

Superior Court of Nevada County

Limited English Proficiency (LEP) Plan

I. Legal Basis and Purpose

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

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

II. Needs Assessment

A. Statewide

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

According to the Judicial Council's Court Interpreter Data Collection System (CIDCS), which aggregates court interpreter usage data received from the California trial courts, the most frequently used languages for interpreters in California courts in 2010 were (in descending order of frequency):

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

B. Superior Court of Nevada County

The Superior Court of Nevada County will make every effort to provide services to all LEP persons. However, the following list shows the foreign languages that are most frequently used in this court's geographic area.

1. Spanish
2. French
3. ASL
4. Japanese
5. Chinese

This information is based on data collected from the Judicial Council's Court Interpreters Data Collection System.

III. Language Assistance Resources

A. Interpreters Used in the Courtroom

1. Providing Interpreters in the Courtroom

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

- For litigants and witnesses in criminal (including traffic) hearings;
- For litigants and witnesses in juvenile hearings;

The Court is permitted to provide interpreter services for all civil case types (except for small claims) pursuant to Evidence Code section 756 and Government Code section 68092.1, as summarized in Attachment A. The Court is not always able to provide or pay for an interpreter in every language or in every civil case. Acknowledging funding limitations, the Legislature has set priorities for civil cases. Courts with limited funds are to try to provide court interpreters based on these priorities. The first priority is to try to provide interpreters in the following kinds of cases:

- Domestic violence cases,
- Family law cases in which there is a domestic violence issue,
- Elder or dependent adult physical abuse cases, and
- Unlawful detainer or eviction cases.

Even in those cases, interpreters will not always be available for all hearings or in all languages. The Superior Court of Nevada County recognizes the significant benefits to both the public and the court by providing interpreters in civil cases. The Court is working to provide spoken-language interpreters for litigants and witnesses in other civil proceedings in the upcoming year, to the extent that funding is provided. As outlined in Attachment A, the Legislature has set priorities in these cases.

Interpreters are referred to other court departments when their assistance is no longer needed for statutorily required calendars/hearings.

2. Determining the Need for an Interpreter in the Courtroom

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

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

The need for an interpreter also may be made known in the courtroom at the time of the proceeding. The Superior Court of Nevada County will display a sign translated into the five most frequently used languages that states: "You may have the right to a court-appointed interpreter in a court case. Please check with a court employee for assistance." The Superior Court of Nevada County will display this sign at the following locations: Security at building entrances; Self-Help Center; Criminal / Traffic Clerks' Office in Suite 7; Civil / Family Law Clerks' Office in Suite 5; Truckee Clerks' Office in Suite 107. This sign will be displayed when it is made available by the Judicial Council of California (JCC).

Also, the judge may determine that it is appropriate to provide an interpreter for a court matter. California's Standards of Judicial Administration offer instruction to judges for determining whether an interpreter is needed. Section 2.10 provides that an "interpreter is needed if, after an examination of the party or a witness, the court concludes that: (1) the party cannot understand and speak English well enough to participate fully in the proceedings and to assist counsel, or (2) the witness cannot speak English so as to be understood directly by counsel, court, and jury." The court is directed to examine the party or witness "on the record to determine whether an interpreter is needed if: (1) a party or counsel requests such examination or (2) it appears to the court that the person may not understand or speak English well enough to participate fully in the proceedings."

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

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

Many people who need an interpreter will not request one because they do not realize that interpreters are available or because they do not recognize the level of English proficiency or communication skills needed to understand the court proceeding. The court does not always have funding to provide interpreters for non-mandated proceedings. However, the court can provide some assistance within existing funding restrictions and will endeavor to do so for non-mandated proceedings pursuant to Evidence Code section 756 and Government Code section 68092.1, as outlined in Appendix A.

In a case where the court is mandated to provide an interpreter, but one is not available at the time of the proceeding, even after the court has made all reasonable efforts to locate one, as previously

outlined in this plan, the case will be postponed and continued on a date when an interpreter can be provided.

When an interpreter is unavailable for a case in which the court is not mandated to provide one, the court takes the following actions: (1) provides an interpreter for priority civil matters (Appendix A) when funding is available, or (2) provides a list of interpreters to the parties for direct contact per the JCC roster if an interpreter cannot be provided by the court, or (3) utilizes Language Select or a comparable telephonic interpreter service.

2. Court Interpreter Qualifications

The Superior Court of Nevada County hires interpreters for courtroom hearings in compliance with the rules and policies set forth by Government Code section 68561 and California Rules of Court, Rule 2.893. The Judicial Council of California (JCC) maintains a statewide roster of certified and registered interpreters who may work in the courts. This roster is available to court staff and the public on the Internet at <http://www.courts.ca.gov/programs-interpreters.htm>.

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

B. Language Services Outside the Courtroom

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

The two most common points of service outside the courtroom are at the court’s public counters and self-help center. Bilingual assistance is provided at the public counters by the placement of bilingual staff as is practical and available. The court also periodically calls on other bilingual staff from elsewhere in the court to assist at a public counter. Similarly, the court’s self-help center recruits and employs bilingual staff to provide self-represented litigants with assistance in understanding and completing necessary forms.

Providing language services outside the courtroom entails both daily communications and interactions between court staff and LEP individuals to provide accessibility of court services, such as self-help and mediation services to LEP court users.

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

- Court interpreters, to the extent permitted under the active memorandum of understanding or independent interpreter contract;
- Bilingual employees, the Superior Court of Nevada County has bilingual employees in the following languages: Spanish and one staff person in our South Lake Tahoe branch who is bilingual in Slovak, Czech, Polish, German, French and Russian. When LEP customers seek our assistance outside the courtroom, we first try to meet their needs by using the language skills of our employees;
- Spanish to English forms with key phrases and information;
- Language Select services, which are available to provide assistance in the clerk's office and at the court's self-help center. The Language Select contract service provides interpretation services via the telephone in over 170 languages.

To provide linguistically accessible services for LEP individuals, the Superior Court of Nevada County provides the following:

- Self-help center services that include: bilingual self-help center staff and telephonic language assistance;
- Language Select services for family court services mediators for custody and visitation matters;
- Judicial Council Domestic Violence forms in Chinese, Korean, Spanish, and Vietnamese.

C. Translated Forms and Documents

The California courts understand the importance of translating forms and documents so that LEP individuals have greater access to the courts' services. The Superior Court of Nevada County currently uses Judicial Council forms and instructional materials translated into commonly used languages.

- These translated forms are available at the court's website for internal use and available to the public at <http://www.courts.ca.gov/selfhelp.htm> as well as at the court's self-help center;
- The court also has access to instructional materials that have been translated by other courts at <http://www.courts.ca.gov/partners/53.htm>.
- The court has translated the following documents into other languages: Local forms for mediation translated to Spanish include: Mediation Questionnaire, Mediation Information Sheet and Mediation Appointment Notice.

These documents are located Superior Court of Nevada County clerks' offices at 201 Church Street, Nevada City, CA 95959 and 10075 Levon Avenue Suite 107, Truckee, CA 96161.

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

IV. Court Staff and Volunteer Recruitment

A. Recruitment of Bilingual Staff for Language Access

The Superior Court of Nevada County is an equal opportunity employer and recruits and hires bilingual staff to serve its LEP constituents. Primary examples include but are not limited to:

- Bilingual staff to serve at public counters;
- Bilingual staff in the court's self-help centers;
- Bilingual staff Child Custody Recommending Counselor.

V. Judicial and Staff Training

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

- Diversity trainings offered by CJER;
- Language Select training;
- New employee orientation training;
- Training on *Courtroom Processing Procedures for Interpreter Services* by CJER and Court Operations;
- Training on *Using a Court Interpreter: The Basics* by CJER
- Judicial officer orientation on the use of court interpreters and language competency.

VI. Public Notification and Evaluation of LEP Plan

A. LEP Plan Approval and Notification

The Superior Court of Nevada County's LEP plan is subject to approval by the Presiding Judge and Court Executive Officer. Upon approval, a copy will be forwarded to the JCC's LEP Coordinator. Any revisions to the plan will be submitted to the presiding judge and court executive officer for approval, and then forwarded to the JCC. Copies of Superior Court of Nevada County's LEP plan will be provided to the public on request. In addition, the court will post this plan on its public website: <http://www.nccourt.net>, and the JCC will post a link to it on the Judicial Council's public website at <http://www.courts.ca.gov>.

Attachment A to Trial Court Limited English Proficiency Plan

Citations on the Use and Payment of Interpreters in Court Proceedings

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

- Article 1, section 14 of the California Constitution provides that a “person unable to understand English who is charged with a crime has the right to an interpreter throughout the proceedings.” There is no corresponding right in civil proceedings. *Jara v. Municipal Court* (1978) 21 Cal.3d 181 held that non-English-speaking indigent civil litigants do not have a right to a court interpreter appointed at public expense. However, the court does have the inherent right to waive filing fees if justice so requires.
- *Jara* let stand an earlier opinion, *Gardiana v. Small Claims Court* (1976) 59 Cal.App.3d 412, which held that in small claims proceedings, the court has a statutory duty to appoint an interpreter free of charge if it finds the litigant unable to speak or understand English. *Jara* reasoned that because attorneys are not permitted in small claims proceedings, non-English-speaking small claims litigants without an interpreter are “effectively barred from access to the small claims proceedings.” (*Jara*, 21 Cal.3d 185.) (See also the two bulleted items below regarding interpreters in small claims matters.)
- Witnesses with limited English proficiency must also be provided with an interpreter. Under Evidence Code section 752, the court must appoint an interpreter whenever “a witness is incapable of understanding the English language or is incapable of expressing himself or herself in the English language so as to be understood directly by counsel, court, and jury. . . .” Appointment of a translator is also required whenever “the written characters in a writing offered in evidence are incapable of being deciphered or understood directly.” (Evid. Code, § 753.)
- In small claims proceedings, if the court determines that a litigant does not speak or understand English sufficiently to comprehend the proceedings or give testimony and needs assistance in doing so, the court may permit another individual (other than an attorney) to assist that party. (Code Civ. Proc., § 116.550(a).) If a competent interpreter is not available at the first hearing of the case, the small claims court shall postpone the hearing one time only to allow the party the opportunity to obtain another individual to assist that party. Any additional continuances shall be at the court’s discretion. (Code Civ. Proc., § 116.550(b)). Rule 3.61 (5) of the California Rules of Court provides that any costs for a court-appointed interpreter in a small claims action must be waived if an application to proceed in forma pauperis is granted.
- In proceedings involving domestic violence and proceedings regarding parental rights, dissolution of marriage, or legal separation involving a protective order, a party who does not proficiently speak or understand English shall have a certified interpreter present to assist communication between the party and his or her attorney (Evid. Code, § 755(a)). The

interpreter's fees shall be paid by the litigants "in such proportions as the court may direct," except that the fees shall be waived for a party who has a fee waiver (Evid. Code, § 755(b) and Gov. Code, § 68092). However, the authorizing statute (Evid. Code, § 755) provides that compliance with its requirements is mandatory only if funds are available under the Federal Violence Against Women Act (P.L. 103-322) or from sources other than the state. The Judicial Council provides special funding through its Trial Court Improvement Fund to allow courts to provide interpreters for these matters and for elder abuse cases. This funding may also be used for general family law matters in and out of the courtroom, on a priority basis and to the degree funding is available.

- AB 1657, which went into effect January 1, 2015, repeals Evidence Code § 755, and instead enacts § 756 of the Evidence Code requiring the Judicial Council, to the extent required by other state or federal laws, to reimburse courts for court interpreter services provided in civil actions and proceedings to any party who is present in court and who does not proficiently speak or understand the English language for the purpose of interpreting the proceedings in a language the party understands, and assisting communications between the party, his/her attorney, and the court. Provides that if sufficient funds are not appropriated to provide an interpreter to every party that meets the standard of eligibility, court interpreter services in civil cases reimbursed by the Judicial Council, pursuant to the provision above, shall be prioritized by case type by each court in the following order:
 1. Actions and proceedings under Division 10 (commencing with § 6200) of the Family Code, actions or proceedings under the Uniform Parentage Act (Part 3 (commencing with § 7600) of Division 12 of the Family Code) in which a protective order has been granted or is being sought pursuant to § 6221 of the Family Code, and actions and proceedings for dissolution or nullity of marriage or legal separation of the parties in which a protective order has been granted or is being sought pursuant to § 6221 of the Family Code; actions and proceedings under subdivision (w) of § 527.6 of the Code of Civil Procedure; and actions and proceedings for physical abuse or neglect under the Elder Abuse and Dependent Adult Civil Protection Act (Chapter 11 (commencing with § 15600) of Part 3 of Division 9 of the Welfare and Institutions Code).
 2. Actions and proceedings relating to unlawful detainer.
 3. Actions and proceedings to terminate parental rights.
 4. Actions and proceedings relating to conservatorship or guardianship, including the appointment or termination of a probate guardian or conservator.
 5. Actions and proceedings by a parent to obtain sole legal or physical custody of a child or rights to visitation.
 6. All other actions and proceedings under § 527.6 of the Code of Civil Procedure or the Elder Abuse and Dependent Adult Civil Protection Action (commencing with W&I Code § 15600).
 7. All other actions and proceedings related to family law.

8. All other civil actions or proceedings.

If funds are not available to provide an interpreter to every party that meets the standard of eligibility, preference shall be given for parties proceeding *in forma pauperis* pursuant to GC § 68631 in any civil action or proceeding described in paragraph (3), (4), (5), (6), (7), or (8) above.

Courts are authorized to provide an interpreter to a party outside the priority order above when a qualified interpreter is present and available at the court location and no higher priority action is taking place at that location during the period of time for which the interpreter has already been compensated.