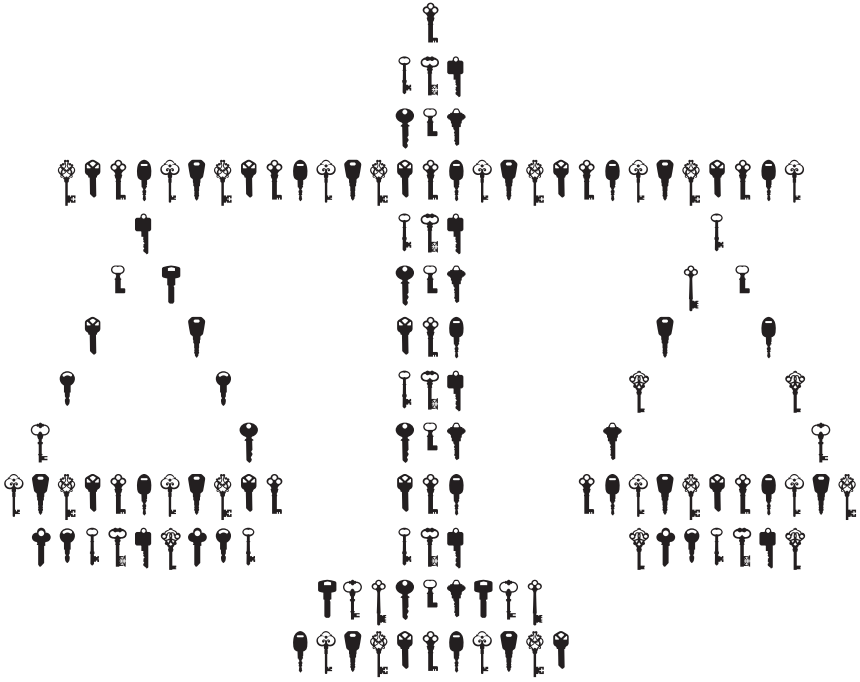




American Bar Association

Standards
for
Language Access
in Courts

American Bar Association



Standards *for* Language Access *in* Courts

Standing Committee on Legal Aid and Indigent Defendants

FEBRUARY 2012

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FEBRUARY 6, 2012

Resolution Adopted by the ABA House of Delegates

**RESOLUTION
(12M113)**

RESOLVED, That the American Bar Association adopts the ABA Standards for Language Access in Courts, dated February 2012;

FURTHER RESOLVED, That the American Bar Association urges that all courts and other adjudicatory tribunals adopt a plan to accomplish implementation of the Standards; and

FURTHER RESOLVED, That the American Bar Association urges federal and state legislative and executive branches to provide adequate funding to courts and other adjudicatory tribunals to fully implement language access services.



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Foreword

Access to justice is unattainable for those who are not proficient in English unless they also have access to language services that will enable them to understand and be understood. We believe that the *Standards for Language Access in Courts* will be an important tool to assist courts, court administrators, policy makers and others in creating systems for language access services, tailored to each jurisdiction, that will make the system of justice more fair and accessible to all in our country.

The Standing Committee on Legal Aid and Indigent Defendants was gratified that the American Bar Association House of Delegates at the 2012 Midyear Meeting adopted the *Standards for Language Access in Courts*. The Standing Committee joined with several other ABA entities to develop these *Standards*, beginning in 2010. Drafting was accomplished in close consultation with a broadly representative Advisory Group.

We worked closely with the Conference of Chief Justices and the Conference of State Court Administrators so that the *Standards* would provide practical, realistic guidance and direction as courts and other components of the justice system seek to assure full language access. As a result, the two Conferences adopted a resolution stating, in relevant part:

NOW, THEREFORE, BE IT RESOLVED that the Conference of Chief Justices and the Conference of State Court Administrators support passage of the revised Standards for Language Access in the Courts by the ABA House of Delegates at the 2012 ABA Midyear Meeting

We are grateful to the many people who contributed to the development of the *Standards*. In particular, we want to thank the members of the Advisory Group for their tireless participation in many long conference calls to assist in drafting each *Standard* and to illuminate and clarify its practical application. Their thoughtful suggestions and advice, drawn from a broad base of experiences and perspectives, were

invaluable. The two reporters for this project, Gillian Dutton and Kristi Cruz, conducted careful research and brought many years of experience in language access issues to the undertaking. Their insight and skillful drafting yielded an excellent product. We also thank Terry Brooks, Chief Counsel to the Standing Committee, for all his counsel and support during the Standards formulation and drafting process. Without these contributions, the final product would not have been nearly as comprehensive, nor would it have successfully accommodated the many variations in court structures, legal requirements and communities.

Hon. Vanessa Ruiz, Chair
Project & Advisory Group
February 2012

Robert E. Stein, Chair
Standing Committee on Legal Aid
and Indigent Defendants
February 2012



Contents

Introduction	1
Definitions	7
Black Letter Standards	15
Standards with Commentary and Best Practices	19
STANDARD 1: Fundamental Principles	19
STANDARD 2: Meaningful Access	29
2.1 Implementing rules	29
2.2 Notice of the availability of language services	30
2.3 Responsibility for costs of language services	33
2.4 Timeliness of language services	35
STANDARD 3: Identifying LEP Persons	37
3.1 Obtaining information about language access needs of users	37
3.2 Self-identification by LEP persons	41
3.3 Obligations when unable to understand a person	42
STANDARD 4: Interpreter Services in Legal Proceedings	47
4.1 Covered proceedings	47
4.2 To whom to provide services	48
4.3 Types of services to be provided	50
4.4 Compliance with interpreter codes of professional conduct	54
STANDARD 5: Language Access in Court Services	59
5.1 Covered court services	59
5.2 Types of services to be provided	61

STANDARD 6: Language Access in Court-Mandated and Offered Services	69
6.1 Services for persons in criminal court-programs	71
6.2 Services for persons in civil court programs	72
6.3 Services for court-appointed or -supervised professionals	73
6.4 Manner for providing services under this Standard	74
STANDARD 7: Translation	77
7.1 Determining which documents should be translated; selecting languages for translation; addressing illiteracy	78
7.2 Ensuring quality of translated documents	83
STANDARD 8: Qualifications of Language Access Providers	91
8.1 Ensuring competency of interpreters	92
8.2 Ensuring competency of bilingual staff	101
8.3 Ensuring competency of translators	102
8.4 Credentialing service-providers	104
STANDARD 9: Training	113
STANDARD 10: State-Wide Coordination	121
10.1 Establishing centralized language access services office; state-wide communication regarding services	123
10.2 Coordinating rules and procedures to implement services	124
10.3 Monitoring compliance	126
10.4 Development of resources to provide services	127
10.5 Coordinating credentialing, recruitment, and monitoring	128
10.6 Coordinating education and training	132
Index	133



Introduction

PURPOSE

These *Standards for Language Access in Courts* are intended to assist courts in designing, implementing, and enforcing a comprehensive system of language access services that is suited to the needs of the communities they serve. Facilitating access to justice is an integral part of the mission of the courts. As American society is comprised of a significant and growing number of persons with limited English proficiency (LEP) in every part of the country, it is increasingly necessary to the fair administration of justice to ensure that courts are language accessible to LEP persons who are brought before, or require access to, the courts.

An LEP person is one who speaks a language other than English as his or her primary language and has a limited ability to read, write, speak, or understand English. According to the 2007 – 2009 American Community Survey of the U.S. Census Bureau, over 55 million persons in the United States who are age 5 or older, almost 20% of the population, speak a language other than English at home. This is an increase of 8 million persons since 2000.¹ These numbers are significant because a high level of English proficiency is required for meaningful participation in court proceedings due to the use of legal terms, the structured nature of court proceedings, and the stress normally associated with a legal proceeding when important interests are at stake. Therefore, it is widely recognized that language access services, through professional interpretation of spoken communication and translation of documents, as well as the use of bilingual and multilingual court personnel, lawyers, and others integral to court operations and services, are an essential component of a functional and fair justice system.

Lack of language access services exacts a serious toll on the justice system. Al-

1. According to the 2000 Census, 18 percent of the U.S. population age 5 or older, or 47 million persons, spoke a language other than English at home. U.S. Census Bureau, http://factfinder.census.gov/servlet/GCTTable?_bm=y&-state=gct&-ds_name=ACS_2005_EST_G00_&-CONTEXT=gct&-mt_name=ACS_2005_EST_G00_GCT1601_US9&-redoLog=false&-geo_id=01000US&-format=US-9&-lang=en. See also, http://factfinder.census.gov/servlet/STTable?_bm=y&-geo_id=01000US&-qr_name=ACS_2009_3YR_G00_S1601&-ds_name=ACS_2009_3YR_G00_&-lang=en&-redoLog=false&-format=&-CONTEXT=st.

though there is scant national data on the number of LEP persons involved in court proceedings, there is ample experience and anecdotal evidence to substantiate that many LEP persons regularly come before the courts and are unable, without language access services, to protect or enforce their legal rights, with devastating consequences to life, liberty, family, and property interests.² Persons who are unable to communicate in English are also likely to have limited understanding of their rights and of the role of the courts in ensuring that rights are respected. The language barrier exacerbates this lack of awareness, and effectively prevents many LEP persons from accessing the system of justice. Inability to communicate due to language differences also has an impact on the functioning of the courts and the effect of judgments, as proceedings may be delayed, the court record insufficient to meet legal standards, and court orders rendered unenforceable or convictions overturned, if a defendant or other party has not been able to understand or be understood during the proceedings.

These *Standards* recognize that language services are critical to ensure access to justice for LEP persons and necessary for the administration of justice by ensuring the integrity of the fact-finding process, accuracy of court records, efficiency in legal proceedings, and the public's trust and confidence in the judicial system.

SCOPE AND PURPOSE

The *Standards* represent the considered judgment of persons and organizations with experience in and ties to state and federal courts across the country, and the *Commentary* is largely geared toward those courts. There are important and vibrant efforts underway in many quarters to identify and remedy obstacles to access to justice, including those faced by LEP persons. Several national organizations, including the Conference of Chief Justices and the Conference of State Court Administrators, have adopted resolutions identifying language access as an immediate concern, and the National Center for State Courts has directed attention and scarce resources to address the problem.³ With these *Standards*, the ABA has undertaken to contribute resources and draw on its national scope and membership to assist the effort to improve language access in courts.

The fundamental access to justice principle articulated in *Standard 1* and the com-

2. Laura Abel, *Language Access in State Courts*, Brennan Center for Justice at New York University School of Law, (2009), http://www.brennan-center.org/content/resource/language_access_in_state_courts/.

3. Conferences of Chief Justices, Conference of State Court Administrators, Resolution 2 In Support of Efforts to Increase Access to Justice, <http://ccj.ncsc.dni.us/AccessToJusticeResolutions/resol2IncreaseAccessToJustice.html> (last visited Apr. 18, 2011), <http://cosca.ncsc.dni.us/Resolutions/AccessToJustice/2Civil%20Gideon%20Proposal.pdf> (last visited Apr. 18, 2011); Conference of Chief Justices, Resolution 7 In Support of Efforts to Ensure Adequate Court Interpretation Services, http://ccj.ncsc.dni.us/AccessToJusticeResolutions/resol7_AdequateCourtInterpretationSvcs.html (last visited Apr. 18, 2011); Conference of Chief Justices, Conferences of State Court Administrators, Resolution 12 In Support of State Courts' Responsibility to Promote Bias-Free Behavior, <http://ccj.ncsc.dni.us/AccessToJusticeResolutions/resol12PromoteBias-FreeBehavior.html> (last visited Apr. 18, 2011), <http://cosca.ncsc.dni.us/Resolutions/resolutionPromoteBiasFreeBehavior.html> (last visited Apr. 18, 2011); Conference of Chief Justices, Resolution 23 Leadership to Promote Access to Justice, <http://ccj.ncsc.dni.us/AccessToJusticeResolutions/resol23Leadership.html> (last visited Apr. 18, 2011).

prehensive system for language access described in *Standards 2-10* are applicable to all adjudicatory bodies that deal with LEP persons: federal courts, state courts, territorial courts, administrative tribunals at the federal, state, and local level, military courts and commissions, and tribal courts. Courts and tribunals are encouraged to conduct a review of their operations in the light of these *Standards* and evaluate their systems and services against the principles described herein. Courts should then adopt requirements for language access through legislation, court rules, or administrative orders that are clear, effective, and enforceable.

The purpose of the *Standards* is to assist courts and other adjudicatory bodies in developing a comprehensive system for language access. The *Standards* represent what the ABA believes to be necessary to develop an effective system for language services for LEP individuals. Because the *Standards* provide a basic blueprint for courts, implementation will need to be adapted to individual jurisdictions. The *Standards* are aspirational in nature and are not intended to create enforceable legal rights.

Courts are but one of several actors with responsibility for ensuring that LEP persons are assured access to justice. Legislatures and other funding sources at the federal, state and local levels should provide the resources necessary for courts to meet their constitutional and legal responsibilities and fulfill their access to justice mission. Courts should seek such resources, informing funders of the needs of LEP persons and the court's constitutional, legal and equitable responsibilities to ensure meaningful access to justice for all.

Courts have historically been underfunded and sometimes face severe budget shortfalls that require cutbacks in other services that are similarly essential to access to justice and the effective functioning of courts. In some circumstances courts will not be able to fully implement the *Standards* immediately, and courts may need to adopt phased implementation plans, for example, giving initial priority to language access services for low and moderate income persons and unrepresented litigants.

PROCESS

The *Standards* were developed under the auspices of the ABA's Standing Committee on Legal Aid and Indigent Defendants (SCLAID) through an extended consultative process with a broad range of professionals and organizations with deep experience in court administration and language access issues in state courts. The *Standards* build upon resolutions adopted by the ABA in 1997 and 2002 calling for the use of interpreters in courts, the discussion of cultural competence and use of interpreters in attorney-client communication in the *Standards for the Provision of Civil Legal Aid* adopted by the ABA in 2006,⁴ and the *ABA Commission on Domestic Violence, Stan-*

4. American Bar Association, Standing Committee on Legal Aid and Indigent Defendants, *Standards for the Provision of Civil Legal Aid*.

Standards of Practice for Lawyers Representing Victims of Domestic Violence, Sexual Assault and Stalking in Civil Protection Order Cases adopted in 2007.⁵ The *Standards*, for the first time, undertake a comprehensive approach to the issue of language access. They were drafted with the active participation of a national Advisory Group composed of judges, court administrators, interpreters, translators, public defenders, civil legal aid attorneys, members of the private bar, and advocates who brought expertise gained from a variety of perspectives, and geographical and practice areas. The Advisory Group reviewed legal requirements, discussed problems encountered and practices followed in different court settings, and consulted with organizations of judges, court administrators, and advocacy groups – all with a view to establishing practical standards with broad support and identifying resources and best practices. The Advisory Group was guided by two reporters who brought extensive experience and expertise in language access issues to their work preparing drafts of the *Standards*.

STRUCTURE AND ORGANIZATION

Standard 1 establishes the foundation for what follows, stating that courts should “as a fundamental principle of law, fairness, and access to justice” provide language access services so that courts will be accessible to LEP persons. *Standards 2-10* set out essential components of a comprehensive system to address the needs of LEP persons in court and court-related services, and are subdivided to address specific matters included within the overall subject matter of the particular standard. Although *Standards 2-10* are to be adapted to specific courts and communities, each being an essential component of a comprehensive and effective system of language access services; courts should implement all of them in achieving the overarching access to justice principle of *Standard 1*. Each *Standard* is accompanied by extended *Commentary* intended for courts and practitioners. Where appropriate, *Best Practices* are also described. The *Commentary* gathers legal authority, discusses legal and practical issues that can arise in specific settings as well as strategies for addressing them, and provides information about additional sources of expertise and assistance. The *Best Practices* sections provide examples for courts to use in designing, implementing, and enforcing a system adapted to the organization and administration of their court systems and the type of court proceedings they handle, and for discussing the relative benefits and burdens of different approaches, in light of the composition and needs of the LEP communities they serve. The *Commentary* is intended to provide context and

(2006). http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_civillegalaidstds2007.pdf.

5. ABA Comm'n on Domestic Violence, *Standards of Practice for Lawyers Representing Victims of Domestic Violence, Sexual Assault, and Stalking in Civil Protection Order Cases* Std. III.D.3 (2007), http://www.americanbar.org/content/dam/aba/migrated/2011_build/domestic_violence/aba_standards_of_practice_dv.authcheckdam.pdf; Am. Bar Ass'n, Resolution 109 (1997) (recommending that “all courts be provided with qualified language interpreters”).

explanation of the black letter statements. The *Commentary* and *Best Practices* are not intended to create any additional obligations beyond those set forth in the black letter *Standards*, but merely to illustrate, illuminate and clarify.



Definitions

Adjudicatory Tribunal/Body. Any tribunal, whether judicial or administrative, where decisions are made impacting rights or liberties. This term is intended to include all decision making bodies at judicial and administrative levels, but is not intended to include legislative hearings or proceedings.

Bilingual. Using or knowing two languages proficiently.

Bilingual Staff. Individuals who are proficient in English and another language and who communicate directly with an LEP individual in their common language. This term is intended to be read broadly to include individuals who are proficient in multiple languages.

Certification. The determination, through standardized testing, that an individual possesses certain knowledge, skills, and abilities.

Competency Assessment. The testing of qualifications, such as language competency.

Court. Any federal, state, local, tribal, military, or territorial tribunal within an adjudicatory system, whether judicial or administrative.

Court-annexed Proceedings. Court proceedings which are managed by officers of the court or their official designees.

Court Interpreter Code of Professional Conduct. The minimum standard of conduct for interpreters working in a court. This is also referred to as the interpreter's ethical code.

Court-managed Professionals. Persons who are employed, appointed, paid, or super-

vised by the court. These may include counsel, guardians, guardians ad litem, conservators, child advocates, social workers, psychologists, doctors, trustees, and other similar professionals.

Court-mandated Services (also referred to as court-ordered services). Pre- or post-adjudication services or programs that are required of litigants in connection with a civil or criminal matter. Court-mandated services include treatment programs, evaluations, supervision, and other services required by the court.

Court-offered Services. Pre- or post-adjudication services or programs that are offered to litigants to resolve a civil or criminal matter. These may include alternative sentencing, alternative dispute resolution, mediation, arbitration, treatment programs, workshops, information sessions, evaluations, treatment, and investigations.

Court Personnel. Court-managed, -supervised, or -employed individuals who work in court services and programs.

Court Services. The full range of court functions, including legal proceedings and other court-operated or managed offices with points of public contact. Examples of such services include information counters; intake or filing offices; cashiers; records rooms; probation offices; alternative dispute resolution programs; pro se clinics; criminal diversion programs; anger management classes; and other similar offices, operations, and programs.

Credentialing. The process of establishing, through training and testing programs, the qualifications of an individual to provide a particular service, which designates the individual as qualified, certified, licensed, approved, registered, or otherwise proficient and capable.¹

Cultural Competence. A set of congruent behaviors, attitudes, and policies that come together in a system, agency, or among professionals that enables effective work in cross-cultural situations.²

Interpretation. The unrehearsed transmitting of a spoken or signed message from one

1. National Center for State Courts, Consortium for Language Access in State Courts, *10 Key Components to a Successful Language Access Program in the Courts*, http://www.ncsconline.org/d_research/CourtInterp/10KeystoSuccessfulLangAccessProgFinal.pdf (last visited Apr. 18, 2011).

2. U.S. Dep't of Health and Human Services, Office of Minority Health, *What Is Cultural Competency?*, <http://minorityhealth.hhs.gov/templates/browse.aspx?lvl=2&lvlID=11> (last modified Oct. 19, 2005).

language to another.³

Interpreter. A person who is fluent in both English and another language, who listens to a communication in one language and orally converts it into another language while retaining the same meaning.

Interpreter by Classification

Certified Court Interpreter. An individual who has the ability to preserve the “legal equivalence” of the source language, oral fluency in English and the foreign language; the skill to interpret in all three modalities (simultaneous, consecutive, and sight translation); and the knowledge of the code of professional conduct; and whose ability, skill, and knowledge in these areas have been tested and determined to be meet the minimum requirements for certification in a given court.

Registered or Qualified Court Interpreter. An individual whose ability to interpret in the legal setting has been assessed as less than certified. This designation can either denote a slightly lower score on a certification exam or, for languages in which full certification exams are not available, that a registered or qualified interpreter has been evaluated by adequate alternate means to determine his or her qualifications and language proficiency.

Interpreter Functions

Interview Interpreter. Interprets to facilitate communication in an interview or consultation setting.⁴

Proceedings Interpreter. Interprets for an LEP litigant in order to make the litigant “present” and able to participate effectively during a proceeding.⁵

Witness Interpreter. Interprets during witness testimony for the purpose of presenting evidence to the court.⁶

Interpreter Services. The services provided by professional, competent interpreters,

3. *Id.*

4. National Center for State Courts (NCSC), *Court Interpretation: Model Guides for Policy and Practice in the State Courts*, Ch. 2 (2009) [hereinafter, *NCSC Court Interpretation Model Guides*].

5. *Id.*

6. *Id.*

including those provided for legal proceedings and services outside of the courtroom.

Judicial Officer. A duly authorized person vested with the authority to exercise powers appropriate to the court, which may include judges, magistrates, masters, commissioners, administrative hearing officers, arbitrators, mediators, and other official decision makers.

Language Access. The provision of the necessary services for LEP persons to access the service or program in a language they can understand, and to the same extent as non-LEP persons.

Language Access Plan. A written plan used to implement the language access services of a court, which includes the services that are available, the process to determine those services, the process to access those services, and all of the components of a comprehensive system. National variation exists regarding the name of this plan; some refer to a “language assistance plan” and others to a “policy for providing services to LEP persons” or an “LEP plan.”

Language Access Services. The full spectrum of language services available to provide meaningful access to the programs and services for LEP persons, including, but not limited to, in-person interpreter services, telephonic and video remote interpreter services, translation of written materials, and bilingual staff services.

Language Access Services Office. A centralized office tasked with coordinating, facilitating, and enforcing all aspects of the courts’ language access plan.

Language of Lesser Diffusion. A language with low representation within a jurisdiction and for which interpreter services, translation services, and adequate language-specific training is largely unavailable or very limited.

Language Service Providers. A person or entity who provides qualified court interpreting services, bilingual assistance, and translation services for individuals who are limited English proficient.⁷

Legal Proceeding. Court or court-annexed proceedings under or by the authority of a judicial officer, including proceedings handled by judges, magistrates, masters, commissioners, hearing officers, arbitrators, mediators, and other decision-makers.

7. Consortium for Language Access, *supra* note 6.

Limited English Proficient Person. A limited English proficient (LEP) person is someone who speaks a language other than English as his or her primary language and has a limited ability to read, write, speak, or understand English.⁸

Machine Translation. Software that automatically translates written material from one language to another without the involvement of a human translator or reviewer.

Meaningful Access. The provision of services in a manner which allows a meaningful opportunity to participate in the service or program free from intentional and unintentional discriminatory practices.

Modes of Interpreting

Consecutive Mode. Rendering the statement made in a source language in the target language only after the speaker has completed the utterance.

Simultaneous Mode. Rendering the interpreted message continuously at nearly the same time someone is speaking.

Sight Translation. A hybrid of interpreting and translating in which the interpreter reads a document written in one language while translating it orally into another language, without advance notice.⁹

Multilingual Document Format. The practice of having multiple languages—one of which is always English—on one form for a translation.

Persons with Legal Decision-Making Authority. Persons who are authorized by law or who have been designated by a court or judicial officer to act on behalf of another, and whose participation is necessary to protect their legal decision-making interest and to protect the interest of the individuals they represent.

Persons with a Significant Interest in the Matter. Persons whose presence or participation in the matter is necessary or appropriate as determined by a judicial officer.

8. See Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Person. 67 Fed. Reg. 41455 (June 18, 2002).

9. NCSC *Court Interpretation Model Guides*, *supra* note 8, at ch. 2. The interpreter is generally provided with sufficient time to review the document in full before beginning the sight translation. The ‘without advance notice’ here is to distinguish this process from tape transcription, a process that occurs in advance of the legal proceeding where the foreign language tape will be introduced into evidence.

Plain Language. Communication that members of an audience can understand the first time it is read or heard.¹⁰

Recipient of Federal Financial Assistance—Recipients of federal funds range from state and local agencies, to nonprofits and other organizations. A list of the types of recipients and the agencies funding them can be found at Executive Order 12250 Coordination of Grant-Related Civil Rights Statutes. Sub-recipients are also covered, when federal funds are passed from one recipient to a sub-recipient. Federal financial assistance includes grants, training, use of equipment, donations of surplus property, and other assistance.¹¹

Register. The level and complexity of vocabulary and sentence construction.¹²

Relay Interpreter. An interpreter who interprets from one foreign language or sign language to another foreign language or sign language, and vice versa. Another interpreter then interprets from the second language into English, and vice versa. This is also referred to as an intermediary interpreter.

Relay Interpreting. Involves using more than one interpreter to act as a conduit for spoken or sign languages beyond the understanding of a primary interpreter.¹³

Source Language. The language of the original speaker, which the interpreter interprets into a second language. This term is always relative, depending on who is speaking.¹⁴

Target Language. The language of the listener, into which the interpreter renders the interpretation from the source language. This term is always relative, depending on who is listening.¹⁵

Transcription - The process of producing a written transcript of an audio or video recording, where the recording is in a language other than English.¹⁶

10. Plain Language, www.plainlanguage.gov (last visited Apr. 18, 2011).

11. Definition from DOJ *Commonly Asked Questions and Answers Regarding Limited English Proficient (LEP) Individuals* at <http://www.justice.gov/crt/lep/faqs/faqs.html#OneQ4>.

12. NCSC *Court Interpretation Model Guides*, *supra* note 8, at ch. 2.

13. Asian & Pacific Islander Institute on Domestic Violence, *Resource Guide for Advocates and Attorneys on Interpretation Services for Domestic Violence Victims* (2009), <http://www.dcf.state.fl.us/programs/domesticviolence/dvresources/docs/InterpretationResourceGuide.pdf>

14. Adapted from NCSC, *supra* note 8, at ch. 2.

15. Adapted from *id.*

16. National Association of Judiciary Interpreters and Translators (NAJIT), Position Paper, General Guidelines and Minimum Requirements for Transcript Translation in any Legal Setting (2009), <http://www.najit.org/publications/Transcript%20Translation.pdf>.

Translation. Converting written text from one language into written text in another language. The source of the text being converted is always a written language.¹⁷

Back Translation (also known as Roundtrip Translation). The translation of a translated text back into the language of the original text, made without reference to the original text.

Sight Translation. A hybrid of interpreting and translating in which the interpreter reads a document written in one language while translating it orally into another language, without advance notice.¹⁸

Translation Memory Software. Software that stores and develops translated phrases for use in subsequent translations.

Translation Protocol. The process by which translations are evaluated for quality control — includes the process for creating and assessing consistent translations, evaluating translator qualifications, and reviewing the translation for accuracy.

Translator. An individual who is fluent in both English and another language and who possesses the necessary skill set to render written text from one language into an equivalent written text in another language.

17. NCSC, *supra* note 8, at ch. 2.

18. *Id.*



Black Letter Standards

STANDARD 1: FUNDAMENTAL PRINCIPLES

As a fundamental principle of law, fairness, and access to justice, and to promote the integrity and accuracy of judicial proceedings, courts should develop and implement an enforceable system of language access services, so that persons needing to access the court are able to do so in a language they understand, and are able to be understood by the court.

STANDARD 2: MEANINGFUL ACCESS

Courts should ensure that persons with limited English proficiency have meaningful access to all the services, including language access services, provided by the court.

- 2.1 Courts should promulgate, or support the promulgation of, rules that are enforceable in proceedings and binding upon staff, to implement these Standards.
- 2.2 Courts should provide notice of the availability of language access services to all persons in a language that they understand.
- 2.3 Courts should provide language access services without charge, and may assess or recoup the cost of such services only in a manner that is consistent with principles of fairness, access to justice and integrity of the judicial process, and that comports with legal requirements.
- 2.4 Courts should provide language access services in a timely manner.

STANDARD 3: IDENTIFYING LEP PERSONS

Courts should develop procedures to gather comprehensive data on language access needs, identify persons in need of services, and document the need in court records.

- 3.1 Courts should gather comprehensive language access data as well as individualized language access data at the earliest point of contact.
- 3.2 Courts should ensure that persons with limited English proficiency may self-identify as needing language access services.

- 3.3 Courts should establish a process that places an affirmative duty on judges and court personnel to provide language access services if they or the finder of fact may be unable to understand a person or if it appears that the person is not fluent in English.

STANDARD 4: INTERPRETER SERVICES IN LEGAL PROCEEDINGS

Courts should provide competent interpreter services throughout all legal proceedings to persons with limited English proficiency.

- 4.1 Courts should provide interpreters in legal proceedings conducted within courts and court-annexed proceedings.
- 4.2 Courts should provide interpreter services to persons with limited English proficiency who are in court as litigants, witnesses, persons with legal decision-making authority, and persons with a significant interest in the matter.
- 4.3 Courts should provide the most competent interpreter services in a manner that is best suited to the nature of the proceeding.
- 4.4 Courts should provide interpreter services that are consistent with interpreter codes of professional conduct.

STANDARD 5: LANGUAGE ACCESS IN COURT SERVICES

Courts should provide appropriate language access services to persons with limited English proficiency in all court services with public contact, including court-managed offices, operations, and programs.

- 5.1 Courts should provide language access services for the full range of court services.
- 5.2 Courts should determine the most appropriate manner for providing language access for services and programs with public contact and should utilize translated brochures, forms, signs, tape and video recordings, bilingual staff and interpreters, in combination with appropriate technologies.

STANDARD 6: LANGUAGE ACCESS IN COURT-MANDATED AND OFFERED SERVICES

Courts should ensure that persons with limited English proficiency have access to court-mandated services, court-offered alternative services and programs, and court-appointed professionals, to the same extent as persons who are proficient in English.

- 6.1 Courts should require that language access services are provided to persons with limited English proficiency who are obligated to participate in criminal court-mandated programs, are eligible for al-

- ternative adjudication, sentencing, and other optional programs, or who need to access services in order to comply with court orders.
- 6.2 Courts should require that language access services are provided to persons with limited English proficiency who are ordered to participate in civil court-mandated services or who are otherwise eligible for court-offered programs.
 - 6.3 Courts should require that language access services are provided for all court-appointed or supervised professionals in their interactions with persons with limited English proficiency.
 - 6.4 Courts should require the use of the most appropriate manner for providing language access for the services and programs covered by this Standard and should promote the use of translated signs, brochures, documents, audio and video recordings, bilingual staff, and interpreters.

STANDARD 7: TRANSLATION

Courts should establish a process for providing access to translated written information to persons with limited English proficiency to ensure meaningful access to all court services.

- 7.1 Courts should establish a system for prioritizing and translating documents that determines which documents should be translated, selects the languages for translation, includes alternative measures for illiterate and low literacy individuals, and provides a mechanism for regular review of translation priorities.
- 7.2 To ensure quality in translated documents, courts should establish a translation protocol that includes: review of the document prior to translation for uniformity and plain English usage; selection of translation technology, document formats, and glossaries; and, utilization of both a primary translator and a reviewing translator.

STANDARD 8: QUALIFICATIONS OF LANGUAGE ACCESS PROVIDERS

The court system and individual courts should ensure that interpreters, bilingual staff, and translators used in legal proceedings and in courthouse, court-mandated and court-offered services, are qualified to provide services.

- 8.1 Courts should ensure that all interpreters providing services to persons with limited English proficiency are competent. Competency includes language fluency, interpreting skills, familiarity with technical terms and courtroom culture and knowledge of codes of pro-

- fessional conduct for court interpreters.
- 8.2 Courts should ensure that bilingual staff used to provide information directly to persons with limited English proficiency are competent in the language(s) in which they communicate.
 - 8.3 Courts should ensure that translators are competent in the languages which they translate.
 - 8.4 Courts should establish or participate in a comprehensive system for credentialing interpreters, bilingual staff, and translators that includes pre-screening, ethics training, an orientation program, continuing education, and a system to verify language services providers' qualifications in all settings for which they are used.

STANDARD 9: TRAINING

The court system and individual courts should provide all judges, court personnel, and court-appointed professionals with training on the following: legal requirements for language access; court policies and rules; language services provider qualifications; ethics; effective techniques for working with language services providers; appropriate use of translated materials; and cultural competency.

STANDARD 10: STATE-WIDE COORDINATION

Each court system should establish a Language Access Services Office to coordinate and facilitate the provision of language access services.

- 10.1 The office should provide, facilitate, and coordinate state-wide communication regarding the need for and availability of language access services.
- 10.2 The office should coordinate and facilitate the development of necessary rules and procedures to implement language access services.
- 10.3 The office should monitor compliance with rules, policies and procedures for providing language access services.
- 10.4 The office should ensure the statewide development of resources to provide language access.
- 10.5 The office should coordinate the credentialing, recruitment, and monitoring of language services providers to ensure that interpreters, bilingual staff, and translators possess adequate skills for the setting in which they will be providing services.
- 10.6 The office should coordinate and facilitate the education and training of providers, judicial officers, court personnel, and the general public on the components of Standard 9.



Standards with Commentary and Best Practices

STANDARD 1 Fundamental Principles

As a fundamental principle of law, fairness, and access to justice, and to promote the integrity and accuracy of judicial proceedings, courts should develop and implement an enforceable system of language access services, so that persons needing to access the court are able to do so in a language they understand, and are able to be understood by the court.

Commentary

These *Standards* are based on the fundamental principles of fairness, access to justice and integrity of the judicial process; the principles of due process, equal protection and judicial independence rooted in the U.S. Constitution; and the legal requirements of state and federal law, including the Civil Rights Act of 1964.

The *Standards* apply to all adjudicatory tribunals, including state and federal courts;¹ administrative tribunals at the state, federal, and local levels;² tribal courts;³ military courts

1. The Court Interpreters Act of 1978 provides for government-compensated interpreters in any criminal or civil judicial proceeding initiated by the United States, 28 U.S.C. § 1827, in which a person's LEP status inhibits understanding of the proceeding, communication with the court or counsel, or a witness's comprehension of questions or presentation of testimony. Under the Court Interpreters Act of 1978, the presiding judicial officer is required to utilize the services of an interpreter for persons "who speak only or primarily a language other than the English language, in judicial proceedings instituted by the United States." 28 U.S.C. § 1827 (d)(1) The legislative intent behind the passage of the Court Interpreters Act was concern that the lack of an interpreter would undermine rights protected by the Fifth and Sixth Amendments. However, the Court Interpreters Act of 1978 does not provide for interpreters, at court expense, in civil matters not initiated by the United States; in those instances, the litigants must bring or pay for their own interpreters.

2. Administrative Office of the U.S. Courts, 5 Guide to Judiciary Policy § 260 (Interpreters needed to assist parties in civil proceedings, both in court and out of court, are the responsibility of the parties to the action.).

3. Language access in tribal courts varies by tribal law and is impacted, in some instances, by the discontinuation of the tribal language. Although some tribes have created consortium courts for member tribes, there is no one uniform code regarding language access services in tribal courts. The need for language access services in some tribal courts is non-existent because the tribal language is no longer spoken. In other instances, the tribal courts are conducted in either English or in the native language, depending on the needs of the parties. The language access needs of tribal members are more often relevant in interactions with state courts, administrative tribunals, and other adjudicatory settings. See the work of the New Mexico Navajo Interpreter Training Program as a reference for this on-going work, at <http://jec.unm.edu/training/programs.htm>.

and commissions;⁴ territorial courts; and other tribunals.⁵

PRINCIPLE OF FAIRNESS

The fundamental principle of fairness requires that individuals who are LEP have access to court services in a language they understand and to the same extent as their English-speaking counterparts. This fairness requires that an LEP individual be able to be fully present during a legal proceeding: an interpreter is provided in order for him to understand what is discussed and decided (including questions asked of him, the statements of the judge, and testimony of others), and to participate in the proceedings (including consultations with an attorney, cross-examination of witnesses, and delivery of his own testimony).⁶

The principle of equal treatment under the law is a cornerstone of the U.S. judicial system upon which the legitimacy of the justice system depends. In order for a court system to be open and accessible to individuals who are not proficient in English, language access services, through the use of qualified interpreters and translated materials, are vital. This is true for all courts, regardless of whether the court is a recipient of federal financial assistance subject to Title VI or required to provide access by state law. Language access services do not give LEP persons any advantage over English speakers; they are simply necessary to achieve a fair process in which LEP persons are placed on an equal footing.

ACCESS TO JUSTICE

The principle of access to justice supports the provision of language access services in all court settings, including legal proceedings and services outside the courtroom. Many individuals come into contact with the court system to gather information about their legal rights and responsibilities, to protect important rights, to participate in court-mandated or court-offered programs, to benefit from mediation and other dispute resolution court-based programs, and to seek out assistance from pro bono or self-help centers operated by the court. Meaningful access at each of these points of contact is critical to achieving justice.

4. The Uniform Code of Military Justice (UCMJ) is the guiding document on the provision of language access services in the military court setting. The UCMJ, Section 828, Article 28, provides that the convening authority may employ interpreters to interpret for the court or commission. While Section 828, Article 28 provides that interpreters are permissible in the courtroom during a court martial, appointment and qualification are left to the discretion of the presiding judge or adjudicator. No other provisions govern the qualification of interpreters, access to translated materials, or information to help guide an informed decision whether to appoint an interpreter. See Uniform Code of Military Justice § 828, Art. 28 (“[U]nder like regulations the convening authority of a court-martial, military commission, or court of inquiry may detail or employ interpreters who shall interpret for the court or commission.”).

5. These Standards are intended to be broadly applicable to all adjudicatory settings, including territorial and commonwealth courts. In instances where a tribunal is conducted in a language other than English, the term “limited English Proficient” or “LEP” should be understood as referring to any person who faces a barrier in accessing the court due to inability to communicate in the language spoken by that court.

6. The Second Circuit in *United States ex rel. Negron v. State*, 434 F.2d 386, 389 (2nd Cir. 1970) stated that “Considerations of fairness, the integrity of the fact-finding process, and the potency of our adversary system of justice forbid that the state should prosecute a defendant who is not present at his own trial.”

Provision of language access services also ensures access for all groups of people. Discriminating against one group of individuals on the basis of language is against the fundamental principle of equal treatment exemplified in laws which seek to end discrimination. In speaking about civil rights and discrimination, President John F. Kennedy stated that “simple justice requires that public funds, to which all taxpayers of all races contribute, not be spent in any fashion which encourages, entrenches, subsidizes, or results in racial discrimination.”⁷ The U. S. Supreme court in *Lau v. Nichols*⁸ held that failing to take reasonable steps to ensure meaningful access to LEP persons is a form of national origin discrimination prohibited by Title VI regulations. For all courts, regardless of funding or legal requirement, adherence to the principles of access to justice and non-discrimination based upon national origin supports ensuring that court interpretation provided is independent, professional, accurate, and whenever possible, free. Attention has focused on the need for courts to provide language access services because, without court control and funding, services are less likely to be adequate, which can present a barrier to access to justice to LEP individuals purely on the basis of their lack of English proficiency.

INTEGRITY OF THE JUDICIAL PROCESS

The provision of language access services is not for the sole benefit of the LEP individual. Competent and timely language access services also support the administration of justice by ensuring the integrity of the fact-finding process, accuracy of court records, and efficiency in legal proceedings. Both LEP persons and English speakers alike benefit, as courts often decide issues which affect the interests of both. The Second Circuit noted the connection between the constitutional protections and both “considerations of fairness” and “the integrity of the fact-finding process.”⁹ If the fact-finder – whether jury or judge – is to make an accurate determination of the facts, the court should rely upon an interpreter, as an officer of the court, to ensure accurate communication with an LEP person in the course of adjudicating the matter.

Preserving the integrity of the judicial process as a whole is also the reason why language access services must be provided in a comprehensive manner, not simply in one part of the legal proceedings or in one part of the courthouse. As the Conference of State Court Administrators noted in their “*White Paper on Court Interpretation, Fundamental to Access to Justice*,” “[c]ase law has provided that a criminal defendant

7. President Kennedy’s Address, H.R. Misc. Doc. No 124, 88th Cong., 1st Sess. 3, 12 (1963).

8. 414 U.S. 563, 569 (1974).

9. *Negron*, 434 F.2d at 389.

has the right to an interpreter at every crucial stage of the criminal proceedings.”¹⁰ Extending language access services to all parts of the legal system, to civil and criminal, to court mandated services and court offered services, to written documents as well as oral testimony, ensures that the judicial process can meet its goal of the administration of justice for all. The detail and complexity of the language access services presented in these *Standards* underscores the imperative for court responsibility and control and is one of the main reasons the ABA has devoted resources to clarify the language access requirements courts should address.

CONSTITUTIONAL PROTECTIONS AND LANGUAGE ACCESS

Although the U.S. Constitution does not expressly guarantee the right to an interpreter in criminal cases, courts have found that an interpreter is necessary to effectuate the guarantees of the Fifth, Sixth and Fourteenth Amendments’ right to a fair trial, right to be present at trial, right to confrontation, right to effective assistance of counsel, and right to due process.¹¹ Accordingly, the right to an interpreter in criminal proceedings has been addressed by the following case law:

- *State v. Gonzales-Morales* (defendant’s right to an interpreter rested upon the “Sixth Amendment constitutional right to confront witnesses and the right inherent in a fair trial to be present at one’s own trial”);¹²
- *United States v. Edouard* (denial of interpreter for LEP defendant implicates the “rights to due process, confrontation of witnesses, effective assistance of counsel, and to be present at trial”);¹³
- *United States ex rel. Negron v. State* (proceeding in absence of an interpreter, where the defendant was LEP, “lacked the basic and fundamental fairness required by the due process clause of the Fourteenth Amendment”);¹⁴
- *Perez-Lastor v. INS* (“[i]t is long-settled that a competent translation is fundamental to a full and fair hearing”);¹⁵

10. COSCA, *White Paper on Court Interpretation: Fundamental to Access to Justice*, Recommendation 15 (Nov. 2007), <http://cosca.njsc.dni.us/WhitePapers/CourtInterpretation-FundamentalToAccessToJustice.pdf> (last visited Apr. 18, 2011) [hereinafter “COSCA White Paper”]. The *White Paper* cites cases that require courts to provide interpreters for jury instructions, sentencing, arraignment, entry of a guilty plea, hearings to change or and withdraw a plea, though not for a probation interview or out of court discussions with counsel. (Cites omitted)

11. With respect to the Fifth Amendment right to a fair trial and the Sixth Amendment right to counsel and confrontation, in addition to the cases cited below see also *See United States v. Sanchez*, 483 F.2d 1052, 1057 (2d Cir. 1971); *State v. Natividad*, 526 P.2d 730, 733 (Ariz. 1974); *People v. Romero*, 187 P.3d 56, 73-74 (Cal. 2008); *Arrieta*, 878 N.E.2d at 1243-44; *Rodriguez*, 633 N.Y.S.2d at 680; *People v. Robles*, 614 N.Y.S.2d 1 (App. Div. 1994), *revid on other grounds*, 655 N.E.2d 172 (N.Y. 1995); *People v. Johnny P.*, 445 N.Y.S.2d 1007, 1010 (App. Div. 1981); *State v. Torres*, 524 A.2d 1120, 1126 (R.I. 1987).

12. *State v. Gonzales-Morales*, 979 P.2d 826, 828 (Wash. 1999) (internal quotations omitted); see also *Chao v. State*, 604 A.2d 1351, 1362 (Del. 1992) (holding that a defendant has a right to a court-appointed interpreter, where the trial court is put on notice that an indigent defendant may have obvious and significant difficulty with the language).

13. *United States v. Edouard*, 485 F.3d 1324, 1338 (11th Cir. 2007).

14. *United States ex rel. Negron v. State*, 434 F.2d at 389 (2d Cir. 1970).

15. *Perez-Lastor v. INS*, 208 F.3d 773, 778 (9th Cir. 2000).

- *United States v. Mayans* (defendant’s right to testify on his own behalf was violated when the court denied him an interpreter);¹⁶
- *United States v. Martinez* (recognized that “defendants’ constitutional rights to due process and confrontation” are involved when considering the use of court interpreters);¹⁷
- *United States v. Carrion* (acknowledged that a criminal defendant has a constitutional right to an interpreter);¹⁸ and
- *Cervantes v. Cox* (noted that Sixth Amendment right to counsel may be denied where the defendant is unable to communicate with counsel).¹⁹

The constitutional right to an interpreter in all civil proceedings is less settled. In consideration of due process protections, courts are required to consider the need for language access services within the context of a myriad of factors, including state and federal statutes and case law. While some state and federal cases have recognized that interpreters are necessary to ensure meaningful participation, courts have not uniformly held that civil litigants are entitled to an interpreter under the Constitution.²⁰ Courts have addressed such a right in a limited number of cases, including the following:

- *Augustin v. Sava* (in political asylum proceeding, court held that the “[t]he very essence of due process is a meaningful opportunity to be heard” and that the “absence of adequate translation” denied the refugee his procedural rights);²¹
- *Lizotte v. Johnson* (in foster care benefits case, court held that “the failure to provide adequate translation services . . . deprived petitioner of fundamental due process.”);²²
- *Figueroa v. Doherty* (in unemployment benefits case, court found that “[t]he failure to provide a competent translation of all proceedings deprived [the claimant] of his right to a fair hearing that he understood and at which he would be understood.”);²³
- *Abdullah v. INS* (noted that when courts consider claims involving due process, they are to consider the factors enumerated in *Mathews v. El-dridge*: “1) the interests of the claimant, 2) the risk of erroneous depriva-

16. *United States v. Mayans*, 17 F.3d 1174, 1180-81 (9th Cir. 1994).

17. *United States v. Martinez*, 616 F.2d 185, 188 (5th Cir. 1980).

18. *United States v. Carrion*, 488 F.2d 12, 14 (1st Cir. 1971).

19. *Cervantes v. Cox*, 350 F.2d 855, 855 (10th Cir. 1965).

20. See *Jara v. Municipal Court*, 21 Cal.3d 181 (1978) (stating that generally there is not a constitutional right to an interpreter in civil matters).

21. *Augustin v. Sava*, 735 F.2d 32, 37 (2d Cir. 1984).

22. *Lizotte v. Johnson*, 777 N.Y.S.2d 580, 586 (Sup. Ct. 2004).

23. *Figueroa v. Doherty*, 707 N.E.2d 654, 659 (Ill. App. Ct. 1999).

tion absent the benefit of the procedures sought and the probable value of such additional safeguards, and 3) the government’s interest in avoiding the burdens entailed in providing the additional procedures claimed”);²⁴

- *In re Doe* (in family court proceedings where parental rights are substantially affected, court held that parents must be provided with an interpreter);²⁵ and
- *Yellen v. Baez* (in a landlord-tenant case, court held that “[t]o require a tenant to proceed when it is obvious that an interpreter is needed would violate due process of law.”).²⁶

The right to an interpreter in civil cases has also been established in many states by statute.²⁷ A 2009 report by the Brennan Center for Justice at New York University School of Law reported an increasing number of states requiring the appointment of an interpreter in all civil cases.²⁸ At the time these standards are being written, half of the states have a state statute or court rule that requires that interpreters be provided in both civil and criminal cases.²⁹ In passing such statutes, states have reaffirmed the important rights at stake in civil proceedings which adjudicate critical legal matters such as protection from abuse; child custody and support; dependency; termination of parental rights; eviction; and eligibility for unemployment compensation, worker’s compensation, and public benefits.³⁰

FEDERAL STATUTES AND DOJ REGULATIONS

In addition to the constitutional protections and statutory provisions identified above, the obligation to provide language access services stems from the nondiscrimination provisions of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, *et seq.* (Title

24. *Abdullah v. INS*, 184 F.3d 158, 164 (2d Cir. 1999).

25. *In re Doe*, 57 P.3d 447 (Haw. 2002).

26. *Yellen v. Baez*, 676 N.Y.S.2d 724 (Civ. Ct. 1997).

27. Am. Bar Ass’n, Commission on Domestic Violence, State Statutes Requiring the Provision of Foreign Language Interpreters to Parties in Civil Proceedings (June 2007), http://apps.americanbar.org/domviol/trainings/Interpreter/Binder-Materials/Tab9/foreign_language_interpreters_with_disclaimer_language.pdf.

28. Abel, *supra* note 2. See also Emily Kirby et al., *An Analysis of the Systemic Problems Regarding Foreign Language Interpretation in the North Carolina Court System and Potential Solutions*, North Carolina School of Law, (2010), D.C. Code § 2-1902(a); Idaho Code Ann. § 9-205; Ind. Code § 34-45-1-3; Iowa Code § 622A.2; Kan. Stat. Ann. § 75-4351; Ky. Rev. Stat. Ann. § 30A.410; La. Code. Civ. Proc. art. 192.2(A); Mass. Gen. Laws Ch 221C, §2; Minn. Stat. §§ 546.42, 546.43; Miss. Code. Ann. §§ 9-21-71, 9-21-79; Mo. Rev. Stat. § 476. 803; Neb. Rev. Stat. § 25-2403; Or. Rev. Stat. § 45.275; 42 Pa. Cons. Stat. § 4401; Tex. Gov’t Code § 57.002; Utah Code Ann. § 78B-1-146; Wash. Rev. Code § 2.43.030; Wis. Stat. Ann. §§ 885.37, 885.38; Georgia State Court Unif. Rules for Interpreter Programs I(A), app. A; Maine State Judicial Court, Administrative Order JB-06-03 (Oct. 11, 2006); Maryland Rules of Procedure, R. 16-819; N.J. Judicial Directive 3-04, std. 1.2 (Mar. 22, 2004).

29. These states include: Colorado, Washington DC, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Massachusetts, Maryland, Maine, Minnesota, Missouri, Nebraska, New Jersey, New Mexico, New York, Oregon, Pennsylvania, South Carolina, Texas, Utah, Washington, and Wisconsin.

30. For example, Oregon provides for the appointment of an interpreter for LEP persons in all civil cases. Or. Rev. Stat. § 45.272 *et seq.* (Interpreters; appointment of interpreters for non-English speaking party or witness).

VI), which applies to all courts that receive federal financial assistance,³¹ Executive Order 12250, Executive Order 13166, the Omnibus Crime Control and Safe Streets Act of 1968, and the Court Interpreters Act.

Title VI of the Civil Rights Act of 1964

Section 601 of Title VI provides that no person shall “on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”³² Section 602 of the Act provides that “[e]ach Federal department and agency which is empowered to extend Federal financial assistance . . . is authorized and directed to effectuate the provisions of section 2000d of this title . . . by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken.”³³ The Department of Justice regulations which implement Section 602 forbid recipients of federal financial assistance from “utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin.”³⁴

Executive Order 12250

Executive Order 12250 (EO 12250)³⁵ charges the Department of Justice with ensuring the consistent and effective implementation of Title VI and delegates the power vested in the President of the United States, pursuant to Section 602—relating to the approval of rules, regulations, and orders of general applicability—to the Attorney General. EO 12250 also gives the Attorney General the task of coordinating the implementation and enforcement of the nondiscrimination provisions of Title VI. Courts play a key role in adopting rules and procedures to guard against disparate impact and discrimination, as the Supreme Court has ruled that there is no private right

31. Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d-1 (2006). For more information on determining if an entity is a recipient of federal financial assistance, see DOJ Civil Rights Division, <http://www.justice.gov/crt/about/cor/federalfundingsources.php> (last visited Apr. 18, 2011) (links to searchable databases for federal financial assistance awards); DOJ Federal Agency/Recipient Overlap Chart, <http://www.justice.gov/crt/about/cor/Federal%20Agency-Recipient%20Chart.pdf> (last visited Apr. 18, 2011); Catalog of Federal Domestic Assistance, <https://www.cfda.gov/> (last visited Apr. 18, 2011); USA Spending, <http://www.usaspending.gov/> (last visited Apr. 18, 2011) (information on federal sub-contractors and sub-grantees); Recovery.gov Track the Money, <http://www.recovery.gov/Pages/default.aspx> (last visited Apr. 18, 2011) (information on Recovery Act federal financial assistance). See Also U.S. Department of Justice, Civil Rights Division, Title VI Legal Manual, at 25 (2001) (“A recipient may not absolve itself of its Title VI obligations by hiring a contractor or agent to perform or delivery assistance to beneficiaries.”).

32. 42 U.S.C. § 2000d.

33. 42 U.S.C. § 2000d-1.

34. 28 C.F.R. § 42.104(b)(2) (2010).

35. Exec. Order 12,250, 45 Fed. Reg. 72, 995 (Nov. 2, 1980), <http://www.archives.gov/federal-register/codification/executive-order/12250.html>.

of action to enforce the disparate impact regulations promulgated under Title VI.³⁶

Executive Order 13166

The principle of non-discrimination in the provision of services was extended to federal agencies themselves on August 16, 2000, when President Clinton signed Executive Order 13166. The order required each federal agency providing assistance subject to the criteria of Title VI to issue guidance to recipients of its funding programs to clarify their obligations.

EO 13166 specifically directed federal agencies to publish guidance on how both they and the recipients of their financial assistance can provide “meaningful access” to LEP persons.³⁷ In response, the Department of Justice issued “*Enforcement of Title VI of the Civil Rights Act of 1964 – National Origin Discrimination Against Persons with Limited English Proficiency*” (*DOJ LEP Guidance*) in 2000, followed by amended *Guidance* in 2001 and 2002.³⁸ The *DOJ LEP Guidance* utilizes the following four factors to determine whether recipients have taken reasonable steps to ensure “meaningful access:” (1) the number or proportion of LEP persons; (2) the frequency with which LEP individuals come into contact with the program; (3) the nature and importance of the program, activity, or service provided by the program to people’s lives; and (4) the resources available to the grantee/recipient and costs.³⁹

The *DOJ LEP Guidance* as well as memoranda, opinion letters⁴⁰ and legal briefs are cited throughout these *Standards*. The degree of deference accorded to these pronouncements, ranging from binding to persuasive weight, depends on the formality

36. *Alexander v. Sandoval*, 532 U.S. 275, 293 (2001) (holding that there is no private right of action to enforce Title VI disparate impact regulations, and that only the funding agency issuing the disparate impact regulation has the authority to challenge a recipient’s actions under this theory of discrimination).

37. *Id.*

38. Enforcement of Title VI of the Civil Rights Act of 1964 – National Origin Discrimination Against Persons with Limited English Proficiency, 65 Fed. Reg. 50,123 (Aug. 16, 2000), Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 66 Fed. Reg. 3834 (Jan. 16, 2001). See also Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Person, 67 Fed. Reg. 41,455 (June 18, 2002) [hereinafter *DOJ LEP Guidance*].

39. *Id.* at 41,471 (“Application of the four-factor analysis requires recipient courts to ensure that LEP parties and witnesses receive competent language services, consistent with the four-factor analysis. At a minimum, every effort should be taken to ensure competent interpretation for LEP individuals during all hearings, trials, and motions during which LEP individuals must and/or may be present.”) For examples of the four-factor test applied to court settings, see *DOJ LEP Guidance*.

40. The letters include a 2003 Letter to State Court and State Court Administrators, a 2009 Memorandum entitled “Strengthening of Enforcement of Title VI of the Civil Rights Act of 1964,” and a 2010 Language Access Guidance Letter to Chief Justices and State Court Administrators. The letters are available at www.lep.gov.

of review and the authority under which the rule was made.⁴¹ Implementing regulations, agency guidance, and memoranda are often further interpreted by the courts.⁴²

The Omnibus Crime Control and Safe Streets Act of 1968

The *Omnibus Crime Control and Safe Streets Act of 1968* (Safe Streets Act) prohibits national origin discrimination by recipients of federal financial assistance.⁴³ Regulations implementing the Safe Streets Act further prohibit recipients from administering programs in a manner that has the effect of subjecting individuals to discrimination based on their national origin.⁴⁴

The Court Interpreters Act

The Court Interpreters Act of 1978 requires federal courts to appoint an interpreter in criminal and civil actions brought by the federal government in U.S. District Courts. Pursuant to this Act, the right to an interpreter in federal courts in such cases is broad and extends to pretrial and grand jury proceedings.⁴⁵

41. The degree of deference given depends on the nature of the document and whether external reviews are a part of the process. An agency's memoranda, opinion letters, or legal briefs, while not warranting "Chevron-type deference" have been awarded a degree of deference in cases. For regulations, the controlling case is *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984) (holding that considerable weight should be accorded to executive department's construction of statutory scheme it is entrusted to administer). See *Long Island Care at Home, Ltd. v. Coke*, 551 U.S. 158, 162 (2007) (finding third-party regulation was not a mere interpretive rule subject only to nonbinding *Skidmore* deference), *Christensen v. Harris County*, 529 U.S. 576, 587 (2000) (noting that agency's interpretation of statute which is contained in opinion letters, policy statements, agency manuals, or enforcement guidelines, all of which lack force of law, do not warrant *Chevron*-style deference); *United States v. Mead Corp.*, 533 U.S. 218, 226-27 (2001); *Auer v. Robbins*, 519 U.S. 452 (1997); (noting that fact that Secretary of Labor's interpretation of regulation came to Supreme Court in form of legal brief did not compel finding that interpretation was unworthy of deference, where Secretary's position was not post hoc rationalization advanced to defend past action by Secretary against attack, and there was no reason to suspect that interpretation did not reflect Secretary's fair and considered judgment on matter in question); *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944) (holding in applying Fair Labor Standards Act, that weight to be given by court to administrator's ruling is dependent upon thoroughness evident in its consideration, validity of its reasoning, and its consistency with earlier and later pronouncements). *Skidmore*, 323 U.S. at 140 (holding that agency guidelines, interpretations and opinions, while not controlling upon the courts by reason of their authority, do constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance. The weight of such a judgment in a particular case will depend upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade.

42. One such example is *Lau v. Nichols*, 414 U.S. at 567-69. (holding that failing to take reasonable steps to ensure meaningful access for LEP persons is a form of national origin discrimination prohibited by Title VI regulations.) In its ruling, the Supreme Court relied upon a memorandum issued by the Department of Health, Education, and Welfare, Office for Civil Rights, highlighting areas of concern in the services provided to "national origin-minority group children deficient in English language skills." The memorandum also clarified the school district's obligations regarding language access pursuant to the Department's regulations promulgated under Title VI.

43. *Omnibus Crime Control and Safe Streets Act of 1968*, 42 U.S.C. § 3789d (2006).

44. See 28 C.F.R. §§ 42.104(b)(2), 42.203(e); see also 42 U.S.C. § 3789d(c).

45. *Court Interpreters Act*, 28 U.S.C.A. § 1827 (1978).



STANDARD 2

Meaningful Access

Courts should ensure that persons with limited English proficiency have meaningful access to all the services, including language access services, provided by the court.

Commentary

To ensure meaningful access for LEP persons, courts should implement all of the services covered in these *Standards*. *Standard 2.1* encourages courts to promulgate rules to ensure that services are clearly described and are enforceable. *Standard 2.2* provides a detailed description of how courts can provide notice of the availability of language access services. *Standard 2.3* explains that services should be provided free of charge, although courts may under appropriate circumstances assess, or require recoupment of, language access services costs so long as such fees do not impede access to the courts or disproportionately affect LEP persons. *Standard 2.4* describes the steps a court should take to ensure that services are timely.

2.1 Courts should promulgate, or support the promulgation of, rules that are enforceable in proceedings and binding upon staff, to implement these *Standards*.

Commentary

Courts' obligation to provide language access have been described in case law as well as in statutes, regulations, and guidance, yet clear and effective implementation of language access services requires the promulgation of comprehensive, clear, and enforceable court rules or administrative orders. This *Standard* recognizes that variation in court administrative structures may necessitate the promulgation of rules by courts, legislatures, or other administrative bodies. The purpose of rules of court is to provide necessary governance of court procedures and practice and to promote justice by establishing a fair and expeditious process. Rules governing procedures

and practices for the provision of language access services by courts are useful; they simplify and clarify court obligations, guide those implementing the adjudicatory process, and provide additional mechanisms for enforcement by affected individuals.

Best Practices

While many states have some court rules regarding provision of interpreters,¹ comprehensive model rules should be developed to ensure that all the services described in these *Standards* are adequately covered. Rather than undertake this effort on an individual basis, courts should work with national agencies such as the National Center for State Courts to adopt a thorough set of court rules regarding language access. Courts should also encourage the adoption of legislative measures, where helpful to implement these *Standards*, and seek adequate funding to implement their language access obligations.

2.2 Courts should provide notice of the availability of language access services to all persons in a language that they understand.

Commentary

Knowledge about the availability of language access services is crucial to the ability of LEP persons to exercise their right to request services and promotes the efficient functioning of the court. Courts should provide this notice in a language that all persons understand, taking into account the appropriate method to provide the information.²

Best Practices

Notice to Whom and in Which Languages

Notice about the court's language access services should be provided so that all individuals who need to access the court are aware of the availability of services. This includes providing notice to the English-speaking public at large, and to attorneys and advocates who are working with LEP persons. Courts can do this through the use of clear and comprehensive English signage.

Courts should also provide notice to LEP persons of the availability of the language access services in a language that they understand. Using the most recent lan-

1. ABA Comm'n on Domestic Violence, Standards of Practice for Lawyers Representing Victims of Domestic Violence, Sexual Assault, and Stalking in Civil Protection Order Cases Std. III.D.3 (2007), http://www.americanbar.org/content/dam/aba/migrated/2011_build/domestic_violence/aba_standards_of_practice_dv.authcheckdam.pdf; Am. Bar Ass'n, Resolution 109 (1997) (recommending that "all courts be provided with qualified language interpreters").

2. Where a court is a recipient of federal financial assistance, the Department of Justice takes the position that such financial assistance is conditioned upon compliance with the *DOJ LEP Guidance*, interpreting Title VI as requiring notices as described here.

guage data for their service area,³ courts should provide *written* notice in the most common languages spoken⁴ and should establish procedures for providing *oral* notice to individuals who speak languages that are less common. This same language needs assessment information should be used to determine when notices in alternate formats, including video and tape recordings for persons with low-literacy in their primary language, should be provided in other languages.

Notice about Available Language Access Services

The content of the notification is as important as the language and manner in which it is communicated. To be meaningful, the notice needs to be sufficiently detailed, describing the available language services, who is eligible to receive them, methods for obtaining the services, the time when services are expected to be provided, and any policies related to costs.⁵ The notice should also include how to file a complaint about inadequate language access services, including issues of poor quality, limited availability, and denial of services. Notification about the complaint process should contain both internal procedures for filing a complaint as well as the contact information for the Department of Justice, Civil Rights Division, and any other entity or official exercising oversight.⁶

In addition to notifying LEP persons about the availability of language access services, translated notices can assist the courts in identifying the language spoken by the individual. The multilingual poster developed by the Social Security Administration,⁷ and to a lesser degree, the “Language Identification Flashcard” developed by the U.S. Census Bureau,⁸ are examples of free and efficient ways to both simultaneously communicate the availability of language access services and to identify an individual’s language needs in one document.⁹ A thorough and complete notice should be identified or developed, translated into as many languages spoken in the state as possible, and distributed to courts within the state court system. The National Center for State

3. Information on using language data from the U.S. Census Bureau and the American Community Survey can be found at http://www.lep.gov/demog_data.html (last visited Apr. 18, 2011). For a more complete discussion of the role of courts and court administrators in gathering and reviewing language data, see Standard 10.

4. For more information on procedures for translation, see *Standard 7*.

5. See Standard 2.3 for discussion of criteria to be applied in determining whether or when it is appropriate to assess or recoup the cost of language access services.

6. For information on filing a complaint, see <http://www.justice.gov/crt/complaint/index.php#five> (last visited Apr. 18, 2011).

7. Social Security Administration, Multilingual Poster, http://www.ssa.gov/multilanguage/20x32Poster8_13_03.pdf (last visited Apr. 18, 2011); see also Massachusetts Legal Services, Multilingual Interpreter Rights and Requests for Help Posters and Card, http://www.masslegalservices.org/docs/5948_You_have_a_right_to_an_interpreter_poster_20060130.pdf (last visited Apr. 18, 2011) (“You have a right to an interpreter at no cost to you. Please point to your language. An interpreter will be called. Please wait.”). This notice is translated into 32 languages. The content of this notice could be expanded to include all of the areas of required notification highlighted in this *Standard*.

8. U.S. Census Bureau “Language Identification Flashcard” (commonly referred to as “I-Speak”) cards are available electronically at <http://www.lep.gov/ISpeakCards2004.pdf>. See also, Community Partners, “I Speak” cards, used by community healthcare organizations to distribute to LEP persons. The business size card identifies the persons language and requests an interpreter, at http://www.compartners.org/pdf/forms/i_speak_card.pdf.

9. Identifying language needs is discussed in *Standard 3*; however, the notification posters and information developed in this setting can serve this dual purpose if developed properly.

Courts and other national entities working in this area are encouraged to assist in the development, and national distribution, of resources such as the detailed notice form described here.¹⁰

Notice at All Points of Contact with the Court

Since courts are administratively complex and include a multitude of contact points with the public, the availability of free language access services and policies governing payment for these services and other related language access policies should be clearly communicated at all these points. Contact with the court system may be a one-time use of an informational booth or website, or it may include the entire range of services, from information gathering, through a court proceeding, to post adjudication programs. Moreover, an individual's interactions with the court do not always follow a particular order, thus courts should not limit their notice to initial points of contact but should repeat the information in all phases of the legal process.

A comprehensive notification system should include notification on the court's website, posted notification near any information counters, a blanket notification of availability of language access services in all court published brochures, notification in or with the initial service of process or in charging documents, and outreach measures targeted to traditionally underserved LEP communities. Courts should also ensure that outreach materials—including those to community-based organizations serving individuals who speak the most common languages in the area—as well as video and telephonic communication, are used to disseminate information about the court's language access services.

Outreach materials containing information about court programs and other important court information that are routinely provided in English should be available in the languages most commonly spoken in the jurisdiction. Outreach to traditionally underserved communities should be designed to increase awareness of court programs and help to eliminate perceived language barriers to access to courts.¹¹ If the court uses telephonic recordings in English to communicate with the public, the court should add additional language-specific recordings describing both the court services and the language access services for LEP persons. Benefits of a comprehensive notice and outreach program include increased access for LEP persons, reduced need for bilingual staff to answer questions at a front counter, and reduced need for staff to use telephonic interpreter services to answer frequently asked questions, thereby conserving court resources.

¹⁰ The ABA supports efforts by the Consortium and COSCA to develop such resources at the national level.

¹¹ See NCSC, Trust and Confidence in the California Courts: A survey of the Public and Attorneys 21 (2005).

2.3 Courts should provide language access services without charge, and may assess or recoup the cost of such services only in a manner that is consistent with principles of fairness, access to justice and integrity of the judicial process, and that comports with legal requirements.

Commentary

Language access services ensure that all persons have equal access to justice and that information essential for the efficiency and integrity of legal proceedings can be understood by both English speakers and those who are LEP. Many states and courts, as well as the federal government, have endorsed these principles by passing laws and promulgating rules and guidance that expressly require the provision of language access services in both civil and criminal cases regardless of indigency.¹² See Standard 1 for a full examination of these principles and relevant law and jurisprudence.

Courts should avoid placing the burden of paying for language access disproportionately on LEP individuals in a manner that discourages access to court by LEP persons or inhibits requests for language services necessary to enable LEP persons to participate fully in proceedings. The cost of language services, if imposed, should not unduly impact LEP persons. The court may assess or recoup those costs from a well-resourced party who has the ability to pay, as appropriate and where allowed by law. Whatever test the court applies to determine if costs should be assessed or recouped, it cannot have a chilling effect on the rights of the LEP person to access the court system. In all cases, the court has an institutional interest in having adequate language services to capture evidence accurately and determine cases fairly on the merits.

Best Practices

There is broad agreement that justice cannot be achieved in any adjudicatory setting (whether civil or criminal) when persons affected by the proceedings do not comprehend them, when persons with information that is essential to a fair outcome cannot convey that information, when the judge or jury do not have an accurate understanding of relevant evidence, or when persons are subject to a different outcome or penalty, or are denied an otherwise available option or treatment, based only on their language ability. Because language services are essential to the fair and efficient operation of the courts, expenses associated with providing those services should be considered routine, necessary expenses and included in budget requests for judicial

12. See Fn. 2, Laura Abel, *Language Access in State Courts* (2009), pp. 67-68 (identifying Idaho, Kansas, Kentucky, Maine, Minnesota, Nebraska, New Jersey, New York, Oregon and Wisconsin as states in which the courts pay for interpreters without imposing a means test and without assessing interpreter costs on the parties), available at www.brennancenter.org; Colo. Ch. J. Dir. 06-03, (June 2011); COSCA White Paper Appendix A.; DOJ Guidance and Letter from Thomas E. Perez, Assistant Attorney General, to Chief Justices and State Court Administrators 2 (Aug. 16, 2010), http://www.justice.gov/crt/lep/final_courts_ltr_081610.pdf [hereinafter "Letter to Chief Justices and State Court Administrators"].

administration and as part of other court efforts seeking adequate funds for court operations. Courts may seek necessary increases in funding of judicial budgets, or grants from the federal government or other sources.¹³ Courts may include the cost of language access services in the calculation for determining filing fees for all users.

Recognizing that adequate funding might not be immediately available, implementation of these Standards in all tribunals and proceedings may need to be phased over a period of time, and priority should be given to providing interpreter services without charge to low and moderate income persons and unrepresented litigants. Assessment or recoupment of the cost of interpreter services, where allowed by law, should be limited to well-resourced parties who have the ability to pay such costs, because fees imposed upon LEP persons have the strong potential to chill recourse to the courts and inhibit the use of language access services that are necessary or beneficial to the fair administration of justice.

An example of a situation where a court may, where allowed by law, assess or recoup the cost of language access services would be when, in a specific civil proceeding, language access services are provided for the benefit of a well-resourced non-LEP individual or corporate party. In such a situation, the cost of language services can be imposed on that individual/corporation without chilling court access or disproportionately burdening LEP individuals and most would agree that it is fair to require that party to bear the costs, for example, of presenting the testimony of an LEP expert witness. If the well-resourced party was himself/herself LEP, the court would need to evaluate the circumstances to ensure that any assessment of costs would be consistent with the principles articulated in this Standard.

In considering whether to provide an interpreter without charge, courts should be mindful that the poverty/indigency threshold is unrealistically low. For that reason, any effort by a court to impose fees on particular persons and litigants should take into consideration that the cost of interpreter services will burden most people of modest or even “middle class” means, and of many small or moderate-size businesses. Litigants in those categories will not be treated on a par with persons who do not require language services and will effectively be denied access to justice, if they are unable or dissuaded from using the courts, because they are subject to up-front fees or know that they will be assessed fees under an after-the-fact recoupment mechanism.

13. See, e.g., Colorado Judicial Branch, FY 2010-11, Joint Budget Committee Hearing Agenda (Nov. 18, 2010), p. 3 (showing interpreter costs as 2% of the judiciary's general fund allocation); http://www.courts.state.co.us/userfiles/file/Administration/Financial_Services/Judicial%202012%20Hearing%20Agenda%20-%20FINAL.pdf; Wisconsin Court System, Biennial Budget Summary: Court-Related Items (July 1, 2011), p. 16 (allocating a portion of the Justice Information Systems Surcharge for court interpreter costs), <http://www.wicourts.gov/courts/overview/docs/budgetsummary.pdf>; Texas Courts Online, Remote Interpreter Project, (describing use of federal Violence Against Women Act funding for remote interpretation project), <http://www.courts.state.tx.us/oca/dvra/trip.asp>.

2.4 Courts should provide language access services in a timely manner.

Commentary

Courts routinely deal with matters that require quick resolution. In addition, high caseloads and scarce resources demand the efficient use of court time. Ensuring that language access services are provided in a timely manner helps courts to function smoothly and provides meaningful access to justice.

While there is no single definition of “timely” for all interactions with courts and court services, conduct which results in delays for LEP persons that are significantly greater than those for English-speaking persons or materially interferes with the parties’ preparation for a proceeding, application, or petition violates the court’s obligation to provide language access services in a timely manner. The definition of “timely” also depends in part on the urgency of the proceeding, service, benefit, or right at issue.

The *Department of Justice LEP Guidance* states that “to be meaningfully effective, language assistance should be timely” and that to be considered timely, language access services “should be provided at a time and place that avoids the effective denial of the service, benefit, or right at issue or the imposition of an undue burden on or delay in important rights, benefits or services to the LEP person.”¹⁴

Best Practices

Timely access to a certified interpreter for an LEP domestic violence victim seeking an ex parte order of protection, with a potential risk of serious harm from any delay, requires that the interpreter be available to ensure the same access to the court’s legal remedies as that provided to English speakers. Courts should develop methods to obtain such language access services quickly and balance the need for in-person interpreters against the convenience of telephonic, video remote services or other technology.¹⁵

Different types of language access services are discussed in full in *Standard 5*, and the speed with which each one is available varies. As a matter of practicality, in-person interpreter services usually require more time to coordinate than using telephonic or video interpreter services, particularly in languages of lesser diffusion. Translating court documents and other notices takes longer than a sight translation. Timeliness is also affected by the extent to which the court has hired interpreters on staff in languages of high demand versus relying on contract interpreters, where scheduling requires additional processes and time. In some circumstances, such as when a court has bilingual staff providing direct services at an information counter, those services can be provided in a manner comparable to the services for non-LEP persons.

¹⁴ DOJ LEP Guidance, *supra* note 66, at 41,461.

¹⁵ For more information on video remote interpreting, see *Standard 4.3*.



STANDARD 3

Identifying LEP Persons

Courts should develop procedures to gather comprehensive data on language access needs, identify persons in need of services, and document the need in court records.

Commentary

Providing appropriate language access services requires identification of the language access needs of all individuals needing services from the court. Courts should employ a number of procedures, including comprehensive data gathering, self-identification by LEP persons, and court-initiated appointment of language access services, to provide language access to each individual interacting with the court. The need for services should be documented with appropriate detail and should cover all services where language access services are required, including those inside and outside the courtroom.

3.1 Courts should gather comprehensive language access data as well as individualized language access data at the earliest point of contact.

Commentary

Courts should develop appropriate data gathering tools to anticipate and determine language access service needs. Courts should develop tools to track and respond to the individual language needs of the LEP persons accessing the courts. Individuals often need to access the court in advance of filing a case, during an ongoing matter, or after the conclusion of a legal proceeding. These encounters may occur at the clerk's office, an information counter, self-help centers, or other places where the court provides information to the public. In addition, because the need for language access services may develop later in the court process, a comprehensive system for identifying language needs should incorporate language access information throughout the duration of the case. Identifying the needs of LEP persons accessing the court for

information-gathering purposes, and tracking that information in a formal way, will assist courts in determining appropriate staffing needs and resource allocation.

Comprehensive Data

The *DOJ LEP Guidance* recommends that recipients analyze prior experiences or encounters with LEP persons in addition to other sources of data, including school systems, community organizations and local governments.¹ The *COSCA White Paper on Court Interpretation* also emphasizes the need for data stating that “the National Center for State Courts and the States should explore and support methods to better identify and track needs for interpreters – in individual cases and overall, including identification of languages for which interpretation is needed, frequency of interpreter use, and types of cases in which interpretation is required.”² These data can be used to assist courts in making decisions about hiring bilingual staff, developing appropriate interpreter pools, reaching out to community organizations to develop additional language access services and prioritizing additional translations and other resources such as videos and online training.

Data gathering can be done internally through the use of systems that monitor trends in the need for and provision of interpreter, bilingual staff and translation services. This information is needed to meet a court’s current language access needs and to assist in forecasting future trends. Courts should monitor the scheduling and billing of both interpreters and bilingual staff, broken down by language, type of proceeding and location.³ For this task, data on the languages for which interpreters have been *requested* is just as important as data on languages for which interpreters have been *provided*. Data on the availability and use of translations, including the types of materials translated, should include alternatives to translation such as online resources, video recordings and oral tape-recordings. Additional internal surveys can supplement automatic data gathering systems and should be conducted periodically, in a manner that is consistent with any statewide language assistance plan.⁴

External demographic data should be gathered by the court to supplement internal systems and to help anticipate the language needs of individuals accessing the

1. *DOJ LEP Guidance*, *supra* note 66, at 41,465.

2. *COSCA, White Paper*”.

3. One example is the data gathered by the Minnesota Courts, using their interpreter invoicing database, from which reports can be generated that provide information on the use of court interpreters by language and geographical areas at the county, district and statewide level. For more information on language access plans, see *Standard 10.2*.

4. Some states, such as California, require individual courts to adopt a Language Assistance Plan and update it on an annual basis. For example, the Superior Court of Sacramento County LEP plan may be changed or updated at any time but is reviewed not less frequently than once a year. The evaluation includes identification of any problem areas and development of corrective action strategies. Elements of the evaluation include the number of LEP persons requesting court interpreters and language assistance and an assessment of current language needs to determine if additional services or translated materials should be provided, solicitation and review of feedback from LEP communities within the county, and an assessment of the implementation of the LEP plan itself. See Superior Court of Sacramento County, Limited English Proficiency (LEP) Plan, <http://www.saccourt.ca.gov/outreach/docs/lep-plan.pdf> (last visited Apr. 18, 2011).



courts. External data sources include national surveys, state agency demographic data and community partners. National data, including information from the U.S. Census Bureau and American Community Survey (ACS), should be consulted as it becomes available.⁵ In addition to these sources, local governmental agencies, such as health and education departments,⁶ regularly compile detailed demographic data. Courts should establish mechanisms to coordinate with groups to regularly obtain such data for evaluating language access needs.

Individualized Data

Courts should incorporate the individualized language needs of LEP persons they encounter into the intake or case management system by asking about the language needs of any litigant, witness, person with legal decision-making authority and person with a significant interest in the matter.⁷ Courts can do this by creating a form to request interpreter services on the initial filing with the court. Courts should avoid requesting or compiling individualized information that may inhibit requests for language access services, such as information or documents potentially reflecting immigration status (i.e., green cards, work permits and social security numbers). This type of information is irrelevant to determine language access needs and potentially erects a barrier to the courts. Courts should also gather this data from external agencies and court-appointed professionals who may be the first point of contact for an LEP person's interaction with the court system. Law enforcement officers, jail personnel, prosecutors, court-appointed defense counsel, child protective services staff, domestic violence advocates, guardians ad litem and treatment providers should identify the language access needs of LEP persons they serve and communicate that information to the court. Courts should develop mechanisms and procedures to allow communication among these groups and should review and modify current documentation systems where necessary.

Once the data are gathered, courts should manage and organize the data in an efficient way to determine what services are needed and how to provide them. The following information should be documented: (1) the nature of the legal proceeding or event for which an interpreter is needed;⁸ (2) the location, time frame, and duration

5. For one source using this data, see Modern Language Ass'n, The Modern Language Association Language Map, http://www.mla.org/map_main (last visited Apr. 18, 2011). Although a full census is done only once every ten years, the ACS does more regular updates. See Am. Community Survey, <http://www.census.gov/acs/www/> (last visited Apr. 18, 2011).

6. The Minnesota Department of Education provides current year home-language survey data on their website, http://education.state.mn.us/MDE/Data/Data_Downloads/Student/Languages/index.html.

7. A discussion of each of these categories of individuals is provided in *Standard 4*.

8. Event types include all aspects of a case including those that occur outside the courtroom setting including transcription of phone call recordings and interviews with court-appointed professionals.

of each event; (3) the estimated number of interpreters needed in the matter;⁹ (4) any conflicts of interest of interpreters; (5) the names of interpreters (including contact information) assigned to each interpreting event; (6) identification of other individuals involved in the case, including attorneys and court-appointed professionals;¹⁰ and, (7) a system to prioritize or flag a case where there are a limited number of interpreters in the particular language needed since this may require special scheduling considerations.

The primary method courts use to track court records and information is a case management system (CMS). Many courts use an electronic CMS; however, some continue to rely on manual files. The extent to which a court needs to modify its system to meet this standard depends on the level of detail it currently captures. Where a court's current case management system does not gather the information identified above, the court should modify it or develop additional procedures—including forms or online tracking mechanisms—to track the information comprehensively. Where a court uses a manual case management system, procedures such as color coded files and additional forms should be used. Whether electronic or manual, the documentation systems used by a court should be reviewed to ensure that they gather information in the detailed and comprehensive format outlined above and that the system for communicating the language access needs of LEP individuals covers all court and court-related services.

The case management system in King County Superior Court (KCSC), in Seattle, Washington, illustrates the benefit for courts in using a comprehensive approach. The KCSC Interpreter Services Program's electronic case management system¹¹ uses a sophisticated database with all the seven elements listed above in addition to some particularly useful features such as a drop down list for languages¹² and for each person's role in the case¹³ along with a list of all interpreting event locations, including all courtrooms, court-affiliated programs, and out-of-court locations.¹⁴ Reporting and scheduling functions allow case information to be transferred to the schedul-

9. Additional considerations regarding the number of interpreters needed for a particular event include: review of the nature of the event, language needs of all LEP persons involved in the event, interpreter fatigue, consideration of the different roles of the LEP individuals within the event [including proceedings interpreter, defense counsel (per defendant), and witness interpreter] and transcription or translation needs.

10. This information will then inform courts on the need to ensure that these individuals are complying with the language access requirements of the court and are providing appropriate interpreter services, as necessary.

11. Each individual is a unique "customer" within the system. Customers are then associated with different events within a case.

12. Within the language tab, notes can be added to indicate the country of origin or to document specific language needs of an individual.

13. The list of possible "roles" an individual can have within a particular case is very extensive and includes the following: advocate; agency (community rep); attorney for petitioner; defendant; respondent; case manager; child; co-defendant; commissioner; contact; co-petitioner; co-respondent (juvenile court); counselor; defendant; detective; doctor; evaluator; evictee; friend of defendant; friend of petitioner; friend of respondent; guardian; Guardian ad litem; investigator, adjudicator; juror; mother; other; paralegal; parent/guardian; petitioner; plaintiff; polygraph technician; probation counselor; prosecutor; prosecutor representative; psychologist; relative of defendant; relative of petitioner; relative of respondent; respondent; respondent (juvenile); school district representative; social worker; spouse; victim; witness (defense); witness (petitioner); witness (respondent); witness (by case type, including parent or child in an At Risk Youth Hearing); attorney; *in re*; and alleged incapacitated.

14. Out of court locations include such places as attorneys' offices, home visits for court appointed guardians ad litem, or interviews by court-ordered professionals in custody in a community setting.



ing component within the CMS where all essential information is displayed.¹⁵ The schedule can be sorted by language, location, case type or any combination of those views, creating an instantaneous reporting and documentation system for the court. In addition, the schedule can be sorted by interpreter and sent electronically to each interpreter, with any necessary notes or scheduling reminders included. The CMS also creates reports regarding the frequency of interpreter encounters by language, case type, and settings outside the courtroom to assist courts in evaluating the need for additional services.

Courts should be careful to ensure that case management systems include not just courtroom services, but also settings outside of the courtroom where language access is needed.¹⁶ Ideally, language services at such settings should include the need for translated materials, the use of bilingual staff at information counters and access to telephonic interpreter services. A documentation system that tracks the encounter rates for different languages can also assist the court in determining the need for services in languages for which neither bilingual staff nor qualified in-person interpreters are available. This tracking can lead to cost-savings (such as the translation of documents which would otherwise need to be sight translated by an interpreter)¹⁷ which might be overlooked when no monitoring occurs.

3.2 Courts should ensure that persons with limited English proficiency may self-identify as needing language access services.

Commentary

Courts should allow an LEP person to self-identify as needing services. When an individual or his/her representative requests an interpreter, a judge or adjudicator should presume the need is bona fide.¹⁸ This preference for self-identification recognizes that assessing language proficiency is a difficult and intensive task that requires training in language acquisition and language proficiency assessment – training not usually possessed by a judge or court personnel. For example, a judge might be inclined to deny an interpreter for an individual after observing him or her conversing with an attorney without the aid of an interpreter, or after observing the individual following simple instructions such as “sit down.” Such a denial could be erroneous because it incorrectly assumes that the ability to use English for simple communications and rote statements (which are often memorized) is an indication of the language

15. This includes the date, time, location, courtroom and associated judge or commissioner, the nature of the event, the case name and number, language(s) needed, the assigned interpreter(s), the role(s) of the person who needs interpreter services and relevant notes

16. These settings are discussed in *Standards* 5, 6, and 7.

17. For more discussion of the efficient use of translation see *Standard* 7.

18. NCSC, *supra* note 8, at 126.

proficiency necessary for the meaningful comprehension and effective communication that is required to protect a person's interest in a legal matter.

Understanding legal proceedings and communications in court settings is particularly challenging to LEP individuals due to a number of factors: the complexity of legal proceedings; the use of specialized terminology; the importance of detailed and accurate information; the lack of familiarity with the legal system in the United States; the stressful and emotional content of the communication; and the impact of court proceedings on a person's life, liberty, family relationships, or property interest. As a result, many individuals who are comfortable speaking in English in less formal settings require interpreter services and translated written materials in court. Communicating under these circumstances should be done in the language in which the individual is most proficient.

Furthermore, the importance of accuracy in legal proceedings outweighs any concern for abuse of the system in those rare instances where an LEP person appears to be unnecessarily requesting an interpreter. Legal proceedings can be confusing and intimidating even for an individual who speaks English fluently; the potential for misunderstanding is more acute for one who does not.¹⁹ In addition to misunderstanding information due to the language barrier, LEP persons from a country where legal systems and concepts vary substantially from those of the United States may be further confused when an interpreter is not used. The failure to appoint an interpreter when one has been requested not only impairs that person's access to justice but also can result in costs and inefficiencies to the court system in the form of appeals, reversals, and remands.²⁰

3.3 Courts should establish a process that places an affirmative duty on judges and court personnel to provide language access services if they or the finder of fact may be unable to understand a person or if it appears that the person is not fluent in English.

Commentary

In some instances, LEP persons may declare themselves "proficient" in English and decline interpreter services resulting in the need for a judge to make an independent

19. The U.S. census asks individuals who speak a language other than English at home to say whether they speak English "very well," "well," "not well," or "not at all." In 2000, 8.1 percent of respondents indicated they spoke English less than "very well," a number that increased to 8.6 percent in the 2005 American Community Survey.

20. See *Mayans*, 17 F.3d at 1180-81 (holding that defendant's right to testify on own behalf was violated when the court prevented him from testifying with an interpreter); *Negron*, 434 F.2d at 389 (holding that a trial lacked the basic and fundamental fairness required by the Constitution where a criminal defendant who did not speak or understand English was not provided with an interpreter at trial); *Romero*, 79 Cal. Rptr. 3d at 355 ("The right to an interpreter has its underpinnings in a number of state and federal constitutional rights."); *State v. Neave*, 344 N.W.2d 181, 184 (Wis. 1984) ("Fairness requires that such persons who may be defendants in our criminal courts have the assistance of interpreters where needed.").



determination. This may occur, for example, due to an LEP person's misunderstanding of the complexity of the proceedings, concerns about confidentiality, and fear of misinterpretation and discrimination against non-English speakers. However, when LEP persons have been provided a thorough explanation of the availability of interpreter services and the benefits of communicating in their primary language, it is unusual for them to decline interpreter services. While these *Standards* use the term "proficient" in English to refer to the fact that ability to speak a language exists across a range, from "limited" to "highly proficient," the term "fluent" is used here to emphasize that an individual whose English falls short of the ability to communicate in a language easily and effectively should be appointed an interpreter to ensure accuracy of the proceedings. If a judge has concerns about the person's fluency in English, the judge should make an inquiry, on the record, to determine the need for an interpreter. The seriousness of charges involved in a case, or of the consequences or the complexity of the proceedings, may require a high level of proficiency. If the judge cannot understand the person's responses to the questions asked, or the court anticipates that jurors or other participants might not understand the LEP person, or if the judge has any doubt about the ability of the LEP person to comprehend the proceedings fully or adequately to express him or herself, the court should appoint a certified or qualified interpreter.

If, after being advised of the availability and benefit of language access services, the importance of the proceeding, and the role of the interpreter an LEP person declines these services or is hesitant to use an interpreter, the judge should inquire into the LEP person's reason to determine if there are measures the court should take to remedy the concern. This communication should be done through an interpreter.

If the LEP person in this situation is attempting to decline the appointment of an interpreter; that request should be permitted only in documented circumstances similar to "an intentional relinquishment or abandonment of a known right."²¹ The right to an interpreter in criminal cases is well established under the Fifth Amendment right to a fair trial and the Sixth Amendment right to counsel and confrontation. While the constitutional right to an interpreter in civil matters, however, is not as well settled as in criminal matters, the right to an interpreter in civil matters has been established in many states by statute. Therefore, understanding the need for an interpreter, the availability of interpreter services, the role of the interpreter and the advisability of testifying in one's native language should be communicated through an interpreter on the record. The court should allow an LEP person to decline the use of an interpreter only upon a finding that it is done knowingly and that the court is confident it can communicate effectively with the LEP person; such circumstances should be carefully documented on the record.

21. *Negron*, 434 F.2d at 390 (citing *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938)).



In situations where the court itself is unable to understand the LEP person's communication, due to lack of proficiency in English or a strong accent, the judge should refuse to allow the person to decline interpreter services, as such services are necessary to assist the court in understanding the individual's testimony.²²

Similar advisements regarding interpreter availability should be made for court-mandated services outside the courtroom and procedures should be provided for LEP persons to self-identify as LEP, and thus receive services in those settings. Procedures for self-identification as LEP in these settings should not be overly prescriptive. Simple awareness or communication of the presence of a language barrier should trigger court personnel to offer the appropriate language access services. This is especially true in those non-court settings where the LEP person may not know interpreter services are available or may be embarrassed or afraid to ask for assistance. The procedures should be modified to fit situations outside of the courtroom.

Best Practices

Determining Fluency

If a judge has concerns about the individual's fluency in English or is having difficulty understanding the person's spoken English, open questions can be used to establish fluency:

- How did you come to court today?
- Please tell me about your country of origin.
- Describe for me some of the things or people you see in the courtroom.
- What is the purpose of your court hearing today?
- How did you learn English and what is most difficult about communicating in English?
- Tell me a little about how comfortable you feel speaking and understanding English.

These open-ended questions are helpful in determining the need for an interpreter. If a court chooses to use additional questions to those listed above to assess a person's English fluency and level of comfort using English, it is important to avoid questions that can be appropriately answered with "yes" or "no" and to focus instead on questions that ask "what," "where," "who," and "when," and call for descriptions

22. See, e.g., S.C. Code Ann. § 15-27-155 ("[W]henver a party or witness to a civil legal proceeding does not sufficiently speak the English language to testify, the court may appoint a qualified interpreter to interpret the proceedings and the testimony of the party or witness. However, the court may waive the use of a qualified interpreter if the court finds that it is not necessary for the fulfillment of justice. The court must first make a finding on the record that the waiver of a qualified interpreter is in the best interest of the party or witness and that this action is in the best interest of justice.").



of people, places or events. A person who is unable to answer these questions is unable to communicate in English at the level minimally necessary to comprehend even simple legal proceedings.

Declining Interpreter Services

When an LEP person declines the use of or is hesitant to use an interpreter the judge should establish that the court can communicate with the LEP person by determining through an interpreter on the record that:

- The LEP person intentionally declined interpreter services through verbal communication rather than passively or through silence;
- The LEP person knew²³ that interpreter services were available;
- The LEP person knew about the costs (if any) of interpreter services;²⁴
- The LEP person was advised of the role of the interpreter, including the obligation of the interpreter to maintain confidentiality; and
- The LEP person was aware of the advisability of communicating in one's native language.

When a LEP person declines the use of an interpreter, the judge may appoint an interpreter to assist the court in understanding the individual's testimony. This interpreter may not need to interpret all the proceedings but is in the courtroom and available should the court not understand the spoken English of the person testifying.

The right to an interpreter in civil cases has been established in many states by statute. In passing such statutes, states have reaffirmed the importance of legal issues at stake in civil proceedings such as abuse, child custody and support; dependency; termination of parental rights; eviction; and eligibility for unemployment compensation; worker's compensation and public benefits. All states should consider adopting statutes providing for language access services.

Settings Outside the Courtroom

Simple awareness or communication of the presence of a language barrier should trigger court personnel to offer appropriate language services outside the courtroom for:

23. For a declination of interpreter services to be considered "knowing," an individual must understand that he or she has the right to an interpreter without charge; passive acquiescence by way of silence or failure to affirmatively assert the right should not be regarded as an "intentional relinquishment, that supports a valid waiver." *Negron*, 434 F.2d at 390 (citing *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938)); see also, *Neave*, 344 Wis.2d at 189 (holding that "[i]f the court determines that an interpreter is necessary, it must make certain that the defendant is aware that he has a right to an interpreter and that an interpreter will be provided for him if he cannot afford one. Any waiver of the right to an interpreter must be made voluntarily in open court on the record").

24. See Standard 2.3 for discussion of when costs might be assessed.

- Court-managed services, including clerk and informational offices;
- Court-mandated programs and services; and
- Court-offered services

Courts should consider providing a variety of information brochures, pattern forms and other printed material describing court programs and services in a variety of languages as well as signage directing LEP persons to request language assistance.



STANDARD 4

Interpreter Services in Legal Proceedings

Courts should provide competent interpreter services throughout all legal proceedings to persons with limited English proficiency.

Commentary

The delivery of appropriate language access services in legal proceedings¹ depends upon the provision of competent services provided by professional and well trained interpreters.² The following sections detail the requirements to provide interpreter services in all legal proceedings, to all persons eligible for services, in a manner that is best suited to the nature of the proceeding, and consistent with the interpreter’s code of conduct.

4.1 Courts should provide interpreters in legal proceedings conducted within courts and court-annexed proceedings.

Commentary

The terms “legal proceedings” and “courts” are intended to encompass all legal proceedings where important legal rights and benefits are involved, whether they are adjudicated in a criminal or civil matter, in problem-solving or therapeutic justice courts,³ or in an administrative hearing.

Best Practices

The Department of Justice LEP Guidance states that “every effort should be taken to ensure competent interpretation for LEP individuals during all hearings, trials, and motions.”⁴ Subsequently, DOJ elaborated on this *Guidance*, writing that legal

1. See Standard 5 for language access services in court services, and Standard 6 for services in court-mandated or offered services.

2. See Standard 8 for a full discussion of Interpreter skills and the necessary components of interpreter credentialing.

3. Specialty, problem-solving, or therapeutic justice courts include drug courts, mental health courts, family treatment courts, domestic violence courts, and courts that address the issues of homeless persons. See Challenges and Solutions to Implementing Problem Solving Courts from the Traditional Court Management Perspective (2008), at http://www.sji.gov/PDF/Problem_Solving_Courts-BJA3-31-08.pdf.

4. DOJ LEP Guidance, *supra* note 66, at 41.471.

proceedings include “all court and court-annexed proceedings, whether civil, criminal, or administrative including those presided over by non-judges”⁵ as well as “[p]roceedings handled by officials such as magistrates, masters, commissioners, hearing officers, arbitrators, mediators, and other decision-makers.”⁶

Courts that currently limit interpreter services by case type should move to expand the provision of interpreter services to all legal proceedings. Clearly, as the Department of Justice recognized, “it takes time to create systems that ensure competent interpretation in all court proceedings and to build a qualified interpreter corps” but over the years some progress should be made, since “[w]ith ... passage of time, the need to show progress in providing all LEP persons with meaningful access has increased.”⁷

4.2 Courts should provide interpreter services to persons with limited English proficiency who are in court as litigants, witnesses, persons with legal decision-making authority, and persons with a significant interest in the matter.

Commentary

While most courts are aware of the need to provide an interpreter to a litigant,⁸ some do not recognize that witnesses, persons with legal decision-making authority and persons with a significant interest in the matter are also persons whose presence or participation in a legal proceeding may be “necessary or appropriate.”⁹ Each of these persons has either information to provide or a stake in the legal proceeding before the court, and the court should facilitate their participation by providing language services.

Best Practices

Witnesses

As part of the exercise of their rights to present evidence in a legal proceeding, litigants may call a witness who is limited English proficient; failure to provide an inter-

5. Letter to Chief Justices and State Court Administrators, *supra* note 91, at 2.

6. *Id.*

7. *Id.* at 4. (“Yet nearly a decade has passed since the issuance of Executive Order 13166 and publication of the initial general guidance clarifying language access requirements for recipients. Reasonable efforts by now should have resulted in significant and continuing improvements for all recipients. . . . With this passage of time, the need to show progress in providing all LEP persons with meaningful access has increased. DOJ expects that courts that have done well will continue to make progress toward full compliance in policy and practice. At the same time, we expect that court recipients that are furthest behind will take significant steps in order to move promptly toward compliance.”)

8. See Standard 1 for case law on the requirement to provide interpreter services to litigants. See also Thomas M. Fleming, Right of Accused to Have Evidence or Court Proceedings Interpreted, Because Accused or Other Participant in Proceedings is Not Proficient in the Language Used, 32 A.L.R.5th 149 (1995) (“[The] well-established precept of due process is that non-English speaking defendants in criminal actions are entitled to an interpreter.” (citing *People v. Torres*, 772 N.Y.S.2d 125 (App. Div. 2004))); *In re Interest of Angelica L.*, 767 N.W. 2d 74 (Neb. 2009).

9. “Courts should also provide language assistance to non-party LEP individuals whose presence or participation in a court matter is necessary or appropriate, including parents and guardians of minor victims of crime or of juveniles and family members involved in delinquency proceedings.” Letter to Chief Justices and State Court Administrators, at 2.

preter for the witness would deny the litigant access to the court process and violate the Sixth Amendment Confrontation Clause.¹⁰ In both criminal and civil matters, the court's ability to rule on legal questions, such as admissibility of evidence, depends on the court's understanding the testimony of the LEP witness, through the use of a competent interpreter. Where a court conducts the proceeding without an interpreter, misunderstandings over the use of language can lead to questions about the admissibility of evidence, accuracy of the testimony, and character or veracity of the witness, and the resulting verdict may be challenged.

Persons with Legal Decision-Making Authority

Certain LEP persons who are not litigants or witnesses have legal decision-making authority regarding the matter before the court. Such persons should also be provided interpreter services throughout the proceedings and for all interactions with the court. These include, but are not limited to: parents or legal guardians of minor children where the child is involved in the matter but where the parent or guardian is not a named party; parents and guardians of minor victims of crime; guardians acting pursuant to their authority under guardianship of an incapacitated individual; and guardians ad litem. LEP parents of a minor child involved in a juvenile action should be provided interpreter services throughout the legal proceeding and to communicate with court-appointed counsel. In all these circumstances, the participation of these individuals is necessary to effectuate their legal decision making authority and to protect the interest of the individuals they represent.¹¹

Persons with a Significant Interest in the Matter

Finally, there are LEP persons who have a significant interest in a matter before the court, even if they have no "legally recognized" interest at stake. Examples include non-testifying victims in a criminal case, tenants in a public housing complex in a legal action that affects their tenancy, members of a class action who are not lead plaintiffs or family members of the victim or the defendant in a trial for murder or other aggravated offense. The court should inquire whether there are individuals in the courtroom who may be in need of interpreter services, and determine whether their interest warrants provision of language services. That determination should take

10. *People v. Johnson*, 46 Cal. App. 3d 701, 704 (1975) (finding that lack of interpreter for prosecution witness left no opportunity for cross-examination); *People v. Fogel*, 467 N.Y.S.2d 411 (App. Div. 1983) (finding that trial judge should have granted defendant's request for an interpreter for prosecution's witness); *Miller v. State*, 177 S.W.3d 1, 6 (Tex. App. 2004) (stating that providing an interpreter to confront a material witness who does not understand English is required by the Confrontation Clause and by Article 1, section 10.).

11. DOJ LEP Guidance, at 41,459 ("Examples of populations likely to include LEP persons who are encountered and/or served by DOJ recipients and that should be considered when planning language services, include, but are not limited to: . . . [p]ersons who encounter the court system [and] [p]arents and family members of the above."). See also, Letter to Chief Justices and State Court Administrators (referring to non-party LEP individuals whose presence or participation in a court matter is "necessary or appropriate," including parents and guardians of minor victims of crime or juveniles and family members involved in delinquency proceedings).

into account the following factors: the relationship of the individual to the matter; the seriousness of the matter; the impact of the outcome on the individual; and whether interpretation is already being provided to another party in the proceeding and could be easily transmitted with the use of available technology.¹²

A review of these factors should be made on the record along with the resulting determination. The presiding judge has discretion in making this initial determination; however, once the court determines that an individual has a significant interest in the matter, competent interpreter services should be provided. Meaningful access to the courts does not require courts to provide free interpreter services to any LEP person who visits the courthouse to observe a case, but does require provision of interpreter services for those persons deemed by the presiding judge to have a significant interest in the matter.

4.3 Courts should provide the most competent interpreter services in a manner that is best suited to the nature of the proceeding.

Commentary

Courts should provide competent interpreter services during all legal proceedings through the use of staff court interpreters and contracted interpreters, who appear either in-person or through the use of remote telephonic or video technology.¹³ The primary consideration for a court in appointing an interpreter for a legal proceeding should be to appoint the most qualified¹⁴ interpreter available in the most appropriate medium, taking into account the urgency of the matter involved.

Best Practices

Current practices do not necessarily direct courts to select the most qualified interpreters. For longer hearings, including trials, in-person interpreters are generally preferred, and often required. Many jurisdictions allow only emergency hearings and non-evidentiary hearings to be conducted through remote telephonic or video services, with the preference for in-person interpreters codified in court rule or state statute.¹⁵ This preference is based on the benefit of seeing the body language and non-verbal communication of the testifying individual and on the recognition that the technology available for remote interpreting has not always been adequate to meet

12. Interpreter services can often be provided without additional cost by use of headsets that allow the individual to hear the interpretation being provided for other courtroom participants. For more information on telephonic interpreting practices and equipment, see NCSC Court Interpretation Model Guides at 189.

13. See, COSCA White Paper, at 9, 23; NCSC Court Interpretation Model Guides, at 11-13, 127. Interpreter competency is addressed fully in Standard 8.

14. For a complete discussion of how to determine interpreter qualification, see Standard 9.

15. See Wash. Ct. R. 11.3 (regarding the limited permissible uses of telephonic interpreting and the implicit default preference for in-person interpreting), available at www.courts.wa.gov/court_rules/ (last visited Apr. 19, 2011). See also, Pennsylvania Administrative Regulations Governing Court Interpreters, §§ 201 – 204.

the needs of courts.¹⁶ However, a preference for in-person interpreters can sometimes mean that a less qualified, or even unqualified, interpreter is used, and it can also result in delayed proceedings.

With the increasing number of languages spoken across the U.S., courts should recognize that in-person interpreter services may not be sufficient to meet the language needs of all LEP persons in the court's jurisdiction. Many courts and adjudicatory bodies now encounter LEP persons who speak languages not previously served. In these instances, courts need to ascertain if there are qualified in-person interpreters available to meet the language needs of the LEP person, and if not, should identify qualified interpreters who are able to provide the service remotely.

Courts, litigants and interpreters all benefit from the appropriate use of remote interpreting services. Courts pay only for the time spent in actual interpretation and reduce the money spent to reimburse interpreters for traveling and for waiting for the matter to be called. Litigants avoid delays in waiting to schedule an in-person interpreter. Both the court and the litigant benefit from having access to certified or qualified remote interpreter services in languages where there are no certified or qualified interpreters available in-person. Interpreters are able to avoid sometimes stressful traffic and travel, schedule work more efficiently, and interpret more assignments per day, allowing them to increase their income and stay in the profession – a benefit to all involved.

Some courts are addressing the problem of insufficient in-person interpreters by developing interpreter pools¹⁷ of certified interpreters who are available by telephone or video. By selecting the interpreters in the pool, the courts can hold them to the same qualification, screening and training standards as in-person interpreters.¹⁸ It is important to distinguish this kind of remote interpreter pool from services provided by telephonic interpreting agencies that generally do not share information about the criteria they use to determine interpreter qualifications.¹⁹ Even those remote inter-

16. Inadequate telephone systems that do not allow for private communications between an LEP defendant and counsel, telephone speaker systems that result in garbled speech such that it impairs an interpreter's ability to render an equivalent message in the target language, and concerns about confidentiality, are all reasons cited for avoiding the use of telephonic interpreting in court proceedings. See National Association of Judiciary Interpreters, *Telephonic Interpreting in Legal Settings* (2009), <http://www.najit.org/publications/Telephone%20Interpreting.pdf> (last visited Apr. 19, 2011). Separate concerns are raised by remote adjudication practices which are further complicated when the defendant is LEP. The remote location of the interpreter and inadequate equipment can impair the defendant's ability to participate in the hearing as well as the attorney's ability to consult with the client. One solution is to establish a policy that courts will default to in-person appearance where an interpreter is required.

17. For more information on the development of interpreter pools, see COSCA White Paper. One model program is that used by the Alaska Court System. See Alaska Court System, *Language Access Plan* (2010), <http://www.courts.alaska.gov/addinfo/langaccess.pdf> (last visited Apr. 19, 2011).

18. Programs available for determining interpreter qualifications, including the national certification process managed by the National Center for State Court's Consortium on Language Access in State Courts, can be found at <http://www.ncsc.org/education-and-careers/state-interpreter-certification.aspx> (last visited Apr. 19, 2011).

19. Some telephonic interpreter services have or may develop their own credentialing systems; however, without understanding the nature of the testing involved and the validity of the test as it relates to legal proceedings, courts should not accept this certification / credentialing as a proxy for qualifications to provide interpreter services in court. Courts should consider including specific minimum certification requirements in a contract for telephonic language access services.

preter agencies that have created internal testing and credentialing exams may use assessments that are vastly different from those of national interpreter certification programs. Courts should use caution in accepting alternate testing credentials and should consult with professional interpreter organizations to determine best practices in this regard.²⁰

When determining whether to use remote interpreter services, courts should consider the appropriateness of the technology and the qualifications of the interpreters. Courts should also determine whether the use of remote technology is appropriate for the setting. As noted above, the preference for in-person interpreting is based on the recognition that non-verbal cues are critical in most communication. Despite the growing use of remote video interpreting, telephonic interpreting, which allows the interpreter to be located away from the proceedings and the interpretation to occur over a standard telephone line using fairly basic equipment, is still the most common remote technology used. To ensure the most efficient and effective use of telephonic interpreters, courts need to consider whether lack of visual cues will pose a problem and when deciding that telephonic interpretation is appropriate, should provide the proper equipment and training.²¹

Telephonic remote interpreter services require specialized equipment at both locations to provide adequate services. For the remote interpreter, the recommended equipment consists of a headset and microphone, and a telephone system that allows the interpreter to control both his or her volume as well as the volume of the individual speaking in the courtroom.²² To accommodate attorney-client confidentiality, the equipment also allows for a private three-way communication between client, attorney and interpreter which is not broadcast to the court. The court's equipment should include headsets and microphones for multiple individuals and an amplification system that is wired into the courtroom's sound system or is in some way sufficiently amplified in the courtroom. The headsets allow the interpreter to interpret simultaneously when the LEP person is listening to the testimony of others, and the amplification system allows the interpreter to broadcast into English the testimony of any LEP witnesses or litigants for the court.²³ In some circumstances telephonic interpretation will need to be consecutive rather than simultaneous.²⁴ Equipment used for

20. An analogous example is the national certification exam for American Sign Language (ASL) interpreters, available through a joint project with the Registry of Interpreters for the Deaf and the National Association of the Deaf. Many states accept this national certification as a proxy for certification in the state system. These programs do not offer direct interpreter services.

21. See Standard 9 for a full discussion of training. See also, Wisconsin Court manual on best practices in remote and video interpretation, www.wicourts.gov/services/interpreter/docs/telephoneinterpret.pdf.

22. National Association of Judiciary Interpreters and Translators, *Telephonic Interpreting in Legal Settings*, supra note 137.

23. See Standard 4.4 for more discussion of the different interpreter functions.

24. Just as in all legal proceedings, the mode of interpreting varies depending on who is speaking. During the proceeding, when the LEP person is listening to the testimony of others, the interpreter will interpret in the simultaneous mode; however, when an LEP person is testifying, the interpreter should interpret in the consecutive mode. Telephonic interpreting conducted over the most basic systems using speaker phones will always require consecutive interpreting. For more information on the modes of interpreting, see NCSC, *Court Interpretation Model Guides*, at 138.

recording has advanced to allow for multiple channel recordings that allow isolation of each speaker, one for the interpreter and the other for the LEP individual. Recording telephonic testimony is necessary to ensure that any errors in interpretation or communication can be considered on review and appeal.

Without the proper equipment, the limitations of telephonic interpreting are significant and often outweigh the benefits. Courts that rely on a standard speaker phone placed in the courtroom for telephonic interpreting run the risk of delayed and inefficient proceedings as well as compromised quality. In such situations, the interpretation should be conducted in consecutive mode throughout the proceedings, doubling the time spent hearing the matter. Additionally, such a system has no mechanism for private communications between the attorney and LEP litigant.²⁵ Finally, the limitations of this equipment can lead to compromised quality because of the inability of the speaker phone to pick up the utterance of all speakers, the interruptions in the interpretation from background noise, and the tendency for the equipment to allow only one speaker at a time. These problems impede both the testimony and the interpretation and can lead to misinterpretation and misunderstanding.

The increased availability of video remote interpreting, when used appropriately, may help address some of these problems. These systems are an enhancement over telephonic interpreting and offer a combination of video and audio connections,²⁶ allowing the interpreter to see all of the relevant individuals in the communication. Equipment needed includes a high-speed internet connection, a computer with television videoconferencing equipment, and, potentially, additional software.²⁷ As with telephonic interpreting services, courts that employ remote video interpreting services should maintain a focus on the quality of the interpretation, and ensure both that the video and audio quality are sufficient, and that the system has the capability for interpretation of confidential conversations. Courts are encouraged to seek out the expertise of other courts that have established video remote interpreting systems, as well as the American Sign Language interpreting community, regarding the development of standards and the lessons learned in providing competent interpreter services through combined medium of video/audio.²⁸

Regardless of the type of technology used, court personnel working in courtrooms that are equipped with either telephonic or video remote interpreting systems should be trained²⁹ on the proper use of the system, including appropriate uses of the tech-

25. NCSC Court Interpretation Model Guides, at 181.

26. COSCA White Paper, at 13.

27. *Id.*

28. The Ninth Judicial Circuit Court of Florida developed a video remote interpreter project. See Ninth Judicial Circuit Court, Court Interpreters, <http://www.ninthcircuit.org/programs-services/court-interpreter/> (last visited Apr. 19, 2011). The use of video interpreting technology for American Sign Language interpreting has increased over the decade from 2000 -2010. See National Association of the Deaf, Video Remote Interpreting, <http://www.nad.org/issues/technology/vri/position-statement-hospitals>.

29. For more information on training, see Standard 9.

nology and its limitations. Each individual LEP person's language needs vary and may have a bearing on the selection of a particular interpreter or method by which the interpreter services are delivered. Courts using remote technology should still require a pre-session³⁰ to allow interpreters to establish whether they can communicate effectively with each LEP individual for whom interpretation is being provided. Judges should verify that the selected medium is an appropriate match for the particular LEP person. Even the most advanced video technology and skilled remote interpreter will not always be an appropriate fit for a particular LEP individual, who, for example, may not be able to communicate in this manner due to trauma or disability.

With ongoing technological advancement, courts will continue to encounter new and promising solutions to meet the language access needs of LEP persons. These should be encouraged as long as the following protections are implemented: the quality of the communication is not compromised; courts ensure both that the interpreter services are competent and that the medium used is appropriate; and, there is opportunity for confidential communication between counsel and the LEP client or other LEP participants in the proceeding where such communication is appropriate.

4.4 Courts should provide interpreter services that are consistent with interpreter codes of professional conduct.

Commentary

Interpreters operate under an interpreter code, or set of professional responsibilities, that carefully guides their actions both in and outside the courtroom.³¹ Most states have adopted such a code³² and national entities, such as the National Center for State Courts and the National Association for Judiciary Interpreters and Translators, also publish detailed guides for both judges and interpreters.³³ Common requirements include: maintaining accuracy, confidentiality, and impartiality; restricting communication to the limited role of interpreter; and not acting as an advocate, independent commentator, or fact-finder.³⁴ Interpreters are also under an ethical duty to inform the court of any conflicts of interest and any inability to understand any of the persons

30. This pre-session is discussed in full in Standard 4.4.

31. For more on interpreter codes of professional conduct, see Standard 8.4.

32. See, e.g., Wash. Ct. Code of Conduct for Court Interpreters R. 11.2, http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&set=GR&ruleid=gagr11.2 (last visited Apr. 19, 2011).

33. NCSC Court Interpretation Model Guides, at ch. 9; Model Code of Professional Responsibility for Interpreters in the Judiciary, www.ncsconline.org/wc/publications/Res_CtInte_ModelGuidePub.pdf. See also National Association of Judiciary Interpreters and Translators, <http://www.najit.org/about/NAJITCodeofEthicsFINAL.pdf>.

34. NCSC Court Interpretation Model Guides, at 202; Model Code of Professional Responsibility for Interpreters in the Judiciary Canon 3 Cmt. ("The interpreter serves as an officer of the court and the interpreter's duty in a court proceeding is to serve the court and the public to which the court is a servant. The interpreter should avoid any conduct or behavior that presents the appearance of favoritism toward any of the parties.")

for whom they are interpreting.³⁵ These codes of conduct were developed specifically to reflect the adversarial nature of the legal setting and to protect the court process and record. Courts need to be aware of and to take into account these ethical requirements in appointing, scheduling, and working with interpreters. Courts should also develop systems to ensure that interpreters comply with these ethical requirements, and that individual courts and judges do not implement procedures to the contrary.³⁶ Courts can promote compliance with the interpreter's ethical obligations by scheduling an adequate number of interpreters, providing time for a pre-session and addressing any concerns raised and refraining from asking interpreters to perform tasks outside of their limited role as interpreters.

Best Practices

Scheduling interpreters for legal proceedings can be a complicated arrangement depending on the complexity of the case, the number of LEP persons involved, the number of languages spoken and the duration of the proceedings. Technology and ethical considerations also dictate the number of interpreters needed, and a court should take into account the different interpreting functions that occur within a legal proceeding to determine the appropriate number of interpreters required for the matter. These functions reflect the fact that some interpretation is for all in the court to hear, whereas other interpretation is for the LEP person to understand the proceedings or consult with counsel.

Interpreter functions within the court setting include witness interpretation, proceedings interpretation, and interview or party interpretation. Witness interpretation occurs "during witness testimony for the purpose of presenting evidence to the court. This interpreting function is performed in the consecutive mode; the English language portions of the interpretation are part of the record of the proceeding."³⁷ Proceedings interpretation "is for a non-English speaking litigant in order to make the litigant present and able to participate effectively during the proceeding."³⁸ This func-

35. NCSC Court Interpretation Model Guides, at 202; Model Code of Professional Responsibility for Interpreters in the Judiciary Canon 3 Cmt ("Before providing services in a matter, court interpreters must disclose to all parties and presiding officials any prior involvement, whether personal or professional, that could be reasonably construed as a conflict of interest. This disclosure should not include privileged or confidential information. The following are circumstances that are presumed to create actual or apparent conflicts of interest for interpreters where interpreters should not serve: 1) The interpreter is a friend, associate, or relative of a party or counsel for a party involved in the proceedings; 2) The interpreter has served in an investigative capacity for any party involved in the case; 3) The interpreter has previously been retained by a law enforcement agency to assist in the preparation for the criminal case at issue; 4) The interpreter or the interpreter's spouse or child has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that would be affected by the outcome of the case; or 5) The interpreter has been involved in the choice of counsel or law firm for the case."). See NAJIT Position Paper on regarding Code of Ethics and Professional Responsibility, Canon 2; Impartiality and Conflicts of Interest, <http://www.najit.org/about/NAJITCodeofEthicsFINAL.pdf>.

36. Training is a necessary part of this process to educate court personnel on the role and professional obligations of the court interpreter. Standard 9 discusses training in more detail.

37. NCSC, Court Interpretation Model Guides, ch.2 at 34.

38. *Id.*; See also, Asian and Pacific Islander Institute on Domestic Violence, Resource Guide for Advocates and Attorneys on Interpretation Services for Domestic Violence Victims, (2009), at 11, <http://www.apiidv.org/files/Interpretation.Resource.Guide-APIIDV-7.2010.pdf>.

tion “is ordinarily performed in the simultaneous mode” and “the interpreter’s speech is always in the foreign language, in whisper mode (not out loud) to the litigant, and is not part of the record of proceedings.”³⁹ Interview or party interpretation is also not part of the record of the proceedings and “is interpreting to facilitate communication in interview or consultation settings. Interview interpreting may occur in conjunction with court proceedings or before or after court proceedings.”⁴⁰

Depending on the number of LEP persons involved in a legal proceeding, a court may need to appoint separate interpreters for each interpreting function needed in the matter. For example, where there are two LEP parties that speak the same language, the court may appoint one proceedings interpreter, so long as the court has the appropriate equipment necessary to transmit the spoken interpretation (in whisper mode) to both parties at their respective tables. However, within that same legal proceeding, the court should, when possible, appoint a separate interpreter for any LEP witnesses, and party interpreters to facilitate attorney-client communications during the proceeding.

Another consideration in scheduling is the appointment of different interpreters for different aspects of a legal proceeding, especially in those proceedings involving emotional or sensitive matters such as domestic violence or sexual abuse. Even though each interpreter is bound by confidentiality and neutrality provisions, and should be able to make an accurate interpretation, the appearance of impartiality or neutrality can be compromised when an interpreter has worked for one party or another in preparation for trial and then is brought in to interpret for the legal proceedings.⁴¹ Courts should establish procedures to track the interpreter’s prior contact with the parties and the case and, where possible, use a different interpreter to interpret the court proceedings to uphold the appearance of impartiality. This is important in situations where, for example, there are two LEP co-defendants, each with separate counsel, and each of whom has privately retained an interpreter to facilitate attorney-client communication in preparation for trial. In such a situation, it is inappropriate for the court to hire one of these interpreters to interpret for the trial due to the possibility of perceived bias in favor of one of the defendants. Where it is not possible to schedule a different interpreter, courts should inform all parties that the interpreter is “under oath to protect confidentiality of communications”⁴² and that the interpreter acts as a neutral party and is not an advocate for either side.

Finally, courts should schedule an adequate number of interpreters to avoid inter-

39. *Id.*

40. *Id.*

41. See note 2; NCSC Court Interpretation Model Guides, at 202; Model Code of Professional Responsibility for Interpreters in the Judiciary Canon 3 Cmt., *supra* note 154.

42. NCSC Court Interpretation Model Guides, at 143.

preter fatigue and resulting errors. Interpreting is a cognitively demanding and stressful process: the interpreter needs to listen, analyze, comprehend, and use contextual clues to convert the spoken word from one language to another, rendering a reproduction of the message in an equivalent meaning in another language. This process leads to fatigue and mental exhaustion, and the possibility of error increases after approximately 30 minutes of sustained simultaneous interpreting.⁴³ Courts should support the interpreter's ability to uphold the code of conduct's mandate to provide an accurate interpretation by scheduling a team of interpreters for long proceedings. The industry standard where continuous interpreting is required for more than one hour is team interpreting, which refers to the practice of using two rotating interpreters to provide simultaneous or consecutive interpretation for one or more individuals.⁴⁴

Once an interpreter is appointed, courts should ensure that the interpreter is informed of the nature of the proceeding, that the interpreter and litigant or witness have met to determine language compatibility and that the role of the interpreter has been explained to the LEP person. The court should provide the interpreter, in a timely manner, the relevant case information, including the nature of the hearing or interpreting assignment and any potentially emotionally charged content. This information allows the interpreter to assess his or her ability to faithfully interpret the matter.⁴⁵ Next, courts should provide adequate time for a pre-session interview between the interpreter and the LEP individual for whom he or she will interpret. One function of the pre-session interview is for the in-person, telephonic, or video remote interpreter to briefly communicate directly with the LEP person to make sure that they can understand one another and that any technology being used does not create a barrier. The pre-session interview covers non-case related basic information and routine questions to ensure that the two can communicate effectively.

Some courts have experimented with asking interpreters to give general information about their role to the LEP person, but interpreter ethical requirements have generally prohibited this unless it is simply reading or interpreting from a set script. One way to avoid the ethical problem is to provide general information in printed or video form, an approach which avoids the interpreter's exposure to information or questioning by the LEP person that may later call into question the interpreter's ability to remain neutral, and also ensures that the information provided to LEP persons is consistent. Another preferred method is to have the judge go over any general information and have the selected interpreter provide an interpretation; this has the added

43. *Id.*

44. Team interpreting is defined as "the practice of using two rotating interpreters to provide simultaneous or consecutive interpretation for one or more individuals with limited English proficiency." NAJIT, Position Paper on Team Interpreting, (2007), at 1, http://www.najit.org/publications/Team%20Interpreting_052007.pdf.

45. For more on the information interpreters need to determine if they are the appropriate person to interpret, see Standard 8.

benefit of modeling the process of interpreting at the same time as the explanation takes place and can be helpful for many LEP persons who have previously had little to no experience with formal interpreting.⁴⁶

Concerns raised by interpreters, as a result of a pre-session interview or at any time during the proceeding, should be treated with serious consideration. Under the model code of conduct, interpreters are required to “bring to the court’s attention any circumstances or conditions that impede full compliance with any canon of the code, including interpreter fatigue, inability to hear, or inadequate knowledge of the specialized terminology.”⁴⁷ This requirement applies to the interpreter’s ability to establish communication with the LEP person as well as to the appropriateness of the medium selected. The requirement covers both in-person interpreters and remote interpreter service providers. Contracts for remote services should include a requirement consistent with ethical obligations, including in particular the ethical obligation to ensure the ability to interpret in the proceeding and to notify the court of any barriers or reasons that the interpreter is not able to adequately interpret. In some instances, the court may need to intervene if the technology and /or the interpretation is inadequate, but the interpreter, for reasons of pecuniary interest, is unwilling to advise the court of the barriers.

Finally, courts should take special care not to ask the interpreter to perform a task that is outside the limited role of the interpreter. This can sometimes occur unintentionally when interpreters are asked to facilitate communication between two individuals who do not share a common language. A generally accepted task is providing sight translation of documents, either in English or in the second language. This is allowed but only to the extent that the interpreter is not asked to explain the document or answer any questions beyond simply reading it aloud as a sight translation. The model code of court interpreter conduct requires interpreters to remain impartial, avoid unnecessary contact with the parties, and abstain from commenting on matters in which they interpret.⁴⁸ The code prohibits the giving of advice or otherwise engaging in activities that can be construed as the practice of law.⁴⁹ Policies or practices that ask interpreters to go beyond sight translation of forms to explaining forms or court processes violate these provisions.⁵⁰

46. When considering the best way to provide basic information on the interpreter’s role, courts should evaluate what is the most efficient use of an interpreter’s time, whether translation of the information into the most common languages spoken in the area would be more efficient, or whether the development of video or audio recordings would provide greater access at a reduced cost. Also, courts should ensure that the interpreters are not inappropriately asked to step outside of their role to provide additional assistance to or information to LEP persons that should be provided by other court staff.

47. NAJIT, Code of Ethics and Professional Responsibilities Canon 8.

48. NAJIT, Code of Ethics and Professional Responsibilities, Canon 2.

49. NAJIT, Code of Ethics and Professional Responsibilities, Canon 4.

50. As discussed above and in Standard 7, it is very likely more cost effective to have materials translated and available for unrepresented litigants in written or video format. This avoids the cost of having to pay interpreters to sight translate a form numerous times and the likelihood that interpreters will be asked to answer questions on the materials.



STANDARD 5

Language Access in Court Services

Courts should provide appropriate language access services to persons with limited English proficiency in all court services with public contact, including court-managed offices, operations, and programs.

Commentary

While many courts provide interpreters for legal proceedings, the effective administration of justice also requires appropriate language access services for all court services used by the general public.¹ These should include all services that are provided, managed, supervised, or contracted for by the court. The court should ensure that language access is provided for these court services, even though the court may not itself be responsible for paying for these services. The providing entity may be obligated to provide such services due to federal or state law.

5.1 Courts should provide language access services for the full range of court services.

Commentary

The provision of language access services in court managed offices, operations, and programs is necessary to ensure equal access to justice for all and to provide for the effective administration of justice. In addition, the Department of Justice “expects courts to provide meaningful access for LEP persons to such court operated or managed points of public contact in the judicial process, whether the contact at issue occurs inside or outside the courtroom.”² Services covered by this guidance include all those necessary to access the courts, ranging from routine matters such as gathering information about court procedures from a court clerk, filing pleadings, paying

1. See DOJ LEP Guidance, at 41,471.

2. Id. See also COSCA White Paper at 20. “For example, the inability of a clerk to convey to the defendant, because of language difficulties, the need to return to the court for a later hearing, or to make payments on court-ordered fees on a certain date, often results in serious consequences to the defendant and negatively impact the court process.”

court-ordered fines, and using any court services incidental to the resolution of a legal matter. Where court services with public contact are funded by the court, whether or not they are housed inside the court, courts should ensure that language access services are provided. In some instances, courts rely on external programs to provide essential court functions.³ The court should verify that these programs are providing language access services, even if they are paid for by the programs themselves.

Best Practices

Courts should determine points of contact for which language services may need to be provided. These include: information counters; websites, services for *pro se* individuals; court clerk's offices; intake or filing offices; cashiers; records rooms; security personnel within the courthouse; and offices to pay fines.⁴ Courts should then assess all their services to determine which are essential to meaningful access to the court. The *DOJ LEP Guidance* states that “[p]roviding meaningful access to the legal process for LEP individuals might require more than just providing interpreters in the courtroom,” and that “[r]ecipient courts should assess the need for language services all along the process.”⁵ In the first instance, security screening procedures implemented by a court should not create barriers for LEP persons; for example, court security personnel should be provided with signage, video instructions, or a method to contact telephonic interpreters and should be trained on the need for and delivery of these services. In addition, language access services provided at the filing office are essential for a litigant to be able to access the courts. In contrast, courthouse tours are non-essential. Similarly, accessing information at the clerk's office or services offered as part of a *pro se* clinic are instrumental to a *pro se* litigant's ability to navigate the justice system, but information provided by community partners that does not relate to court services is non-essential.

In some instances, courts rely on external programs to provide essential court functions.⁶ These programs may separately be obligated under Title VI of the Civil Rights

3. For example, some state courts operate drug-testing offices or community service offices within the courthouse, while others contract out for these services.

4. Points of contact may also include, depending upon how a court is structured: probation offices; alternative dispute resolution programs; *pro se* clinics; criminal diversion programs; anger management classes; and other similar offices, operations, and other programs that are operated or managed by courts. The DOJ 2010 Letter to Chief Justices and State Court Administrators also includes an enumeration of such services and adds “any other similar offices, operations, and programs.” Letter to Chief Justices and State Court Administrators, at 3. For an example of the growing number of services available see the San Francisco Superior Court ACCESS (Assisting Court Customers with Education and Self Help Services) Program, a court-based information service which provides information on small claims, civil harassment restraining orders, name changes, gender changes, evictions, guardianship of the person, conservatorship of the person, small claims and limited civil mediation. Family law matters are referred to the Family Law Self-Help Center. See Superior Court of California, County of San Francisco, ACCESS, <http://www.sfsuperiorcourt.org/index.aspx?page=24>. (last visited Apr. 19, 2011). Similar services are available in courts across the country.

5. DOJ LEP Guidance, at 41,471. See also, Letter to Chief Justices and State Court Administrators, at 3 (“Some states provide language assistance only for courtroom proceedings, but the meaningful access requirement extends to court functions that are conducted outside the courtroom as well”).

6. For example, some state courts operate drug-testing offices or community service offices within the courthouse, while others contract out for these services.

Act to provide such services, in which case the court should verify that they are available. However, where the court relies on an external program to provide essential court functions and that program does not receive federal assistance, the court should ensure that language access services are provided. For example, a court could assign its staff interpreters to assist in providing language access services to the program.

Although services to deaf and hard of hearing individuals are required under a different legal obligation than those for LEP individuals, the processes developed to provide services to the deaf community can provide useful models to courts when developing similar services for LEP persons. Interpreter services are provided in and out of court, and include interpreter services for deaf and hard-of-hearing persons to participate in court services with public access.⁷ Sign language interpreter services are provided for deaf and hard of hearing individuals as a reasonable accommodation for accessing the clerk's office, and for other court services.⁸

5.2 Courts should determine the most appropriate manner for providing language access for services and programs with public contact and should utilize translated brochures, forms, signs, tape and video recordings, bilingual staff and interpreters, in combination with appropriate technologies.

Commentary

Courts should ensure that the manner in which language access for court services and programs are provided is appropriate to address the language needs of all LEP persons. Which language access services are necessary depends on the amount of advance notice the court has regarding the need, the complexity of the communication, and the setting; however, courts should ensure the availability of two-way communication in all court services and programs with public contact. This section provides guidance for courts to consider when developing these services and selecting options to meet these obligations.

7. See also Letter to Chief Justice and State Court Administrators, at 3, ("Most court systems have long accepted their legal duty under the Americans with Disabilities Act (ADA) to provide auxiliary aids and services to persons with disabilities, and would not consciously engage in the practices highlighted in this letter in providing an accommodation to a person with a disability. While ADA and Title VI requirements are not the same, existing ADA plans and policy for sign language interpreting may provide an effective template for managing interpreting and translating needs for some state courts.")

8. For example, the Kentucky Court of Justice appoints and pays for interpreter services for LEP and deaf individuals for all court proceedings and direct services. See Kentucky Court of Justice, Frequently Asked Questions, <http://courts.ky.gov/stateprograms/courtinterpreters/faqs.html> (last visited Apr. 19, 2011). For more information on the Kentucky Court of Justice Interpreter Services program, including an example of a notice about the availability of free interpreter services in 31 languages, see Kentucky Court of Justice, Court Interpreting Services, <http://courts.ky.gov/stateprograms/courtinterpreters/> (last visited Apr. 19, 2011).

Best Practices

Advance Notice of Need

The availability of advance notice of the need for language assistance varies by court service; some services are requested on an ad hoc basis, such as at a cashier's office, whereas others, such as a courthouse orientation class, are scheduled in advance. Where the service is accessed without advance notice, courts should ensure that LEP persons are not limited to accessing the services on particular days or times if this would result in an unnecessary delay.⁹ Courts can achieve this by employing bilingual staff in the most common languages to work in positions with ad hoc public contact. By adding remote telephonic or video interpreter services for languages in which no bilingual staff are available, courts can be sure that they are providing appropriate language access services that allow for two-way communication as needed.

Complexity of Communication

The complexity of the communication will also influence the selection of the appropriate language access service to meet the language needs of the LEP person. Court services and programs range from basic to very detailed. For example, the routine services at a cashier's window may be handled differently than the more complicated services at a court intake office. Where courts provide some of their information in written form, translating these documents into the most common languages may be adequate, as long as there is also a system for two-way communication (if available to English speaking persons) and for communication to an LEP person who is unable to read the translated information¹⁰ or speaks a language not included in the translated versions.

Finally, the appropriate language access service in a given court setting depends on the level of interaction between staff and the general public. Some services provide only informational materials, others have staff that interact with the public; each of these requires different language access services. The court service or program may provide language access services through a combination of the options listed below. A multi-faceted approach is recommended since it provides increased access while maximizing cost efficiency. Building language access services into the court's system for providing routine oral and written communications with the public and litigants creates greater certainty that the communication will occur, safeguards the court's promise of access to justice, and promotes public confidence in the courts.

9. DOJ LEP Guidance, at 41,461 ("For example, when the timeliness of services is important . . . a recipient would likely not be providing meaningful access if it had one bilingual staffer available one day a week to provide the service. Such conduct would likely result in delays for LEP persons that would be significantly greater than those for English proficient persons:").

10. A person may be unable to read the translated information because they are illiterate in their spoken language or due to disability.

Language Access Measures for Court Services

Courts can employ a variety of services to meet the language needs of LEP persons. The following sections describe the different measures—ranging from signs, handouts, and video or audio recordings, to bilingual staff and interpreters—a court can take. No single measure listed below is intended to be used in isolation but, implemented together, they can create a comprehensive language access program that is suited to the needs of different situations.

i. Translated Forms, Signs, and Handouts

At the most basic level, language access measures should include provision of translated written materials, such as signage, program information, program application forms, court pleading forms and other written materials containing information about accessing court services and programs.¹¹ The use of translated print materials reduces staff time and the need to provide repeated oral interpretation of basic information, leading to an overall cost savings for courts.¹² Many court services and programs with public contact have developed programmatic information in print formats in multiple languages. For example, the California Court Self-Help Center provides information on many civil law matters in Chinese, Korean, Spanish, and Vietnamese.¹³ While some courts provide this information directly, others provide it in collaboration with outside organizations.¹⁴

Courts should also develop and translate into the most common languages a list of Frequently Asked Questions and Answers or basic “Know Your Rights” documents to assist all users of their services and to reduce staff time in answering the most common questions.¹⁵ Providing this information in multiple languages is an effective language access measure, but doing so will not completely eliminate the need to provide for two-way communication. In languages that are translated, LEP persons may have questions, and in languages where no translated materials are available, LEP persons should have some means of

11. For a full discussion of the requirement to provide translated programmatic signage and notification of the availability of interpreter services, see Standard 2. Translation of written materials, a component of language access services, is further discussed in Standard 7.

12. The cost of translation services varies nationally; however, the amortization of translation services over time compared to the cost of staff time in providing a verbal explanation or the use of telephonic interpreter services often means that translation of programmatic information such as that described in this Standard results in cost savings. For a general overview of translation contracting considerations, see: American Translators Association, *Translation: Buying a Non-Commodity* (2008), http://www.atanet.org/docs/translation_buying_guide.pdf.

13. California Courts Self-Help Center, <http://www.courtinfo.ca.gov/selfhelp/languages> (last visited Apr. 19, 2011).

14. For example, LawHelp.org helps low and moderate income people find free legal aid programs in their communities and answers questions about their legal rights. All fifty states, plus the District of Columbia, Guam, Virgin Islands, and Puerto Rico have either a Law Help Website or a link from the law help site to their state's legal aid provider. Many of these sites offer information in multiple languages. See generally Helplaw.org, <http://www.lawhelp.org/> (last visited Apr. 19, 2011). For instance, New York's Law Help site provides information in 37 languages, see New York Law Help, www.lawhelp.org/NY/ (last visited Apr. 19, 2011), and Washington's Law Help site provides information about accessing civil legal aid services in 23 languages.

15. For example, the Superior Court of San Francisco provides a document entitled “Need an Interpreter?” in multiple languages. That document is also provided in a template form which allows other courts to easily modify the document to fit their local needs.

accessing the information. In all instances, LEP individuals should be able to ask questions and interact with court personnel to the same extent as those who speak English.

ii. Audio and Video Recordings

Courts should also consider the use of audio or video recordings of commonly asked questions. These methods of communication can be particularly effective in disseminating information to individuals and communities with low literacy rates. As with translated materials, audio and video recordings reduce the demand on court staff for repeated interpretation but should be supplemented with methods to provide two-way communication if available to those who speak English. Similar to translated materials, audio and video recordings are both efficient and economical in reaching a large audience.

iii. Bilingual Staff

Hiring bilingual staff who speak the languages that are frequently encountered in the court's jurisdiction is a particularly effective way to provide language access services.¹⁶ Bilingual staff in a court program can provide the same information they provide to English-speaking individuals, whether in a clerk's office, filing office, cashier's office, or other court service, directly to LEP persons. Although able to speak another language, bilingual staff are not hired as interpreters, but instead communicate directly with the LEP person in a shared language. To determine the appropriate staffing levels and to guide future staff hiring, courts should use demographic data, including data gathered internally, interpreter usage data, and external data.¹⁷

Courts should ensure that bilingual staff providing these direct services are competent in all languages in which they will communicate.¹⁸ Some bilingual staff persons may become certified by the court to work as interpreters,¹⁹ but courts should avoid using them as interpreters in legal proceedings if possible, as the two roles may be in conflict and could raise ethical concerns. As discussed in detail in the interpreter section below, bilingual staff would probably be disqualified from interpreting in the courtroom due to the violation of the

16. Even when courts hire bilingual staff who speak the most commonly spoken languages in the community, it is likely that there will be some LEP persons who speak a different language and bilingual staff thus will also need to have access to interpreter services for communication with such LEP persons.

17. See Standard 3.1 for a discussion of the different data sources envisioned here.

18. Language assessment tools are described in detail in Standard 8. See also Memorandum of Understanding Between the United States and Maine, *supra* note 71 (including provisions for creating a list of bilingual staff and for development of mechanisms to identify language access needs for LEP persons inside and outside of the courtroom).

19. According to the COSCA White Paper on Court Interpretation: Fundamental to Access to Justice, at 9, "good practices, however, support applying the same certification standards to bilingual court staff providing interpreter services in court proceedings as those applied to contract interpreters." See also *The Supreme Court of Ohio, Interpreters in the Judicial System, A Handbook for Ohio Judges*, at 54.

ethical rules of impartiality and neutrality.²⁰ The Department of Justice recognizes this concern, emphasizing that “there may be times when the role of the bilingual employee may conflict with the role of the interpreter (for instance, a bilingual law clerk would probably not be able to perform effectively the role of a courtroom or administrative hearing interpreter and law clerk at the same time, even if the law clerk were a qualified interpreter). Effective management strategies, including any appropriate adjustments in assignments and protocols for using bilingual staff, can ensure that bilingual staff are fully and appropriately utilized.”²¹

Courts should also limit the use of a bilingual staff member as an interpreter in situations outside of the courtroom to very low-risk, basic communications.²² When a court relies on bilingual staff, whose primary function is a task other than interpreting, to interpret between LEP persons and other staff members, the court should train them in the role of the interpreter and basic interpreter skills.

iv. Interpreters

The final component of a multi-faceted approach to providing language access in court services is the use of interpreters, either in-person or telephonically. Courts do not necessarily need to use court-certified interpreters for all services that occur outside of the courtroom and may use interpreters whose skills match an appropriate level of the court’s registered or tiered scale. Regardless of who is used, courts should ensure that the individual is qualified to interpret in the setting; this includes assessing the proficiency of the interpreter’s language skills in both English and the target language to ensure competence and knowledge of ethical responsibilities.²³

Courts should take great care that the use of interpreters in settings outside of the courtroom does not lead to ethical conflicts for interpreters who will appear in court, to confusion as to an interpreter’s role,²⁴ and to unnecessary restriction of the pool of qualified courtroom interpreters. Interpreting for other court staff in settings outside of the courtroom is permissible, but these inter-

20. See, NAJIT, Code of Ethics and Professional Responsibilities, Canon 2, “Court interpreters and translators are to remain impartial and neutral in proceedings where they serve, and must maintain the appearance of impartiality and neutrality, avoiding unnecessary contact with the parties.”

21. DOJ LEP Guidance, at 41,461.

22. This section is not referring to staff interpreters, who are discussed in full in the following section.

23. For more on the assessment of qualifications, see Standard 8.

24. Examples of this problem have occurred when a bilingual staff person has received or given information in a court service and is later asked to interpret for that same individual in a court hearing. Ethical obligations require the staff person, when working as an interpreter, to disclose this other prior role to the judge and all parties and may be disqualified from interpreting should one of the parties feel that the prior contact with the opposing party renders the interpreter partial to one party and unable to remain neutral. Concerns that such conflicts may lead to the inability to interpret in court generally result in court certified interpreters declining positions as bilingual staff for fear of ethical conflicts.

preters should not be asked to provide direct assistance or function as bilingual staff,²⁵ since they might become unintentionally involved in matters that would later disqualify them from interpreting in legal proceedings.

Thus, hiring a court certified interpreter to provide services directly, such as to LEP persons in a *pro se* clinic, would only be feasible where the roles are strictly defined, where the likelihood of working with a litigant in both capacities is reduced to avoid inefficiencies, and where the interpreter is properly trained to disclose all prior contact.²⁶ Under the model code of ethics, interpreters in their professional capacity “shall limit their participation in those matters in which they serve to interpreting and translating, and shall not give advice to the parties or otherwise engage in activities that can be construed as the practice of law.”²⁷

A recommended practice is for courts to create systems that prioritize certified interpreters for legal proceedings and provide an opportunity for lesser-credentialed but competent interpreters to develop their skills by interpreting in settings outside of the courtroom. This may be accomplished by coordinating calendars and scheduling interpreters in blocks of time and by the use of a tiered credentialing system.²⁸ The practice of hiring interpreters to provide direct services as bilingual staff is increasing due to the growing number of *pro se* LEP litigants and the recognition that, for a *pro se* LEP person, interpretation alone may not be sufficient to overcome barriers due to lack of familiarity with court culture and processes. In some jurisdictions, in response to the overwhelming number of LEP *pro se* litigants, courts are promoting an expanded role for the interpreter who, in addition to facilitating communication, provides the *pro se* individual basic information about the court and the nature of the legal proceeding in which he or she is involved.²⁹ These non-lawyer staff can provide legal *information* but are prohibited from the practice of law. Legal information provided may include helping *pro se* litigants navigate the judicial

25. This can occur when an interpreter who works in legal proceedings is also asked to provide assistance to LEP persons in programs such as the clerk's office or court information counters, not as an interpreter, but as a staff person, during times when not needed in court. The potential for ethical violations and role confusion is increased under these circumstances, especially in services for *pro se* litigants.

26. Though courts should proceed with caution due to potential ethical problems that may be presented, it may be possible to achieve some efficiencies by developing pools of interpreters who work in the courtroom in one area of the judicial system and assist in courthouse services in other areas for which they do not normally interpret.

27. For a general overview of interpreter ethics, see NCSC, *supra* note 8, at ch. 9. See also NAJIT, Code of Ethics and Professional Responsibilities Canon 4. (“Court interpreters and translators shall limit their participation in those matters in which they serve to interpreting and translating, and shall not give advice to the parties or otherwise engage in activities that can be construed as the practice of law.”).

28. The tiered credentialing system envisioned in this Standard is fully discussed in Standard 9.

29. For example, under California Rules of Court, rule 2.890 (e), “An interpreter must not give legal advice to parties and witnesses, nor recommend specific attorneys or law firms.” This rule is further explained in the California Administrative Office of the Courts Professional Standards and Ethics for California Court Interpreters (2008) manual, within a section entitled “Giving Legal Advice,” the guidance states “You do have a certain amount of discretion with regard to questions that are asked of you. There would be nothing objectionable to your answering general questions such as hours of operation and location of departments in the hall of justice, or matters that were stated in open court, including admonitions given by the judge.” http://www.courts.ca.gov/xbcrc/cc/Ethics_Manual_4th_Ed_Master.pdf, at 26.

system, such as by identifying necessary forms, and ensuring that those forms are completed appropriately, at times explaining and clarifying the content, particularly in regards to the court culture. Staff being used in this way are not functioning as interpreters and should never be labeled as such.

The Role of Technology in Delivering Language Access Services Outside of the Courtroom

Technology can play a role in ensuring equal access to the information provided by courts and in court programs. Many court websites provide information, including online forms, e-filing and self-help materials, in English written text. Millions of LEP individuals in the United States are barred from accessing this information. To address this problem, courts can incorporate features that enable LEP users to access the site's information through use of quality translated materials and interpreted audio and video recordings. Technology to create simple videos and audio recordings is advancing quickly. When courts create an online informational piece, resource, forms or self-help materials, they should create and post the non-English language versions without significant delay. Any project to create online content for court users should include the development of the same content in the most common languages spoken in the area.



STANDARD 6

Language Access in Court-Mandated and Offered Services

Courts should ensure that persons with limited English proficiency have access to court-mandated services, court-offered alternative services and programs, and court-appointed professionals, to the same extent as persons who are proficient in English.

Commentary

Courts mandate and offer services in criminal and civil matters because of the recognized benefits of participation for the individuals served, their families, the community and the courts themselves. The services and programs described within this *Standard* are a critical component of the justice system; lack of access to them can result in the loss of liberty and interference with important rights. An LEP person denied participation in such programs due to lack of language access may suffer extended jail time, the delayed return of a child, loss of access to driving and professional licenses or simply a less expedient resolution of the case.¹

This *Standard* focuses on language access services to court services and programs, an area that some jurisdictions have not addressed. The sections below discuss the unique considerations that arise in criminal and civil court-mandated and offered services to remind courts of the need to provide language access in civil as well as criminal services. The requirement to provide language access applies to all types of courts, including specialized courts, therapeutic justice courts, and problem-solving courts, in addition to traditional criminal and civil matters. *Standard 6.1* addresses the requirement for services in court-mandated, alternative sentencing programs, or other optional programs offered in conjunction with a criminal matter. *Standard 6.2* addresses the requirement for services in court-mandated programs or voluntary court-offered programs related to civil matters. *Standard 6.3* discusses the requirement for services in interactions with court-appointed or supervised professionals

1. The DOJ August 16, 2010 Letter to Chief Justices and State Court Administrators states that the “meaningful access requirement extends to court functions that are conducted outside the courtroom as well.” Letter to Chief Justices and State Court Administrators, at 3.

and *Standard 6.4* discusses the range of approaches courts may undertake to meet these obligations.

Courts play pivotal roles in leadership, education, and resource development to ensure that language access services are accessible to LEP communities, not just because of the courts' knowledge of the number and type of services needed, but also because of their authority to offer, require, and contract for those services. Courts are well situated to identify the appropriate providers for referrals of individual litigants, to coordinate with community providers to develop programs, to exercise leadership in assessing current needs and services and to help develop future resources.² Courts are also in the best position to identify providers who have failed to deliver language access services and encourage them to develop adequate services or discontinue referrals to those organizations. Where courts currently have limited contact with provider organizations, they should develop outreach and community contacts to ensure that the LEP individuals they refer are adequately served.

Courts should use the information in this *Standard* to determine the language access services needed. In general, courts should ensure that language access services are available; however, where it is impossible to provide language access services and the court offered or ordered service is not critical, participation by LEP persons may be waived.³ This is true for court-mandated services or programs in both civil and criminal matters. If courts require that an LEP person receive a service or attend a program without ensuring that language access services are provided, the LEP person may not receive the intended benefit and may fail to comply with program requirements, which could expose the person to further penalties or other adverse consequences. Courts should assess all services and seek out resources in order to avoid this predicament. The same reasons that make court mandated and offered services desirable for both the courts and for English speaking persons apply to individuals who are LEP; thus, courts should develop language access for all court services so that they can be available to all persons, regardless of their ability to speak English. Refer to *Standard 2.3* for discussion of criteria to be applied in determining whether and when it is appropriate to assess or recoup costs for language access services. In providing these language services, courts should be careful not to impose any limitations, including costs, that would have a chilling effect on the ability of LEP persons to access court-mandated and offered programs.

2. U.S. Dept of Justice, Bureau of Justice Assistance, *Strategies for Court Collaboration with Service Communities* (2002), <http://www.ncjrs.gov/pdffiles1/bja/196945.pdf>.

3. Judges should exercise their discretion where language-accessible services are not available so as to avoid denying the LEP person a service, benefit, or right. See *DOJ LEP Guidance*, at 41,446.

6.1 Courts should require that language access services are provided to persons with limited English proficiency who are obligated to participate in criminal court-mandated programs, are eligible for alternative adjudication, sentencing, and other optional programs, or who need to access services in order to comply with court orders.

Commentary

This section discusses those services that are mandated or offered in conjunction with the disposition of a criminal matter. These include all pre- and post-adjudication programs which are a part of the judicial process, including diversion, pre-trial conditions of release, conditions on bail, probation or conditions of parole, and alternative sentencing. Court-mandated services and programs include those in which a defendant may be required to participate by a court, such as substance abuse treatment, anger management and other counseling services, parole, and probation. Court-offered alternative services include alternative programs or conditions offered in lieu of bail, adjudication, and sentencing, as well as mediation and dispute resolution services. These services and programs are critical to the criminal justice process and often result in less time in custody and an increased likelihood of rehabilitation for a criminal defendant. LEP persons should not be denied participation in programs for which they are otherwise qualified because of a language barrier.

Best Practices

Court-mandated services or programs⁴ that are part of the pre- or post-adjudicatory process should all be language accessible. For example, where mental health counseling is a condition of bail, the counseling should be available directly in a language understood by the individual or appropriate interpretation services should be provided. Similarly, a person sentenced to participate in a court-ordered work release program is often required to participate in an interview to find an appropriate work placement.⁵ This initial interview may prevent the LEP person from complying with the order if the interviewer does not provide appropriate language access services.⁶ In both instances, denying an otherwise eligible LEP person participation in these

4. A more complete list of court mandated services includes: Alcoholics Anonymous, Alcohol Assessment, Alcohol Information School, Alternative Dispute Resolution Programs, Anger Management - Assessment/Evaluation/ Treatment, Arbitration, Behavioral Therapy Program, Chemical Dependency Assessment / Evaluation / Treatment, Community service, Counseling Services – general, Diversion programs, Divorce / Co-parenting classes, Domestic Violence- Assessment / Treatment, Drug – Evaluation / Assessment/ Treatment, Family Counseling, Marriage Counseling, Mediation, Mental Health- Assessment/ Evaluation/ Counseling, Monitored Supervised / Unsupervised Probation, Parenting Classes, Parole, Probation, Victims Panel (also commonly referred to as Victim Impact Panels), Work Crew.

5. See, e.g., The Superior Court of California, County of Napa, Criminal Division – Work Program, http://www.napa.courts.ca.gov/criminal/crim_work.htm (last visited Apr. 19, 2011).

6. Ideally, the work placement would take place in a location where the LEP person and the provider share a common language.

programs may deprive LEP individuals of “meaningful access” to court services.⁷

Optional alternative programs have proliferated in recent years. These services, offered as part of a diversion program, pre-trial conditions of release, or alternative sentencing programs, promote justice and result in a significant savings to the justice system.⁸ According to a Bureau of Justice Assistance Report, from 1990 to 2004, an estimated 62% of state court felony defendants in the 75 largest counties surveyed were released prior to the disposition of their case, with approximately one-half of those defendants released on non-financial conditions, including mandatory compliance with court-ordered services.⁹ Such programs provide important benefits and should be made equally available to LEP and non-LEP defendants.¹⁰ Furthermore, once a person enrolls in the alternative program, compliance becomes mandatory and non-compliance may result in substantial consequences; ensuring that language services are available increases the likelihood that LEP persons can successfully utilize and succeed in these programs.

6.2 Courts should require that language access services are provided to persons with limited English proficiency who are ordered to participate in civil court-mandated services or who are otherwise eligible for court-offered programs.

Commentary

In civil cases, court-mandated and voluntary court-offered programs often support and protect important rights. Participation in these programs results in less time apart from children, improved family stability through counseling services and parenting classes, and individual improvement through participation in alcohol or substance abuse treatment programs. Examples of services include classes, workshops, information sessions, evaluations, treatment programs, investigations, arbitrations, mediations and other alternative dispute resolution programs. Courts mandate participation in these programs for many of the same reasons that they mandate such services in the criminal context,¹¹ and non-compliance can prejudice constitutional

7. See 28 C.F.R. 42.104 (b).

8. See *Strategies for Court Collaboration with Service Communities*, *supra* note 201; see also *Applying Problem-Solving Principles in Mainstream Courts: Lessons for State Courts*, 26 Just. Sys. J. 1 (2005).

9. See U.S. Dep’t of Justice, Bureau of Justice Statistics, *Pretrial Release of Felony Defendants in State Courts* (2007), <http://bjs.ojp.usdoj.gov/content/pub/pdf/prfdsc.pdf>. (providing an overview of the pre-trial release conditions of felony cases in state courts from 1990 - 2004). See also U.S. Dep’t of Justice, Bureau of Justice Assistance, *Pretrial Services Programming at the Start of the 21st Century* (2003), <http://www.ncjrs.gov/pdffiles1/bja/199773.pdf> (providing an overview of the types and usage of particular court services.).

10. The Bureau of Justice Assistance, *The Community-Based Problem-Solving Criminal Justice Initiative* aims to broaden the scope of problem-solving courts, testing their approach to wider defendant populations and applying key problem-solving principles (e.g., links to social services, rigorous judicial monitoring, and aggressive community outreach) outside of the problem-solving court context. See Bureau of Justice Assistance, *The Community-Based Problem-Solving Criminal Justice Initiative*, http://www.ojp.usdoj.gov/BJA/grant/cb_problem_solving.html (last visited Apr. 19, 2011).

11. Extensive research and writing has been done on pre-trial services and conditions and the benefits of such services. See U.S. Dep’t of Justice, Bureau of Justice Assistance, *Expanding the Use of Problem Solving: The U.S. Department of Justice’s Community-Based Problem-Solving Criminal Justice Initiative* (2007). See also, ABA Criminal Justice Section Standards, Pre-Trial Standard 10-5.2. Conditions of Release (2002), http://www.pretrial.org/Docs/Documents/2.1.5_ABA_STANDARDS_ON_PRETRIAL_RELEASE.pdf.

and other important rights. Providing language access services for these programs is fundamental to ensuring equal access. While not required, voluntary court-offered services and programs in civil cases are also important in that they allow litigants to have faster and cheaper solutions to their legal issues, often also reducing financial and caseload burdens for courts. To the extent that these services offer a benefit for English speaking litigants, they should also be made accessible to LEP individuals who are otherwise eligible to participate.¹²

Best Practices

Similar to the considerations with respect to criminal services discussed above, judges should either ensure that services are accessible, or not penalize LEP persons for an inability to participate. Thus, when ordering mediation¹³ in a family law matter, judges should consider the availability of bilingual service providers¹⁴ who can meet the litigant's language needs directly. If language-specific services are not be available for the service needed, the court should ensure that the individual has access to the program with an interpreter.

Just as in the criminal context, increasing access to LEP persons, not waiving participation, should be the goal. Programs such as mediation and alternative dispute resolution often provide litigants with a faster, better, and less costly resolution to their legal matter; courts should ensure that these options are also accessible with language services in place.

6.3 Courts should require that language access services are provided for all court-appointed or supervised professionals in their interactions with persons with limited English proficiency.

Commentary

Court-appointed or supervised professionals or personnel are an important component of the justice system and courts daily rely upon their services to assist in the adjudication of both criminal and civil matters. Court-appointed or supervised professionals include counsel, guardians, guardians *ad litem*, conservators, child advocates, social workers, psychologists, doctors, trustees and other such persons who are employed, paid, or supervised by the courts, and who are required to communicate

12. See also, discussion in *DOJ LEP Guidance*, at 41,461.

13. In many courts, the mediation program is court-operated and the court is obligated to provide meaningful access to those services, as discussed in *Standard 5*. The programs and services included in *Standard 6* are not court-operated but are provided by separate entities to which the court may refer individual litigants for court-mandated services.

14. See Florida's Sixth Judicial District's Parent Education and Family Stabilization Course Provider List, which includes a column to identify providers who provide the course in languages other than English. Florida Dep't of Family & Children, Parent Education and Family Stabilization Course, http://www.jud10.org/CourtAdmin/Files/Parent_Education_Family_Course_Providers_List_05-05-09.pdf (last visited Apr. 19, 2011).

with LEP persons as part of their case-related functions. Courts appoint these professionals in criminal and civil matters to counsel litigants and provide necessary information to the court and their interaction with litigants promotes the fair and efficient administration of justice.

Best Practices

A court's obligation in these circumstances is to appoint a professional with demonstrated bilingual skills or require that the professional appointed use an interpreter in communicating with the client or ward.¹⁵ Courts can meet this obligation by appointment of an appropriately qualified bilingual professional or appointment and payment of interpreter services to facilitate the communication process.¹⁶ For example, a court should appoint a bilingual guardian so that there can be direct communication between the guardian and the LEP person, or the court should ensure that the appointed English-speaking guardian follows the court's procedures for hiring a qualified interpreter.

The obligation of the court-appointed or supervised professional to communicate is not limited to the parties for whom the professional has been appointed. At times, the professional will need to communicate with the litigant's family members, advocates, witnesses, and others. Where the professional needs to interview additional persons who can assist the litigant or the court, such interviews should not be limited to those with whom the professional shares a common language, and the need for interpreter services is not a reason to forgo such an interview. Courts should instruct court-appointed personnel of their obligations in cases involving LEP individuals and on the availability of language access services so that court-appointed professionals may appropriately fulfill their responsibilities.¹⁷

6.4 Courts should require the use of the most appropriate manner for providing language access for the services and programs covered by this *Standard* and should promote the use of translated signs, brochures, documents, audio and video recordings, bilingual staff, and interpreters.

Commentary

Courts may utilize a range of approaches, similar to those discussed in *Standard 5*, to

15. DOJ Letter to Chief Justices and State Court Administrators, at 3 (noting that "some recipient court systems have failed to ensure that LEP persons are able to communicate effectively with a variety of individuals involved in a case under a court appointment or order").

16. *Id.*

17. These *Standards* recognize that, except where appointment of counsel is required by law, courts are not generally involved with the provision of language access services between lawyers and clients. However, the *Standards* set out the expectation that all lawyers in civil and criminal cases – whether or not they are appointed by the court – should communicate with their clients in a language the client understands in order to uphold the lawyers' obligation to provide competent representation, consistent with the standards established by the ABA in the *Standards for the Provision of Civil Legal Aid*.

ensure that language access services are provided in court-mandated, court-offered alternative programs, and with court-appointed or supervised professionals. When the programs or services are operated or provided by courts directly, *Standard 5* addresses those operations.¹⁸ This *Standard* addresses the court's obligation to ensure meaningful access to services and programs not necessarily operated by the court but still relied upon as an integral component of the justice system, and discusses alternative procedures for courts to use when they encounter shortcomings in language services available within such programs.¹⁹

Best Practices

Many entities under contract with courts to provide services are recipients of federal financial assistance, and may have an obligation to ensure meaningful access similar to that of court-provided or staffed services.²⁰ When contracting for the services and programs covered by this *Standard*, courts should make the following determinations: how services within the scope of the contract will be accessible to all persons, including those with limited English proficiency; and how the delivery of those services will be accomplished, *i.e.*, whether through bilingual staff or interpreters. A court should first identify whether there is a community provider with bilingual staff in the languages relevant to litigants referred for services. The service providers' obligation to provide meaningful access to LEP persons should be specifically noted in the contract, or contained in written assurances, and the court should monitor the program's compliance by requesting a copy of the contractor's language access policies and procedures and asking for evidence of payment for language access services where appropriate.²¹

Even when not directly contracting for services, courts should maintain some control over the delivery of those services and retain their obligation to ensure meaningful access. When referring LEP individuals to programs not operated or provided by the courts directly but still relied upon as a critical component of the justice system, the court should ensure that these providers adequately understand their obligations. In addition, courts have the ability to refer litigants only to certain providers or to indicate a preference for providers who offer language access services. Competition

18. For example, many courts operate mediation services in the courthouse with court personnel. See Models of Funding for Ohio Court Mediation Programs, <http://www.sconet.state.oh.us/JCS/disputeResolution/funding/>.

19. Research is ongoing to determine the scope of services provided by courts, services generally provided by separate entities which are likely recipients of federal financial assistance, and services which may be provided by separate entities that do not have a legal obligation to provide language access services. Initial research has shown that some courts directly provide the following court-mandated services: mediation, parenting classes and victim impact panels; independent service providers that provide services mandated or offered as part of court proceedings, such as mental health agencies, substance abuse and chemical dependency treatment centers and domestic violence treatment providers, are commonly recipients of federal financial assistance and are themselves subject to the requirements of Title VI.

20. Information on determining whether an entity is a recipient of federal financial assistance can be found *supra*, note 52.

21. Both the contract and memorandum of understanding should include a description of the language access services required. See model court assurances at http://www.justice.gov/crt/about/cor/draft_assurance_language.pdf.

among providers for court referrals should lead to improved services for LEP persons if providers of quality services, including appropriate language services, are given increased referrals from the court.²²

In a few instances, courts may order an LEP individual to participate in a program that the court neither operates, nor pays for, and that is not a recipient of federal financial assistance or otherwise obligated to provide language access services.²³ Where there is no legal obligation requiring the provider to offer language access services, and the court cannot identify an alternative language accessible program, the court should waive the requirement or provide for an interpreter so that the LEP person can participate. For example, in a civil case where a judge orders a litigant to participate in counseling and the only local provider is not a recipient of any federal financial assistance, the court should ensure that interpreter services are available.

Courts can play an important role in identifying the sources of funding for language access services, and in educating and collaborating with providers to develop resources in the community. Courts should also take a leadership role in collaborating with community-based organizations and justice partners to develop additional resource capacity in specific areas and in the most common languages spoken in the surrounding communities.²⁴ Increased community outreach and collaboration with community organizations can assist courts in meeting the needs of all litigants in an efficient manner.²⁵

22. See Florida's Sixth Judicial District's Parent Education and Family Stabilization Course Provider List, which includes a column to identify providers who provide the course in languages other than English, http://www.jud10.org/CourtAdmin/Files/Parent_Education_Family_Course_Providers_List_05-05-09.pdf.

23. In these instances, the individual participant is responsible for the cost of participating in the program itself; however, an LEP individual may not be charged for the cost of the interpreter service associated with the program, as this would be discrimination based on LEP status/national origin.

24. For example, the New Mexico Administrative Office of the Courts New Mexico Justice System Interpreter Resource Partnership brought together the New Mexico State Police, the Administrative Office of the District Attorney, the New Mexico Public Defender Department, the University of New Mexico – Los Alamos, the University of New Mexico Hospital and School of Law, and several agencies within the New Mexico Human Services Department, such as the Income Support Division and the Youth and Families Department. See New Mexico Justice System Interpreter Partnership Report (December 2010), http://www.sji.gov/PDF/New_Mexico_Justice_System_Interpreter_Partnership.pdf.

25. June B. Kress, *Think Outside the Court: How Nonprofit Organizations Can Benefit Court Systems During Times of Economic Uncertainty*, <http://contentdm.ncsconline.org/cgi-bin/showfile.exe?CISOROOT=/ctcomm&CISOPTR=123> (last visited Apr. 19, 2011) (“While courts have not historically partnered with nonprofit organizations, the latter can augment court services, act as an advocate or conduit for funding, assist with community outreach, provide community education, and engage in research that results in needed justice policy reform.”).



STANDARD 7

Translation

Courts should establish a process for providing access to translated written information to persons with limited English proficiency to ensure meaningful access to all court services.

Commentary

Courts utilize written documents to provide information about services and programs, to initiate legal proceedings, to protect or establish important legal rights, and to inform litigants of the outcome of court cases. Lack of access to translated materials in the context of legal proceedings and court services creates impediments to justice and can result in great harm. Courts should facilitate meaningful access by providing written materials in translated form to LEP persons.

“Translation” is defined as converting a written text from one language into written text in another language. The source of the text being converted is always a written language.¹ “Transcription” refers to the process of producing a written transcript of an audio or video recording, where the recording is in a language other than English.² “Sight translation” refers to a hybrid of interpreting and translating in which the interpreter reads a document written in one language while translating it orally into another language. Professional “translators” possess the necessary skills to render a document into the target language while retaining the meaning and accuracy of the document’s source language. The skills and tools used in translation are not the same as those used in interpretation, although some individuals may be proficient in both tasks.

Because translation is a process that takes more time than interpretation and has higher initial costs, courts have generally not provided translations of written mate-

1. NCSC, *Court Interpretation Model Guides*, at 33.

2. See National Association of Judiciary Interpreters and Translators, Position Paper, General Guidelines and Minimum Requirements for Transcript Translation in Any Legal Setting (May 1, 2009) <http://www.najit.org/publications/Transcript%20Translation.pdf>.

rials as often as they have used interpreters.³ This section provides guidance to help courts increase the number and quality of translations available in a cost-efficient manner and to ensure meaningful access to services. *Standard 7.1* discusses the need for translating documents and describes how to determine which documents to translate and to identify the languages into which the documents should be translated. *Standard 7.2* describes the necessary components of a translation protocol to ensure that translations are done accurately and efficiently. *Standard 2.3* describes criteria to be considered in determining whether and when the cost of translating individualized documents prepared in a particular proceeding may appropriately be assessed or recouped.

7.1 Courts should establish a system for prioritizing and translating documents that determines which documents should be translated, selects the languages for translation, includes alternative measures for illiterate and low literacy individuals, and provides a mechanism for regular review of translation priorities.

Commentary

When determining which documents to translate, courts should consider the importance of the service, benefit, or activity involved, the nature of the information sought, and the number or proportion of LEP persons served. A comprehensive approach to determining which documents to translate incorporates an assessment of written materials to identify “vital” documents,⁴ the use of demographic data to determine the languages into which materials will be translated, and the creation of a plan to phase-in additional documents and languages over time.

Best Practices

Identifying Vital Documents for Translation

Identification of a court’s “vital documents” is the necessary first step in providing access to written materials for LEP persons. Determining which documents and forms to translate requires an individualized assessment. The *DOJ LEP Guidance* explains that “whether or not a document (or the information it solicits) is ‘vital’ may depend upon the importance of the program, information, encounter, or service involved, and the consequence to the LEP person if the information in question is not provided

3. Translation is a one-time expense as opposed to the repeated and ongoing need for oral interpretations of documents. Translations of documents should be determined on a “case-by-case basis, looking at the totality of the circumstances in light of the four-factor analysis.” *DOJ LEP Guidance* at 41,463. “Consideration should be given to whether the upfront cost of translating a document (as opposed to oral interpretation) should be amortized over the likely lifespan of the document when applying the four-factor analysis.” *Id.*

4. For a discussion of the DOJ four-factor analysis, see *Standard 1*.

accurately or in a timely manner.”⁵ Under these criteria, a broad range of court documents and forms may be considered “vital” if they involve decisions regarding liberty, safety, property, and relationships that have significant consequences for an LEP person. Examples of vital written materials, include the following:

- Consent and complaint forms,
- Intake forms with the potential for important consequences,
- Written notices of rights; denial, loss, or decreases in benefits or services; parole and other hearings,
- Notices of disciplinary action,
- Notices advising LEP persons of free language assistance, and
- Applications to participate in a program or activity or to receive benefits or services.⁶

This list is not exhaustive, but provides a guide for courts to evaluate their documents in light of the overarching goal of providing access to “vital” written documents. Court documents that may be determined to be “vital” fall within three general categories: 1) court information; 2) court forms; and 3) individualized documents. Considerations in identifying documents as “vital” within each of these categories are discussed below.

Information About Court Services And Programs

Information regarding court services and programs is critical to meaningful access for LEP persons. Many court brochures, guides and other documents contain information about court services and programs, rights, responsibilities, and other information that facilitates a litigant’s ability to seek relief available through the court. “Awareness of rights or services is an important part of ‘meaningful access.’”⁷

Information about court services and programs should be made widely available in multiple languages. The content of documents such as guides, “Know Your Rights” flyers, self-help materials, and instruction booklets, is likely to remain fairly constant and should be translated and distributed widely.⁸ As part of the planning and review process, courts should consider prioritizing the translation of documents relevant to the protection of a litigant’s safety or the safety of a child. As noted in *Standard Two*, notice of both the availability of language access services and the means of obtaining

5. DOJ LEP Guidance, at 41,463.

6. *Id.*

7. *Id.*

8. Many state courts offer programmatic information in a variety of languages. Some of this information is centralized in self-help centers, legal aid resource websites (including the law help network), and other sources. For example, the Centro de Ayuda de las Cortes de California provides materials in Spanish that help individuals navigate the California court system. <http://www.courtinfo.ca.gov/selfhelp/espanol/>.

these services are considered “vital” and should be provided in the languages likely to be encountered in the communities in the court’s jurisdiction. The content on a court’s public website is often informational in nature and should be considered for translation. Alternate formats for providing translated information, including websites, are discussed in *Standard 7.2*.

Court Forms

Court forms are vital to accessing courts and protecting rights, and include pleadings, summons, waiver forms and any notice that requires action by the person receiving it. Generally court pleading forms used to initiate or respond to a legal matter are documents that are considered “vital.” Most courts translate only a relatively small percentage of the court forms they have available in English and the number of translated forms varies by language and case-type.⁹ However, many courts are increasing the availability of translated materials, particularly in the area of family and housing law. For example, the Tennessee Administrative Office of the Courts provides translated court forms in Spanish, Vietnamese, and Korean, and is expanding both the languages and forms for which translations are available.¹⁰ Other courts have engaged in collaborative efforts with local legal aid providers to create online document preparation materials in languages other than English. In one instance, a legal aid organization in Idaho, in collaboration with the court, has created four interactive online forms in Spanish, which guide the user through a series of questions to produce the final pleading.¹¹

Case-Specific Documents

Translation of documents in a specific proceeding may be necessary for the efficient administration of justice and for the enforceability of court orders. In addition, the principles of access to justice and fairness require that courts provide access to these materials in a language that is understood by the litigant. These documents include foreign language evidentiary documents and court orders. While such documents are often considered the most difficult to translate, courts should make every effort to have these materials translated and should consider alternate formats to assist in this effort.

Foreign language evidentiary documents submitted in a proceeding, including foreign language tape transcriptions, are often governed by court rules regarding

9. For example, Tennessee courts provide 65 documents translated into Vietnamese and Korean, and 69 documents translated into Spanish, <http://www.tsc.state.tn.us/geninfo/programs/interpreters/Interpreters3h.htm>. Washington State courts provide many court forms in 6 languages, <http://www.courts.wa.gov/forms/?fa=forms.contribute&formID=72>.

10. Tennessee Administrative Office of the Courts, <http://www.tsc.state.tn.us/geninfo/programs/interpreters/Interpreters3h.htm>; see also, California Courts, translated court forms, <http://www.courts.ca.gov/partners/53.htm>.

11. Idaho Legal Aid Services, Inc., <http://www.idaholegalaid.org/es/node/1231> (last visited Apr. 19, 2011).

sufficiency of evidence. Some courts allow submission of written foreign language documents through the court interpreter who provides a sight translation¹² of the written material for the record.¹³ In other courts, admission of the foreign-language document is at the discretion of the judge. Transcription of foreign language audio recordings should not be done in the manner of sight translations; advance notice, planning and translation by a qualified translator are required.¹⁴ All courts should ensure that court rules regarding foreign language documents and audio recordings provide a way for all LEP persons to submit these materials into evidence through transcription translation by a qualified translator or through sight translation by a qualified interpreter, depending on the evidence offered.

Translating court orders helps ensure that they are enforceable. When an LEP individual is subject to a court order but the order is only provided in English, there is a risk that court time will be needlessly consumed to deal with non-compliance or that the administration of justice will be frustrated if the order is unenforceable. Even when an oral interpretation of the order has been given, the LEP person usually needs to rely on memory for the details of the order, placing an unfair burden on the individual and making it difficult to follow specific terms. For example, in a termination of parental rights case, the Supreme Court of Nebraska reversed the lower court's ruling terminating the mother's rights because, among other things, the mother never received a copy of the case plan in her native language, and so her failure to strictly comply with the plan was insufficient grounds to warrant termination.¹⁵ The risk of significant harm to the LEP individual who receives no translation of operative documents in a legal proceeding has been recognized in both civil and criminal cases.¹⁶

Some courts have been proactive in their efforts to provide translations of documents in specific cases such as domestic violence protection orders. A study conducted by the National Center for State Courts reported that the Eleventh Judicial Circuit, the Circuit Court of Miami-Dade County, and the Superior Court of the District of Columbia were all providing protection orders translated into non-English languages.¹⁷ In Miami-Dade County, the Civil Interpreter Unit translates court documents, letters, motions, answers, and orders, and transcribes 911 calls and other audio recordings for submission in court. It also provides sight translation for all foreign

12. NCSC, *Court Interpretation Model Guides*, at 33.

13. NAJIT, *Modes of Interpreting* (2006), at 2.

14. For more information on tape transcription of foreign language evidence in a legal proceeding, see NAJIT, <http://www.najit.org/publications/Onsite%20Simultaneous%20Interpre.pdf> (website last visited May 6, 2011).

15. *In re Interest of Angelica L. and Daniel L., State of Nebraska v. Maria L.*, 277 Neb. 984, 1010-11, 767 N.W.2d 74 (2009). By the time the Nebraska Supreme Court heard the case and ruled in favor of reunification, the mother and her children had been separated for four years.

16. See *United States v. Mosquera*, 816 F. Supp. 168, (E.D.N.Y. 1993), (holding that the Sixth Amendment required Spanish-speaking defendants to receive written translations of documents including the indictment and any statute referenced therein, any plea agreement and statutes referenced therein, and any pre-sentence report with costs being allocated to several government entities).

17. NCSC, *Serving Limited English Proficient (LEP) Battered Women: A National Survey of the Courts' Capacity to Provide Protection Orders*, (2006), http://www.ncsonline.org/d_research/Documents/LEP_NIJFinalReport.pdf.

language documents offered as evidence as well as interpreter services. Translations of case-specific documents are provided by staff in the following languages: Spanish, Haitian Creole, Russian, Portuguese, French, and Italian.¹⁸ Courts in California and Texas are participating in pilot projects to create a process for producing court orders in Spanish.¹⁹

Determining the Languages for Translation of “Vital Documents”

In addition to identifying which documents to translate, courts should determine the languages into which the materials will be translated. Because of the importance of information in written documents, courts should provide information in as many languages as possible based on data on community needs.²⁰ Using demographic data for its jurisdiction, a court should identify the languages of the LEP individuals commonly coming into contact with the court as well as those additional LEP individuals likely to be affected by the court’s services or programs, even if they do not yet directly access court services. Courts should translate vital documents into “at least several of the more frequently-encountered languages and . . . set benchmarks for continued translations into the remaining languages over time.”²¹

For recipients of federal financial assistance, the DOJ LEP “safe harbor” provision offers some useful guidance, but it should be read in the context of the guidance’s emphasis on “meaningful access” as the guiding principle to determine the languages into which documents should be translated. Under the “safe harbor” provision, the following circumstances provide strong evidence of compliance with Title VI obligations: “(a) [t]he DOJ recipient provides written translations of vital documents for each eligible LEP language group that constitutes five percent or 1,000, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered. Translation of other documents, if needed, can be provided orally; or (b) [i]f there are fewer than 50 persons in a language group that reaches the five percent trigger in (a), the recipient does not translate vital written material but provides written notice in the primary language of the LEP language group of the right to receive competent oral interpretation of those written materials, free of cost.”²²

The “safe harbor” provision is a guide; however, courts should be mindful that the provision applies “to the translation of written documents only” and “do[es] not affect the requirement to provide meaningful access to LEP individuals through competent oral interpreters where oral language services are needed and are reasonable.”²³ The

18. *Id.*, pp. 85 – 92.

19. Pilot projects in California and Texas are in current development. Resources will be posted at the ABA website as they become available.

20. DOJ LEP Guidance at 41,463.

21. *Id.*

22. *Id.*

23. *Id.*

DOJ LEP Guidance setting forth a “safe harbor” distinguishes between written translation of a document, which may take substantial time and multiple levels of review, and sight translation, which provides an oral interpretation of a written document to a single user. Thus, courts receiving federal financial assistance should be aware that they are obligated to provide an alternative method of translation for an individual who speaks a language in which written translation is not provided.

Alternatives for Illiterate and Low-Literacy Individuals

A court may be hesitant to translate written materials into a language when low literacy rates in the particular language may be perceived as limiting the usefulness of a translated written document. However, before deciding not to translate, courts should have current and reliable data to support the belief regarding low literacy. Census data generally used to determine LEP population numbers and trends does not currently include information on the literacy rate of LEP individuals in their native language.²⁴ Literacy rates are not static and courts should periodically gather data and reevaluate any decision not to provide a written translation on this basis.²⁵ Courts should also take into account the changing nature of literacy rates among different immigrant age demographics. Where a court decides to forgo a written translation because of this reason, it should consider the use of audio or video recordings as a way to provide access to the information in a useful way.

System for Regular Review of Vital Documents and Languages for Translation

Once a document has been translated, courts should adopt a process to ensure that the translation is updated any time the original document is revised. In addition, as new forms are created, courts should consider them for translation. In this way courts can ensure that translated documents are current and that new forms are available for LEP persons as well as for English speakers. This review should also include planning for future translations and expanding the number of translated documents. This system for regular review of documents should be developed as part of the translation protocol that is described below.

7.2 To ensure quality in translated documents, courts should establish a translation protocol that includes: review of the document prior to translation for uniformity and plain English usage; selection of translation technology,

24. The U.S. Census Bureau 2000 Census asked if the individual spoke a language other than English at home; however, it did not contain a question about literacy in either English or a primary or native language. See U.S. Department of Commerce, Bureau of the Census, 2000 Census Form, <http://www.census.gov/dmd/www/pdf/d02p.pdf>.

25. One source for literacy data is the U.S. Department of Education, National Center for Education Statistics, English Literacy and Language Minorities in the United States, a National Adult Literacy Survey, (2001), http://www.usc.edu/dept/education/CMMR/FullText/EngLit_LM_inUS.pdf; NCES website, <http://nces.ed.gov/pubsearch/pubsinfo.asp?pubid=2001464> (last visited Apr. 19, 2011).

document formats, and glossaries; and, utilization of both a primary translator and a reviewing translator.

Commentary

The development of a comprehensive translation protocol will assist courts in planning for and providing high quality translated materials. A comprehensive protocol will also help a court provide language access to written materials in an efficient manner. Centralized management of translations can also assist courts in providing competent translations. In contracting for translations, courts should track translations projects, obtain and store translated documents from individual translators to print on demand, and coordinate updating translations.

Best Practices

Centralized coordination, as discussed in *Standard 10*, can assist with these tasks and with each of the following components.²⁶ Courts should establish a translation protocol by reviewing their current practices for translations to ensure they have the elements described below.²⁷

Review of Document Prior to Translation

Courts should review all documents prior to translation. Many documents within a state court system are similar in content with only slight differences so translation of each document at the local level may not be an efficient use of court resources; by reviewing the documents in advance courts can identify efficiencies and cost-savings. Some courts have begun to address this issue by standardizing and simplifying court orders. One way to do this is to reduce the amount of individualized information in the form and develop checklists of commonly used options. By creating checklists instead of fill-in-the-blank sections, courts can translate the majority of the form in advance, adding the limited individualized information with little additional time and cost.²⁸

Next, courts should review documents to ensure that they contain consistent terminology. The first step in this process is to ensure the documents are written in plain language.²⁹ “Plain language” means “readers understand . . . documents more quickly.

26. One example of this type of coordination around translation is the Ohio Supreme Court Advisory Committee on Interpreter services, in collaboration with the Ohio Judicial Conference, <http://supremecourt.ohio.gov/JCS/interpreterSvc/forms/default.asp>.

27. For example, in Washington, the Administrative Office of the Courts adopted a translation protocol for all state court forms which includes each of these elements and requires that the original translation be conducted by a certified translator.

28. For example, a project in California is currently reviewing multiple court forms and orders, converting them to plain language, and reducing the number of blank fields requiring a written response by replacing them with standardized checklists. Washington State’s Form Petition for Order for Protection, WPF DV 1.015, utilizes a similar format, <http://www.courts.wa.gov/forms/?fa=forms.static&staticid=14> (follow “WPF DV 1.015” hyperlink).

29. “Plain language (also called Plain English) is communication your audience can understand the first time they read or hear it.” The Plain Language Action and Information Network, www.plainlanguage.gov (last visited Apr. 19, 2011).

Readers call less often for explanations. They make fewer errors filling out forms. They comply more accurately and quickly with requirements.”³⁰ Documents should be reviewed for readability in English to ensure that a translation will be useful and that the translator will not be asked to create a “simplified” version of the English document. The second step in creating documents that contain consistent terminology is the use of legal glossaries. The legal glossary in this context is the English glossary of legal terminology used by the court, so that written materials produced by the court refer to topics within a document in a consistent manner. This process will be coupled with the translator’s use of a legal glossary in the language of the translation. Those glossaries are discussed below.

Selection of Translation Technology, Document Formats, and Glossaries

i. Technology

A court’s translation system should incorporate technology in a way that promotes efficiencies for requesting, processing, distributing, and maintaining translated written materials. As noted in a 2011 Migration Policy Institute report, “translation and interpretation programs have developed in-house systems to allow them to more effectively manage requests for their services and to track resource needs and allocation.”³¹ In determining which kind of translation technology to use, courts need to be aware of two general categories: translation memory software and machine translation.

Translation memory software uses “stored memory to reuse pre-translated phrases in subsequent translations;”³² this allows courts to develop an individualized database of all prior translations. When translations are done internally, courts can capitalize on translation memory software to promote efficient and consistent translations that build on prior documents. When done externally through translation companies, courts should work closely with the provider to ensure consistent translations and efficient use of resources.³³ Most translation companies utilize translation memory software which assists in the creation of consistent forms, but this does not always result in cost savings for the court if

30. The Plain Language Action and Information Network <http://www.plainlanguage.gov/whyPL/index.cfm> (last visited Apr. 19, 2011) (“Plain language writing saves time. If we save time, we save money. Plain language is good customer service and makes life easier for the public.”). See also The Plain Language Act of 2010, H.R. 946, 111th Cong (2010). While applicable to executive branch federal agencies, this Act provides information regarding the usefulness of and movement toward plain language documents.

31. Migration Policy Institute (MPI), National Center on Immigrant Integration Policy, *Communicating More for Less: Using Translation and Interpretation Technology to Serve Limited English Proficient Individuals*, (January 2011), <http://www.migrationpolicy.org/pubs/LEP-translationtechnology.pdf> [hereinafter MPI, *Communicating*].

32. *Id.* at 12.

33. See American Translators Association (ATA), *Translation: Getting it Right, A Guide to Buying Translations* (2003), for a complete discussion of the considerations in working with a translation company to ensure quality outcome, http://www.atanet.org/docs/Getting_it_right.pdf. ATA also provides a directory of several translation companies on its website, http://www.atanet.org/onlinedirectories/tsd_corp_listings/tsd_corp_search.fpl (last visited Apr. 19, 2011).

the forms used in the software are not relevant to the particular court forms being translated. Working closely with the translation company will allow a court to capitalize on stored memory of prior translations – making translations less expensive and quicker to produce.

The second type of common translation technology is machine translation. Machine translation involves technology that “automatically translates written material from one language to another without the involvement of a translator.”³⁴ Courts should use caution when considering any kind of machine translation, as it has been found to be “unacceptably unreliable” in its current format.³⁵ According to a test reported by the Migration Policy Institute, machine translation’s common use of “roundtrip” translation (translating a phrase from English to another language and then back to English) results in a phrase that can become muddled or change altogether.³⁶ This risk is demonstrated in the following example from the report: “Please fill out the top part of this form,” is changed to “Please fill in this form the crown.”³⁷ As this technology develops over the coming years, it may become a viable option for translating some court information; however, courts should be very cautious in pursuing this option unless and until it reliably produces excellent quality translations.

ii. Document and Alternate Formats

Utilizing standardized document formatting in producing translations is critical to avoiding confusion, waste, and inefficiency. Proper document formatting should include a standardized naming practice for the identification of translated documents. Standardized naming practices typically include the identification of the form, the language into which translation is provided and the date of the original translation and any updates.³⁸ Each document should also contain a message that states the court’s policy on whether the forms can be submitted in the foreign language.

One recommended method for formatting documents involves providing the English text along with the translation in a multilingual format.³⁹ In this approach, courts provide the English and the foreign language text together in

34. MPI, *Communicating*, at 13.

35. Clearinghouse Review, *How Effective is Machine Translation of Legal Information* (2010). [<http://www.povertylaw.org/clearinghouse-review/issues/2010/2010-may-june/mule-johnson.pdf>] (subscription required).

36. MPI, *Communicating*, at 13. Roundtrip translation, like back translation, can result in a different translation of the original because of individual word choices in the original translation. It doesn’t necessarily mean that the original translation was incorrect. The use of roundtrip translation is conducted by a qualified translator who can review both translations for accuracy. Current machine translation technology is not capable of this level of review.

37. MPI, *Communicating*, at 13.

38. For more information on translation quality measures, the National Center on Immigrant Integration Policy has several suggestions on its website, http://www.migrationinformation.org/integration/language_portal/corner_dec08.cfm (last viewed Apr. 19, 2011).

39. Multilingual format is used here to denote the practice of having multiple languages on one form; one of which would always be English.

one document. This approach has been adopted by many courts due to staff inability to recognize monolingual non-English forms and the administrative complexity of tracking and maintaining translations that are only produced in a foreign language. In addition, English-speaking professional staff often assist LEP persons with forms; providing the English text next to the foreign language text reduces the risk of using a form in error, and increases the likelihood that the form will be filled out in English.⁴⁰ Bilingual staff may also have difficulties assisting LEP persons filling out forms that are only provided in the foreign language due to a written literacy level that is lower than their oral proficiency.

Technology can be an effective tool for providing access to written materials in alternate formats for case-specific court documents and can include recording oral interpretations of court orders and sight translations. By coupling already existing interpreting services with the technology of MP3 devices, cellular phones with advanced capabilities for recording,⁴¹ or cassette-recordings, individual litigants can be provided with a recording of the in-court interpretation of the court order or sight translation for future reference. Courts need to inform the litigant that the oral interpretation can be recorded and allow time for the litigant or the interpreter to prepare the recording device. Courts should consider providing court interpreters or courtrooms with MP3 devices or cassette recorders and should work with service providers, including domestic violence agencies, to provide recording devices into which the litigant or interpreter can record an audio version of the communication.⁴² Some governmental agencies have addressed the need to provide translated orders or determinations by developing systems that create a written notice in the language of the litigants explaining that they may call the number provided on the notice to hear the order read to them by an interpreter.⁴³

Courts should also consider using alternate formats to increase accessibility to their written documents. Alternate format documents include oral or video recordings of generally applicable information. The recordings can then

40. Translated forms should include a message, in the second language and in English, regarding the court's policy on forms being submitted in the foreign language.

41. The increasing availability of Smartphone technology and mobile computing devices is promising; however, courts should consider other alternatives, such as those noted in this section, that do not depend on a litigant's access to these devices.

42. For more information on this project idea, see Migration Policy Institute, *Communicating More for Less: Using Translation and Interpretation Technology to Serve Limited English Proficient Individuals*, (2011), which cites a proposed project by New York City Administration of Children's Services translating documents into 9 languages and sight translating all non-translated documents. The program is considering recording a sight-translation of the non-translated documents.

43. For example, the Washington Office of Administrative Hearings uses this system to provide litigants with access to the hearing officer's decision. All decisions are rendered after the hearing and are sent via mail. LEP individuals receive the order in English along with a note to call the number provided to have an interpreter read the order to them. Some concerns have been raised regarding this system because, depending on the language of the litigant, the interpreter may or may not be OAH staff and the phone number provided may be the personal contact number for the interpreter. Also, courts may want to weigh the cost of ongoing interpreter services compared to the one-time cost of providing a recording of the interpretation or by providing a written translation of the order.

be posted to the court's website and shown in the courthouse at information counters and self-help areas. An example of this approach is the Superior Court of California, County of Contra Costa, which provides videos describing the services of the clerk's office in 7 languages.⁴⁴

iii. Glossaries

When translating documents, courts should provide the translator with a glossary of standardized legal terminology in the target language. This requires courts to make available legal terminology glossaries in all languages for which the court provides translated materials. A centralized office should obtain or help develop a legal terminology glossary for each language and require the use of such a glossary by all translators. Providing glossaries increases the likelihood that documents are translated using consistent terminology.⁴⁵ The National Center for State Courts provides legal terminology glossaries in six languages on its public website, and several state court interpreter programs have developed legal glossaries in a number of languages.⁴⁶ For example, court administrator offices in California, Minnesota, and Washington have each developed legal glossaries in multiple languages and made them available on their publically accessible websites.⁴⁷

Selection of Primary and Reviewing Translators; Ensuring Accuracy in Translations

The final component of a comprehensive translation protocol is the use of primary and reviewing translators. In selecting both a primary and reviewing translator, courts should ensure that a "qualified" individual, preferably a certified translator, conducts the primary translation and the review.⁴⁸ The *DOJ LEP Guidance* recognizes that "particularly where legal or other vital documents are being translated, competence can often be achieved by use of certified translators."⁴⁹

44. Multi-lingual videos in English, Spanish, Vietnamese, Punjabi, Korean, Tagalog, and Mandarin welcoming litigants to the court and introducing the court's online self help services are available on the Superior Court's website, <http://www.cc-courts.org/index.cfm?fuseaction=Page.viewPage&pageID=2285> (last visited Apr. 19, 2011). See also, "Best Practices in Court-Based Programs for the Self-Represented: Concepts, Attributes, Issues for Exploration, Examples, Contacts, and Resources" (2008), at 20. (describing the use of video to provide court information, and giving examples of courts, self-help services, and legal aid providers using this technology); http://www.americanbar.org/content/dam/aba/migrated/legalservices/sclaid/atjresourcecenter/downloads/best_practices_7_08.authcheckdam.pdf, Contra Costa Virtual Self Help Center, <http://virtual.cc-courthelp.org/index.cfm?fuseaction=page.viewPage&pageID=5434>, Minnesota Judicial Branch, Self Help Center, Video information <http://www.mncourts.gov/selfhelp/?page=1913>.

45. The concept of a centralized office is discussed in *Standard 10*.

46. National Center for State Courts, <http://www.ncsc.org/Education-and-Careers/State-Interpreter-Certification.aspx>.

47. Superior Court of California, County of Sacramento. Legal Glossaries. (2005) , <http://www.saccourt.ca.gov/general/legal-glossaries/legal-glossaries.aspx> Minnesota Judicial Branch, Legal Glossaries, <http://www.mncourts.gov/default.aspx?page=461> Washington Administrative Office of the Courts, http://www.courts.wa.gov/programs_orgs/pos_interpret/index.cfm?fa=pos_interpret.display&fileName=glossary/index ; see also, Oregon Court Interpreter Program for a list of additional legal dictionary and glossary resources, <http://courts.oregon.gov/OJD/OSCA/cpsd/InterpreterServices/Resources.page?> (all websites last visited Apr. 19, 2011).

48. Translator certification is discussed more fully in *Standard 8.3*.

49. *DOJ LEP Guidance* at 41,464.

Courts should create a two-step process for all translation work which includes both an initial translation and a review to ensure the accuracy of the translation prior to distribution. Translation of a written court document, similar to the creation of the original document in English, requires editing for accuracy and attention to detail at all stages of the translation process. “Competence can often be ensured by having a second, independent translator ‘check’ the work of the primary translator.”⁵⁰ The initial translator should be provided with details about the purpose of the document, the audience, and other relevant information, as well as the court’s legal glossary. Courts should then have a separate reviewing translator compare the initial translation to the original document for accuracy; this process is recognized as a standard in the industry.⁵¹ Due to the cost of printing and production, review of the translated document by a second translator before finalizing the document is critical to identifying and correcting errors in a way that is cost-efficient. Requiring the reviewing translator to compare the translation to the original should be included in all translation contracts.

50. *Id.* The DOJ LEP Guidance also refers to using “back translation.” (“Alternatively, one translator can translate the document, and a second, independent translator could translate it back into English to check that the appropriate meaning has been conveyed. This is called ‘back translation’”). Back translation should be avoided as it can lead to slightly different renderings of the message as compared to the original text because of word choices by different translators. There is often more than one correct word choice in an interpretation or translation – therefore, translators need to make choices based on their professional opinion. The same is true for all second translators reviewing the work. Their opinions may result in a slightly different word choice in rendering the message back into English. This variation is to be expected and does not necessarily mean that the original translator made an error. The use of back translation should be supplemented by review of the two texts to check for accuracy.

51. MPI, *Communicating*; Consortium for Language Access in the Courts, *Equal Justice: Bridging the Language Divide, Guide to Translation of Legal Materials* (2011), at 8.



STANDARD 8

Qualifications of Language Access Providers

The court system and individual courts should ensure that interpreters, bilingual staff, and translators used in legal proceedings and in courthouse, court-mandated and court-offered services, are qualified to provide services.

Commentary

Due to the complex nature of legal matters, the high level of skill needed for accurate interpreting and translating, and the need for strict observance of ethical rules, interpreters, bilingual staff, and translators should be qualified. Quality and accuracy of the language service is critical in order to avoid serious consequences to the LEP person and to the recipient.¹ It is the responsibility of all courts to ensure that language services providers² are competent.

Best Practices

The *DOJ LEP Guidance* requires competency in the delivery of language access services in the context of interpretation, bilingual staff providing direct services, and translation services; it also indicates that the levels of competency required may differ depending on the setting. Establishing competency is an objective process. “Competency requires more than self-identification as bilingual.”³

Certification refers to the use of standardized testing to determine that an individual possesses certain knowledge, skills and abilities. Courts should always utilize an assessment of the qualifications of all language services providers, and using a formal certification process ensures that the appropriate level of qualification is provided. “Where individual rights depend on precise, complete, and accurate interpretation or translations, particularly in the contexts of courtrooms ... the use of certified inter-

1. See *DOJ LEP Guidance*, at 41,461.

2. “Language service providers” are defined as “[t]hose individuals and/or entities who provide qualified court interpreting services, bilingual assistance, and translation services for court users who are limited English proficient.” NCSC, *10 Keys to a Successful Language Access Program in Courts*. http://www.ncsconline.org/d_research/CourtInterp/10KeystoSuccessfulLangAccessProgFINAL.pdf.

3. *DOJ LEP Guidance*, at 41,461.

preters is strongly encouraged.”⁴

Credentialing is an umbrella term which includes assessment and certification along with additional training and screening, and allows courts to both designate different levels of qualification and require continuing education. This is necessary to ensure that language services providers are competent in the languages in which they will communicate, understand the role of the interpreter and basic interpreting concepts, possess competent interpreting skills, and know the ethical rules governing court interpreting. Credentialing the different categories of language services providers—interpreters, bilingual staff, and translators—requires an assessment program for each; these are described in *Standards 8.1, 8.2, and 8.3*. A comprehensive discussion of the credentialing components is provided in *Standard 8.4*. The role of a centralized office in coordinating the implementation and administration of language access provider competency assessment⁵ and credentialing⁶ procedures is mentioned below but a full discussion can be found in *Standard 10*.

8.1 Courts should ensure that all interpreters providing services to persons with limited English proficiency are competent. Competency includes language fluency, interpreting skills, familiarity with technical terms and courtroom culture and knowledge of codes of professional conduct for court interpreters.

Commentary

In the legal setting, competent interpreting includes mastery of legal terms and concepts, understanding the use of legal arguments, protocols, procedures, laws, and traditions, and compliance with legal and ethical standards.”⁷

Best Practices

Research on the tasks performed while interpreting has identified the following areas of knowledge, ability, and skill: ⁸

- Grammar—Knowledge of standard and formal grammar of the source

4. *Id.*

5. “Assessment” which is a process, rather than a designation, refers to actual testing of qualifications, such as language competency.

6. Credentialing refers to a determination that the individual is qualified to provide services. As mentioned in *Standard Eight*, NCSC defines credentialing as “[d]esignating as qualified, certified, licensed, approved, registered, or otherwise proficient and capable through training and testing programs.” NCSC, *10 Keys to a Successful Language Access Program in Courts*. *Supra*, note 282.

7. Bruno G. Romero, *Here Are Your Right Hands: Exploring Interpreter Qualifications*, 34 U. Dayton L. Rev. 15, 18 (2008-09).

8. This list is a compilation of research on the issue of interpreter skills, including NCSC, *Court Interpreting Model Guides*, at 41 - 44; Romero, 34 U. Dayton L. Rev. 15.

and target languages;⁹

- Fluency —Ability to speak the source and target languages easily and effectively with correct pronunciation, inflection, and in a variety of registers;¹⁰
- Comprehensive Vocabulary—Knowledge of the source and target language vocabulary, including colloquial slang, idiosyncratic slang and regionalisms, used in formal, consultative, and casual modes of communication in justice system contexts;
- Specialized Vocabulary—Knowledge of source and target language specialized vocabulary including: civil and criminal justice system terminology; case-related specialized vocabulary; physical and mental symptoms of illness; tests and laboratory analyses related to alcohol and drugs; ballistics and firearms; and expressions related to crime and drug use.
- Legal Culture—Knowledge of standards and laws pertaining to court interpreting and basic court procedure;
- General Culture—Ability to understand and employ the dialectal and cultural nuances of the source and target language;
- Ethics—Knowledge of and commitment to the interpreter codes of professional conduct and the protocol of interpreting;
- Interpretation Modes—Ability to interpret in both consecutive and simultaneous modes, and the knowledge of the appropriate settings to use each mode;¹¹
- Sight Translation—Ability to sight-translate printed, typed, or handwritten documents;¹²
- Cognitive Skills—Possession of the skills of memory, attention, problem solving, and flexibility.
- Communication Skills—Possession of the skill of providing a timely interpretation in a clear manner.¹³

According to the National Center for State Courts Consortium for Language Ac-

9. The use of the terms source and target language are intentional and each of these terms is defined in the Definition Section. There are times when neither of the languages being interpreted is English. In particular, the use of relay interpreters is often necessary in languages of lesser diffusion and in ASL. Relay interpreters work in tandem with a second interpreter, most often because the LEP person speaks a language for which there is not an available interpreter who can speak directly to the LEP person and back into English. The relay interpreter is fluent in the language of the LEP person and a second language, other than English. The second interpreter then interprets from the second language into English.

10. Register refers to the level and complexity of vocabulary and sentence construction. *NCSC Court Interpretation Model Guides*, ch.3, at 42.

11. Consecutive interpreting is the rendering of the interpreted message only after the speaker has completed the utterance. Simultaneous interpreting occurs at nearly the same time as the message is being spoken.

12. Sight translation requires the interpreter to read a written document in the source language and render it orally into the target language.

13. NCSC, *Court Interpretation Model Guides*, at 40–42. See also *Interpreters in the Judicial System: A Handbook for Ohio Judges*, (2008), http://www.sconet.state.oh.us/publications/interpreter_services/ISHandbook.pdf. The United States federal court system describes a similar list of skills on its webpage. See <http://www.uscourts.gov/FederalCourts/UnderstandingtheFederalCourts/DistrictCourts/CourtInterpreters/InterpreterSkills.aspx>.

cess in the Courts, “[a]udits of interpreted court proceedings in several states have revealed that untested and untrained interpreters often deliver inaccurate, incomplete information to both the person with limited English proficiency and the trier of fact. . . . Every state that has examined interpreted court proceedings has concluded that interpreter certification is the best method to protect the constitutional rights of court participants with limited English proficiency.”¹⁴

Methods used to assess language services providers’ competency include oral certification examinations and language proficiency examinations; these have been developed by interpreter professional organizations, court administrators, and programs such as the Consortium.¹⁵ Oral certification exams for court interpreters should test the skills of simultaneous interpreting, consecutive interpreting, sight translation, proficiency in legal, general, and colloquial terminology and ethics. However, oral certification exams are only available in a limited number of languages and therefore courts should also establish other methods to assess interpreter qualification in languages for which oral certification exams are not available.

The following sections provide a detailed description of the assessment process for certified and non-certified languages. While there is some overlap between assessment and credentialing, a discussion of the comprehensive system for credentialing language services providers—which includes candidate pre-screening, ethics training and testing, orientation programs, and continuing education requirements for both certified and non-certified interpreters and for a variety of settings—is covered in *Standard 8.4*.

Certification of Court Interpreters

Certification of interpreters within the court setting occurs in both federal and state courts. Congress passed The Court Interpreters Act of 1978,¹⁶ and created the Federal Court Interpreter Certification Exam (FCICE) Program,¹⁷ which developed certification exams in Spanish, Navajo, and Haitian-Creole.¹⁸ Federal court certification

14. NCSC, *Consortium for State Court Interpreter Certification*, (1995, last amended May 2008), http://www.ncsconline.org/d_research/CourtInterp/Agreements2008FinalMay.pdf.

15. NCSC’s *Court Interpretation Model Guides* provides detailed information regarding the necessary skills and credentialing process for interpreters interpreting in court proceedings; see also *10 Keys to a Successful Language Access Program*, Component Number 4—Credentialing of Language service providers, Component Number 5—Appointment of credentialed language service providers, and Component Six—Standards of professional conduct for court-related language service providers.

16. 28 USC §§ 1827 -28. In addition to federal and state court certification, NAJIT also conducts certification examinations for Spanish court interpreters, which 11 states accept in lieu of state certification. Those 11 states are: Colorado, Connecticut, Delaware, Hawaii, Iowa, Massachusetts, New York, Pennsylvania, Rhode Island, Texas, and Wisconsin.

17. The FCICE, which has a minimum duration of two years, includes both written and oral examinations.

18. <http://www.uscourts.gov/federalcourts/understandingthefederalcourts/DistrictCourts/CourtInterpreters.aspx>. As of 2011, the FCICE Program is only available in Spanish; however, prior certifications granted under the program in Navajo and Haitian-Creole remain valid. For more information, see <http://www.uscourts.gov/FederalCourts/UnderstandingtheFederalCourts/DistrictCourts/CourtInterpreters/InterpreterCategories.aspx>; see also http://www.ncsconline.org/d_research/fcice_exam/about.htm.

represents one of the highest levels of professional credentialing.¹⁹ Since 1980, the mission of the FCICE has been to define criteria for certifying interpreters qualified to interpret in federal courts and to assist the Director of the Administrative Office of the U.S. Courts in maintaining a list of federally certified court interpreters.

Recognizing that language needs exist outside of the three certified languages, the Administrative Office of the United States Courts created additional categories for qualifying interpreters. The categories of “professionally qualified interpreter” and “language skilled interpreter”²⁰ are used for languages other than Spanish, Navajo, and Haitian-Creole. “Professionally qualified interpreters” are required to either have passed one of two comparable examinations provided by the State Department and the United Nations or be a current member in good standing of one of two professional organizations which require sponsorship and relevant experience as pre-requisites to membership.²¹ “Language skilled interpreters” are required to demonstrate to the satisfaction of the court the ability to interpret court proceedings from English to a designated language and from that language into English.²²

State court certification efforts began when four states²³ collaborated to develop oral testing examinations²⁴ and created the Consortium for State Court Interpreter Certification (CSCIC).²⁵ The Consortium’s goal was to “facilitate court interpretation test development and administration standards, to provide testing materials, to develop educational programs and standards, and to facilitate communications among the member states and entities, in order that individual member states and entities may have the necessary tools and guidance to implement certification programs.”²⁶ As of 2011, CSCIC, now called the Consortium for Language Access in the Courts (Consortium), has 43 member states and offers 18 language-specific oral examina-

19. National Center for State Courts Model Guide, ch. 5 “Assessing Interpreter Qualifications: Certification Testing and Other Screening Techniques,” at 90, http://www.ncsconline.org/wc/publications/Res_CTInte_ModelGuideChapter5Pub.pdf.

20. <http://www.uscourts.gov/FederalCourts/UnderstandingtheFederalCourts/DistrictCourts/CourtInterpreters/InterpreterCategories.aspx>.

21. <http://www.uscourts.gov/FederalCourts/UnderstandingtheFederalCourts/DistrictCourts/CourtInterpreters/InterpreterCategories.aspx>; <http://www.taals.net/bylaws.php>.

22. <http://www.uscourts.gov/FederalCourts/UnderstandingtheFederalCourts/DistrictCourts/CourtInterpreters/InterpreterCategories.aspx>.

23. Minnesota, New Jersey, Oregon, and Washington were the four original states involved in this effort.

24. In addition to the spoken language interpreter certification process highlighted below, courts may find the development of certification examinations for American Sign Language interpreters instructive. The National Interpreting Certificate program for ASL interpreters certifies interpreters as generalists or specialists. Certification as a generalist signifies skill in a broad range of general interpreting assignments and holders of generalist certificates have met or exceeded a nationally recognized standard of minimum competence in interpreting and/or transliterating. The National Interpreting Certificate program for ASL interpreters certifies interpreters as generalists or specialists. Certification as a generalist signifies skill in a broad range of general interpreting assignments and holders of generalist certificates have met or exceeded a nationally recognized standard of minimum competence in interpreting and/or transliterating. Certification as a *specialist* signifies skill in a particular area or specialty of interpretation and holders of specialty certificates have demonstrated specialized knowledge in a specific area of interpreting, including legal and the performing arts. Candidates for specialized certifications need to hold a generalist certification and need to have a combination of advanced degrees and legal mentoring and legal interpreter training. For more information on ASL interpreter certification, see http://www.rid.org/education/edu_certification/index/cfm/, and for more information on ASL continuing education requirements, see <http://www.rid.org/education/testing/> (both websites last visited Apr. 19, 2011).

25. The Consortium for State Court Interpreter Certification has come under the auspices of NCSC and is now referred to as The Consortium for Language Access in State Courts.

26. Consortium for Language Access in the Courts, *Agreements for Consortium Organization and Operation*, (2010), http://www.ncsconline.org/D_Research/CourtInterp/Agreements2010FINAL.pdf.

tions, written examinations, resources, and networking opportunities.²⁷

The Consortium's oral certification examinations are "designed to determine whether candidates possess minimal levels of language knowledge and interpreting skills required to perform competently during court proceedings, to measure a candidate's ability to faithfully and accurately interpret the range of English ordinarily used in courtrooms into another language and to understand and interpret into English what is said by a native speaker of another language, and are substantially similar in structure and content to tests that have been developed by the federal courts."²⁸ The examinations are "designed and developed by consultants who have extensive knowledge of courts and court proceedings, the job requirements for court interpreters, and /or advanced training or high levels of fluency in English and the non-English language."²⁹ These exams are carefully validated to ensure that the testing program meets the "basic needs of all state courts in the area of interpreting services."³⁰ Using these standards, the Consortium provides testing in Arabic, Modern Standard Arabic, Egyptian, Cantonese, Chuukese, Bosnian/Croatian/Serbian, French, Haitian-Creole, Hmong, Ilocano, Korean, Laotian, Mandarin, Marshallese, Polish, Portuguese, Russian and Somali.

Given the documented need for a rigorous examination system like that established by the Consortium, court language access programs should incorporate the following requirements: test components and scoring system that have utility for diagnostic evaluation of candidate strengths and weaknesses as well as for summative evaluation; a program that informs candidates and users of interpreter services of the names and credentials of all individuals involved in the testing development and administration process; test source materials that are derived exclusively from specimens of court and related justice system language; and test scoring that utilizes a procedure that is readily perceived to be objective and unaffected by personal bias.³¹

Certification should help assess and identify an interpreter's level of skill, not simply whether the candidate has passed or failed a relevant examination. This allows courts to identify interpreters who exceed, meet, or fall below the minimum passing score for certification, and utilize them accordingly. For example, a state may establish categories based on score ranges above 80 percent to identify master-level

27. For a full list of member states as of publication of these *Standards*, See, http://www.ncsc.org/education-and-careers/~/_media/Files/PDF/Education%20and%20Careers/State%20Interpreter%20Certification/Res_CtInte_ConsortMemberStatesPub2010.ashx

28. Consortium for State Court Interpreter Certification, *Overview of the Oral Performance Examination for Prospective Court Interpreters* (2005), at 3; see also, California's Assessment of the Consortium for Language Access in the Courts' Exams, ALTA Language Services, Inc., for the Judicial Council of California, Administrative Office of the Courts (2009), at 19; see also, Consortium for Language Access in the Courts, *Court Interpreter Oral Examination: Test Construction Manual* (1996).

29. Consortium for State Court Interpreter Certification, *Overview of the Oral Performance Examination for Prospective Court Interpreters*, (2005), Test Construction Manual, <http://www.ncsc.org> (follow hyperlink for "Education and Careers"; then follow hyperlink for "Overview of the Oral Examination (for test candidates)").

30. NCSC, *Court Interpretation: Model Guides for Policy and Practice in the State Courts*, ch. 5, Assessing Interpreter Qualifications: Certification Testing and Other Screening Techniques, at 101.

31. *Id.*

interpreters, a score between 70 and 80 percent to identify professional interpreters, and a score of 60 to 70 percent to identify qualified interpreters.³² New Jersey employs a tiered certification system that gives interpreters who are not quite ready to pass the certification exam a chance to continue to improve their skills by working in other court settings.³³ This ‘tiered’³⁴ approach to certification allows courts to identify the skill level of interpreters along a wider range of abilities, prioritize the highest skilled interpreters for in-court interpreting, and identify areas for improvement and training opportunities for those testing in the lower ranges.³⁵ Providing this information to judges helps inform their selection of the highest qualified interpreter available.

Assessing Interpreter Qualifications in Non-Certified Languages

Due to the availability of Consortium certification exams in only 18 languages³⁶ and the limited number of state-developed exams beyond that number, most state courts have to determine for themselves the qualifications of interpreters in many other languages for which no formal oral certification exams are available.³⁷ Many states use an alternate assessment system for non-certified languages which includes a written exam, language fluency testing, and sometimes, testing of interpreter skills. Written exams are useful because they can easily and efficiently determine an interpreter’s level of knowledge of codes of professional conduct and basic information about interpreting. However, language fluency and interpreter skills require oral assessments. The written exam is used to test the applicant’s understanding of legal terminology, the role of the interpreter, interpreter ethics, and basic interpreting functions and skills; the oral language fluency test is used to assess the applicant’s level of proficiency in the foreign language and in English, and most tests include some assessment of the applicant’s ability to perform simultaneous and consecutive interpreting. States should combine these assessments with other credentialing components (ethics, orientation, and training etc.) to ensure that interpreters are qualified for the demands of court interpretation.

32. This is one example of an approach to a tiered certification process for certified languages.

33. New Jersey Courts, Language Services, *Frequently Asked Questions*, <http://www.judiciary.state.nj.us/interpreters/faq.htm#approved>.

34. Nomenclature varies by state. This section is intended as an overview of current practices generally and includes a discussion of best practices, but is not intended to detail the practice in every state.

35. For example, the Minnesota courts have a system of interpreter certification which allows an interpreter to be either certified or rostered. An interpreter can be listed on the roster list in a language for which there is an oral examination which the interpreter did not pass, or because the interpreter speaks a language for which an oral examination is not available, if the interpreter has satisfied other minimum requirements. Minnesota Judicial Branch, Court Interpretation, *Frequently Asked Questions*, <http://www.mncourts.gov/?page=455>. Another example is New Jersey, which classifies certified interpreters as Master, Journeyman, and Conditionally Approved based on the candidate’s score on the exam. New Jersey Judiciary Language Services Section, *How Are Interpreters Who Work In Languages For Which There Is No Court Interpreting Performance Examination Classified?* http://www.judiciary.state.nj.us/interpreters/intclass_untested.pdf.

36. As of 2011, the Consortium offers oral examinations in 18 languages. For further information about the current availability of testing and the languages for which certification is available, see http://www.ncsconline.org/D_Research/CourtInterp/ExaminationsAvailableForMembersOfTheConsortiumForStateCourtInterpreterCertificatio_000.html (last visited Apr. 19, 2011). Expansion beyond these languages is slow due to the high cost of test development.

37. For example, in Seattle, Washington, the King County Superior Court has provided interpreters in over 132 languages. In California, the courts have provided interpreters in approximately 120 languages.

Many states are unable to provide complete certification exams in languages not available from the Consortium, and use a roster or registry process to test language fluency but not interpreting skills. These states test the interpreter's language ability and understanding of basic legal terminology and interpreter role, and create a mechanism to impose court orientation, ongoing education, and ethics requirements. The state of Washington represents one example of a state court's approach to testing interpreters in non-certified languages. It offers testing in only 10 of the 18 languages available from the Consortium,³⁸ but tests an additional 50 languages and classifies these under the category "registered."³⁹ To become a registered court interpreter in Washington, an individual is required to pass both the written Consortium exam, which includes English language vocabulary and court related terms as well as ethics, and a separate oral proficiency telephonic interview.⁴⁰ Candidates are required to pass the written exam with a score of 80 percent or better and are then eligible to take a separate oral exam measuring their foreign language speaking and comprehension skills. This examination is a telephonic interview with a qualified evaluator of the foreign language and measures how well the interpreter speaks and comprehends the language for which he/she is attempting to become registered. However, "registered" language interpreters have not had their interpreting skills (from English to the foreign language, and vice versa) assessed.

If a state does not have both kinds of "certification" and "registry" categories, or if a court is working with an interpreter in languages not available in either category, a judge should engage in additional questions to determine interpreter language competency (including legal terms) and interpreting skill. These questions are discussed in greater detail in Section 8.4 as part of the *voir dire* process used to qualify all interpreters in a legal proceeding. When inquiring about language ability, judges may encounter interpreters who have been tested in areas outside of the legal setting. Certification exams have been developed in the areas of healthcare and social and health services and include testing in languages for which court certification is not available. However, courts should be aware that these assessments do not test legal terminology

38. Washington has not purchased all the Consortium tests due to the high cost of the exams and the low numbers of LEP individuals in some of the languages for which testing is available.

39. The registered status is open to language interpreters in the following languages: Afrikaans, Akan-Twi, Albanian, Amharic, Azerbaijani, Bengali, Bulgarian, Burmese, Cebuano, Chavacano, Czech, Dari, Dutch, Farsi, German, Gujarati, Haitian Creole, Hausa, Hebrew, Hindi, Hmong, Hungarian, Igbo, Indonesian, Japanese, Kurdish-Kurmanji, Malay, Nepali, Norwegian, Polish, Portuguese, Punjabi, Romanian, Samoan, Sindhi, Sinhalese, Slovak, Swahili, Tagalog (Filipino), Tajik, Tamil, Tausug, Telugu, Thai, Turkish, Turkmen, Ukrainian, Urdu, Wu, Yoruba. Washington State Courts, Registered Interpreters, http://www.courts.wa.gov/programs_orgs/pos_interpret/index.cfm?fa=pos_interpret.display&fileName=registeredInterpreters.

40. Washington State Courts, Washington Court Interpreter Program 2011 Certification Process, http://www.courts.wa.gov/programs_orgs/pos_interpret/content/pdf/CertifiedProcess2011.pdf.

or the skills needed for court interpreting.⁴¹

The history of interpreter testing demonstrates that even with a strong national effort to increase the number of languages in which certification is available, many states and courts still need to develop procedures for the large number of non-certified languages. Understanding that certifying interpreters is complex and requires thoughtful review can help courts and judges make a better individualized assessment of competence when necessary. Courts should implement processes to test and train interpreters in languages for which certification exams are not available to ensure that these interpreters have the same level of oversight as certified interpreters. This process should include the pre-screening, ethics training, orientation programs, and continuing education requirements described in *Standard 8.4*.

Assessing Specialized Skills - Relay Interpreting

Relay interpreting is an example of a specialized type of interpreting which requires distinct skills. It requires that the communication first be interpreted into a third language, before it can be interpreted into English. “Relay interpretation involves using more than one interpreter to act as a conduit for spoken or sign languages beyond the understanding of a primary interpreter.”⁴² In relay interpreting “an interpreter (called the ‘intermediary’ interpreter) interprets from one foreign language (e.g., Mixtec) to a second foreign language (e.g., Spanish), then a qualified interpreter (referred to as the ‘primary’ interpreter) interprets from the second foreign language (in this case Spanish) into English.”⁴³ Increasingly, relay interpreting is used for languages of lesser diffusion, where there are no interpreters in the jurisdiction who speak both English and the other language. Relay interpreting is commonly used for deaf individuals who may not know American Sign Language or any formal system of signed communication.⁴⁴ In such cases a Certified Deaf Interpreter relays the information from the deaf individual to the ASL interpreter, who then interprets the ASL into English.⁴⁵ Because relay interpreters are not fluent in English, their ability to take and pass a certification exam is limited. The court should determine their qualifications pursu-

41. These certification programs exist at both the state and national level. For example, Washington has interpreter certification in eight languages for medical interpreters through the Department of Social and Health Services, and verifies language competency in all other languages for which interpreters are provided in the state Medicaid interpreter program. At the national level, two organizations began developing and offering certification for healthcare interpreting in Spanish in 2010. Those organizations are: The National Council on Interpreting in Healthcare (NCIHC) through the Certification Commission on Healthcare Interpreting and the National Medical Interpreter Certification developed in partnership with the International Medical Interpreter Association (IMIA) and Language Line Services.

42. Asian & Pacific Islander Institute on Domestic Violence, *Resource Guide for Advocates & Attorneys on Interpretations Services for Domestic Violence Victims* (August 2009), <http://www.dcf.state.fl.us/programs/domesticviolence/dvresources/docs/InterpretationResourceGuide.pdf>.

43. *Id.*

44. These *Standards* do not provide detailed guidance on the rights of deaf and hard of hearing individuals in courts, but do refer to the provision of services such as American Sign Language interpreters and Certified Deaf Interpreters as both a model for the provision of spoken language interpreters and as a resource for technology and systems that are applicable in both situations.

45. See Mathers Esq., Carla, The National Consortium of Interpreter Education Centers, “*Deaf Interpreters in Court: An accommodation that is more than reasonable*” (2009) at http://www.nciec.org/projects/docs/The_Deaf_Interpreter_in_Court62409.pdf.

ant to the process for non-certified interpreters and require them to be familiar with the code of professional conduct.

Assessing Interpreter Qualifications for Services Outside of Legal Proceedings

When assessing interpreter qualifications to interpret in settings outside of legal proceedings, courts should still ensure the interpreter possesses the necessary qualifications, and should prioritize how resources are used to maximize efficiency. Credentialing interpreters specifically for settings outside the courtroom is a newly emerging area and resources need to be developed at the national level. When assessing competency of interpreters in these settings, courts may rely on a tiered system to evaluate the appropriate match between interpreter and setting or may develop alternate systems.

Credentialing interpreters for settings outside the courtroom is distinct from credentialing interpreters for legal proceedings in the following two ways: first, the interpreter's fluency in complex legal terminology may not need to be as high; and second, the interpreter's skills (particularly the ability to perform simultaneous interpreting) may not need to be as well developed. Courts using different credentialing for non-courtroom interpreting should still ensure that the interpreter's skill is properly matched to the specific communication rather than assuming that any interpreters at a lower skill level will suffice. For example, an interpreter may need to know less legal terminology to interpret a parenting class than to interpret in civil and criminal matters in court, but may need to be able to provide simultaneous interpreting. These services are sometimes provided in much more informal settings where consecutive interpreting is not appropriate. Nevertheless, courts should still consider the additional screening, ethics training and testing, orientation programs, continuing education and voir dire (or individual assessment) components used as part of interpreter credentialing to ensure competent services are provided.

Including Interpreter Competency in Contracts with Language Services Providers

When courts contract out for interpreter services they should ensure that expectations regarding competency are clearly identified in the contract and that monitoring procedures are established. Every interpreter who comes into the court to interpret, whether appearing in-person, by video, or by telephone, or who has been hired as staff, independent contractor, or from a third-party agency needs to be competent for the setting in which he or she will interpret. In contracting with a third-party provider for interpreter services, these same requirements apply.

8.2 Courts should ensure that bilingual staff used to provide information directly to persons with limited English proficiency are competent in the language(s) in which they communicate.

Commentary

Where bilingual staff are providing language services directly to LEP persons, courts should determine the level of fluency needed for the position, and assess the language fluency of the bilingual staff member in both English and the other language(s) in which they are communicating.⁴⁶ The level of language fluency needed by bilingual staff to communicate directly with LEP persons depends upon the setting. In some court services and programs, the level of complex legal terminology or subject matter required may be nearly equal to that used in the courtroom. In such instances, courts should assign staff to these positions who are able to speak the language with sufficient accuracy and vocabulary to participate effectively in most formal and informal conversations on practical, social and professional topics. For example, a bilingual staff member conducting an interview, assisting with filling out and reviewing forms, or teaching a class, would need to have a near native-speaker level of fluency in order to ensure that communication is effective. In contrast, for clerical situations in which the bilingual staff member is providing routine and basic information, a lower level of language fluency may be adequate.

In all situations where courts are relying on bilingual staff to provide services, the staff should possess a minimum level of language fluency to express fully the relevant concepts and fully understand the communications of the LEP persons involved.

Best Practices

An instructive resource to assist in determining the level of language proficiency necessary for different interactions is provided by the Inter-Agency Language Roundtable (ILR), which has developed a comprehensive tool for categorizing the language competency of a non-native speaker based on standardized rating factors including the typical stages in the development of language competency.⁴⁷ The ILR identifies categories of proficiency for speaking, reading, writing, listening, interpreting, and translating.

Courts should verify a bilingual staff person's language fluency by assessing skill

46. It is important to emphasize again the distinction between bilingual staff providing services directly and those same staff acting as interpreters in settings inside and outside of the courtroom. This is extensively discussed in *Standard 5.2*. When a court utilizes bilingual staff in the role of interpreters, they should be held to the same standard as all other interpreters. Therefore, a court would evaluate the competency of these bilingual staff (acting as interpreters) under the criteria set out in *Standard 8.1*.

47. Inter-Agency Language Roundtable, Assessment scales are available for speaking, reading, writing, and listening. The IRL recently developed translation and interpreting performance skill assessments as well, <http://www.govtilr.org/skills/ILRscale2.htm> (last visited Apr. 19, 2011).

level through internal systems or external contracts. Language proficiency falls along a continuum and is a fluid concept that can “develop or diminish over time depending on the efforts or circumstances of the individual.”⁴⁸ Courts should use a valid assessment tool rather than relying on staff self-evaluation. When developing internal language proficiency tools, courts should ensure that the tools are reliable, have been specifically designed to test the relevant skill needed, and are based on the setting in which services will be provided. The assessment tool should be repeatable, fair, and not subject to bias. If bilingual staff are used to assess other staff, by conducting interviews or testing, they should first be independently assessed to ensure their competency to evaluate others.

When a court does not develop internal systems to assess bilingual staff, it can contract with external language proficiency testing providers to assess the language proficiency of bilingual staff. Several national companies offer tests which evaluate the language proficiency of the candidate through a combination of oral and written examinations and provide a rating which correlates to a hierarchy of settings in which the individual is competent to converse.⁴⁹ Tests are available in as many as 90 languages⁵⁰ and provide a court with independent verification of the staff member’s language proficiency.

8.3 Courts should ensure that translators are competent in the languages which they translate.

Commentary

Because translating is a specialized skill,⁵¹ individuals providing translations should be assessed and credentialed separately from interpreters. Certification of competency in translation is available in some languages. For others, courts will need to use an assessment process such as the *voir dire* for translators discussed in *Section 8.4*, which describes how courts can establish broader credentialing standards for translators similar to those developed for interpreters and bilingual staff.

48. Romero, 34 U. Dayton L. Rev. at 18.

49. For example, two resources that are commonly used are Alta Language Services and Language Testing International. These *Standards* do not endorse either company but describe the process as a model. In general, language proficiency testing, which is not testing a person’s ability to interpret, involves a telephonic interview by a rater who asks questions which become more complex and abstract throughout the conversation. The rater scores the person on language usage, grammar, and other criteria and provides a ranking which indicates the types of communications that the person is able to engage in effectively. See <http://www.altalang.com/language-testing/> (last visited Apr. 19, 2011). [N.T.D. - the deleted information appears above in the main text].

50. <http://www.altalang.com/language-testing/languages.aspx> (last visited Apr. 19, 2011).

51. As described in *Standard 7*, translation involves the conversion of a written text in one language into written text in another language. The skills and tools used in translation are not the same as those used in interpretation although an individual may be competent in both.

Best Practices

Professional translators are “fluent in their source languages; are effective bridges between the languages they work in; can render the message of the original text, with appropriate style and terminology; and are first and foremost writers.”⁵² The skills necessary to be a competent translator in the court setting include:

- Proficiency in reading English and the foreign language;
- Mastery of the foreign language equivalent to that of an educated native speaker;⁵³
- Knowledge of common grammatical and syntactical conventions, in addition to dialectical aspects of English and the foreign language;
- Knowledge of formal writing and legal writing conventions in English and the foreign language;
- Knowledge of legal terminology in English and the foreign language;
- Professional experience translating complex legal documents; and
- Ability to communicate effectively with court personnel.⁵⁴

Translator Assessment and Certification

Most state courts accept professional translator organization certifications to establish competency to translate complex court materials and have not created internal testing systems for translators. One well-respected national organization is the American Translators Association (ATA), which certifies individuals by language pairs in the following languages: into English from Arabic, Croatian, Danish, Dutch, French, German, Japanese, Portuguese, Russian, and Spanish; and from English into Chinese, Croatian, Dutch, Finnish, French, German, Hungarian, Italian, Japanese, Polish, Russian, Spanish, Swedish, and Ukrainian.⁵⁵ Candidates for ATA certification are required to establish qualifying educational degrees or minimum experience before taking the exams.⁵⁶ The ATA certification program tests the professional translation skills identified above to determine whether a candidate is able to produce a translation that matches the source document and meets the needs of the requestor, as identified in the request for translation.⁵⁷ By way of comparison, the level of competency that the ATA certification requires—a passing grade in the ATA examination—is roughly equivalent to a minimum of Level 3, on a scale of 1–5, on the Interagency

52. ATA, *Translations: Getting it Right*, at 22, http://www.atanet.org/docs/Getting_it_right.pdf (emphasis added).

53. ATA, *Code of Professional Conduct and Business Practice*, www.atanet.org/membership/code_of_professional_conduct.php (last visited Apr. 19, 2011).

54. National Association of Judiciary Interpreters and Translators, *General Guidelines and Requirements for Transcript Translation in Legal Settings*, <http://www.najit.org/publications/Transcript%20Translation.pdf>.

55. http://www.atanet.org/certification/aboutcert_overview.php (last visited Apr. 19, 2011).

56. http://www.atanet.org/certification/eligibility_requirementsform.php (last visited Apr. 19, 2011).

57. http://www.atanet.org/certification/aboutexams_overview.php (last visited Apr. 19, 2011).

Language Roundtable scale.⁵⁸

Assessing Translator Qualifications in Non-Certified Languages

Given the limited number of languages for which ATA certification exists and the lack of state court programs to independently certify translators, courts need to develop and follow internal protocols to identify qualified translators who can provide the necessary translations. Because translations do not require the translator to be physically present, courts should identify and share resources both nationally and internationally. Once a qualified translator is located, using a system such as that described in *Standard 7* will assist courts in ensuring that translations are accurate. The Language Access Services Office (LAS Office), described in *Standard 10*, should establish such a protocol and use assessment and credentialing to ensure that translators and bilingual staff used to translate court documents are qualified.⁵⁹

8.4 Courts should establish or participate in a comprehensive system for credentialing interpreters, bilingual staff, and translators that includes pre-screening, ethics training, an orientation program, continuing education, and a system to voir dire language services providers' qualifications in all settings for which they are used.

Commentary

Assessment tools are helpful in determining a language services provider's fluency; however, using such tools alone will not ensure that interpreters, bilingual staff, and translators are competent. A comprehensive credentialing system should include both evaluation and training in areas not typically included in the language skills assessment processes. Establishing a thorough and comprehensive credentialing system allows courts to be confident that providers will possess the skills and knowledge needed, that their competency continues at a consistent level, and can be monitored over time. The elements of a comprehensive credentialing system are discussed below.

While pre-screening, ethics, orientation, continuing education and training requirements appropriate for translators need not be as detailed as those used for inter-

58. <http://www.govtillr.org/Skills/AdoptedILRTranslationGuidelines.htm> (last visited Apr. 19, 2011). "Professional Performance Level 3 - Can translate texts that contain not only facts but also abstract language, showing an emerging ability to capture their intended implications and many nuances. Such texts usually contain situations and events which are subject to value judgments of a personal or institutional kind, as in some newspaper editorials, propaganda tracts, and evaluations of projects. Linguistic knowledge of both the terminology and the means of expression specific to a subject field is strong enough to allow the translator to operate successfully within that field. Word choice and expression generally adhere to target language norms and rarely obscure meaning. The resulting product is a draft translation, subject to quality control." 59. See *Standard 7* for a discussion of guidelines for the prior review of source materials to promote quality translations. These guidelines should include the following areas: the purpose of the translation, the use of plain English, the intended audience of the document, regional variation of the target language. See also, ATA, *Translation: Buying More than a Commodity*, http://www.atanet.org/docs/translation_buying_guide.pdf.

preters and bilingual staff, some should be used since translation of court documents requires specialized language and recognition of unique ethical issues.⁶⁰

Best Practices

Components of a Comprehensive Credentialing System

Courts, through a central Language Access Services Office (LAS Office),⁶¹ should use a comprehensive credentialing system to supplement the language assessments provided by the Consortium or other testing entities, as well as to substitute for a complete assessment for languages where no testing is available. The order in which these components are implemented may vary based on priorities set by the state. For example, a court may determine that the pre-screening measures are best done early in the process to avoid unnecessary testing and training of individuals who might be disqualified from interpreter candidacy at a later stage. However, the comprehensive nature of the program requires the inclusion of each element to be effective.

i. Pre-Screening

Pre-screening measures include criminal background checks and other prerequisites that a court may impose upon individuals seeking to work as interpreters, bilingual staff, or translators. Interpreters, bilingual staff, and translators should be pre-screened with criminal background checks to uphold the public trust and ensure protection and security for courts. Courts use background checks to help evaluate the character and fitness of an individual to act as a court interpreter, who is an officer of the court. A candidate for certification or other credentialing whose background check identifies conduct involving dishonesty, fraud, deceit, or misrepresentation should be disqualified from becoming certified to work in the court. As identified by Minnesota Court policy, “(a) court interpreter should be one whose record of conduct justifies the trust of the courts, witnesses, jurors, attorneys, parties, and others with respect to the official duties owed to them. A record manifesting significant deficiency in the honesty, trustworthiness, diligence, or reliability of an applicant may constitute a basis for denial of certification.”⁶²

The LAS Office, as described in *Standard 10*, should develop mechanisms to require a background check and review the fitness of each candidate’s background. These mechanisms should include adequate protections for the interpreter candidate. As described above in *Standard 8.1*, courts should also use

60. Translation raises ethical issues in terms of privacy, record keeping, and representation of qualifications.

61. The Language Access Services Office is discussed in full in Standard 10.

62. Minnesota General Rules of Practice, Rule 8.06 (b).

pre-screening written exams to test all applicants on basic interpreting concepts, including the interpreter code of professional responsibility, interpreting modes, and vocabulary. This testing can be administered in English to all applicants prior to the applicant moving to the language and interpreting assessment phase. Additional pre-screening measures include language proficiency testing, oral interpreting exams, written translation exams, or completion of training programs or degrees that are applicable to interpreters, bilingual staff, and translators working within the court system.

ii. Ethics Testing and Training

Ethical standards, as defined in the interpreter code of professional conduct, are an essential aspect of competency; therefore, courts should utilize both testing and training in this area. Testing an interpreter's knowledge of the components of the court's interpreter code of professional conduct is common practice and should be done as a pre-screening tool. Courts should also test bilingual staff and translators' knowledge of ethical requirements that govern their roles.

Courts should require training, in addition to the ethics assessment, as part of the credentialing process, including opportunities to practice the application of ethical principles that help educate language services providers beyond a simple introduction to the rules themselves.⁶³ This training recognizes that "as officers of the court, interpreters help assure that [LEP] persons may enjoy equal access to justice and that legal proceedings and court support services function efficiently and effectively."⁶⁴ Accordingly, many state court interpreter programs require court interpreter candidates to participate in ethics training as part of both the certification and credentialing process.⁶⁵ The components of ethics training programs are discussed in *Standard 9*.

Although courts may not test translator ethics or provide extensive ethics training to translators, courts should include compliance with the translator's code of professional conduct as part of a signed agreement for services.⁶⁶ The ATA has developed a model code of professional conduct and business practices for translators that include provisions to ensure translators are competent in the language pair of the translation work, render accurate and equivalent translations, engage in fair business practices, and accurately identify relevant

63. Many professional certification programs, like attorney licensing programs, require annual participation in ethics training due to the high standards necessary in legal matters.

64. NCSC, Court Interpretation Model Guides, ch. 9.

65. Two examples are Minnesota and California.; In Minnesota, ethics training and testing is required of all court interpreters prior to working in the courts; see <http://www.mncourts.gov/?page=3937>

66. A sample Code of Professional Conduct and Business Practices for Translators can be found at: http://www.atanet.org/membership/code_of_professional_conduct.php (last visited Apr. 19, 2011).

skills and training.⁶⁷

iii. Orientation

Credentialing should also include appropriate court orientation programs for interpreters, bilingual staff and translators. For interpreters, the orientation program introduces them to the court, identifies common local legal terms and protocols, describes the role of the interpreter, teaches basic interpreter skills, and may also cover ethical standards for court interpreters.⁶⁸ Because many orientation programs address some of the testing components in interpreter credentialing, some states require attendance at orientation prior to taking either a certification or other credentialing examination. The National Center for State Courts promotes this requirement in its *Court Interpretation: Model Guides for Policy and Practice in the State Courts, Chapter on Training (Model Guides)*.⁶⁹

The NCSC Model Guides envision an introductory orientation workshop as a “starting point in the process of increasing the level of professionalism among bilingual individuals who may work in courts . . . but who have never received formal training in court interpreting. The primary goal of the introductory workshop is to improve court interpreters’ understanding of the skills and appropriate conduct required of them, and to offer a basic orientation to courts and the justice environment.”⁷⁰ As envisioned by NCSC, this introductory workshop contains eight modules, including: an overview of the profession of interpreting; modes of interpreting; court and justice system environments; court procedures; the interpreter’s role; court terminology; and an overview of the state court’s certification or assessment process.⁷¹

Orientation programs also offer valuable training for bilingual staff and translators. Although bilingual staff may not need such extensive orientation if they are providing direct services and not interpreting, it is recommended that they still be offered an orientation to increase their knowledge of the complexities of interpretation and to help them address ethical issues. For translators, orientation programs are less common, but can be helpful. An orientation program for translators should orient them to the type of translation tasks the court routinely requires, identify common local legal terms and protocols, describe the role of the translator and the translator protocol, review basic translation and transcription skills, provide and instruct on the proper use of available

67. http://www.atanet.org/membership/code_of_professional_conduct.php (last visited Apr. 19, 2011).

68. Depending on the court’s program, this orientation may occur prior to an applicant taking an exam.

69. NCSC, *Court Interpretation: Model Guides for Policy and Practice in the State Courts*, ch. 4, *Training for Court Interpreters*.

70. *Id.* at 55.

71. *Id.* at 56-59.

glossaries, and may also include ethical standards for court translators.

iv. Continuing Education

A comprehensive court credentialing system should always include a requirement for all court interpreters, bilingual staff, and translators to participate in ongoing professional development and continuing education. Many state court interpreter programs require interpreters to complete a minimum number of continuing education training credits in a given cycle in order to maintain their certifications. Continuing education requirements are common to many professions, and should be applied to all language services providers, regardless of whether or not they are certified. Continuing education is particularly important in ethics, and annual training in this area is required by many courts. For example, in California all certified and registered interpreters are required to complete 30 hours of continuing education within a two year period.⁷²

Given their interest in maintaining good language skills and high ethical standards in bilingual staff, courts should offer these same opportunities and requirements to all language services providers.⁷³ Interpreter organizations increasingly provide ongoing training opportunities, and courts should work collaboratively with these and other community partners to increase opportunities for continuing education. Courts should also require continuing education for translators. For ATA certified translators, continuing education is a part of the credentialing process and is required to maintain their certification.⁷⁴ Certified members are required to obtain 20 hours of credits in a three year cycle.⁷⁵ Courts should include provisions regarding ongoing training, including the requirement that the translator keep apprised of technology and current practices to aid in the translation process, in all translator contracts.

Voir Dire to Establish Qualifications

While pre-screening, ethics training, and continuing education can be done on a regular basis and in a group setting, voir dire is the process by which courts determine that an individual language services provider is competent for a particular task. This

72. <http://www.courtinfo.ca.gov/programs/courtinterpreters/becoming-faq.htm#diff>.

73. In developing a program for continuing education, courts may find the programs developed at the national level for ASL interpreters to be instructive. ASL Interpreters are registered by The Registry of Interpreters for the Deaf (RID). RID recognizes that certification maintenance is a way of “ensuring that practitioners maintain their skill levels and keep up with developments in the interpreting field, thereby assuring consumers that a certified interpreter provides quality interpreting services.” Continuing education requirements for RID certified interpreters include a minimum of 8.0 CEUs, equivalent to 80 contact hours, during each four-year certification maintenance cycle and participation in the program is required of all certified members of RID.

http://www.rid.org/education/continuing_education/index.cfm/AID/98 (last visited Apr. 19, 2011).

74. http://www.atanet.org/certification/aboutcont_overview.php (last visited Apr. 19, 2011).

75. http://www.atanet.org/certification/aboutcont_overview.php (last visited Apr. 19, 2011).

fundamental aspect of ensuring competent services involves a process to establish the language services provider's qualifications. This process should be developed to fit the setting: on the record, inside the courtroom for a specific legal proceeding; by court personnel in court services or programs; and by court-mandated or offered program staff, regardless of where services occur. All language services providers should be asked about their credentials and ability to communicate with a specific LEP person. The process can be initiated by the judge, court personnel, or counsel.

These questions are designed to help determine that there are no ethical reasons, such as being related to the LEP person, why the interpreter should not be used in a particular matter, and to confirm that the interpreter and the LEP person have been able to establish communication and understand one another, including any use of dialect by the LEP person. In legal proceedings, the judge should begin the voir dire questioning described below with a brief overview of the subject matter of the hearing to ascertain if there is a possibility that issues interpreted in the hearing will inhibit the interpreter's ability to faithfully and accurately render the message.⁷⁶ An interpreter's life experiences may impact his or her ability to remain neutral and can lead to vicarious trauma and an inability to accurately interpret; appointment of an interpreter to serve in a matter that strikes an emotional nerve based on prior trauma or experiences can be avoided through use of these preliminary questions.

In instances where the interpreter is court-certified or has had his or her language fluency and interpreting skills assessed through a verified examination process, the voir dire can be a relatively brief process. It is used to establish the interpreter's qualifications and appropriate language match with the LEP person, and to ensure that the interpreter is free from a conflict of interest to interpret in the matter at hand.⁷⁷ After a brief overview of the subject-matter of the case, the court should ask the following questions of all proposed interpreters:⁷⁸

- Do you have any particular training or credentials as an interpreter? If so, please describe.⁷⁹

76. This is a fail-safe measure; ideally, the interpreter should receive some information about the case-type in advance of the interpreting assignment. This measure will protect the efficiency of the proceedings by informing an interpreter of issues that are likely to be raised to ascertain if these issues would present a problem for the interpreter's ability to remain neutral. For example, in a sexual assault case, an interpreter with a history of sexual assault may decide that the issues are too intense and likely to cause vicarious trauma for the interpreter. Knowing this in advance is the most efficient way of avoiding delays and inaccuracies in the hearing. This introductory information is consistent with common interpreter code of conduct provisions regarding impediments to performance. For example, Canon 10, Impediments to Compliance With Code, of the New Jersey Court Code of Conduct, provides that "Any interpreter, transliterator, or translator who discovers anything that would impede full compliance with this code should immediately report it to his or her employer or the court." See <http://www.judiciary.state.nj.us/rules/appinterpret.htm>.

77. This should be distinguished from the voir dire discussed in Standard Three, which focuses on determining whether to appoint an interpreter or not and whether the person is LEP.

78. NCSC, Court Interpretation: Model Guides for Policy and Practice in the State Courts, ch. 6: Judges Guide to Standards for Interpreted Proceedings, Figure 6.2.

79. These questions are intended to start a dialog and to elicit a narrative response.

- How many times have you interpreted in court?
- How many times have you interpreted for this type of hearing or trial?
- Please tell me some of the main points of the code of professional conduct for court interpreters.
- Do you know or work for any of the parties? If yes, please explain.
- Do you have any potential conflicts of interest in this matter? If yes, please explain.
- Have you had an opportunity to speak with the LEP person and were there any communication problems?
- Are you familiar with the dialectical or idiomatic peculiarities of the LEP party or witness?
- Based on my overview of this case and information that was provided to you by the court, is the testimony or evidence likely to create an impediment to your ability to render a faithful and accurate message? If so, please explain.

When the interpreter's interpreting skills and language fluency have not been assessed, the voir dire should be more detailed. In the longer inquiry, the judge should establish, on the record, the interpreter's qualifications to interpret in court, ability to communicate, and absence of conflicts of interest. The more detailed voir dire is generally used in these circumstances: when a certified interpreter is not available even though the language is one where court certification exists and a judge needs to determine whether an uncertified interpreter can be used;⁸⁰ and, when no certification exists for the language needed and the judge needs to establish the interpreter's qualifications. The following questions should be asked:⁸¹

- What is your native language?
- How did you learn the source and target languages?
- Have you spent any time in the/a country where the target language is spoken?
- Did you formally study either language in school?
- Are you able to interpret simultaneously without leaving out or changing anything that is said?
- Are you able to interpret consecutively?

80. An example of this might be when a Spanish interpreter is needed for an urgent domestic violence protection order hearing and the court certified interpreters are engaged in other matters and not available in person or through technological means.

81. The sample questions come from multiple sources, including the NCSC Court Interpretation Model Guides, ch. 6: Judges Guide to Standards for Interpreted Proceedings, Figure 6.2; Romero, 34 U. Dayton L. Rev. 15; and the Supreme Court of Ohio, Interpreters in the Judicial System: A Handbook for Judges.

- Have you had any legal interpreting training? If yes, please describe.
- Have you previously taken any kind of certification exam for interpreting? If so, please tell me the number of times, the dates, and your scores on each occasion.
- If you have taken interpreter certification exams, please provide me with any information the testing organization gave you regarding your test results.⁸²

While this *voir dire* is most commonly used in legal proceedings, courts should develop procedures to adapt it for other legal settings. For bilingual staff who are used not to interpret, but to provide direct assistance, it is important that some questions be asked if a separate process to assess language competency (discussed above) cannot be used. These questions should inquire into the individual's language fluency, the method used to learn the language, and the level of understanding of the relevant terminology in both English and the second language.

Courts should also inquire into the qualifications of translators with whom they will work. The inquiry differs because translation work involves different skills than interpretation and because the work can occur remotely, even across national or international boundaries. The following inquiry should be used to help determine the appropriate fit between translator and the type of translation work needed by the court:

- Do you have any credentials as a translator? If so, please describe.
- If no, ask the following questions to determine language proficiency:
 - What is your native language?
 - How did you learn the source and target languages?
 - Did you formally study either language in school?
 - Have you spent any time in the/a country where the target language is spoken?
- Have you had any formal training as a translator?
- Tell me about your experience in conducting court translations, including the number of years of experience and the types of court document translated.
- In what other fields have you provided translations?
- Please tell me some of the main points of the code of professional responsibility for translators based on the ATA model code.
- Do you feel confident that you can match the language in this particular

82. NCSC Court Interpretation Model Guides, ch. 6: Judges Guide to Standards for Interpreted Proceedings, Figure 6.2.

type of document?⁸³

For situations where a translator is providing services in connection with a legal proceeding, the voir dire questions should be used to start a dialog between the court and the language services provider to allow the court to make a determination, on the record, regarding the provider's qualifications and ability to render services in the legal proceeding. Outside the courtroom, the voir dire should still be used and the translator's qualifications should be documented in an appropriate manner.

83. *Id.*



STANDARD 9

Training

The court system and individual courts should provide all judges, court personnel, and court-appointed professionals with training on the following: legal requirements for language access; court policies and rules; language services provider qualifications; ethics; effective techniques for working with language services providers; appropriate use of translated materials; and cultural competency.

Commentary

Mandatory training of judges, court personnel, and court-appointed professionals on the court's language access policies and court rules, as well as on each of the components identified below, is necessary to ensure meaningful access to the justice system for LEP persons. Providing interpreters and translated materials is complex, often requires the use of technology, and depends upon consistent implementation of the court's policies to be effective. Training is critical since it is really the only way to determine "whether staff knows and understands the LEP plan and how to implement it."¹

Best Practices

The following sections describe who should be trained, what the training should cover, and how frequently it should occur. The *DOJ LEP Guidance* emphasizes that training needs to be provided broadly to many different groups and points out that "[s]taff should know their obligations to provide meaningful access to information and services for LEP persons" and "it is important to ensure that all employees in public contact positions are properly trained."² The Consortium for Language Access in the Courts' "*Ten Key Components to a Successful Language Access Program in the Courts*" lists education as a needed activity, listing four areas to be covered:

Educate judicial partners such as judges, mediators, arbitrators, court staff, at-

1. *DOJ LEP Guidance*, at 41,465.

2. *Id.*

torneys and others about: (1) the need for and role of language service providers in court proceedings; (2) the knowledge, skills, and abilities of a competent language service provider; (3) the policies, procedures, and rules for the appointment and use of credentialed language service providers in the courts; and (4) the techniques for effectively delivering services to persons facing language barriers in the courts.³

The Department of Justice noted a model training and orientation program for court staff in Washington in their resource, “*Executive Order 13166 Limited English Proficiency Resource Document: Tips and Tools from the Field.*” The report highlights King County Superior Court, Office of Interpreter Services, in Seattle, Washington, as providing “orientations to new judges and commissioners regarding the interpreter program and the appropriate use of interpreters. ... The office also strives to ensure that experienced interpreters are assigned to cases with newer judges or commissioners.”⁴

Individuals Who Should Receive Training

Regarding who should receive training on the court’s language access program, “[t]he more frequent the contact with LEP persons, the greater the need will be for in-depth training. Staff with little or no contact with LEP persons may only have to be aware of an LEP plan. However, management staff, even if they do not regularly interact with LEP persons, should be fully aware of and understand the plan so they can reinforce its importance and ensure its implementation by staff.”⁵ Training on the court’s language access program, court rules, policies, and procedures is critical for all court personnel that come into contact with the public. The Department of Justice recommends that courts train “new interpreters, as well as judges, attorneys and other court personnel.”⁶

In addition to judges and court personnel, courts should provide training to court-appointed or supervised professionals, even when not directly employed by the court. This includes court-appointed attorneys and other court-appointed or supervised professionals who need to communicate with LEP persons as part of their court-related duties. According to the Department of Justice, “[i]n order for a court to provide meaningful access to LEP persons, it must ensure language access in all such operations and encounters with professionals.”⁷

3. NCSC, Consortium for Language Access in State Courts, 10 Key Components to a Successful Language Access Program in the Courts, http://www.ncsconline.org/D_Research/CourtInterp/10KeystoSuccessfulLangAccessProgFINAL.pdf (website last visited, April 25, 2011).

4. U.S. Department of Justice, Civil Rights Division, Coordination and Review Section, *Executive Order 13166 Limited English Proficiency Resource Document: Tips and Tools from the Field* (2004), at 62.

5. *DOJ LEP Guidance*, at 41,465.

6. U.S. Department of Justice, Civil Rights Division, Coordination and Review Section, *Executive Order 13166 Limited English Proficiency Resource Document: Tips and Tools from the Field* (2004), at 59.

7. *DOJ, Letter to Chief Justices and State Court Administrators*, at 3.

While the court is not obligated to provide training to justice partners outside of those individuals whom they appoint or supervise, the court is often the most appropriate provider of this training due to its expertise, authority, and control over language access services in the courts. This is also true for trainings to the general public on the availability of language access services. The *Consortium's Ten Key Components* highlights the need to “[e]ducate persons with limited English proficiency about the availability, role, and use of language service providers in the courts.”⁸ Some state Administrative Offices of the Courts have taken a leadership role in providing this training very broadly while others have collaborated with other entities, such as the private bar, to ensure that training is available.⁹ Local bar associations also provide this training, and should collaborate with the court to enlist the court’s expertise in the area.

Components of a Court Language Access Training Program

A comprehensive training curriculum helps ensure that services are provided correctly. The components should include: legal requirements to provide language access services, court policies and rules, language services provider qualifications, ethics, working with language services providers, translation protocols, and cultural competence.

i. Legal Requirements

Fundamentally, training should include a discussion of the legal requirement to provide services in a non-discriminatory manner. This component should provide basic information about access to justice imperatives, federal and state laws, legal decisions, and court rules requiring meaningful access. It should include relevant constitutional provisions, Title VI of the Civil Rights Act of 1964 (with implementing regulations, guidance, and letters), as well as relevant state laws and court rules governing the use of interpreters and translated materials. The training should cover the scope of the language access services required, including not only in the courtroom, but also for court services with public contact and court-mandated or offered programs.

ii. Court Rules and Court Policies

Comprehensive training on the relevant court rules and policies is critical to effective implementation of meaningful access. This aspect of the training should describe the court rules and policies regarding the provision of language access services, and cover procedures for implementing those services to LEP persons

8. NCSC, *10 Key Components to a Successful Language Access Program in the Courts*.

9. According to the NCSC 2008 Consortium Member Survey Data, approximately 16 state court interpreter programs provide some training to attorneys working within the court system.

consistent with the state's policies and language access plan. This section of the training should focus on the requirements of the court rules, and procedures to request services, and mechanisms to ensure enforcement and resolve complaints of inadequate services.

iii. Language Services Provider Qualifications

Training should also include information on the language access provider qualification process, including the credentialing process for all languages including those where state or national certification does not exist. A basic understanding of the role of the court interpreter, the skills necessary to interpret competently, and the certification process, is critical to avoiding the misunderstanding and confusion that occurs with the use of untrained individuals as interpreters. For example, without an understanding of the skills required to interpret, a judge may not understand the court policy against the use of ad hoc or untrained family member interpreters. Training is also necessary to dispel the myth and misunderstanding that bilingualism is sufficient qualification to interpret: the trained judge or court personnel understands that not all bilingual persons have the necessary interpreting skills to work in courts and that the skills needed to interpret are extensive. This training should also provide guidance on the steps necessary to appoint a qualified interpreter and should describe the differences between interpreters and bilingual staff and the appropriate roles for each.

iv. Ethics

One of the most important components of training is the interpreter's code of professional conduct that governs court interpreting. Judges, court personnel, and court-appointed professionals should develop a full understanding of these ethical requirements, including their own responsibilities and those of the interpreter. Discussing the scope of the interpreter code of conduct helps avoid situations where judges, court personnel, or attorneys ask interpreters to perform tasks that are outside their role or in other ways place them in ethical dilemmas. Recognition that ethical areas pose one of the greatest risks for error is one reason that continuing ethics education is required in many professions; therefore including a component of regular and detailed ethical training is strongly recommended.

The training should cover the basic components of interpreter codes of professional conduct, including the following: requirement for accuracy and completeness; accurate representation of qualifications; duty to remain impartial and unbiased; avoidance of conduct that may give an appearance of bias; main-

tenance of professional demeanor; protection of confidentiality; prohibition of public comment; limitation of the scope of practice to interpreting and translating; assessment and reporting of impediments to performance; and duty to report ethical violations.¹⁰

v. Effective Techniques for Working with Language Services Providers

Training on how to work with language services providers helps ensure that judges and court personnel understand the role of the interpreter, and methods for effectively and efficiently interacting with an LEP person through an interpreter. Communicating through an interpreter isn't intuitive; yet, by learning some simple tools, judges and court personnel can help facilitate that communication. Knowledge of how to effectively work with interpreters in the courtroom also helps ensure an accurate record.

Training on this topic should include common tips and conventional practices that help facilitate communication when using an interpreter. These practices include: avoiding rapid speech, having one person speak at a time, avoiding speaking over another person, using proper positioning, employing different interpreter modes and registers, bringing issues of interpreter competency to the attention of the court, understanding special considerations for the use of multiple interpreters including relay interpreters,¹¹ and employing technologies such as telephonic and video remote interpreting. Special attention should be paid to the processes for recording interpreted proceedings and challenges to interpreter accuracy.

vi. Translation

Training judges, court personnel, and court appointed professionals regarding the court's translation policies and procedures is critical to their effective implementation. In particular, training should include information on the certification available, the skills needed, and the court's translation protocol, including the steps to follow as translations are finalized. Special attention should be paid to the review of newly developing translation technologies with clear guidelines provided for the appropriate use of these technologies to avoid inadequate translations.

10. NCSC, *Court Interpretation: Model Guides for Policy and Practice in the State Courts*, ch. 9, pp. 200-09.

11. The issue of the appropriate number of interpreters for a particular matter is discussed in *Standard 4*. Relay interpreters are interpreters who interpret from one foreign language to another foreign language, and vice versa. Another interpreter then interprets from the second language into English, and vice versa. This is also referred to as an "intermediary interpreter." The use of a relay interpreter is common in two areas: languages of lesser diffusion and ASL. For languages of lesser diffusion or indigenous languages, the relay interpreter speaks the indigenous language fluently and another, more common foreign language, but is not fluent in English. The second interpreter is fluent in the second language (the more common foreign language) and English. It is a common practice in ASL interpreting for deaf litigants who are not proficient in ASL.

vii. Cultural Competence

Cultural competence has been defined as a set of values, behaviors, attitudes and practices that allows a system, organization, program or individual to work effectively across cultures.¹² Training on cultural competence helps all participants in the justice system respect the diverse beliefs, language, interpersonal styles and behaviors of people receiving services as well as the staff providing those services.¹³ As recognized by the *ABA Standards for the Provision of Civil Legal Aid*, “[a]n essential component of cultural competence is recognizing and resisting the temptation to stereotype individual members of the cultural group.”¹⁴ The *COSCA White Paper on Court Interpretation* adds the component of cultural competence in its recommendation on training stating that “[s]tate courts should educate and train their judges and court staff on the importance of using competent court interpreters, on cultural diversity and culturally-based behavior differences, and on the importance of following court policies regarding usage of court interpreters.”¹⁵

Cultural competence training helps promote communication that is not prejudiced by different cultural norms and behaviors. Although cultural competence is separate from interpretation, many state court administrative agencies have made it a mandatory component of training about language access services for two reasons: first, interpreters are often incorrectly asked to provide information about cultural norms as part of their interpreting tasks, in direct violation of their ethical code; second, misconceptions about the requirements of cultural competence can result in untrained individuals from a particular country being asked to provide an overview of the culture, resulting in the introduction of misinformation and bias into legal proceedings. Providing formal cultural competence training can promote better understanding of LEP communities while reinforcing the appropriate role of the court interpreter in a

12. U.S. Department of Health and Human Services, Office of Minority Health, <http://minorityhealth.hhs.gov/templates/browse.aspx?lvl=2&lvlID=11> (lasted visited Apr. 19, 2011).

13. “Cultural and linguistic competence is a set of congruent behaviors, attitudes, and policies that come together in a system, agency, or among professionals that enables effective work in cross-cultural situations. ‘Culture’ refers to integrated patterns of human behavior that include the language, thoughts, communications, actions, customs, beliefs, values, and institutions of racial, ethnic, religious, or social groups. ‘Competence’ implies having the capacity to function effectively as an individual and an organization within the context of the cultural beliefs, behaviors, and needs presented by consumers and their communities.” U.S. Department of Health and Human Services, Office of Minority Health, <http://minorityhealth.hhs.gov/templates/browse.aspx?lvl=2&lvlID=11>.

14. American Bar Association, *Standards for the Provision of Civil Legal Aid* (2006), Standard 2.4, at 57, <http://www.americanbar.org/content/dam/aba/migrated/legalservices/sclaid/downloads/civillegalaidstds2007.authcheckdam.pdf> (The ABA Standards for the Provision of Civil Legal Aid recognize that “[c]ultural competence involves more than having the capacity to communicate in the language of the persons from each community and involves more than an absence of bias or discrimination. It means having the capacity to interact effectively and to understand how the cultural mores and the circumstances of the persons from diverse communities effect their interaction with the provider and its practitioners and govern their reaction to their legal problems and to the process for resolving them.”)

15. Conference of State Court Administrators, *White Paper on Court Interpretation: Fundamental to Access to Justice* (November 2007), Recommendation Number 14, <http://cosca.ncsc.dni.us/WhitePapers/CourtInterpretation-FundamentalToAccessToJustice.pdf>.

consistent and accurate manner.¹⁶

Frequency and Duration of Training

Courts should determine the frequency and duration of training on the basis of how much contact various staff have with the public. An adequate training program should include training for newly hired staff and ongoing training for all staff. Including language access training in new staff orientation educates staff at the earliest point in their interactions with the public and provides an opportunity for courts to set the expectation that staff will implement language access policies and procedures. Providing ongoing training to all staff reinforces the initial training and provides an opportunity to discuss in greater detail the complex issues involved with providing appropriate language access services, and how to do so in an efficient manner. Some state interpreter programs provide regular trainings to judges through the state's judicial college program, a practice which is encouraged.

In addition to implementing annual training measures, courts should establish procedures to provide training in instances when policies have changed, new programs or services have been developed, or new technologies have been implemented. This includes trainings needed to respond when monitoring systems or individual complaints have uncovered deficiencies in the services provided. Courts may want to incorporate a review of language access training into the performance review standards for all employees as a way to monitor the effectiveness of the training program.

The duration of the training is determined in part by the role of the individuals being trained and by whether the information provided is sufficiently detailed to ensure understanding and compliance, as required by the person's position. The more contact the person has with the public, the more intensive the training should be. Some staff, particularly those responsible for coordinating, scheduling or monitoring interpreter services for a particular court may require training that is of a longer duration, lasting from one to several days. Each of the areas outlined above could be the focus of individual day-long detailed training sessions; however, recognizing the time constraints on court staff, each could also be covered in shorter sessions. Where shorter trainings are provided, courts should supplement the training by providing the participants with written materials. These sessions may be provided in electronic format to allow for flexibility in scheduling when the individual takes the training and should be coupled with an evaluation tool to determine if the information is

16. The following training modules are sample cultural competency training components. See U.S. Department of Health and Human Services, Office of Minority Health, *What is Cultural Competency?* <http://minorityhealth.hhs.gov/templates/browse.aspx?lvl=2&lvlid=11> (last visited Apr. 19, 2011); see also, Regents of the University of California, UCSF Center for Health Professionals, *Cultural Competency Training Program*, http://depts.washington.edu/ccph/pdf_files/Halfdaytemplate-network.pdf. Courts should also consider adding a component of cultural competency in serving Deaf litigants as part of this training. For more information, see The National Consortium of Interpreter Education Centers, *Linguistic Considerations of Deaf Litigants*, <http://www.nciec.org/projects/docs/Legal-FactsheetLinguisticConsiderations.pdf>.

understood.

Resource Materials and Best Practices

Courts should develop or obtain detailed resource manuals that address each of the training components highlighted above and distribute them to all judges, court personnel and court-appointed professionals. These resources can help support the court's ongoing training programs. A court should also consider developing or enhancing its intranet resource materials. Resources are available to assist courts in these efforts from organizations such as the National Center for State Courts Consortium on Language Access in the Courts and the National Association of Judiciary Interpreters and Translators. The Consortium provides a forum for member states to share general training materials on many of the subjects listed below.

Courts should review and implement existing resources as they either create or strengthen their training programs. The resource developed by William Hewitt for the Consortium entitled *Court Interpretation: Model Guides for Policy and Practice in the State Courts* covers many of the topics addressed in this *Standard* is highly recommended.¹⁷ The Department of Justice, in the manual entitled “*Executive Order 13166 Limited English Proficiency Resource Document: Tips and Tools from the Field*,” highlighted the resource development efforts of the New Jersey Administrative Office of the Courts which has created separate training manuals for judges, interpreters, and court administrative staff.¹⁸ Some state courts have also developed bench books for judges that address many of the issues relevant to working with LEP litigants in the courtroom, including the proper use of interpreter services.¹⁹ Current efforts to further develop national resources mean that more programs should be available in the near future.

17. Available at http://www.ncsconline.org/wc/publications/Res_CtInte_ModelGuidePub.pdf.

18. U.S. Department of Justice, Civil Rights Division, Coordination and Review Section, *Executive Order 13166 Limited English Proficiency Resource Document: Tips and Tools from the Field* (2004), at 63.

19. See, Minnesota Judicial Branch, Bench Card, Courtroom Interpreting, http://www.mncourts.gov/Documents/0/Public/Interpreter_Program/Bench%20Card%20-%20Interpreter.pdf; New York Unified Court, Court Interpreter Manual, (2008), <http://www.nycourts.gov/courtinterpreter/pdfs/CourtInterpreterManual.pdf>; The Supreme Court of Ohio, Interpreters in the Judicial System: A Handbook for Ohio Judges; see also, http://www.sconet.state.oh.us/publications/interpreter_services/IShandbook.pdf; Oregon Judges Criminal Bench Book, ch. 19 Interpreters, (2005); http://courts.oregon.gov/OJD/docs/OSCA/cpsd/CrimLawBenchBook_11.06.pdf; Washington Courts Bench Card Courtroom Interpreting, http://www.americanbar.org/content/dam/aba/migrated/domviol/pdfs/dmcja_bench_card_2.authcheckdam.pdf.



STANDARD 10

State-Wide Coordination

Each court system should establish a Language Access Services Office to coordinate and facilitate the provision of language access services.

Commentary

Statewide coordination of language access services by a centralized Language Access Services Office (LAS Office)¹ creates efficiencies, reduces costs, avoids duplications, and improves the delivery of services by increasing collaboration both at the state level and between state and national organizations.² The National Center for State Courts Consortium on Language Access in the Courts lists the establishment of a centralized office within the state court administrator's office as one of the ten key components of an effective "Language Access Program."³ It highlights the centralized office's role in determining the need for services and taking steps to ensure they are provided in the most cost-effective manner.⁴ The Conference of Chief Justices has also endorsed the benefits of centralized coordination, which is particularly useful as courts deal with the increasing demand for language access services at a time of lim-

1. Language Access Services Office (LAS Office) is intended to be a generic term for the purposes of discussion in these *Standards*. It signifies a centralized office that oversees the components described in *Standards 10-1 to 10-6*. The name and placement within the state system of this office will vary by state.

2. http://www.ncsconline.org/d_research/CourtInterp/1Consort-FAQ.pdf. The effort to centralize, standardize, and enforce language access services can be duplicated in all adjudicatory settings, not only state court systems. Courts are encouraged to collaborate with other tribunals in the area of language access.

3. The Consortium defines a "Language Access Program" as: "A program created to increase access to the courts, its services and activities by eliminating language barriers and increasing education, including, but not limited to the following resources: credentialing court interpreters; developing LEP plans as defined by the Department of Justice; providing interpreters for the Deaf and Hard of Hearing; translating signage, forms, and other vital documents; providing local courts with appropriate means to identify language needs; developing and distributing judicial bench books and/or bench cards; and providing professional development training for interpreters, as well as training on language access for the judiciary, the Bar, and court personnel." NCSC, *10 Key Components to a Successful Language Access Program in the Courts*.

4. The Consortium identifies efficiency as a primary motivation for the establishment of centralized testing, explaining that it was "created to counter the high costs of test development and associated proprietary interests by providing a vehicle for exchange of expertise while safeguarding work products." NCSC, *Consortium for State Court Interpreter Certification, Frequently Asked Questions*. http://www.ncsconline.org/d_research/CourtInterp/1Consort-FAQ.pdfhttp://www.ncsconline.org/d_research/CourtInterp/10KeystoSuccessfulLangAccessProgFINAL.pdf. Component Seven of the Consortium's ten components is Program Administration. The guideline for this component suggests that the LAS Office should: "employ highly competent professional individuals who efficiently and effectively oversee the delivery of language services in accordance with established rules, policies, and procedures. Effective administration includes, but is not limited to: (1) managing program budget and staff; (2) recruiting, hiring, and monitoring the performance of qualified language service providers; (3) collecting, analyzing and disseminating program data and information to court leaders and stakeholders; and (4) actively seeking alternative funding, including grants, to enhance program operations and services."

ited budgets.⁵ Providing adequate staff to the LAS Office ensures it has the resources necessary to carry out these tasks.

This Standard provides a comprehensive list of the duties of a centralized office as a guide for states that are establishing or expanding their offices to efficiently develop new services.⁶ The tasks of a centralized office are discussed in the following sections. Standard 10.1 covers the communication of information about language access services throughout the state. Standard 10.2 discusses the establishment of procedures and plans to implement services. Standard 10.3 describes the office's role in monitoring for compliance. Standard 10.4 details how the office can help develop resources. Standard 10.5 offers a description of coordination of credentialing and quality assurance for language services providers, and Standard 10.6 summarizes the need to provide training.

Most state courts have a centralized office that coordinates some aspects of the language access services outlined in these *Standards*. Of the forty-one member states which are currently part of the Consortium,⁷ virtually all of them have a statewide foreign language interpreting program housed in the Administrative Office of the Courts or one of its subdivisions.⁸ While most of these programs play some role in the training, testing,⁹ and monitoring of interpreters, some also coordinate other functions including training, hiring, supervising, and scheduling¹⁰ of interpreters for courts throughout the state.¹¹ A centralized office at the state level assists courts in expanding services beyond legal proceedings to court services and to court-mandated or offered programs and helps to efficiently expand the availability of translated materials. It is the principal point of contact for all issues regarding language access to the courts.

5. See Conference of Chief Justices Resolution 2, *Regarding Increase to Access to Justice*, <http://ccj.ncsc.dni.us/AccessToJusticeResolutions/resol2IncreaseAccessToJustice.html>; Resolution 7, *Regarding Adequate Court Interpretation Services*, http://ccj.ncsc.dni.us/AccessToJusticeResolutions/resol7_AdequateCourtInterpretationSvcs.html; Resolution 23, *Regarding Access to Justice Leadership*, <http://ccj.ncsc.dni.us/AccessToJusticeResolutions/resol23Leadership.html>.

6. Even those states that do not have a centralized office for spoken language access have developed processes, including a centralized office, to coordinate all sign language interpreter services to ensure that interpreter services are provided to deaf individuals in an efficient and comprehensive manner. Programs to serve the deaf and hard of hearing usually rely on an after-the-fact determination of whether the service was effective by reviewing the accommodation after the service is provided. However, a prior evaluation of services, including a determination of which services are essential and the most efficient way to provide quality language access, is a better proactive approach, particularly as it allows courts to employ more cost-effective language access services rather than always paying for an in-person interpreter.

7. States that are not yet members of the Consortium include Arizona, Kansas, Louisiana, Montana, North Dakota, Oklahoma, Rhode Island, South Dakota, and Wyoming. Many of these states do have some statewide coordination of interpreters but some are limited to ASL interpreters for the deaf and hard of hearing.

8. A list of the offices for language access services for the 41 states which are currently members of the Consortium can be found at <http://www.ncsc.org/education-and-careers/state-interpreter-certification/contact-persons-by-state.aspx> (last visited Apr. 19, 2011). This list is reproduced in Appendix B.

9. Some states, such as New York, develop their own language testing programs. See New York State Unified Court System, Court Interpreting Services, <http://www.courts.state.ny.us/courtinterpreter/index.shtml>. The NYS Unified Court System's Office of Court Administration (OCA) established its Office of Court Interpreting Services (CIS) in 2001. CIS has statewide oversight of court interpreting issues, and works closely with personnel in the courts and local administrative offices on the provision and scheduling of interpreters, as well as training, quality-assurance, and any related concerns. CIS works in cooperation with the OCA Examination Unit to administer language-proficiency testing for prospective interpreters, and maintains a real-time database of all registered (*i.e.*, qualified or certified) court interpreters.

10. One such example is Oregon. See Oregon Judicial Department, Court Interpreter Services, <http://courts.oregon.gov/OJD/OSCA/cpsd/InterpreterServices/index.page>.

11. Part of this variation can be attributed to the fact that not all states have a unified court system; other differences are due to the size of the state LEP population and geographic diversity.

An important function of a centralized office is to foster collaboration among different components of the court administration and relevant community stakeholders. One example of the benefits of this coordination among court components can be seen in California, where the Administrative Office of the Courts has convened a language access working group that includes representatives from various court units and divisions, including Court Interpreters Unit, Human Resources, Education, Office of the General Counsel, Equal Access Unit, Communications Office, Facilities Division (re: court design and signage), Access and Fairness Advisory Committee, and the Task Force on Self-Represented Litigants. This office developed and updates the AOC's LEP plan,¹² shares information on different projects, and identifies which member department should take the lead on Language Assistance Plan (LAP) implementation and support of the courts.¹³ The LAS Office's ongoing communication with outside stakeholder groups is also particularly helpful in monitoring for quality of services (discussed in *Standard 10.3*); and in seeking out information and receiving feedback about the adequacy of existing court rules, policies, procedures and language access services from the bar, community advocates, interpreters, and other stakeholders, who are involved with the courts but not employed there, and provide an additional perspective that differs from those of judges and staff.

Centralized coordination at the state level in turn promotes collaboration with national entities and among states, allowing them to share best practices and resources and reducing the need to develop costly individualized systems for certification and testing. The Conference of State Court Administrators (COSCA), in its "*White Paper on Court Interpretation: Fundamental to Access To Justice*," encouraged all states to join the Consortium "in order to establish nationwide competency standards, use the Consortium's resources to initiate new court interpreter programs or enhance existing programs, and promote efficiencies associated with the "pooling" of limited interpreter and program funding resources."¹⁴

10.1 The office should provide, facilitate, and coordinate statewide communication regarding the need for and availability of language access services.

Commentary

Communication is a critical component of a successful language access program. The Consortium has identified communication as one of the "*Ten Key Components to*

12. As mentioned in *Standard 7*, the terms Language Assistance Plan, Language Access Plan, and LEP Plan are all used to describe comprehensive written plans for language access services to LEP persons. These Standards use the term language access plan as a generic term to refer to these written plans. *Standard 2* provides that aspects of the Plan be codified in court rules for clarity, wide access and enforceability.

13. Description provided by Bonnie Hough, ABA Advisory Group Member and Managing Attorney, Center for Families, Children and the Courts Judicial Council of California - Administrative Office of the Courts.

14. Recommendation Number 7, Conference of State Court Administrators, *White Paper on Court Interpretation: Fundamental to Access to Justice* (1997).

a Successful Language Access Program in the Courts,” and noted the importance of maintaining effective ongoing communication with the following groups: “(1) judicial and court administration leaders regarding the needs and performance of the language access program; (2) stakeholders regarding the nature and performance of the program; and (3) Consortium members through participation in its annual meeting, list serve discussions, and requests for information.”¹⁵

Best Practices

The LAS Office should research and communicate to all courts regarding language needs in the communities served and services offered to meet those needs, including the availability of existing interpreter and translation services, interpreter lists, translated materials, and training resources. Communicating with courts about the availability of interpreter services and written translations assists in incorporating the delivery of language access services into the courts’ core operations across the state. Educating the general public on the availability of language access services in courts also removes barriers that are created when LEP persons are unaware of those services.¹⁶

10.2 The office should coordinate and facilitate the development of necessary rules and procedures to implement language access services.

Commentary

Effective and uniform implementation of language access services throughout the state requires the development of court rules, policies, and procedures to support the court’s language assistance plan. The LAS Office should take the lead in developing court rules, policies, and procedures, as discussed in *Standard 2.1*, and should coordinate with judges, court administrators and state legislators where appropriate to implement effectively the court’s written language assistance plan.¹⁷

Best Practices

Court rules should be developed to establish the language access services required and available in the court; such rules are needed to facilitate access to and enforceability of required services. As mentioned in *Standard 2.1* rules need to be developed that address all of the components of these standards. Court rules, administrative orders, and policies serve to enhance and support implementation and should be co-

15. NCSC, *10 Key Components to a Successful Language Access Program in the Courts*.

16. NCSC, *Trust and Confidence in the California Courts, A survey of the Public and Attorneys* (2005), at 21 (identifying difficulty with English as a barrier keeping members of the public from taking a case to court).

17. The LAS Office can also provide financial support to encourage the use of quality interpreter services. States such as Oregon and Washington, for example, have programs to reimburse courts for a portion of the cost of interpreter services when courts hire certified interpreters.

ordinated from a centralized office to promote efficiency and save staff resources. For example, the requirement that courts identify LEP persons for whom language access services are needed can be implemented through a court rule that requires courts to add language needs to all forms that initiate a court action and to provide notice of services to the public; statewide coordination can ensure that the resources developed can be adapted for use by all courts throughout the state.

The LAS Office should also develop and coordinate the use of Language Access Plans on a statewide basis.¹⁸ These plans are an important part of a coordinated and effective statewide language access program and should convey information to both court personnel and the public at large. According to the Department of Justice, “the development and maintenance of a periodically-updated written plan on language assistance for LEP persons (“LEP plan”) for use by recipient employees in serving the public will likely be the most appropriate and cost-effective means of documenting compliance and providing a framework for the provision of timely and reasonable language assistance. Moreover, such written plans would likely provide additional benefits to a recipient’s managers in the areas of training, administration, planning, and budgeting.”¹⁹ The *DOJ LEP Guidance* goes on to state that “the following five steps may be helpful in designing an LEP plan and are typically a part of effective implementation plans: 1) Identifying LEP individuals Who Need Language Assistance;²⁰ 2) Language Assistance Measures; 3) Training Staff; 4) Providing Notice to LEP persons; and 5) Monitoring and Updating the LEP Plan.”²¹ These *Standards* include the five steps identified by DOJ. One example of the benefits of statewide coordination of plans can be seen in Minnesota, where, like California, each state court, including the State Court Administrator’s Office, is required to annually update and post its LEP Plan on the Judicial Branch’s public website.²²

The LAS Office should establish a process for regular review of the court’s rules, policies, procedures and LEP plan. Courts should consider whether “changes in demographics, types of services, or other needs require annual reevaluation of their LEP plan.”²³ Elements to be evaluated during such a review include “current LEP populations in the service area or population affected or encountered; frequency of encounters with LEP language groups; nature and importance of activities to LEP persons; availability of resources, including technological advances and sources of additional resources, and the costs imposed; whether existing assistance is meeting the needs

18. Depending on the court system structure, this office may be limited to the ability to create model plans and share that information with each court. In that instance, the office can be instrumental in assisting courts in creating a localized plan and in its implementation.

19. *DOJ LEP Guidance*, at 41,464.

20. The data described under *Standard 3.1* should be gathered as the first step in developing a written plan.

21. *Id.*; see also, Department of Justice, *Executive Order 13166 Limited English Proficiency Document: Tips and Tools from the Field*, ch. 5: Tips and Tools Specific to Courts.

22. The Minnesota LEP Plans is available at: <http://www.mncourts.gov?page=444>.

23. *DOJ LEP Guidance*, at 41465.

of LEP persons; and whether identified sources for assistance are still available and viable.”²⁴ California is one example of a state with a centralized office that conducts a comprehensive survey to gather data with a large array of data fields including information on ASL and Deaf and Hard of Hearing individuals as well as those who are LEP.²⁵

10.3 The office should monitor compliance with rules, policies and procedures for providing language access services.

Commentary

In addition to the role of monitoring the *quality* of language services providers, discussed in *Standard 10.5*, the LAS Office should monitor for compliance with the legal requirements, rules, policies, and procedures for providing language access services. The *COSCA White Paper on Court Interpretation* confirms this important role in *Recommendation Number 4* which states that “[s]tate courts should establish a process for enforcing judicial compliance with those policies.”²⁶ Monitoring helps ensure that consistent and adequate services are provided statewide and that barriers are identified and resolved appropriately, and should be utilized regardless of whether a state implements language access policies and procedures at the state or local level.

Best Practices

Monitoring for compliance should be conducted through the use of surveys, evaluations, and complaint forms (including anonymous screenings, assessments, and complaints)²⁷ and should incorporate the groups with whom the LAS Office regularly communicates listed in *Standard 10.1* above. To obtain a general overview of services rendered, the LAS Office should survey LEP individuals, the community organizations assisting them, language services providers themselves, as well as judges and staff in the courts and in organizations providing court-ordered and offered services.²⁸ These surveys should be anonymous given the concerns of many interpreters, translators, and other providers about potential job loss due to complaints of inadequate services or support. Individualized evaluations by anonymous trained observers may be used to evaluate language access services both in and outside the court-

24. *Id.*

25. <http://www.courts.ca.gov/xbc/cc/language-interpreterneed-10.pdf> (website last visited May 6, 2011).

26. Conference of State Court Administrators, *White Paper on Court Interpretation: Fundamental to Access to Justice*.

27. See *Standard 10.1* for a discussion of the two-way communication procedures that are recommended to facilitate communication between courts and outside groups and stakeholders.

28. See *Standard 10.1* for a discussion on collaboration. This collaboration extends to the LAS Office’s role in seeking input from community organizations, LEP persons, the bar, interpreters and other stakeholders, regarding the adequacy of existing court rules and practices. The experiences of these individuals may differ from staff and are essential to monitoring functions listed here.

room.²⁹ Courts can use internal or external reviewers throughout the state and in various types of settings to gather detailed information, and to identify and address barriers to the delivery of language access services.

In addition to regular surveys and evaluations, the LAS Office should provide a system for responding to individual complaints regarding the provision of language access services.³⁰ These include complaints about denials of interpreter services, denial of access to services outside the courtroom, and lack of translated written information. Where the denial concerns a local proceeding or service, complaints solely to the local courts may be ineffective and will not necessarily result in mobilization of increased resources to address issues on a systemic basis. Where an individual has filed a complaint about the denial of services, an anonymous complaint mechanism may be appropriate to lessen the fear of reprisal against the complainant. Coordination at the state level should be used to increase the likelihood that measures will be identified to address the problem and that similar problems in other jurisdictions will be prevented or corrected.

10.4 The office should ensure the statewide development of resources to provide language access.

Commentary

Creation of resources (including translated materials, videos etc.) at the state and national level is one of the most important ways that the LAS Office can improve the functioning of the justice system for all participants. The Office should play a role in identifying, funding, and creating such resources. Examples include the establishment of sufficient pools of language access service providers, translation of materials, development of resources, selection of appropriate and cost-effective technology, and the procurement of additional funding to meet changing needs.

Best Practices

Developing regional and statewide interpreter pools, particularly those that can be used with video remote interpreting, is one example of an effective means of addressing the scarcity of interpreters and the cost of travel. *Recommendation Number 18* of the *COSCA White Paper on Court Interpretation* directs the National Center for State Courts and the Consortium to work with state courts to explore the feasibility of establishing regional or national pools of interpreters, as well as community-based in-

29. See New York Unified Court System's "Justice Speaks" project, [<http://www.legalservicesnyc.org/storage/lsny/PDFs/justice%20speaks%202010%20survey%20preliminary%20report.pdf>], and University of North Carolina, *An Analysis of the Systemic Problems Regarding Foreign Language Interpretation in the North Carolina Court System and Potential Solutions* (2010), http://brennan.3cdn.net/8ea3a557a5c266e543_pwm6b023o.pdf.

30. A discussion of monitoring and complaints regarding the quality of language access services appears in *Standard 10.5*.

interpreter testing programs, as cost-effective alternatives. Other resources that should be developed are translated court brochures, forms, and orders that can be used state-wide. State-wide development of translation resources is another example of a significant cost-savings (hiring translators to translate very similar forms in each jurisdiction) and, where translations are done internally, reduces staff time spent on creating nearly identical materials in each location. Examples of coordination of translation of documents can be found in Ohio³¹ and Washington³² and are an impressive demonstration of what can be accomplished with collaboration and coordination.

The centralized office should play a role in both identifying grants and sharing that information with courts throughout the state. Additional funding presents opportunities to improve technology and can have a significant impact on many aspects of the justice system. In the state of Washington, courts were able to use Court Improvement Act funding to purchase items such as translated documents and headsets for interpreting.³³ The LAS Office should work with community partners to create or facilitate development of resources that are suitable for LEP communities.

10.5 The office should coordinate the credentialing,³⁴ recruitment, and monitoring of language services providers to ensure that interpreters, bilingual staff, and translators possess adequate skills for the setting in which they will be providing services.

Commentary

The centralized coordination of credentialing, recruitment and monitoring of language services providers within the LAS Office creates efficiencies and improves the delivery of language access services in courts. Each area of coordination is discussed in the following sections. In some instances development of such credentialing service may be necessary.

Best Practices

Interpreter, Bilingual Staff, and Translator Credentialing

The LAS Office should provide clear standards and procedures regarding interpreter, translator, and bilingual staff competency and should coordinate the implementation and administration of language access provider competency assessment³⁵ and

31. See Ohio project led by the Translation Subcommittee of the Supreme Court Advisory Committee on Interpreter Services and coordinated by the Interpreter Services Program: <http://www.supremecourt.ohio.gov/JCS/interpreterSvc/forms/default.asp>.

32. See list of family law forms, translated by a court-led group of judges, administrators and legal services attorneys at <http://www.courts.wa.gov/forms/?fa=forms.contribute&formID=25>.

33. See 2007 Trial Court Improvement Account Use Report April 2008 at http://www.courts.wa.gov/programs_orgs/pos_bja/cftf/2007TCIARreport.pdf.

34. Credentialing is further discussed in *Standard 9*.

35. "Assessment" refers to actual testing of qualifications, such as language competency.

credentialing³⁶ procedures. Centralized coordination is necessary because “it is unreasonable to expect trial judges to be the sole determiners of an interpreter’s qualifications and that interpreter certification “needs to be available at the local or state level for testing or otherwise assessing the qualifications of interpreter candidates.”³⁷ The NCSC *Model Guides* also note that “in most states it would be preferable to locate the responsibility for screening interpreters in the state’s administrative office of the courts. In this way, screening can be conducted by individuals with specialized training, and a statewide register of qualified interpreters can be maintained for the use of all of the state’s courts.”³⁸

Coordination of language services provider credentialing in services *outside* of the courtroom is one of the newer areas of leadership for offices coordinating language access services. The Consortium’s *Ten Key Components* can be adapted for this process and describes three tasks necessary for a successful language access program:

- Credentialing of language service providers: Adopt clear standards and procedures for credentialing language service providers through the use of exams and accompanying policies and protocols developed or approved by the Consortium.
- Appointment of credentialed language service providers: Adopt appropriate, legally binding rules, policies and procedures to require the use of credentialed language service providers for all court proceedings, the translation of court documents, and the translation/transcription of audio and video recordings.
- Standards of professional conduct for court-related language service providers: Adopt and enforce a Code of Professional Conduct for court-related language service providers.³⁹

The LAS Office should also provide coordination of credentialing for bilingual staff when they are hired to provide direct services in English and the other languages they speak. In coordinating the credentialing of bilingual staff, the Office should not only coordinate testing but should also provide or facilitate training for bilingual staff on their role to ensure they are not providing interpreter services without proper credentialing and training.

36. As mentioned in *Standard 8*, NCSC defines credentialing as “Designating as qualified, certified, licensed, approved, registered, or otherwise proficient and capable through training and testing programs.” NCSC, *10 Key Components to a Successful Language Access Program in the Courts*, note 364.

37. NCSC, *Court Interpretation Model Guides*, ch. 5, Assessing Interpreter Qualifications: Certification Testing and Other Screening Techniques, at 89 – 90.

38. *Id.*

39. NCSC, *10 Key Components to a Successful Language Access Program in the Courts*, Elements 4, 5, and 6, note 364.

LAS Office review of translator qualifications is also necessary to ensure the delivery of appropriate language access services with respect to written materials. Although most state court programs accept national translator certification from the American Translators Association (ATA) in lieu of conducting independent certification exams for translators, ATA offers certification in only a limited number of languages. Translator competency is as important as interpreter competency; quality and accuracy in translations is critical and as the need for translations increases, centralized management becomes increasingly important. The task of the LAS Office in this regard is to promote the systematic use of credentialed translators, develop and implement translation protocols, and generally coordinate the translation process. For more information on translator qualifications, see *Standard 7*.

Recruitment of Interpreters, Bilingual Staff, and Translators

Recruitment of adequate numbers of interpreters, translators, and bilingual staff is a challenge for many courts and is an area where collaboration is needed at the state and regional level. The Consortium's *Ten Key Components* recognizes recruitment as an essential function of a centralized office such as that envisioned by this Standard.⁴⁰ With their direct awareness of the critical importance and sometimes limited availability of trained interpreters and translators, the LAS Office and state courts are uniquely situated to play a leadership role in encouraging institutions of secondary and higher learning to serve as a pipeline to supply professionals to meet the need.

This support for development of language access providers should include working with institutions of higher learning to create community interpreter internship programs, creating and hosting certification programs, and encouraging bilingual students to consider careers in interpretation and translation.⁴¹ In addition to working with general educational institutions, law schools and courts can collaborate to develop training programs that utilize law students to conduct outreach to community service organizations regarding language access rights and legal obligations. An example of a successful model is Villanova law School,⁴² which has established a community interpreter program training both law students and interpreters on the need for language access services. States like Alaska⁴³ and New Mexico⁴⁴ have also taken innovative approaches to this problem by working with non-legal users of interpreter and translation services in an attempt to create more formal pipelines for the training

40. *Id.*

41. A list of colleges and universities that offer courses in interpretation and/or translation can be found at http://www.ncsonline.org/ID_Research/CourtInterp/Web%203%20Colleges%20and%20Universities.pdf.

42. Villanova University, Spanish Internship with Law School Clinics, <http://www84.homepage.villanova.edu/mercedes.julia/Internship%20with%20Law%20School.htm> (last viewed Apr. 19, 2011).

43. Alaska Immigration Justice Project, The Language Interpreter Center <http://www.akijp.org/interpreter.html> (last viewed Apr. 19, 2011).

44. New Mexico Center for Language Access, <http://www.nmcenterforlanguageaccess.org/> (last viewed Apr. 19, 2011).

and development of language services providers.

*Evaluation and Monitoring of Language Services Providers*⁴⁵

Finally, a centralized office should support the establishment of a statewide complaint process to monitor interpreter, bilingual staff and translator quality. Monitoring of language access services generally is discussed in *Standard 10.3*, but monitoring of complaints of specific interpreter misconduct, insufficient bilingual staff skills, ethical violations, and translation errors is appropriately discussed in this section because it focuses on language services providers and the LAS Office's obligation to ensure the quality of those services.

The LAS Office should be made aware of and participate in the process for resolution of complaints regarding interpreter quality at the state level because interpreters often interpret in multiple courtrooms and jurisdictions within a state, and local dispute resolution measures are thus inadequate to resolve concerns regarding interpreter quality. Minnesota⁴⁶ and Washington⁴⁷ provide models regarding the disciplinary process for interpreters under the auspices of the State Court Administrator.

Similarly, the LAS Office should handle complaints about the quality of bilingual staff, who are increasingly used to meet the language access needs of LEP persons in settings outside of the courtroom. While complaints should be monitored by a centralized office, resolution should be done in concert with the local court where the bilingual staff is located. The centralized office should assist in providing training resources to bring the bilingual staff member's competency to an appropriate level, or should recruit other qualified bilingual candidates for the position.

The centralized office should also monitor for complaints regarding deficiencies in written translations. This is best handled at the state level to ensure efficient and effective response to these complaints. Because of the nature of translations and the increase in coordination among courts, a centralized complaint process for translations is necessary and enhance the likelihood that courts will comply with the established translation protocol and that resources regarding translation will be shared.

In each instance above, courts should implement procedures for filing a complaint, reviewing and determining the veracity of the complaint, and determining the appropriate disciplinary action. The court should also create mechanisms to protect the individuals who are the subject of the complaint, whether they are court interpreters, bilingual staff, or translators. Not all complaints are credible and the LAS Office should review and determine the veracity of the claims. Protections should include a

45. Monitoring of language access services generally is discussed in *Standard 10.3*.

46. Minnesota Judicial Branch, Interpreter Complaint Process, <http://www.mncourts.gov/?page=448>.

47. Washington State Courts, Disciplinary Policy, http://www.courts.wa.gov/programs_orgs/pos_interpret/index.cfm?fa=pos_interpret.display&fileName=policyManual/disciplinaryPolicyCertified.

written determination identifying the claim, the information upon which the determination was made, and the decision itself. The LAS Office should also support the establishment of a process for the individual to appeal or request reconsideration.

10.6 The office should coordinate and facilitate the education and training of providers, judicial officers, court personnel, and the general public on the components of *Standard 9*.

Commentary

Whether providing training or simply facilitating it,⁴⁸ the LAS Office needs to ensure that training is received by all appropriate groups and that the material covered is comprehensive and accurate. Many state programs provide training on a regular basis to judges and court staff, including clerks and clerk staff.⁴⁹ Coordinating these efforts frees up local court staff time and improves compliance. Sharing knowledge and materials is efficient, avoids duplication of effort, and promotes consistent language access services across the state. It also helps to avoid local practices which are developed in isolation and may violate language access requirements. The LAS Office should also gather training materials, such as those developed by the National Center for State Courts Consortium for Language Access in the Courts to share with local courts.⁵⁰

48. Training is discussed in full in *Standard 9*.

49. Annual training on language access services in the Minnesota courts is offered to all state court personnel. <http://www.mncourts.gov/?page=446>.

50. See Hyperlinks to state judicial education programs are available on the NCSC website at: <http://www.ncsc.org/topics/judicial-officers/judicial-administration/state-links.aspx?cat=> (last visited Apr. 19, 2011).



Index

A

ABA

- Commission on Domestic Violence, 3
- Standing Committee on Legal Aid and Indigent Defendants (SCLAID), 3

Abdullah v. INS (2d Cir. 1999), 23–24

Access to justice, 20–21

Accuracy in legal proceedings, 42, 89

Adjudicatory tribunal/body, defined, 7

Administrative Office of U.S. Courts
categories of interpreters estab-
lished by, 95

list of federally certified court
interpreters, 95

Advisory Group, 4

Affirmative duty to provide language
access services, 42–46

Alternative sentencing programs, lan-
guage access services for, 71–72

American Community Survey of U.S.
Census Bureau, 1, 39

American Sign Language (ASL), 53,
99, 126

American Translators Association
(ATA), 103, 106, 108, 130

Attorney-client confidentiality, 52, 56

Audio recordings

as alternate format to written docu-
ments, 87–88

appropriate manner for meaningful
access, 74–76

for commonly asked questions, 64

for in-court interpretation of court
orders, 87

for outside-of-courtroom services,
67

transcription of foreign language
audio, 81

Augustin v. Sava (2d Cir. 1984), 23

B

Back translation. *See* Roundtrip trans-
lation

Bail conditions, language access ser-
vices for, 71

Best Practices, 4

Bilingual, defined, 7

Bilingual staff

competency of, 101–2

continuing education, 108

defined, 7

disqualified as interpreters due to
ethical conflicts, 64–65

hiring of, 64–65

orientation programs for, 107

qualifications of, 17–18

recruitment of, 130

Brennan Center for Justice (New York University School of Law), 24

Brochures. *See* Outreach materials of courts

Bureau of Justice Assistance Report, 72

C

California

Administrative Office of the Courts' language access working group, 123

centralized office and LEP plan, 125, 126

continuing education of interpreters, 108

foreign language videos describing county court clerk's office services, 88

legal glossaries in multiple languages on website, 88

pilot project for court orders in Spanish, 82

California Court Self-Help Center, 63

Carrion, United States v. (1st Cir. 1971), 23

Case management system (CMS), 40–41

Centralized office of language access services. *See* Language access services office

Certification

court reliance on, 91, 96–97

defined, 7, 91

federal court interpreters, 94–95

language proficiency examinations, 94

oral certification examinations, 94

pre-screening measures for, 105–6

state court interpreters, 95–97

tiered approach to, 97

Certified court interpreters

defined, 9

list of federally certified court interpreters, 95

Certified Deaf Interpreters, 99

Certified translators, 88, 102–4

Cervantes v. Cox (10th Cir. 1965), 23

Charging documents, notice of availability of language access services in, 32

Checklists of commonly used options, 84

Child protective services staff, identifying language access needs of LEP persons, 39

Civil proceedings, rights in, 23–24, 43, 72–73

Civil Rights Act of 1964, 19, 25. *See also* Title VI

CMS (case management system), 40–41

Code of professional conduct. *See* Court interpreter code of professional conduct

Commentary, 4–5

Community-based organizations, working with, 76

Competency

assessment, defined, 7

bilingual staff, 101–2

interpreters, 50–54, 91, 92–101

sight translation, 93

translators, 102–4

voir dire to establish qualifications,

- 108–12
- Competent delivery of language access services, 91, 92–101
- Complaint about inadequate language access services, 131
notice about how to file, 31
- Complexity of communication, 62
- Conference of Chief Justices, 2, 121
- Conference of State Court Administrators, *White Paper on Court Interpretation*, 2, 21–22, 38, 118, 123, 126, 127
- Consecutive mode, 100
defined, 11
- Consortium for Language Access in the Courts, 93–94, 95–96, 121, 132
- Consortium for State Court Interpreter Certification (CSCIC), 95
- Constitutional protections, 19, 22–24, 43
- Contact points with court, notice of language access services at, 32, 62, 63–64
- Continuing education, 108
- Contract interpreters/translators
competency requirements, 100
meaningful access, insuring for, 75–76
scheduling of, 35
- COSCA. *See* Conference of State Court Administrators
- Costs of language access services, recovery of, 33–34
- Court-annexed proceedings, defined, 7
- Court-appointed defense counsel
identifying language access needs of LEP persons, 39
language access services for, 73–74
- Court brochures. *See* Outreach materials of courts
- Court Interpretation: Model Guides for Policy and Practice in the State Courts* (NCSC), 107, 129
- Court interpreter code of professional conduct, 54–58
defined, 7
- Court Interpreters Act of 1978, 27, 94
- Court-managed professionals
defined, 7–8
language access services for, 73–74
- Court-mandated services, 16–17
defined, 8
language access services for, 46, 69–76
- Court-offered services, 16–17
defined, 8
language access services for, 46, 69–76
- Court orders, translation of, 81, 87
- Court personnel. *See also* Bilingual staff
defined, 8
- Court rules and policies, training to cover, 115–16
- Court services
defined, 8
language access in, 59–67. *See also* Language access services
- Credentialing
comprehensive system for, 104–12
defined, 8, 92
interpreters for settings outside the courtroom, 100, 129
LAS Office’s standards and procedures, 128–30
training on qualification process for, 116
- Criminal proceedings, rights in, 22–23,

43, 71–72

CSCIC (Consortium for State Court

Interpreter Certification), 95

Cultural competence, 118–19

defined, 8, 118

D

Data gathering on LEP needs, 37–41

comprehensive data, 38–39

external data sources, 38–39

individualized data, 39–41

Deaf individuals. *See* American Sign

Language

Declining use of interpreter, 43–44, 45

Defense counsel, court-appointed

identifying language access needs

of LEP persons, 39

language access services for, 73–74

Definitions, 7–15

Demographic information

to determine literacy rates of LEP

individuals, 83

to determine most common foreign

languages, 82

Dispute resolution services, language

access services for, 71, 73

Diversion programs, language access

services for, 71–72

Documents. *See* Translation

Doe, In re (Haw. 2002), 24

DOJ LEP Guidance

certified translators, 88

competent delivery of language access services, 91

competent interpretation during all court and court-annexed proceedings, 47–48

full range of court services and contacts, 59

impartiality and neutrality, need for, 65

issuance and scope of, 26–27

LEP plan design, 125

meaningful access, 35, 60

“safe harbor” provision, 82–83

training, 113

vital documents, identification of,

78

Domestic violence

identifying language access needs

of LEP persons, 39

interpreters in proceedings involving, 56

translation of protection orders, 81

E

Edouard, United States v. (11th Cir.

2007), 22

Electronic case management system,

40–41

Ethics. *See also* Court interpreter code

of professional conduct

conflicts for bilingual staff, 64–65

interpreters’ competency, 93

interpreters’ use outside of courtroom, 65–66

testing and training, 106, 116–17

Executive Order 12250, 25–26

Executive Order 13166, 26–27, 114

F

Fairness, principle of, 20

Federal agencies under Executive

Order 13166, 26–27

Federal Court Interpreter Certification

Exam (FCICE) Program, 94–95

Federal financial assistance recipients,

75–76, 82–83

- Fifth Amendment rights, 22–24, 43
- Figueroa v. Doherty* (Ill. App. Ct. 1999), 23
- Fluency, 42–46
- interpreter’s fluency in target and source language, 93
 - questions to determine English fluency, 44–45
- Foreign language evidentiary documents, translation of, 80–81
- Forms
- in multilingual format, 11, 87
 - naming practices for, 86
 - to request interpreter services, 39
 - standardized document formatting, 86–88
 - translated forms, 63–64, 74–76, 80
- Fourteenth Amendment rights, 22–24
- Fundamental principles of access to courts, 15, 19–27
- G**
- Glossaries of legal terminology, 88
- Gonzales-Morales, State v.* (Wash. 1999), 22
- Guardians ad litem
- identifying language access needs of LEP persons, 39
 - interpreters for persons with legal decision-making authority, 49
 - language access services for, 73–74
- I**
- Idaho legal aid organization, creation of interactive Spanish forms, 80
- Illiterate and low-literacy individuals, 83
- Immigrant status, avoiding asking about, 39
- Impartiality of interpreters, 56
- In-person interpreters, 50–51
- Integrity of judicial process, 21–22
- Inter-Agency Language Roundtable (ILR), 101, 103–4
- Interpretation, defined, 8–9
- Interpreters, 65–67
- certification of. *See* Certification code of professional conduct. *See* Court interpreter code of professional conduct
 - competent interpreter services, provision of, 50–54, 91, 92–101
 - concerns raised by, 58
 - continuing education, 108
 - declining use of, 43–44, 45
 - defined, 9
 - effective techniques for working with, 117
 - ethics testing and training, 106
 - federal court interpreters, 94–95
 - interview interpreters, 9, 56
 - “language skilled interpreters,” 95
 - non-certified languages, 97–99
 - number required for legal proceedings, 55
 - orientation programs for, 107
 - for persons with legal decision-making authority, 49
 - practice of law by, prohibited, 58
 - pre-session interviews with, 57–58
 - proceedings interpreter, defined, 9
 - “professionally qualified interpreters,” 95
 - qualifications of, 17–18, 65, 91–92. *See also* Certification for services outside of legal

proceedings, 100, 129
 recruitment of, 130
 registered or qualified court interpreters, 9, 98
 state court interpreters, 95–97
 voir dire to establish qualifications, 108–12
 for witnesses, 48–49

Interpreter services, 16, 47–58. *See also*

Interpreters
 defined, 9–10
 timely delivery of, 35

Interview interpreters, 56

defined, 9

J

Jail personnel, identifying language access needs of LEP persons, 39

Judicial officer, defined, 10

Justice Department’s *Enforcement of Title VI of the Civil Rights Act of 1964—National Origin Discrimination Against Persons with Limited English Proficiency*. *See DOJ LEP Guidance*

K

Kennedy, John F., 21

King County Superior Court (KCSC, Seattle), 40

L

Language access, 16
 defined, 10

Language access plan
 defined, 10

implementation of, 125

Language access services, 59–67

affirmative duty to provide, 42–46
 for all court services, 59–61
 competent delivery of, 50–54, 91, 92–101
 defined, 10
 no charge, 33–34
 notice of availability of, 10, 30–32, 62

outside of courtroom, 45–46, 100, 129

provision of, 1, 16

recovery of costs of, 33–34

timely provision of, 35

Language access services office

communication role of, 123–24

complaints filed with, 131–32

compliance monitoring by, 126–27

comprehensive system for credentialing, participation in, 105

credentialing, coordination of, 128–30

defined, 10

development of resources, 127–28

protocol to assess qualifications of translators and bilingual staff, 104

recruitment, coordination of, 130

rules and procedures, implementation of, 124–26

state-wide coordination, 18, 121–32

training of judges and court personnel, 132

“Language Identification Flashcard” (U.S. Census Bureau), 31

Language of lesser diffusion, defined, 10

Language service providers. *See also* Interpreters; Translators
 defined, 10

- effective techniques for working with, 117
 - evaluation and monitoring of, 131–32
- “Language skilled interpreters,” 95
- Lau v. Nichols* (1974), 21
- Law enforcement officers, identifying language access needs of LEP persons, 39
- Legal proceedings
 - defined, 10
 - interpreters in, 47–48
- Legal terminology
 - glossaries of, 88
 - interpreter’s competency, 93
- Limited English proficient (LEP) persons
 - comprehensive data on needs, 38–39
 - in court proceedings, 2
 - defined, 1, 11
 - identification of, 15–16, 37–46
 - individualized data on needs, 39–41
 - literacy rates of, 83
 - self-identification of, 41–42
 - statistics, 1
- Literacy rates of LEP individuals, 83
- Lizotte v. Johnson* (N.Y. Sup. Ct. 2004), 23
- M**
- Machine translation
 - defined, 11
 - use of, 86
- Martinez, United States v.* (5th Cir. 1980), 23
- Mayans, United States v.* (9th Cir. 1994), 23
- Meaningful access, 15, 29–35
 - courts’ promulgation of rules for, 29–30
 - defined, 11
 - notice of availability of language access services, 10, 30–32
- Mediation, language access services for, 71, 73
- Miami-Dade County, translation of court documents in, 81–82
- Migration Policy Institute report (2011), 85, 86
- Modes of interpreting, 11
- Multilingual document format, 87
 - defined, 11
- N**
- Naming of documents, 86
- National Association for Judiciary Interpreters and Translators, 54
- National Center for State Courts (NCSC), 2, 30, 31–32, 38, 54, 81, 88
 - Consortium for Language Access in the Courts, 93–94, 95–96, 121, 132
 - Court Interpretation: Model Guides for Policy and Practice in the State Courts*, 107, 129
 - Ten Key Components to a Successful Language Access Program in the Courts*, 113, 115, 123–24, 129, 130
- National origin discrimination, 21
- NCSC. *See* National Center for State Courts
- Negron, United States ex rel. v. State* (2d Cir. 1970), 22
- Neutrality of interpreters, 56, 57, 65, 109
- New Jersey’s tiered approach to certi-

fication, 97

Non-certified languages

interpreters, 97–99

translators, 104

Notice of availability of language access services, 10, 30–32, 62

O

Omnibus Crime Control and Safe Streets Act of 1968, 27

Open-ended questions to determine fluency in English, 44–45

Orientation programs for interpreters, bilingual staff, and translators, 107

Outreach materials of courts, 32, 63–64, 74–76, 79–80

Outside of courtroom services, 45–46, 65–66, 67, 100, 126, 127, 129, 131

P

Perez-Lastor v. INS (9th Cir. 2000), 22

Persons with legal decision-making authority
defined, 11

interpreters for, 49

Persons with significant interest in the matter
defined, 11
interpreters for, 49–50

Plain language, defined, 12, 84–85

Poverty/indigency threshold, 34

Practice of law, interpreters not to engage in, 58, 66

Pre-screening measures for certification, 105–6

Pre-session interviews with interpreters, 57–58

Pre-trial conditions of release, language

access services for, 71–72

Proceedings interpreter, defined, 9

“Professionally qualified interpreters,”
95

Professionals working with courts. *See*
Court-managed professionals

Prosecutors, identifying language access needs of LEP persons, 39

Pro se litigants, 60, 66

R

Recipient of federal financial assistance,
defined, 12

Recordings. *See* Audio recordings;
Video recordings

Recovery of costs of language access services, 33–34

Recruitment, coordination of, 130

Register, defined, 12

Registered or qualified court interpreters, 98, 108
defined, 9

Relay interpreters
defined, 12, 99
effective techniques for working with, 117
use of, 99–100

Remote telephonic or video technology,
interpreters using, 50–54
effective techniques for working with, 117

Roundtrip translation
defined, 13
use of, 86

S

“Safe harbor” provision of *DOJ LEP Guidance*, 82–83

- Safe Streets Act of 1968, 27
- SCLAID (ABA Standing Committee on Legal Aid and Indigent Defendants), 3
- Self-identification of LEP persons, 41–42
- Sexual abuse, interpreters in proceedings involving, 56
- Sight translation
competency, 93
constraints on, 58
defined, 11, 13, 77
submission of material into evidence through, 81
- Simultaneous mode, 56, 100
defined, 11
- Sixth Amendment rights, 22–24, 43
- Social Security Administration multilingual poster, 31
- Source language, defined, 12
- Speaker phones, 53
- Standardized document formatting, 86–88
- Standards for Language Access in Courts*
development process for, 3–4
purpose of, 1–2, 3
scope of, 2–3
structure and organization of, 4–5
- Standards for the Provision of Civil Legal Aid* (ABA), 3, 118
- Standards of Practice for Lawyers Representing Victims of Domestic Violence, Sexual Assault and Stalking in Civil Protection Order Cases*, 4
- State court interpreters
certification of, 95–97
in non-certified languages, 97–99
- State laws on interpreters in civil cases, 24, 43, 45
- State-wide coordination, 18, 121–32.
See also Language access services office
- T**
- Target language, defined, 12
- Technology. *See also* Audio recordings; Video recordings; Websites of courts
selection for translated written materials, 85–86
- Telephonic or video technology, interpreters using, 50–54, 117
- Telephonic recordings of courts, 32, 64
- Ten Key Components to a Successful Language Access Program in the Courts* (NCSC), 113, 115, 123–24, 129, 130
- Tennessee Administrative Office of the Courts, 80
- Termination of parental rights, reversal for failure to give mother translated documents, 81
- Texas pilot project for court orders in Spanish, 82
- Timely provision of language access services, 35
- Title VI, Civil Rights Act of 1964, 25, 60–61
Executive Order 12250 and, 25–26
guidance on. *See DOJ LEP Guidance*
regulations, 21, 25
- Training of interpreters and translators. *See* Certification
- Training of judges and court personnel, 18, 113–20
components of court language ac-

- cess training program, 115–19
 - cultural competence, 118
 - ethical requirements of language services providers, 116–17
 - frequency and duration of, 119
 - LAS Office providing, 132
 - resource materials and best practices, 120
 - translation use, 117
- Training of nonjudicial personnel, 115
- Transcription
- defined, 77
 - foreign language audio, 81
- Translation, 17, 77–89. *See also* Translators
- alternate formats to written documents, 87–88
 - case-specific documents, 80–82
 - centralized management of, 84. *See also* Language access services office
 - court orders, 81
 - defined, 13, 77
 - determining which languages have priority, 82–83
 - domestic violence protection orders, 81
 - foreign language evidentiary documents, 80–81
 - forms, signs, and handouts, 63–64, 74–76, 80, 83
 - information about court services and programs, 79–80
 - machine translation, 11, 86
 - multilingual format for forms, 11, 87
 - plain language, 84–85
 - prioritizing documents for, 78–83
 - quality assurance protocol, 83–89
 - review to ensure accuracy, 89
 - roundtrip translation, 13, 86
 - standardized document formatting, 86–88
 - timely delivery of services for, 35
 - training judges and court personnel about, 117
 - updating translated documents, 83
 - vital documents, identification of, 78–79, 80, 82
- Translation memory software
- defined, 13
 - use of, 85–86
- Translation protocol, 83–89
- defined, 13
- Translators
- competency of, 102–4
 - continuing education, 108
 - defined, 13
 - ethics testing and training, 106
 - in non-certified languages, 104
 - orientation programs for, 107
 - qualifications of, 17–18, 77, 91–92
 - recruitment of, 130
 - selection of primary and reviewing translators, 88–89
 - voir dire to establish qualifications, 108–12
- Treatment programs
- court ensuring provision to interpreter services for, 76
 - identifying language access needs of LEP persons, 39
 - language access services for, 71, 72
- U**
- U.S. Census Bureau
- data for evaluating language access

needs from, 39
 “Language Identification Flashcard,” 31
United States v. See name of opposing party

V

Video recordings
 as alternate format to written documents, 87–88
 appropriate manner for meaningful access, 74–76
 for commonly asked questions, 64
 for outside-of-courtroom services, 67
 Video remote technology, interpreters using, 50–54, 117
 Vital documents, identification of, 78–79, 80, 82
 Voir dire to establish qualifications, 108–12
 open-ended questions to determine fluency in English, 44–45

W

Washington (state)
 coordination of translation documents, 128
 legal glossaries in multiple languages, 88
 orientation programs for new judges and commissioners, 114
 testing interpreters in non-certified languages, 98
 Websites of courts
 information for LEP persons on, 67
 notice of availability of language access services on, 32

White Paper on Court Interpretation
 (Conference of State Court Administrators), 2, 21–22, 38, 118, 123, 126, 127

Witness interpreters, 48–49
 defined, 9

Work release programs, language access services for, 71

Written notice of availability of language access services, 31

Y

Yellen v. Baez (N.Y. Civ. Ct. 1997), 24

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