



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on January 12, 2018

Title	Agenda Item Type
Judicial Council–Sponsored Legislation: Interpreters in Small Claims Actions	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Gov. Code, § 68560.5(a) and Code Civ. Proc., § 116.550	January 12, 2018
Recommended by	Date of Report
Policy Coordination and Liaison Committee Hon. Kenneth K. So, Chair	November 16, 2017
Language Access Plan Implementation Task Force	Contact
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Executive Summary

In order to complete the expansion of language access services, including the provision of court interpreters in small claims actions when court resources allow, the Policy Coordination and Liaison Committee, Language Access Plan Implementation Task Force, and Civil and Small Claims Advisory Committee recommend that the Judicial Council sponsor legislation to (1) delete an exception stating that interpreters are not required in small claims proceedings, and (2) authorize courts to appoint certified and registered interpreters in small claims proceedings. The latter amendment also provides judicial officers with discretion to appoint a temporary interpreter if an attempt to secure a certified/registered or provisionally qualified interpreter was not successful. The amendments support recommendations 71 and 72 in the *Strategic Plan for Language Access in the California Courts*.

Recommendation

The Policy Coordination and Liaison Committee, Language Access Plan Implementation Task Force, and Civil and Small Claims Advisory Committee recommend that the Judicial Council sponsor legislation to:

1. Amend Government Code section 68560.5(a) to delete an exception stating that interpreters are not required in small claims proceedings; and
2. Amend Code of Civil Procedure section 116.550 to authorize courts to appoint certified and registered interpreters in small claims proceedings; and
 - a. Provide that courts should follow the provisional qualification process if a certified or registered interpreter is not available; and
 - b. Provide judicial officers with discretion to appoint a temporary interpreter to assist a court user during a small claims hearing if an attempt to secure a certified/registered or provisionally qualified interpreter was not successful either after the matter was continued to allow for a further search or at the first hearing if the judicial officer determines that appointment of a temporary interpreter is appropriate without a further postponement, depending on the complexity of the case.

The text of the proposed statutes is attached at pages 8 and 9.

Previous Council Action

In January 2015, the Judicial Council adopted the *Strategic Plan for Language Access in the California Courts*. Also known as the Language Access Plan (LAP), it includes comprehensive recommendations to serve as the foundation for a branchwide approach to providing language access services to court users throughout the state. The recommendations also accommodate individual courts' needs for flexibility in implementing the plan. Under the plan's goals, by 2017 it will be the state's policy—to be implemented as soon as resources permit—to provide qualified interpreters in the California courts to limited English proficient (LEP) court users in all courtroom proceedings and in all court-ordered, court-operated events by 2020.

The LAP states that “[l]egislative action to amend, delete, or add statutory language, and Judicial Council action to create or revise court forms or rules of court, will be necessary to fully and effectively implement the recommendations contained in this Language Access Plan. Such actions should include the need for clarification of existing statutes” (LAP, p. 78.) Two specific LAP recommendations, recommendations 71 and 72, describe legislation to ensure that qualified interpreters, subject to court resources, are provided in small claims actions:

71. The Judicial Council should sponsor legislation to amend Government Code section 68560.5(a) to include small claims proceedings in the definition of court proceedings for which qualified interpreters must be provided.

72. The Judicial Council should sponsor legislation to amend Code of Civil Procedure section 116.550 dealing with small claims actions to reflect that interpreters in small claims cases should, as with other matters, be certified or registered, or provisionally qualified where a credentialed interpreter is not available.

Rationale for Recommendation

Effective January 1, 2015, Evidence Code section 756 provides that qualified interpreters should be provided to LEP court users in all court proceedings, including small claims proceedings, at no cost to the parties, regardless of the income of the parties. If sufficient funding is not available to provide interpreters in all civil matters, the statute sets forth an order of priority for courts to follow in deploying interpreters. Small claims matters are in priority group (8), “All other civil actions or proceedings”—the lowest of the priority groups (Assembly Bill 1657, Stats. 2014, ch. 721). Separate statutes currently exempt small claims cases from the definition of court proceedings in which qualified interpreters must be appointed (Gov. Code, § 68560.5), and specifically authorize a court to permit an individual (other than an attorney) to assist an LEP party in small claims proceedings (Code Civ. Proc., § 116.550).

LAP recommendations 71 and 72 recommend amendments to both of these statutes to ensure that, as resources permit, court interpreters are provided to LEP court users in small claims matters. The task force approved a proposal in 2016 to the Policy Coordination and Liaison Committee for legislation to be introduced in 2017. However, the Civil and Small Claims Advisory Committee subsequently requested that the task force proposal be delayed until the task force and the advisory committee developed compromise language regarding proposed amendments to Code of Civil Procedure section 116.550. (When proposed changes to Government Code section 68560.5(a) circulated previously, no objections/negative comments were received.)

A joint working group comprised of three task force members and three Civil and Small Claims Advisory Committee members developed compromise language for Code of Civil Procedure section 116.550 to address the advisory committee’s concerns that, as proposed, the amended statutes would adversely impact access to justice for parties in small claims cases. Recommended changes were approved by the task force and by the Civil and Small Claims Advisory Committee to circulate for an abbreviated comment period of 30 days (Sept. 15–Oct. 13, 2017).

The recommended changes to the statutes also conform to recent changes to rule 2.893 of the California Rules of Court as recommended by the Court Interpreters Advisory Panel regarding the appointment of noncertified interpreters in court proceedings, including civil matters. That rule change is anticipated to go into effect on January 1, 2018. Assuming the proposed changes to Code of Civil Procedure section 116.550 go into effect, there may be minor additional changes that need to be made to the rule to ensure that the rule conforms to the amended statute.

After reviewing the comments received during the second circulation, the task force and the Civil and Small Claims Advisory Committee reviewed and approved this revised proposal. They now recommend that the council approve the two proposed statutory amendments for inclusion in council-sponsored legislation (to be effective January 1, 2019).

Comments, Alternatives Considered, and Policy Implications

Comments

The proposal received 11 comments during its recent circulation. Commenters included the California Commission on Access to Justice; State Bar of California; Superior Court of Los Angeles County; Superior Court of San Diego County; California Federation of Interpreters; Interpreters Guild of America; Public Counsel; various California-based, IOLTA-funded disability advocacy organizations; legal services providers (comment signed by various legal services organizations); an individual court interpreter; a California superior court judge; and a California court commissioner.¹ Six commenters agreed with the proposal (both statutory amendments). One commenter agreed with the proposal with a slight modification. Four commenters disagreed with the proposed revision to Code of Civil Procedure section 116.550.

The commenters that opposed the proposed amendments to Code of Civil Procedure section 116.550 (the groups of legal services organizations and the California Federation of Interpreters) indicated that they preferred the prior proposal circulated in 2016 by the task force. That proposal mandated that courts appoint interpreters in small claims proceedings and did not provide for what would happen if such interpreters were not available. In response, the advisory bodies determined that the previously proposed language, especially the inclusion of the phrase “shall appoint,” could prove unduly burdensome on trial courts at this point in time, since it would require courts to provide a registered or certified court interpreter in all small claims matters irrespective of the availability of a certified or registered interpreter. Such a mandate would likely result in numerous continuances of small claims matters, and thus result in small claims parties being denied access to the court system.

The advisory bodies concluded that some of the concerns raised by the commenters who disagreed with the proposed revision were either already addressed in the proposed revisions to Code of Civil Procedure section 116.550, or would be best served by securing approval for the revised proposal as an important first step in ensuring needed language assistance for LEP litigants. The revised provisions make clear that the optimal situation is for courts to use official qualified interpreters. Only when an attempt to secure a certified/registered or provisionally qualified interpreter is not successful will judicial officers have the discretion to appoint a temporary interpreter to assist a court user during a small claims hearing, either (1) after the matter was continued to allow for a further search, or (2) at the first hearing, if the judge determines that appointment of a temporary interpreter is appropriate without a further

¹ The identity of all commenters, the text of the comments, and the advisory bodies’ responses are in the attached comments chart.

postponement, depending on the complexity of the case.² This further provision is essential since there are not currently enough interpreters in all languages to assist court users in small claims. At present, requiring that a certified/registered or provisional interpreter be used in all cases would result in many small claims hearings being continued one or more times. The advisory bodies concluded that in small claims court, where the amounts are smaller and where all parties are self-represented litigants who are often missing work or incurring child care and transportation costs for each court appearance, such continuances would often mean the end to the party's efforts to access the courts. The amended statute will allow judicial officers the discretion to ensure that LEP court users' needs are met even if a certified or registered court interpreter is not available.³ In the future, the judicial branch could consider further revisions and policy changes to expand the appointment of interpreters in small claims proceedings.

Alternatives considered

The task force and the Civil and Small Claims Advisory Committee did not consider leaving the statutes unchanged. Failure to amend the two statutes will result in confusion and is contrary to provisions in both the LAP and Evidence Code section 756, which provides that qualified interpreters should be provided to LEP court users in all court proceedings, including small claims proceedings, subject to available resources.

As noted above, the advisory bodies considered mandating the use of certified/registered or provisional interpreters in all cases involving LEP parties even if that required multiple continuances, but concluded that such a plan would be too burdensome on the parties.

Policy implications

The LAP set forth a goal that by 2017, and beginning immediately where resources permit, qualified interpreters will be provided in the California courts to LEP court users in all courtroom proceedings and in all court-ordered, court-operated events by 2020. Legislative amendments to Government Code section 68560.5(a) and Code of Civil Procedure section 116.550 will make clear that courts are to provide qualified interpreters, subject to available court resources, in small claims actions. If this legislation is sponsored by the Judicial Council and enacted into law, it will take another year before the new statutes take effect, on January 1, 2019.

Implementation Requirements, Costs, and Operational Impacts

The proposed amendments will require that more qualified interpreters in more languages be made available for parties and witnesses. The Governor's budget for fiscal year 2016–17 appropriated an additional \$7 million, ongoing, for the expansion of court interpreter services in

² The advisory bodies accepted the proposed modification from the Superior Court of San Diego County to clarify this provision.

³ Minor amendments to rule 2.893 may be required following council approval of these statutory changes, to clarify that it may apply in small claims matters. That rule requires findings on the record, including a finding of the unavailability of a certified/registered or provisional interpreter, prior to any use of a temporary interpreter.

civil proceedings. An additional ongoing amount of \$4 million for continued expansion was requested by the Judicial Council for fiscal year 2018–19. If approved, trial courts throughout the state should have funding available to address and meet the increased costs of providing interpreter services. To the extent funding is not yet sufficient to provide interpreters in all civil matters, courts may not be able to provide interpreters immediately in small claims matters, which are included within the lowest priority group.

Several commenters provided suggestions on the operational changes, training, and outreach that may be necessary for implementation, including:

- Fee waiver forms and rules and small claims forms may need revisions to address the new provisions.
- Amendments to rule 2.893, effective January 1, 2018, will clarify the requirements and limitations for the temporary use of an interpreter.
- Training will be required for judicial officers and court staff.
- Local policies and procedures and any local rules and forms regarding interpreters in small claims court may need to be revised.
- New codes may need to be added to case management systems to create/modify tracking methods relating to interpreter needs in small claims cases.
- Internal and external webpages may need to be updated to reflect the changes.
- The Judicial Council and courts should publicize the changes, as appropriate, including use of a news release, to other relevant groups such as bar associations, and inform self-help centers, other legal organizations, and other justice partners.

Judicial Council staff will be working over the next year to develop and provide courts with tools regarding notice, training, and outreach to justice partners and LEP communities.

Relevant Strategic Plan Goals and Operational Plan Objectives

The LAP recommendations furthered by this proposal support Goal I, Access, Fairness, and Diversity, of the judicial branch’s strategic plan, which sets forth that:

- All persons will have equal access to the courts, and court proceedings and programs;
- Court procedures will be fair and understandable to court users; and
- Members of the judicial branch community will strive to understand and be responsive to the needs of court users from diverse cultural backgrounds.

The LAP also aligns with objective 5 of the related operational plan for the judicial branch to:

- Increase qualified interpreter services in mandated court proceedings and seek to expand services to additional court venues; and
- Increase the availability of language access services to all court users.

Finally, the LAP also aligns with the Chief Justice’s Access 3D framework and enhances equal access to justice for court users with limited English proficiency.

Attachments and Links

1. Gov. Code, § 68560.5(a), at page 8
2. Code Civ. Proc., § 116.550, at page 9
3. Chart of comments, at pages 10–34

Government Code section 68560.5(a) would be amended, effective January 1, 2019, to read:

1 **§ 68560.5(a)**

2

3 (a) “Court proceeding” means a civil, criminal, or juvenile proceeding, or a deposition in a civil
4 case filed in a court of record. ~~However, “court proceeding” does not include a small claims~~
5 ~~proceeding.~~

6

7 (b) * * *

Code of Civil Procedure section 116.550 would be amended, effective January 1, 2019, to read:

1 **§ 116.550**

2
3 (a) If the court determines that a party does not speak or understand English sufficiently to
4 comprehend the proceedings or give testimony, and needs assistance in so doing, the court
5 may *appoint an interpreter* ~~permit another individual (other than an attorney) to assist to~~
6 *interpret for that party. The requirements of Government Code section 68561 apply to the*
7 *appointment of interpreters in small claims matters.*

8
9 ~~(b) Each small claims court shall make a reasonable effort to maintain and make available to the~~
10 ~~parties a list of interpreters who are able and willing to aid parties in small claims actions~~
11 ~~either for no fee, or for a fee which is reasonable considering the nature and complexity of~~
12 ~~the claims. The list shall include interpreters for all languages that require interpretation~~
13 ~~before the court, as determined by the court in its discretion and in view of the court's~~
14 ~~experience.~~

15
16 ~~(c) Failure to maintain a list of interpreters, or failure to include an interpreter for a particular~~
17 ~~language, shall not invalidate any proceedings before the court.~~

18
19 ~~(d) If a court interpreter or other competent interpreter is not available to aid a party in a small~~
20 ~~claims action, at the first hearing of the case the court shall postpone the hearing one time~~
21 ~~only to allow the party the opportunity to obtain another individual (other than an attorney) to~~
22 ~~assist that party. Any additional continuances shall be at the discretion of the court.~~

23
24 ~~(d)(b)~~ *Notwithstanding the provisions of Government Code section 68561, if a court makes a finding that*
25 *a certified or registered court interpreter or an interpreter provisionally qualified under the rules of*
26 *court is not available to aid a party in a small claims action, at the first hearing of the case the court*
27 *should consider postponing the hearing, depending on the complexity of the matter, in order to*
28 *attempt to obtain a certified or registered court interpreter, an interpreter that has been provisionally*
29 *qualified, or the court may allow use of an individual as a "temporary interpreter" under the*
30 *provisions of the rules of court to assist as an interpreter during the hearing. Any other continuances*
31 *shall be at the discretion of the court.*

32
33 (c) The Judicial Council shall adopt rules of court to implement this statute.

LEG17-07

Language Access: Interpreters in Small Claims – Amend Government Code section 68560.5(a) and Code of Civil Procedure section 116.550

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
1.	California Commission on Access to Justice, State Bar of California by Hon. Mark A. Juhas, Chair	A	<p>We support LEG17-07 in its entirety as proposed by the Language Access Implementation Task Force and the Civil and Small Claims Advisory Committee to amend Government Code section 68560.5(a) and Code of Civil Procedure section 116.550. By providing qualified court interpreters in small claims proceedings when court resources allow, and by clarifying that courts should follow the provisional qualification process if a certified or registered interpreter is not available, this legislative proposal will help ensure that limited English proficient (LEP) Californians have access to small claims court without having to rely on untrained individuals such as family members or friends to interpret, which can result in misunderstandings and jeopardized legal rights and remedies.</p> <p>Regarding operational changes that may be necessary for the courts to make if the proposal becomes law, the Commission recommends the training of court staff at all points of access, including but not limited to, judicial officers, individual court clerks, clerk’s offices, self-help centers and family law facilitator’s offices, to help ensure that implementation is uniform and consistent. The Commission also recommends that information about the availability of interpreters in small claims matters should be posted in all courthouses, on individual court websites, and the Judicial Council’s website.</p>	<p>The Task Force and Civil and Small Claims Advisory Committee thank the commenter for its comments and/or suggestions.</p> <p>The advisory bodies appreciate the commenter’s suggestions on the operational changes, including training and outreach, that will be needed to support and communicate these statutory amendments. In addition, the Language Access Plan Implementation Task Force (LAPITF) is directing Judicial Council staff to develop and provide courts with tools regarding notice, training and outreach to justice partners and LEP communities.</p>

LEG17-07

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	Commenter	Position	Comment	Committee Response
			<p>Some recommended steps to help inform attorneys, judicial officers, court staff, and/or court interpreters if changes are made to the California Code include posting information on the State Bar’s website; notifying nonprofit legal services organizations funded by the Legal Services Trust Fund Program, State Bar certified Lawyer Referral Services, and local bar associations throughout the state; and reaching out to Commission members to share information with their respective appointing entity, such as the Legal Aid Association of California, California Judges Association, and Council of California County Law Librarians. The State Bar Office of Legal Services staff is able to assist with these outreach efforts.</p>	
2.	<p>California Federation of Interpreters by Mary Lou Aranguren, CFI Legislative Director</p>	N	<p>The current proposal for legislation on the provision of interpreters in small claims proceedings is a step backward. Changes from the prior proposal (LEG 16-07) are inconsistent with recommendations in the statewide Language Access Plan (recommendations #71 and #72) and contrary to the goal of providing full and consistent language access in our trial courts.</p> <p>CFI opposes the proposed amendments because they would continue the historical practice of allowing the use of a “temporary” interpreter – read an unqualified layperson—</p>	<p>The Task Force and Civil and Small Claims Advisory Committee thank the commenter for its comments and/or suggestions. The advisory bodies reviewed the comments, but disagree with the commenter’s conclusion.</p> <p>The advisory bodies elected to make certain minor revisions to Code of Civil Procedure 116.550, but concluded that most of the concerns raised by the commenters who disagreed with the proposed revision were either already addressed in the proposal, and/or would be best served by securing approval for the revised proposal as an important incremental step. The advisory bodies agree that the use of a certified/registered or</p>

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			<p>“if a certified or registered or provisionally qualified interpreter not available.” The LAP task force has recognized the dangers of using friends and family or other volunteer “interpreters” in court proceedings and has received ample public testimony on this subject. The risks to the overall integrity of the proceedings extend to all participants and impact the judge’s ability to make a fair and impartial decision based on reliable testimony.</p> <p>Discretion to appoint interpreters who are not qualified, who often have a conflict of interest, and who do not have the knowledge or skills to provide a complete and accurate interpretation would essentially continue the status quo by providing an exception for small claims proceedings to the requirement to provide fully competent and certified or registered interpreters in court proceedings.</p> <p>The proposed amendments will result in unnecessary confusion for court staff and litigants by maintaining two different standards and by making the use of court provided interpreters of known qualifications permissive rather than required. This is contrary to provisions in both the LAP and the newly enacted provisions of Evidence Code section 756, which provides that qualified interpreters should be provided to LEP court users in all</p>	<p>provisionally qualified interpreter is the optimal result. The revised statute makes clear that courts may appoint a temporary interpreter to assist a court user during a small claims hearing only if an attempt to secure a certified/registered or provisionally qualified interpreter was not successful, and may do so either (1) after the matter was continued to allow for a further search; or (2) at the first hearing if the judge determines that appointment of a temporary interpreter is appropriate without a further postponement, depending on the complexity of the case. This compromise language was essential since there are not currently enough interpreters in all languages to assist court users in small claims. The amendment will allow judicial officers the discretion to ensure that LEP court user needs are met if a certified or registered court interpreter is not available to assist small claims parties who might otherwise be denied a day in court because that may not be able to afford to come back for a second or third hearing date.</p>

LEG17-07

Language Access: Interpreters in Small Claims – Amend Government Code section 68560.5(a) and Code of Civil Procedure section 116.550

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			<p>court proceedings, subject to available resources, including small claims proceedings.</p> <p>This exception is not appropriate or necessary for the following reasons:</p> <ul style="list-style-type: none">• Small claims proceedings are just as difficult to interpret as any other court proceeding.• Subjects in small claims proceedings are varied and can often be technical in nature.• The nature of the proceedings is inherently complex as testimony is taken from opposing parties and court procedures are explained to pro per litigants.• The stakes, up to \$10,000, are high for court users of limited means who are often the plaintiffs.• A perceived lack of fairness that is likely to result if fully competent and impartial interpreters are not used in these proceedings will affect the public's confidence in the integrity of the justice system.• Allow for the use of unqualified interpreters is not a reasonable or appropriate solution to the perceived shortage of certified and registered interpreters.• The shortage of certified and registered interpreters is overstated.• A commitment to the requirement to provide competent interpreters will ensure that courts do what is necessary to overcome recruitment problems.	

LEG17-07

Language Access: Interpreters in Small Claims – Amend Government Code section 68560.5(a) and Code of Civil Procedure section 116.550

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			<p>Completing the expansion of interpreter services to all court proceedings is well within reach. In our experience those courts that fully commit to providing interpreters in all court proceedings are able to do so in a large majority of cases with a combination of staff and contract interpreters.</p> <p>The proposed amendments will be counter-productive to the successful expansion of services, and will explicitly allow some courts to continue doing what they have done for decades--“making do” with non-interpreters and poor language access services because they do not take the need for competent interpreters seriously and fail to commit the necessary effort and resources to ensuring that competent interpreters are available.</p> <p>The right approach was the first one already approved by the LAP task force and previously circulated for comment before the intervention of the Civil and Small Claims advisory committee. CFI strongly supports that proposal (LEG16-07) for revising California Code of Civil Procedure §116.550:</p> <p>Previously circulated proposal (LEG16-07): (a) If the court determines that a party does not speak or understand English sufficiently to comprehend the proceedings or give testimony, and needs assistance in so doing, the court may</p>	

Language Access: Interpreters in Small Claims – Amend Government Code section 68560.5(a) and Code of Civil Procedure section 116.550

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	Commenter	Position	Comment	Committee Response
			<p>shall appoint an interpreter permit another individual (other than an attorney) to assist interpret for that party. The requirements of Government Code section 68561 apply to the appointment of interpreters in small claims matters.</p> <p>(b) Each small claims court shall make a reasonable effort to maintain and make available to the parties a list of interpreters who are able and willing to aid parties in small claims actions either for no fee, or for a fee which is reasonable considering the nature and complexity of the claims. The list shall include interpreters for all languages that require interpretation before the court, as determined by the court in its discretion and in view of the court's experience.</p> <p>(c) Failure to maintain a list of interpreters, or failure to include an interpreter for a particular language, shall not invalidate any proceedings before the court.</p> <p>(d) If a court interpreter or other competent interpreter is not available to aid a party in a small claims action, at the first hearing of the case the court shall postpone the hearing one time only to allow the party the opportunity to obtain another individual (other than an attorney) to assist that party. Any additional continuances shall be at the discretion of the court.</p> <p>Achieving the goals of the statewide LAP</p>	

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			<p>requires a firm commitment to the core principles and accountability. Court administrators and judicial officers must be <i>required</i> to take responsibility for ensuring that LEP court users have full and meaningful access to the proceedings and that judges and other parties can rely on the integrity of the proceedings. Allowing for the use of family, friends, audience members and others without appropriate qualifications is antithetical to the core principles and explicit recommendations of the LAP.</p>	
3.	Commissioner Christine Copeland	A	<p>My comments are mine and not my Court's. I agree with the proposed removal and support providing qualified interpreters in small claims actions. It is unfortunate that this progress comes at a time when courts are suffering from years-long underfunding, but that does not diminish the great need for small claims litigants to be assisted by court interpreters. And there should be a demonstrated efficiency in not having to continue matters so litigants can search for and bring their own interpreters. That system inconvenienced the parties, witnesses, the volunteer interpreters and the court.</p> <p>You may want to amend the Fee Waiver Order form FW-003, item 4(a) - it references waiving the court fee for an interpreter in small claims actions. Government Code sections 68630-68640 do not seem to reference waiving fees for</p>	<p>The Language Access Plan Implementation Task Force (Task Force) and Civil and Small Claims Advisory Committee thank the commenter for its comments and/or suggestions.</p> <p>The Civil and Small Claims Advisory Committee will work on revising these forms, and the rule of court regarding this provision, as time and resources allow.</p>

Language Access: Interpreters in Small Claims – Amend Government Code section 68560.5(a) and Code of Civil Procedure section 116.550

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			<p>interpreters, but that Order form mentions such (and in the past, common practice was to deny court interpreters unless a small claims litigant successfully applied for a fee waiver).</p>	
4.	Mr. Sal Gallegos, Court Interpreter	A	<p>For far too long, limited English language parties to small claims actions have been at a disadvantage during proceedings for lack of a proper and certified interpreter at their side. If justice is blind, then without a voice, justice has also been mute to these individuals.</p> <p>Without this recourse many individuals with legitimate grievances against other parties have had to suffer unjust treatment or withheld from filing for reparations because they knew they would not be able to communicate their grievance to a judge or magistrate because of their language barrier.</p> <p>Language should not be a barrier to justice, especially if this State has a system in place to administrate and certify interpreters. To expect these parties to hire interpreters privately is in fact a prohibitive action for limited English parties to file for small claims and a denial of justice that society deems appropriate.</p> <p>When parties realize that interpretation is a service that will be provided then language is not a barrier to access justice but rather language become an enabler to equality. Let's</p>	<p>The Task Force and Civil and Small Claims Advisory Committee thank the commenter for its comments and/or suggestions.</p>

Language Access: Interpreters in Small Claims – Amend Government Code section 68560.5(a) and Code of Civil Procedure section 116.550

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	Commenter	Position	Comment	Committee Response
			<p>not forget that parties to small claims actions are in some sense victims to wrongdoings that although are not criminal, they can be considered negligent or abusive.</p> <p>For these reasons I advocate and agree with the proposed changes.</p>	
5.	Interpreters Guild of America by Rene Garcia, Chair	N	<p>As the chair of IGA: Interpreters Guild of America, I would like to voice our strong opposition to any regulation that would fast track provisional certification for interpreters appearing in any judicial proceeding, including small claims.</p> <p>California Courts have a well-earned reputation for high standards and have a dedicated and ample certified judicial workforce, especially in Spanish. It would be more in keeping with the high value our state places on language access to continue to consider temporary provisional certification as a measure of last resort and only for languages of lesser diffusion other than Spanish.</p> <p>Making it easier for the courts to hire certified freelancers and easier to share existing interpreting resources within the courts system is a more common sense and efficient approach to addressing interpreter availability concerns.</p> <p>Resolving existing limitations on hiring certified freelance interpreters must always be</p>	<p>The Task Force and Civil and Small Claims Advisory Committee thank the commenter for its comments and/or suggestions. The advisory bodies reviewed the comments, but disagree with the commenter’s conclusion.</p> <p>The advisory bodies elected to make certain minor revisions to Code of Civil Procedure 116.550, but concluded that most of the concerns raised by the commenters who disagreed with the proposed revision were either already addressed in the proposal, and/or would be best served by securing approval for the revised proposal as an important incremental step. The advisory bodies agree that the use of a certified/registered or provisionally qualified interpreter is the optimal result. The revised statute makes clear that courts may appoint a temporary interpreter to assist a court user during a small claims hearing only if an attempt to secure a certified/registered or provisionally qualified interpreter was not successful either (1) after the matter was continued to allow for a further search; or (2) at the first hearing if the judge determines that appointment of a temporary interpreter is</p>

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			<p>preferable to facilitating the provisional certification of bilingual family members or parties who happen to be near at hand.</p> <p>We strongly suggest changing current court policies that limit the hiring of freelancers to a fixed number of days per calendar year. We also suggest improving the sharing existing interpreting resources. The focus should be on addressing problems that stand in the way of the courts being able to use certified interpreters, rather than formalizing the inadequacies inherent in the ‘only as a last resort’ methodology that is provisional certification.</p>	<p>appropriate without a further postponement, depending on the complexity of the case. This compromise language was essential since there are not currently enough interpreters in all languages to assist court users in small claims. The amendment will allow judicial officers the discretion to ensure that LEP court user needs are met if a certified or registered court interpreter is not available to assist small claims parties who might otherwise be denied a day in court because that may not be able to afford to come back for a second or third hearing date. Minor amendments to Rule 2.893 may be required following council approval of these statutory changes.</p> <p>Provisions of the Interpreter Act (for example, Government Code section § 71802(c)(2), commonly known as the “100 day rule”) are not a part of this proposal. As a separate project, the LAPITF has recently started an evaluation of the Trial Court Interpreter Employment Labor Relations Act, under LAP Recommendation 74, which will include a review of any negative impacts of the Act’s 100-day rule that limits the hiring of independent contractors beyond a specified number of days.</p>
6.	Hon. Lynn Loschin	A	I have been sitting as a temporary judge in Orange County for several years, including in small claims court. In my view, adding certified interpreters to small claims cases would be a welcome improvement.	The Task Force and Civil and Small Claims Advisory Committee thank the commenter for its comments and/or suggestions.

Language Access: Interpreters in Small Claims – Amend Government Code section 68560.5(a) and Code of Civil Procedure section 116.550

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			<p>On various occasions, I have been informed by third parties who speak the language being interpreted that the friend or relative brought into court by the litigant to act as interpreter is not accurately interpreting what the litigant said. I have also run into situations where both sides are using such interpreters, and dispute that the other interpreter is accurately interpreting. Using certified interpreters would eliminate this disquieting uncertainty.</p> <p>To address the request for specific comments, it is my experience, based on what litigants have said in court, that most turn to two sources for information about small claims procedures: 1) the court's web site, and 2) the court's self-help center. Adding information about the availability of interpreters to these two sources, as well as available printed resources, would assist litigants in learning about this change.</p> <p>Perhaps a question asking if the plaintiff needs an interpreter could be added to the printed and online versions of SC-100, and relevant information about requesting an interpreter could be added to the notice to defendant.</p>	<p>The advisory bodies appreciate the commenter’s suggestions on the operational changes, including training and outreach, that will be needed to support and communicate these statutory amendments. In addition, the Language Access Plan Implementation Task Force (LAPITF) is directing Judicial Council staff to develop and provide courts with tools regarding notice, training and outreach to justice partners and LEP communities.</p> <p>Suggestions for new rules and forms within the purview of the council will be referred to the appropriate advisory committees to work on. Civil and Small Claims Advisory Committee will be working on revising the SC-100 and notices to defendants as time and resources allow.</p>

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			<p>In terms of informing relevant non-litigants, it seems advising the court self-help centers, any non-profits that assist litigants, and local bars would help get the word out.</p> <p>I would add one caveat to this subject based on my small claims experience. Even if an interpreter is available in the courtroom to interpret testimony, sometimes small claims cases turn on documents that are not in English. Not every interpreter can translate a written document on the fly, and it's not really something that is fair to ask of them. Litigants should be advised that either certified or mutually stipulated translations of any critical documents should be obtained before they come to court.</p> <p>I further believe that how to effectively preside over cases where litigants use interpreters (including how to interact with an interpreter, what to do and what not to do) would be a useful addition to the required Bench Demeanor course that temporary judges take every three years.</p>	<p>See comment above regarding notice.</p> <p>The advisory bodies agree with this suggestion to inform parties regarding the need to obtain professional translations of documents. Government Code §27293 permits California county clerks to certify documents translated into English only if the document has been translated by American Translators Association certified translators, California Certified Court Interpreters, or California Registered Interpreters. California Certified Court or Registered Interpreters are authorized in a judicial proceeding to interpret orally the verbal content of documents, but the Judicial Council does not otherwise test or certify an interpreter's written translation skills.</p> <p>The advisory bodies appreciate this suggestion and LAPITF staff will make sure that staff to the Center for Judicial Education Center for Judicial Education and Research (CJER) are informed of the suggestion.</p>
7.	Public Counsel by Magdalena Bordeaux, Supervising Senior Staff Attorney	A	We strongly support the position of the Language Access Plan Implementation Task Force and Civil and Small Claims Advisory	The Task Force and Civil and Small Claims Advisory Committee thank the commenter for its comments and/or suggestions.

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			<p>Committee (“Task Force and Committee”) in amending the Code Sections.</p> <p>If the Code Sections are amended, we recommend the following to ensure greater access to all litigants in small claims court proceedings:</p> <ol style="list-style-type: none"> 1. Update court websites to reflect languages available for interpretation; 2. Train all court staff on how to assist LEP litigants in need of an interpreter; 3. Make announcements at small claims proceedings regarding the availability of interpreters; 4. Post signage in courts indicating the availability of court interpreters; 5. Make interpreters available to LEP litigants at any point of a small claims proceeding; and 6. Provide notices to bar associations, pro bono organizations, self-help centers, and other legal organizations regarding the availability of interpreters at small claims proceedings. 	<p>The advisory bodies appreciate the commenter’s suggestions on the operational changes, including training and outreach, that will be needed to support and communicate these statutory amendments. In addition, LAPITF is directing Judicial Council staff to develop and provide courts with tools regarding notice, training and outreach to justice partners and LEP communities.</p> <p>Court interpreter availability is subject to the resources of individual courts.</p>
8.	Superior Court of California, County of Los Angeles	A	This proposal is supported by the Language Access Plan Implementation Task Force and by the [Civil and Small Claims Advisory Committee]. It conforms the treatment of limited English proficient litigants in small claims cases to that of limited English proficient litigants in other case types. The proposed legislation is carefully balanced	The Task Force and Civil and Small Claims Advisory Committee thank the commenter for its comments and/or suggestions.

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			<p>between the access to justice concerns of the litigants and the real world limitations on the pool of available interpreters.</p> <p>LASC currently provides Spanish interpreters in all small claims courtrooms and other than Spanish interpreters as requested. However, this language provides judges with discretion to appoint a <i>temporary</i> interpreter to assist a court user during a small claims hearing if a certified/registered or provisionally qualified interpreter is not available even after a continuance, or at the first hearing if the judge makes a similar determination of unavailability, depending on the complexity of the case. It is imperative the Court distinguish between “provisionally qualified” and “temporary use” on the record. Pending revisions in Rules of Court will clarify the requirements and limitations for the temporary use of an interpreter.</p>	<p>The advisory bodies appreciate the commenter’s suggestions on the operational changes, including training and outreach, that will be needed to support and communicate these statutory amendments.</p>
9.	Superior Court of California, County of San Diego by Michael Roddy, Executive Officer	AM	<p>General Comments:</p> <p>Propose that Code of Civil Procedure section 116.500(b) be amended as follows for clarity:</p> <p><i>“...at the first hearing of the case the court should consider postponing the hearing, depending on the complexity of the matter, in order to attempt to obtain a certified or registered court interpreter, or an interpreter</i></p>	<p>The Task Force and Civil and Small Claims Advisory Committee thank the commenter for its comments and/or suggestions.</p> <p>Both advisory bodies agreed with commenter’s proposed modification to CCP 116.550, and these changes are reflected in the revised proposal.</p>

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			<p><i>that has been provisionally qualified, or the court may allow use of an individual as a “temporary interpreter” under the provisions of the Rules of Court to assist as an interpreter during the hearing. If at the next court hearing the court makes a similar finding of unavailability, or upon such a finding at the original hearing if it is not continued, the court may allow use of an individual as a “temporary interpreter” under the provisions of the Rules of Court to assist as an interpreter during the hearing Any other continuances shall be at the discretion of the court”</i></p> <p>Some courts are now providing interpreters in all case types, including small claims. This amendment will not require operational changes for these courts. For courts who have not yet expanded the use of interpreters, the following may be necessary should the provision of interpreters in small claims matters become law:</p> <ul style="list-style-type: none"> • Update training materials and internal policies/procedures • Update local rules • Notify judicial officers, court staff (including interpreters) • Update local forms 	<p>The advisory bodies appreciate the commenter’s suggestions on the operational changes, including training and outreach, that will be needed to support and communicate these statutory amendments. Suggestions for new rules and forms within the purview of the council will be referred to the appropriate advisory committees to work on as time and resources allow. In addition, LAPITF is directing Judicial Council staff to develop and provide courts with tools regarding notice, training and outreach to justice partners and LEP communities.</p>

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			<ul style="list-style-type: none"> • Add new codes to case management systems • Create/modify tracking methods • Update internal web page • Expand telephonic/video remote interpreting service <p>Some courts are now providing interpreters in all case types, including small claims. Notifying relevant groups by way of news releases, updating external/internal web pages and internally notifying judicial officer and court staff of policy/procedural changes has taken place. For courts who have not yet expanded interpreter use, the following are recommendations to notify relevant groups:</p> <ul style="list-style-type: none"> • News release • Update external/internal web pages • Internally notify judicial officers and court staff (including interpreters) of policies/procedures 	
10.	Various Disability Rights Advocacy Organizations: - Stuart Seaborn, for Disability Rights California (DRC) - Linda D. Kilb, for Disability	N	On behalf of the undersigned California-based, IOLTA-funded non-profit disability rights advocacy organizations, we commend the Judicial Council’s ongoing recognition of the importance of communication access	The Task Force and Civil and Small Claims Advisory Committee thank the commenter for its comments and/or suggestions. The advisory bodies considered the comments, but disagree with the conclusion reached by the commenter.

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	<p>Rights Education & Defense Fund (DREDF)</p> <ul style="list-style-type: none"> - Elizabeth F. Eubanks, for Disability Rights Legal Center (DRLC) - Jinny Kim, for Legal Aid at Work 		<p>throughout the California court system. Specific to this letter, we appreciate the Council’s focus on the issue of interpreter availability in small claims court, building on issues addressed in the 2015 Strategic Plan for Language Access (“the LAP”) in the California Courts.</p> <p>Signatories here are either significantly or solely devoted to advancing and protecting the civil rights of people with disabilities. All signatories have an extensive presence in California, and are nationally recognized for their decades-long experience with and expertise in both federal and California disability civil rights law analysis.</p> <p>We are aware of the simultaneously submitted public comments being offered by advocates working closely with limited-English proficient (LEP) communities. Those commenters have many years of experience working with legal services-eligible clients throughout the state, and we urge the Council’s close attention to the analysis and concerns offered in their submissions. We write separately here to highlight the related disability access issues within the scope of our specific expertise.</p> <p>While the origins of the LEP and disability rights legal mandate are distinct, they are grounded in the same general full and equal access principles. [*FN] As with other</p>	<p>The advisory committees elected to make certain minor revisions to Code of Civil Procedure 116.550, but concluded that most of the concerns raised by the commenters who disagreed with the proposed revision were either already addressed in the proposal, and/or would be best served by securing approval for the revised proposal as an important incremental step. The advisory bodies agree that the use of a certified/registered or provisionally qualified interpreter is the optimal result. The revised statute makes clear that courts may appoint a temporary interpreter to assist a court user during a small claims hearing only if an attempt to secure a certified/registered or provisionally qualified interpreter was not successful either (1) after the matter was continued to allow for a further search; or (2) at the first hearing if the judge determines that appointment of a temporary interpreter is appropriate without a further postponement, depending on the complexity of the case. This compromise language was essential since there are not currently enough interpreters in all languages to assist court users in small claims. The amendment will allow judicial officers the discretion to ensure that LEP court user needs are met if a certified or registered court interpreter is not available to assist small claims parties who might otherwise be denied a day in court because that may not be able to afford to come back for a second or third hearing date. Minor amendments to Rule 2.893 may be</p>

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			<p>commenters, we note that small claims court is an important venue for ensuring access to justice, particularly for communities with limited resources and limited access to counsel. While the monetary amounts at issue are by design limited, such “modest” amounts are often extremely significant to low-income litigants. Because small claims litigants are by design self-represented, the absence of counsel makes communication access particularly salient. Thus, it is imperative to ensure that small claims courts offer the same level and quality of interpreters as offered in other venues. There is no justification for culling small claims out for differential or subpar treatment.</p> <p>Federal disability rights laws confirm that the California court system has an obligation to ensure communication access in all its venues. [*FN] The federal mandate has been expressly adopted into state law as a floor of protection. [*FN] Additional, California has strong and independent state law protections for disability rights, which have been repeatedly emphasized and confirmed by the California Legislature. [*FN]</p> <p>To facilitate practical administration of these disability rights mandates, the Judicial Council has promulgated California Rule of Court (CRC) 1-100.5 Insofar as they affect disability-</p>	<p>required following council approval of these statutory changes.</p>

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			<p>related communication access, any actions taken to further or implement the LAP should thus be coordinated and aligned with Rule 1.100.</p> <p>Similarly, it may be useful for the Council to consider coordinating and aligning LEP communication access protocols with existing mechanisms implementing disability rights mandates, including Rule 1.100. There are practical similarities as far as implementation. For example, there is comparable need to maintain up-to-date interpreter lists, and to have effective protocols for timely processing of interpreter requests. Consequently, there are efficiencies that come from considering LEP and disability communication access in tandem.</p> <p>Again, we commend the Council for its attention to communication access in the state court system. We appreciate the specific attention being given to the small claims venues that are a critical part of ensuring justice for all those seeking audience with our courts.</p>	
11.	<p>Various Legal Services & Community Organizations:</p> <ul style="list-style-type: none"> - American Civil Liberties Union of California - Asian Americans Advancing 	N	<p>[* Excerpt provided below]</p> <p>To ensure compliance with legal mandates, proper implementation of the LAP must include qualified interpreters for <i>all</i> litigants in <i>all</i> proceedings. The LAP specifically states at</p>	<p>The Task Force and Civil and Small Claims Advisory Committee thank the commenter for its comments and/or suggestions. The advisory bodies considered the comment, but disagree with the commenter’s conclusion.</p>

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	<p>Justice – Asian Law Caucus</p> <ul style="list-style-type: none"> - Asian Americans Advancing Justice – Los Angeles - Bet Tzedek - Korean Resource Center - Legal Aid at Work - Legal Aid Foundation of Los Angeles - Legal Services of Northern California - Neighborhood Legal Services of Los Angeles County - Thai Community Development Center 		<p>recommendation #72, that “[t]he Judicial Council should sponsor legislation to amend Code of Civil Procedure section 116.550 dealing with small claims actions to reflect that interpreters in small claims cases should, as with other matters, be certified or registered, or provisionally qualified where a credentialed interpreter is not available.” All LEP litigants should expect to receive consistent language access services, and no proceeding should be allowed a lesser standard.</p> <p><u>Proposed Amendment of Government Code section 68560.5(a)</u> We have no objections to the proposed changes to Government Code Section 68560.5(a).</p> <p><u>Recommendations on Proposed Amendment to Code of Civil Procedure section 116.550</u> We would like to offer the comments and recommendations below regarding the proposed amendment to Code of Civil Procedure section 116.550, which we believe will greatly enhance language access and justice for small claims litigants.</p> <p>1. Small Claims Proceedings Require Qualified Interpreters In any court proceeding, a qualified interpreter is essential to ensure that an LEP litigant's language access rights are protected. In small</p>	<p>The advisory bodies elected to make certain minor revisions to Code of Civil Procedure 116.550, but concluded that most of the concerns raised by the commenters who disagreed with the proposed revision were either already addressed in the proposal, and/or would be best served by securing approval for the revised proposal as an important incremental step. The advisory bodies agree that the use of a certified/registered or provisionally qualified interpreter is the optimal result. The revised statute makes clear that courts may appoint a temporary interpreter to assist a court user during a small claims hearing only if an attempt to secure a certified/registered or provisionally qualified interpreter was not successful either (1) after the matter was continued to allow for a further search; or (2) at the first hearing if the judge determines that appointment of a temporary interpreter is appropriate without a further postponement, depending on the complexity of the case. This compromise language was essential since there are not currently enough interpreters in all languages to assist court users in small claims. The amendment will allow judicial officers the discretion to ensure that LEP court user needs are met if a certified or registered court interpreter is not available to assist small claims parties who might otherwise be denied a day in court because that may not be able to afford to come back for a second or third hearing date.</p>

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			<p>claims proceedings, that protection is even more critical as litigants cannot have attorney representation in court. Small claim litigants are left to navigate court rules and procedures while asserting their claims and defenses on their own. They also may be seeking resolution in a wide variety of case types, including contractual disputes, consumer fraud, personal injury, and others, likely involving complex issues, and frequently involving an opposing party with far greater English proficiency. In addition, each party in a small claims proceeding may only be allowed several minutes to present their case, and if the judicial officer issues a judgment for the defendant, the plaintiff has no right of appeal. All of these factors underscore the necessity of having qualified interpreters in all small claims proceedings, just as with other court proceedings.</p> <p>2. The Amendment Should Follow the Prior Proposed Revision from April 2016</p> <p>In April 2016, the Language Access Plan Implementation Task Force approved the following revision as proposed by Judicial Council staff to part (a) of Code of Civil Procedure section 116.550:</p> <p>(a) If the court determines that a party does not speak or understand English sufficiently to comprehend the proceedings or give testimony,</p>	<p>Minor amendments to Rule 2.893 may be required following council approval of these statutory changes.</p>

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			<p>and needs assistance in so doing, the court may shall appoint an interpreter permit another individual (other than an attorney) to assist interpret for that party. The requirements of Government Code section 68561 apply to the appointment of interpreters in small claims matters.</p> <p>The proposed April 2016 language should be restored. Changing “shall” to “may” makes appointment of an interpreter in small claims action completely discretionary with the judicial officer. This violates both the letter and the intent of the LAP and can leave small claims litigants completely without interpreters if a judicial officer so chooses. Only the mandatory “shall” is consistent with state and federal civil rights law and will ensure that interpreters are provided in small claims actions.</p> <p>In addition, proposed subdivision (b) of Code of Civil Procedure section 116.550 should be removed in its entirety because it appears to more broadly authorize the use of temporary interpreters in small claims cases than in other civil proceedings. This subdivision conflicts with the protocols and safeguards laid out in Government Code section 68561. It also conflicts with the LAP, which makes clear in recommendation #72 that interpreters in small claims matters should be provided “as with</p>	<p>The advisory bodies determined that the prior proposal, especially the inclusion of the phrase “shall appoint,” would be unduly burdensome on courts, since it would require courts to provide registered or certified court interpreter in all small claims matters, regardless of the availability of a certified or registered interpreter. Such a mandate would be likely, at this point in time, to result in numerous continuances of small claims matters, and so could result in small claims parties being denied access to the court system.</p>

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			<p>other matters” and be certified, registered or provisionally qualified. Recommendation #72 requires that small claims proceedings receive the same language access and quality of interpreters that other matters receive.</p> <p>Moreover, subdivision (b) appears to be at odds with California Rule of Court 2.893, as adopted by the Judicial Council in September 2017 to go into effect in January 2018. Under this new rule, courts can authorize the temporary use of an individual who is not certified, registered, or provisionally qualified if certain conditions are met. The new rule only allows a temporary interpreter for a “single brief, routine matter” [*FN] and not for extended or ongoing interpretation. [*FN] Considerations include not only the complexity of the matter at issue, but also the “likelihood of potential impacts on the LEP person’s substantive rights, keeping in mind the consequences that could flow from inaccurate or incomplete interpretation of the proceedings.” [*FN] Subdivision (b) appears to permit the appointment of a temporary interpreter more broadly in small claims proceedings, including those where a judicial officer hears substantive testimony and renders judgment. These types of proceedings would not be characterized as “brief, routine matter[s]” under the new Rule 2.893. The new rule should apply in all proceedings, including small claims proceedings, as it limits potential</p>	<p>The advisory bodies agree that rule 2.893 will need to be amended if this legislative proposal is enacted. They note, however, that the court’s discretion to appoint a temporary interpreter under the proposal is to be exercised after considering the complexity of the matter at issue.</p>

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			<p>harm to the substantive rights of LEP court users.</p> <p>3. Current Statutes Provide Guidance to Address Concerns</p> <p>The present Invitation to Comment Memorandum discusses the prior April 2016 circulation, indicating that the Civil and Small Claims Advisory Committee raised “concerns about whether sufficient interpreter resources would be available” to comply with the proposed legislation and requirements of Government Code section 68561. [*FN] The appropriate response to these concerns is not to create a lesser standard for interpreters in small claims proceedings, but to look to Government Code 68092.1 and Evidence Code 756. As the memorandum itself describes, [*FN] these statutes created a prioritization of case types in the event that “sufficient funds are not appropriated to provide an interpreter to every party.” Small claims proceedings are in the last category, “(8) All other civil actions or proceedings.” [*FN] Many courts have adapted and designed protocols to provide qualified interpreters for their proceedings, and small claims courts must do the same as resources become available. Where certified or registered interpreters are unavailable, Government Code section 68561 and proposed California Rule of Court 2.893 lay out a process for providing</p>	

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			<p>provisional qualification and temporary interpreters. Together, these statutes provide roadmaps and safeguards to allow courts to prioritize and provide qualified interpreters according to available resources. There is no justification for undermining these provisions and creating a substandard level of interpreter quality for small claims proceedings.</p> <p>With small claims proceedings falling within the last category of prioritization, courts have had ample time and experience to examine and develop appropriate systems to ensure the provision of qualified interpreters as resources become available. It has been almost three years since the LAP has been adopted and over a year since the initial small claims amendments were circulated. Small claims proceedings should not be exempted from the same standards of providing meaningful language access to all litigants.</p>	