Study J-1404 August 24, 2009

Second Supplement to Memorandum 2009-34

Statutes Made Obsolete by Trial Court Restructuring: Part 5 (Staff Draft Tentative Recommendation)

This memorandum discusses further comments received on the staff draft tentative recommendation. The Commission received comments from the following persons:

The staff much appreciates these comments.

PENAL CODE SECTION 13510

The staff draft tentative recommendation proposes amendments to Penal Code Section 13510, which relates to standards and training for local law enforcement officers. The draft would replace "marshals or deputy marshals of a municipal court" with "marshals or deputy marshals *who serve a superior court*." (Emphasis added.)

In response to comments received earlier, the staff recommended revising the draft to adopt a different approach: replacing "marshals or deputy marshals of a municipal court" with "marshals or deputy marshals *of a superior court or county*." (Emphasis added.) See First Supplement to Memorandum 2009-34, pp. 1-2.

The Commission has now received comments in support of that new language from the marshal of San Benito County, Robert D. Scattini. See Exhibit p. 7. Marshal Scattini writes that the new language "rightly clarifies the peace officer status of marshals regardless of whether they are employed (or in my case elected) to serve the Superior Court or the county." *Id.* Marshal Scattini urges the Commission to adopt that language. *Id.*

The staff draft tentative recommendation proposes to amend Code of Civil Procedure Sections 1068, 1085, and 1103 to more closely track constitutional language regarding the appellate jurisdiction of the appellate division of the superior court. The amendments would help make clear that the appellate division lacks jurisdiction of an extraordinary writ seeking review of a judgment or prejudgment ruling in a small claims case. The amendments would not specify which tribunal has jurisdiction of such a writ.

The staff draft tentative recommendation also proposes technical corrections of Sections 1085 and 1103. Each of these provisions contains an erroneous reference to a writ of review, which would be replaced by a reference to the proper kind of writ.

The Commission has received comments on these reforms from the Civil and Small Claims Advisory Committee of the Judicial Council. See Exhibit p. 6. The staff has also been able to discuss these matters with staff from the Administrative Office of the Courts ("AOC"), which has been helpful in understanding the position of the Civil and Small Claims Advisory Committee. We are grateful for this input.

The Civil and Small Claims Advisory Committee "objects to the proposed amendments to sections 1068, 1085, and 1103 of the Code of Civil Procedure, and requests that they be removed from the proposal." Exhibit p. 6. AOC staff has explained that the committee's objection is not to what the amendments would do, but to what they would not do.

The committee puts it this way:

> As CLRC staff memorandum 2009-20 indicates, the Civil and Small Claims Advisory Committee had previously expressed concerns about a 2006 CLRC Tentative Recommendation relating to writ jurisdiction in small claims cases, which would have provided that writs directed to a superior court with respect to a ruling of the small claims division may be granted by another judicial officer of the superior court. The advisory committee appreciates CLRC's responsiveness to concerns that it informally expressed in 2006, by not including the originally proposed sections in the current draft Tentative Recommendation. However, *the committee is concerned that the current draft does not resolve uncertainties about what tribunals currently have, and policy issues about what tribunals should have, jurisdiction to issue writs in small claims cases.*

Id. (emphasis added).

In other words, the committee believes that the proposal should squarely address which tribunal has jurisdiction to issue an extraordinary writ in a small claims case, instead of simply indicating that the appellate division lacks such jurisdiction. The committee "seeks to collaborate with the Law Revision Commission" to address this matter, and would like to explore possible means of collaboration. *Id*.

As the committee mentions in its comments, the Commission already attempted to provide guidance on which tribunal has jurisdiction. In 2006, the Commission proposed that an extraordinary writ "directed to a superior court with respect to a ruling of the small claims division may be granted by an appellate court or by a judicial officer of the superior court, other than the judicial officer who heard the case in the small claims division." Tentative Recommendation on *Statutes Made Obsolete by Trial Court Restructuring: Part 3* (Aug. 2006), pp. 35, 36, 38.

At that time, the Judicial Council did not take an official position on the Commission's proposal, but AOC staff informally advised us that the Civil and Small Claims Advisory Committee raised significant concerns about the proposal and desired an opportunity to consider the matter further before legislation was introduced. As we understood it, the concerns related to (1) whether and, if so, to what extent, a superior court judicial officer should be able to issue a small claims writ to another judicial officer of the same court, and (2) whether addressing this issue by statute would prompt a flood of small claims writ petitions and subvert the efficiency and inexpensiveness of the small claims process.

In response to this input, the Commission dropped the writ reforms from the trial court restructuring proposal that it was preparing at that time. The expectation was that the Commission would receive further input from the Judicial Council at some point, and then revisit the matter. But no such input ever arrived and, when Commission staff reactivated this matter early this year, there had been no progress in developing the Judicial Council's position.

The proposal in the staff draft attached to Memorandum 2009-34 was designed to meet the concerns that AOC staff informally expressed in 2006. The proposal would not authorize a superior court judicial officer to issue a small claims writ to another judicial officer of the same court; the proposed statutory text would not refer to a small claims writ at all, and thus would not be likely to prompt a flood of small claims writ petitions.

Now, however, the objection is that the proposal would not provide guidance on which tribunal can hear a small claims writ petition. That strikes the staff as a positive development, because that is the question the Commission originally set out to answer. Although the Civil and Small Claims Advisory Committee still has not indicated what approach would be acceptable to it, the committee has made clear that it would like to work with the Commission in some manner to reach an answer. A representative of the committee plans to attend the August 28 Commission meeting to discuss this matter further. The staff is convinced that the committee will make a serious effort to deal with the topic. **We recommend that the Commission work with the committee as requested, in a manner consistent with the Commission's policies and practices.**

In light of these developments, **the staff further recommends that the draft tentative recommendation attached to Memorandum 2009-34 be revised to:**

(1) Delete the proposed amendment of Section 1068.
(2) Replace the proposed amendment of Section 1085 with an amendment that would merely correct the erroneous reference to a writ of review.
(3) Replace the proposed amendment of Section 1103 with an amendment that would merely correct the erroneous reference to a writ of review.
(4) Make conforming revisions of the preliminary part (narrative discussion).

AOC staff has assured us that the Civil and Small Claims Advisory Committee has no objection to going forward with correction of the erroneous references to a writ of review.

INTERPRETATION AND TRANSLATION

The Commission received comments on the provisions relating to interpretation and translation from Mary Lou Aranguren, on behalf of the California Federation of Interpreters ("CFI"). See Exhibit pp. 1-5. CFI's comments relate to Evidence Code Section 731 and Government Code Sections 26806, 68092, and 69894.5.

While CFI suggests some revisions and raises some concerns, it expresses agreement with several of the Commission's recommendations. This memorandum does not describe separately each recommendation with which

CFI agrees, but instead focuses on CFI's suggestions and concerns, which are discussed below.

Evidence Code Section 731

CFI suggests revising a sentence in the narrative discussion relating to Evidence Code Section 731. The sentence states that "Evidence Code Sections 730 and 731 govern compensation of a court-appointed expert, an interpreter for a witness, and a translator of a writing offered in evidence." See page 6, lines 14-16 of the staff draft tentative recommendation.

CFI suggests revising that sentence as follows: "Evidence Code Sections 730 and 731 govern compensation of a court-appointed expert, including an interpreter for a witness, and a translator of a writing offered in evidence." See Exhibit p. 2. That revision would amount to an assertion that an interpreter or translator is an expert witness.

The staff is not inclined to make such a revision. Although interpreters and translators possess linguistic expertise, neither one performs the statutory duties of a court-appointed expert. See Evid. Code § 721 & Comment; see also Evid. Code § 751. A court-appointed expert is "to investigate, to render a report ... and to testify as an expert." Evid. Code § 730. Interpreters and translators do not investigate or render reports; nor do they testify as an expert. See Evid. Code §§ 720, 721. Instead, interpreters and translators communicate, by interpretation or translation, another person's testimony or evidence. See Evid. Code § 751(a), (c).

Accordingly, the staff does not recommend a revision that would describe an interpreter and translator as a court-appointed expert.

Government Code Sections 26806, 68092, and 69894.5

CFI makes numerous comments relating to the proposed amendments to Government Code Sections 26806, 68092, and 69894.5. These provisions relate to the employment, assignment, and compensation of interpreters and translators.

"Translator" as Opposed to "Interpreter"

In regards to Sections 26806 and 69894.5, CFI suggests replacing certain references to an interpreter with a reference to a translator. See Exhibit p. 3.

> These sections include many variations on the phrase "employment and assignment of an *interpreter* to *translate* a document." (Emphasis added.).

> To reflect current practice and standards for qualification in the fields of interpretation and translation, it is appropriate and necessary to revise [these sections] to clarify the distinction between the functions of interpretation and translation, based on the distinct skills, abilities and qualifications required for these functions.
>
> An interpreter is not a translator, and a translator is not an interpreter. While many practitioners in these closely related fields are qualified to perform both functions, many are not. Therefore, while a translator may also be qualified as an interpreter, this is not necessarily the case. Likewise, while many certified court interpreters also have expertise and years of experience as translators, many others do not.

Exhibit p. 3.

CFI further explains that the qualifications required for interpreters and translators are different. *Id.* at 3-4. It also says that "[t]ranslation of documents is not within the scope of work performed by court interpreters." *Id.* at 4. Based on the above, CFI states that the provisions "should be revised to clarify that interpretation is performed by *interpreters* and translation is performed by *translators*." *Id.*

The staff agrees that there are distinctions between interpretation of oral testimony and translation of a document for a court, and these tasks involve different skills, training, and qualifications. However, for reasons explained below, the staff does not recommend revising the statutes as suggested.

The Legislature's use of the term "interpreter" has been inconsistent. At times, the Legislature uses "interpreter" to mean both an interpreter and a translator. At other times, the Legislature distinguishes an interpreter from a translator. For example, existing Sections 26806 and 68092 use "interpreter" to mean both an interpreter and a translator. But in other statutes, the Legislature has treated an interpreter and translator separately. See, e.g., Evid. Code §§ 752 (relating to interpreters), 753 (relating to translators).

Furthermore, there are numerous instances in which the Legislature and the courts have used the terms interchangeably. See, e.g., Jara v. Municipal Court, 21 Cal. 3d 181, 185, 578 P. 2d 94, 145 Cal. Rptr. 847 ("There has been no showing as to whether non-English speaking litigants, able to afford paid *interpreters*, are likely to secure them for consulting with counsel and *translating* legal proceedings.") (emphasis added); Correa v. Superior Court, 27 Cal. 4th 444, 457-58, 40 P. 3d 739, 117 Cal. Rptr. 2d 27 (2002) (using translation to refer to interpretation); 1998 Cal. Stat. ch. 981, § 1 ("It is not the intent of the Legislature

by enacting this act to prohibit a person who lacks proficiency in English from having a family member or friend present during any proceeding where a qualified *interpreter is translating* the proceedings.") (emphasis added); see also Cal. R. Ct. 3.1110(g) ("Exhibits written in a foreign language must be accompanied by an English *translation*, certified under oath by a qualified *interpreter*.") (emphasis added), 5.518 ("When the participants speak different languages, *interpreters*, court-certified when possible, should be assigned to *translate* at the mediation session.") (emphasis added); San Diego County Superior Court rule 4.3.2(C) ("Exhibits written in a foreign language must be accompanied by a *translation* certified by a qualified *interpreter*.") (emphasis added).

Given the frequency with which reference to "interpreter" appears to include "translator," caution should be exercised in considering whether to revise any statutes to distinguish a translator from an interpreter. If Sections 26806 and 68092 were revised to refer to interpreters and translators separately, it may give a misimpression that other references to "interpreter" or "interpretation" should be construed to exclude a translator and translation. To avoid that potential problem, revisions of the statutes to remove inconsistent references to "interpreter" would need to be done globally, not piecemeal, and would be beyond the Commission's authority in this study. As a result, **the staff recommends sticking with the existing language.**

Interpreter as Fee Collector

CFI suggests revising subdivision (b)(3) of the proposed amendments to Section 69894.5 to remove the requirement for an interpreter to collect and deposit the fee from the parties. CFI represents more than 800 interpreters employed in the trial courts, but is "not aware of any setting where interpreters collect fees or make deposits of fees." See Exhibit pp. 1, 5. CFI says that "to do so would compromise the interpreters' role, a primary element of which is to be impartial and avoid any conduct that could create even an apparent conflict." CFI adds that

> it would be inappropriate for interpreters to collect fees because it could give the misimpression that a court appointed interpreter is being hired directly by the parties. Because this is not an actual practice in any setting that we are aware of, we suggest this should be deleted or modified to state that fees may be collected by the court rather than by the interpreter.

Exhibit p. 5.

Like revising the codes to cleanly distinguish between "interpreters" and "translators," this issue might be considered beyond the Commission's authority, which is limited to removing material made obsolete by trial court restructuring. But addressing the issue would not seem to require global revisions, only changing a few words in a statute that also requires revisions that are clearly tied to trial court restructuring. Moreover, effective implementation of the Lockyer-Isenberg Trial Court Funding Act demands clarity with regard to the flow of money in the court system. Based on CFI's comments regarding who actually collects interpreter fees, it appears that some clarification of this point may be needed. It would be a stretch, but there is at least a colorable basis for the Commission to address this matter.

However, a review of local court rules indicates that in some counties, parties are required by rule to pay the interpreter directly. See, e.g., Local Rules for the Amador County Superior Court, Rule 11.07(B) ("Except as to interpreters for the deaf and hearing impaired governed by Evidence Code § 754, a party requesting an interpreter or translator in a non-criminal matter shall pay directly to the interpreter or translator the per diem rate and mileage."); Local Rules for the Madera County Superior Court, rule 1.4.3(b) ("Any party requiring the services of an interpreter is responsible for arranging and paying for the services of such interpreters unless otherwise ordered by the Court."); Local Rules of San Mateo County Superior Court, rule 2.10(a) ("When a party desires an interpreter, ... [the] party shall make arrangements for the presence and the payment of the interpreter."). We do not know whether these rules reflect actual practice, or merely track the existing statutory language, which would be continued in proposed Section 69894.5(b)(3).

Perhaps the tentative recommendation should **include a note soliciting comment on whether to revise that language such that the court, not the interpreter, is responsible for collecting the interpreter's fee.** If comments on the tentative recommendation reveal widespread agreement that the court should be responsible for fee collection, the Commission may ultimately want to recommend as much. If there is any controversy, however, it may be better to stay out of this matter and stick with the existing statutory language.

The remainder of CFI's comments relate to concerns with the substance of existing law. Those comments are discussed below.

Concerns with Existing Substantive Law

CFI expresses concerns relating to the substance of provisions that would be revised to reflect trial court restructuring. In particular, CFI is concerned with existing law in Sections 26806 and 68092.

Existing Section 26806 authorizes, in a county of 900,000 or more persons, the employment of as many interpreters and translators as necessary to interpret or translate in criminal cases in the superior court, and in the juvenile court. When the interpreters and translators are not required in such cases, the interpreters and translators may be assigned to interpret or translate in civil cases.

CFI believes that this provision is insufficient. Accordingly, CFI is concerned that retaining its substance will imply that it is sufficient. CFI explains that

> the appointment of interpreters in civil matters is an unsettled area. Demand for interpreters in criminal and civil matters is growing. Frequently, there is a shortage of interpreters available to meet the needs in criminal and juvenile matters, and there is a well-documented, unmet need for interpreters in civil proceedings. Thus, it is not practical or realistic to expect that the need for interpreters in civil matters can be met based on the use of interpreters hired for criminal and juvenile [matters] "when their services are not needed in criminal and juvenile matters." CFI does not disagree with the premise that interpreters hired for criminal and juvenile [matters] may also be appointed in civil matters, *we are concerned that this statutory language implies that this is an appropriate way for the need for interpreters in civil matters to be met.* This approach is not providing adequate services to the public and access to the courts, and results in uneven access to the courts for limited-English proficient (LEP) communities in civil matters.

See Exhibit p. 5. (Emphasis added.)

CFI is also concerned with existing Section 68092, which governs generally when the cost of interpreters and translators in court proceedings is borne by the parties, and when it is not. The general rule is that the parties must bear the cost in civil cases, but not in criminal cases.

CFI questions

> whether it is appropriate to charge fees to parties for interpretation and/or translation services in court proceedings. CFI agrees with the concern articulated by legal services organizations and policy makers that such fees create an additional burden and barrier for LEP communities who need access to the courts, and there is an open question as to whether such fees are discriminatory under Title VI.

Id. CFI adds that, to the extent that fees are collected for interpretation or translation in any civil or criminal action, the fees should be directed to fund improved access to the trial courts for communities with limited-English proficiency. *Id.*

The staff appreciates CFI's concerns and suggestions.

The Commission's authority in this study, however, is limited to revising statutes as necessary to reflect trial court restructuring. It would exceed the Commission's authority to recommend revisions to existing substantive law relating to the provision of interpretation and translation services.

The Commission could, however, include an uncodified section in its proposed legislation, which would make clear that the legislation does not reflect a policy judgment on the substantive law relating to the provision of interpretation and translation services.

For example, the Commission could include an uncodified section along the following lines:

> SEC. ___. The purpose of this act is to remove material from the codes that became obsolete due to trial court restructuring. This act shall not be construed as a re-evaluation of the extent to which interpretation or translation should be provided in court proceedings, or who should bear the expense of interpretation or translation.

The Commission should decide whether it wants to include the above language, with or without change, in the tentative recommendation.

Respectfully submitted,

Catherine Bidart
Staff Counsel

Barbara Gaal
Chief Deputy Counsel

Date: August 17, 2009

To: Catherine Bidart, Staff Counsel
California Law Revision Commission

From: Mary Lou Aranguren, Staff Representative
California Federation of Interpreters, TNG-CWA, Local 39521

Re: Comments in Response to Staff Draft Tentative Recommendation: Statutes Made Obsolete by Trial Court Restructuring: Part 5, August 2009, Study#J-1404

The California Federation of Interpreters represents more than 800 court interpreters employed in the trial courts pursuant to the Trial Court Interpreter Employment and Labor Relations Act (the Interpreter Act). We also function as a professional association for court interpreters working in California as employees and independent contractors.

These comments are focused on those recommendations related to compensation under Evidence Code 731 and employment, assignment and compensation of interpreters and translators (Gov't Code §§ 26806, 68092, 69894.5).

We appreciate the opportunity to comment on the commission's study and recommendations. Please do not hesitate to contact me should you need further information or clarification of these comments.

I. COMPENSATION UNDER EVIDENCE CODE SECTION 731

It is important to note, as discussed more fully below, that while functionally similar, the functions of interpretation and translation, and the terms interpreter and translator, are distinct. These terms should not be used interchangeably because the training, skills, knowledge and abilities needed to perform them are different.

CFI does not agree, therefore, with the suggestion at page 4 of the Commission's Memorandum 2009-26 (June 1, 2009), "[…] 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."

However based on other reasoning, CFI is in agreement with the Commission's suggestion that employment of a translator of a writing offered into evidence is a court operation. As noted in the draft recommendations, although the provisions defining "court operations" do not expressly refer to translation, translation is functionally similar to court interpretation. It is reasonable to suggest, based on this similarity, that translation is a court operation.

More relevant support for this conclusion is the fact that Evidence Code Sections 752 and 753, respectively, provide for the appointment and compensation of interpreters for witnesses and translators of writings offered in evidence. These functions are identified distinctly, under the umbrella of expert witnesses, and are governed by Sections 730 and 731.

To make this clear, we recommend that the July 20, 2009 draft tentative recommendation be revised on page 6 commencing at line 14 as follows:

> "Evidence Code Sections 730 and 731 govern compensation of a court-appointed expert, *including* an interpreter for a witness, and a translator of a writing offered in evidence."

If employment of a court-appointed expert in a criminal or juvenile case is a court operation within the meaning of the Trial Court Funding Act, then the appointment of either a translator or a witness interpreter, *as an expert witness* is also a court operation.

II. EMPLOYMENT, ASSIGNMENT AND COMPENSATION OF INTERPRETERS AND TRANSLATORS (GOV'T CODE §§ 26806, 68092, 69894.5).

A. Section 68092: Compensation of an Interpreter or Translator in a Court Proceeding or a Coroner's Case

Criminal Case

CFI agrees with the recommendations related to clarifying that the Court, and not the county, is responsible for payment of court interpreters and translators.

Civil Case

This is an area of law that is unsettled. Lawmakers have introduced numerous bills to expand the right to interpreters in civil cases at court expense. Although the measures were vetoed by the Governor, there is continuing interest and need to provide these services, and there are ongoing questions about whether the Courts' current practices in civil matters comply with Title VI requirements for access to public agencies. Additionally, many trial courts use staff interpreters to provide some services in civil matters. Interpreter services in those civil matters fall within the scope of bargaining unit work pursuant to the collective bargaining agreements (CBAs) between the Regions and the interpreters' representative, CFI. This is because bargaining unit work is defined in the CBAs as work that has historically been provided by court interpreters hired and compensated by the Court, whether the work is performed in criminal or civil cases. It would be difficult to revise this portion of the law to accurately reflect current practices, particularly given the fact that public policy and court practices are varied and changing.

CFI agrees, however, that Section 68092 should be revised to reflect that the Court, instead of the county, pays for translation and interpretation in court proceedings, the only exception to this being those portions related to coroner's cases.

Fees vs. Compensation

CFI agrees with the recommendations to revise the section to refer to compensation rather than fees, and to eliminate the reference to a particular fee.

B. Section 26806

CFI agrees with the following recommendations:

- The general intent to make revisions in this section to clarify whether, in various contexts, the court or the county is responsible for employment, assignment and compensation of interpreters and translators.

- Relocate the substance of 26808 related to duties that now belong to the court clerk (i.e., the employment and assignment of an interpreter in court proceedings) to Section 69894.5.

- Restate the constitutional requirement to provide an interpreter in a criminal case in order to avoid the misimpression that the right applies only in counties of 900,000 persons or more.

- Modernize the compensation provisions, delete the specified amount, and provide that the amount is to be determined by agreement.

C. The Distinction Between Interpreters and Translators in Sections 26808 and 69894.5

The current recommendations related to Section 26808 69894.5 present a problem, however, that requires correction. These sections include many variations on the phrase, "employment and assignment of an *interpreter* to *translate* a document." (Emphasis added.)

To reflect current practice and standards for qualification in the fields of interpretation and translation, it is appropriate and necessary to revise this section to clarify the distinction between the functions of interpretation and translation, based on the distinct skills, abilities and qualifications required for these functions.

An interpreter is not a translator, and a translator is not an interpreter. While many practitioners in these closely related fields are qualified to perform both functions, many are not. Therefore, while a translator may also be qualified as an interpreter, this is not necessarily the case. Likewise, while many certified court interpreters also have expertise and years of experience as translators, many others do not.

The qualifications to be certified as a court interpreter are well defined (Government Code Section 68561, et. seq.). To be eligible for appointment as a court interpreter, an individual must be certified or registered in accordance with standards set by the Judicial Council of California. Certified court interpreters are rigorously tested for the knowledge, skills and abilities necessary to perform spoken language interpretation in simultaneous, consecutive and sight interpretation modes with a high

degree of accuracy in the legal setting. Certified interpreters are not tested for accuracy and competence in rendering written translations.

The qualifications required to perform translation of legal documents are not specified in statute, and are based more on experience and general education, though translators may hold an advanced degree in translation, and accreditation is also available, for example from the American Translators Association.

Additionally, as noted in the Commission's Memorandum 2009-26 (June 1, 2009) at page 14, the Interpreter Act does not apply to the translation of written documents, "as it applies to spoken language interpretation, not translation." (Gov't Code Sections 71802(a), 71806(a).) Interpreters hired under the Act currently are not qualified for this function and do not perform written translations of documents for filing with the Court or to be presented in evidence in civil or criminal matters. Translation of documents is not within the scope of work performed by court interpreters.

Based on all of the above, all relevant sections should be revised to clarify that interpretation is performed by *interpreters* and translation is performed by *translators.*

For example:

1. At page 21 of the July 20, 2009 tentative recommendation commencing at line 11 we recommend:

> *Section 26806 (a) In counties having a population of 900,000 or over, the county clerk may employ as many foreign language ~~interpreters~~ translators as may be necessary to translate documents intended for recordation in the county recorder's office.*

2. At page 21of the July 20, 2009 tentative recommendation commencing at line 25 we recommend:

> *The ~~interpreters~~ translators so employed shall, when employed to do so by the county clerk, translate documents to be recorded. The fee to be collected for translating each document shall be determined by agreement between the county and the ~~interpreter~~ translator preparing the translation.*

3. At page 23 of the July 20, 2009 tentative recommendation commencing at line 44 we recommend:

> *(1) The clerk of the court may employ as many foreign language interpreters and translators 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.*

4. At page 24 of the July 20, 2009 tentative recommendation commencing at line 11 we recommend:

> *(4) The ~~interpreters~~ translators 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~~ translator preparing the translation.*

D. Use of Interpreters in Civil Matters

CFI has two concerns about subdivision (b)(3) of 69894.5 (page 24 of the July 20, 2009 tentative recommendation commencing at line 6:

> 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, and interpreter shall collect from the litigants the fee fixed by the court and shall deposit that fee in the Trial Court Trust Fund.

First, as discussed above, the appointment of interpreters in civil matters is an unsettled area. Demand for interpreters in criminal and civil matters is growing. Frequently, there is a shortage of interpreters available to meet the needs in criminal and juvenile matters, and there is a well-documented, unmet need for interpreters in civil proceedings. Thus, it is not practical or realistic to expect that the need for interpreters in civil matters can be met based on the use of interpreters employed for criminal and juvenile "when their services are not needed in criminal and juvenile matters." CFI does not disagree with the premise that interpreters hired for criminal and juvenile may also be appointed in civil matters, we are concerned that this statutory language implies that this is an appropriate way for the need for interpreters in civil matters to be met. This approach is not providing adequate services to the public and access to the courts, and results in uneven access to the courts for limited-English proficient (LEP) communities in civil matters.

Additionally, the second sentence of subdivision (b)(3) of 69894.5 appears to be obsolete. We are not aware of any setting where interpreters collect fees or make deposits of fees. Indeed, to do so would compromise the interpreters' role, a primary element of which is to be impartial and avoid any conduct that could create even an apparent conflict. It would be inappropriate for interpreters to collect fees because it could give the misimpression that a court appointed interpreter is being hired directly by the parties. Because this is not an actual practice in any setting that we are aware of, we suggest this should be deleted or modified to state that fees may be collected by the court rather than by the interpreter.

E. Deposits into the County Treasury

CFI agrees with the recommendation that fees collected for translation and interpretation should no longer be deposited into the county treasury. To the extent that such fees are collected, it would appear appropriate to deposit them into the Trial Court Trust Fund. We further recommend that policy makers should consider directing such funds for the purpose of improving access to the trial courts for LEP communities.

CFI questions, however, whether it is appropriate to charge fees to parties for interpretation and/or translation services in court proceedings. CFI agrees with the concern articulated by legal services organizations and policy makers that such fees create an additional burden and barrier for LEP communities who need access to the courts, and there is an open question as to whether such fees are discriminatory under Title VI.

Comments of the Civil and Small Claims Advisory Committee (8/20/09)

Objections to proposed revisions to **Code of Civil Procedure sections 1068, 1085, and 1103**:

The Civil and Small Claims Advisory Committee objects to the proposed amendments to sections 1068, 1085, and 1103 of the Code of Civil Procedure, and requests that they be removed from the proposal.

As CLRC staff memorandum 2009-20 indicates, the Civil and Small Claims Advisory Committee had previously expressed concerns about a 2006 CLRC Tentative Recommendation relating to writ jurisdiction in small claims cases, which would have provided that writs directed to a superior court with respect to a ruling of the small claims division may be granted by another judicial officer of the superior court. The advisory committee appreciates CLRC's responsiveness to concerns that it informally expressed in 2006, by not including the originally proposed sections in the current draft Tentative Recommendation. However, the committee is concerned that the current draft does not resolve uncertainties about what tribunals currently have, and policy issues about what tribunals should have, jurisdiction to issue writs in small claims cases.

The advisory committee seeks to collaborate with the Law Revision Commission to address both bodies' concerns. The Small Claims and Limited Case Subcommittee staff will be contacting CLRC staff to discuss possible forms of collaboration.

August 13, 2009

Catherine Bidart, Staff Counsel
California Law Revision Commission
3200 Fifth Avenue
Sacramento, CA 95817

Re: Statutes Made Obsolete by Trial Court Restructuring/
Comments Regarding Proposed Amendment to Penal Code Section 13510

Dear Ms. Bidart,

I am writing in support of the proposed amendment to Penal Code section 13510, which authorizes the commission to establish standards for peace officers, including "*marshals or deputy marshals of a superior court or county…*".

By way of background, I am a retired CHP officer and have served as the elected Marshal of San Benito County since 1988, for the past 21 years. I was most recently elected to office in 2002 to serve a six year term. Like my counterpart in Inyo County, I do not provide court security.

The proposed amendment to Section 13510 removes what I believe to be unintended ambiguities resulting from the trial courts' restructuring law. Consistent with Section 830.1, the proposed amendment rightly clarifies the peace officer status of marshals regardless of whether they are employed (or in my case elected) to serve the Superior Court or the county.

I urge the Commission to adopt the language as proposed. Thank you for your consideration.

Very truly yours,

Robert D Scattini

ROBERT D. SCATTINI, MARSHAL