Superior Court of Tehama County

Limited English Proficiency (LEP) Plan

I. Legal Basis and Purpose

This document serves as the plan for the Superior Court of Tehama County to provide to persons with limited English proficiency (LEP) services that are in compliance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.; 45 C.F.R. § 80.1 et seq.; and 28 C.F.R. § 42.101–42.112). The purpose of this plan is to provide a framework for the provision of timely and reasonable language assistance to LEP persons who come in contact with the Superior Court of Tehama County.

This LEP plan was developed to ensure meaningful access to court services for persons with limited English proficiency. Although court interpreters are provided for persons with a hearing loss, access services for them are covered under the Americans with Disabilities Act rather than Title VI of the Civil Rights Act, and therefore will not be addressed in this plan.

II. Needs Assessment

A. Statewide

The State of California provides court services to a wide range of people, including those who speak limited or no English. Service providers include the California Supreme Court, the Courts of Appeal, and the superior courts of the 58 counties.

According to the Administrative Office of the Courts (AOC) Court Interpreter Data Collection System (CIDCS), which aggregates court interpreter usage data received from the California trial courts, the most frequently used languages for interpreters in California courts in 2005 were (in descending order of frequency):

1. Spanish
2. Vietnamese
3. Korean
4. Armenian
5. Mandarin

B. Superior Court of Tehama County

The Superior Court of Tehama County takes the needs of LEP persons seriously and attempts to make every reasonable effort to provide meaningful access to them. According to United States Census Bureau data for 2000, in Tehama County, 7,578 people or 14.4 percent of the people five years of age and older speak a language other than English. Of these, 4,024 people reported speaking English less than very well, with 3,867 speaking Spanish, 117 speaking an indo-

European language, 31 speaking an Asian or Pacific Island language and 9 speaking something else.

III. Language Assistance Resources

A. Interpreters Used in the Courtroom

1. Providing Interpreters in the Courtroom

Providing spoken-language interpreters in court proceedings are based in whole or in part on statutory and case law. These are set out in Attachment A. In the Superior Court of Tehama County, interpreters will be provided at no cost to court customers who need such assistance under the following circumstances:

- For litigants and witnesses in criminal hearings;
- For litigants and witnesses in juvenile hearings;
- For litigants and witnesses in hearings involving domestic violence and elder abuse, family law and child support cases, to the extent that funding is provided; and,
- For litigants who need assistance when using family court services, to the extent that funding is provided.

Responsibility for the cost for spoken-language interpreters for litigants and witnesses in other civil proceedings will be determined at the discretion of the officiating judge. Additionally, courts may use interpreters who are providing mandated intepreting services for issues such as criminal or juvenile cases for incidental use in civil courtrooms. The Superior Court of Tehama County recognizes the significant benefits to both the public and the court by providing interpreters in civil cases and will attempt whenever possible to provide such intepreters through incidental use.

2. Determining the Need for an Interpreter in the Courtroom

The Superior Court of Tehama County may determine whether an LEP court customer needs an interpreter for a court hearing in various ways.

The need for a court interpreter may be identified prior to a court proceeding by the LEP person or on the LEP person's behalf by counter staff, self-help center staff, family court services, or outside justice partners.

The need for an interpreter may also be made known in the courtroom at the time of the proceeding. The judge may determine that it is appropriate to provide an interpreter for a court matter. California's Standards of Judicial Administration offer instruction to judges for determining whether an interpreter is needed. Section 2.10 provides that an "interpreter is needed if, after an examination of the party or a witness, the court concludes that: (1) the party cannot

understand and speak English well enough to participate fully in the proceedings and to assist counsel, or (2) the witness cannot speak English so as to be understood directly by counsel, court, and jury." The court is directed to examine the party or witness "on the record to determine whether an interpreter is needed if: (1) a party or counsel requests such examination or (2) it appears to the court that the person may not understand or speak English well enough to participate fully in the proceedings."

To determine if an interpreter is needed, standard 2.10(c) provides that "the court should normally ask questions on the following: (1) identification (for example: name, address, birth date, age, place of birth); (2) active vocabulary in vernacular English (for example: 'How did you come to the court today?' 'What kind of work do you do?' 'Where did you go to school?' 'What was the highest grade you completed?' 'Describe what you see in the courtroom.' 'What have you eaten today?' Questions should be phrased to avoid 'yes' or 'no' replies; (3) the court proceedings (for example: the nature of the charge or the type of case before the court), the purpose of the proceedings and function of the court, the rights of a party or criminal defendant, and the responsibilities of a witness."

Standard 2.10(d) calls on the court to state its conclusion on the record regarding the need for an interpreter. "The file in the case should be clearly marked and data entered electronically when appropriate by court personnel to ensure that an interpreter will be present when needed in any subsequent proceeding."

Many people who need an interpreter will not request one because they do not realize that interpreters are available or because they do not recognize the level of English proficiency or communication skills needed to understand the court proceeding. The court does not have funding to provide interpreters for non-mandated proceedings. However, the court can provide some assistance within existing funding restrictions and will endeavor to do so for non-mandated proceedings.

In a case where the court is mandated to provide an interpreter, but one is not available at the time of the proceeding, even after the court has made all reasonable efforts to locate one, as outlined in this plan, the case will be postponed and continued on a date when an interpreter can be provided. The AOC will be developing a generic continuance form that will be translated into several frequently used languages and will be providing them to the trial courts for their use.

When an interpreter is unavailable for a case in which the court is not mandated to provide one, the court determines and follows the best option that is appropriate for the situation, including:

- Appointing an individual to act as an interpreter for the proceeding;
- Continuing the proceeding to a day when the calendar shows the incidental availability of an interpreter for that language; or
- Continuing the proceeding and informing the party that they must provide an interpreter at their own expense.

3. Court Interpreter Qualifications

The Superior Court of Tehama County hires interpreters for courtroom hearings in compliance with the rules and policies set forth by Government Code section 68561 and California Rules of Court, rule 2.893. The AOC maintains a statewide roster of certified and registered interpreters who may work in the courts. This roster is available to court staff and the public on the Internet at *www.courtinfo.ca.gov/programs/courtinterpreters/master.htm.*

When the court has made a "due diligence" effort to find a certified or registered court interpreter and none is available, the court then seeks a noncertified or nonregistered court interpreter, in accordance with the governing local labor agreement. Whenever a noncertified interpreter is used in the courtroom, to either provisionally qualify the interpreter or find cause to permit him or her to interpret the proceeding, judges must, pursuant to rule 2.893, inquire into the interpreter's skills, professional experience, and potential conflicts of interest. A provisionally qualified interpreter is one who, upon findings prescribed in the rule, is designated by the judge as eligible to interpret in a criminal or juvenile delinquency proceeding for a period of six months.

B. Language Services Outside the Courtroom

The Superior Court of Tehama County is also responsible for taking reasonable steps to ensure that LEP individuals have meaningful access to services outside the courtroom. This is perhaps the most challenging situation facing court staff, because in most situations they are charged with assisting LEP individuals without an interpreter present. LEP individuals may come in contact with court personnel via the phone, the public counter, or other means.

To facilitate communication between LEP individuals and court staff, the Superior Court of Tehama County uses the following resources to the degree that resources are available:

- Court interpreters, to the extent permitted under the active memorandum of understanding or independent interpreter contract;
- Bilingual employees;
- Multilingual signage is being developed by the AOC and a working group of trial courts. Once available, signage with applicable messages for this court will be posted in the court.

C. Translated Forms and Documents

The California courts understand the importance of translating forms and documents so that LEP individuals have greater access to the courts' services. The Superior Court of Tehama County and the public have access to Judicial Council forms and instructional materials translated into commonly used languages at *www.courtinfo.ca.gov/selfhelp/languages*. The court also has access to instructional materials that have been translated by other courts at *www.courtinfo.ca.gov/programs/equalaccess/trans.htm.*

Interpreters at court hearings are expected to provide sight translations of court documents and correspondence associated with the case.

IV. Bilingual Court Staff

The Superior Court of Tehama County is an equal opportunity employer and recruits and hires bilingual staff to serve its LEP constituents whenever possible. The court also looks for opportunities to include bilingual skills in any contractor that provides self-help assistance.

V. Judicial and Staff Training:

The Superior Court of Tehama County is committed to providing LEP training opportunities for all judicial officers and staff members. Training and learning opportunities currently offered by the Superior Court of Tehama County will be expanded or continued as needed. Those opportunities include:

- Diversity Training;
- Cultural competency training;
- LEP plan training;
- Statewide conferences on language access or conferences that include sessions dedicated to topics on language access, when offered;
- New employee orientation training; and,
- Judicial officer orientation on the use of court interpreters and language competency.

VI. Public Notification and Evaluation of LEP Plan

A. LEP Plan Approval and Notification

The Superior Court of Tehama County's LEP plan is subject to approval by the presiding judge and court executive officer. Upon approval, a copy will be forwarded to the AOC, LEP Coordinator. Any revisions to the plan will be submitted to the presiding judge and court executive officer for approval, and then forwarded to the AOC. Copies of Superior Court of Tehama County's LEP plan will be provided to the public on request. In addition, the court will post this plan on its public Web site, and the AOC will post a link to it on the Judicial Council's public Web site at *www.courtinfo.ca.gov*.

B. Annual Evaluation of the LEP Plan

The Superior Court of Tehama County will routinely assess whether changes to the LEP plan are needed. The plan may be changed or updated at any time but reviewed not less frequently than once a year.

- In proceedings involving domestic violence and proceedings regarding parental rights, dissolution of marriage, or legal separation involving a protective order, a party who does not proficiently speak or understand English shall have a certified interpreter present to assist communication between the party and his or her attorney (Evid. Code, § 755(a)). The interpreter's fees shall be paid by the litigants "in such proportions as the court may direct," except that the fees shall be waived for a party who has a fee waiver (Evid. Code, § 755(b) and Gov. Code, § 68092). However, the authorizing statute (Evid. Code, § 755) provides that compliance with its requirements is mandatory only if funds are available under the Federal Violence Against Women Act (P.L. 103–322) or from sources other than the state. The Judicial Council provides special funding through its Trial Court Improvement Fund to allow courts to provide interpreters for these matters and for elder abuse cases. This funding may also be used for general family law matters in and out of the courtroom, on a priority basis and to the degree funding is available.

Each year court staff will review and consider the effectiveness of the court's LEP plan and update it as necessary.

In reviewing the plan the following points will be considered:

- Any related changes in court procedures or in the LEP public's needs;
- Changes in the numbers of LEP persons requesting services;
- Changes in applicable technology that might be made available to the court;
- Review of services and translated materials provided; and,
- Consideration of feedback provided about the court's LEP services;

C. Trial Court LEP Plan Coordinator:

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D. AOC LEP Plan Coordinator:

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E. LEP Plan Effective date: February 1, 2010

F. Approved by:

Presiding Judge: _____ Date: 2/5/10

Court Executive Officer: _____ Date: 2/5/10

Attachment A: Limited English Proficiency Plan

Citations on the Use and Payment of Interpreters in Court Proceedings

Policies for providing interpreters in court proceedings are based on the following Constitutional provisions, case law, and statutory mandates:

- Article 1, section 14 of the California Constitution provides that a "person unable to understand English who is charged with a crime has the right to an interpreter throughout the proceedings." There is no corresponding right in civil proceedings. *Jara v. Municipal Court* (1978) 21 Cal.3d 181 held that non-English-speaking indigent civil litigants do not have a right to a court interpreter appointed at public expense. However, the court does have the inherent right to waive filing fees if justice so requires.

- *Jara* let stand an earlier opinion, *Gardiana v. Small Claims Court* (1976) 59 Cal.App.3d 412, which held that in small claims proceedings, the court has a statutory duty to appoint an interpreter free of charge if it finds the litigant unable to speak or understand English. *Jara* reasoned that because attorneys are not permitted in small claims proceedings, non-English-speaking small claims litigants without an interpreter are "effectively barred from access to the small claims proceedings." (*Jara*, 21 Cal.3d 185.) (See also the two bulleted items below regarding interpreters in small claims matters.)

- Witnesses with limited English proficiency must also be provided with an interpreter. Under Evidence Code section 752, the court must appoint an interpreter whenever "a witness is incapable of understanding the English language or is incapable of expressing himself or herself in the English language so as to be understood directly by counsel, court, and jury. . . ." Appointment of a translator is also required whenever "the written characters in a writing offered in evidence are incapable of being deciphered or understood directly." (Evid. Code, § 753.)

- In small claims proceedings, if the court determines that a litigant does not speak or understand English sufficiently to comprehend the proceedings or give testimony and needs assistance in doing so, the court may permit another individual (other than an attorney) to assist that party. (Code Civ. Proc., § 116.550(a).) If a competent interpreter is not available at the first hearing of the case, the small claims court shall postpone the hearing one time only to allow the party the opportunity to obtain another individual to assist that party. Any additional continuances shall be at the court's discretion. (Code Civ. Proc., § 116.550(b)). Rule 3.61 (5) of the California Rules of Court provides that any costs for a court-appointed interpreter in a small claims action must be waived if an application to proceed in forma pauperis is granted.