

Memorandum 2009-49

**Statutes Made Obsolete by Trial Court Restructuring: Part 5  
(Comments on Tentative Recommendation)**

This memorandum discusses comments received on the Commission’s Tentative Recommendation on *Statutes Made Obsolete by Trial Court Restructuring: Part 5* (hereafter, “Tentative Recommendation”).

The November 10 deadline to comment on the Tentative Recommendation has passed. The Commission received comments from the following sources:

	<i>Exhibit p.</i>
• Elizabeth Howard Espinosa, California State Association of Counties (11/25/09) .....	1
• Tracy Kenny, Judicial Council of California (11/4/09) .....	2
• Shawn Landry, Yolo County Superior Court (10/28/09) .....	9
• David A. Prentice, Madera County (9/24/09) .....	10
• Matt Siverling, California Association of Clerks and Election Officials (11/5/09) .....	11
• Robert Turner, Sacramento County Superior Court (11/10/09) .....	14

The Commission appreciates these comments.

The memorandum also discusses comments on an earlier draft that were not previously analyzed, which relate to interpretation and translation. These comments, submitted by Fred Bennett, on behalf of the Los Angeles County Superior Court, are attached as an exhibit. See Exhibit p. 15.

In addition, the memorandum discusses relevant comments analyzed earlier in the study.

It is difficult to generalize the comments overall.

Some of the proposed reforms appear to be relatively non-controversial. These include:

- The proposed technical revisions of Code of Civil Procedure Sections 1085 and 1103, relating to writ jurisdiction.
- The proposed amendment of Government Code Section 53647.5, relating to interest on bail deposits.

---

Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission’s website ([www.clrc.ca.gov](http://www.clrc.ca.gov)). Other materials can be obtained by contacting the Commission’s staff, through the website or otherwise.

- The proposed amendment of Government Code Section 53679, relating to municipal court bank accounts.
- The proposed technical amendment of Government Code Section 71601, relating to the definition of “subordinate judicial officer.”
- The proposed amendment of Penal Code Section 13510, relating to standards and training of local law enforcement officers.

On a number of provisions, there is little consensus amongst the commenters. Reforms in this category include:

- The proposed amendment of Evidence Code Section 731, relating to compensation of a court-appointed expert.
- The proposed amendment of Evidence Code Sections 752 and 753 and Government Code Sections 26806, 68092, and 69894.5, relating to employment, assignment, and compensation of interpreters and translators.

The relatively non-controversial reforms are discussed first, in the order listed above. Next, the memorandum discusses provisions on which there was less agreement amongst commenters.

**The Commission should review the comments and discussion below, and determine whether to make any changes to the proposal before issuing a final recommendation.**

#### TECHNICAL REVISIONS OF WRIT STATUTES (CODE CIV. PROC. §§ 1085, 1103)

The Tentative Recommendation proposes certain technical corrections of Code of Civil Procedure Sections 1085 and 1103, relating to writ jurisdiction. The Commission received no comments on these revisions while the Tentative Recommendation was open for comment.

**The Commission should proceed with these reforms as presently drafted.**

#### INTEREST ON BAIL DEPOSITS (GOV'T CODE § 53647.5)

Government Code Section 53647.5 concerns interest earned on bail deposits in court. Currently, the section authorizes the board of supervisors to allocate interest earned on such deposits to support the courts in that county.

The county no longer funds the court and is no longer in charge of the court's budget. Accordingly, the Tentative Recommendation proposes to place the decision with the judicial branch, instead of the county. The Commission specially solicited comment on which entity in the judicial branch should make

the decision: the Judicial Council of California (hereafter, “the Judicial Council”), or the local court that accepted the deposit.

The Commission received two comments on that issue.

Shawn Landry, Assistant Court Executive Officer, comments on behalf of the Yolo County Superior Court. He writes that the local court that accepted the deposit, not the Judicial Council, should make the decision. See Exhibit p. 9.

Tracy Kenny, an attorney, comments on behalf of the Judicial Council. The Judicial Council suggests allocating the interest to the court that accepted the deposit, and removing the reference to who makes the decision. See Exhibit p. 3. The Council explains that “[o]nce these funds are identified as trial court funds, the need for a decision on how to allocate them is obviated.” *Id.*

Absent disagreement that the interest should be allocated to the local court, the Judicial Council’s suggested approach seems reasonable. Accordingly, **the staff recommends amending Government Code Section 53647.5 as follows:**

**Gov’t Code § 53647.5 (amended). Interest on bail deposits**

53647.5. Notwithstanding any other provision of law, interest earned on any bail money deposited by a court in a bank account pursuant to Section 1463.1 of the Penal Code and Section 53679 of this code shall, ~~if the board of supervisors so directs,~~ be allocated for the support of ~~the courts in that county~~ that court.

**Comment.** Section 53647.5 is amended to reflect enactment of the Lockyer-Isenberg Trial Court Funding Act, 1997 Cal. Stat. ch. 850 (see generally Gov’t Code §§ 77000-77655). 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.

MUNICIPAL COURT BANK ACCOUNTS (GOV’T CODE § 53679)

The Tentative Recommendation proposes an amendment to Government Code Section 53679, relating to municipal court bank accounts. The Commission received no new comments on this matter while the Tentative Recommendation was open for comment.

**The Commission should proceed with this amendment as presently drafted.**

DEFINITION OF "SUBORDINATE JUDICIAL OFFICER"  
(GOV'T CODE § 71601)

The Tentative Recommendation proposes the following technical amendment of Government Code Section 71601(i):

**Gov't Code § 71601 (amended). Definition of "subordinate judicial officer"**

71601. For purposes of this chapter, the following definitions shall apply:

....

(i) "Subordinate judicial officer" means an officer appointed to perform subordinate judicial duties as authorized by Section 22 of Article VI of the California Constitution, including, but not limited to, a court commissioner, probate commissioner, child support commissioner, traffic trial commissioner, referee, traffic referee, and juvenile court referee, and juvenile hearing officer.

....

**Comment.** Subdivision (i) of Section 71601 is amended to expressly refer to a child support commissioner, traffic trial commissioner, and juvenile hearing officer. See former Section 72450 (traffic trial commissioners), Fam. Code §§ 4250-4253 (child support commissioners); Welf. & Inst. Code § 255 (juvenile hearing officers).

Subdivision (i) is also amended for consistency of terminology. See Gov't Code § 70045.4 (juvenile court referee); Penal Code § 853.6a (same); Veh. Code § 40502 (same); Welf. & Inst. Code § 264 (same).

The Judicial Council "recommends that this revision be altered to eliminate the reference to child support commissioners and traffic trial commissioners as both of these types of SJOs are captured in the existing statute by the term "court commissioner," and because the term "traffic trial commissioner" is not currently used by the courts." Exhibit p. 5.

It is true that the term "court commissioner" is broad enough to encompass a child support commissioner and a traffic trial commissioner. See Family Code § 4251 (requiring each superior court to "provide sufficient commissioners" to hear child support cases, and referring to such commissioners as "child support commissioners"); former Section 72450, 1972 Cal. Stat. ch. 57, § 1 (stating that traffic trial commissioner serves court "as a commissioner").

But the term "child support commissioner" is used in a number of statutes, rules of court, and local court rules, sometimes where it may not be clear that a

“child support commissioner” is a type of “court commissioner” or “subordinate judicial officer.” See, e.g., Family Code §§ 4251, 4252, 17306, 17441, 17712; Cal. R. Ct. 5.340, 10.700; Kings County Superior Ct. Local Rules 740, 741, 742; Marin County Superior Court Local Rule 6.3; Mendocino County Superior Court Local Rule 151; San Benito County Superior Court Local Rule 11.13; Santa Clara County Superior Court Local Rule 6; Sonoma County Superior Court Local Rule 9.3. Thus, it might be helpful to include “child support commissioner” as an example in the definition of “subordinate judicial officer,” as proposed in the Tentative Recommendation. The staff does not feel strongly about this, but we are inclined to **retain the proposed reference to a “child support commissioner” in the amendment of Government Code Section 71601(i).**

In contrast, the term “traffic trial commissioner” is currently used in only three code provisions, one of which is a trial court unification transitional provision. See Gov’t Code § 70214(b) (trial court unification transitional provision); see also Gov’t Code § 53069.4(b)(3) (“The conduct of the appeal under this section is a subordinate judicial duty that may be performed by traffic trial commissioners and other subordinate judicial officers ....”), Veh. Code § 40230(c) (same). Consequently, it may not be of much benefit to include “traffic trial commissioner” as an example in the definition of “subordinate judicial officer,” especially because the Judicial Council says that the term is not currently used by the courts. The staff therefore recommends omitting “traffic trial commissioner” from the proposed amendment of Government Code Section 71601(i), as suggested by the Judicial Council. **That could be done by replacing the amendment proposed in the Tentative Recommendation with the following:**

**Gov’t Code § 71601 (amended). Definition of “subordinate judicial officer”**

71601. For purposes of this chapter, the following definitions shall apply:

....

(i) “Subordinate judicial officer” means an officer appointed to perform subordinate judicial duties as authorized by Section 22 of Article VI of the California Constitution, including, but not limited to, a court commissioner, probate commissioner, child support commissioner, referee, traffic referee, ~~and~~ juvenile court referee, and juvenile hearing officer.

....

**Comment.** Subdivision (i) of Section 71601 is amended to expressly refer to a child support commissioner and juvenile hearing officer. See Fam. Code §§ 4251, 4252, 17306, 17441, 17712

(child support commissioners); Welf. & Inst. Code § 255 (juvenile hearing officers).

Subdivision (i) is also amended for consistency of terminology. See Gov't Code § 70045.4 (juvenile court referee); Penal Code § 853.6a (same); Veh. Code § 40502 (same); Welf. & Inst. Code § 264 (same).

A subsidiary issue is whether the term “traffic trial commissioner” should be retained in Government Code Section 53069.4(b)(3) and Vehicle Code Section 40230(c). It would be a simple matter to delete the term, revising each provision as follows: “The conduct of the appeal under this section is a subordinate judicial duty that may be performed by ~~traffic trial commissioners and other~~ subordinate judicial officers ....” We understand, however, that the Judicial Council’s research on the extent to which the term “traffic trial commissioner” is still used was not exhaustive. Moreover, this matter is at best tangential to clean-up necessitated by trial court restructuring. **The staff is not inclined to pursue it.**

STANDARDS AND TRAINING OF LOCAL LAW ENFORCEMENT OFFICERS  
(PENAL CODE § 13510)

Penal Code Section 13510 relates to standards and training of local law enforcement officers. The section contains references to a municipal court marshal.

No new comments were received on proposed Section 13510. However, an issue has arisen that should be brought to the Commission’s attention.

At the time the Tentative Recommendation was drafted, marshals existed in four counties: Inyo, San Benito, Shasta, and Trinity. The marshals in Inyo County and San Benito County were employed by the *county*, while the marshals in Shasta County and Trinity County were employed by the *superior court*. To reflect that situation, the Tentative Recommendation proposes amending Section 13510 to replace references to a marshal of the municipal court with references to a marshal of a superior court or county.

Since the Tentative Recommendation was issued, however, the staff has learned that Inyo County has taken measures to terminate its marshal, based on its view that the position of marshal had been eliminated. The staff has also learned that San Benito County has instituted similar steps, and that litigation is pending on the matter.

However, unless and until the Commission receives information of a final determination that there no longer is any marshal employed by a county, **the staff recommends moving forward with proposed Section 13510 as drafted.**

#### COMPENSATION OF A COURT-APPOINTED EXPERT (EVID. CODE § 731)

### **Background**

Evidence Code Sections 730 and 731 govern compensation of a court-appointed expert. Section 730 provides that the amount of compensation is fixed by the court.

Section 731 currently places responsibility for payment of the expert with the county, or the parties, depending largely on the nature of the underlying case (criminal, juvenile, civil). In a criminal or juvenile case, the county is responsible for the payment. In a civil case, the parties pay, except the county may elect to pay court-appointed medical experts in civil cases.

The Tentative Recommendation proposes two amendments to reflect trial court restructuring. First, the court, rather than the county, would be responsible for the payment of an expert appointed *for the court's needs* in a criminal or juvenile case. The county would remain responsible for the payment of an expert appointed for other purposes in a criminal or juvenile case.

Second, the court could elect to pay for medical experts appointed *for the court's needs* in civil cases. The county could continue to elect to pay for medical experts appointed for other purposes in civil cases.

The Commission received input on proposed Section 731 from David A. Prentice, County Counsel, on behalf of Madera County, and from Ms. Kenny, on behalf of the Judicial Council.

### **Madera County's Comments**

Mr. Prentice's comments are brief. He writes that the county "will only comment as to Evidence Code section 731 and Government Code section 60892." See Exhibit p. 10. He says that "[w]e fully agree that these charges should be appointed costs of the Courts." *Id.* Based on these comments, it appears that Madera County agrees with the proposed revisions to Section 731.

### **The Judicial Council's Comments**

The Judicial Council comments on both amendments to Section 731. Its comments on the amendment relating to compensation of a court-appointed

expert in a criminal or juvenile case are discussed first, followed by its comments on the amendment relating to compensation of a court-appointed medical expert in a civil case.

*Court-Appointed Expert in a Criminal or Juvenile Case*

The Judicial Council agrees that the court, rather than the county, is now responsible for payment of an expert appointed for the court's needs in a criminal or juvenile case. See Exhibit p. 2.

However, the Judicial Council requests a non-substantive drafting change. The amendment proposed in the Tentative Recommendation is:

731. (a) In all criminal actions and juvenile court proceedings, the compensation fixed under Section 730 for an expert appointed for the court's needs shall be a charge against the court. The compensation fixed under Section 730 for an expert appointed for other purposes shall be a charge against the county in which ~~such~~ the action or proceeding is pending and shall be paid out of the treasury of ~~such that~~ county on order of the court.

Instead, the Judicial Council would like the provision amended as follows:

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~~ the action or proceeding is pending and shall be paid out of the treasury of ~~such that~~ county on order of the court, unless the expert is appointed for the court's needs in which case the compensation shall be a charge against the court.

See Exhibit p. 6. Mr. Bennett, Court Counsel of the Los Angeles County Superior Court, suggested a revision on behalf of the court that would have the same effect. See Fourth Supplement to Memorandum 2009-34, Exhibit p. 1.

The Judicial Council explains that experts are appointed for the court's needs with much less frequency than experts are appointed for other purposes. It says that

[s]etting forth the responsibilities in [this] order will reflect current practice in which it is far more often the case that experts are appointed for the needs of one party who is unable to bear the cost of the appointment. As a result, these costs are properly part of indigent defense costs which are not a court operations expense, but rather a county responsibility.

Exhibit pp. 2-3.

The staff believes that the concern could be addressed, but even more clearly, by amending the provision as follows:

731. (a) (1) In all criminal actions and juvenile court proceedings, the compensation fixed under Section 730 shall be a charge against the county in which ~~such~~ the action or proceeding is pending and shall be paid out of the treasury of ~~such~~ that county on order of the court.

(2) Notwithstanding paragraph (1), if the expert is appointed for the court's needs, the compensation shall be a charge against the court.

...

**The staff therefore recommends this amendment to Section 731.**

### **Court-Appointed Medical Expert in Civil Cases**

As stated above, Section 731 currently provides that a county may elect to pay for court-appointed medical experts in civil cases. To reflect trial court restructuring, the Tentative Recommendation would (1) remove the county's authority to elect to pay for the experts when the expert is appointed *for the court's needs*, and (2) leave intact a county's authority to elect to pay for the experts when the expert is appointed *for any other purpose*. The Judicial Council agrees with that proposal. See Exhibit pp. 3, 6.

The Judicial Council disagrees, however, with a related proposal to grant the court authority to elect to pay for medical experts in civil cases when the expert is appointed *for the court's needs*.

Ms. Kenny writes:

The fact that the Legislature wanted to authorize counties to choose to use local funds to pay for a certain class of expert witnesses does not mean that the Legislature intended that the same authority be given to the trial courts to use state funds for this very specific purpose. Substituting "superior court" for "board of supervisors" in this statute is a substantive policy change that does not appear to fit within the scope of CLRC's endeavor to update what is obsolete under current law."

See Exhibit p. 3.

The proposal, however, would not substitute "superior court" for "board of supervisors." The statute would continue to provide that the board of supervisors may elect to pay for medical experts in civil cases, when the expert is not appointed for the court's needs.

The statute would authorize the court, however, to pay for medical experts in civil cases, when the expert is appointed for the court's needs. The Judicial Council asserts that granting courts this authority is not supported by the legislative intent behind Section 731, and would constitute a policy change beyond updating the statute to reflect trial court restructuring.

However, the staff believes that granting courts such authority would be consistent with the legislative intent behind Section 731, and would properly update the section in light of trial court restructuring. Section 731 reflects an intent to provide a mechanism to remove the burden of paying medical experts in civil cases from the parties. To effectuate that intent, the section grants authority to the entity responsible for the court's budget — formerly, the county — to provide that medical experts in civil cases are paid with public funds. Now that a court is responsible for promulgating its budget, and is responsible for payment of experts appointed for the court's needs in other cases (criminal and juvenile), it is appropriate to provide that the court may elect to pay for medical experts appointed for its needs in civil cases. If such authority were not provided, the intent for there to be a mechanism to pay medical experts appointed in civil cases with public funds would not be fully effectuated, because the mechanism would not apply to the experts appointed for the court's needs.

The Judicial Council makes a further objection to granting courts authority to pay for medical experts appointed for the court's needs in civil cases. It questions the necessity of granting such authority:

It is not clear why this wholly discretionary provision needs to be changed in light of [California Rules of Court, rule] 10.810. Courts already have the ability to pay for all appointed experts for the court's needs in civil matters if the parties are unable to do so.

See Exhibit p. 3.

It is not entirely clear, however, that the text of Rule 10.810 provides that a court may pay for all experts appointed for the court's needs in civil cases, if the parties are unable to do so. The rule lists "court operations," which are funded by the state. Court operations include "[c]ourt-appointed expert witness fees (for the court's needs)." Cal. R. Ct. 10.810, Function 10. But no further detail is given. The rule may be intended to give a court discretion to pay all experts appointed for the court's needs in civil cases if the parties are unable to pay, but it does not expressly say as much.

Accordingly, if proposed Section 731 were silent on the authority to pay for medical experts appointed for the court's needs in civil cases, it might not be obvious that the court may elect to do so. Thus, **the staff recommends sticking with proposed Section 731 as shown in the Tentative Recommendation.**

#### INTERPRETATION AND TRANSLATION

The Tentative Recommendation proposes amending several provisions relating to interpretation and translation. These provisions include Evidence Code Sections 752 and 753, and Government Code Sections 26806, 68092, and 69894.5.

The discussion below begins with comments received on proposed Evidence Code Section 752, then proposed Section 753. Next, the discussion turns to comments received on proposed Government Code Section 68092, and then to Sections 26806 and 69894.5, because these two sections are closely related.

In addition to comments received on the Tentative Recommendation, the discussion includes comments on an earlier draft that were submitted by Mr. Bennett, on behalf of the Los Angeles County Superior Court. The staff was unable to analyze these comments before the Commission adopted its Tentative Recommendation. Accordingly, they are considered below, alongside the comments on the Tentative Recommendation.

Where relevant, the discussion also mentions other comments received earlier in the study. In addition, it should be noted at the outset that Holly Mikkelson, a certified interpreter and translator, agreed with all the staff recommendations and conclusions relating to interpretation and translation that served as a basis for the Tentative Recommendation. See First Supplement to Memorandum 2009-26, Exhibit p. 1. We will not repeat this point separately for each of the reforms discussed below.

#### **Evid. Code § 752. Interpreter for a Witness**

Evidence Code Section 752 requires that an interpreter be appointed for a witness who cannot speak or understand English. The section currently provides that an interpreter for a witness is appointed and compensated as a court-appointed expert under "Article 2 (commencing with Section 730) of Chapter 3" of Division 6 of the Evidence Code — i.e., Evidence Code Sections 730-733.

As discussed above, Evidence Code Section 731 sets forth a scheme allocating responsibility for payment of a court-appointed expert based on the nature of the

underlying case (criminal, juvenile, or civil). Section 752 currently extends that scheme to an interpreter for a witness.

The Tentative Recommendation proposes to amend Section 731 to differentiate between an expert appointed for the court's needs and an expert appointed for other purposes. In a criminal or juvenile case, the compensation of an expert appointed for the court's needs would be a charge against the court, because retention of such an expert is considered a "court operation." See Cal. R. Ct. 10.810, Function 10. The compensation of an expert appointed for other purposes would continue to be a charge against the county. In a civil case, the compensation of a court-appointed expert would initially be apportioned among the parties and later taxed as costs, as under existing law, except in certain circumstances involving a medical expert appointed for the court's needs.

The Tentative Recommendation proposes to extend this new compensation scheme to an interpreter for a witness, by amending Section 752 as follows:

**Evid. Code § 752 (amended). Interpreters for witnesses**

752. (a) When 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, an interpreter whom he or she can understand and who can understand him or her shall be sworn to interpret for him or her.

(b) The record shall identify the interpreter who may be appointed and compensated as provided in Article 2 (commencing with Section 730) of Chapter 3, in the same manner as an expert appointed for the court's needs.

**Comment.** Subdivision (b) is amended to reflect enactment of the Lockyer-Isenberg Trial Court Funding Act, 1997 Cal. Stat. ch. 850 (see generally Gov't Code §§ 77000-77655).

The purpose of the revisions in the act that amended this section is to remove material made obsolete by trial court restructuring. See Gov't Code § 71674. The revisions should 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.

Comments on the proposed amendment to Section 752 are discussed below.

*Court's Needs*

The Judicial Council objects that the proposed amendment of Section 752 applies a "court's needs test," under which the court incurs the cost of an interpreter for a witness, if provided for the court's needs. See Exhibit pp. 3-4.

The Council's concern appears to be that the court might be required to pay the cost of an interpreter for a witness in a civil case, if the interpreter is "for the court's needs."

However, the proposal does not apply a "court's needs test." Rather, it provides that an interpreter for a witness is to be compensated *in the same manner* as an expert appointed for the court's needs under Evidence Code Section 731 — i.e., compensated by the court in a criminal or juvenile case, and, as a general rule, compensated by the parties in a civil case.

That intent could perhaps be made more clear. One possibility, advocated by the Judicial Council, would be to state expressly who pays in Section 752, instead of cross-referring to the rules stated in Sections 730-733. See Exhibit pp. 4, 6. The staff has some trepidation about this possibility, because Section 752 currently includes the cross-reference and, in trying to eliminate it (at least with regard to who is responsible for payment) we might inadvertently omit or fail to properly characterize some of the pertinent material in Sections 730-733. But that potential problem might be outweighed by the benefits of achieving greater clarity. To help address the Judicial Council's concern, **the staff recommends attempting to state expressly in Section 752 who pays for an interpreter for a witness.**

*Language Suggested by the Judicial Council*

The Judicial Council suggests the following language:

**Evid. Code § 752 (amended). Interpreters for witnesses**

752. (a) When 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, an interpreter whom he or she can understand and who can understand him or her shall be sworn to interpret for him or her. The record shall identify the interpreter appointed.

~~(b) The record shall identify the interpreter who may be appointed and compensated as provided in Article 2 (commencing with Section 730) of Chapter 3.~~

(b) In criminal and juvenile delinquency cases, the interpreter is to be compensated by the court.

(c) In civil cases, the interpreter is to be compensated by the litigants, in such proportions as the court may direct, to be taxed and collected as other costs.

Exhibit p. 6.

Notably, the above amendment would refer to “juvenile delinquency cases” instead of “juvenile court proceedings,” which is the phrase currently used in Section 731. The staff believes this would be problematic.

By its terms, “juvenile court proceedings” encompasses *all* types of juvenile court cases — delinquency *and dependency* alike. See Welf. & Inst. Code §§ 200 (“juvenile court law” is Welfare and Institutions Code Sections 200-987), 245 (“Each superior court shall exercise the jurisdiction conferred by this chapter [Sections 200-987], and while sitting in the exercise of such jurisdiction, shall be known and referred to as the juvenile court....”), 300-395 (provisions specifically relating to juvenile *dependency* cases). Limiting Section 752 to “juvenile delinquency cases,” would thus amount to a significant policy change, beyond mere clean-up necessitated by trial court restructuring. The staff therefore recommends **sticking with the phrase currently used in Section 731 — i.e., “juvenile court proceedings.”**

Further, Sections 730-733 provide more guidance on how an expert is to be “appointed and compensated” (the phrase used in Section 752) than would be encompassed by the Judicial Council’s suggested amendment eliminating the cross-reference to Sections 730-733. For example, Section 730 states that the court may fix compensation “at the amount as seems reasonable to the court.” That principle would not be reflected in the Judicial Council’s suggested amendment.

To deal with the problems identified above, **the staff suggests the following alternative language:**

**Evid. Code § 752 (amended). Interpreters for witnesses**

752. (a) When 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, an interpreter whom ~~he or she~~ the witness can understand and who can understand ~~him or her~~ the witness shall be sworn to interpret for ~~him or her~~ the witness.

(b) The record shall identify the interpreter, who may be appointed and compensated as provided in Article 2 (commencing with Section 730) of Chapter 3, with that compensation charged as follows:

(1) In all criminal actions and juvenile court proceedings, the compensation for an interpreter under this section shall be a charge against the court.

(2) In all civil actions, the compensation for an interpreter under this section shall, in the first instance, be apportioned and charged to the several parties in a proportion as the court may determine

and may thereafter be taxed and allowed in like manner as other costs.

**Comment.** Subdivision (a) of Section 752 is amended to make stylistic revisions.

Subdivision (b) is amended to reflect enactment of the Lockyer-Isenberg Trial Court Funding Act, 1997 Cal. Stat. ch. 850 (see generally Gov't Code §§ 77000-77655). 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).

Subdivision (b) is also amended to make a stylistic revision.

The purpose of the revisions in the act that amended this section is to remove material made obsolete by trial court restructuring. See Gov't Code § 71674. The act should 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.

#### *Interpreter for a Witness in a Criminal Case*

Mr. Bennett, on behalf of the Los Angeles County Superior Court (hereafter, "LASC"), also commented on the proposed amendment of Section 752. LASC's comments pertain to the circumstances under which a court is to pay an interpreter for a witness in a criminal case.

Section 752 says:

When 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*, an interpreter whom he or she can understand and who can understand him or her *shall be sworn* to interpret for him or her.

Evid. Code § 752(a) (emphasis added.)

According to LASC, interpretation for a witness closely related in time and place to court proceedings is a court operation, paid by the court. However, LASC says that away from the courtroom context, the interpretation (e.g., during a client interview by a public defender) is a county charge, and should remain that way. See Exhibit p. 17.

No other commenter raises this issue. That may reflect a widespread assumption that Section 752 only applies in the courtroom context.

Indeed, an analysis of provisions governing appointment of an interpreter for a witness, and the text of Section 752 itself, suggest that the section applies only in the courtroom context.

An interpreter for a witness under Section 752 is appointed by the court. See Evid. Code §§ 730, 752(b). It would not make sense if an interpreter for a witness testifying outside of court (e.g., at a deposition) nevertheless had to be appointed by the court. Also, the text of Section 752 that describes a witness who cannot be understood directly by counsel, court, and jury implies that the interpretation occurs in court. Furthermore, the staff was unable to find any case, published or unpublished, discussing an interpreter for a witness appointed under Section 752 outside the courtroom context.

For these reasons, it does not appear that Section 752 applies outside the courtroom context. Accordingly, revisions are not needed to ensure that interpretation for a witness outside of court is not a court cost.

However, the staff believes that LASC's comments on this issue are relevant to proposed Government Code Section 68092. Those comments will therefore be reconsidered further below in connection with Section 68092.

Based on all the above, **the staff recommends replacing the amendment of Section 752 in the Tentative Recommendation with the language shown on pages 14-15 above.**

### **Evid. Code § 753. Translation of a Writing Offered in Evidence**

#### *Background*

Evidence Code Section 753 concerns the translation of a writing offered in evidence. When a writing offered in evidence is incapable of being deciphered or understood directly, Section 753 requires a translator be sworn to decipher or translate the writing.

Section 753 currently provides that the translator is to be appointed and compensated "as provided in Article 2 (commencing with Section 730) of Chapter 3" of Division 6 of the Evidence Code — i.e., Evidence Code Sections 730-733. The Tentative Recommendation proposes to amend Section 753 essentially the same way it proposes to amend Section 752, pertaining to an interpreter for a witness. The proposed amendment of Section 753 reads:

#### **Evid. Code § 753 (amended). Translators of writings**

753. (a) When the written characters in a writing offered in evidence are incapable of being deciphered or understood directly, a translator who can decipher the characters or understand the language shall be sworn to decipher or translate the writing.

(b) The record shall identify the translator who may be appointed and compensated as provided in Article 2 (commencing with Section 730) of Chapter 3, in the same manner as an expert appointed for the court's needs.

**Comment.** Subdivision (b) is amended to reflect enactment of the Lockyer-Isenberg Trial Court Funding Act, 1997 Cal. Stat. ch. 850 (see generally Gov't Code §§ 77000-77655).

The purpose of the revisions in the act that amended this section is to remove material made obsolete by trial court restructuring. See Gov't Code § 71674. The revisions should 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.

Comments received earlier in the study by Mary Lou Aranguren, on behalf of the California Federation of Interpreters (hereafter, "CFI"), expressed agreement with these revisions. See Second Supplement to Memorandum 2009-34, Exhibit p. 1. Juliet Viola, a member of the Northern California Translators Association (hereafter "NCTA"), also submitted comments in agreement, with which the Board of the NCTA agreed. See First Supplement to Memorandum 2009-26, Exhibit p. 2.

However, comments from the Judicial Council, LASC, and the Sacramento County Superior Court express disagreement with the proposed amendment to Section 753.

The comments by the Judicial Council are discussed first. Its comments mirror those it made in connection with the proposed amendment to Evidence Code Section 752, relating to an interpreter for a witness.

Next, concerns expressed by LASC and the Sacramento County Superior Court are discussed. The concerns relate to (1) the scope of Section 753, and (2) who is responsible for payment of a translator of a writing offered in evidence.

#### *The Judicial Council's Comments*

The Judicial Council makes the same comments on Section 753 that it made in connection with Section 752 (relating to an interpreter for a witness). See Exhibit pp. 3-4. For the same reasons discussed above in connection with Section 752, the staff recommends replacing the amendment of Section 753 proposed in the Tentative Recommendation with one that would state expressly who pays for the translator of a writing offered in evidence. **That could be done as follows:**

**Evid. Code § 753 (amended). Translators of writings**

753. (a) When the written characters in a writing offered in evidence are incapable of being deciphered or understood directly, a translator who can decipher the characters or understand the language shall be sworn to decipher or translate the writing.

(b) The record shall identify the translator, who may be appointed and compensated as provided in Article 2 (commencing with Section 730) of Chapter 3, with that compensation charged as follows:

(1) In all criminal actions and juvenile court proceedings, the compensation for an interpreter under this section shall be a charge against the court.

(2) In all civil actions, the compensation for a translator under this section shall, in the first instance, be apportioned and charged to the several parties in a proportion as the court may determine and may thereafter be taxed and allowed in like manner as other costs.

**Comment.** Subdivision (b) is amended to reflect enactment of the Lockyer-Isenberg Trial Court Funding Act, 1997 Cal. Stat. ch. 850 (see generally Gov't Code §§ 77000-77655). 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).

Subdivision (b) is also amended to make a stylistic revision.

The purpose of the revisions in the act that amended this section is to remove material made obsolete by trial court restructuring. See Gov't Code § 71674. The act should 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.

*Scope of Section 753*

On behalf of LASC, Mr. Bennett disagrees with the Commission's assessment of the scope of Section 753. LASC maintains that Section 753 extends only to "sight translation." See Exhibit p. 17. Mr. Bennett explains that "sight translation" is different from documentary translation in that "the interpreter is sworn in as a witness and translates a document by testimony." *Id.*

To assess that view of Section 753, the text of the provision, relevant case law, and legislative intent are analyzed below.

Section 753 requires a translator be appointed when "a writing offered in evidence" cannot be "deciphered or understood directly." Nothing in that requirement limits the translator to a "sight translation."

Nevertheless, some language in Section 753 might support LASC's view that the section applies only to a translation to be read aloud as testimony. For

example, the section states that the translator must “be sworn,” which could indicate that the translator is to testify as a witness, translating aloud. However, the requirement to “be sworn” appears to refer to an oath that the translator must take in translating “any writing.” See Evid. Code § 751(c) (requiring translator under Section 753 to take oath to make true translation). Accordingly, the text of Section 753 does not appear to be limited to “sight translation,” but seems to apply equally to a written translation.

The staff was unable to find any case that holds as much. However, in at least one case, it appears that Section 753 was the basis for a written translation. See *Evangelize China Fellowship, Inc. v. Evangelize China Fellowship*, 146 Cal. App. 3d 440, 444-45 & n. 3, 194 Cal. Rptr. 240 (1983).

Finally, the intent behind Section 753 indicates that it applies to any writing offered in evidence needing translation, regardless of whether the translation is read aloud as testimony or submitted in writing. As Section 753 was enacted on Commission recommendation, the Comment is evidence of legislative intent. See 2008-2009 Annual Report, 38 Cal. L. Revision Comm’n Reports 1, 16-21 (2008) & cases cited therein. The Comment provides:

The same principles that require the appointment of an interpreter for a witness who is incapable of expressing himself so as to be understood directly apply with equal force to documentary evidence. See Evidence Code § 752 and the Comment thereto.

Because the rationale underlying the provision requiring an interpreter for a witness is the same rationale for requiring a translator of a writing, it would seem incongruous for that rationale to require interpretation for a witness in any case, but only require translation of a writing if read aloud as testimony, not if submitted in writing.

**Taking together all the above, the staff is not convinced that Section 753 applies only to a “sight translation.”**

#### *Who Pays a Translator of a Writing Offered in Evidence*

LASC maintains that nothing in Evidence Code Sections 730, 731, or 753 requires the court to be responsible for all translations of a writing offered in evidence. See Exhibit p. 18.

However, the Commission is not proposing to make the court responsible for all translations of a writing offered in evidence. Instead, the proposal is to reflect that the court is now responsible for a translation that is a court operation, which

appears to include translation of a writing offered in evidence in a criminal or juvenile case. See Gov't Code § 77003; Cal. R. Ct. 10.810. Other commenters, such as the Judicial Council, indicate general agreement with the Commission's conclusion that court translation is a court operation, paid by the court. See Exhibit pp. 3, 7.

Mr. Bennett asserts that the parties, not the court, should pay a translator of a writing offered in evidence. He asserts that a party must pay for the translation as part of the party's responsibility to lay a foundation for admission of the evidence. See Exhibit pp. 17-18.

However, the same assertion could be made in relation to material requiring a "sight translation," or testimony requiring interpretation. For example, if a visual display in court requires a sight translation, it could be argued that it is the party's responsibility to provide the translation as part of the party's duty to lay the foundation for admission. Likewise, if a party's witness does not speak or understand English, it could be argued that it is the party's responsibility to provide an interpreter as part of meeting the requirements for admission of the testimony. However, Section 752 (through its incorporation of Section 731) provides that an interpreter for a witness is not paid by the party in a criminal or juvenile case. Similarly, Section 753 (through its incorporation of Section 731) provides that a translator for a writing offered in evidence is not paid by the party in a criminal or juvenile case.

Robert Turner, on behalf of the Sacramento County Superior Court, makes a comment similar to Mr. Bennett's assertion that providing the translation is part of a party's responsibility to lay a foundation. Mr. Turner writes that "the proponent of a foreign language document should be providing a translated copy at their own expense, not unlike a transcript of a recording. See [Cal. Ct. Rule] 2.1040." See Exhibit p. 14. However, he says that if the court were in need of, and orders a translation, he would agree that the translation is a court expense.

Mr. Turner's comments seem to question the wisdom of Section 753, rather than express disagreement with the Commission's interpretation of what the section presently requires. Accordingly, it isn't clear whether the Sacramento County Superior Court disagrees with the Commission's interpretation. But in any event, revisiting the wisdom of Section 753 is beyond the Commission's study to revise statutes made obsolete by trial court restructuring.

Mr. Bennett submits one more reason why the court should not be responsible for translating a writing offered in evidence. He says that it would require the court to translate many documents, including discovery documents lodged at court that are provided by the prosecution to the defense at arraignment. He says, “[s]ince those documents are not at that time offered into evidence, and are merely lodged with the court to facilitate delivery of discovery to the defense, the court should not be required to translate those documents.” See Exhibit p. 18.

By its terms, however, Section 753 only applies to a writing *offered in evidence*. If the document is merely *lodged* at the court, Section 753 would not require the court to pay for a translation of the document.

Based on all the above, it does not appear necessary to make any changes in response to the comments of LASC or the Sacramento County Superior Court on Section 753. Only the concerns voiced by the Judicial Council appear to warrant alteration of the Commission’s previous view. **The staff therefore recommends replacing the amendment of Section 753 proposed in the Tentative Recommendation with the one shown on page 18 above.**

### **Gov’t Code § 68092. Compensation of Interpreters and Translators in Court Proceedings and Coroner’s Cases**

#### *Background*

Government Code Section 68092 specifies who — the county, or the parties — pays an interpreter or a translator. Because Evidence Code Sections 752 and 753 specify who pays an interpreter for a witness and a translator of a writing offered in evidence, Government Code Section 68092 governs payment of other interpreters and translators (e.g., an interpreter for a party).

Section 68092 allocates responsibility for payment of an interpreter or translator based on whether the case is a criminal case, civil case, or coroner’s case (e.g., a coroner’s inquest proceeding). Section 68092 currently provides that the county pays in a criminal case or coroner’s case, but that the parties pay in a civil case.

Comments received on proposed Section 68092 relate to amendments that would (1) make the court, instead of the county, responsible to pay an interpreter or translator in a criminal case, and (2) replace the term “fees” with “compensation.” The first amendment is intended to reflect the shift in responsibility from the county to the court to pay for court operations. The

second amendment is intended to reflect the enactment of the Trial Court Interpreter Employment and Labor Relations Act (Gov't Code §§ 71800-71829) (hereafter, the "Interpreter Act").

*The Judicial Council's Comments on Responsibility for Payment*

It is apparent from the Judicial Council's comments that it agrees that the court is to pay for an interpreter in a criminal case. See Exhibit p. 7.

However, the Judicial Council suggests a revision to Section 68092 that is similar to a revision it suggested in connection with Evidence Code Sections 752 and 753. Specifically, it suggests revising Section 68092 to provide that the court pays an interpreter or translator in a juvenile delinquency case. See Exhibit p. 7.

Unlike Evidence Code Sections 752 and 753, Government Code Section 68092 does not expressly refer to a juvenile case.

The Judicial Council does not explain its reasoning for suggesting this revision in connection with Section 68092. Presumably, it is for the same reason it suggested a similar revision to Evidence Code Sections 752 and 753. That is,

to restate the current status of the law, which requires the court to incur the cost for interpretation and translation in criminal delinquency cases and places on the litigants the responsibility for the cost in civil proceedings.

See Exhibit p. 4.

The Judicial Council's assessment of the current status of the law requiring the court to pay for an interpreter in a juvenile delinquency case appears to be based on appellate court decisions interpreting a criminal defendant's state constitutional right to an interpreter. The decisions provide that the state constitutional right to an interpreter applies to a juvenile delinquency case. See *In re Dung T.*, 160 Cal. App. 3d 697, 708-09, 206 Cal. Rptr. 772 (1984); see also *In re Raymundo B.*, 203 Cal. App. 3d 1447, 250 Cal. Rptr. 812 (1988).

It thus appears that the Judicial Council is suggesting that the Commission codify appellate case law in Section 68092. However, codifying the appellate case law as suggested would make a final legislative pronouncement on when interpretation and translation are provided at public expense. Bills are frequently introduced on the subject, which is heavily debated and controversial. Revisions beyond restating existing provisions not made obsolete by trial court restructuring would carry a high risk of miring the proposal in controversy. Moreover, revisions to codify appellate case law on when interpretation and

translation are provided at public expense is beyond the Commission's authority to revise statutes made obsolete by trial court restructuring.

The Commission's proposed amendment of Section 68092 would not disrupt appellate case law providing that a defendant's constitutional right to an interpreter applies in a juvenile delinquency case. Codifying the case law is unnecessary for that existing principle to remain in effect.

For all the reasons stated above, **the staff thinks it would be unwise to amend Section 68092 to state expressly that the court is to pay for an interpreter or translator in a juvenile delinquency case.**

*The Judicial Council's Comments on Fees v. Compensation*

Under the Interpreter Act, an interpreter is paid a salary (as an employee) or a fee (as an independent contractor). To reflect that, the proposed amendment to Section 68092 would refer to "compensation" rather than "fees."

The Judicial Council, however, suggests revising Section 68092 to refer to "compensation or fees." The Judicial Council does not provide a specific reason for its suggestion. However, it suggests other revisions on the ground that they are needed to reflect the enactment of the Interpreter Act. Perhaps this suggestion is likewise intended to reflect that act.

Indeed, reference to both "compensation" and "fees" would reflect that an interpreter may be paid a salary or a fee under the Interpreter Act. However, the staff believes that the term "compensation" encompasses both a salary and a fee.

Thus, instead of referring to "compensation or fees," as suggested, **the staff recommends referring to "fees or other compensation."** That would seem to address the Judicial Council's point, while not appearing inconsistent with other comments received earlier in the study from Ms. Aranguren, on behalf of the CFI, which expressed agreement with the replacement of "compensation" with "fees." See Second Supplement to Memorandum 2009-34, Exhibit p. 3.

*LASC's Comments on Translation in a Criminal Case*

The Tentative Recommendation treats translation in a criminal case as a court operation, paid by the court, on the ground that it is functionally similar to court interpretation, which is a court operation. See Gov't Code § 77003; Cal. Ct. R. 10.810, Function 4.

LASC disagrees that translation in a criminal case is a court operation. See Exhibit p. 18.

Other commenters, however, such as the Judicial Council and Madera County, indicate agreement with the Commission's assessment that translation in a criminal case is a court operation. See Exhibit pp. 7 (Judicial Council), 10 (Madera County). Additionally, comments received earlier in the study from Ms. Aranguren, on behalf of the CFI, express agreement with that assessment. See Second Supplement to Memorandum 2009-34, Exhibit p. 2.

Based on the available information, **the staff recommends that the Commission continue to treat translation in a criminal case as a court operation.**

#### *LASC's Comments on Interpretation in a Criminal Case*

As previously discussed, LASC's comments on an interpreter for a witness under Evidence Code Section 752 are pertinent to proposed Section 68092. Accordingly, those comments are reconsidered below.

LASC asserts that interpretation in a criminal case closely related in time and place to court proceedings is a court operation. LASC maintains, however, that interpretation associated with a criminal case, but away from the courtroom context, is not a court operation, and is a county charge. LASC emphasizes that non-court interpretation in a criminal case should remain a county charge.

Section 68092 currently provides that interpretation "in criminal cases" is a county charge, without specifying whether the interpretation occurs in court or elsewhere. Now that the court, rather than the county, is responsible for interpretation in the court context in a criminal case, revisions to reflect as much are necessary. Those revisions should not imply that the court is responsible for other interpretation, which may be necessitated by the commencement of criminal proceedings, but is not a court operation. For example, interpretation during a client interview by a public defender is not a court operation, and should therefore remain a county charge.

Nothing in existing or proposed Section 68092 expressly provides that it governs *court-based* interpretation and translation in a criminal case.

To reflect that the court is to pay for court-based interpretation and translation in a criminal case, but that the county remains responsible for interpretation or translation in such a case beyond the court context, **the staff recommends amending Section 68092 to apply to "court interpreters and translators."** (Emphasis added.)

However, Section 68092 also applies to a coroner's case. An amendment to make the section applicable only to court interpretation and translation would be inappropriate as to a coroner's case, because such a case is conducted by a coroner, not a court. Moreover, this material relating to coroner's cases is located in a portion of the codes relating to courts, which are no longer run by the counties. A coroner, however, is a county officer. Accordingly, the material related to a coroner's case would be better located in the portion of the codes related to coroners.

Taking together all the above, **the staff recommends the following amendments:**

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

68092. ~~Interpreters' Court interpreters' and translators' fees or other 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.~~

**Comment.** Section 68092 is amended to reflect enactment of the Lockyer-Isenberg Trial Court Funding Act, 1997 Cal. Stat. ch. 850 (see generally Sections 77000-77655). 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 by a court interpreter 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). In contrast, interpretation beyond the court context (e.g., during a client interview), or 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).

The material relevant to coroner's cases in subdivision (a) is relocated to Section 27473 of the Government Code.

Section 68092 is also amended to refer to compensation, not just 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 Section 71802.

Section 68092 is further amended to make stylistic revisions.

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 for a witness, see Evidence Code Section 752.

The purpose of the revisions in the act that amended this section is to remove material made obsolete by trial court restructuring. See Gov't Code § 71674. The revisions should 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.

**Gov't Code § 27473 (added). Compensation of interpreters and translators in coroners' cases**

27473. In coroners' cases, interpreters' and translators' fees or other compensation shall be paid from the county treasury upon warrants drawn by the county auditor, when so ordered by the coroner.

**Comment.** Section 27473 continues part of the substance of former Section 68092(a). The material relating to coroners' cases in Section 68092 is relocated to Section 27473 to reflect enactment of the Lockyer-Isenberg Trial Court Funding Act, 1997 Cal. Stat. ch. 850 (see generally Sections 77000-77655).

The purpose of the revisions in the act that amended this section is to remove material made obsolete by trial court restructuring. See Gov't Code § 71674. The revisions should not be construed as a re-evaluation of the extent to which interpretation or translation should be provided, or who should bear the expense of interpretation or translation.

**Gov't Code § 26806. Foreign Language Interpreters in a County of 900,000 or More**

*Background*

Government Code Section 26806 contains provisions on the employment, compensation, and assignment of interpreters in a county with a population of 900,000 or more persons.

In particular, the section provides that a court clerk in such a county may employ as many interpreters as necessary to do the following:

- Assign interpreters as needed in criminal and juvenile cases.
- 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.
- Assign an interpreter to translate any document intended for filing in any civil or criminal action or proceeding.
- Assign an interpreter to translate any document intended for county recordation.

The Tentative Recommendation proposes retaining the material relating to translation of a document intended for county recordation, and relocating the rest of the material relating to interpretation and translation in court proceedings to Government Code Section 69894.5, which authorizes a court to employ persons to interpret and translate as specified in Section 26806.

The Tentative Recommendation also proposes revising Section 26806 to refer to a county clerk, rather than a court clerk. In 2004, revisions to Section 26806 replaced a reference to a county clerk with a reference to the court clerk. See 2004 Cal. Stat. ch. 118, § 13. Reference to the court clerk is appropriate for the bulk of the provisions in Section 26806, relating to courts. However, the last provision authorizes the hiring of a translator to translate a document intended for recordation (a county matter), and should therefore refer to a county clerk.

The discussion below concerns proposed Section 26806, relating to translation of a document intended for county recordation. The material relating to courts, proposed for relocation to Section 69894.5, will be discussed separately below in connection with the proposed amendment to Section 69894.5.

The Commission received comments on the proposed amendment to Section 26806 from Elizabeth Howard Espinosa, on behalf of the California State Association of Counties (hereafter, “CSAC”), and Matt Siverling, on behalf of the California Association of Clerks and Election Officials (hereafter, “CACEO”). These comments are discussed in turn below.

#### *Comments by CSAC*

The proposed amendment to Section 26806 is acceptable to CSAC. Ms. Espinosa writes:

CSAC is not aware of any counties employing interpreters pursuant to GC Section 26806 and we’re not certain that the authority is necessary. However, we understand to delete or substantively amend the section is beyond the scope of the CLRC proposal, and we therefore agree with the non-substantive changes to that section. We are not aware of any other concerns with the proposed changes.

Exhibit p. 1.

#### *Comments by CACEO*

CACEO objects to the proposed amendment, and would like the section repealed. See Exhibit pp. 11-12.

On CACEO's behalf, Mr. Siverling writes that Section 26806 "creates a major conflict with [Government Code Section] 27293," which requires a county clerk to issue a translation certificate if certain requirements are met. Exhibit p. 11.

Under Section 27293, a person seeking recordation of a document in a foreign language may present a translation by a certified court interpreter or approved translator to a county clerk. Upon presentation of such a translation, the clerk must issue a translation certification. The county recorder must accept the translation certificate, and record it with the original.

The staff does not believe that proposed Section 26806 creates a conflict with Section 27293. Although Section 26806 provides a mechanism for a document in a foreign language to be translated for recordation (in a county with 900,000 or more persons), the section does not purport to provide an exclusive means by which a document in a foreign language is translated for recordation. The authorization in Section 26806 for a clerk to hire a translator to translate a document intended for recordation is distinct from, and not in conflict with, the authorization in Section 27293 for a person seeking recordation of a document in a foreign language to present a translation to the clerk for certification.

The second reason that CACEO gives for repealing Section 26806 is that the section is not used by any county. CACEO says that the county clerk "does not employ translators, and would be unable to do so for the sole purpose of translating documents" for recordation and certification. Exhibit p. 11.

However, non-use of authority to hire a translator does not justify removal of that authority. In enacting Section 26806, the Legislature decided that counties of a particular size should be granted authority to hire a translator to translate documents intended for county recordation. The Commission should not second-guess that decision. Repealing Section 26806 would effectuate a substantive change, beyond the Commission's authority to revise statutes to reflect trial court restructuring. Thus, **the staff recommends sticking with the amendment of Section 26806 proposed in the Tentative Recommendation.**

#### **Gov't Code § 69894.5. Employment and Assignment of Interpreters in Court Proceedings**

##### *Background*

As explained above, existing Section 69894.5 authorizes a court clerk to employ persons to interpret and translate as specified in Section 26806. The amendment proposed in the Tentative Recommendation would delete the cross-

reference to Section 26806, and incorporate its provisions authorizing a court clerk to assign interpreters and translators into Section 69894.5 itself. The amendment would revise those provisions to reflect the Interpreter Act, by providing that the clerk may employ persons consistent with that act. The amendment would also restate a state constitutional provision granting a criminal defendant a right to an interpreter, to ensure that the provision is not overlooked. Finally, to reflect current practice, the amendment would replace an outdated statutory fee for a translation with a provision stating that the translator's fee is determined by agreement between the court and the interpreter.

The comments received on the proposed amendment to Section 69894.5 are discussed below.

#### *Interpreter Act*

The Judicial Council asserts that the proposed amendment may be inconsistent with the Interpreter Act in two ways. The first relates to an interpreter performing translation.

The Judicial Council says that

the tentative recommendation confuses the responsibility and duties of court interpreters with the duties of translators. Under the Court Interpreters Act, court interpreters are responsible for performing simultaneous and consecutive interpretation and sight translation. Sight translation, however, should not be confused with written translation. Court interpreters certified by, or registered with, the Judicial Council of California are authorized in a judicial proceeding to interpret orally the verbal content of documents, but the Judicial Council does not otherwise test or certify an interpreter's written translation skills."

See Exhibit p. 4.

LASC makes a similar comment. It says that authorizing a court to employ interpreters to translate documents may be inconsistent with the Interpreter Act, which requires the court to employ interpreters to perform spoken language interpretation. See Exhibit p. 19.

Although a court is required to hire an interpreter to perform spoken language interpretation, that does not preclude an interpreter from being hired to perform a translation.

Indeed, it appears that the Legislature intended to maintain a court's authority to hire an interpreter to translate documents, as provided in Section

26806, even after enactment of the Interpreter Act. Section 26806 was amended after the enactment of the Interpreter Act, but was not amended to remove the authority to hire an interpreter to translate. See 2004 Cal. Stat. ch. 118, § 13 (amending Section 26806); 2002 Cal. Stat. ch. 1047, § 2 (enacting Interpreter Act). Moreover, another provision enacted after the Interpreter Act envisions that an interpreter may perform translation: Government Code Section 27293, as amended in 2007, requires a county clerk to accept a translation by a certified court interpreter. See 2007 Cal. Stat. ch. 231, § 1. Accordingly, **the staff is not persuaded that the proposed amendment of Section 69894.5 should be revised to remove existing authority to use an interpreter to perform translation.**

The Judicial Council discusses another way that the proposed amendment of Section 69894.5 may be inconsistent with the Interpreter Act. The Judicial Council says that the amendment could revise a court's authority to hire an interpreter under the act:

Under the Act, courts are authorized to hire foreign language interpreters and retain contract interpreters in order to meet the needs of the court. The tentative recommendation appears to revise the authority provided under the Act by providing only courts in counties with a population over 900,000 with the explicit authority to employ the necessary foreign language interpreters to interpret in criminal cases.

See Exhibit p. 4.

However, the staff has reviewed the Interpreter Act, and found nothing providing authority to hire interpreters to meet the needs of the court. The act sets forth rules governing labor and employment relations between interpreters and courts. The act does not state the purposes for which a court is authorized to hire an interpreter. It would be odd if the Interpreter Act were the source of a court's authority to hire interpreters as needed, because the act does not apply in two counties (Ventura County and Solano County). See Gov't Code § 71828(a).

But even assuming that a court has authority under the Interpreter Act to hire an interpreter as needed, that wouldn't necessarily supersede existing Section 26806's grant of authority to a court in a county of 900,000 or more persons to hire interpreters to perform specified functions. That is suggested by the Legislature's decision to retain such authority when it amended Section 26806 after it enacted the Interpreter Act.

**Based on the analysis above, the staff is not persuaded that the proposed amendment of Section 69894.5 would be inconsistent with the Interpreter Act.**

### *Fee for a Translation*

Proposed Section 69894.5(b)(4) would state that the interpreter's fee for providing a translation would be determined by agreement between the court and the interpreter.

LASC says that "[i]t is not clear why the interpreter's agreement would be required in determining a fee to be imposed by the court and deposited into the Trial Court Trust Fund." See Exhibit p. 19.

However, earlier comments by Ms. Aranguren, on behalf of the CFI, and Ms. Viola, with whose comments the board of the NCTA concurred, advised that determining the fee by agreement reflects current practice. See Second Supplement to Memorandum 2009-34, Exhibit p. 3; First Supplement to Memorandum 2009-26, Exhibit p. 2.

Even assuming, however, that it is common practice for a court to set the fee, that practice would not seem to be precluded by the proposal. If the court sets the fee, the interpreter would agree to the fee by virtue of accepting the assignment to translate.

**Based on the information available to the staff, we do not believe any change is needed to proposed Section 69894.5(b)(4).**

### *Authority To Permit Party To Contract for Translation*

As mentioned above, LASC does not currently exercise its authority to assign an interpreter to translate documents. The court would like to ensure "that any amendments to section 69894.5 do not preclude" a practice by which the court authorizes a party to hire a translator to obtain the translation. See Exhibit p. 19.

It does not appear that the proposed amendment of Section 69894.5 would require the court to alter its practice. As revised, the section would merely continue authorization in existing Section 26806 for a court to assign an interpreter to translate a document intended for filing in a court proceeding.

**Based on all the above, the staff recommends sticking with the amendment of Section 69894.5 proposed in the Tentative Recommendation.**

### NEXT STEP

The Commission should decide whether to issue a final recommendation, incorporating amendments discussed in this memorandum, with or without revision.

If the Commission approves a final proposal at its December meeting, there will be time for the proposal to be introduced as a bill in early 2010, with enactment that year.

Respectfully submitted,

Catherine Bidart  
Staff Counsel

Barbara Gaal  
Chief Deputy Counsel

**EMAIL FROM ELIZABETH HOWARD ESPINOSA, CALIFORNIA STATE  
ASSOCIATION OF COUNTIES  
(NOVEMBER 25, 2009)**

Good morning, Catherine:

Hope first thing Wednesday works for you. I was awaiting a final review by our counsel, but they had no further comment on the proposed changes.

I believe you spoke to my colleague, Eraina Ortega, who had the opportunity to review the amendments. Based on her analysis, we offer the following:

CSAC is not aware of any counties employing interpreters pursuant to GC Section 26806 and we're not certain that the authority is necessary. However, we understand to delete or substantively amend the section is beyond the scope of the CLRC proposal, and we therefore agree with the non-substantive changes to that section. We are not aware of any other concerns with the proposed changes.

Thank you for your outreach efforts. If there is something further you would like to discuss, I'm back in the office on Monday. Happy Thanksgiving!

Elizabeth Howard Espinosa  
Legislative Representative, Administration of Justice  
California State Association of Counties  
1100 K Street, Suite 101  
Sacramento, CA 95814  
916/650-8131 | 916/321-5062 - FAX  
www.csac.counties.org | ehoward@counties.org



# Judicial Council of California

ADMINISTRATIVE OFFICE OF THE COURTS

OFFICE OF GOVERNMENTAL AFFAIRS

770 L Street, Suite 700 • Sacramento, California 95814-3393  
Telephone 916-323-3121 • Fax 916-323-4347 • TDD 415-865-4272

RONALD M. GEORGE  
*Chief Justice of California*  
*Chair of the Judicial Council*

WILLIAM C. VICKREY  
*Administrative Director of the Courts*

RONALD G. OVERHOLT  
*Chief Deputy Director*

CURTIS L. CHILD  
*Director, Office of Governmental Affairs*

November 4, 2009

Ms. Barbara Gaal  
Chief Deputy Counsel  
California Law Revision Commission  
4000 Middlefield Road, Room D-2  
Palo Alto, California 94303-4739

Dear Ms. Gaal:

The Judicial Council has reviewed the California Law Revision Commission's (CLRC) Tentative Recommendation J-1404: Statutes Made Obsolete by Trial Court Restructuring: Part 5 and is submitting the following comments on behalf of the judicial branch. Each of these comments is reflect in the proposed revised statutory text that is provided in the enclosed attachment to this letter.

### Responsibility for the Costs of Court Appointed Expert Witnesses – Evidence Code Section 731

While the tentative recommendation for amending Evidence Code Section 731(a) accurately reflects the fact that CRC 10.810 makes court-appointed expert witnesses for the courts' needs a court operations expense, it does not reflect the actual frequency with which experts who meet that definition are appointed by the court in criminal and juvenile cases. The tentative recommendation, by placing the court's financial responsibility for costs first in the revised subdivision implies that most of these experts will be a court expense, and then places the obligation on the county to pay only when witness is appointed for "other purposes." The Judicial Council requests that those sentences be reversed so that the county obligation to pay is the general rule, and that the court be placed in the position of financial responsibility only in those cases in which the appointment is made for the court's needs. Setting forth the responsibilities in that order will reflect current practice in which it is far more often the case that

experts are appointed for the needs of one party who is unable to bear the cost of the appointment. As a result, these costs are properly part of indigent defense costs which are not a court operations expense, but rather a county responsibility.

With regard to Evidence Code Section 731(b), the Judicial Council requests that no change be made in that section except to clarify that counties are not responsible for the costs of experts appointed for the court's needs. Evidence Code Section 731(b) allows counties to pay for medical experts in civil cases if the board of supervisors in the county authorizes such payments. It is not clear why this wholly discretionary provision needs to be changed in light of CRC 10.810. Courts already have the ability to pay for all appointed experts for the court's needs in civil matters if the parties are unable to do so. The fact that the Legislature wanted to authorize counties to choose to use local funds to pay for a certain class of expert witnesses does not mean that the Legislature intended that the same authority be given to the trial courts to use state funds for this very specific purpose. Substituting "superior court" for "board of supervisors" in this statute is a substantive policy change that does not appear to fit within the scope of CLRC's endeavor to update what is obsolete under current law.

#### Interest on Bail Deposits – Government Code Section 53647.5

The tentative recommendation specifically requests input on the question of which judicial branch entity should be substituted for the board of supervisors in Government Code Section 53647.5, which currently authorizes the board of supervisors to allocate the interest earned on bank deposits of bail money received by a trial court. Because these deposits involve only money received by a court, CLRC correctly concludes that this authority should no longer rest with the county. However, the proposed revision seems to unnecessarily complicate the statute. The tentative recommendation asks whether it is the superior court or the Judicial Council that should be authorized to make this allocation, but having determined that this interest should be controlled by the judicial branch, it would seem that the most effective and efficient revision of the statute would be to remove the need to authorize the allocation altogether and to simply provide that the money shall be allocated to the support of the courts in that county. The current statute appears to be premised on the notion that counties could opt to allocate these funds to their trial courts, or some other local government priority. Once these funds are identified as trial court funds, the need for a decision on how to allocate them is obviated. Thus the Judicial Council recommends that this statute be revised to simply direct that this interest be allocated for the support of the local court.

#### Interpreters for Witness and Translation of Written Evidence – Evidence Code Section 752 and 753

The tentative recommendation is accurate in its description of current law relating to compensation of interpreters and translators providing services during or for a court proceeding. Similar to the Commission's recommendation for Evidence Code Section 731, it applies the

methodology of CRC 10.810, in which the court would incur the cost of the service if the service was provided for the court's needs. However, existing statute and CRC 10.810 clearly lay out the courts' and parties' responsibility. Therefore, the proposed application of the "court needs" test is not appropriate. The Judicial Council recommends that this statute be revised to explicitly restate the current status of the law, which requires the court to incur the cost for interpretation and translation in criminal and juvenile delinquency cases and places on the litigants the responsibility for the cost in civil proceedings.

Employment, Assignment, Compensation of Interpreters and Translators – Government Code Sections 26806, 68092 and 69894.5

Government Code sections 26806, 68092 and 69894.5 established the courts authority to hire interpreters and translators prior to the enactment of the Trial Court Interpreter Employment and Labor Relations Act (Government Code Sections 71800-71829). CLRC's tentative recommendation simply deletes reference to the county and inserts court. However, such an approach runs counter to the spirit and letter of the Trial Court Interpreter Employment and Labor Relations Act (Court Interpreters Act).

First, the tentative recommendation confuses the responsibility and duties of court interpreters with the duties of translators. Under the Court Interpreters Act, court interpreters are responsible for performing simultaneous and consecutive interpretation and sight translation. Sight translation, however, should not be confused with written translation. Court interpreters certified by, or registered with, the Judicial Council of California are authorized in a judicial proceeding to interpret orally the verbal content of documents, but the Judicial Council does not otherwise test or certify an interpreter's written translation skills.

Second, the tentative recommendation regarding the court's authority to employ court interpreters conflicts with the Court Interpreters Act. Under the Act, courts are authorized to hire foreign language interpreters and retain contract interpreters in order to meet the needs of the court. The tentative recommendation appears to revise the authority provided under the Act by providing only courts in counties with a population over 900,000 with the explicit authority to employ the necessary foreign language interpreters to interpret in criminal cases.

The Judicial Council recommends that these statutes be revised to conform to the statutory provision of the Court Interpreters Act related to the employment and compensation of court interpreters and clearly define the duties and responsibilities of interpreters and translators.

Definition of Subordinate Judicial Officer

The tentative recommendation proposes that the existing statutory definition of "subordinate judicial officer" be revised to add "child support commissioner," "traffic trial commissioner," and "juvenile hearing officer" and to replace the current reference to "juvenile referee" with

Ms. Barbara Gaal  
November 4, 2009  
Page 4

“juvenile court referee.” The Judicial Council recommends that this revision be altered to eliminate the reference to child support commissioners and traffic trial commissioners as both of these types of SJOs are captured in the existing statute by the term “court commissioner,” and because the term “traffic trial commissioner” is not currently used by the courts.

If you have any questions regarding these comments, please contact me at (916) 323-3121 or [tracy.kenny@jud.ca.gov](mailto:tracy.kenny@jud.ca.gov).

Sincerely,

Tracy Kenny  
Attorney

cc: Ms. Catherine Bidart, Staff Counsel

Attachment

## Proposed Revisions to CLRC Tentative Recommendations

Note: CLRC revisions are shown in underline and strikethrough, and proposed Judicial Council revisions to these provisions are denoted with italics and double strikethrough.

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

Section 731 of the Evidence Code is amended to read:

731. (a) In all criminal actions and juvenile court proceedings, the compensation fixed under Section 730 ~~for an expert appointed for the court's needs shall be a charge against the court. The compensation fixed under Section 730 for an expert appointed for other purposes~~ shall be a charge against the county in which ~~such~~ the action or proceeding is pending and shall be paid out of the treasury of ~~such~~ that county on order of the court, *unless the expert is appointed for the court's needs in which case the compensation shall be a charge against the court.*

(b) ~~In any county in which the superior court so provides, the compensation fixed under Section 730 for medical experts appointed for the court's needs in civil actions shall be a charge against the court.~~ In any county in which the board of supervisors so provides, the compensation fixed under Section 730 for medical experts appointed in civil actions, for purposes other than the court's needs, ~~in such county~~ shall be a charge against and paid out of the treasury of ~~such~~ that 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.

### **Evid. Code § 752 (amended). Interpreters for witnesses**

752. (a) When 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, an interpreter whom he or she can understand and who can understand him or her shall be sworn to interpret for him or her. *The record shall identify the interpreter appointed.*

~~(b) The record shall identify the interpreter who may be appointed and compensated as provided in Article 2 (commencing with Section 730) of Chapter 3, in the same manner as an expert appointed for the court's needs.~~

*(b) In criminal and juvenile delinquency cases, the interpreter is to be compensated by the court.*

*(c) In civil cases, the interpreter is to be compensated by the litigants, in such proportions as the court may direct, to be taxed and collected as other costs.*

### **Evid. Code § 753 (amended). Translators of writings**

753. (a) When the written characters in a writing offered in evidence are incapable of being deciphered or understood directly, a translator who can decipher the characters or understand the language shall be sworn to decipher or translate the writing. *The record shall identify the translator appointed.*

~~(b) The record shall identify the translator who may be appointed and compensated as provided in Article 2 (commencing with Section 730) of Chapter 3, in the same manner as an expert appointed for the court's needs.~~

*(b) In criminal and juvenile delinquency cases, the translator is to be compensated by the court.*

*(c) In civil cases, the translator is to be compensated by the litigants, in such proportions as the court may direct, to be taxed and collected as other costs.*

**Gov't Code § 53647.5 (amended). 1 Interest on bail deposits**

53647.5. Notwithstanding any other provision of law, interest earned on any bail money deposited by a court in a bank account pursuant to Section 1463.1 of the Penal Code and Section 53679 of this code shall, if the board of supervisors ~~[Judicial Council or court] so directs,~~ be allocated for the support of the courts in that county that court.

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

68092. Interpreters' and translators' fees compensation or 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.~~

(c) In criminal cases and juvenile delinquency cases, by the court.

**Gov't Code § 69894.5 (amended). Employment and assignment of 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) (1) The clerk of the court shall, when interpreters are needed, assign ~~the~~ interpreters ~~so~~ employed to interpret in criminal and juvenile *delinquency* cases in the superior court.~~

~~(3) (2) 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~~

delinquency cases. When so assigned, an interpreter the court 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.

(e) 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.

**Gov't Code § 71601(i) (amended). Definition of "subordinate judicial officer"**

71601(i) "Subordinate judicial officer" means an officer appointed to perform subordinate judicial duties as authorized by Section 22 of Article VI of the California Constitution, including, but not limited to, a court commissioner, probate commissioner, child support commissioner, traffic trial commissioner, referee, traffic referee, and juvenile court referee, and juvenile hearing officer.

**EMAIL FROM SHAWN LANDRY, YOLO COUNTY SUPERIOR COURT  
(OCTOBER 28, 2009)**

On behalf of Yolo Superior Court, please consider the following comment on the section entitled: INTEREST OF DEPOSITS OF BAIL

The decision on whether interest earned on bail money deposited by a court should be allocated to support that court should be made by the **court** that makes the deposit, NOT the Judicial Council. This should be a local decision and should not involve the Judicial Council.

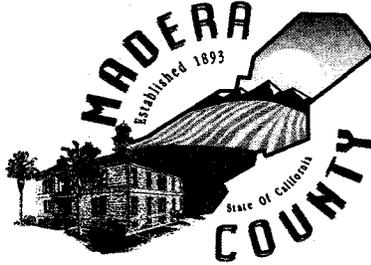
We have no comment on the other recommendations.

Shawn Landry, Assistant Court Executive Officer  
Superior Court of California, County of Yolo  
725 Court Street, Room 308  
Woodland, CA 95695  
530-406-6838  
[slandry@yolo.courts.ca.gov](mailto:slandry@yolo.courts.ca.gov)

OFFICE OF THE COUNTY COUNSEL  
COUNTY OF MADERA

200 West 4<sup>th</sup> Street  
Fourth Floor  
Madera, CA 93637

Tele: (559) 675-7717  
Fax: (559) 675-0214  
TDD: (559) 675-8970



COUNTY COUNSEL  
David A. Prentice

ASSISTANT COUNTY COUNSEL  
Douglas W. Nelson

DEPUTY COUNTY COUNSEL  
James M. Gerecke  
David L. Herman  
Miranda P. Neal  
Woodrow C. Whitford

Law Revision Commission  
RECEIVED

SEP 28 2009

September 24, 2009

File: \_\_\_\_\_

California Law Revision Commission  
4000 Middlefield Road, #D-2  
Palo Alto, CA 94303

Re: Tentative Recommendations for Statutes Made Obsolete  
by Trial Court Restructuring

Dear Commission:

Thank you for the opportunity to comment on tentative recommendations for revisions of Penal Code section 13510, Government Code sections 53679, 53647.5, 26806, 68092 and 69864.5, and Evidence Code section 731. The Commission also intends to tentatively recommend technical revisions to California Code of Civil Procedure sections 1085, 1103 and Government Code sections 71601.

This office has fully reviewed the tentative recommendations for revisions to the above-cited sections and will only comment as to Evidence Code section 731 and Government Code section 68092. We fully agree that these charges should be appointed costs of the Courts. With regard to the County's option to cover costs for experts appointed on civil matters, the County will only comment that it has not been the historical practice of Madera County to absorb such costs and we will not do so in the future.

Very truly yours,

  
DAVID A. PRENTICE  
County Counsel

DAP:ich  
cc: Steven Rodriguez, County Administrative Officer

S:\County Counsel\County Counsel\Letters\statutes made obsolete by trial court reconstructing.doc

October 30, 2009

Attn: Catherine Bidart, Staff Counsel, California Law Revision Commission

Subject: California Association of Clerks and Election Officials

Catherine-

The California Association of Clerks and Election Officials County Clerks Legislative Committee have reviewed the recent report on "*Statutes Made Obsolete by Trial Court Restructuring*" and have identified an issue of concern with the proposal.

Specifically, the report contains an amendment to GC 26806 pertaining to the Courts authority (in counties having a population of 900,000 or over) to employ interpreters to interpret in criminal and juvenile cases, and to translate documents intended for filing in a civil or criminal action, or that need to be recorded by the County Recorder. The Commission has tentatively recommended revising GC 26806 to transfer the responsibility to county clerks to employ interpreters to translate documents that need to be recorded by the County Recorder, while relocating the other portions of that section related to the Court employing interpreters to interpret in criminal and juvenile cases & translate for civil or criminal actions to GC 69894.5.

CACEO has identified two problems with this proposal:

1. It creates a major conflict with GC 27293 (translation certificates) - the County Clerk is required to issue a translation certificate on documents that have been translated by either a certified or registered court Interpreter as specified in GC 68561 & found on the Judicial Council website, or an accredited translator registered with the American Translators Association. (CACEO sponsored, AB 349 Ch 231 statutes 2007 - to clean-up the prior shift of this function from Superior Court in AB 145 Ch 75 Statutes 2005).
2. The County Clerk does not employ translators, and would be unable to do so for the sole purpose of translating documents that must subsequently be recorded and certified.. The code also is specific to counties having a population of 900,000 or over.

CACEO proposes for the Commission to repeal GC 26806 in its entirety and to relocate the portions related to the Courts to GC 69894.5. The Commission would also need to amend GC 27293 to remove the language authorizing the translation to be performed by a court interpreter....suggested amendments are attached.

Thank you for your consideration of these requests and the opportunity to provide comments on the report. Please review the CACEO suggested language and contact me with any questions or concerns on the amendments.

Sincerely,

Matt Siverling

Legislative Advocate, CACEO

**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.~~

**27293.** (a) (1) Except as otherwise provided in subdivision (b), if an instrument intended for record is executed or certified in whole or in part in a language other than English, the recorder shall not accept the instrument for record.

(2) (A) A translation in English of an instrument executed or certified in whole or in part in a language other than English may be presented to the county clerk for verification that the translation was performed by ~~a certified or registered court interpreter, as described in Section 68561, or by~~ an accredited translator registered with the American Translators Association. The translation shall be accompanied by a notarized declaration by the ~~interpreter or~~ translator that the translation is true and accurate, and includes the certification, qualification, or registration of the ~~interpreter or~~ translator. The clerk shall consult an Internet Web site maintained by the ~~Judicial Council of the~~ American Translators Association in verifying the certification, qualification, or registration of the ~~interpreter or~~ translator.

(B) Upon verification that the translation was performed by an ~~interpreter or~~ translator described in subparagraph (A), and that the translation is accompanied by a notarized declaration as required pursuant to subparagraph (A), the clerk shall duly make certification of that verification under seal of the county, attach the certification to the translation, and attach the certified translation to the original instrument.

(C) For this verification and certification, a fee of ten dollars (\$10) shall be paid to the county clerk for each document submitted for certification. The attached original instrument and certified translation may be presented to the recorder, and, upon payment of the usual fees, the recorder shall accept and permanently file the instrument and record the certified translation. The recording of the certified translation gives notice and is of the same effect as the recording of an original instrument. Certified copies of the recorded translation may be recorded in other counties, with the same effect as the recording of the original translation, provided, however, that in those counties where a photostatic or photographic method of recording is employed, the whole instrument, including the foreign language and the translation, may be recorded, and the original instrument returned to the party leaving it for record or upon his or her order.

(b) The provisions of subdivision (a) do not apply to any instrument offered for record that contains provisions in English and a translation of the English provisions in a language other than English, provided that the English provisions and the translation thereof are specifically set forth in state or federal law.

(c) The county clerk is not required to issue a translation certificate if he or she is unable to confirm the certification, registration, or accreditation of the translator, as required in subdivision (a).

**EMAIL FROM ROBERT TURNER,  
SACRAMENTO COUNTY SUPERIOR COURT  
(NOVEMBER 10, 2009)**

The Superior Court of California, County of Sacramento has reviewed the California Law Revision Commission's Tentative Recommendations Report (#J-1404) and has the following comment to submit:

I do have a comment about the revision to require the Court to pay for translation as opposed to the County. I would agree if the Court is in need of and orders a translation. However, I believe that the proponent of evidence of a foreign language document should be providing the Court with a translated copy at their own expense, not unlike a transcript of a recording. See CRC 2.1040.

Respectfully submitted on behalf of the court by,

Robert Turner  
ASO II  
Research & Evaluation Division  
Superior Court of California  
County of Sacramento  
(916) 874-3141



FREDERICK R. BENNETT  
COURT COUNSEL

111 NORTH HILL STREET, SUITE 546  
LOS ANGELES, CA 90012-3014  
(213) 893-1224 Fax: (213) 625-3964  
e-mail: FBennett@LASuperiorCourt.org

*Superior Court of California*  
*County of Los Angeles*

August 27, 2009

Via Mail, Email and Facsimile to (916) 739-7072 and (650) 494-1827

Catherine Bidart  
Staff Counsel  
California Law Revision Commission  
4000 Middlefield Road, Rm D-2  
Palo Alto, CA 94303-4739

Re: Law Revision Commission Study on Statutes Made Obsolete by Trial Court  
Restructuring (Part 5).

Dear Ms. Bidart:

On behalf of the Los Angeles Superior Court, I am forwarding these comments to your Staff Memorandum, dated July 20, 2009, identified as Study J-1404, for consideration by the Commission at its public meeting on August 28, 2009.

**Experts in Criminal and Juvenile Proceedings**

The proposed change to Evidence Code section 731 is based upon the incorrect assumption that the costs of experts in criminal and juvenile cases appointed at the request of counsel for the parties is a court operation cost. Only costs for “court-appointed expert witness fees (**for the court's needs**)” and “court-ordered forensic evaluations and other professional services (**for the court's own use**)” [emphasis added] are court operation cost defined in California Rule of Court 10.810(d), Function 10. Rarely are such experts appointed “for the court's own use” in criminal and juvenile cases. Most experts in criminal and juvenile cases are appointed at the request of court appointed counsel for indigent defendants or for the prosecutor, as permitted by Evidence Code section 730, which authorizes the court to appoint such experts and to fix the compensation thereof for experts “required by the court **or by any party to the action.**” [Emphases added.] Accordingly, the only appropriate change to Evidence Code section 731 would be to amend subdivision (a) thereof to read:

“(a) In all criminal actions and juvenile court proceedings, the compensation fixed under Section 730, other than court appointed experts for the court's own needs and use, 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.”

Catherine Bidart, Staff Counsel, California Law Revision Commission

Re: Law Revision Commission Study on Statutes Made Obsolete by Trial Court  
Restructuring (Part 5)

August 27, 2009

Page: 2

The cost of experts appointed for the courts use are clearly a court operation cost which is properly chargeable to the court. However, the cost of experts requested by the county public defender, county alternate public defender, court appointed counsel for the indigent or by the prosecutor are properly county charges. *See* Penal Code section 987.2(a): “In any case in which a person, including a person who is a minor, desires but is unable to employ counsel, and in which counsel is assigned in the superior court to represent the person in a criminal trial, proceeding, or appeal, the following assigned counsel shall receive a reasonable sum for compensation **and for necessary expenses**, the amount of which shall be determined by the court, **to be paid out of the general fund of the county**: [hereafter are listed the public defender, alternate public defender, and panels of private counsel that may exist in each county; emphasis added]. *See also*, Government Code section 29602, which provides that “[t]he expenses necessarily incurred ... for ... services in relation to criminal proceedings for which no specific compensation is prescribed by law are county charges.”

In Los Angeles County, and likely in many other counties, the longstanding practice is for public defenders, alternate public defenders, court appointed counsel for the indigent, and, in some cases, prosecutors, to seek appointment of necessary experts for defense of their clients pursuant to Evidence Code section 730. Although some counties directly appropriate funds in the public defender's budget for experts, that practice is subject to criticism as it places the public defender in a position of potential conflict or faced with the more costly option of declaring unavailability for appointment in cases requiring experts for lack of funds. In accordance with the provisions of Evidence Code section 730 an alternative methodology is for the court to determine the necessity of the requested expert, and to fix the amount of the compensation, which is to be paid by the county. This avoids the potential conflict defense counsel could face, and minimizes the necessity for counsel to declare unavailability on the basis of lack of funds for necessary experts. In Los Angeles the amount approved and paid by the County of Los Angeles for such experts exceeds \$9 million dollars annually. Few, if any, experts, are appointed pursuant to Evidence Code section 730 for the court's own use.

Accordingly, the Commission should not amend Evidence Code section 731 to provide that the costs of all experts in criminal and juvenile actions be the responsibility of the court. The costs of experts in all criminal actions and juvenile court proceedings other than the costs of experts for the court's own use, should continue to be required to be paid out of the treasury of the county on order of the court. The only appropriate change to Evidence Code section 731 would be to amend subdivision (a) thereof to read:

“(a) In all criminal actions and juvenile court proceedings, the compensation fixed under Section 730, other than court appointed experts for the court's own needs and use, 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.”

Catherine Bidart, Staff Counsel, California Law Revision Commission  
Re: Law Revision Commission Study on Statutes Made Obsolete by Trial Court  
Restructuring (Part 5)  
August 27, 2009  
Page: 3

### **Translators and Interpreters**

As the Commission notes in its analysis, the employment of an interpreter for a witness in a criminal or juvenile case is a court operation cost (Cal. R. Ct. 10.810(d), Function 10), but that it is less clear whether court operations include employment of a translator of a writing offered in evidence.

Although the Commission has determined that employment of an interpreter for a witness in a criminal case is a court operation cost, it has left open the question of what services that includes. The Commission does not discuss providing an interpreter for a non-English speaking indigent defendant or to assist appointed counsel in interviewing a non-English speaking defendant in the adjacent court lockup as part of a court proceeding. A duty to provide a non-English speaking indigent defendant with an interpreter to understand the proceedings is consistent with the discretionary authority given the court to hire interpreters for criminal and civil proceedings (*See, e.g.*, Government Code section 26806(a)), and the requirements of Due Process. That authority can reasonably be construed to also include interpreter services closely related in time, place, and effect to courtroom proceedings, such as discussions between court appointed counsel and a non-English speaking defendant during short breaks in the court proceedings, or to assist counsel in such discussions just prior to court proceedings in courtroom adjacent lockups, but not to interviews at the jail or during lengthy breaks, such as lunch breaks. The costs of interpreter services outside of the courtroom proceedings, and not related closely in time, place and effect to courtroom proceedings should be treated as necessary defense costs, which should remain county charges pursuant to Penal Code section 987.2 and Government Code section 29602.

With regard to translation services, and without citing any authority therefor, other than a reference for the court's authority to appoint an expert "for its own needs" under Evidence Code section 731, discussed above, the Commission tentatively recommends revising Evidence Code section 731 to make the court responsible for translating a writing offered in evidence. However, such a construction is inconsistent with the obligation of the parties to provide the necessary information and foundation to make an exhibit admissible in evidence, which should include a translation, and with the provisions of Government Code section 29602, which provides that the expenses incurred "for all services in relation to criminal proceedings for which no specific compensation is prescribed by law are county charges."

Evidence Code section 753 authorizes a "sight translation" that, when required, can be performed by a court-employed interpreter who is not a translator. A "sight translation" is distinguishable from the typical documentary translation or translated transcript of non-English language voice recordings or documents. When a "sight translation" is conducted under section 753, the interpreter is sworn in as a witness and translates a document by testimony. Since the

Catherine Bidart, Staff Counsel, California Law Revision Commission  
Re: Law Revision Commission Study on Statutes Made Obsolete by Trial Court  
Restructuring (Part 5)  
August 27, 2009  
Page: 4

procedure is performed within the course and scope of the court-employed interpreter's employment, it is properly a court operation and not inconsistent with the provisions of the Trial Court Interpreter Employment and Labor Relations Act.

Nothing in Evidence code sections 730, 731, nor 753 support the Commission's recommendation that the court should be responsible for all translations of a writing offered into evidence.

In addition, many documents, such as discovery documents provided by the prosecution at the time of arraignment, may require translation. Since those documents are not at that time offered into evidence, and are merely lodged with the court to facilitate delivery of discovery to the defense, the court should not be required to translate those documents. Even though the court has the authority to employ interpreters to provide translation, it is not required to do so, as the statutory language is permissive and not mandatory. *See* Government Code section 26806, which provides that courts with populations over 900,000 "may" employ interpreters "to translate documents intended for filing in any civil or criminal proceeding," and which does not mandate that any such translation be done at court expense. The translation of documents to be filed with the court or submitted in evidence are expenses that should be incurred by the person seeking to file or admit such documents. The Commission's construction is inconsistent with the obligation of the parties to provide the necessary information and foundation to make an exhibit admissible in evidence, which should include a translation, and with Government Code section 29602, which provides that expenses incurred "for all services in relation to criminal proceedings for which no specific compensation is prescribed by law are county charges." To conclude otherwise would result in the necessity of the translation being determined exclusively by the parties and not by the court, and is inconsistent with the court's duty to determine the necessity of experts to be engaged "for the courts needs," as prescribed in the Rules of Court defining which expert costs are court operations costs. Cal. R. Ct. 10.810(d), Function 10.

The Los Angeles Superior Court currently does not assign interpreters to prepare written translations in litigation. In criminal and juvenile cases, the Court, pursuant to a motion, authorizes a party to obtain a translation to assist that party. Translations obtained pursuant to such an order are obtained by the parties who contract for the translation and pay the translator whatever fees have been negotiated for the service.

Proposed amendments to Government Code § 68092 would add subdivision (c) to provide that interpreters and translators' compensation shall be paid by the Court in criminal cases. Since translation fees are paid by the parties, such fees are not a court expense. Although it is appropriate to provide that the compensation of interpreters employed by the court and acting as such is paid by the court, it is not appropriate to make the compensation of translators a court expense as proposed.

Catherine Bidart, Staff Counsel, California Law Revision Commission  
Re: Law Revision Commission Study on Statutes Made Obsolete by Trial Court  
Restructuring (Part 5)

August 27, 2009

Page: 5

Proposed subdivision (b)(4) of Government Code § 69894.5 incorporates and amends subdivision (d) of Government Code § 26806 relating to the translation of documents. It incorporates existing provisions that authorize but do not require the court to assign a court-employed interpreter to translate documents. However, by the terms of the Trial Court Interpreter Employment and Labor Relations Act, court-employed interpreters are appointed to perform "spoken language interpretation of trial court proceedings," not translations. Government Code §71802(a). As noted above, the Court does not currently exercise the authority in subdivision (d) of section 26806 to assign an interpreter to translate documents but instead authorizes a party to obtain a translation on an independent contractor basis between the party and the translator. The Court's interest is in ensuring that any amendments to section 69894.5 do not preclude this current practice.

Two additional issues do not appear to be of direct concern to the court but may be worth noting:

1. The first issue relates to the imposition of a fee when a court does exercise its authority to order translation pursuant to section 69894.5. Pursuant to subdivision (b)(4) of section 69894.5, a fee would be collected for translations performed pursuant to that section, which would be deposited into the Trial Court Trust Fund. The fee would be "determined by agreement between the court and the interpreter preparing the translation." It is not clear why the interpreter's agreement would be required in determining a fee to be imposed by the court and deposited into the Trial Court Trust Fund.

2. Provisions in subdivision (b)(1) of Government Code § 69894.5 authorizing a court to employ interpreters to translate documents may be inconsistent with provisions of the Trial Court Interpreter Employment and Labor Relations Act, which requires the court to employ interpreters to perform spoken language interpretation.

Very truly yours,



Frederick R. Bennett  
Court Counsel

c: Hon. Charles W. McCoy, Jr., Presiding Judge  
Hon. Lee S. Edmon, Assistant Presiding Judge  
Hon. Michael Nash, Presiding Judge, Juvenile Court  
Hon. Peter Espinoza, Supervising Judge, Criminal Division  
John A. Clarke, Executive Officer/Clerk