* Part IV below).
 - i. At aforementioned points of contact, when interpreters are not available to be personally present or the court staff does not speak the litigant's language, the court shall provide language access through remote telephonic or video interpretation.
2. Identifying Language Needs at Case Inception
 - a. Creation of Language Needs Form:
 - i. Create language needs form to be completed at inception of case, along with both the Petition and Response. This form shall be translated into the five primarily spoken languages in the state of California. The first page of the form will gather information on whether the litigant requires an interpreter and in what language. The first page shall be filed with the court. The second page of the form will give the litigant notice of his/her right to an interpreter and provide practical information on where and how he/she can file a complaint regarding language access. The litigant will keep this second page of the form.
 - ii. Upon receipt of a language needs form that requests an interpreter, the court clerk shall place a brightly colored sticker, filling in the language needed, in a prominent location on the court file.
 - iii. The court clerk shall also immediately input into the case status system that the litigant requires an interpreter, and what language is needed.
3. Ensuring language needs are met throughout the duration of court proceedings
 - a. Scheduling
 - i. Upon scheduling a court proceeding, the scheduling clerk shall

immediately check the court file or the case status system for the language needs of the litigants. Accordingly, that clerk shall immediately request an interpreter(s) for the parties.

ii. Clerks shall make to efforts schedule interpreters to maximize efficiency.

1. NOTE: *As a general matter, we do not support the utilization of Spanish-speaking or single language calendars. Although this concept might seem appealing, it could have disastrous consequences and should be avoided. It has the potential of creating separate and different standards, expectations, and results for certain language groups, which could have discriminatory effects. We have also heard accounts that immigration officers have come to court in certain counties where such “language calendars” occur and questioned litigants. If this occurs it will discourage immigrants from accessing courts and defending their rights. For this reason, we believe that courts should avoid such language calendars.*

4. Courts shall transfer, reassign, hire and/or contract with certified (or registered) interpreters to meet the needs and priorities in this section.
5. Training for all clerks and court staff on policy and procedure on interpreter requests
 - a. Courts shall provide immediate training to all court staff on current changes to procedures
 - b. Court shall also provide regular language access training and policy updates to all court staff as other changes are implemented
6. Oversight & Monitoring
 - a. A robust complaint process shall be developed, advertised and made widely available to litigants (*See Parts VI and VII below*).
 - b. The Language Access Oversight Committee shall, amongst other duties, monitor the courts’ written policies and websites (*See Parts VI and VII below*).

IV. Use of Interpreters and Translated Materials Inside and Outside of Courtroom Proceedings

Providing interpreters beyond the courtroom is integral for a litigant to have equal access to the legal system. Failing to do so presents an insurmountable bar to LEP litigants, which effectively shuts them out of their day in court. To remove these barriers, the courts must provide some form of interpretation at all points of contact with LEP litigants.

There should be proper staffing and language services available for LEP litigants throughout the course of their judicial proceedings. The DOJ has articulated that statutory mandates include services outside the courtroom:

Examples of such court-managed offices, operations, and programs can include information counters; intake or filing offices; cashiers; records rooms; sheriffs offices; probation and parole offices; alternative dispute resolution programs; *pro se* clinics; criminal diversion programs; anger management classes; detention facilities; and other similar offices, operations, and programs. Access to these points of public contact is essential to the fair administration of justice, especially for unrepresented LEP persons. DOJ expects courts to provide meaningful access for LEP persons to such court operated or managed points of public contact in the judicial process, whether the contact at issue occurs inside or outside the courtroom.⁵⁰

Although funding is a critical component, it cannot be cited as a barrier to implementing these policies and services. As stated above, the DOJ has made it clear that language access expenses “be treated as a basic and essential operating expense, not as an ancillary cost.”⁵¹ Some other state plans reference “external funding” for language access, and the Judicial Council should explore such opportunities.⁵² One seemingly unique approach is mentioned in Wisconsin’s LAP—the use of workforce money available through the State’s Office of Refugees to create an interpreter training program.⁵³

In carrying out these functions, all courts should work with a local Language Access Oversight Committee (*See* Part VI below).

Translated Documents

The proper translation of state court materials, notices, and forms is also essential to bridging the language divide between the California court system and the LEP populations it serves. All vital documents must be translated for any language spoken by 5% or 500 persons,

⁵⁰Perez, *supra* note 19.

⁵¹*Id.*

⁵² See Office of Language Access, Colorado Judicial Department, *Strategic Plan for Implementing Enhanced Language Access in the Colorado state courts: Blueprint for providing Full access to Justice for Colorado’s Limited English Proficient Court Users* (Colorado LAP) (March 2012), at 5; Wisconsin Director of State Courts Language Access Plan (Wisconsin LAP)(rev. version 11/25/2013), at 7-8, available at: <http://www.wicourts.gov/services/interpreter/docs/laplan.pdf>.

⁵³ Wisconsin LAP at 7.

whichever is less, of the population in the service area of each courthouse. These thresholds for written translations should be established to meet the needs of the extraordinarily diverse populations within California.

Tiered Approach to Language Services

We believe that for certain activities outside the courtroom, courts can and should utilize non-certified interpreters with different tiers of qualifications to meet the needs of litigants. The American Bar Association Standards for Language Access in Courts (ABA Standards) recognize the acceptability of a tiered approach to interpretation and bilingual staffing.⁵⁴ This has been recommended for the California Courts in past reports as well.⁵⁵ As noted in the ABA Standards, some positions may not require the highest level of certification that is needed in a courtroom because simultaneous interpretation and an understanding of complex terminology may not be necessary at those points of contact.⁵⁶ The ABA Standards do, however, recommend that courts assess and identify the language proficiency needed at various points of contact.⁵⁷ They also recommend testing of all bilingual staff and identify the “Interagency Language Roundtable (ILR)” tool, which we cite to, as a best practice.⁵⁸ Alternatively, they list two testing agencies that are commonly used: Alta Language Services and Language Testing International.⁵⁹ The Migration Policy Institute, referenced above in Part II, also has a Language Access: Translation and Interpretation Policies and Practices project that offers some useful resources.⁶⁰ As noted below, courts should work with their local Language Access Oversight Committee, including a variety of stakeholders, to identify the language needs and skills necessary at the various points of contact in the local court (*See* Part VII below).

Hiring of Bilingual Staff

The recruiting and retention of bilingual staff is critical in providing improved language access to LEP court users. This was highlighted in the Findings and Recommendations of the 2008 study of interpreter services in civil cases in California.⁶¹ Bilingual ability should be a *sine qua non* of all future court hiring of all positions involving public contact — these positions should require proficiency in languages commensurate with the needs of local communities. If the Judicial Council believes such an absolute mandate on bilingual hiring is not possible, then

⁵⁴ American Bar Association Standing Committee on Legal Aid and Indigent Defendants, *ABA Standards for Language Access in Courts* (February 2012) (ABA Standards), at 100-2, available at: http://www.americanbar.org/groups/legal_aid_indigent_defendants/initiatives/language_access.html.

⁵⁵ See National Center for State Courts, Research Services, *The Provision of Court Interpreter Services in Civil Cases in California: An Exploratory Study, Final Report* (January 31, 2008), at 6-7, available at: <http://www.courts.ca.gov/documents/ncsc-report.pdf>.

⁵⁶ American Bar Association, *supra* note 54, at 100.

⁵⁷ *Id.* at 101-2.

⁵⁸ *Id.* at 101. The Interagency Language Roundtable (ILR) is a Federal interagency organization that works on addressing language access, language testing, interpretation and translation performance, and other language-related activities. The ILR website is available at: <http://www.govtilr.org/index.htm>.

⁵⁹ *Id.* at 102, footnote 49.

⁶⁰ <http://www.migrationpolicy.org/programs/language-access-translation-and-interpretation-policies-and-practices>.

⁶¹ See National Center for State Courts, Research Services, *The Provision of Court Interpreter Services in Civil Cases in California: An Exploratory Study, Final Report* (January 31, 2008), at 4, available at: <http://www.courts.ca.gov/documents/ncsc-report.pdf>.

we recommend the approach Delaware has adopted. First, Delaware identifies positions where bilingual capacity is required and will list that as a mandatory requirement of the job. In other positions, there is a hiring preference for bilingual staff.⁶² Local courts should work with the stakeholders and committees recommended in Part VI of these comments to identify where language capacity is essential and for what languages.

Assessment, Transfer, and Training of Existing Qualified Bilingual Court Staff

Until sufficient staff can be hired, all courts should do an assessment of the language capacity already available in the courthouse, especially in Spanish. While California is a very diverse state, we know that the majority of LEP individuals are Spanish speakers. We believe courts may already have Spanish or other language capacity that is not being utilized to the fullest. For instance, we have observed criminal courtrooms where staff, such as bailiffs and judicial assistants, speak Spanish. These same courtrooms have Spanish-speaking interpreters assigned to them and available to assist with introductory remarks and other preliminary communication. Down the hall, however, restraining order and unlawful detainer courtrooms have no staff who can communicate with Spanish speakers and other LEP individuals.

Courts should survey, test, and identify bilingual staff and transfer them to civil courts, clerk's offices, and other public contact locations to increase language access immediately. The assessment of language ability should be standardized, thorough, and extensive. Some resources for testing as recommended by the ABA Standards are noted above in this section. Different levels of oral and written ability should be tested and tiered with pay differentials. The court may also want to explore encouraging current court staff to improve and develop language skills by offering language classes and other incentives for professional growth. Staff should be placed strategically and utilization of language skills should be part of their job duties and expectations. Bilingual staff should be designated on court-wide phone lists to assist court users as needed. Standardized resources, including glossaries and training curriculum to be administered on a regularly basis, should be developed and updated.

Utilizing Technology and Translated Materials for Introductory Remarks and General Information

Courts should utilize technology to provide assistance with introductory remarks and court instructions in the courtroom and the hallway. The simplest approach might be to translate instructions into other languages and provide them to all litigants. However, many litigants may not be literate in their native language, so courts should also use other technology. Headsets can be used in courtrooms without disrupting proceedings. Video remote or videos can also be used with or without headsets for interpretation. By utilizing various applications, courts could provide or play pre-recorded messages on a variety of devices.

⁶² State of Delaware Administrative Office of the Court, Court Interpreter Office, *Language Access Plan* (Delaware LAP) (August 2013), at 9, available at: <http://courts.delaware.gov/forms/download.aspx?id=64928>.

Language Posters and Cards in Courtrooms

All filing rooms, courtrooms, and other public areas should have the means to identify less easily recognized languages. To identify such languages, these areas should have language line posters and brochures available that allow a person to point to their language when court staff cannot identify the language. Various language line services provide their customers with posters and brochures that list a variety of languages. For instance, LanguageLine Solutions' (LLS) poster has a tag line that says a free interpreter will be provided in the 20 most common languages. In addition, LLS provides a brochure that has over a hundred languages listed. LEP individuals can simply point to the line that reflects their language. Court personnel will then know the language as it is listed in English next to the tag line. All courtrooms should post and have available such tools at the judicial assistant's desk.

To increase language access beyond the courtroom, we recommend the following be incorporated into the LAP.

PROPOSED LAP LANGUAGE: Relevant parts of the LAP Outline include Section V, Parts A, B; Section VI, Parts A, B, C, E; Section VII, Parts A, B, C.

The Court shall adopt a tiered language services system based on the knowledge, skills, and abilities needed at each point of contact, as follows:

Court and Ancillary Court Proceedings

(See Appendix Below for Interpreter Qualification Levels)

1. A certified or registered court interpreter must be provided for all courtroom proceedings *and* activities that are ancillary to courtroom proceedings but nevertheless mandatory for litigants. This includes, but is not limited to, trials, mandated mediation, settlement conferences, and parental interpretation in juvenile matters.
2. If a certified or registered interpreter cannot be obtained within a reasonable amount of time, then the court may contract with a qualified non-certified/registered interpreter. The minimum qualification level should be at least Level 3 plus on the Interagency Language Roundtable Skill Level descriptions for Interpretation Performance. *See* <http://www.govtilr.org/>.
3. If none of the interpreters above can be obtained, Video Remote Interpreting (VRI) may be utilized in specific circumstances only. VRI must be used in accordance with a well-designed protocol, similar to the limitations prescribed in <http://courts.ca.gov/documents/CIP-ASL-VRI-Guidelines.pdf>. VRI must be limited to non-trial or evidence-gathering settings.
4. Where a live interpreter is unavailable, courts must provide language assistance with introductory remarks, court instructions, and pre and post-proceeding instructions through translated written materials and/or utilizing available technology
 - a. Through the local Language Access Oversight Committees, local courts should meet with stakeholders, including legal services providers, self-help staff, and

others to develop a plan to provide such services and identify appropriate ways to use technology (*See* Part VI below).

Interpreters Outside the Courtroom

1. Outside of the courtroom, the court will provide certified or *qualified* uncertified interpreters at all points of contact with LEP litigants. Unlike translations of written documents, oral interpretation services should not be subject to any thresholds for when they should be offered but be available “on demand” and free of charge.
2. The court must utilize the Department of Justice’s hierarchy of language services⁶³ to provide interpretive services outside the courtroom setting. In accordance with this hierarchy:
 - a. The first choice is always to use bilingual staff to provide services directly in the preferred language.
 - b. If bilingual staff is unavailable at a particular location, court staff from another location should be brought in to assist as a second choice.
 - c. While the court must strive to provide in person interpretation, the third choice is to use VRI to draw on interpreters from other courts.
 - d. If all the options above are exhausted, the fourth choice is to use a *qualified* volunteer.
 - e. Finally, if all other options are unavailable, telephonic or language line service may be used as the last resort.
3. Qualified bilingual staff will be located at all filing windows and self-help centers. Additionally, in each of the civil courtrooms either or both the bailiff and clerk should be bilingual whenever possible.
4. The use of friends or relatives as interpreters should be highly discouraged, and minors should never be used.
5. The minimum level of qualification for interpretation outside of courtroom proceedings should be at least Level 3 on the Interagency Language Roundtable Skill Level descriptions for Interpretation Performance. *See* <http://www.govtirl.org/>. A Level 3 interpreter is able to interpret consistently in the mode required by the setting, provide renditions of informal as well as some colloquial and formal speech with adequate accuracy, and normally meet unpredictable complications successfully. Be able to convey many nuances, cultural allusions, and idioms, though expression may not always reflect target language conventions. Adequately deliver with pleasant voice quality. Hesitations, repetitions or corrections may be noticeable but do not hinder successful communication of the message. Performance reflects high standards of professional conduct and ethics.

⁶³ For sample LAP Plans that use the Department of Justice’s hierarchy, available at: <http://iri.lsc.gov/engaging-clients/language-access/planning-evaluation/sample-plans>.

Placement of Bilingual Staff

Moving forward, the court should only hire staff that is bilingual in positions requiring public contact commensurate with the needs of local communities. This should dramatically increase capacity for interpretation while reducing the need to rely on costly interpretation services by non-court personnel. Additionally, bilingual staff should be prioritized in civil proceedings and pulled from the criminal courts if necessary. In criminal court bilingual staff is less essential as all individuals are represented by counsel and provided with interpreters.

Assessment and Training of Bilingual Staff

1. All bilingual staff must be tested through a standardized process before being instructed to utilize their language skills with court users. Such testing should include various levels designating oral and written proficiency. Staff shall be compensated accordingly with corresponding pay differentials. Utilization of language skills shall be made part of all job duties for staff with public contact.
2. Qualified bilingual staff shall be designated on the court-wide phone list to be called upon to assist in appropriate situations. Guidelines and protocols shall be developed and trainings provided to all staff.
3. All bilingual staff shall be required to attend regular trainings regarding how to appropriately utilize their language skills with court users. The Office of Language Access shall develop standardized training curriculum and language resources, such as glossaries and other language-specific resources (*See* Part VI below).

How to Determine when Language Services Are Needed

1. The court shall be responsible for identifying the need for language services. At the point of contact, the court employee shall notify the court user of their right to an interpreter. If a court user speaks a language other than English, the court will use a language identification card to determine the litigant's primary language and particular dialect, and any other languages she/he may speak fluently. If the court is not able to determine the client's primary language, the court will use a telephonic interpreter service to identify the litigant's language.
2. In each filing window and courtroom the court must put up "I Speak" posters.⁶⁴ This will give court staff the ability to easily identify the LEP individual's language. In addition, at each location brochures explaining language services, which list dozens of other languages, must be available allowing the LEP individual to point to their language to

⁶⁴ Samples of these posters available at: <http://www.dhs.gov/xlibrary/assets/crcl/crcl-i-speak-poster.pdf>, or <http://www.lep.gov/ISpeakCards2004.pdf>, <http://www.courts.alaska.gov/language/poster-flags.pdf>.

identify it for the court staff.

3. The court should have “I Speak” cards readily available for LEP litigants to pick up at the clerk’s office.⁶⁵ Handing them out to litigants will ensure that no matter where in the courthouse a litigant is, s/he will be able to let court staff know the language the litigant speaks.

Centralized Quality Control

Certified court interpreters must be able to provide simultaneous interpretation. Staff and court volunteers should be qualified to provide consecutive translation at a minimum. The Federal Court Interpreter manual provides detailed guidelines on certification and qualifications for interpreters.⁶⁶ Quality control for all California courts should lie within the Office of Language Access, discussed below. This will ensure the same standard is being applied across all California courts. Along the same lines, a centralized resources and training curriculum should be developed and maintained. Attached are a number sample word banks and glossaries for reference.

Translation and Signage

The court must prioritize the translation of all signs that let LEP litigants know that they have a right to an interpreter.

Multilingual Court Information and Signage

Notification of Court-Provided Language Services

1. Courts must provide visible signage indicating the litigant’s right to language services.⁶⁷ The following website <http://www.masslegalservices.org/content/your-right-interpreter-poster-editable-version>, allows for the creation of a customized sign. This should be placed in all public areas and in each courtroom
2. Courts must post signs throughout the court that indicate “the court serves all people. It does not matter where you were born or what language you speak.”
3. For each notice the court sends out to litigants, the court must include language that indicates the court’s obligation to provide free interpretation services. The notice should also include the LEP coordinator’s number as well as the LEP specific call-in numbers (described below).

⁶⁵ A sample of these can be found at: <http://www.dss.cahwnet.gov/civilrights/PG584.htm> or <http://www.cultureconnectinc.org/ispeak.html>.

⁶⁶ See <http://www.uscourts.gov/uscourts/FederalCourts/Interpreter/federal-court-interpreter-orientation-manual.pdf> and <http://lri.lsc.gov/engaging-clients/language-access/language-assistance/oral/staff-language-skill>.

⁶⁷ See <http://www.masslegalservices.org/content/your-right-interpreter-poster-editable-version>, which allows for the creation of a customized sign.

Dissemination of Multilingual Courtroom Instructions

Many courtrooms have standard instructions they provide litigants daily at the initiation of proceedings. It is critical for LEP litigants to understand these instructions to be able to proceed with their cases. For these sorts of courtroom instructions, the court should pre-record the instructions in multiple LEP languages, starting with those in highest demand, and make the interpreted instructions available either through the use of headsets or kiosks.

Multilingual signage providing direction to LEP court users to courtrooms, programs, and services

Multilingual posting signs should be provided in intake areas and other entry points providing direction to LEP persons to courtrooms, programs, and services.

Multilingual court information phone numbers

The court should identify the languages in the highest demand locally and set up specialized numbers that a litigant can call to get information, such as their trial date or case status, other than the general court numbers. This will increase LEP access and reduce the time staff spends identifying the language. This will also allow for early identification of language needs.

Translation of Documents

The court should at the very least translate all vital documents for each LEP language group that comprises at least 5% or 500, whichever is less, of persons eligible for or likely to be directly affected by the court's services. A sample translation process manual can be found at <http://www.kingcounty.gov/operations/policies/executive/itao/inf142aao.aspx>.

A document should be considered vital and need to be translated if it contains information critical for obtaining access to court or it is required by law. Some examples of vital documents that courts may need to translate to ensure that LEP individuals are provided meaningful access can include applications, court forms, consent or complaint forms, notices of rights, and letters or notices that require a response.⁶⁸ In translating forms, translated text should be written alongside the original English text, thus facilitating litigants understanding and completing forms in English. The statewide Language Access Oversight Committee in conjunction with the local Language Access Oversight Committees should identify and prioritize translation.

Vital documents for the court must include fee waiver and supplemental fee waiver forms and hearing notices. For all other languages, the court must make sight translation available.⁶⁹ Court forms in areas of law that have a high number of pro per litigants, such as family law and

⁶⁸ U.S. Department of Justice, *Language Access Planning and Technical Assistance Tools for Courts*, February 2014, available at: http://www.lep.gov/resources/courts/022814_Planning_Tool/February_2014_Language_Access_Planning_and_Technical_Assistance_Tool_for_Courts_508_Version.pdf.

⁶⁹ Dymally-Alatorre Act, Gov. Code §§ 7290, 7294.5, and 7295.

unlawful detainees, should also be translated as a priority. Any material explaining services available, such as self-help services, must be translated into any non-English language spoken by 5% or 500 persons, whichever is less, in the service area of the specific courthouse. The court should also accept for filing all pleadings completed in non-English languages.

With the balance of interests at play in the current definition of “vital documents” and to this end, the inclusion of in-language “taglines” in at least 15 languages should be utilized for some documents and notices. Taglines are a low-cost way to inform litigants of the availability of language services.

Work with Local Language Access Oversight Committees

In carrying out all these functions local courts should work with a local language access oversight committee comprised of stakeholders including legal service providers, community-based organizations and representatives of local ethnic communities (*See Part VI below*).

APPENDIX – Interpreter Qualifications

1. Certified Court Interpreters – Interpreters that have successfully passed the Bilingual Court Interpreter Certification Exam or the exam for American Sign Language and have met all requirements as prescribed the Judicial Council and Administrative Office of Courts. Court interpreter certification exams are administered: American Sign Language, Arabic, Eastern Armenian, Cantonese, Khmer, Korean, Mandarin, Portuguese, Punjabi, Russian, Spanish, Tagalog, and Vietnamese.
2. Registered and non-certified qualified interpreters – Interpreters in languages spoken for which there is no state-certifying exam, or have not passed the Bilingual Court Interpreter Certification Exam. These interpreters have passed the Written Exam and Oral Proficiency Exams in both English and their non-English language and have demonstrated the ability to interpret at a Level 3 plus interpreter performance level on the Interagency Language Roundtable Skill Level descriptions for Interpretation Performance. See <http://www.govtilr.org/>. And have successfully passed an exam on interpreter ethics.

Level 3+ (Professional Performance Plus): Able to interpret accurately and consistently in the mode (simultaneous, consecutive, and sight) required by the setting and provide generally accurate renditions of complex, colloquial and formal speech, conveying most but not all details and nuances. Expression will generally reflect target language conventions. Demonstrates competence in the skills required for interpretation, including command of both working languages, their cultural context, and terminology in those specialized fields in which the interpreter has developed expertise. Good delivery, with pleasant voice quality, and few hesitations, repetitions, or corrections. Performance reflects high standards of professional conduct and ethics.

<http://www.govtilr.org/Skills/interpretationSLDsapproved.htm>

3. Lesser skilled interpreters – Interpreters that demonstrate the ability to interpret at the Level 3 performance level on the Interagency Language Roundtable.

Level 3 (Professional Performance): Able to interpret consistently in the mode (simultaneous, consecutive, and sight) required by the setting, provide renditions of informal as well as some colloquial and formal speech with adequate accuracy, and normally meet unpredictable complications successfully. Can convey many nuances, cultural allusions, and idioms, though expression may not always reflect target language conventions. Adequate delivery, with pleasant voice quality. Hesitations, repetitions or corrections may be noticeable but do not hinder successful communication of the message. Can handle some specialized subject matter with preparation. Performance reflects high standards of professional conduct and ethics.

<http://www.govtilr.org/Skills/interpretationSLDsapproved.htm>

4. Bilingual – Language skilled individuals that do not meet the interpreter performance requirements of a Level 3 interpreter on the Interagency Language Roundtable.

V. **Training of Court Staff** [Section IX of LAP Outline]

To ensure statewide compliance with the legal requirements, the language access plan must do more than lay out the law and requirements that govern language access; the plan must also establish the programs and guidelines to be used for the training of court staff on language access services, requirements, and mandates in order to ensure the delivery of high-quality and timely language services to LEP litigants. Oftentimes, judges, clerks, court administrators, staff, and other court-appointed professionals want to help the LEP litigant that comes to their courthouse, but they do not have the proper tools or knowledge. At the 2012 National Center for State Court Summit (NCSC) on Language Access in the Courts, “Training Judges, Clerks, and Interpreters” was chosen the most often as a priority area by the various judicial leaders present at the summit from across the nation.⁷⁰

Ongoing training on language access ensures that court staff receives the support they need to properly serve LEP litigants while also identifying areas where additional education or guidance is necessary. In its March “Access Brief,” the Center on Court Access to Justice for All reinforced the importance of training court staff about language access services, noting that “judges and court staff need education about, for example, identifying individuals in need of language access services, appropriately assisting LEP self-represented litigants with their cases, and cultural differences that may affect an LEP self-represented litigant’s understanding and behavior.”⁷¹ We also anticipate that technology will be a means of providing language services, whether it is through the use of headsets, audio recording, or video remote interpreting. Education on the use of this technology is critical to ensuring its effective use, particularly for court staff that has little to no experience with these tools.

Furthermore, training on cultural sensitivity and norms will better prepare court staff for the expected culture change that will result as language access becomes routine. The burden of acquiring language services should not fall on the LEP litigant. Instead, court staff should be proactive about identifying the needs of LEP litigants and providing the necessary services. To ensure that this happens, training should encourage court staff to actively approach LEP litigants who may feel intimidated by the court process or unaware of the options to seek language services. Any training should emphasize customer service and the importance of being cordial and patient with LEP litigants.

Below are topic areas that the training and education efforts should include, although it is not an exhaustive list:

- Background on language access issues, including review of legal requirements, mandates and policies (identified above);
- Review of California’s language access plan;

⁷⁰ See National Center for State Courts, *A National Call to Action: Access to Justice for Limited English Proficient Litigants, Creating Solutions to Language Barriers in State Courts*, (2012), at 16, available at: http://www.ncsc.org/services-and-experts/areas-of-expertise/language-access/~/_media/files/pdf/services%20and%20experts/areas%20of%20expertise/language%20access/call-to-action.ashx.

⁷¹ See Center on Court Access to Justice for All, *Access Brief 5: Language Access & Self-Represented Litigants*, available at: <http://ncsc.contentdm.oclc.org/cdm/ref/collection/accessfair/id/339>.

- Processes for identifying LEP court users;
- The various services that are available to LEP litigants, including technological assistance (interpreters, bilingual staff, translated materials, websites, video remote interpreting, headphones);
- Processes for the appointment of interpreters;
- Review of the role of interpreters;
- Review of interpreter code of ethics;
- Legal services and community-based organizations that court staff can refer to for more information on how to serve LEP individuals;
- Cultural competency and awareness trainings on working with specific populations;
- Training on how to effectively work with interpreters for all staff;
- For non-certified bilingual court staff, training on how to effectively work as an interpreter

In addition to highlighting the importance of providing training to court staff, the language access plan must also establish the standards by which courts will have to comply with to ensure that staff is being adequately and consistently trained. This includes that there be mandatory trainings provided on a regular basis to court staff and a requirement that courts report the number of trainings their staff attended, who led the trainings, and the materials that were reviewed at such trainings. Such oversight will not only ensure that court staff is complying with the requirements of the language access plan, but also that court staff is receiving all the support that it needs in providing language services.

VI. Language Access Management

A. Creation of an Office of Language Access (OLA)

The Judicial Council should create an Office of Language Access (OLA) to ensure implementation of the LAP. The process of making language access a reality will take time and will certainly be a challenge. Without an office at the state level with power to enforce the plan sufficient progress may not happen. The OLA would expand, complement, and integrate with the existing work and functions of the Court Interpreters Program and Court Interpreters Advisory Panel. The OLA should also have significant input from community stakeholders. Some OLA functions can include identifying language needs, providing technical assistance in assigning and calendaring interpreters for court proceedings, coordinating translations of court forms and other “vital” documents, providing trainings, developing training curriculum, methods and standards for VRI and other technology, and monitoring progress and funding needs. It could also help coordinate expanded testing, certification and scheduling of different tiers of interpreters, court staff and independent contractors.

Further, the LAP will require extensive training for all court staff and court-appointed professionals. Training topics include implementation of the new plan, how to be an effective interpreter, how to work with an interpreter, and cultural competency. Cultural differences and how they might impact such interactions may need to be explored for various ethnic groups. As a statewide centralized office, the OLA could develop training curriculum and make materials available throughout the state. This would prevent each court from having to develop such trainings independently.

It is also worth noting that other state courts have developed similar entities to assist with these functions. For example, Colorado has a centralized coordinating office that oversees language access services.⁷² In addition, they rely on a language access committee to provide feedback and guidance to the office.

B. Language Access Oversight Committee (LAOC)

The Judicial Council should also create a new statewide Language Access Oversight Committee (LAOC), which would provide critical support to the OLA. It would include legal service providers and others with experience in court services and civil rights. The current working group has very limited representation from the legal services community. The legal services community has extensive experience representing clients in court and assisting indigent litigants in court-based self-help centers. In addition, these same organizations have attorneys with substantial experience in civil rights law, especially in the area of language access. The LAOC must be expanded to include more individuals with such experience. As mentioned above, Colorado and Wisconsin have used these types of diverse committees to provide input on their language access efforts. Colorado’s committee includes judges, court personnel, and external

⁷² Office of Language Access, Colorado Judicial Department, *Strategic Plan for Implementing Enhanced Language Access in the Colorado State Courts: Blueprint for providing Full access to Justice for Colorado’s Limited English Proficient Court Users* (Colorado LAP) (March 2012), at 5.

stakeholders.⁷³ Wisconsin notes that their “Committee to Improve Court Interpreting” also included members of the “Hispanic, Hmong, and Deaf and hard of hearing communities.”⁷⁴ This type of approach—including impacted communities on committees—is critical to success and community buy-in.

In addition, the committee should be used to monitor and ensure compliance with the new plan. We recommend quarterly meetings for the first two years, then annual hearings to discuss successes and failures, annual reports to highlight progress and offer recommendations, assignment of monitors to observe compliance in the courts, and implementation of a questionnaire or survey to LEP litigants for direct feedback. There should also be extensive data collection to provide quantitative analysis of the effectiveness of the plan.

C. Creation of Local Language Access Oversight Committees

Local courts should also set up their own oversight committees to develop and implement language services consisting of court staff, self-help center staff, interpreters, and community stakeholders including legal services providers, and other organizations working with various ethnic communities. This committee could help local courts adapt the AOC’s Language Access Plan to the needs of their specific counties. The tasks of such a committee would include identifying local language needs and emerging languages, identifying critical points of contact and the level of language proficiency needed at each point, providing feedback on the plan implementation and creating a bridge to various ethnic communities. The activities of such local LAP committees would mirror the statewide committee but with a local county focus.

PROPOSED LAP LANGUAGE: Relevant parts of the LAP draft outline include Section XI, Parts A, B, E.

1. The Judicial Council shall create a new statewide Office of Language Access (OLA) and provide adequate staff responsible for ensuring that local courts and the state meet the requirements of civil rights laws with regards to language access for LEP individuals and that LEP individuals receive high quality service and equal access in all programs and services throughout the state.
 - a. The OLA would expand, complement, and integrate with the existing work and functions of the Court Interpreters Program and Court Interpreters Advisory Panel.
 - b. The duties of the State OLA shall include, but are not limited, to:
 - i. Implementation of the Judicial Council’s adopted statewide Language Access Plan
 - ii. Monitoring local courts and their services to LEP individuals
 1. Annually reviewing LEP services and publishing a report (working with the Language Access Oversight Committee)
 2. Handling and resolving complaints regarding language access

⁷³ *Id.*

⁷⁴ Wisconsin Director of State Courts, *Language Access Plan* (Wisconsin LAP)(rev. version 11/25/2013), at 7, available at: <http://www.wicourts.gov/services/interpreter/docs/laplan.pdf>.

- iii. Providing technical assistance and training to all court personnel on language access
- iv. Coordinating the provision of interpreter services throughout the state, including:
 1. Testing & certification
 2. Scheduling
 3. Coordinating use of technology, including video remote services
- v. Ensuring the adequacy of bilingual court staff and volunteers
- vi. Working with stakeholders, including legal services providers, to identify the language needs of public contact positions
- vii. Testing and certification of the bilingual capacity of employees by:
 1. Developing tools
 2. Contracting with certification agencies such as those recommended in the ABA Standards⁷⁵
- viii. Working with stakeholders, including legal services providers, to identify “vital” documents and ensuring translation of all such documents as expeditiously as possible
 1. Coordinating and providing translations of other documents
- ix. Explore funding opportunities for language access

2. Language Access Oversight Committee (LAOC)

- a. The committee shall meet at least quarterly and more often as needed to ensure implementation of the language access plan.
- b. The committee shall include a substantial number of legal services providers from throughout the state.
- c. The committee shall conduct public hearings throughout the state a year after implementation begins to assess the ongoing needs and as often thereafter as deemed necessary by the committee.
- d. After such hearings, the committee shall annually update the plan and identify areas of need or improvement and publish a report with recommendations.
- e. The committee shall work with the Court Interpreters Program and Court Interpreters Advisory Panel to enhance data collection and reporting to assess the effectiveness of the statewide Language Access Plan.

3. Local Language Access Oversight Committees

- a. Local courts must also set up committees to help plan and monitor language access implementation.

⁷⁵ American Bar Association, *supra* note 54, at 100-2.

- i. Tasks include identifying local language needs and emerging languages, identifying critical points of contact and the level of language proficiency needed at each point, providing feedback on the plan implementation and creating a bridge to various ethnic communities.
 - ii. Activities will mirror the statewide committee but with a local county focus.
- b. The committee should include court personnel including interpreters, legal services providers, self-help center staff, and other community-based organizations that serve LEP individuals.

VII. Monitoring: Complaint Processes

In addition to the committees and proposed structure noted above, the AOC should consider a variety of mechanisms used by other states to monitor compliance. Colorado has adopted several interesting features: an interpreter discipline policy⁷⁶, a complaint process⁷⁷, an “audit unit” that monitors compliance, and “managing interpreters”⁷⁸, which appear to be similar to language access coordinators. Washington State has adopted a very thorough process for handling complaints against interpreters. Ohio has posted a one page outline of its complaint process for denial of language access and a complaint form in 13 languages on its website.⁷⁹

A consistent, transparent, and efficient statewide complaint mechanism will provide individual litigants with the means to ensure language-sensitive services in their matters. Moreover, transparency, through publication of results, will help clarify standards for interpreters, translators, and the courts. Such mechanisms should also be time and cost-efficient to ensure rapid resolution of language barriers in the court in a way that allows litigants to promptly resume court matters while not administratively or financially overburdening the courts. Overall, this should lead LEP litigants to expect and receive consistent language access services across all California courthouses, regardless of location or type of case.

Both users and providers of language access services in the courts should expect predictable, transparent, and prompt resolution of language access problems. Language access services should be included as part of court employee duties and should be written into employee manuals. Failure to provide proper services should be reviewed in a complaint process, and adverse decisions should lead to verbal or written warnings, and ultimately cause for misconduct.

The Judicial Council should appoint at least one Language Access Coordinator in each court, as done in Colorado, to work with the OLA to maximize efficiency and fully utilize available interpreters. Language Access Coordinators should have the power to make assignments and transfers as needed, and determine the roster of interpreters in a given court. This is analogous to the court’s current treatment of ADA services, which are no less mandated than language access services. Language Access Coordinators should manage and oversee interpreter services, particularly compliance with standards of interpretation and fulfillment of training, certification requirements, and maintenance of a roster of interpreters for the courthouse. Language Access Coordinators should also keep a log of complaints and decisions and cooperate with the OLA in investigating complaints. The Language Access Coordinator must have the authority to order corrective action that must be followed when finding a violation of language access rights under the Language Access Plan.

⁷⁶Office of Language Access, Colorado Judicial Department, *supra* note 52, at 8.

⁷⁷*Id.* at 9.

⁷⁸*Id.* at 14.

⁷⁹ Ohio’s complaint forms, available at:

<http://www.supremecourt.ohio.gov/JCS/interpreterSvcs/compliance/forms/default.asp> and resolution process, available at: <http://www.supremecourt.ohio.gov/JCS/interpreterSvcs/compliance/Process.pdf>.

The Complaint Process

Local courts should handle all complaints relating to language access in the courts with an appeal to the AOC. If a party wants to complain about local court-wide practices or policies then original jurisdiction would lie with the state level OLA. The AOC should create parallel complaint processes: one for complaints about the quality of interpreters and another about the denial of language services. These processes should be implemented uniformly statewide. The state should create a simple, easy to use form (translated into multiple languages) that can be used by all courts to track and handle complaints in their court. Each local court's LAOC should accept, investigate and resolve all such complaints.

Litigants, lawyers, mediators, court staff, and judges should be allowed to file complaints. The Judicial Council and local courts should provide forms both in paper and online. The complainants should be able to specify information such as the case number, courtroom, the parties involved, and when they experienced the problem.

Complaints Regarding Quality of Interpretation or Translation

For complaints filed against interpreters or translators for inadequate services, the OLA should then review the written complaint, personally interview the interpreter/translator and/or the complainant, then consult with the Language Access Coordinator. Any interview with the complainant will include court-provided interpretation, and can be either in person or via phone, at the complainant's request. Following investigation the OLA should issue a written decision of (1) No offense, (2) Inadequate/unprofessional service, (3) Grossly inadequate/unprofessional, or repeat offense of (2), or (4) Repeat offense of (3). The decision should be issued within 14 days of the filing of the complaint. The decision should indicate the finding, remedies for the complainant, and punishment imposed on the interpreter, if applicable. The decision should be translated into the complainant's language and mailed to the litigant; complainants should receive the decision within 21 days of filing the complaint. Appeal should be available if filed within 14 days. The AOC will handle the appeals of OLA decisions in a hearing that complainant may attend. Complainant has a right to a court-provided interpreter in these hearings.

Remedies should include replacing the interpreter or translator for the matter concerned. The interpreter/translator should be replaced regardless of the outcome of the investigation, unless no other interpreter/translator is available in the complainant's language. If the OLA finds that the interpreter/translator offered inadequate services, he should warn the interpreter/translator. If the OLA finds that the interpreter/translator provided grossly inadequate services, or has been found to provide inadequate services for a second time, he should order the Language Access Coordinator to temporarily remove the interpreter/translator's name from the court roster until the interpreter/translator completes a re-training program or otherwise demonstrates cure. If an interpreter/translator is found to have again provided grossly inadequate services, or is found a third time to have provided inadequate services, the OLA should order permanent removal of the interpreter/translator from the court roster.

If a complainant is not satisfied with the results of the investigation, they should be advised of their right to appeal the finding to the AOC for investigation and also other civil rights

enforcement tools, such as the right to file a discrimination complaint with the U.S. Department of Justice.

Washington State has a very thorough process for handling these types of complaints which can serve as a model. Complaints are handled by the Washington Court Interpreter Commission,⁸⁰ which investigates and disposes of the complaints,⁸¹ and can impose a range of sanctions on interpreters from an advisory letter to termination.⁸²

Complaints Regarding Denied or Untimely Provision of Language Access Services

The AOC should create a separate complaint process to enforce adequate provision of language access needs in the courts. The process to file the complaint should mirror the one described above.

The Office of Language Access in a given court should then interview both the court person responsible for providing service and/or the complainant. Any interview with the complainant will include court-provided interpretation, and can be either in person or via phone, at the complainant's request. Following the interview, the OLA should issue a written decision of (1) No offense, (2) Inadequate and/or discriminatory service, (3) Grossly inadequate/discriminatory, or repeat offense of (2), or (4) Repeat offense of (3). The decision should be issued within 14 days of the filing of the complaint. The decision should indicate the finding, remedies for the complainant, and punishment imposed on the court person, if applicable, and a corrective action plan. The decision should be translated into the complainant's language. Appeal should be available if filed within 14 days. The AOC will adjudicate the appeals of OLA decisions.

Remedies should include immediate provision or repetition of service and should be applied regardless of the decision of the OLA. If the OLA finds inadequate or discriminatory provision of services, the court person will be issued a warning. If gross inadequacy or discriminatory service or a second finding of inadequate or discriminatory service applies, the person will receive a written reprimand and must attend language access training. If a second finding of gross inadequacy/discrimination or a third finding of inadequacy/ discrimination applies, the court will have grounds for terminating that employee for misconduct.

If a complainant is not satisfied with the results of the investigation, they should be advised of their right to appeal the finding to the AOC for investigation and also other civil rights enforcement tools, such as the right to file a discrimination complaint with the U.S. Department of Justice.

⁸⁰ *Washington Court Interpreter Disciplinary Process*, Washington Court Interpreter Commission, May 2012, available at:

http://www.courts.wa.gov/programs_orgs/pos_interpret/content/pdf/InterpDiscRules%20Final%20Aprvrd%20May%202012.pdf.

⁸¹ *Id.* at 7-8.

⁸² *Id.* at 17-8 (an advisory letter is not a "sanction"); 25-9.

Complaints Against Courts for Systemic Denial of Language Access

The AOC should also allow for complaints against a court's systemic failure to provide language access services. The AOC's Statewide OLA should review, investigate, and adjudicate such complaints. We recommend a public hearing be held within 30 days of the filing of the complaint, and interpreters should be provided for complainants. Complainants must show a policy or practice of denying language access services. Following the hearing, the Administrative Director should issue a written decision ruling (1) No offense, (2) Systemic violation of language access plan provisions, (3) Repeated systemic violation of language access provisions. The decision should be issued within 14 days of the filing of the complaint. The decision should indicate the finding, remedies, and punishment imposed on the OLA, if applicable, and a corrective action plan. The decision will be translated in the complainant's language and mailed to the complainant within 7 days of the decision.

If a violation or gross violation is found, remedies should include immediate provision or repetition of service. An OLA found to have violated the language access plan should be required to attend training, and the AOC should appoint an independent observer to monitor the court periodically for the next 180 days. A repeat violation should result in removal of the Language Access Coordinator from that position.

Appeals of AOC Decisions

A complainant should be advised in writing of any AOC decision. Complainants should also be given instructions of their rights generally to file other complaints of discrimination, such as with the U.S. Department of Justice.

Complaint Process Data and Information

The AOC should keep a written record of complaints filed, decisions, and appeals. Written decisions should be published on the AOC website for public view. All records should be reviewed quarterly for the first two years of the administration of the language plan, then annually to identify problems with implementation and corrective action.

PROPOSED LAP LANGUAGE: Relevant parts of the LAP draft outline include Section VIII, Parts A, B, C; Section XI, Parts A, B, C, D.

Language Access Services Complaints

LEP Court Users Notification on Right to Complain

1. Each court shall post visible notification to LEP individuals on the right to file a complaint if they are denied languages accessible services, or receive inadequate interpretation and translation services.

(example - http://www.lep.gov/resources/012314_NC_lang.Acc.Poster.pdf)

Initiating a Complaint

1. Any person or entity, including litigants, mediators, court staff, and judges, may file a complaint with the Office of Language Access (OLA) for denial or inadequate language access services, including complaints against interpreters employed by the court, and/or certified or registered by the AOC.
2. To file a complaint, litigants may:
 - a. Contact the Office of Language Access at (xxx)xxx-xxxx;
 - b. Complete and submit the Language Access Services complaint form to the Language Access Coordinator or the OLA. Online complaints will be directly submitted to the OLA. Paper copies may be submitted directly to the Language Access Coordinator, or mailed to the OLA. The complaint form should specify complaints for:
 - i. Inadequate interpretation or translation
 - ii. Denial of language access services
3. Review of Complaint
 - a. Complaints Regarding Quality of Interpretation or Translation
 - i. The OLA will respond with 5 business days by letter or email acknowledging the receipt of the complaint.
 - ii. The OLA shall investigate the complaint and issue a decision within 14 days of the filing of the complaint.
 - iii. Notification to Complainant - Complainant shall receive the OLA's decision indicating the findings, remedies, and disciplinary action imposed on the interpreter or translator, translated into the complainant's language of preference within 21 days of filing a complaint.
 - iv. Appeal – Complainant may appeal the OLA's decision to the Administrative Director of the Courts within 14 days of receiving the OLA's decision in writing.
 - b. Complaints Regarding Denial of Language Accessible Services
 - i. The OLA will respond with 72 hours by email or telephone acknowledging receipt of the complaint, and determining if the litigant still requires language assistance.
 - ii. If the complainant requires language assistance, the OLA will contact the court Language Access Coordinator to coordinate appropriate language resources to address the language needs of the complainant, and instruct the complainant on who to contact and next steps
 - c. Systemic Denial of Language Access Services Complaints
 - i. Complaints against an OLA will be received by the AOC Administrative Director directly.
 - ii. Complainants must show a policy or practice of denying language access services.
 - iii. The Administrative Director shall investigate the complaint and issue a decision within 30 days of the filing of the complaint.
 - iv. Notification to Complainant - Complainant shall receive the decision

indicating the findings and remedies translated into the complainant's language of preference within 7 days of the decision.

4. Appeal of Administrative Director Decision

- a. A complainant should be advised in writing in any decision that if they are dissatisfied with a decision by the AOC Administrative Director, they have the right to file civil rights complaint of discrimination with other bodies, such as the U.S. Department of Justice.

5. Rights of Complainant

- a. To all rights specified in the Language Access Plan;
 - i. Remedies should include immediate provision or repetition of service and should be applied regardless of the decision of the OLA
- b. To be notified of the receipt of the complaint, and of the name, address, and office phone number of the person assigned to its investigation if such an assignment is made;
- c. To speak with the person assigned to the complaint, by telephone or in person, about the substance of the complaint or its status;
- d. To submit additional supplemental written information or documentation;
- e. To written decisions of the complaint;
- f. To appeal with the Administrative Director;
- g. To file civil rights complaints with other bodies, such as the U.S. Department of Justice.

VIII. Technology Generally [Section V, Parts A4, B2; Section VI, Part D; various other parts in trainings of LAP Outline]

We recognize the importance of the use of technology in enhancing language access for LEP court users. We believe that any implementation around the use of technology, specifically Video Remote Interpreting (VRI), should be carefully explored and discussed with a wide range of stakeholders, including judicial officers, court staff, interpreters, legal services providers, community-based organizations, and court users themselves. Based on this research and exploration, there should be standards and protocols developed on the use of technology. For now, we offer some general comments on the use of VRI and other technology.

Video Remote Interpreting

As discussed in some of the sections above, we believe that VRI may be appropriate in certain settings and specific circumstances only where there is no live interpreter available. VRI must be used in accordance with a well-designed protocol, similar to the limitations prescribed in <http://courts.ca.gov/documents/CIP-ASL-VRI-Guidelines.pdf>. VRI must be limited to non-trial or evidence-gathering settings. Other than training court staff and others regarding the technology, there should be considerations regarding how to proceed in the event of a technology failure.

Use of Headsets and Video/Audio Recordings

This again is not meant to be a replacement for live interpreters, but use of headset technology could be very helpful and important in proceedings where multiple interpreters are unavailable. We often see scenarios where both parties are required to share one interpreter. In certain cases where there is sharing of an interpreter, the following physical configurations have deeply impacted and negatively affected our client and their ability to get proper protection from the process:

- Interpreter sits between client and abuser; so they are sitting very near each other; abuser has been able to glare/make threatening looks at client with physical presence;
- Abuser sits in front of interpreter, client sits behind interpreter; our client feels like her needs are placed last;
- Interpreter ends up sitting closer to abuser

The use of headsets would allow the interpreter to be more neutral and allow some of these physical configurations to be ameliorated. It may also allow for interpretation for individuals beyond the two main parties that may be important to the case, where their understanding of what is being said could be critical. Multiple headsets could be handed out to all those who require it.

As stated in Part III above, the use of headsets, with or without additional visual tools, could also help with the introduction and/or preface that the judge or other court staff give as general instructions to the court. We have many examples of bailiffs “shushing” and getting upset with interpreters who interpret the judge's general introduction of what to expect during the

proceedings. With the use of headset technology, the interpreter could be situated in a more private area and interpret to multiple people without disrupting the flow of the introduction or other comments. Accommodations would be required for those who are hearing impaired or have other disabilities, but this is an initial suggestion that would be cost-effective. Some of this type of information, as appropriate, could be pre-recorded in various languages to be played through headsets with video as well, if available.

California Court and Local Court Websites

The California courts and local court websites should explore ways to offer online services or video/audio recordings to LEP court users. The content can include instructions in various languages for filling out forms, self-help centers, filing instructions, directions, and procedures in other languages where court users can listen at home or through headphones at self-help centers or kiosks. Again, these services should complement and not replace services provided by live persons in the courts.

Suggestions on Using Equipment in Certain Settings, such as Self-Help, Counters, Kiosks

In addition to the language identification posters, brochures, and cards mentioned on other sections above, there are also spoken audio language buttons available for those who are not literate in their spoken language. The use of computers or tablets may also facilitate both the written and audio identification services with minimal cost.

The use of video or telephonic services in public settings should include various types of equipment, such as the use of dual headphones, dual receivers, or jack splitters to allow two phones use the same phone line. The use of speakerphone is not feasible or appropriate at public counters or self-help centers due to the surrounding noise, lack of space, and discomfort of court users having to state personal information loudly into a speakerphone microphone. Companies such as LanguageLine Solutions and other interpretation agencies offer such equipment, but we do not endorse any particular product.

IX. Conclusion

Thank you for taking the time to review our comments as the Judicial Council takes these critical steps to develop, finalize, and implement the LAP. We look forward to working collaboratively with you to provide access to justice for all Californians.

Respectfully submitted:

Asian Americans Advancing Justice – Los Angeles
Asian Law Alliance
Asian Pacific American Bar Association of Los Angeles County
Asian Pacific Islander Institute on Domestic Violence
Asian Pacific Islander Legal Outreach
Bay Area Legal Aid
California Rural Legal Assistance, Inc.
Center for the Pacific Asian Family
Disability Rights Legal Center
Inner City Law Center
Korean American Bar Association of Southern California
Korean American Family Services
Korean Resource Center
Legal Aid Foundation of Los Angeles
Legal Services of Northern California
Los Angeles Center for Law and Justice
Los Angeles Community Action Network
Mexican American Bar Association
Neighborhood Legal Services of Los Angeles County
Public Counsel
South Asian Bar Association of Southern California
Thai Community Development Center
Western Center on Law and Poverty
Youth Law Center

APPENDIX – Referenced and Additional Resources

Limited English Proficiency (LEP): A Federal Intra-agency Website

<http://www.lep.gov>

Social Security Administration, For Persons with Limited English Proficiency

<http://www.ssa.gov/multilanguage/LEPPlan2.htm>

Interagency Language Roundtable (ILR)

<http://www.govtilr.org>

Migration Policy Institute

<http://www.migrationpolicy.org/topics/language-access>

California Department of Education (CDE) DataQuest

<http://data1.cde.ca.gov/dataquest/>

Legal Services Corporation (LSC) Resource Information

<http://lri.lsc.gov/engaging-clients/language-access>

U.S. Census Bureau

<https://www.census.gov/>

Asian and Pacific Islander American Health Forum

<http://www.apiahf.org/>

Asian Pacific Islander Institute on Domestic Violence

<http://www.apiidv.org/>

State Bar of California, Center on Access to Justice

<http://www.calbar.ca.gov/AboutUs/CenteronAccesstoJustice.aspx>

Indigenous Mexicans in California Agriculture

<http://www.indigenousfarmworkers.org/>

A Community of Contrasts: Asian Americans, Native Hawaiians and Pacific Islanders in California

http://advancingjustice-la.org/system/files/Communities_of_Contrast_California_2013.pdf

A Community of Contrasts: Asian Americans, Native Hawaiians and Pacific Islanders in Los Angeles

http://advancingjustice-la.org/system/files/CommunityofContrasts_LACounty2013.pdf

American Bar Association Standing Committee on Legal Aid and Indigent Defendants

http://www.americanbar.org/groups/legal_aid_indigent_defendants.html

National Center for State Courts (NCSC)

<http://www.ncsc.org/>

Mass Legal Services, Online Resource for Massachusetts Poverty Law Advocates

<http://www.masslegalservices.org/library-directory/language-access>

Federal Court Interpreter Orientation Manual and Glossary

<http://www.uscourts.gov/uscourts/FederalCourts/Interpreter/federal-court-interpreter-orientation-manual.pdf>

Sacramento Superior Court Legal Glossaries

<http://www.saccourt.ca.gov/general/legal-glossaries/legal-glossaries.aspx>

Culture Connect, Inc.

<http://www.cultureconnectinc.org/>

State-Specific Language Access Plans and Resources

Strategic Plan for Implementing Enhanced Language Access in the Colorado State Courts

http://www.courts.state.co.us/userfiles/file/Interpreters/Program_Information/Colorado%20Language%20Access%20Plan%203_15_12%20FINAL.pdf

Wisconsin Director of State Courts, Language Access Plan

<http://www.wicourts.gov/services/interpreter/docs/laplan.pdf>

State of Delaware Administrative Office of the Courts, *Language Access Plan*

<http://courts.delaware.gov/forms/download.aspx?id=64928>

Supreme Court of Ohio and The Ohio Judicial System, Language Services Program

<http://www.supremecourt.ohio.gov/JCS/interpreterSvcs/default.asp>

Washington Court Interpreter Commission, Interpreter Disciplinary Process

http://www.courts.wa.gov/programs_orgs/pos_interpret/content/pdf/InterpDiscRules%20Final%20Apprvd%20May%202012.pdf

Appendix 2

Santa Barbara and Imperial Counties Language Group Data - Countywide for 2013 - 14

**Santa Barbara County
 Language Group Data - Countywide
 for 2013 - 14**

Language	Total Enrollment	Number of English Learners (EL)	Number of Fluent English Proficient (FEP) Students	Total Number of EL and FEP Students	Percent of Total Enrollment that is EL and FEP
Spanish		21,680	9,408	31,088	45.93%
Mixteco		1,002	100	1,102	1.63%
Other non-English languages		178	161	339	0.50%
Filipino (Pilipino or Tagalog)		114	132	246	0.36%
Vietnamese		41	79	120	0.18%
Arabic		78	30	108	0.16%
Hmong		57	35	92	0.14%
German		37	53	90	0.13%
Korean		24	63	87	0.13%
Mandarin (Putonghua)		24	61	85	0.13%
French		26	47	73	0.11%
Russian		26	30	56	0.08%
Japanese		28	24	52	0.08%
Portuguese		21	29	50	0.07%
Ilocano		32	12	44	0.07%
Cantonese		7	36	43	0.06%
Italian		12	24	36	0.05%
Farsi (Persian)		14	20	34	0.05%
Thai		17	11	28	0.04%
Punjabi		14	8	22	0.03%
Hindi		7	13	20	0.03%
Dutch		3	14	17	0.03%
Indonesian		7	9	16	0.02%
Urdu		6	10	16	0.02%
Lao		9	5	14	0.02%
Hebrew		7	7	14	0.02%
Turkish		2	9	11	0.02%

Ukrainian		1	9	10	0.01%
Khmer (Cambodian)		5	5	10	0.01%
Polish		3	4	7	0.01%
Gujarati		1	6	7	0.01%
Armenian		1	6	7	0.01%
Serbo-Croatian (Bosnian, Croatian, Serbian)		3	4	7	0.01%
Bengali		2	4	6	0.01%
Rumanian		2	4	6	0.01%
Hungarian		1	4	5	0.01%
Pashto		1	3	4	0.01%
Cebuano (Visayan)		1	2	3	0.00%
Taiwanese			3	3	0.00%
Greek			2	2	0.00%
Burmese			1	1	0.00%
Tamil			1	1	0.00%
Telugu		1		1	0.00%
Samoan			1	1	0.00%
Tigrinya					0.00%
Tongan					0.00%
Marshallese					0.00%
Santa Barbara County Total	67,686	23,495	10,489	33,984	50.21%
California State Total	6,236,672	1,413,549	1,273,561	2,687,110	43.09%

**Imperial County
 Language Group Data - Countywide
 for 2013 - 14**

Language	Total Enrollment	Number of English Learners (EL)	Number of Fluent English Proficient (FEP) Students	Total Number of EL and FEP Students	Percent of Total Enrollment that is EL and FEP
Spanish		15,572	8,563	24,135	65.27%
Korean		18	50	68	0.18%
Arabic		15	18	33	0.09%
Filipino (Pilipino or Tagalog)		13	15	28	0.08%
Cantonese		10	13	23	0.06%
Vietnamese		10	10	20	0.05%
Other non-English languages		8	10	18	0.05%
Mandarin (Putonghua)		6	10	16	0.04%
Hindi		1	8	9	0.02%
Gujarati		2	6	8	0.02%
Urdu		2	4	6	0.02%
Khmer (Cambodian)		2	2	4	0.01%
Chaldean		3	1	4	0.01%
Cebuano (Visayan)		3		3	0.01%
Japanese		2	1	3	0.01%
Punjabi		1	2	3	0.01%
Polish			2	2	0.01%
Dutch		2		2	0.01%
Farsi (Persian)			2	2	0.01%
German			1	1	0.00%
Italian		1		1	0.00%
Pashto		1		1	0.00%
Russian			1	1	0.00%
Samoan					0.00%
French					0.00%
Imperial County Total	36,976	15,672	8,719	24,391	65.96%
California State Total	6,236,672	1,413,549	1,273,561	2,687,110	43.09%