

Memorandum 2009-26

**Statutes Made Obsolete by Trial Court Restructuring: Part 5
(Discussion of Issues)**

This memorandum continues the Commission's work on statutes made obsolete by trial court restructuring. The memorandum focuses on certain provisions relating to court-appointed experts, court interpreters, and court translators.

First, the memorandum discusses possible revisions to a compensation scheme in Evidence Code Section 731 to reflect the enactment of the Trial Court Funding Act (Gov't Code §§ 77000-77400). Next, the memorandum discusses possible revisions to a few provisions relating to interpreters and translators (Gov't Code §§ 26806, 68092, 69894.5) to reflect trial court unification, the enactment of the Trial Court Funding Act, and the enactment of the Trial Court Interpreter Employment and Labor Relations Act (Gov't Code §§ 71801-71829).

The Commission should consider the suggested revisions and determine whether to include them, with or without change, in a tentative recommendation.

COMPENSATION UNDER EVIDENCE CODE SECTION 731

Evidence Code Section 730 authorizes a court to appoint an expert when expert evidence appears necessary. It also authorizes the court to fix reasonable compensation for the expert's services.

Evidence Code Section 731 sets forth a compensation scheme applicable to court-appointed experts. It provides:

731. (a) In all criminal actions and juvenile court proceedings, the compensation fixed under Section 730 shall be a charge against the county in which such action or proceeding is pending and shall be paid out of the treasury of such county on order of the court.

(b) In any county in which the board of supervisors so provides, the compensation fixed under Section 730 for medical experts in

civil actions in such county shall be a charge against and paid out of the treasury of such county on order of the court.

(c) Except as otherwise provided in this section, in all civil actions, the compensation fixed under Section 730 shall, in the first instance, be apportioned and charged to the several parties in such proportion as the court may determine and may thereafter be taxed and allowed in like manner as other costs.

Under Section 731, the county must pay court-appointed experts in criminal and juvenile cases, but may elect to pay court-appointed medical experts in civil cases, who must otherwise be compensated by the parties.

Section 731 also governs compensation of an interpreter for a witness (see Evid. Code § 752) and compensation of a translator of a writing offered in evidence (see Evid. Code § 753).

Due to the enactment of the Trial Court Funding Act, compensation pursuant to Section 731 may now be the responsibility of the court, instead of the county. The discussion below analyzes the impact of the Trial Court Funding Act on compensation under Section 731 of (1) a court-appointed expert, (2) an interpreter for a witness, and (3) a translator of a writing.

Court-Appointed Expert

The Trial Court Funding Act provides that courts, with state funds, pay for “court operations,” as defined by Government Code Section 77003 and Rule of Court 10.810. See Gov’t Code § 77200. It appears that a court appointment of an expert is a “court operation.” See Gov’t Code § 77003(a)(8); Cal. R. Ct. 10.810(d), Function 10 (referring to “court appointed expert witness fees (for the court’s needs)”). Accordingly, it appears that the expert should be compensated by the court, rather than the county.

The Trial Court Funding Act also provides that the courts, not the county, perform countywide administration of the trial courts. See Gov’t Code § 77001(b). It therefore also appears that the court, rather than the county, should determine whether the court should pay court-appointed medical experts in civil cases or whether the parties must pay the experts. See Evid. Code § 731(b).

In 2001, the staff proposed revisions to Section 731 to provide that (1) the court, instead of the county, pays court-appointed experts in criminal and juvenile cases, and (2) the court, instead of the county, determines whether to pay for court-appointed medical experts in civil cases.

Because the area was unsettled, however, the Commission did not incorporate those revisions into a tentative recommendation.

Now that time has passed and there is less uncertainty regarding the implementation of the Trial Court Funding Act, it is appropriate to revisit the possibility of amending Section 731. Before determining precisely how to do that, however, the Commission should consider how the compensation scheme in Section 731 applies to a court interpreter or a translator of a writing offered in evidence.

Interpreter for a Witness

Evidence Code Section 752 requires a court to appoint an interpreter for a witness when needed. The interpreter is compensated pursuant to the scheme set forth in Section 731. See Evid. Code § 752(b).

Section 731 provides that the county pays the interpreter for a witness in criminal and juvenile cases, but that in civil cases, the parties must pay. However, the county may no longer be responsible for paying the interpreter, due to the enactment of the Trial Court Funding Act.

Whether the court pays, rather than the county, depends on whether interpretation for a witness in criminal and juvenile cases is a “court operation.” It appears that court interpretation is a court operation, and thus funded by the state. See Gov’t Code § 77003; Cal. R. Ct. 10.810, Function 4 (court interpreters). It therefore appears that Section 731 should be revised such that the interpreter of a witness in criminal and juvenile cases is paid by the court, rather than the county.

Translator of a Writing Offered in Evidence

Evidence Code Section 753 requires a court to appoint a translator when a writing offered in evidence needs to be translated. The translator is compensated pursuant to the scheme set forth in Section 731. See Evid. Code § 753(b).

Section 731 provides that the county pays the translator of a writing offered in evidence in criminal and juvenile cases, but that in civil cases, the parties must pay. However, the county may no longer be responsible for paying the translator, due to the enactment of the Trial Court Funding Act.

Whether the court pays, rather than the county, depends on whether translation of a writing offered as evidence in criminal and juvenile cases is a “court operation.”

The provisions defining “court operations” do not expressly refer to translation. However, it might be that payment of court interpreters, which appears to be a court operation, also includes payment for translation of a writing offered in evidence. **The staff invites comments on whether translation of a writing offered in evidence is a “court operation,” funded by the state.** Absent contrary evidence, we are inclined to treat it as such, because translation of a writing is functionally similar to acting as an interpreter.

Conclusion

Based on all of the above, for purposes of preparing a tentative recommendation, **the staff recommends revising Section 731 as follows:**

Evid. Code § 731 (amended). Compensation of court-appointed expert

731. (a) In all criminal actions and juvenile court proceedings, the compensation fixed under Section 730 shall be a charge against ~~the county in which such action or proceeding is pending and shall be paid out of the treasury of such county on order of the court.~~

(b) In any county in which the ~~board of supervisors~~ court so provides, the compensation fixed under Section 730 for medical experts in civil actions in ~~such that~~ that county shall be a charge against ~~and paid out of the treasury of such county on order of the court.~~

(c) Except as otherwise provided in this section, in all civil actions, the compensation fixed under Section 730 shall, in the first instance, be apportioned and charged to the several parties in ~~such~~ a proportion as the court may determine and may thereafter be taxed and allowed in like manner as other costs.

Comment. Subdivisions (a) and (b) of Section 731 are amended to reflect the enactment of the Trial Court Funding Act (Gov’t Code §§ 77000-77400). See, e.g., Gov’t Code §§ 77001 (local trial court management), 77003 (“court operations” defined), 77200 (state funding of “court operations”); see also Cal. R. Ct. 10.810, Function 4 (court interpreters) and Function 10 (referring to court-appointed witness fees).

Subdivisions (b) and (c) are also amended to make stylistic revisions.

The staff welcomes comments on whether these revisions are appropriate.

INTERPRETERS AND TRANSLATORS

A few Government Code provisions relating to interpreters and translators — Sections 26806, 68092, and 69894.5 — still need to be revised to reflect the enactment of the Trial Court Funding Act.

The staff proposed revisions to those provisions in 2001. But only Section 26806 was included in a tentative recommendation, and none was included in a final recommendation. The Commission postponed its work on the provisions because the area was unsettled. See Memorandum 2002-14, pp. 19-21.

Since then, the Trial Court Interpreter Employment and Labor Relations Act was enacted. See Gov't Code §§ 71801-71829; 2002 Cal. Stat. ch. 1047, § 2. As its name suggests, the act governs employment and labor relations between interpreters and courts.

Now that the area is more settled, Government Code Sections 26806, 68092, and 69894.5 should be ripe for revision to reflect the enactment of the Trial Court Funding Act and the Trial Court Interpreter Employment and Labor Relations Act. Possible revisions, beginning with Section 68092, are discussed below.

Section 68092. Compensation of Interpreters and Translators in Court Proceeding and Coroner's Cases

Government Code Section 68092 specifies who — the county or the parties — pays interpreters' and translators' fees. Although Evidence Code Section 731 also specifies who pays interpreters' and translators' fees, it does so only as to (1) an interpreter for a witness, and (2) a translator of a writing offered in evidence. See Evid. Code §§ 752(b), 753(b). It thus appears that Section 68092 applies *in circumstances other than those to which Evidence Code Section 731 applies*. In other words, Section 68092 governs payment of interpreters and translators, but not an interpreter for a witness, nor a translator of a writing offered in evidence. *Cf.* Evid. Code §§ 752(b), 753(b).

Under Section 68092, who pays interpreters' and translators' fees depends on whether the case is a coroner's case (e.g., a coroner's inquest proceeding), a criminal case, or a civil case. The provision states:

68092. Interpreters' and translators' fees shall be paid:

(a) In criminal cases and in coroners' cases, from the county treasury upon warrants drawn by the county auditor, when so ordered by the court or by the coroner, as the case may be.

(b) In civil cases, by the litigants, in such proportions as the court may direct, to be taxed and collected as other costs. The county's proportion of such fees so ordered to be paid in any civil suit to which the county is a party shall be paid in the same manner as such fees are paid in criminal cases.

Coroner's Case

Section 68092(a) states that, in a coroner's case, the county pays the interpreters' and translators' fees.

After the enactment of the Trial Court Funding Act, "court operations" are paid by the court, not the county. See Gov't Code § 77200.

It is not clear whether interpretation and translation in a coroner's case is a court operation. It appears that court operations include interpretation because "court interpreters" are listed in the provisions defining court operations. See Gov't Code § 77003; Cal. R. Ct. 10.810(d), Function 4 (court interpreters). That only seems to refer, however, to interpreters for the courts. It would not seem to include an interpreter in a proceeding conducted by a *coroner* as opposed to a court officer. See, e.g., Gov't Code §§ 27490-27512 (inquest proceeding conducted by coroner). This conclusion is reinforced to some extent by Government Code Sections 27471 and 27472, which give counties control over coroner fees and in some circumstances impose coroner expenses on counties. As best as we can tell from the information we have, interpretation and translation in a coroner's case is not a court operation. It thus remains appropriate for a county to pay such fees.

Criminal Case

Section 68092(a) states that, in a criminal case, the county pays the interpreters' and translators' fees.

Under the Trial Court Funding Act, however, interpretation in a criminal case appears to be a court operation, funded by the state. See Gov't Code § 77003; Cal. R. Ct. 10.810(d), Function 4 (court interpreters).

As discussed above, the provisions defining court operations do not discuss translation. While it appears that court interpretation is a court operation, it is unclear whether that extends to translation. Nevertheless, it appears that translation for a criminal case is to be paid by the court, for reasons explained below.

Translation fees governed by Section 68092 appear to arise only in relation to translation of a document intended for filing in court in a county of 900,000 or more persons. Such translation is authorized by Government Code Section 26806(a). Under former law, the county employed the translator. See former Section 26806; 1998 Cal. Stat. ch. 931, § 199. But now, the court employs the translator. See Gov't Code § 26806. As the employer of the translator, it appears

that the court pays the translator. (Note: Payment for translation of a writing offered in evidence is not relevant here because it is governed by Evidence Code Section 731, not by Government Code Section 68092. See Evid. Code § 753.)

In light of all of the above, it appears that **Section 68092(a) should be revised to provide that the cost of interpretation and translation in a criminal case is paid by the court.** Before determining precisely how to do that, however, the Commission should consider how Section 68092 applies to a civil case.

Civil Case

Section 68092(b) states that in a civil case, the parties pay the interpreters' and translators' fees, in a proportion ordered by the court. Subdivision (b) also provides that, if a county is a party to a civil case, the county's proportion is to be paid in the same manner as in criminal cases — i.e., "from the county treasury upon warrants drawn by the county auditor," as provided in subdivision (a).

Now that compensation in a criminal case is no longer paid by the county, it no longer makes sense to say that if a county is a party to a civil case, the county's proportion is to be paid in the same manner as in criminal cases. **That portion of subdivision (b) should be deleted.**

Fees vs. Compensation

In determining how to revise Section 68092, a further consideration is whether it should refer to "interpreters' and translators' fees," or whether it should be revised to refer to "interpreters' and translators' compensation." Under the recently enacted Trial Court Interpreter Employment and Labor Relations Act, an interpreter may either be paid a salary (e.g., as a court employee), or may be paid on a daily basis (e.g., as an independent contractor). See Gov't Code § 71802. To reflect that, **Section 68092 should be revised to refer to compensation, instead of fees.**

Conclusion

Taking together all of the above, **the staff recommends revising Section 68092 as follows:**

Gov't Code § 68092 (amended). Compensation of interpreters and translators in court proceedings and coroners' cases

68092. Interpreters' and translators' fees compensation shall be paid:

(a) In ~~criminal cases and in~~ coroners' cases, from the county treasury upon warrants drawn by the county auditor, when so ordered ~~by the court or by the coroner, as the case may be.~~

(b) In civil cases, by the litigants, in ~~such~~ proportions as the court may direct, to be taxed and collected as other costs. ~~The county's proportion of such fees so ordered to be paid in any civil suit to which the county is a party shall be paid in the same manner as such fees are paid in criminal cases.~~

(c) In criminal cases, by the court.

Comment. The introductory clause of Section 68092 is amended to refer to compensation, rather than fees. Under the Trial Court Interpreter Employment and Labor Relations Act (Sections 71801-71829), interpreters may be paid a salary (e.g., as court employees), or may be paid on a daily basis (e.g., as independent contractors) See Gov't Code § 71802.

Subdivisions (a) and (b) are amended, and subdivision (c) is added, to reflect enactment of the Trial Court Funding Act (Sections 77000-77400). Under that act, the state, not the county, funds the cost of "court operations." See, e.g., Sections 77003 ("court operations" defined), 77200 (state funding of "court operations"). Interpretation for a court proceeding is a court operation and therefore payable by the court and ultimately by the state. See Cal. R. Ct. 810, Function 4 (court interpreters); see also Section 26806 (cost of translation in criminal case is to be paid by court). In contrast, interpretation for a coroner's case is not a court operation and thus remains payable by the county. See Cal. R. Ct. 810 (listing matters classified as court operations).

For provisions governing the cost of translation of a writing offered in evidence, see Evidence Code Section 753. For provisions governing compensation of an interpreter of a witness, see Evidence Code Section 752.

Section 68092 is also amended to make stylistic revisions.

Possible revisions to the remaining two provisions relating to interpreters and translators — Section 26806 and 69894.5 — are discussed below.

Section 26806. Foreign Language Interpreters in a County of 900,000 or More

Government Code Section 26806 contains provisions on employment, assignment, and compensation of interpreters in counties with a population of 900,000 or more:

26806. (a) In counties having a population of 900,000 or over, the clerk of the court may employ as many foreign language interpreters as may be necessary to interpret in criminal cases in the superior court, and in the juvenile court within the county and to translate documents intended for filing in any civil or criminal

action or proceeding or for recordation in the county recorder's office.

(b) The clerk of the superior court, shall, when interpreters are needed, assign the interpreters so employed to interpret in criminal and juvenile cases in the superior court. When their services are needed, the clerk shall also assign interpreters so employed to interpret in criminal cases in municipal courts.

(c) The clerk of the court may also assign the interpreters so employed to interpret in civil cases in superior and municipal courts when their services are not required in criminal or juvenile cases and when so assigned, they shall collect from the litigants the fee fixed by the court and shall deposit the same in the county treasury.

(d) The interpreters so employed shall, when assigned to do so by the clerk of the court, translate documents to be recorded or to be filed in any civil or criminal action or proceeding. The fee to be collected for translating each such document shall be three dollars (\$3) per folio for the first folio or part thereof, and two cents (\$0.02) for each word thereafter. For preparing a carbon copy of such translation made at the time of preparing the original, the fee shall be twelve cents (\$0.12) per folio or any part thereof. All such fees shall be deposited in the county treasury.

Section 26806 provides that a court clerk in a county of 900,000 or more may employ as many interpreters as necessary to do the following:

- Assign an interpreter when needed in criminal and juvenile cases. Section 26806(b).
- Assign an interpreter, who is employed to interpret in criminal and juvenile cases, to interpret in a civil case when not needed in a criminal or juvenile case. Section 26806(c).
- Assign an interpreter to translate any document intended for filing in any civil or criminal action or proceeding. Section 26806(a) & (d).
- Assign an interpreter to translate any document intended for county recordation. *Id.*

Section 26806 was amended in 2004 by an omnibus bill relating to local government. See 2004 Cal. Stat. ch. 118, § 13. The bill amended Section 26806 to provide that the *court clerk*, rather than the *county clerk*, is responsible for the employment and assignment of interpreters. See former Section 26806; 1998 Cal. Stat. ch. 931, § 199. Presumably, the amendments were to reflect (1) the enactment of the Trial Court Funding Act, which made courts responsible for managing day-to-day operations and provided for countywide trial court administration (Gov't Code § 77001), and (2) the enactment of the Trial Court

Interpreter Employment and Labor Relations Act, under which the courts — not the county — employ court interpreters.

Further possible revisions to Section 26806 are discussed below.

Translation of a Document Intended for County Recordation

It is proper that Section 26806 now states that the *court clerk* is responsible for the employment and assignment of an interpreter in *court proceedings*.

However, Section 26806 now also states that the *court clerk* is responsible for the employment and assignment of an interpreter *to translate a document intended for county recordation*, even though county recordation is a *county* matter, not a court operation. **Section 26806 should be revised to reflect that such responsibility properly belongs to the county clerk.**

Location in the Codes

Section 26806 is located in a part of the Government Code relating to duties of a *county clerk*. The substance of Section 26806 that relates to duties of the county clerk — employment and assignment of an interpreter to translate a document intended for county recordation — is therefore located in an appropriate part of the codes.

However, the substance of Section 26806 that relates to employment and assignment of an interpreter in *court proceedings*, involving duties of the *court clerk*, is not in an appropriate location. Accordingly, the staff recommends moving that substance of Section 26806 to another provision. A logical location would be Government Code Section 69894.5, which authorizes a court to employ persons to interpret and translate as required by Section 26806. See Section 69894.5 (“The court may by rule employ and assign officers or attachés to perform the duties outlined in Section 26806 of the Government Code.”)

To summarize, the provisions of Section 26806 that relate to employment and assignment of interpreters in regards to a court proceeding are now out of place in the portion of the codes relating to a county clerk’s duties. The provisions would be better located in Section 69894.5, which authorizes a court to employ persons to interpret and translate as specified by Section 26806.

Revisions to Section 26806 should therefore be made to **remove the substance relating to the employment and assignment of an interpreter in court proceedings**. The substance removed from Section 26806 **should be relocated to Section 69894.5**.

Modernization

Some of the material in Section 26806 appears to be obsolete due to the passage of time. In particular, subdivision (d) specifies the amount of compensation for an interpreter to translate a document intended for county recordation, as well as the cost for a *carbon copy* of the translation.

The reference to a carbon copy seems obsolete and should probably be deleted.

Also, the amount of compensation may be out of date. The amount has not been updated in at least forty years. (Section 26806 has not been amended to change the amount in the past fifty years, and the applicable definition of “folio” of one hundred words has been unchanged since 1963. See Gov’t Code § 27360.5 (defining “folio”); 1963 Cal. Stat. ch. 22, § 1.) When revisions to Section 26806 to reflect trial court restructuring were considered in 2001, groups of court interpreters commented that the amount specified in Section 26806 was outdated, and that compensation received for these services was much higher. See Email from Mary Lou Aranguren, Bay Area Court Interpreters and the California Federation of Interpreters, to Lynne Urman (Jan. 18, 2002) (on file with Commission).

Specifying a higher amount, however, could be divisive and controversial. Perhaps Section 26806 should not specify any amount. That should result in the amount being negotiated between the county and the translator. Or, the provision could expressly provide as much. These approaches were suggested in comments by groups of interpreters in 2001. See *id.*; see also Email from Denise Choate, California Court Interpreters Association, to Lynne Urman (Jan. 17, 2002) (on file with the Commission). The staff thinks that these approaches seem reasonable. Based on the comments from 2001, it appears that adopting either of these approaches would reflect actual practice.

Although the effect of the suggested approaches may be the same, an expressly stated rule might be clearer than remaining silent on the amount of compensation. Accordingly, **the staff recommends revising Section 26806 to provide expressly that the amount is to be determined by agreement.**

Conclusion

Based on all of the above, for purposes of preparing a tentative recommendation, **the staff recommends revising Section 26806 as follows:**

Gov't Code § 26806 (amended). Foreign language interpreters in county of 900,000 or more

26806. (a) In counties having a population of 900,000 or over, the ~~county clerk of the court~~ may employ as many foreign language interpreters as may be necessary to ~~interpret in criminal cases in the superior court, and in the juvenile court within the county and to translate documents intended for filing in any civil or criminal action or proceeding or for recordation in the county recorder's office.~~

~~(b) The clerk of the superior court, shall, when interpreters are needed, assign the interpreters so employed to interpret in criminal and juvenile cases in the superior court. When their services are needed, the clerk shall also assign interpreters so employed to interpret in criminal cases in municipal courts.~~

~~(c) The clerk of the court may also assign the interpreters so employed to interpret in civil cases in superior and municipal courts when their services are not required in criminal or juvenile cases and when so assigned, they shall collect from the litigants the fee fixed by the court and shall deposit the same in the county treasury.~~

~~(d) The interpreters so employed shall, when assigned to do so by the county clerk of the court, translate documents to be recorded or to be filed in any civil or criminal action or proceeding. The fee to be collected for translating each such document shall be three dollars (\$3) per folio for the first folio or part thereof, and two cents (\$0.02) for each word thereafter. For or preparing a carbon copy of such the translation made at the time of preparing the original, the fee shall be twelve cents (\$0.12) per folio or any part thereof. All such fees shall be determined by agreement between the county and the interpreter preparing the translation. The fee shall be deposited in the county treasury.~~

Comment. Section 26806 is amended to delete the provisions relating to employment and assignment of an interpreter in court proceedings. Those provisions are relocated, with revisions, to Section 69894.5.

Section 26806 is further amended to reflect that the county clerk, not the court, may employ and assign an interpreter to translate a document intended for recordation in the county recorder's office. In such circumstances, translation is a county matter, not a court operation. See Cal. R. Ct. 10.810 (listing matters classified as court operations).

Former subdivision (d) (reabeled as subdivision (b)) is amended to delete the specified fees for translating a document and preparing a carbon copy of the translation. The reference to a carbon copy is obsolete, and is replaced with a general reference to a copy. Consistent with current practice, the fees for a translation and for a copy of the translation are to be determined by agreement between the county and the interpreter.

Section 26806 is also amended to make stylistic revisions.

Section 69894.5. Employment and Assignment of Interpreters

As discussed above, the substance of Section 26806 that relates to the employment and assignment of interpreters in court proceedings should be moved out of the portion of the codes relating to a county clerk's duties. That substance is as follows:

26806. (a) In counties having a population of 900,000 or over, the clerk of the court may employ as many foreign language interpreters as may be necessary to interpret in criminal cases in the superior court, and in the juvenile court within the county and to translate documents intended for filing in any civil or criminal action or proceeding

(b) The clerk of the superior court, shall, when interpreters are needed, assign the interpreters so employed to interpret in criminal and juvenile cases in the superior court. When their services are needed, the clerk shall also assign interpreters so employed to interpret in criminal cases in municipal courts.

(c) The clerk of the court may also assign the interpreters so employed to interpret in civil cases in superior and municipal courts when their services are not required in criminal or juvenile cases and when so assigned, they shall collect from the litigants the fee fixed by the court and shall deposit the same in the county treasury.

(d) The interpreters so employed shall, when assigned to do so by the clerk of the court, translate documents ... to be filed in any civil or criminal action or proceeding. The fee to be collected for translating each such document shall be three dollars (\$3) per folio for the first folio or part thereof, and two cents (\$0.02) for each word thereafter. For preparing a carbon copy of such translation made at the time of preparing the original, the fee shall be twelve cents (\$0.12) per folio or any part thereof. All such fees shall be deposited in the county treasury.

This substance would be well-placed in Section 69894.5, which authorizes a court to employ persons to interpret and translate as specified in Section 26806. Section 69894.5 provides:

69894.5. The court may by rule employ and assign officers or attachés to perform the duties outlined in Section 26806 of the Government Code.

The substance to be removed from Section 26806 should not be continued in Section 69894.5 verbatim. As explained below, some changes appear necessary

due to trial court restructuring, the enactment of the Trial Court Interpreter Employment and Labor Relations Act, or for other reasons.

Municipal Courts

Section 26806(b) and (c) contain references to the municipal court. However, municipal courts no longer exist following their unification with the superior court. Accordingly, **the municipal court references in Section 26806(b) and (c) should not be continued.**

Amount of Compensation for Translating Document for Filing in Court

Section 26806(d) specifies the amount of compensation for an interpreter to translate a document intended to be filed in any court proceeding in a county of 900,000 or more. The provision also specifies the cost for a carbon copy of the translation.

As previously discussed, those aspects of Section 26806(d) are obsolete. The reference to a carbon copy **should be replaced by a general reference to a copy.** The specified fee for translating a document **should be replaced by a statement that the amount of compensation for translating a document intended for filing in a court proceeding is to be determined by agreement between the court and the translator.** (Note, the Trial Court Interpreter Employment and Labor Relations Act does not apply, as it applies to spoken language interpretation, not translation. Cf. Sections 71802(a), 71806(a).)

Deposits to County Treasury

Section 26806(c) and (d) provide that the parties' payment for an interpreter or translator is to be deposited into the county treasury. It appears that these provisions are obsolete, due to the enactment of the Trial Court Funding Act and the Trial Court Interpreter Employment and Labor Relations Act, under which the courts manage and pay for court interpreters.

In particular, it is clear that the court interpreter fees should no longer be deposited to the county treasury, because providing such services is a court operation, not a county responsibility. See Cal. R. Ct. 10.810, Function 4 (court interpreters). The proper treatment of court translation fees is less clear, but for the reasons previously discussed, court translation services are probably a court operation, not a county responsibility. If so, the fees for such services should no longer be deposited into the county treasury.

Where should fees attributable to these court operations be deposited instead of the county treasury? The staff is not sure, but we suspect that the deposits should be made to the Trial Court Fund. **Comments on this point would be helpful.** Absent input, for purposes of a tentative recommendation, **we would assume that the Trial Court Trust Fund is the proper choice and Section 69894.5 should be revised accordingly.**

Officers and Attachés

Section 69894.5 provides that a “court may by rule employ and assign officers or attachés to perform the duties outlined in Section 26806.” In revising this provision to incorporate portions of Section 26806, the Commission would also revise the reference to officers and attachés.

The authorization of courts to employ attachés and officers is superseded by the Trial Court Interpreter Employment and Labor Relations Act, which governs comprehensively the system of employing court interpreters. For example, the act specifies conditions under which courts may use an interpreter who is an independent contractor. See Gov’t Code § 71802.

To reflect this development, **Section 69894.5 should be revised to refer to employment of persons pursuant to the Trial Court Interpreter Employment and Labor Relations Act**, instead of employment of officers and attachés by rule.

Constitutional Requirement

Finally, Section 26806 requires a court clerk in a county of 900,000 or more to assign an interpreter to a criminal case when needed. However, the California Constitution includes a broader requirement than this. It states that “[a] person unable to understand English who is charged with a crime has a right to an interpreter throughout the proceedings.” Cal. Const. art. I, § 14.

As presently drafted, Section 26806 may give the impression that the right to an interpreter in a criminal case only applies in a county of 900,000 or more. To prevent that misimpression, **the staff recommends restating the constitutional requirement verbatim in Section 69894.5, in proximity to the material being moved from Section 26806.**

Conclusion

To reflect the considerations discussed above, **the staff recommends revising Section 69894.5 as follows:**

Gov't Code § 69894.5 (amended). Employment and assignment of ~~officers or attachés~~ as interpreters in court proceedings

69894.5. (a) A person unable to understand English who is charged with a crime has a right to an interpreter throughout the proceedings.

(b) In a county having a population of 900,000 or over:

(1) The clerk of the court may employ as many foreign language interpreters as may be necessary to interpret in criminal cases in the superior court, and in the juvenile court within the county, and to translate documents intended for filing in any civil or criminal action or proceeding.

(2) The clerk of the court shall, when interpreters are needed, assign the interpreters so employed to interpret in criminal and juvenile cases in the superior court.

(3) The clerk of the court may also assign the interpreters so employed to interpret in civil cases in the superior court when their services are not required in criminal or juvenile cases. When so assigned, an interpreter shall collect from the litigants the fee fixed by the court and shall deposit that fee in the Trial Court Trust Fund.

(4) The interpreters so employed shall, when assigned to do so by the clerk of the court, translate documents to be filed in any civil or criminal action or proceeding. The fee to be collected for translating each document or preparing a copy of the translation shall be determined by agreement between the court and the interpreter preparing the translation. The fee shall be deposited in the Trial Court Trust Fund.

(c) The court may ~~by rule~~ employ and assign ~~officers or attachés~~ persons to perform the duties outlined in ~~Section 26806 of the Government Code~~ this section as provided in the Trial Court Interpreter Employment and Labor Relations Act, Chapter 7.5 (commencing with Section 71800) of Title 8.

Comment. Subdivision (a) is added to Section 69894.5 to restate the constitutional requirement of a court interpreter in a criminal case (Cal. Const. art. I, § 14), which applies regardless of the size of the county. Courts have recognized that the right exists in a juvenile case in which the juvenile is charged with a crime. See, e.g., *In re Dung*, 160 Cal. App. 3d 667, 708-09, 206 Cal. Rptr. 772 (1984); see also *In re Raymundo B.*, 203 Cal. App. 3d 1447, 250 Cal. Rptr. 812 (1988).

Subdivision (b)(1) continues former Section 26806(a) without substantive change, as it pertained to employment and assignment of interpreters in court proceedings.

Subdivision (b)(2) continues the first sentence of former Section 26806(b) without substantive change. The second sentence of former Section 26806(b), relating to assignment of interpreters in criminal cases in municipal court, is not continued due to the

unification of the municipal and superior courts pursuant to Article VI, former Section 5(e), of the California Constitution.

Subdivision (b)(3) continues former Section 26806(c), with revisions to (1) reflect the unification of the municipal and superior courts pursuant to Article VI, former Section 5(e), of the California Constitution, and (2) reflect the enactment of the Trial Court Funding Act (Sections 77000-77400). See, e.g., Sections 77001 (local trial court management), 77003 (“court operations” defined), 77220 (state funding of “court operations”); see also Cal. R. Ct. 10.810, Function 4 (court interpreters).

Subdivision (b)(4) continues former Section 26806(d), as it pertained to translation of documents to be filed in court proceedings, with revisions to (1) reflect the enactment of the Trial Court Funding Act, and (2) delete the specified fees for translating a document and preparing a carbon copy of the translation. The reference to a carbon copy is obsolete, and is replaced with a general reference to a copy. Consistent with current practice, the fees for a translation and for a copy of the translation are to be determined by agreement between the court and the interpreter.

Subdivision (c) contains the material previously in this section, with revisions to reflect the enactment of the Trial Court Interpreter Employment and Labor Relations Act, which now comprehensively governs the system of employing court interpreters.

Respectfully submitted,

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