



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 21-066

For business meeting on: March 12, 2021

Title	Agenda Item Type
Court Interpreters: Payment Policies for Contract Court Interpreters	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Revise <i>Payment Policies for Contract Court Interpreters</i>	July 1, 2021
Recommended by	Date of Report
Court Executives Advisory Committee Nancy Eberhardt, Chair	February 17, 2021
	Contact
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Executive Summary

The Judicial Council is charged with setting compensation rates and policies for court interpreters. In April 2018, the Court Executives Advisory Committee (CEAC) voted to form a working group to review and update the *Payment Policies for Contract Court Interpreters* (Payment Policies). The Judicial Council's Executive and Planning Committee approved the formation of the CEAC Ad Hoc Working Group on Interpreter Payment Policy in December 2018. CEAC is recommending an increase to the daily compensation rates, standardized travel reimbursements rates in accordance with the Judicial Council *Financial Policies and Procedures Manual*, a change to the policy title, as well as other changes.

Recommendation

The Court Executives Advisory Committee recommends that the Judicial Council, effective July 1, 2021, adopt revisions to the Payment Policies as follows:

1. Revise the title of the current policy to Payment Policies for Independent Contractor Interpreters.

2. Establish the requirement of a written agreement between the court and an independent contractor interpreter.
3. Increase and standardize the daily compensation rate for certified and registered independent contractor interpreters as follows:

Time	Current Rate	Increased Rate
Half-day	\$156	\$175
Full-day	\$282	\$350
Hourly	N/A	\$44

4. Increase and standardize the daily compensation rate for noncertified and nonregistered independent contractor interpreters as follows:

Time	Current Rate	Increased Rate
Half-day	\$92	\$110
Full-day	\$175	\$220
Hourly	N/A	\$28

5. Establish a standard hourly compensation rate if an independent contractor interpreter is required to work between the hours of 12:15 p.m. and 1:00 p.m. or after 5:15 p.m. until the conclusion of the afternoon session:
 - Certified/registered: \$44
 - Noncertified/nonregistered: \$28
6. Clarify that business-related travel expenses must be addressed in a written agreement between the court and the independent contractor interpreter. Approved business-related travel expenses must be made in accordance with the judicial branch travel guidelines (see FIN 8.03) with the exception of sign language interpreters.
7. Clarify requirements for negotiating compensation rates above those established by the policy.
8. Provide the optional *Independent Contractor Interpreter–Payment Rate Authorization Form* (Attachment A) to document efforts to locate available interpreters and the court’s approval of a higher payment rate prior to the commencement of work.
9. Incorporate minor revisions to language and formatting.

In addition, the committee has learned that a number of trial courts have negotiated existing, sometimes multiyear, agreements with nonemployee interpreters for services under the current

provisions of the Payment Policies. The committee recommends, if these recommendations are adopted by the Judicial Council, that any existing agreements be renegotiated consistent with the new guidelines recommended in this report as soon as practical.

Relevant Previous Council Action

In February 2000, the Judicial Council approved the Payment Policies, which set forth uniform policies in several areas of contract court interpreter compensation, including daily compensation rates. Effective July 1, 2000, the daily compensation rate for certified and registered independent contractor interpreters was set at \$265 for a full day and \$147 for a half day. The daily compensation rate for noncertified and nonregistered independent contractor interpreters was set at no more than \$175 for a full day and \$92 for a half day. In August 2007, the Judicial Council approved an increase in the daily compensation rate for certified and registered independent contractor interpreters to \$282 for a full day and \$156 for a half day. The Judicial Council did not increase the rate for noncertified and nonregistered independent contractor interpreters. There have been no other increases in the policies since 2007.

Analysis/Rationale

The *Payment Policies for Independent Contractor Interpreters*, reflecting the updated name and the revisions recommended above, is attached as Attachment B.

Independent contractor interpreters play a vital and integral role in the public's access to justice. To ensure that there are sufficient interpreters to work in the courts at a fair market rate, there is a need to modify the daily compensation rate, as the daily rates for independent contractor interpreters have not increased in 13 years. Courts have faced difficulty in attracting independent contractor interpreters and have frequently needed to raise compensation rates above the rates listed in the policies. Although the ability to pay above the listed rates is provided in the policies in "extraordinary circumstances," this practice was becoming more commonplace. CEAC believes that the updated rates will allow courts to adhere to the policies without the need to negotiate higher rates as often. The recommended changes reflect rates that are closer to the federal rates for court interpreters and provide more flexibility for courts to attract independent contractor interpreters.

The revised policies require that a written agreement defining the cost, rates, scope of work, and terms and conditions, is in place when contracting with court interpreters. CEAC believes that these agreements are essential in ensuring that the contracting process follows the policy guidelines and creates a standard of documentation throughout the judicial branch. The *Independent Contractor Interpreter–Payment Rate Authorization Form* is available to assist the courts in documenting the approval of a higher payment rate for independent contractor interpreters.

CEAC proposes that payment of business-related travel expenses for independent contractor interpreters should be done in accordance with the Judicial Branch Contracting Manual, which states that if the contractor must be reimbursed for travel expenses per their contract, that

reimbursement should follow judicial branch travel guidelines. This revision is intended to clarify and standardize the travel reimbursement paid to contract court interpreters. This section of the policies includes an exception for reimbursement limits for sign language interpreters. California Evidence Code section 754 states that sign language interpreters must be paid actual travel expenses and, therefore, reimbursement limits outlined in Finance memos do not apply.

Policy implications

CEAC believes that the *Payment Policies for Independent Contractor Interpreters* furthers the committee's goal of ensuring that there are sufficient independent contractor interpreters for court business.

Comments

The invitation to comment (ITC) was circulated for public comment on September 30, 2020, to October 14, 2020, and was distributed to all judicial officers and judicial branch employees for judicial branch comment. The ITC was sent to all administrative presiding justices, appellate clerk/executive officers, presiding judges, and court executive officers, with a request that the ITC be shared with their respective court staff and judicial officers. The ITC elicited a total of eight responses, and a comment chart responding to each of these comments is included at the end of this report.

Of the eight comments received, seven were from court management and one was from the California Federation of Interpreters. Commenters suggested that the increase to the independent contractor interpreter rates aligns with the federal rates for independent contractor interpreters. A primary goal of the committee in revising the policies was to increase rates for independent contractor interpreters as the rates have not been updated since 2007. The committee determined that increasing rates to match the inflation rate from 2007 to 2020 would be the most appropriate and equitable way to make this change. The committee believes that the increased rates, in addition to standardizing rates statewide, will assist the courts in attracting independent contractor interpreters.

Other commenters expressed an interest in examples of "extraordinary circumstances" that would allow courts to pay above the rates outlined in the policies. The committee believes that each court has the ability to determine the "extraordinary circumstances" for their court. CEAC does not intend to create a list of "extraordinary circumstances" as it recognizes that each county faces different challenges that could create a need to pay above the listed rates. This provision was in the Payment Policies prior to this revision, and the committee believes that it should remain in the policies to provide courts more flexibility.

Finally, some commenters suggested changes to the travel reimbursement guidelines in the policies (Comment 1, pages 6–7; Comment 2, pages 11–12; Comment 4, pages 15–20). CEAC believes that it is important to adhere to the judicial branch travel guidelines in order to simplify and standardize reimbursement. The committee also believes that adding travel requirements, such as independent contractor interpreter insurance requirements, could place an additional burden on courts to monitor and confirm compliance with these requirements.

Alternatives considered

CEAC considered not revising the Payment Policies. Due to the current shortage of independent contractor interpreters, there is a need driven by the marketplace to increase the daily compensation rate in order to attract individuals in the court interpreter profession.

CEAC considered continuing with a regional approach to setting compensation rates as outlined in the 2007 proposal to the Judicial Council. Although the regional approach was originally intended to allow for courts to recommend rates that reflected local markets, this approach has caused issues with many courts' ability to attract interpreters. Some courts are unable to match the rates of courts from neighboring counties, which puts them at a disadvantage when seeking independent contractor interpreters. A standard approach, while still allowing for negotiation in unusual circumstances, ensures that all courts are on an equal footing.

Fiscal and Operational Impacts

Rates have grown since the implementation of the 2007 Payment Policies due to demand for interpreters and inflation. The average full-day rate paid for certified, registered, noncertified, and nonregistered interpreters for 2018-19 was \$301 per day, however full day certified or registered interpreter assignments often exceed this amount. The current rate for certified or registered interpreters is \$282 for a full day. The rate updates align policy with current operations and market costs for interpreter services.

Attachments and Links

1. Chart of comments, at pages 6–29
2. Attachment A: *Independent Contractor Interpreter–Payment Rate Authorization Form*
3. Attachment B: *Payment Policies for Independent Contractor Interpreters*

SP20-05

Payment Policies for Contract Court Interpreters

#	Commenter	Position	Comment	Committee Response
1	<p>Name: Travis Andreas Title: Deputy Court Executive Officer, Finance Organization: Superior Court of California, County of Kern Comment on Behalf of Org.: Yes</p>	AM	<p>Payment Rate Authorization Form: Court Executive Officer’s authorization should have language to include a Designee in the signature section of the form (Section C).</p> <p>What “Other Unique Costs” would be expected in this section (i.e. Travel Costs)?</p> <p>Include check box for Travel Time Required, Mileage Required, and Total Miles with room to enter the full mileage.</p> <p>Include a check box if it meets criteria to maintain the authorization for a year.</p>	<p>The committee thanks the commenter for the suggestion. The Independent Contractor Interpreter Rate Authorization form has been updated to include a Designee to the instructions and the signature line in Section C.</p> <p>The committee agreed that it is best to have each court determine what is a unique cost for their court.</p> <p>The committee notes the commenter’s suggestions to the form. However, this suggestion would create an administrative burden for courts and interpreters.</p> <p>The committee thanks the commenter for the suggestion. The form has been modified to include a section for the dates the payment rates are valid.</p>

		<p>Travel Rates: In order to be more fair and equitable, our Court has established that travel mileage will only be compensated for mileage that exceed the roundtrip minimum of 60 miles. This prevents a party from receiving full compensation for all miles traveled at 61 miles, while someone who travels 59 miles receives no compensation. The same is done for Travel Time with 60 minutes being the starting point for compensation. This was difficult to establish with many Contract Interpreters because of the differing compensation methods throughout the State. If this can be considered as a suggested standardized compensation format, it would likely provide a more equitable method for all to use.</p> <p>III.D.2.b. Clarify the language in this section to provide more clarity as to the rates that are being referenced (i.e. Travel Time). For instance, mileage reimbursement rates are usually adjusted each year to match the IRS standard mileage rate. With the current language in this section, it would seem like an amendment to the agreement would need to take place in order to adjust for this rate change, should the IRS rate increase at some point during the contract period.</p> <p>Insurance Requirements: Currently, our Court is having significant push back in obtaining proper liability insurance from Contract Interpreters (JBCM 11.6; FIN 8.03 - 6.1.8), based on a</p>	<p>The committee notes the commenter’s suggestion. The goal of the committee is to ensure that the revised policies are consistent with the judicial branch travel guidelines. Implementing this suggestion would cause the policies to deviate from these guidelines.</p> <p>The committee notes the commenter’s suggestion but does not recommend including specific insurance requirements for independent contractor interpreters.</p>
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		<p>common Contract Interpreter argument that no other courts are requiring that they obtain and maintain insurance. They then claim that procuring the required insurance will add an additional cost for them, and subsequently claim that it no longer makes it worthwhile to work with our Court. Many that do agree to proceed with the insurance requirements then follow up with a request to increase their required rates with our Court even further above the JCC minimums. This has become the Contract Interpreter’s way of obtaining additional compensation for their insurance costs, and is further perpetuated based on their claim that other courts are not requiring or requesting of them the prudent liability insurance needed to protect the Court and all related parties.</p> <p>Commercial General Liability - \$1,000,000 minimum per occurrence</p> <p>Professional Liability - \$1,000,000 minimum per occurrence</p> <p>Privately Owned Vehicles – The driver’s own personal vehicle liability insurance provides the primary protection up to the policy limit. The State’s Motor Vehicle Liability Program provides unlimited excess coverage (FIN 8.03: 6.2.5) In order to properly protect the Court, Judicial Council of California, State of California, and all of their related entities and individuals, proper insurance coverage and endorsements would be required.</p>	<p>The committee’s purpose in proposing revisions to these policies is to ensure courts’ abilities to attract independent contractor interpreters. This suggestion would likely make the stated goal more difficult as it puts the burden on independent contractor interpreters to obtain insurance as well as on the courts to confirm their compliance.</p>
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		<p>For instance, not only would requiring a minimum limit of auto liability coverage per incident up to \$1,000,000 per occurrence be prudent, but it would also require the following three essential endorsements be included for all liability policies to provide the actual indemnity protection intended (JBCM 8.3.A.3 Insurance):</p> <ul style="list-style-type: none"> • Primary Insurance Endorsement (Contractor’s policy will be Primary and Non-Contributory) • Additional Insured Endorsement (Includes Court and related parties as insureds) <ul style="list-style-type: none"> ○ With the following (or similar) language included as additionally insured: “the Court, the State of California, the Judicial Council of California, and their respective judges, subordinate judicial officers, executive officers, administrators, officers, officials, agents, representatives, contractors, volunteers or employees.” • Waiver of Subrogation Endorsement (Waives Right of Recovery by Contractor or their insurance) <ul style="list-style-type: none"> ○ With the following (or similar) language included in the Waiver of Subrogation: “the Court, the State of California, the Judicial Council of California, and their respective judges, subordinate judicial officers, executive officers, administrators, officers, 	
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			<p>officials, agents, representatives, contractors, volunteers or employees.”</p> <p>In reference to Automobile Liability, if Commercial Automobile Liability is not required, and instead, personal automobile liability is accepted, the \$1,000,000 limit, and the generally required endorsements, will be unrealistic and unlikely to be obtained by most if not all insurance companies providing this type of personal coverage.</p> <p>It is our understanding that there have been scenarios where liability in relation to Contract Interpreter services has come into play, and it is our Court’s goal to take the necessary steps to protect properly our Court, the Judicial Council, the State, and all other related parties. Having support from the JCC in standardizing this area of indemnity would provide a significant key in the protection of all related parties involved with Contract Interpreters</p>	
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2	<p>Name: Marizela Leon Title: Interpreter/Senior Operations Support Manager Organization: Superior Court of California County of Fresno Comment on Behalf of Org.: Yes</p>	AM	<p>Does the proposal appropriately address the stated purpose? Yes</p> <p>Would the proposal provide cost savings? If so, please quantify. Unable to determine at this time. It would be dependent on the availability of local interpreters. It would be a cost savings with the exotic languages as we will be able to consider the rates for non-certified or non-registered when considering paying outside the maximum compensations rates.</p> <p>What would the implementation requirements be for courts? Position Supervisor - Hours for implementation - 24 hours/Seniors x's 3 - 4 hours =total 12 hours.</p> <p>How well would this proposal work in courts of different sizes? Our court is defined as a large court. This process would be beneficial in removing the competitiveness of securing interpreter contractors and place all courts in an equal playing field to hire contractors.</p> <p>Recommendation: Nothing in the new pay policy limits the travel requirements. A suggestion is to consider adding language regarding interpreters be hired to work 2 or more consecutive days lodging should be mandated if round trip travel including hour for travel exceeds daily lodging rates. This will encourage local contractors to accept local</p>	<p>The committee thanks the commenter for responding to specific questions presented.</p> <p>The committee notes the commenter's suggestion and recommends that courts adhere to the Trial Court Financial Policies and Procedures Manual.</p>
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			assignments. Examples: Round Trip travel exceeds 4 hours round trip or travel time exceeding the lodging rate.	
3	<p>Name: Susan Ryan Title: Organization: Superior Court of California, County of Riverside Comment on Behalf of Org.: Yes</p>	Agree	<p>Comments regarding Rate Increase: Increasing the daily rate can assist with attracting individuals to the profession. The scarcity in resources, especially for exotic languages, creates a challenge for courts when attempting to locate services at a reasonable rate. By increasing the pool, it will eventually reduce challenges associated with locating interpreters and minimize competition between courts.</p> <p>Comments regarding Standardization of Rates: The proposed rate will have a positive impact with respect to languages in high use where there are significant resources, i.e. Spanish, Mandarin, Vietnamese, etc. Concerning that have a high statewide demand, i.e. Sign Language, Arabic, and Tagalog, we project an initial adverse impact due to the proposed rate being far below what is currently being paid, less than 50% in most cases. The court will be required to negotiate a higher rate or risk losing the current pool of qualified resources to other entities willing to pay the higher rate. Perhaps imposing a price ceiling would provide the flexibility needed to secure resources in a timely manner.</p> <p>Over time, incremental stages will assist the contractors to adjust to the new guidelines. In addition to price ceilings,</p>	The committee thanks the commenter for taking an interest in this proposal and the time to comment and respond to specific questions.

		<p>guidelines will need to be established to identify extraordinary situations that would warrant paying above the standard rate. Local courts will also need to work together to ensure consistency in the approach.</p> <p>Sign Language Rates: The Proposed Payment Policy does not delineate the pay difference for certified sign language interpreters and noncertified sign language interpreters. This could discourage sign language interpreters from pursuing certification.</p> <p>Would the proposal provide cost savings? If so, please quantify? Yes, if the court reduces the instances of negotiating excessive rates. However, this could result in not having an interpreter, or having to utilize telephonic services. Video Remote Interpreting could assist with reducing rates once implemented.</p> <p>For example, in applying the proposed rates to actual court expenditures in Fiscal Year 19/20, the court could have potentially reduced costs by approximately \$119,054, a 13% savings.</p> <p>What would the implementation requirements be for courts? Implementation would consist of training, modification of desk procedures, and updates to the court's electronic payment voucher system. The court will also need new guidelines and consistent notification to all stakeholders regarding the new guidelines.</p>	
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		<p>Training for implementation would include: Interpreter Supervisors = 2 hours Court Services Coordinators = 2 hours Judicial Officers= 1 hour</p> <p>There will also be ongoing training needed to educate court staff about the changes.</p> <p>Coordinator desk procedures will need to be updated to reflect the new diligent search process and new requirements for completing the independent contractor payment claim form.</p> <p>The changes would also require a modification to the electronic system used for processing independent contractor vouchers (Laserfiche).</p> <p>Does the effective date provide sufficient time for implementation? No.</p> <p>Due to the current COVID-19 pandemic crisis, court resources are limited, and the proposed changes will take dedicated hours implement via preparation of manuals and training. IT involvement will also be needed in order to make system updates. Currently, IT resources are being utilized to address court access issues related to the pandemic.</p> <p>Courts will also need time to adapt and set forth guidelines for situations of excessive rates and establish alternatives.</p>	
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			<p>How well would this proposal work in courts of different sizes?</p> <p>The proposal will benefit smaller courts with smaller budgets, if interpreter assistance is available at the proposed rate.</p>	
4	<p>Name: Daniel Gutierrez Title: Legislative Advocate Organization: California Federation of Interpreters Comment on Behalf of Org.: Yes</p>	N	<p>Dear Council, Chief Justice, and Court Executive Advisory Committee</p> <p>The California Federation of Interpreters (CFI) Local 39000 TNG-CWA is a statewide union representing all employee interpreters rendering interpretation services in courthouses throughout the state. Our position is in strong opposition to the proposed Revise Payment Policies for Contract Court Interpreters. Revising this policy is contrary to the spirit of the Trial Court Interpreter Employment and Labor Relations Act (TCIELRA), as it misclassifies employees and discourages employment.</p> <p>When Senate Bill 371 gave birth to the TCIELRA the intent was clear: "...to provide that the trial courts shall make an orderly transition from relying on independent contractors to using employees for interpretation services." This bill mandated state courts to transition from a contractor-based structure to an employment system for providing language access services. The bill recognizes that interpreters are constitutionally mandated and play a vital, integral role in the justice system. Moreover, the bill was necessary to provide "fair treatment" to court interpreters, as well as create sound management.</p>	The committee thanks the commenter for taking an interest in this proposal and the time to respond.

		<p>The current and proposed contract interpreter policy violates the purpose of the bill and harms the interpreter employment system by encouraging courts to continue relying on the costly, if not wasteful system of providing language access through independent contract interpreters. To continue on a path of relying on contractors to a degree that places the Interpreter Fund into a deficit does not coincide with judicial economy and is contrary to any and all recruitment and retention efforts to create a reliable, stable group of court interpreter employees.</p> <p>The TCIELRA was created to end the unreliable fluctuating “gig” economy practiced by the courts in sourcing court interpreters. In the recent codification of labor laws under the Dynamex Operations West v. Superior Court the California Supreme Court ruled that workers must be treated as employees, not as contractors, if their jobs are part of the core business or if bosses direct the way the work is carried out. The ruling tightened the standard to prevent business from evading fundamental responsibilities.</p> <p>In the current proposal to revise payment policies for contractor interpreters, the Court Executive Advisory Committee recommends courts “[e]stablish the requirement of a written agreement between the court and an independent contractor interpreter.” This recommendation circumstantially encourages courts to establish an “as-needed” contractual relationship and is no different than what Government Code article 71803 already provides. An “as-needed,” pro tempore court interpreter employee classification already allows interpreters to work under the same conditions as</p>	
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		<p>contractors. The added benefit for courts is the judicial economy that comes with this model, as the pattern that has developed since the TCIELRA demonstrates as-needed interpreters fill local service needs first before cross assigning to other courts.</p> <p>Additionally, the proposal recommends an “hourly wage” be established for contractors required to work between hours of 12:15 pm and 1:00 pm, or after 5:00 pm. This exactly mirrors the language in all 4 regional MOUs for the “as-needed” employee classification. These revised payment policies de facto categorize a contract interpreter as an employee; the proposal also recommends that “business-related travel expenses be addressed in a written agreement between the court and the independent contractor interpreter,” adding that approved travel expenses be made according to the judicial branch travel guidelines in FIN 8.03. Once again, the standard actually being established is the courts imposing control over and treating the contractor as a court employee.</p> <p>The current proposal to adopt revisions to the Payment Policies for Contract Court Interpreters violates 71802 (c) (3) of TCIELRA by creating more favorable working conditions and discourages employment. Establishing a payment policy that is higher than what employees are compensated, creates a situation that discourages employment. The proposal disincentivizes interpreters from becoming employees, hinders organized labor, and undermines union representation. On average, yearly compensation of one contractor costs taxpayers what would be the outlay for an employee and a half. According to information obtained by requests for information, most</p>	
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		<p>contractors work less days per year than employees and earn on average 35-50% more. No contractor who receives higher income, has the same working conditions and business-travel reimbursement as interpreter pro tempore, will ever consider employment as an option. The courts often express openly the lack of qualified interpreter applicants to fill what have become something akin to permanent vacancies. These lack of applicants and long-standing vacancies is self-imposed and hurts Limited English Proficient (LEP) court users.</p> <p>It is both vexing and irresponsible to increase the contractor per diem rate by 25% during the current pandemic and resultant economic crisis; this course of action definitively cannot be characterized as good public fund stewardship. Recently, the Budget Advisory Committee Ad Hoc Interpreter Subcommittee changed the current interpreter fund reimbursement model to an allocation methodology on the premise that the Court Interpreter Program (CIP) “has been faced with a shortfall for a number of years.” The better solution is to classify independent contractors as “interpreter pro tempore” as codified in California Government Code §71803 and in compliance with California Labor Code §2775.</p> <p>Classifying contractors as interpreters pro tempore will result in cost savings in that it provides parity among employee wages and per diem rates; provides parity with respect to payment outlay inequalities within language pairs; and ensures interpreters pro tempore fill local service needs first, before cross assigning to other courts.</p> <p>Implementing this approach will cause the employee pool to increase. The regional coordinator will have larger</p>	
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		<p>resource of available interpreters and greater control over cross-assignments, which then results in overall cost savings with respect to travel cost and mileage reimbursement. Interpreters pro tempore will be able to maintain the flexibility they presently enjoy as contractors. Interpreters who are classified as pro tempore will continue to make themselves available to the court and they can be offered some prorated benefits. Altogether, this will also create a streamlined path to other employee categories, as they become available.</p> <p>In the end, irresponsibly raising independent contract interpreter remuneration by 25%, as well as reimbursing travel and mileage as if the provider were an employee, will not resolve the issue at hand – namely, provide expanded language access services across all interpretation events and case types in the most efficient, fiscally sound way possible. It is bureaucratic folly to simply throw greater sums of money at contract interpreters who are not consistently available as a permanent reliable baseline workforce, nor are necessarily willing to work across several jurisdictions providing for statewide needs through the cross-assignment system.</p> <p>We respectfully propose that the courts return to the sourcing model for language access providers in the courts, as originally expressed in the TCIERLA. The Court Executive Advisory Committee should follow the interpreter law and favor the employee model; require that anyone working on an “as-needed” basis become an employee, as they would instantly have a contract that will equitably guide as to pay, travel and mileage reimbursement, and would maintain cost outlays in check,</p>	
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			<p>as there would be predictable uniformity to thereby better gauge budgets into the future.</p> <p>Thank you for your attention to this correspondence.</p> <p>Sincerely,</p> <p>Michael Ferreira, President</p>	
5	<p>Name: Ginger Durham Title: Operations Manager/Interpreter Coordinator Organization: Superior Court of California, County of Sacramento</p>	NI	<p>Hello</p> <p>Thank you for the invitation to comment on the Payment Policies for Contract Court Interpreters.</p> <p>We have the following comments:</p> <ul style="list-style-type: none"> • We agree with the new standardized daily compensation rates for the certified and registered and non-certified and non-registered contact interpreters as new rates and policies have been long overdue. Unfortunately, many courts are currently compensating contract interpreters at the Federal Rate. Is the proposal that all courts decrease their daily compensation rates to be in line with the proposed daily compensation rates? • Rates for VRI. We are opposed to the stated hourly rates for VRI. Additional consideration should be given to how VRI will be compensated. • Night Session. This should remain as a 4 hour or half day assignment. 	<p>The committee thanks the commenter for taking an interest in this proposal and the time to comment.</p> <p>The committee recommends that courts adhere to the policy language in Section III.E.1 - Costs Exceeding Normal Rates.</p> <p>The committee believes that local Memorandums of Understanding will dictate compensation rates for Virtual Remote Interpreting.</p> <p>The night session rates as identified in the policy do not preclude a court</p>

		<ul style="list-style-type: none"> • ASL compensation. What if there are no “persons employed by the court” to base the compensation on? This requires additional flushing out. • This document is missing a clear definition of what constitutes extraordinary circumstances. • We currently negotiate evergreen contracts with all of our contract interpreters to avoid having to renegotiate all contracts every year. If the need were to arise to renegotiate we can do so at any time. Please consider making the one year provision an option. • Who will monitor this to ensure that the courts will be abiding by this policy? Unless all of the courts uniformly apply this payment policy then the courts will continue to compete with one another to attract the contract interpreters. <p>Request for Specific Comments</p>	<p>from paying a half-day rate if a good cause argument is provided.</p> <p>The committee does not intend to create a list of extraordinary circumstances. Each court has the ability to determine what they consider “extraordinary circumstances”</p> <p>The committee thanks the commenter for the suggestion. There is nothing in the recommendations that would restrict or prohibit a court from this practice which is permissible under the existing procurement policies and procedures within the Judicial Branch.</p> <p>The committee strongly suggests that trial courts conduct internal reviews to ensure that they in compliance with the policy. Judicial Council’s Audit Services also conducts periodic audits to determine if the courts are within compliance.</p>
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			<p>The policy does address the stated purpose. The policy will only result in cost savings if all of the courts uniformly implement it. For our court, we would need to amend out current contracts and begin offering the new standardized rates as stated in the revised policy. The effective date provides sufficient time for implementation.</p>	
6	<p>Name: Ana Parrack, Nora Sanchez Organization: Superior Court of California, County of Orange - Language Access Services Comment on Behalf of Org.: Yes</p>	AM	<p>The new proposal to amend the <i>Court Interpreters Payment Policies for Contractor Court Interpreters</i> has been reviewed and the following comments are being submitted for consideration.</p> <ul style="list-style-type: none"> • Comment(s): This section displays the comments we suggest on behalf of Language Access Services. • Impact: This section displays the impact the policy change will have on Language Access Services. • Request for Specific Comments: This section displays questions and suggested responses the Judicial Council has asked the courts to provide responses on specific to the legislation / form change. <p>Title of Proposal Description SPR20-05 Revision Payment Policies for Contract Court Interpreters</p> <p>Comment(s) 1. Section III.D.2.c. – Validating relevant travel conditions. This process may be too labor intensive for the Court to validate travel conditions as proposed to determine travel time. Factors will vary and impact travel conditions within counties such as traffic congestion, etc. In the alternative, it is recommended that the Court have</p>	<p>The committee thanks the commenter for taking an interest in this proposal and the time to comment and respond to specific questions.</p>

		<p>the discretion to set a flat travel rate or travel time when deemed appropriate.</p> <p>2. Suggest adding a section for hourly rate under Costs Exceeding Normal Rates to be calculated using the negotiated rate instead of the \$44 and \$22 hourly rate. If the court has determined an extraordinary circumstance that requires an increased rate, it would seem appropriate to pro-rate an hourly rate accordingly.</p> <p>3. Section III.E.3. – Documentation. Consider adding information for the e-claim processes, allowing Courts to cross-reference the information required (case, date, rate and approval), instead of attaching the documentation to the claim. The current requirement appears to focus on a paper-driven process that may not be used by all courts. The Court tracks and documents assignment information electronically in the Interpreter Tracking System. The Court also uses an e-claim process rather than paper claim process. Consider revising the last sentence of Section III.E.3. as follows, “All documentation, including the specific case, date(s), rate, and approval, must be kept with <i>for</i> the claim.”</p> <p>4. Section III.E.4. – This Section contemplates document retention for extraordinary circumstances by the courts for possible use to support a future claim. Consider revising the last sentence as follows so that document retention is consistent with the intent of the Section, “A copy of the documentation with the initial research and approval of the Executive Officer or designee must be kept with <i>for</i> each claim.” This revision would allow courts to cross-reference the required information using an e-claim process, instead of attaching documentation to each claim.</p> <p>Impact</p>	<p>The committee thanks the commenter for the suggestion. Section III.E.3.- Documentation of the policy has been updated to replace “with” to “for”.</p> <p>The committee thanks the commenter for the suggestion. Section III.E.4 of the policy has been updated to replace “with” to “for”.</p>
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		<p>1. Section III.D.2.c. – Validating relevant travel conditions. Certain communities, based on population, may have varying travel times due to traffic congestion. Therefore, the travel expenses would have to be validated for each assignment. This process will greatly increase the coordinators workload as they would be required to validate travel conditions for each assignment.</p> <p>2. The Court relies on independent contractors to make themselves available so that proceedings are not continued. Allowing the use of a higher negotiated hourly rate for extraordinary circumstances will help the Court keep good working relationships with independent contractors and avoid continuances of hearings.</p> <p>3. Section III.E.3. – Documentation of Costs Exceeding Normal Rates. This process would be labor intensive if we are required to print and attach documentation to each claim. Given the use of electronic tools, an option to cross reference required information as noted above should be considered.</p> <p>4. Section III.E.4. – This process would have the same impact as described for Section III.E.3. above.</p> <p>Request for Specific Comments</p> <p>1. Does the proposal appropriately address the stated purpose? Response: n/a.</p> <p>2. Would the proposal provide cost savings? If so, please quantify. Response: Unknown at this time. Cannot quantify savings at this time. There may be or may not be savings, it depends on whether the independent contractor interpreters are willing to accept standard rates.</p>	
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		<p>3. What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?</p> <p>Response:</p> <p>a) Revise process and procedures:</p> <ul style="list-style-type: none"> o Update processes and procedures for Language Access Services Coordinators to ensure that additional steps in the policy are followed. o Update processes for Language Access Services Supervisors and Manager as they will have to play a more active role in negotiating rates with interpreters each time, they refuse to accept the standard rates. o Revise procedures for courtroom staff to ensure requests are submitted early as it will now take longer to inquire, for each assignment, with 3 interpreters to see if they are willing to accept standard rates. <p>b) Rates in the Interpreter Tracking System will have to be adjusted to reflect new standard rates.</p> <p>c) Update Written Agreements to ensure information required is captured.</p> <p>4. Does the effective date provide sufficient time for implementation?</p> <p>Response: Yes, the Court can start implementing changes to this policy starting January 2021.</p> <p>5. How well would this proposal work in courts of different sizes?</p>	
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			<p>Response: The process will add work to the Language Access Services Coordinators. With over 5,000 contractors hired yearly, the new process will, at the minimum, double our efforts to locate interpreters willing to accept standard rates. If standard rates are not accepted, it will also increase the supervisors' and manager's workload to negotiate and document compensation rates exceeding standard rates.</p>	
7	<p>Name: Kimberly Flener Title: Court Executive Officer Organization: Superior Court of California, County of Butte Comment on Behalf of Org.: Yes</p>	NI	<p>Butte's Comments: <u>General Comments:</u></p> <ul style="list-style-type: none"> • Locally we have paid higher rates than what is being proposed. Contract interpreters want to be paid at the federal rate. This proposal doesn't explain why rates were not adjusted to this level. • This proposal will likely add to the administrative burden as the Court currently pays more than the proposed rates. This would require justification in each instance where the rate paid exceeds the rates established in the policy. • It remains to be seen whether the proposed rate increases, if approved, would increase the shortage of interpreters state-wide. The proposal doesn't address other concerns that have been mentioned over the years such as the perception that the process to become a certified interpreter is overly difficult. • A centralized system of contracting with independent contract interpreters, managed by the JCC, might ensure better cost containment and services to rural courts. (I know this probably 	<p>The committee thanks the commenter for taking an interest in this proposal and the time to comment and respond to specific questions.</p> <p>The purpose of the revised policies is to update and standardize rates throughout the state. CEAC recognizes the difficulty that courts have in attracting independent contractor interpreters but payment rates above the rates listed in the policy should only be paid in extraordinary circumstances. The committee intended to adjust rates according to inflation and the Consumer Price Index since the rates were last updated in 2007.</p> <p>The creation of a centralized system of contracting managed by the</p>

			<p>won't occur, but I never miss an opportunity to suggest it.)</p> <p><u>Request for Specific Comments:</u></p> <p>Does the proposal appropriately address the stated purpose?</p> <ul style="list-style-type: none"> • It does adjust rates and clarify business related travel, which was previously lacking in the prior policy; however, it is uncertain whether this will have any positive effect for Courts located in more rural areas. <p>Would the proposal provide cost savings?</p> <ul style="list-style-type: none"> • No, most courts already pay above the proposed rates and interpreters are not likely to take a 'pay cut' to a lower authorized rate. Additionally, due to the proposed policy requiring rates be substantiated above approved rates, it will likely increase the administrative burden to the Court and thus increase costs. 	<p>Judicial Council is outside of the scope of this Invitation to Comment and the policies.</p>
8.	<p>Name: Joe Azevedo Title: Court Fiscal Officer Organization: Superior Court of California, County of Sutter Comment on Behalf of Org.: Yes</p>	NI	<p>Section III Policy</p> <p>A. Written Agreement Comment: Are we going to have to renegotiate with all of our existing or currently used interpreters?</p> <p>B. Compensation Rates Comment: (Subsections 2 & 3) How are the hourly rates intended to be paid if the if the interpretations goes beyond 12:15 but only lasts until 12:20 or 5:15, but only lasts until 5:18? In quarter-hour increments or some other</p>	<p>The committee thanks the commenter for taking an interest in this proposal and the time to comment.</p> <p>The committee recommends best practices for contract negotiation in the "Recommendation" section of this report.</p>

		<p>method? If the court is supposed to make that determination within the written agreement with each interpreter we are losing the “standardization” the Judicial Council is seeking to create.</p> <p>E. Costs Exceeding Normal Rates Comment: The loopholes that are provided for in this section eliminate any standardization the policy is attempting to create. What determines “feasibility in a given circumstance” in order to contact 3 (or fewer) interpreters? Each interpreter contacted must be unwilling to accept the assignment, if that’s the case, are we then able to reach out to those same interpreters to “negotiate compensation rates” or do we have to reach out to different interpreters with the higher rates? In that instance, what would stop them from saying they cannot take the assignment knowing that we would turn around and negotiate a higher rate. If the court must make a determination to continue the proceeding instead of paying a higher compensation rate, that will not happen in our court. Our bench officers would rather pay the higher rates than delay access to justice.</p> <p>Overall, given the rates we pay the interpreters we contract with, the “standardized rates” they are proposing in their policy would be a decrease in pay for our court which may make it difficult for us to find interpreters. They are proposing this under the guise that this would create “fair market rates” but when it comes to rural courts who have to reach out to interpreters outside of their geographical area, we would still be competing with other courts to</p>	
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		<p>secure the services of interpreters if our rates are all “standard” without following Section E and creating extraordinary circumstances for them all to come here. What is going to stop the interpreter unions from lobbying against these rates?</p> <p>This policy seems to be skewed towards defining the interpreters as employees of the court or Judicial Council instead of understanding that they are independent contractors and the Judicial Council is not going to be able to force the interpreters to take assignments in courts that they are not equitably compensated at.</p>	
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JUDICIAL BRANCH OF CALIFORNIA

INDEPENDENT CONTRACTOR INTERPRETER—PAYMENT RATE AUTHORIZATION FORM(NEW **XX/XX**)

BACKGROUND: The Judicial Council's Payment Policies for Independent Contractor Interpreters establishes maximum compensation rates for independent contractor interpreters. The policy also allows courts the discretion to negotiate compensation rates above those rates when ***all of the following conditions apply:***

- The court must make a reasonable effort to contact a minimum of three independent contractor interpreters. If contacting three is not feasible in a given circumstance, the reason(s)/rationale and what attempts were made must be documented below.
- Each interpreter contacted must be unwilling to accept the applicable maximum rate and/or must be unavailable on the requested date(s).
- The court must make a determination that the only alternative, other than to pay a higher compensation rate, is to continue the proceeding.
- The trial court's Executive Officer or designee must approve the higher rate.

INSTRUCTIONS: Courts may use this form to document its good-faith effort to find an independent contractor interpreter at the applicable maximum rate (see Judicial Council's Payment Policies for Independent Contractor Interpreters), and to document the court's Executive Officer's or designee's approval of the higher rate (Section C).

If fewer than three interpreters in a given language are available to the court, the Executive Officer or designee may authorize that the higher rate be valid for at least one year. The dates the higher rate will be valid must be indicated in Section C.

SECTION A: INTERPRETER SERVICES INFORMATION

LANGUAGE	DATE(S) INTERPRETER NEEDED
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SECTION B: GOOD FAITH EFFORT TO FIND INTERPRETER AT APPLICABLE MAXIMUM RATE

INTERPRETER #1	NAME		
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CERTIFIED INTERPRETER (YES/NO)	REGISTERED INTERPRETER (YES/NO)	DATE CONTACTED (VIA PHONE OR EMAIL)	PHONE NUMBER / E-MAIL
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AVAILABLE ON DATES REQUESTED (YES/NO)	RATE REQUIRED BY INTERPRETER
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INTERPRETER #2	NAME		
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CERTIFIED INTERPRETER (YES/NO)	REGISTERED INTERPRETER (YES/NO)	DATE CONTACTED (VIA PHONE OR EMAIL)	PHONE NUMBER / E-MAIL
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AVAILABLE ON DATES REQUESTED (YES/NO)	RATE REQUIRED BY INTERPRETER
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INTERPRETER #3	NAME		
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CERTIFIED INTERPRETER (YES/NO)	REGISTERED INTERPRETER (YES/NO)	DATE CONTACTED (VIA PHONE OR E-MAIL)	PHONE NUMBER / E-MAIL
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AVAILABLE ON DATES REQUESTED (YES/NO)	RATE REQUIRED BY INTERPRETER
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SECTION C: AUTHORIZATION OF HIGHER RATE

I have reviewed my court's good faith efforts—as documented in Section B—to secure an independent contractor interpreter at the applicable maximum rate pursuant to the Judicial Council's Payment Policy for Independent Contractor Interpreters. Based on the due diligence performed, I am authorizing a rate above the maximum given the extraordinary circumstances as noted on this form. Specifically, I hereby authorize the superior court to pay the following independent contractor interpreter the indicated rate, which is valid for the dates indicated below.

Interpreter (name): _____

Compensation Rate: \$ _____ (half-day/full day/hourly) Rate valid (dates) _____

DATE (must be signed prior to commencement of work)

Type or Print Name

(11/6/2020)

Signature of Court Executive Officer or Designee



Payment Policies for Independent Contractor Interpreters

I. Purpose

Originally adopted February 1, 2000, this policy establishes standard compensation rates and policies for payment for independent contractor interpreters retained by California trial courts.

II. Authority

The annual Budget Act provides the judicial branch with spending authority from the Trial Court Trust Fund to pay independent contractor interpreters to provide services during court proceedings, and for services related to pending court proceedings, including services provided outside a courtroom. Through provisional language in the Budget Act, the Legislature requires the judicial branch to set statewide or regional payment rates and to establish payment policies that do not exceed the rate paid to certified interpreters in the federal court system.

III. Policy

A. Written Agreement

A written agreement, defining the cost, rates, scope of work, and terms and conditions, must be in place between the court and independent contractor interpreter (hereinafter referred to as “interpreter”) before service is provided.

B. Compensation Rates

1. Interpreters will be compensated for services at a half-day, full-day, or hourly rate.
 - a. Half-day Rate: Paid when services are provided for any portion of a consecutive four-hour period during either of the following:
 - A morning court session, defined as beginning no earlier than 8:00 a.m. and ending by 12:15 p.m.
 - An afternoon court session, defined as beginning no earlier than 1:00 p.m. and ending by 5:15 p.m.
 - b. Full-day Rate: Paid when services are provided in both a morning and afternoon court session in a single day.
 - c. Hourly Rate: Paid when services are provided via Video Remote Interpreting or during a night session (defined as beginning no earlier than 5:15 p.m. and ending by 10:00 p.m.).
2. If an interpreter is required to work between the hours of 12:15 p.m. and 1:00 p.m. or after 5:15 p.m. until the conclusion of the afternoon session, the interpreter is entitled to hourly compensation in addition to other compensation received for the day.
3. The compensation rates for interpreters are as follows:
 - a. Certified/Registered Interpreters
 - Half-day: \$175
 - Full-day: \$350
 - Hourly: \$44
 - b. Noncertified/Nonregistered Interpreters (provisionally qualified [Cal. Rules of Court, rule 2.893])

- Half-day: \$110
 - Full-day: \$220
 - Hourly: \$28
- c. Oral, Sign Language, and Deaf-Blind Interpreters (hereinafter referred to as “sign language interpreters”)
- In accordance with Evidence Code section 754(i), sign language interpreters will be paid the prevailing rate paid to persons employed by the court to provide interpreter services.
- C. Cancellation fee
1. A cancellation fee, not to exceed the half-day or full-day compensation rates included in this policy, may be paid if the court entered into an agreement with an interpreter more than 24 hours or one business day in advance of the assignment, and either of the following occurs:
 - The court cancels the assignment with less than 24-hour notice.
 - The court cancels an assignment that begins on the first business day of the workweek without one business day’s notice.
 2. Paying a cancellation fee under any other circumstances, or negotiating a fee that exceeds that of the half-day or full-day compensation rates included in this policy, requires written approval by the Executive Officer or designee.
 3. The rate and terms of paying a cancellation fee must be included in the written agreement between the court and interpreter.
- D. Business-Related Travel Expenses
- Business-related travel expenses may be reimbursed for interpreter travel to and from an assignment, as follows:
1. Reimbursement of travel expenses such as air transportation, lodging, meals, personal vehicle usage, and rental vehicle usage, for interpreters must be made in accordance with the judicial branch travel guidelines (see FIN 8.03).
 2. If travel expenses, including travel time, are to be reimbursed, they must be addressed in the written agreement between the court and interpreter.
 - a. Travel expense reimbursement limits are outlined in Finance Memos and guidelines located on the Judicial Resources Network and Government Code section 71810(f).
 - b. Rates, with the exception of lodging (see FIN 8.03), may not be negotiated higher than the upper limits that are in effect at the time the agreement is signed.
 - c. If the interpreter will be required to travel outside of the half-day or full-day time frame, and travel time is negotiated as part of the agreement, the rate may not exceed the hourly compensation rate included in this policy. The rate and method for calculating travel time must be included in the written agreement between the court and interpreter and the determination of travel time must be validated by relevant travel conditions.
 3. Copies of receipts and invoices must be submitted for reimbursement of travel expenses that have been incurred and that are in accordance with the written agreement between the court and interpreter. Travel expenses that have not been authorized in writing will not be paid.

Exception for Reimbursement Limits for Sign Language Interpreters: Evidence Code section 754 provides that sign language interpreters will be paid actual travel expenses. Therefore, reimbursement limits outlined in Finance Memos are not applicable to sign language interpreters. Reimbursement rates must be negotiated and provided for in the written agreement.

E. Costs Exceeding Normal Rates

1. Courts have the discretion to negotiate compensation rates above those established by this policy in order to obtain services in extraordinary circumstances.
2. Before a higher compensation rate may be authorized, the following procedures must be followed:
 - a. The court must make a reasonable effort to contact a minimum of three independent contractor interpreters. If contacting three is not feasible in a given circumstance, the reason(s)/rationale and what attempts were made must be documented.
 - b. Each interpreter who is contacted must be unwilling to accept the applicable maximum rate and/or be unavailable to provide service to the court on the requested date(s).
 - c. The court must make a determination that the only alternative, other than to pay a compensation rate that exceeds the maximum rate included in this policy, is to continue the proceeding.
 - d. The trial court's Executive Officer or designee must approve the higher rate for the specific case and date(s) requested prior to the commencement of work.
3. Efforts to locate available interpreters and the court's approval of a higher payment rate prior to the commencement of work must be documented. Courts may use the Judicial Council's *Independent Contractor Interpreter–Payment Rate Authorization Form* or an alternative method of documentation. All documentation, including the specific case, date(s), rate, and approval, must be kept with the claim.
4. If fewer than three interpreters in a given language are available to a court, with the approval of the Executive Officer or designee, a compensation rate that is above that which is included in this policy may be negotiated and be valid for at least one year without the need to renegotiate and document each time the services of one of those interpreters are retained. A copy of the documentation with the initial research and approval of the Executive Officer or designee must be kept with each claim.

Note: The discretion to negotiate a higher rate in extraordinary circumstances does not apply to business-related travel expenses. Travel expenses may not be negotiated to a rate higher than that permitted in the judicial branch travel guidelines. (See section III.D. above for more information.)