

Memorandum 92-1

Subject: Study J-03.01 - Translation of Foreign Language Documents for Recordation

Government Code Section 27293 requires, as a prerequisite to recordation, the translation and certification of all documents containing any language other than English. The certification must be performed by a judge, who must certify that the translation is accurate. (For the full text of this statute, see Exhibit 1.) The Commission received a letter from attorney Ronald Vandenberg suggesting revision of this statute. (See Exhibit 2.) As Mr. Vandenberg points out, the statute requires a judge's certification even when the translation is accompanied by a translator's notarized affidavit attesting to the translator's ability to perform the translation and to the accuracy of the particular translation. (See Exhibit 3.) Mr. Vandenberg suggests that the statute be revised to allow for recordation of an English translation, without a judicial certification, where a United States Embassy, or other official translation is provided.

Mr. Vandenberg also states that there are three instances in Government Code Section 27293 in which the use of the word "record" is improper and should be "recordation." (These are underlined in Exhibit 1.) Whether or not Mr. Vandenberg is correct about this, it appears that the terms "record" and "recordation" are used interchangeably in the remainder of the recording statutes. Revision of Section 27293 would not achieve overall consistency. Revision of all of the recording statutes in this manner would require further study.

Should Government Code Section 27293 be revised?

There has been no specific resolution by the Legislature referring this topic to the Commission for study. However, the Commission has authority, pursuant to Government Code Section 8298, to study and recommend revisions to correct technical or minor substantive defects in the statutes of the state without a prior concurrent resolution of the Legislature. The staff has studied Government Code Section 27293, to determine if it could be revised within the scope of this authority.

The staff has examined Government Code Section 27293 and related California statutes dealing with translation of foreign language documents for use in state courts. The staff has also reviewed the statutes of other states and federal law as it relates to this topic.

The staff has not located any statute dealing with translated documents that contains an alternative to the judicial certification procedure set out in Government Code Section 27293. The California Probate Code, for example, contains a substantially similar provision for introduction of a foreign language will into probate. Prob. Code § 8002(b)(2). (For the full text of this statute, see Exhibit 4.)

However, as Mr. Vandenberg points out, unless the judge is fluent in the foreign language, the judge will not be able to make an independent determination as to the accuracy of a translation. The judge presumably relies on the statement of the translator of the document or another person qualified in the particular language. As Mr. Vandenberg states, where there is a notarized affidavit of the accuracy of the translation it seems redundant to have a judge certify the translation.

On the other hand, as the use of interpreters and translators in courtrooms increases, concerns as to how to ensure the accuracy of translations also increase. (See Exhibit 5.) The present focus of legislation and debate is the use of interpreters in court. These concerns are also applicable to documents translated for purposes of recordation.

Evidence Code Sections 750 to 755 deal with interpreters and translators. Evidence Code Section 751 requires that an interpreter or translator take an oath to make a true translation. Evidence Code Section 751(a) requires that an interpreter's oath include a statement that the interpreter's best skill and judgment will be used. There is no statutory requirement that the interpreter or translator meet the requirements of an expert witness. (Federal law does require that interpreters and translators be qualified as experts. Fed. R. Ev. 604.)

There is, moreover, increasing regulation of the qualifications of court interpreters. The Judicial Council is involved in an ongoing review of procedures to ensure competent interpreter services in California courts. Gov't Code § 68560 et. seq. At present the State Personnel Board (SPB) administers a testing program for court

interpreters and compiles a list of interpreters who have successfully completed the testing. Government Code Section 68562 requires that trial courts use only interpreters certified by the SPB, absent a finding of good cause for appointment of an interpreter not on the SPB list. (Code of Civil Procedure Section 264 also authorizes trial courts to adopt their own rules ensuring the competency of translators. This statute was enacted prior to referral of this issue to the Judicial Council in 1978 and the resulting enactment of the SPB testing system.)

Despite the establishment of the SPB testing procedures, there is increasing pressure to impose further competency requirements on state court interpreters. The Judicial Council's Advisory Committee on Court Interpreters has proposed a "comprehensive revision of Government Codes 68560-68564, which set guidelines for using foreign language interpreters in the courtroom." (See Exhibit 5.) The considerable concern regarding the competency of translators in California courts would be applicable to translation of documents for purposes of recordation, though it does not appear that attention has yet turned to this particular use of translated documents. Any revision of Government Code Section 27293 should meet the concerns for ensuring accuracy.

How should Government Code Section 27293 be revised?

The statute could be revised to allow recordation, without judicial certification, of a foreign language document and its English translation whenever such a document is accompanied by a notarized translator affidavit such as the one provided by Mr. Vandenberg. (See Exhibit 3.) The affidavit could be required to contain the name and address of the translator, plus statements that the translator has the ability to make an accurate translation and that the translation is accurate. Notarization of the affidavit could be required.

However, in light of the current pressures to ensure the accuracy of interpreter services, an affidavit that contains only a conclusory statement that the affiant has the ability to make the translation would likely meet with opposition. Requiring the affidavit to contain the evidentiary facts that would establish that the translator is

competent to make the translation would require the exercise of judicial discretion to determine the sufficiency of those facts, thereby defeating the objective of avoiding judicial review.

A statute that would ensure the accuracy of the translation without judicial review would require specific identification of those translators presumed to be competent. The Commission would need to determine what constitutes interpreter competency, duplicating the work of the Judicial Council in this area.

The Commission could piggyback the Judicial Council's efforts and make a single exception from the judicial certification requirement for interpreters on the SPB list. However, this would be a piecemeal approach and it would not deal with the problem presented by Mr. Vandenberg's letter. Mr. Vandenberg's translation was performed by a translator at the United States Embassy in Tokyo, who most likely was not certified by the California SPB.

To add an exception for embassy interpreters would require study and evaluation of the competency and credentials of embassy interpreters. In the staff's opinion, this would be outside the scope of the Commission's authority to recommend "technical and minor" revisions.

Staff Recommendation

The Staff recommends that the Commission refer this issue to the Judicial Council, since the Judicial Council has already devoted significant resources to the general topic of interpreter competency.

Respectfully submitted,

Pamela K. Mishey
Staff Attorney

§ 27293. Recording of instruments in foreign language; fee for translation; effect of certified recorded translation; recording where photostating permitted; translation of English provisions

(a) Except as otherwise provided in subdivision (b), when an instrument intended for record is executed or certified in whole or in part in any language other than English, the recorder shall not accept the instrument for record. A translation in English of an instrument executed or certified in whole or in part in any language other than English may be presented to the judge of a court of record, and upon verification that the translation is a true translation the judge shall duly make certification of the fact under seal of the court, attach the certification to the translation, and attach the certified translation to the original instrument. For such verification and certification, a fee of one dollar and fifty cents (\$1.50) shall be paid for each folio contained in the translation. 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 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 which contains provisions in English and a translation of the English provisions in any language other than English, provided that the English provisions and the translation thereof are specifically set forth in state or federal law.

(Added by Stats.1947, c. 424, p. 1161, § 1. Amended by Stats.1951, c. 388, p. 1187, § 1; Stats.1980, c. 425, p. 854, § 1, urgency, eff. July 11, 1980; Stats.1983, c. 969, § 4.)

Code Commission Notes

"Recorders are not required to accept for record" has been changed to "Recorders shall not record." The section apparently forbids recordation of an untranslated document. It cannot be discretionary as it would result in making such documents recordable at the will of the recorder. See *Wilson v. Corbier*, 13 Cal. 166 for recordation of documents in foreign language.

Historical Note

The 1951 amendment added the proviso at the end of subd. (a).

The 1980 amendment designated subds. (a) and (b); added subd. (b); added "Except as otherwise provided in subdivision (b)" to the beginning of subd. (a); and added "or her" to the sixth sentence of subd. (a).

The 1983 amendment modified the fee in the third sentence of subd. (a).

Derivation: Pol.C. § 4131a, added by Stats. 1921, c. 356, p. 535, § 1.

Cross References

Certificates under seal, fee for, see § 27364.

Courts of record specified, see Const. Art. 6, § 1.

Documents to which court seal must be attached, see Code of Civil Procedure § 153.

Page defined, see § 27361.5.

Seals of courts, generally, see § 68074 et seq.

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July 1, 1991

John H. De Mouilly
Executive Secretary
California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

Re: Government Code Section 27293

Dear Mr. DeMouilly:

I am writing with regard to Government Code Section 27293, a photocopy of which is attached for your convenience. I recently had occasion to represent a client who was the surviving joint tenant of a parcel of California real estate. The deceased joint tenant was a citizen of another country and died while residing outside of the United States.

In order to complete the Affidavit - Death of Joint Tenant, it was necessary to affix a certified copy of the decedent's death certificate to the affidavit. The original certified death certificate that I obtained was in the language of the decedent's country of residence, which was his place of death. The death certificate was translated by an official of the U.S. Embassy according to U.S. Embassy procedures. The appropriate U.S. Embassy seal was included on the official translation.

When I presented the Affidavit - Death of Joint Tenant, along with the death certificate and the official translation of the death certificate, the county recorder in California refused to record the document because we had not complied with Government Code Section 27293. As you will note in reviewing that section, it provides in part that

"When an instrument intended for record (sic) is executed or certified in whole or in part in a language other than English, the recorder shall not accept the instrument for record (sic). A translation in English of an instrument executed or certified in

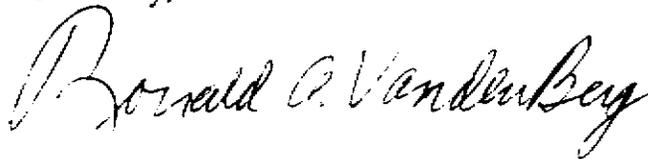
whole or in part in any language other than English may be presented to the judge of the court of record, and upon verification that the translation is a true translation, the judge shall duly make certification of the fact under seal of the court, attach the certification to the translation, and attach the certified translation to the original instrument. (Emphasis added)

Thus, even though a judge does not speak the language in which the original death certificate is prepared, the judge is required to certify that the translation is a "true translation". Of course, one could retain an independent translator to prepare a translation for the judge's review. In this case the judge could rely upon the U.S. Embassy's official translation. Since the U.S. Embassy official translation was available, it seemed unnecessary and, in fact, redundant to require the court to certify that the translation is a "true translation". Consequently, I recommend that a revision be made to this Government Code section so as to enable the use of a U.S. Embassy or other official translation in lieu of a "true translation" certified by a judge.

In addition, I believe the word "record" in the statute should be "recordation".

If you are unable to assist me, would you please let me know to whom I should write.

Sincerely,



RONALD A. VANDENBERG

RAV:gcn/CA Law Rev Letter
Enclosures

cc: Richard Gorini, Esq. (w/enclosures)
Mark Franich, Esq. (w/enclosures)

Law Revision Commission
RECEIVED

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October 10, 1991

Pamela Mishey
Staff Attorney
California Law Revision Commission
4000 Middlefield Road, Suite D2
Palo Alto, CA 94303-4739

Re: Government Code Section 27293

Dear Ms. Mishey:

In accordance with our recent telephone discussion, I have enclosed a photocopy of the Embassy of the United States of America Certificate of Translation which was used by the Tokyo office of the Consul of the United States.

Please provide me with a copy of the draft of the proposed legislation to modify Government Code section 27293.

Sincerely,



RONALD A. VANDENBERG

RAV:nvm
Enclosure

CERTIFICATE OF TRANSLATION

JAPAN)
CITY OF TOKYO) SS:
EMBASSY OF THE UNITED STATES OF AMERICA)

Before me, _____ Consul
of the United States of America, in and for Tokyo, Japan,
duly commissioned and qualified, personally appeared
_____, who, being duly sworn,
deposes and says:

That my name is _____;

That my address is _____;

That I know well both the English and Japanese
languages;

That I translated the attached Japanese language
document into the English language;

That the attached English language translation
is a true and correct translation of the
attached Japanese language document to the
best of my knowledge and belief;

And further deponent saith not.

SUBSCRIBED AND SWORN TO before me this

20th day of November, A.D. 1990.

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Consul of the
United States of America

§ 8002. Contents of petition; attachment of will

(a) The petition shall contain all of the following information:

(1) The date and place of the decedent's death.

(2) The street number, street, and city, or other address, and the county, of the decedent's residence at the time of death.

(3) The name, age, address, and relation to the decedent of each heir and devisee of the decedent, so far as known to or reasonably ascertainable by the petitioner.

(4) The character and estimated value of the property in the estate.

(5) The name of the person for whom appointment as personal representative is petitioned.

(b) If the decedent left a will:

(1) The petitioner shall attach to the petition a photographic copy of the will. In the case of a holographic will or other will of which material provisions are handwritten, the petitioner shall also attach a typed copy of the will.

(2) If the will is in a foreign language, the petitioner shall attach an English language translation. On admission of the will to probate, the court shall certify to a correct translation into English, and the certified translation shall be filed with the will.

(3) The petition shall state whether the person named as executor in the will consents to act or waives the right to appointment.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

Court interpreters seek board, tighter certification policy

By **RON SMITH**
Special to The Daily Recorder

NEWPORT BEACH — A call for creating both tighter certification requirements and a governing board to establish minimum training guidelines for court interpreters was issued Sunday at the conclusion of a two-day meeting of the California Court Interpreters Association here.

In February of this year, the Judicial Council's Advisory Committee on Court Interpreters — formed in May 1990 and chaired by 2nd District Justice Arthur Gilbert — sent out for comment copies of proposed changes to the 1978 law that created the policies governing court interpreters. Copies were sent to the 12 CCIA chapters throughout the state.

Proposed is a comprehensive revision of Government Codes 68560-68564, which set guidelines for using foreign language interpreters in the courtroom.

Under the 1978 law, anyone can become a court interpreter simply by passing an exam given by the State Personnel Board and having their names put on a list of "state-recommended interpreters."

That list is "next to useless," said Carlos Gaudy, a member of the Judicial Council's advisory committee and a former CCIA president. "There are

no renewal requirements, no continuing education requirements and no provisions for discipline. The list simply includes everyone who has passed the state interpreter's test."

Gaudy is familiar with the list and all other aspects of the interpreter's program because in 1977 he was one of a handful of Los Angeles-based interpreters who pushed creation of a state-wide system.

"Los Angeles County was the first governmental body in the country to recognize the importance of certifying court interpreters," said Gaudy. "And for years, we had been fighting for state legislation patterned after the Los Angeles County plan.

"But we had trouble getting anyone to listen. That's why a group of us went up and broke into a Judicial Council meeting that was being held on a Saturday morning. The Council wanted to have us thrown out, but Judge (Supreme Court Chief Justice Rose) Bird took us into a room and really listened to us. That act led to the 1978 law," he said.

The proposed legislative changes would create a governing body — the Certified Interpreters Board under the Department of Consumer Affairs — that would be responsible for all activities necessary to provide the courts with competent interpreter services, Gaudy said.

The activities would include recruiting, training, testing, certification, continuing education and periodic evaluation, he added.

One proposal — retesting all interpreters on the state-recommended list — was rejected by all 12 CCIA chapters, according to CCIA President Renee Veale, who is a Spanish-language interpreter with the Los Angeles Superior Court.

It was rejected, she said, because many interpreters in the CCIA already have passed tests given by various court and government agencies.

On Sunday, some 300 convention attendees met with the members of the advisory committee and listened to the rationale for the proposed changes.

"It was a roundtable discussion," said Gaudy, "and we received a lot of valuable input that we will take back to Sacramento."

In addition to Justice Gilbert, the advisory committee consists of Justice Gilbert Nares of the 4th District Court of Appeal, the vice chairman; Municipal Court Judge Ernest Borunda of South Bay; Municipal Court Judge Ronald E. Quidachay of San Francisco; and Municipal Court Judge Armando O. Rodrigues of Fresno.