

Kathleen R. Mulligan Baxter, General Counsel • (FAX) 518/487-5694

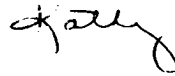
June 16, 2011

To: Members of the Executive Committee

Re: June 23-24, 2011 Meeting

To supplement the materials you previously received for next week's meeting, enclosed are (1) comments from the Labor and Employment Law Section with respect to the report and recommendations of the Committee on Women in the Law (Agenda Item #20) and (2) a recommendation for co-sponsorship of a resolution for the ABA House of Delegates August 2011 meeting with respect to Standards for Language Access in Courts (Agenda Item #28).

With warm regards.



Kathleen R. Mulligan Baxter



Staff Memorandum

EXECUTIVE COMMITTEE Agenda Item #20

To supplement the materials you previously received with respect to the report and recommendations of the Committee on Women in the Law, attached are comments prepared by the Labor and Employment Law Section's EEO Committee and submitted by the Section. While the Section is unable to reach a consensus on the proposal, it submitted these comments to provide assistance in your consideration of the report.

COMMENTS ON PROPOSED NYS FAIR PAY ACT

NYSBA, LABOR AND EMPLOYMENT SECTION

EEO COMMITTEE

Although the EEO Committee is strongly in favor of pay equity for women and minorities, it is unable to reach a consensus in support or opposition to passage of the New York State Fair Pay Act (A 6130/S 2200) ("FPA"). Set forth below are summary viewpoints which represent both sides of the discussion.

In Opposition

Since 1963, with the passage of the U.S. Equal Pay Act, which amended the Fair Labor Standards Act of 1938, equal pay for equal work has been the law for both public and private employers. This law, along with the Civil Rights Act of 1964 and the New York State Human Rights Law prohibit any wage differentials based on the sex, race, or national origin of employees. While those on the EEO Committee who are opposed to passage of the FPA recognize that wage payment discrimination and prejudice continues to exist, we cannot support a bill which centers on a theory of comparable worth as the remedy to such unlawful behavior. Rather, stronger enforcement of existing laws and a push for elimination of barriers to women and minorities in non-traditional occupations remains key.

The theory of comparable worth rejects market involvement in the determination of pay and substitutes some form of assessment as to the "value" of the work. In terms of the FPA, Section 753(b)(3) specifically provides that "wage differentials based on varying market rates for equivalent jobs or the differing economic benefits to the employer of equivalent jobs shall not be considered differentials based on bona fide factors other than sex, race or national origin."

Instead, under the FPA, discretion as to what might constitute comparable worth is left entirely up to the NYS Department of Labor, which will "promulgate regulations specifying the methodology for determining equivalent skill, effort, responsibility and working conditions." See FPA, Section 753(e)(2). Hence, equal pay for different work, without any solid explanation as to what might be considered non-discriminatory set forth in the law would be the rule.

The FPA simply ignores the fact that the majority of employers use market based salary and wage surveys, which include geographic differentials, industry, revenue, and organization size in order to price their jobs. Moreover, companies that employ foreign workers through various visa sponsorships must rely on such market-based surveys to support such sponsorships. The FPA would declare this reliance discriminatory without offering any concrete, viable substitute thereby creating only confusion and a comparable worth morass.

In Support

While the Equal Pay Act, Title VII of the Civil Rights Act of 1964, and the New York State Executive Law are important pieces of legislation that prohibit wage differentials based on the sex and mandate equal pay for equal work, the lack of strong enforcement of these statutes, inconsistent treatment by the courts, and the inadequacy of the remedies under these statutes, make the New York State Fair Pay Act (“FPA”) a necessary and welcome protection.

Rhetoric about pushing for “elimination of barriers to women and minorities in non-traditional occupations” has not turned into action and change. The FPA will go a long way to actually remove and remedy both direct and institutional discrimination. The use of “market rates” to set wages often reinforces and continues to institutionalize wage disparity and discrimination.

The FPA also provides remedies such as attorney’s fees and expert’s fees – which will allow individuals to more easily obtain representation – and eliminates caps on compensatory and punitive damages that exist under other statutes (the New York State Executive Law has limited remedies).

Conclusion

Given the lack of consensus as set forth above, the EEO Committee and the Labor and Employment Law Section of the NYSBA are unable to take a position with respect to passage of the New York State Fair Pay Act.



Staff Memorandum

EXECUTIVE COMMITTEE Agenda Item #28

REQUESTED ACTION: Approval of NYSBA co-sponsorship of a resolution for the ABA House of Delegates meeting in August 2011 with respect to Standards for Language Access in the Courts.

Attached is a memorandum from the President's Committee on Access to Justice and the Committee on Legal Aid recommending that NYSBA co-sponsor a resolution by which the ABA would adopt Standards for Language Access in Courts, urge their implementation by courts and other tribunals, and urge federal and state authorities to provide adequate funding for implementation. The resolution is scheduled to be considered by the ABA House of Delegates in August 2011.

The Standards proceed from the principle that in order to facilitate access to justice, it is necessary for courts to be language accessible to persons with limited English proficiency. They set forth the components of a comprehensive system to address the needs of persons with limited English proficiency. Each Standard is supplemented by accompanying commentary that discusses legal and practical issues, identifies best practices, and provides information about additional sources of assistance.

The PCAJ/Legal Aid Committee notes in its memorandum that New York has already adopted many of the practices set forth in the Standards, including the provision of interpreters in court proceedings when needed, the establishment of a court interpreter certification program, and the provision of documents and Web materials in multiple languages.

The request for co-sponsorship will be discussed at the June 23-24 meeting.

MEMORANDUM

To: NYSBA Executive Committee

From: President's Committee on Access to Justice and Committee on Legal Aid

Re: ABA Standards for Language Access in the Courts

Date: June 9, 2011

The President's Committee on Access to Justice and the Committee on Legal Aid recommend enthusiastically that the New York State Bar Association co-sponsor the resolution put forward by the ABA Standing Committee on Legal Aid & Indigent Defendants to adopt the proposed ABA Standards for Language Access in the Courts.

It is essential to the administration of justice that the courts be accessible to all people, regardless of language ability. The ability to understand what is going on in court is also a matter of fundamental due process. As the Second Circuit has warned, a trial that a defendant cannot understand "becomes an invective against an insensible object." *U.S. ex rel. Negron v. N.Y.*, 434 F.2d 386, 389 (2d Cir. 1970). NYSBA has traditionally supported measures to ensure that the courts are open to the elderly, women, people with disabilities, and people who cannot afford lawyers. And, NYSBA's Model Code of Judicial Conduct for State Administrative Law Judges outlines the language access obligations of administrative law judges. *See* Canon 3(B)(7). By encouraging the courts to provide adequate access to people with limited proficiency in English, the proposed Standards are a logical extension of this earlier work.

The proposed Standards provide the courts with workable guidelines regarding the scope of their language access obligations and how to implement those obligations. They were developed over the course of nine months by a large advisory group which included judges, attorneys, interpreters, court administrators, and members from five different ABA committees. The Standards follow closely the Department of Justice guidelines regarding courts' obligations under Title VI of the Civil Rights Act. At the same time, the Standards are intended to help alleviate some of the courts' financial pressures by describing ways to share and create language assistance resources to improve quality while saving staff time and money for individual courts.

The New York Judiciary has already adopted many of the practices that the Standards recommend, demonstrating that compliance with the Standards is possible. Under Uniform Rule 217, it is the policy of the New York courts to provide interpreters in all court proceedings, free of charge, whenever they are needed. The Office of Court Administration has established a court interpreter certification program to ensure that the interpreters provided are of the highest quality. And, OCA provides web pages, forms and other documents in multiple languages. The Standards, which frequently use New York as an example, provide a way to help other state court systems attain the same level of language access, while at the same time providing the New York courts with examples of best practices in other states.

AMERICAN BAR ASSOCIATION

**STANDING COMMITTEE ON LEGAL AID AND INDIGENT DEFENDANTS
CRIMINAL JUSTICE SECTION**

REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

1 **RESOLVED**, That the American Bar Association adopts the ABA STANDARDS FOR
2 LANGUAGE ACCESS IN COURTS, dated August 2011, including the Introduction and
3 Commentary; and
4

5 **FURTHER RESOLVED**, That the American Bar Association urges that courts and other
6 tribunals give high priority to the prompt implementation of these STANDARDS; and
7

8 **FURTHER RESOLVED**, That the American Bar Association urges federal and state legislative
9 and executive branches to take prompt action to provide adequate funding to court systems for
10 full implementation of language access services in the courts.

ABA Standards for Language Access in Courts

4/29/2011

NOTE: This copy of the Standards is provided for commenting purposes only. The Standards have been approved by the ABA Standing Committee on Legal Aid and Indigent Defendants, which will submit them for approval by the American Bar Association at the Annual Meeting in August, 2011. The Standards are not ABA policy until they are adopted by the ABA House of Delegates. The Standards and commentary are undergoing editorial revisions.

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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 <i>Standard 9</i>.	120

Standards for Language Access in Courts

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 need in 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 in every part of the country with limited English proficiency (LEP), 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 2010 Census, XX% of the U.S. population age 5 or older speaks a language other than English at home, a XX% increase since 2000.¹ The language proficiency required for meaningful participation in court proceedings is high because of 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. Although 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

¹ According to the 2000 Census, 18 percent of the U.S. population age 5 or older, or 47 million persons, speak a language other than English at home. By 2010 that number had increased to XX percent or YY persons. 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.

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

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 inadequate 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 in the judicial system.

Scope

The *Standards* represent the considered judgment of persons and organizations with experience in and ties to state courts across the country, and the *Commentary* is primarily geared toward those courts. The ABA focused on state courts because, in the United States, the majority of persons who come into contact with the justice system do so in state courts. Moreover, there is an important and vibrant effort in the states 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 Because of the importance of the state courts and state court leadership in this area, the ABA undertook to contribute resources and draw on its national scope and membership, to assist the effort to improve language access in state courts.

In addition, the access to justice imperative of *Standard 1* and the need for a comprehensive system for language access that addresses the principles in *Standards 2-10* are equally

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_AdequateCourtInterpretationSyvs.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/resol12PromoteBiasFreeBehavior.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).

applicable to all adjudicatory bodies that deal with LEP persons: federal courts, territorial courts, administrative tribunals at the federal, state, and local level, military tribunals, and tribal courts. It is expected that such courts and tribunals also will conduct a review of their operations in the light of these standards and evaluate their systems and services against the access to justice imperative of *Standard 1*.

Overall, the *Standards* are intended to provide a guide to assist courts in developing a comprehensive system for language access. Courts are encouraged to adopt requirements for language access through legislation, court rules, or administrative orders that are clear, effective, and enforceable.

Constitutional and Legal Requirements

The *Standards* are grounded in constitutional rulings, and statutory and regulatory provisions that establish minimum requirements for the affirmative access to justice goal of *Standard 1*. The *Commentary* cites selected cases, statutes, and regulations and also draws on "Guidance" documents issued by the United States Department of Justice (DOJ) in 2002 and 2010 pursuant to Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d-1, which prohibit national origin discrimination by recipient of federal financial assistance. Because many state courts and affiliated service providers receive federal financial assistance and are therefore subject to these mandates, the *Commentary* seeks to enhance their awareness and understanding of official interpretations of their obligations. All courts must provide access to justice on a fair and nondiscriminatory basis. Therefore, even for courts and related organizations that are not recipients of federal financial assistance, the views of DOJ, the nation's chief legal office charged with implementing nondiscrimination laws, deserve the most serious consideration.

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 the courts. The *Standards* build upon the discussion of cultural competence and use of interpreters in attorney-client communication discussed in the *Standard for the Provision of Civil Legal Aid* adopted by the ABA in 2006,⁴ and the ABA *Commission on Domestic Violence, Standards of Practice for Lawyers Representing Victims of*

⁴ American Bar Association, Standing Committee on Legal Aid and Indigent Defendants, *Standards for the Provision of Civil Legal Aid* (2006), <http://www.americanbar.org/content/dam/aba/migrated/legalservices/sclaid/downloads/civillegalaidstds2007.authcheckdam.pdf>

1 *Domestic Violence, Sexual Assault and Stalking in Civil Protection Order Cases* adopted in 2007.⁵
2 The *Standards* were drafted with the active participation of a national Advisory Group
3 composed of judges, court administrators, interpreters, translators, public defenders, civil legal
4 aid attorneys, members of the private bar, and advocates who brought expertise gained from a
5 variety of perspectives, and geographical and practice areas. The Advisory Group reviewed
6 legal requirements, discussed problems encountered and practices followed in different court
7 settings, and consulted with organizations of judges, court administrators, and advocacy groups
8 -- all with a view to establishing practical standards with broad support and identifying
9 resources and best practices. The Advisory Group was guided by two reporters, who brought
10 extensive experience and expertise in language access issues to their work preparing drafts of
11 the *Standards*.
12

13 Structure and Organization

14

15 *Standard 1* establishes the imperative that courts must "as a fundamental principle of law,
16 fairness, and access to justice" provide language access services so that courts will be accessible
17 to LEP persons. *Standard 1* is therefore stated in mandatory terms. *Standards 2-10* set out
18 different and essential components of a comprehensive system to address the needs of LEP
19 persons in court and court-related services, and are subdivided to address specific matters
20 included within the overall subject matter of the particular standard. They provide a blueprint
21 for courts to design, implement, and enforce a system adapted to the organization and
22 administration of their court systems, the type of court proceedings they handle, the relative
23 benefits and burdens of different approaches, and the composition and needs of the LEP
24 communities they serve. *Standards 2-10* are therefore phrased in terms of "should" in order to
25 denote that they are to be adapted to specific courts and communities. However, each of
26 *Standards 2-10* is an essential component of a comprehensive and effective system of language
27 access services, and courts will need to implement all of them in achieving the overarching
28 access to justice imperative of *Standard 1*. Each *Standard* is accompanied by extended
29 *Commentary* intended for courts and practitioners. The *Commentary* gathers legal authority,
30 discusses legal and practical issues that can arise in specific settings as well as strategies for
31 addressing them, identifies best practices, and provides information about additional sources of
32 expertise and assistance.
33

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").

DEFINITIONS

Bilingual – Using or knowing two languages.

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 tribunal within an adjudicatory system.

Court-annexed Proceedings -

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, paid, or supervised 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, mediation, alternative dispute resolution, treatment programs, workshops, information sessions, evaluations, treatment, investigations, or arbitrations.

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; sheriff's offices; probation and parole offices; alternative dispute resolution programs; pro se clinics; criminal

diversion programs; anger management classes; detention facilities; and other similar offices, operations, and programs.

Credentialing – The process of establishing 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 through training and testing programs.⁶

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.⁷

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 has 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.⁸

⁶ 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).

⁷ 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).

1 Proceedings Interpreter – Interprets for an LEP litigant in order to make the litigant
2 “present” and able to participate effectively during a proceeding.⁹

3 Witness Interpreter – Interprets during witness testimony for the purpose of presenting
4 evidence to the court.¹⁰

5 Interpretation – The unrehearsed transmitting of a spoken or signed message from one
6 language to another.¹¹

7 Interpreter Services – The services provided by professional, competent interpreters, including
8 those provided for legal proceedings and services outside of the courtroom.

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

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

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

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

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

25 Language Service Providers – A person or entity who provides qualified court interpreting
26 services, bilingual assistance, and translation services for court users who are limited English
27 proficient.¹²

⁸ National Center for State Courts (NCSC), *Court Interpretation: Model Guides for Policy and Practice in the State Courts*, Ch. 2 (2009).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

Legal Proceeding – Court or court-annexed proceedings, including proceedings handled by judges, magistrates, masters, commissioners, hearing officers, arbitrators, mediators, and other decision-makers.

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.¹³

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.¹⁴

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 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.

¹² Consortium for Language Access, *supra* note 6.

¹³ 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).

¹⁴ NCSC, *supra* note 8, at ch. 2.

1 Plain Language – Communication that members of an audience can understand the first time it
2 is read or heard.¹⁵

3 Register – The level and complexity of vocabulary and sentence construction.¹⁶

4 Relay Interpreting – Involves using more than one interpreter to act as a conduit for spoken or
5 sign languages beyond the understanding of a primary interpreter.¹⁷

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

9 Source Language – The language of the original speaker, which the interpreter interprets into a
10 second language. This term is always relative, depending on who is speaking.¹⁸

11 Target Language – The language of the listener, into which the interpreter renders the
12 interpretation from the source language. This term is always relative, depending on who is
13 listening.¹⁹

14 Transcription - The process of producing a written transcript of an audio or video recording,
15 where the recording is in a language other than English.²⁰

16 Translation – Converting written text from one language into written text in another language.
17 The source of the text being converted is always a written language.²¹

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

21 Sight Translation – A hybrid of interpreting and translating in which the interpreter
22 reads a document written in one language while translating it orally into another
23 language, without advance notice.²²

¹⁵ Plain Language, www.plainlanguage.gov (last visited Apr. 18, 2011).

¹⁶ NCSC, *supra* note 8, at ch. 2.

¹⁷ 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>

¹⁸ Adapted from NCSC, *supra* note 8, at ch. 2.

¹⁹ Adapted from *id.*

²⁰ 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>

²¹ NCSC, *supra* note 8, at ch. 2.

- 1 Translation Memory Software – Software that uses stored memory to re-use pre-translated
2 phrases in subsequent translations.
- 3 Translation Protocol – The process by which translations are evaluated for quality control --
4 includes the process for creating and assessing consistent translations, evaluating translator
5 qualifications, and reviewing the translation for accuracy.
- 6 Translator – An individual who is fluent in both English and another language and who
7 possesses the necessary skill set to render written text from one language into an equivalent
8 written text in another language.

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²² *Id.*

STANDARD 1 FUNDAMENTAL PRINCIPLES

- 1. As a fundamental principle of law, fairness, and access to justice, and to promote the integrity and accuracy of judicial proceedings, courts shall 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.**

These *Standards* are based on the due process protections afforded by the Constitution, including the Fifth, Sixth, and Fourteenth Amendments, the legal requirements in the Civil Rights Act of 1964, and the fundamental principles of integrity of the judicial process, fairness, and access to justice. While the *Standards* focus primarily on access to state court systems, the principles described apply to all adjudicatory tribunals, including federal courts;²³ administrative hearings at the federal, state, and local levels;²⁴ tribal courts;²⁵ military courts;²⁶ territorial courts; and other tribunals.

Constitutional Protections and Language Access

²³ The Court Interpreter 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' comprehension of questions or presentation of testimony. Under the Court Interpreters Act of 1978, the presiding judicial officer shall 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. 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, for individuals within civil matters not initiated by the United States; in those instances, the litigants must bring or pay for their own interpreters. See 28 U.S.C. § 1827 (d)(1).

²⁴ 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.).

²⁵ 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>.

²⁶ In U.S. Military courts, 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. Within the UCMJ, no other provisions govern the qualification of interpreters, access to translated materials, or information to help guide the informed decision regarding when 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.").

1 Although the Constitution does not specifically guarantee the right to an interpreter, this right
2 has long been established in case law from across the U.S. as “axiomatic,”²⁷ “unquestionable,”²⁸
3 “long-settled,”²⁹ and “nearly self-evident.”³⁰ For an LEP defendant, an interpreter is necessary
4 to effectuate the guarantee of the Sixth and Fourteenth Amendments’ “right to be present at
5 all stages of the trial where his absence might frustrate the fairness of the proceedings.”³¹
6 Among these decisions, the Second Circuit observed that “every criminal defendant – if the
7 right to be present is to have meaning – [must] possess sufficient ability to consult with his
8 lawyer with a reasonable degree of rational understanding.”³² Additionally, the Second Circuit
9 regarded the “right that was denied Negron [as] even more consequential than the right of
10 confrontation. Considerations of fairness, the integrity of the fact-finding process, and the
11 potency of our adversary system of justice forbid that the state should prosecute a defendant
12 who is not present at his own trial.”³³

13 While all courts agree on the constitutional right to an interpreter for LEP persons in criminal
14 cases, some courts have set an unacceptably low threshold for the litigant’s English proficiency,
15 ³⁴ income level, ³⁵ and the interpreter’s professional competence.³⁶ The denial of a qualified

²⁷ *State v. Natividad*, 526 P.2d 730, 733 (Ariz. 1974). (holding that an indigent defendant who is unable to speak and understand the English language was denied a fair and impartial trial when he was denied a timely request for assistance in translating trial proceedings into his native language in order to participate effectively in his own defense, and explaining that “[i]t is axiomatic that an indigent defendant who is unable to speak and understand the English language should be afforded the right to have the trial proceedings translated into his native language in order to participate effectively in his own defense, provided he makes a timely request for such assistance”).

²⁸ *People v. Robles*, 655 N.E.2d 172, 173 (N.Y. 1995). (“No one quarrels with these settled propositions, nor with the unquestionable right of any defendant, upon request, to the assistance of an interpreter at any stage of a criminal proceeding.”).

²⁹ *Perez-Lastor v. INS*, 208 F.3d 773, 778 (9th Cir. 2000) (holding that translation provided to alien at deportation hearing was incompetent, and that incompetent translation prejudiced alien, and he thus was denied due process and stating that “[i]t is long-settled that a competent translation is fundamental to a full and fair hearing”).

³⁰ *United States ex rel. Negron v. State*, 434 F.2d 386,389 (2d Cir. 1970) (held that Spanish-speaking defendant in State homicide prosecution was entitled to services of translator, and failure to provide translator rendered trial constitutionally infirm, notwithstanding that interpreter employed on behalf of prosecution from time to time supplied resumes of proceedings; and stating “the nearly self-evident proposition that an indigent defendant who could speak and understand no English would have a right to have his trial proceedings translated so as to permit him to participate effectively in his own defense, provided he made an appropriate request for this aid”).

³¹ *Tennessee v. Lane*, 541 U.S. 509, 523 (2004).

³² *Negron*, 434 F.2d at 389.

³³ *Id.*

³⁴ See *State v. Lopez*, 872 P.2d 1131 (Wash. Ct. App. 1994) (Trial court did not abuse its discretion in determining that defendant was fluent enough in English to understand nature of proceedings for waiver of speedy trial and trial court reasonably relied on representations of defense counsel and prosecutor that defendant understood and agreed to continuance, on defendant’s statements in open court, and on defendant’s signature on agreed order); See also *People v. Rodriguez*, 633 N.Y.S.2d 680 (App. Div. 1995) (finding that criminal defendant was able to speak and understand English, so that denial of request for interpreter did not violate defendant’s due process rights).

1 interpreter in each of these instances undermines the provision of independent, professional,
2 accurate, and free language access services. Attention has focused on the need for courts to
3 provide language access services precisely because, without court control and funding, services
4 are inadequate or non-existent, presenting a barrier to access to justice to LEP individuals
5 purely on the basis of their national origin or English literacy.³⁷ The detail and complexity
6 presented in the rest of these *Standards* underscores this. The need for court responsibility and
7 control is one of the main reasons the ABA has devoted resources to clarify court language
8 access requirements.

9 The right to an interpreter in criminal cases has been confirmed by highest levels of the
10 judiciary. In *Marino v. Ragen*, the U.S. Supreme Court held that the failure to appoint a neutral
11 interpreter denied a criminal defendant “the due process of law which the Fourteenth
12 Amendment requires.”³⁸ Moreover, every federal court of appeals to address the question has
13 recognized the constitutional issues raised by the failure to provide an interpreter for an LEP
14 person whose rights were to be determined at a trial.³⁹ For example, the First Circuit has
15 explained that the constitutional right to an interpreter in criminal proceedings “rests most
16 fundamentally . . . on the notion that no defendant should face the Kafkaesque spectre of an
17 incomprehensible ritual which may terminate in punishment.”⁴⁰ The Second Circuit also pointed

³⁵ *Arrieta v. State*, 878 N.E.2d 1238 (Ind. 2008) (Non-English speaking defendant was not entitled to the appointment of an interpreter at the government’s expense, where defendant did not present any evidence that he was indigent).

³⁶ *State v. Rodriguez*, 635 So. 2d 391 (La. Ct. App. 1994) (Defendant was not denied due process and equal protection based on an ineffective interpreter where state and defense stipulated to interpreter and trial court cautioned each witness to speak loudly and clearly for benefit of interpreter)

³⁷ One of the reasons underlying a denial of services is the belief that LEP individuals should simply learn English. Yet data on language acquisition has shown that age, trauma, and other cognitive impairments make it impossible for some non-native speakers of English to learn English sufficiently well to understand and participate in a legal proceeding. (Cite in process.)

³⁸ *Marino v. Ragen*, 332 U.S. 561, 562 (1947).

³⁹ *United States v. Edouard*, 485 F.3d 1324, 1338 (11th Cir. 2007) (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”); *United States v. Mayans*, 17 F.3d 1174, 1180-81 (9th Cir. 1994) (holding that the defendant’s right to testify on own behalf was violated when the court denied him an interpreter.); *United States v. Garcia*, 956 F.2d 41, 45 (4th Cir. 1992) (citing *Marino*, 332 U.S. 561); *Luna v. Black*, 772 F.2d 448, 451 (8th Cir. 1985) (per curiam) (finding that indigent defendants with language barriers have a right to a court-appointed interpreter); *United States v. Martinez*, 616 F.2d 185, 188 (5th Cir. 1980) (per curiam) (recognizing that “defendants’ constitutional rights to due process and confrontation” are involved when considering the use of court interpreters); *United States v. Carrion*, 488 F.2d 12, 14 (1st Cir. 1971) (recognizing that a criminal defendant has a constitutional right to an interpreter); *Negron*, 434 F.2d at 389 (holding that 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”); *Cervantes v. Cox*, 350 F.2d 855, 855 (10th Cir. 1965) (Sixth Amendment right to counsel may be denied where the defendant is unable to communicate with counsel).

⁴⁰ *Carrion*, 488 F.2d at 14.

1 out that proceeding in the absence of an interpreter “lacked the basic and fundamental fairness
2 required by the due process clause of the Fourteenth Amendment.”⁴¹

3 Courts across the country have made similar determinations in connection with the Fifth
4 Amendment right to a fair trial and the Sixth Amendment right to counsel and confrontation.⁴²
5 The constitutional guarantees of the right to be confronted with adverse witnesses and to
6 cross-examine those witnesses all support the requirement of interpreter services where a
7 defendant and the court do not share a common language. In *State v. Gonzales-Morales*, the
8 court held that the defendant’s right to an interpreter rested upon the “Sixth Amendment
9 constitutional right to confront witnesses and the right inherent in a fair trial to be present at
10 one’s own trial.”⁴³ As the Second Circuit has stated, “[i]t is axiomatic that the Sixth
11 Amendment’s guaranteed of a right to be confronted with adverse witnesses, now also
12 applicable to the states through the Fourteenth Amendment . . . includes the right to cross-
13 examine those witnesses.”⁴⁴

14 These same principles generally support the provision of interpreter services in civil matters.
15 Federal and state cases have recognized that interpreters are necessary to ensure meaningful
16 participation. While generally holding that civil litigants are not broadly entitled to an
17 interpreter under the U.S. Constitution, courts have found such a right in a limited number of
18 circumstances.⁴⁵ In *Augustin v. Sava*, a political asylum proceeding, the Second Circuit held that
19 the “[t]he very essence of due process is a meaningful opportunity to be heard”⁴⁶ and that the
20 “absence of adequate translation” denied the refugee procedural rights.⁴⁷ In *Lizotte v. Johnson*,
21 a case regarding foster care benefits payments, the New York Supreme Court held that “the
22 failure to provide adequate translation services . . . deprived petitioner of fundamental due

⁴¹ *Negron*, 434 F.2d at 389.

⁴² 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 v. State*, 878 N.E.2d 1238, 1243-44 (Ind. 2008); *Rodriguez*, 633 N.Y.S.2d at 680; *People v. Robles*, 614 N.Y.S.2d 1 (App. Div. 1994), *rev’d 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).

⁴³ *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) (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).

⁴⁴ *Negron*, 434 F.2d at 389.

⁴⁵ *Jara v. Municipal Court*, 21 Cal.3d 181 (1978) (standing for the proposition that there is generally not a constitutional right to an interpreter in civil matters).

⁴⁶ *Augustin v. Sava*, 735 F.2d 32, 37 (2d Cir. 1984).

⁴⁷ *Id.*; see also *Abdullah v. INS*, 184 F.3d 158, 164 (2d Cir. 1999) (noting that when courts consider claims involving due process, they are to consider the factors enumerated in *Mathews v. Eldridge*: “1) the interests of the claimant, 2) the risk of erroneous deprivation 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”).

process.”⁴⁸ In *Figueroa v. Doherty*, a case regarding unemployment benefits, the Appellate Court of Illinois found that “[t]he failure to provide a competent translation of all proceedings deprived Figueroa of his right to a fair hearing that he understood and at which he would be understood.”⁴⁹

While not always established in case law, the right to an interpreter in civil cases has been established in many states by statute.⁵⁰ 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.⁵¹ 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; eligibility for unemployment compensation, worker’s compensation; and public benefits. For example, Oregon Revised Statutes provide for the appointment of an interpreter for LEP persons in all civil cases.⁵²

Title VI of the Civil Rights Act of 1964

In addition to the constitutional protections described above, the obligation to provide meaningful access under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, *et seq.* (Title VI) applies to all courts that receive federal financial assistance.⁵³ In a 1963 national address

⁴⁸ *Lizotte v. Johnson*, 777 N.Y.S.2d 580, 586 (Sup. Ct. 2004); *see also In re Doe*, 57 P.3d 447 (Haw. 2002) (holding that in family court proceedings where parental rights are substantially affected, parents must be provided with an interpreter); *Yellen v. Baez*, 676 N.Y.S.2d 724 (Civ. Ct. 1997) (“To require a tenant to proceed when it is obvious that an interpreter is needed would violate due process of law.”).

⁴⁹ *Figueroa v. Doherty*, 707 N.E.2d 654, 659 (Ill. App. Ct. 1999).

⁵⁰ 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.

⁵¹ 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).

⁵² Or. Rev. Stat. § 45.272 *et seq.* (Interpreters; appointment of interpreters for non-English speaking party or witness).

⁵³ Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d-1 (2006). Executive Order No. 12250, 45 Fed. Reg. 72995 (Nov. 2, 1980), set out as a note under section 2000d-1 of this title, delegates the authority vested

1 prior to the enactment of the Civil Rights Act, President John F. Kennedy stated that “simple
2 justice requires that public funds, to which all taxpayers of all races contribute, not be spent in
3 any fashion which encourages, entrenches, subsidizes, or results in racial discrimination.”⁵⁴

4 Section 601 of Title VI provides that no person shall “on the ground of race, color, or national
5 origin, be excluded from participation in, be denied the benefits of, or be subjected to
6 discrimination under any program or activity receiving Federal financial assistance.”⁵⁵ Section
7 602 of the Act provides that “[e]ach Federal department and agency which is empowered to
8 extend Federal financial assistance . . . is authorized and directed to effectuate the provisions of
9 section 2000d of this title . . . by issuing rules, regulations, or orders of general applicability
10 which shall be consistent with achievement of the objectives of the statute authorizing the
11 financial assistance in connection with which the action is taken.”⁵⁶ Department of Justice
12 regulations implementing Section 602 forbid recipients of federal financial assistance from
13 “utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals
14 to discrimination because of their race, color, or national origin, or have the effect of defeating
15 or substantially impairing accomplishment of the objectives of the program as respects
16 individuals of a particular race, color, or national origin.”⁵⁷ The federal government has the
17 power to fix the terms on which its money allotments to the states shall be disbursed.⁵⁸

in the President to the Attorney General for the coordination and implementation of enforcement of section 2000d-1. 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); USASpending.gov <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.”).

⁵⁴ *Lau v. Nichols*, 414 U.S. 563, 569 (1974) (citing 110 Cong. Rec. 6543 (Sen. Humphrey speaking to Congress, quoting from President Kennedy's national address on June 19, 1963)); President Kennedy's Address, H.R. Misc. Doc. No. 124, 88th Cong., 1st Sess. 3, 12 (1963).

⁵⁵ 42 U.S.C. § 2000d

⁵⁶ 42 U.S.C. § 2000d-1.

⁵⁷ 28 C.F.R. § 42.104(b)(2) (2010).

⁵⁸ *Oklahoma v. United States Civil Service Comm'n*, 330 U.S. 127, 142-43 (1947) (Holding that Congress has the power to fix the conditions for review of administrative orders” and “ The offer of benefits to the state by the United States dependent upon cooperation by the state with federal plans, assumedly for the general welfare, is not unusual.”)

1 Executive Order 12250 (EO 12250)⁵⁹ charges the Department of Justice with ensuring the
2 consistent and effective implementation of Title VI and delegates the power vested in the
3 President of the United States, pursuant to Section 602—relating to the approval of rules,
4 regulations, and orders of general applicability—to the Attorney General. EO 12250 also gives
5 the Attorney General the task of coordinating the implementation and enforcement of the
6 nondiscrimination provisions within Title VI. This role is even more pronounced in the area of
7 enforcing Title VI disparate impact regulations since the 2001 U.S. Supreme Court ruling in
8 *Alexander v. Sandoval* held there was no private right of action to enforce the disparate impact
9 regulations.⁶⁰ In 2009, following up on concerns over enforcement post-*Sandoval*, Acting
10 Assistant Attorney General Loretta King stated that, because “victims can only turn to the
11 administrative complaint process . . . agencies must be particularly vigilant in ensuring strong
12 enforcement in this area.”⁶¹

13 The principle of non-discrimination in the provision of services was extended to federal
14 agencies themselves on August 16, 2000, when President Clinton signed Executive Order 13166.
15 The order directed “each federal agency [to] develop and implement a system by which LEP
16 persons can meaningfully access [the agency's] services”⁶² and asked each agency providing
17 federal financial assistance to devise plans on who they will serve LEP persons in their own
18 operations and to issue guidance to recipients of such assistance on their legal obligations to
19 take reasonable steps to ensure meaningful access for LEP persons under the national origin
20 nondiscrimination provisions of Title VI of the Civil Rights Act of 1964, and implementing
21 regulations.⁶³ EO 13166 also directs federal agencies to publish guidance on how both they and
22 the recipients of their financial assistance can provide meaningful access to LEP persons.⁶⁴

23 Pursuant to Executive Order 13166, the Department of Justice issued “*Enforcement of Title VI of*
24 *the Civil Rights Act of 1964 – National Origin Discrimination Against Persons with Limited*
25 *English Proficiency*” (*DOJ LEP Guidance*) in 2000, followed by amended Guidance in 2001 and
26 2002.⁶⁵ The purpose of the *DOJ LEP Guidance* is to assist recipients of federal financial

⁵⁹ Exec. Order 12,250, 45 Fed. Reg. 72, 995 (Nov. 2, 1980), <http://www.archives.gov/federal-register/codification/executive-order/12250.html>.

⁶⁰ *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; that only the funding agency issuing the disparate impact regulation has the authority to challenge a recipient's actions under this theory of discrimination.)

⁶¹ Memorandum from Loretta King, Acting Assistant Attorney General, to Federal Agency Civil Rights Directors and General Counsels on Strengthening of Enforcement of Title VI of the Civil Rights Act of 1964, at 3 (July 10, 2009), available at http://www.lep.gov/titlevi_enforcement_memo.pdf.

⁶² Exec. Order 13,166, 65 Fed. Reg. 50,121 (Aug. 16, 2000), <http://www.lep.gov/13166/eolep.pdf>

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ 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

1 assistance in fulfilling their responsibilities to provide meaningful access to LEP persons under
2 Title VI and “to suggest a balance that ensures meaningful access by LEP persons to critical
3 services while not imposing undue burdens on small business, small local governments, or small
4 nonprofits.”⁶⁶ The *DOJ LEP Guidance* states, “the starting point is an individualized assessment
5 that balances the following four factors: (1) The number or proportion of LEP persons; (2) the
6 frequency with which LEP individuals come into contact with the program; (3) the nature and
7 importance of the program, activity, or service provided by the program to people’s lives; and
8 (4) the resources available to the grantee/recipient and costs.”⁶⁷

9 While the *DOJ LEP Guidance* is not regulation, it is intended as a guide that recipients may use
10 to comply with statutory and regulatory obligations.⁶⁸ The Department has also issued
11 subsequent opinion letters in 2003, 2009, and 2010 providing information about the need for
12 appropriate language access services in the court setting.⁶⁹ The *DOJ LEP Guidance* and opinion
13 letters also serve as a measure by which the Department can address and evaluate complaints
14 that are filed when individuals allege that interpreter and translation services are not being
15 provided consistent with federal law. While these complaints can lead to the withdrawal of
16 funds, the Department of Justice has generally been able to resolve issues leading to the
17 complaints with an agreement by the agency or court to provide appropriate language access
18 services.⁷⁰

19 The *DOJ LEP Guidance*, memoranda, opinion letters, and legal briefs are entitled to respect and
20 deference, and are cited throughout these *Standards*.⁷¹ The degree of deference accorded,

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*].

⁶⁶ *DOJ LEP Guidance*, *supra* note 66, at 41,459.

⁶⁷ *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 *id.*

⁶⁸ *Id.* at 41,457 n.2.

⁶⁹ 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.

⁷⁰ Sample Memoranda of Understanding can be found at www.lep.gov/; see Memorandum of Understanding between United States of America and the State of Maine Judicial Branch (Sept. 29, 2009), http://www.justice.gov/crt/lep/guidance/Maine_MOA.pdf.

⁷¹ An agency’s memoranda, opinion letters, or legal briefs, while not warranting “*Chevron*-type deference” have been awarded a degree of deference in cases. The degree of deference given depends on the nature of the document and whether external reviews are a part of the process. For regulations, the controlling case is *Chevron*

1 ranging from binding to persuasive weight, depends on the formality of review and the
2 authority under which the rule was made.⁷² In the case of agency guidelines, interpretations,
3 and opinions, the Supreme Court has held that, “while not controlling upon the courts by
4 reason of their authority, [they] do constitute a body of experience and informed judgment to
5 which courts and litigants may properly resort for guidance. The weight of such a judgment in a
6 particular case will depend upon the thoroughness evident in its consideration, the validity of
7 its reasoning, its consistency with earlier and later pronouncements, and all those factors which
8 give it power to persuade”⁷³

9 These implementing regulations, agency guidance, and memoranda are often further
10 interpreted by the courts. In *Lau v. Nichols*, the U.S. Supreme Court interpreted agency
11 guidelines and memoranda to hold that failing to take reasonable steps to ensure meaningful
12 access for LEP persons is a form of national origin discrimination prohibited by Title VI
13 regulations.⁷⁴ In its ruling, the Supreme Court relied upon a memorandum issued by the
14 Department of Health, Education, and Welfare, Office for Civil Rights, to selected school
15 districts with students of national origin-minority groups.⁷⁵ In the memorandum, the office
16 highlighted four areas of concern in the services provided to “national origin-minority group
17 children deficient in English language skills.”⁷⁶ The memorandum also clarified the school
18 district’s obligations regarding language access pursuant to the Department’s regulations
19 promulgated under Title VI.⁷⁷

20 Other federal laws also ban the conduct prohibited by Title VI. In the context of access to
21 federally funded state courts, the *Omnibus Crime Control and Safe Streets Act of 1968* (Safe
22 Streets Act) prohibits national origin discrimination by recipients of federal financial
23 assistance.⁷⁸ Regulations implementing the Safe Streets Act further prohibit recipients from

U.S.A. Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984). See *Long Island Care at Home, Ltd. v. Coke*, 551 U.S. 158, 162 (2007), *Christensen v. Harris County*, 529 U.S. 576, 587 (2000). (Add case descriptions)

⁷² *Chevron U.S.A.*, 467 U.S. 837; *United States v. Mead Corp.*, 533 U.S. 218, 226-27 (2001); *Auer v. Robbins*, 519 U.S. 452 (1997); *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944).

⁷³ *Skidmore*, 323 U.S. at 140.

⁷⁴ The Supreme Court in *Lau* relied on the agency’s regulation and interpretive memorandum in holding the school district was in violation of their Title VI obligations. 414 U.S. at 567-69.

⁷⁵ The regulations referred to in *Lau* were promulgated under the Department of Health, Education, and Welfare (HEW). *Id.* at 566-67. The Court in *Lau* cited to a 1970 HEW memorandum to school districts clarifying their obligations under the Department’s regulations, 45 CFR Part 80, in finding that the school system’s failure to provide English language instruction denied meaningful opportunity to participate in public educational program in violation of Civil Rights Act of 1964. *Id.* at 567.

⁷⁶ Identification of Discrimination and Denial of Services on the Basis of National Origin, 35 Fed. Reg. 11595, at 11595 (July 18, 1970).

⁷⁷ 45 C.F.R. Part 80.

⁷⁸ Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. § 3789d (2006).

administering programs in a manner that has the effect of subjecting individuals to discrimination based on their national origin.⁷⁹ Notwithstanding any state statutory language that may state a contrary position, where a court is a recipient of federal financial assistance, language access services must be provided in a manner consistent with requirements under Title VI.

Integrity of the Judicial Process

Access to courts through the provision of language access services is not for the sole benefit of the LEP person; language access services also support the administration of justice by ensuring integrity of the fact-finding process, accuracy of court records, and efficiency in legal proceedings. The Second Circuit noted the connection between the constitutional protections and both “considerations of fairness” and “the integrity of the fact-finding process.”⁸⁰ If the fact-finder is to make an accurate determination of the facts and the court and the LEP person do not share English as a common language, the court must rely upon an interpreter, as an officer of the court, to facilitate accurate communication so that the court may perform its function in adjudicating the matter.

Principle of Fairness

The fundamental principle of fairness requires that individuals who are LEP have access to the full spectrum of court services⁸¹ in a language they understand and to the same extent as their English speaking counterparts. The principle of equal treatment under the law is a cornerstone of the U.S. judicial system and the legitimacy of the justice system depends upon it. In order for a court system to be open and accessible to individuals who are not proficient in English, the delivery of language access services, through the use of qualified interpreters and translated materials, is vital for both the LEP person and for the administration of justice. This is true for all courts, regardless of whether the court is a recipient of federal financial assistance. 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 with English speaking counterparts.

Access to Justice

⁷⁹ See 28 C.F.R. §§ 42.104(b)(2), 42.203(e); see also 42 U.S.C. § 3789d(c).

⁸⁰ *Negron*, 434 F.2d at 389.

⁸¹ Court services include the full range of court functions, including legal proceedings and other court-operated or -managed offices with points of public contact. Examples of such court-managed offices, operations, and programs can include information counters; intake or filing offices; cashiers; records rooms; sheriff’s offices; probation and parole offices; alternative dispute resolution programs; pro se clinics; criminal diversion programs; anger management classes; detention facilities; and other similar offices, operations, and programs.

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 achieve justice.

STANDARD 2 MEANINGFUL ACCESS

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

To ensure meaningful access for LEP persons, courts must implement all of the services covered in these *Standards*. *Standard 2.1* directs 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 the requirement that services be provided free of charge, and *Standard 2.4* explains 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*.

Court obligations to provide language access have been described in case law as well as in federal rules, regulations, and guidance, yet clear and effective implementation of language access services requires the promulgation of comprehensive, clear, and enforceable court rules. 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. Such rules are useful, whether or not they are supported by current state statute or regulation; they simplify and clarify court obligations, guide those implementing the adjudicatory process, and provide additional mechanisms for enforcement at the local level. Courts should also encourage the adoption of legislative measures, where helpful to implement these *Standards*, and seek funding to carry out the mandates appropriately.

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

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 are required under the *DOJ LEP Guidance* to provide this notice in a language that all persons understand, taking into account the appropriate method to provide the information.

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 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 language data for their service area,⁸² courts should provide *written* notice in the most common languages spoken and should establish procedures for providing *oral* notice to individuals who speak languages that are less common.⁸³ 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 manner in which it is communicated. To be meaningful, the notice must be sufficiently detailed, describing the available language services, who is eligible to receive them, methods for obtaining the services, and that the services will be provided in a timely manner and free of charge. 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. This 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.⁸⁴

⁸² 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*.

⁸³ For more information on procedures for translation, see *Standard 7*.

⁸⁴ For information on filing a complaint, see <http://www.justice.gov/crt/complaint/index.php#five> (last visited Apr. 18, 2011).

1 In addition to notifying LEP persons about the availability of services, translated notices can
2 assist the courts in identifying the language spoken by the individual. The multilingual poster
3 developed by the Social Security Administration,⁸⁵ and to a lesser degree, the “I-Speak” cards
4 developed by the U.S. Census Bureau,⁸⁶ are examples of free and efficient ways to both
5 simultaneously communicate the availability of language access services and to identify an
6 individual’s language needs in one document.⁸⁷ A thorough and complete notice should be
7 identified or developed, translated in to as many languages as possible, and distributed to
8 courts within the state court system. The National Center for State Courts and other national
9 entities working in this area are encouraged to assist in the development and national
10 distribution of resources such as the detailed notice form described here.⁸⁸

11 Notice at All Points of Contact with the Court

12 Since courts are administratively complex and include a multitude of contact points with the
13 public, the availability of free language access services should be clearly communicated at all
14 these points. Contact with the court system may be a one-time use of an informational booth
15 or website, or it may include the entire range of services, from information gathering through
16 the court proceeding to post-sentencing. Moreover, an individual’s interactions with the court
17 do not always follow a particular order. Courts should not limit their notice to initial points of
18 contact but should repeat the information in all phases of the legal process.

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

⁸⁵ 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](http://www.masslegalservices.org/docs/5948>You%20have%20a%20right%20to%20an%20interpreter%20poster%2020060130.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*.

⁸⁶ U.S. Census Bureau “I Speak” cards are available electronically at <http://www.lep.gov/ISpeakCards2004.pdf>.

⁸⁷ 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.

⁸⁸ The ABA supports efforts by the Consortium and COSCA to develop such resources at the national level.

1 information about court programs and other important court information that are routinely
2 provided in English should be available in the jurisdiction's most common languages. Outreach
3 to traditionally underserved communities should be designed to increase awareness of court
4 programs and help to eliminate perceived language barriers to access to courts.⁸⁹ If the court
5 uses telephonic recordings in English to communicate with the public, the court should add
6 additional language specific recordings describing both the court services and the language
7 access services for LEP persons. Benefits of a comprehensive notice and outreach program
8 include increased access for LEP persons, reduced need for bilingual staff to answer questions
9 at a front counter, and reduced need for staff to use telephonic interpreter services to answer
10 frequently asked questions, thereby saving precious resources for the court.

11 12 **2.3 Courts should provide language access services without charge.**

13 Providing language access services free of charge is fundamental to an open and fair justice
14 system. Any imposition of court costs on individuals in need of interpreter services may
15 discourage the request for needed services and therefore impair an LEP individual's
16 participation in the proceeding, and, ultimately, the court's ability to accurately determine the
17 facts. When a court has determined that language access services are necessary, it should make
18 them available free of charge.⁹⁰ Legal proceedings are among the most important activities
19 conducted by recipients of federal funds, and the provision of interpreter services includes
20 arrangement for and payment of those services at no cost to the persons involved.⁹¹

21 The challenge of operating a court under a limited budget is considerable; however, the
22 Department of Justice has pointed out that language access services should be "treated as a
23 basic and essential operating expense" and that "[b]udgeting adequate funds to ensure
24 language access is fundamental to the business of the courts."⁹² Both the obligation to provide
25 meaningful access pursuant to Title VI, and the fundamental principle of access to justice, do
26 not allow a court to impose the cost of interpreter services upon either party or to limit the
27 provision of free interpreter services to specific case types. State laws to the contrary are
28 superseded by these requirements. In state courts where the current practice includes an *In*

⁸⁹ See NCSC, Trust and Confidence in the California Courts: A survey of the Public and Attorneys 21 (2005).

⁹⁰ See 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"].

⁹¹ *Id.*

⁹² *Id.* at 3.

1 *forma pauperis* (IFP) standard to qualify for free interpreter services, those practices must be
2 changed to comply with federal law.⁹³

3

4 **2.4 Courts should provide language access services in a timely manner.**

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

9 The Department of Justice LEP Guidance recognizes that “to be meaningfully effective,
10 language assistance should be timely.”⁹⁴ To be considered timely, language access services
11 “should be provided at a time and place that avoids the effective denial of the service, benefit,
12 or right at issue or the imposition of an undue burden on or delay in important rights, benefits
13 or services to the LEP person.”⁹⁵ While there is no single definition of “timely” for all
14 interactions with courts and court services, conduct which results in delays for LEP persons that
15 are significantly greater than those for English-speaking persons or materially interferes with
16 the parties’ preparation for a proceeding, application, or petition violates the court’s obligation
17 to provide language access services in a timely manner.

18 The definition of “timely” also depends in part on the urgency of the service, benefit, or right at
19 issue. Timely access to a certified interpreter for an LEP domestic violence victim seeking an ex
20 parte order of protection, with a potential risk of serious harm from any delay, requires that the
21 interpreter be available to ensure the same access to the court’s legal remedies as that
22 provided to English speakers. Courts must develop methods to obtain such language access
23 services quickly and balance the need for in-person interpreters against the convenience of
24 telephonic, video remote services, or other technology.⁹⁶

25 Whether a service is considered timely is also determined by the type of language access
26 service provided. Different types of language access services are discussed in full in *Standard 5*,
27 and the speed with which each one is available varies. As a matter of practicality, in-person
28 interpreter services usually require more time to coordinate than using telephonic or video

⁹³ See *Id.* In general, many individuals who are LEP fall below the IFP standard and qualify for interpreters free of charge, so some courts have decided that using the IFP process is not an efficient use of resources.

⁹⁴ DOJ LEP Guidance, *supra* note 66, at 41,461.

⁹⁵ *Id.*

⁹⁶ For more information on video remote interpreting, see *Standard 4.3*.

1 interpreter services, particularly in languages of lesser diffusion. Translating court documents
2 and other notices will take longer than a sight translation. Timeliness is also affected by the
3 extent to which the court has hired interpreters on staff in languages of high demand versus
4 relying on contract interpreters, where scheduling requires additional processes and time. In
5 some circumstances, such as when a court has bilingual staff providing direct services at an
6 information counter, timely means those services can be provided in a manner comparable to
7 the services for non-LEP persons.

8 9 **STANDARD 3 IDENTIFYING LEP PERSONS**

10 **3. Courts should develop procedures to gather comprehensive data on language access** 11 **needs, identify persons in need of services, and document the need in court records.**

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

19 20 **3.1 Courts should gather comprehensive language access data as well as individualized** 21 **language access data at the earliest point of contact.**

22 **Comprehensive Data**

23 Courts should develop appropriate data gathering tools to anticipate and determine language
24 access service needs. The *DOJ LEP Guidance* recommends that recipients analyze prior
25 experiences or encounters with LEP persons coupled with comparison by other sources of data,
26 including school systems, community organizations, and local governments.⁹⁷ The COSCA
27 *White Paper on Court Interpretation* also emphasizes the need for data stating that “the
28 National Center for State Courts and the States should explore and support methods to better
29 identify and track needs for interpreters – in individual cases and overall, including
30 identification of languages for which interpretation is needed, frequency of interpreter use, and

⁹⁷ *DOJ LEP Guidance*, *supra* note 66, at 41,465.

types of cases in which interpretation is required.”⁹⁸ This data can be used to assist courts in making decisions about hiring bilingual staff, hiring and 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.⁹⁹ For this task, data on the languages for which interpreters have been *requested* is just as valuable 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.¹⁰⁰

External demographic data should be gathered by the court to supplement internal systems and to help anticipate the language needs of individuals accessing the 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.¹⁰¹ In addition to these sources, local

⁹⁸ COSCA, *White Paper on Court Interpretation: Fundamental to Access to Justice*, Recommendation 15 (Nov. 2007), <http://cosca.ncsc.dni.us/WhitePapers/CourtInterpretation-FundamentalToAccessToJustice.pdf> (last visited Apr. 18, 2011).

⁹⁹ 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*.

¹⁰⁰ 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).

¹⁰¹ 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).

governmental agencies, such as health and education departments,¹⁰² regularly compile detailed demographic data. Courts should establish mechanisms to coordinate with groups to regularly obtain such data for evaluating pipeline language access needs.

Individualized Data

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 must be able to 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. Courts should incorporate individualized identification data 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.¹⁰³

Courts should also include a means to gather information 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, jail personnel, prosecutors, court-appointed defense counsel, child protective services, 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 is gathered, courts must 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;¹⁰⁴ (2) the location, time frame, and duration of each event; (3) the estimated

¹⁰² 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.

¹⁰³ A discussion of each of these categories of individuals is provided in *Standard 4*.

¹⁰⁴ 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.

number of interpreters needed in the matter;¹⁰⁵ (4) documentation of 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;¹⁰⁶ and, (7) a system to prioritize or flag a case where there are a limited number of interpreters in the particular language needed which may require special scheduling considerations.

The primary method for courts 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 must 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 functions.

The case management system in King County Superior Court (KCSC), in Seattle, Washington, illustrates the benefit for courts in using a comprehensive approach. The King County Superior Court Interpreter Services Program's electronic case management system¹⁰⁷ 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 languages¹⁰⁸ and for each person's role in the case¹⁰⁹ along with a list of all interpreting event locations, including all courtrooms, court-

¹⁰⁵ 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.

¹⁰⁶ 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.

¹⁰⁷ Each individual is a unique "customer" within the system. Customers are then associated with different events within a case.

¹⁰⁸ Within the language tab, notes can be added to indicate the country of origin or to document specific language needs of an individual.

¹⁰⁹ The "role" an individual can have within a particular case encompasses a very extensive list. The list of roles 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;

1 affiliated programs, and out-of-court locations.¹¹⁰ Reporting and scheduling functions allow
 2 case information to be transferred to the scheduling component within the CMS where all
 3 essential information is displayed.¹¹¹ The schedule can be sorted by language, location, case
 4 type or any combination of those views, creating an instantaneous reporting and
 5 documentation system for the court. In addition, the schedule can be sorted by interpreter and
 6 sent electronically to each interpreter, with any necessary notes or scheduling reminders
 7 included. The CMS also creates reports regarding the frequency of interpreter encounters by
 8 language, case type, and settings outside the courtroom to assist courts in evaluating the need
 9 for additional services.

10 Courts should be careful to ensure that case management systems include not just courtroom
 11 services, but also settings outside of the courtroom where language access is needed.¹¹² Ideally,
 12 such settings should include the need for translated materials, the use of bilingual staff at
 13 information counters, and access to telephonic interpreter services. A documentation system
 14 that tracks the encounter rates for different languages can also assist the court in determining
 15 the need for services in languages for which neither bilingual staff nor qualified in-person
 16 interpreters are available. This tracking can actually lead to cost-savings (such as the translation
 17 of documents which must be sight translated)¹¹³ which might be overlooked when no
 18 monitoring occurs.

20 **3.2 Courts should ensure that persons with limited English proficiency may self-identify as** 21 **needing language access services.**

22 Courts should allow an LEP person to self-identify as needing services. When an individual or
 23 his/her representative requests an interpreter, a judge or adjudicator should presume the need
 24 is bona fide.¹¹⁴ This preference for self-identification recognizes that assessing language

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.

¹¹⁰ 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.

¹¹¹ 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

¹¹² These settings are discussed in *Standards* 5, 6, and 7.

¹¹³ For more discussion of the efficient use of translation see *Standard* 7.

¹¹⁴ NCSC, *supra* note 8, at 126.

1 proficiency is a difficult and intensive task that requires training in language acquisition and
2 language proficiency assessment – training not usually possessed by a judge or court personnel.
3 For example, a judge might be inclined to deny an interpreter for an individual after observing
4 him or her conversing with an attorney without the aid of an interpreter, or after observing the
5 individual following simple instructions such as “sit down.” Such a denial would be erroneous
6 because it assumes that the ability to use English for simple communications and rote
7 statements (which are often memorized) is an indication of the language proficiency necessary
8 for the meaningful comprehension and effective communication that is required to protect a
9 person’s interest in a legal matter.

10 Furthermore, the importance of accuracy in legal proceedings outweighs any concern for abuse
11 of the system in those rare instances where an LEP person appears to be unnecessarily
12 requesting an interpreter. Legal proceedings can be confusing and intimidating even for an
13 individual who speaks English fluently; the potential for misunderstanding is more acute for one
14 who does not.¹¹⁵ In addition to misunderstanding information due to the language barrier, LEP
15 persons from a country where legal systems and concepts vary substantially from those of the
16 United States may be further confused when an interpreter is not used. The failure to appoint
17 an interpreter when one has been requested not only impairs that person’s access to justice
18 but also can result in costs and inefficiencies to the court system in the form of appeals,
19 reversals, and remands.¹¹⁶

¹¹⁵ The 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. The language proficiency required in court proceedings and legal settings far exceeds that of many other situations and much more is likely at stake. As a result, many individuals who are comfortable speaking in English in less formal settings require interpreter services and translated written materials in court. Understanding legal proceedings 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; and the impact of court proceedings on a person’s life, liberty, family relationships, or property interest. Communicating under these circumstances must be done in the language in which the individual is most proficient.

¹¹⁶ 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.”).

3.3 Courts should establish a process that places an affirmative duty on judges and court personnel to provide language access services if unable to understand a person or if it appears that he or she is not fluent in English.

When LEP persons have been provided a thorough explanation of the availability of free services and the benefits of communicating in their primary language, it is unusual for them to decline the services. However, in some instances, misunderstanding of the complexity of the proceedings, concerns about confidentiality, and fear of misinterpretation and discrimination against non-English speakers may lead LEP persons to decline services, resulting in the need for a judge to make a separate determination. If a judge has concerns about the individual's English proficiency, or is having difficulty understanding the individual's spoken English, the judge should make an inquiry, on the record, by asking such open ended questions as:

- 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 bit about how comfortable you feel speaking and understanding English.¹¹⁷

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 an individual's English proficiency, 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 describing people, places, or events.¹¹⁸ A person who is unable to answer these questions is unable to communicate in English at the level minimally necessary to comprehend legal proceedings. If the court cannot understand the person's responses to the questions asked, or if the judge has any doubt about the ability of the person to comprehend the proceedings fully or adequately to express him or herself, the judge should appoint a certified or qualified interpreter. While this section has focused on a judge's determination of the need for interpreter services – this same process should be used by all court personnel who realize an interpreter is needed to interact with an individual who is LEP.

¹¹⁷ These *voir dire* questions are taken in part from the National Center for State Courts, Model Guide for Policy and Practice in the State Courts, the Washington State Administrative Office of the Courts, Bench Card for Courtroom Interpreting, and the New York State Unified Court System, USC Court Interpreter Manual and Code of Ethics Bench Card.

¹¹⁸ NCSC, *supra* note 8, at 126.

1 After being fully advised of the right to language access services free of charge, the importance
2 of the proceeding, and the role of the interpreter, including a short description of interpreter
3 skills, ethics and confidentiality an LEP person may continue to decline these services. Where an
4 LEP person is hesitant to use an interpreter, the judge should inquire into the LEP person's
5 reason to determine if there are measures the court should take to remedy the concern. This
6 communication should be done through an interpreter.

7 In essence, the LEP person in this situation is attempting to waive the right to an interpreter;
8 this must only be done with great caution. Waiver is "an intentional relinquishment or
9 abandonment of a known right."¹¹⁹ For the waiver to be considered "knowing," an individual
10 must understand that he or she has the right to an interpreter without charge; passive
11 acquiescence by way of silence or failure to affirmatively assert the right should not be
12 regarded as a valid waiver.¹²⁰ Understanding the right to an interpreter requires a full
13 explanation of the availability of free interpreter services, the role of the interpreter, and the
14 advisability of testifying in one's native language, all of which must be communicated through
15 an interpreter on the record. The court should accept a waiver of the interpreter only upon a
16 finding that it is a knowing waiver and the court is confident it can communicate effectively
17 with the LEP person; such circumstances should be carefully documented in the record.

18 In situations where the court itself is unable to understand the LEP person's communication,
19 due to lack of proficiency in English or a strong accent, the judge should still decline the waiver;
20 the interpreter is necessary to assist the court in understanding the individual's testimony.¹²¹
21 This interpreter may not interpret all the proceedings but is in the courtroom and available
22 should the court not understand the spoken English of the person testifying.

23 In settings outside the courtroom, such as court services, court-mandated programs, and court-
24 offered programs, courts must also provide procedures for LEP persons to self-identify as LEP,
25 and require court personnel to offer language access services. Procedures for self-identification
26 as LEP in these settings should not be formulaic or overly prescriptive; simple communication of

¹¹⁹ *Negron*, 434 F.2d at 390 (citing *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938)).

¹²⁰ *Id.* 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.").

¹²¹ See, e.g., S.C. Code Ann. § 15-27-155 ("[W]henever 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.").

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 services are available or may be embarrassed or afraid to ask for them. The procedures above, including the voir dire questions, should be modified to fit situations outside of the courtroom.

STANDARD 4 INTERPRETER SERVICES IN LEGAL PROCEEDINGS

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

The delivery of appropriate language access services in legal proceedings¹²² depends upon the provision of competent services provided by professional and well trained interpreters.¹²³ 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 the following: proceedings conducted within a court; court-annexed proceedings; and proceedings handled by judges, magistrates, masters, commissioners, hearing officers, arbitrators, mediators, and other decision-makers.

The terms "legal proceedings" and "courts" are broadly defined. Legal proceedings involve important legal rights and benefits, whether they are adjudicated in a criminal or civil matter, or in an administrative hearing.¹²⁴ The provision of interpreter services in all legal proceedings is supported by the fundamental principles of fairness, access to justice, and integrity of the process and is required by federal law and many state laws.¹²⁵

The Department of Justice *LEP Guidance* supports the broad definition of legal proceedings stating that "every effort should be taken to ensure competent interpretation for LEP

¹²² See *Standard 5* for language access services in court services, and *Standard 6* for services in court-mandated or offered services.

¹²³ See *Standard 8* for a full discussion of Interpreter skills and the necessary components of interpreter credentialing.

¹²⁴ This principle recognizes that competent interpreter services are required where an LEP person is involved with a live legal proceeding in all of the capacities described in this section.

¹²⁵ For a more complete discussion of legal authority, see *Standard One*.

individuals during all hearings, trials, and motions.”¹²⁶ DOJ provides a comprehensive list of legal proceedings including “all court and court-annexed proceedings, whether civil, criminal, or administrative including those presided over by non-judges”¹²⁷ as well as “[p]roceedings handled by officials such as magistrates, masters, commissioners, hearing officers, arbitrators, mediators, and other decision-makers.”¹²⁸

Courts that currently limit interpreter services by case type should end this practice and move to expand the provision of interpreter services to all legal proceedings. The Department of Justice recognizes that “it takes time to create systems that ensure competent interpretation in all court proceedings and to build a qualified interpreter corps” but also warns that ten years have passed since the issuance of Executive Order 13166 and the *DOJ LEP Guidance* and reminds courts that “[w]ith this passage of time, the need to show progress in providing all LEP persons with meaningful access has increased.”¹²⁹

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.

While most courts are aware of the need to provide an interpreter to a litigant,¹³⁰ some do not recognize that witnesses, persons with legal decision-making authority, and persons with a significant interest in the matter are also individuals whose presence or participation may be necessary or appropriate.¹³¹ Each of these persons has either information to provide or a stake

¹²⁶ *DOJ LEP Guidance*, *supra* note 66, at 41,471.

¹²⁷ Letter to Chief Justices and State Court Administrators, *supra* note 91, at 2.

¹²⁸ *Id.*

¹²⁹ *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.”).

¹³⁰ 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))). See also *In re Interest of Angelica L.*, 767 N.W. 2d 74 (Neb. 2009).

¹³¹ “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” and “DOJ expects that meaningful access will

1 in the legal proceeding before the court, and the court should not bar their participation
2 because of a language barrier.

3 4 Witnesses

5
6 As part of the exercise of their rights, litigants may call a witness who is limited English
7 proficient; to deny the witness an interpreter would deny the litigant access to the court
8 process and be in violation of the Sixth Amendment confrontation clause.¹³² In both criminal
9 and civil matters, the court must be able to understand the testimony of the LEP witness, and
10 this requires the use of a competent interpreter. Where a court conducts the proceeding in the
11 absence of an interpreter, questions may arise about the accuracy of the information, character
12 of the witness, or veracity of the testimony, and the resulting verdict may be challenged.

13 14 Persons with Legal Decision-Making Authority

15
16 The court may encounter an LEP individual who is not a litigant or a witness, but who has the
17 legal decision-making authority regarding the matter before the court. This person is also
18 entitled to interpreter services throughout the proceedings and for all interactions within the
19 court. Such individuals may include, but are not limited to: parents or legal guardians of minor
20 children where the child is involved in the matter but where the parent or guardian is not a
21 named party; parents and guardians of minor victims of crime; guardians acting pursuant to
22 their authority under guardianship of an incapacitated individual; and guardians ad litem. LEP
23 parents of a minor child involved in a juvenile action are entitled to interpreter services
24 throughout the legal proceeding and to communicate with court-appointed counsel. In such
25 circumstances, the participation of these individuals is necessary to protect their legal decision
26 making interest and to protect the interest of the individuals and interests they represent.¹³³

be provided to LEP persons in all court and court-annexed proceedings, whether civil, criminal, or administrative including those presided over by non-judges." Letter to Chief Justices and State Court Administrators, *supra* note 91, at 2. See also *Standard 4* for further discussion of each of these categories of individuals.

¹³² *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.)

¹³³ *DOJ LEP Guidance*, *supra* note 66, 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, which references the delivery of appropriate language access services for non-party LEP individuals whose presence or participation in a court

Persons with a Significant Interest in the Matter

Finally, courts may come into contact with LEP persons who have a significant interest in a matter before the court, even if they have no “legally recognized” interest at stake. Examples of this 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 LEP family members of the victim or the defendant in a murder trial. The court should inquire whether there are individuals in the courtroom who may be in need of interpreter services, and make a determination. That determination should take 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 provided to another party in the proceeding and could be easily transmitted with the use of available technology.¹³⁴

A review of these factors should be made on the record along with the resulting decision. The presiding judge has discretion in making this initial determination; however, once he or she has determined that an individual has a significant interest in the matter, competent interpreter services must be provided. Meaningful access does not require courts to provide free interpreter services to any LEP person who wanders into the courthouse to observe a case, but does require provision of interpreter services for those individuals 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.

Courts should meet their obligation to 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.¹³⁵ The primary consideration for a court in appointing an interpreter for a legal proceeding should be to appoint the most qualified¹³⁶ interpreter available in the most appropriate medium, taking into account the urgency of the matter involved.

matter is “necessary or appropriate,” including parents and guardians of minor victims of crime or juveniles and family members involved in delinquency proceedings.

¹³⁴ 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, *supra* note 8, at 189.

¹³⁵ See, COSCA, *supra* note 99; NCSC, *supra* note 8. Interpreter competency is addressed fully in *Standard 8*.

¹³⁶ For a complete discussion of how to determine interpreter qualification, see *Standard 9*.

1
2 Current practices do not necessarily direct courts to select the most qualified interpreters. For
3 longer hearings, including trials, in-person interpreters are generally preferred, and often
4 required. Many jurisdictions allow only emergency hearings and non-evidentiary hearings to be
5 conducted through remote telephonic or video services.¹³⁷ In some states, the preference for
6 in-person interpreters has been codified in court rule or state statute.¹³⁸ This preference is
7 based on the benefit of seeing the body language and non-verbal communication of the
8 individuals and on the recognition that the technology available for remote interpreting has not
9 always been adequate to meet the needs of courts.¹³⁹ However, a preference for in-person
10 interpreters can sometimes mean that a less qualified, or even unqualified, individual is used,
11 and it can also result in delayed proceedings.

12
13 With the increasing number of languages spoken across the U.S., courts should recognize that
14 in-person interpreter services may not be sufficient to meet the language needs of all LEP
15 persons in the court's jurisdiction. Many courts and adjudicatory bodies now encounter LEP
16 individuals who speak languages not previously served. In these instances, courts need to
17 ascertain if there are qualified in-person interpreters available to meet the language needs of
18 the LEP person, and if not, should identify qualified interpreters who are able to provide the
19 service remotely. Remote interpreting services have the ability to enhance the number of
20 assignments that an interpreter can interpret daily. By reducing travel and wait time, remote
21 interpreting can cut costs and increase interpreter quality. When determining whether to use
22 remote interpreter services, courts should consider the appropriateness of the technology and
23 the qualifications of the interpreters.

¹³⁷ Examples pending.

¹³⁸ 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.

¹³⁹ Inadequate telephone systems that do not allow for private communications between an LEP defendant and his or her counsel, telephone speaker systems that resulted 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 placement of the interpreter and inadequate equipment negatively impact the defendant's ability to participate in the hearing as well as the attorney's ability to consult with the client before the hearing. One solution is to establish a policy that courts will default to in-person appearance in these instances.

1 Some courts are addressing the problem of insufficient in-person interpreters by developing
2 interpreter pools¹⁴⁰ of certified interpreters who are available by telephone or video. By
3 selecting the interpreters in the pool, the courts can hold them to the same qualification,
4 screening, and training standards as in-person interpreters.¹⁴¹ It is important to distinguish this
5 kind of remote interpreter pool from services provided by telephonic interpreting agencies that
6 generally do not share information about the criteria they use to determine interpreter
7 qualifications.¹⁴² Even those remote interpreter agencies that have created internal testing and
8 credentialing exams may use assessments that are vastly different from those of national
9 interpreter certification programs. Courts should use caution in accepting alternate testing
10 credentials and should consult with community organizations to determine best practices in
11 this regard.¹⁴³

12
13 Courts should also determine whether the use of remote technology is appropriate for the
14 setting. As noted above, the preference for in-person interpreting is based on the recognition
15 that non-verbal cues are critical in most communication. Despite the growing use of remote
16 video interpreting, telephonic interpreting, which allows the interpreter to be located away
17 from the proceedings and the interpretation to occur over a standard telephone line using fairly
18 basic equipment, is still the most common remote technology used. To ensure the most
19 efficient and effective use of telephonic interpreters, courts must provide the proper
20 equipment and training.¹⁴⁴

21
22 Telephonic remote interpreter services require specialized equipment at both locations to
23 provide adequate services. For the remote interpreter, the recommended equipment consists
24 of a headset and microphone, and a telephone system that allows the interpreter to control

¹⁴⁰ For more information on the development of interpreter pools, see COSCA, *supra* note 99. 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).

¹⁴¹ 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).

¹⁴² Some telephonic interpreter services have or may develop their own credentialing systems; however, without understanding the nature of the testing involved and the veracity 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 certification requirements in a contract for language access services.

¹⁴³ One reference would be the national certification exam for 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.

¹⁴⁴ 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

1 both his or her volume as well as the volume of the individual speaking in the courtroom.¹⁴⁵ To
2 accommodate attorney client confidentiality, the equipment also allows for a private three-way
3 communication between client, attorney, and interpreter that is not broadcast to the court. The
4 court's equipment should include headsets and microphones for multiple individuals and an
5 amplification system that is wired into the courtroom's sound system or is in some way
6 sufficiently amplified in the courtroom. The headsets allow the interpreter to interpret
7 simultaneously when the LEP person is listening to the testimony of others, and the
8 amplification system allows the interpreter to broadcast into English the testimony of any LEP
9 witnesses or litigants for the court. In some circumstances telephonic interpretation will need
10 to be consecutive rather than simultaneous.¹⁴⁶ Equipment used for recording has advanced to
11 allow for multiple channel recordings that allow isolation of each speaker, one for the
12 interpreter and the other for the LEP individual. Recording telephonic testimony is necessary to
13 ensure that any errors in interpretation or communication can be considered on review.

14
15 Without the proper equipment, the limitations of telephonic interpreting are significant and
16 often outweigh the benefits. Courts that rely on a standard speaker phone placed in the
17 courtroom for telephonic interpreting run the risk of delayed and inefficient proceedings as
18 well as compromised quality. In such situations, the interpretation must be conducted in
19 consecutive mode throughout the proceedings, doubling the time spent hearing the matter.
20 Additionally, such a system has no mechanism for private communications between the
21 attorney and LEP litigant.¹⁴⁷ Finally, the limitations of this equipment can lead to compromised
22 quality because of the inability of the speaker phone to pick up the utterance of all speakers,
23 the interruptions in the interpreting from background noise, and the tendency for the
24 equipment to only allow one speaker at a time. These problems obscure both the testimony
25 and the interpretation and can lead to misinterpretation and misunderstanding.

26
27 The increased availability of video remote interpreting, when used appropriately, may help
28 address some of these problems. These systems are an enhancement over telephonic
29 interpreting and offer a combination of video and audio connections,¹⁴⁸ allowing the
30 interpreter to see all of the relevant individuals in the communication. Equipment needed

¹⁴⁵ National Association of Judiciary Interpreters, *supra* note 140.

¹⁴⁶ 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 for Policy and Practice in the State Courts, at 138.

¹⁴⁷ NCSC, *supra* note 8, at 181.

¹⁴⁸ COSCA, *supra* note 99, at 13.

1 includes a high-speed internet connection, a computer with television videoconferencing
2 equipment, and, potentially, additional software.¹⁴⁹ As with telephonic interpreting services,
3 courts that pursue remote video interpreting services must maintain a focus on the quality of
4 the interpretation, and ensure both that the video and audio quality are sufficient, and that the
5 system has the capability for interpretation of private conversations. Courts are encouraged to
6 seek out the expertise of other courts that have established video remote interpreting systems,
7 as well as the American Sign Language interpreting community, regarding the development of
8 standards and the lessons learned in providing competent interpreter services through the
9 medium of video.¹⁵⁰

10
11 Regardless of the type of technology used, court personnel working in courtrooms that are
12 equipped with either telephonic or video remote interpreting systems should be trained¹⁵¹ on
13 the proper use of the system, including appropriate uses of the technology and its limitations.
14 Each individual LEP person's language needs vary and may impact the selection of a particular
15 interpreter or method by which the interpreter services are delivered. Courts using remote
16 technology should still require a pre-session¹⁵² to allow interpreters to establish whether they
17 can communicate effectively with each LEP individual. Training also helps remind judges to
18 verify that the selected medium is an appropriate match for the particular LEP person. Even the
19 most advanced video technology and skilled remote interpreter will not always be an
20 appropriate fit for a particular LEP individual, who, for example, may not be able to
21 communicate in this manner due to trauma or disability.

22
23 With ongoing technological advancement, courts will continue to encounter new and promising
24 solutions to meet the language access needs of LEP litigants. These should be encouraged as
25 long as the following protections are implemented: the quality of the communication is not
26 compromised; courts ensure both that the interpreter services are competent and that the
27 medium used is appropriate; and, there is opportunity for private communication between
28 counsel and the LEP client or other LEP participants in the proceeding where such
29 communication is appropriate.

30

¹⁴⁹ *Id.*

¹⁵⁰ 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>

¹⁵¹ For more information on training, see *Standard 9*.

¹⁵² This pre-session is discussed in full in *Standard 4.4*.

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

Interpreters operate under an interpreter code, or set of professional responsibilities, that carefully guides their actions both in and outside the courtroom.¹⁵³ Most states have adopted such codes¹⁵⁴ 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.¹⁵⁵ 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.¹⁵⁶ Interpreters are also under an ethical duty to inform the court of any conflicts of interest and any inability to understand either of the parties for whom they are interpreting.¹⁵⁷ 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 must adhere to 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.¹⁵⁸ Ways in which courts can promote compliance with the interpreter's ethical obligations include scheduling an adequate number of

¹⁵³ For more on interpreter ethics, see *Standard 8.4*.

¹⁵⁴ 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).

¹⁵⁵ NCSC, *supra* note 8, 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>

¹⁵⁶ NCSC, *supra* note 8, 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.").

¹⁵⁷ NCSC, *supra* note 8, 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>

¹⁵⁸ 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.

1 interpreters, providing time for a pre-session and addressing any concerns raised, and
2 refraining from asking interpreters to perform tasks outside of their very limited role.

3
4 Scheduling interpreters for legal proceedings can be a complicated arrangement depending on
5 the complexity of the case, the number of LEP persons involved, and the number of languages
6 spoken by the persons involved. A court should also take into account the interpreting
7 functions that occur within the legal proceedings to determine the appropriate number of
8 interpreters needed for the matter. These functions refer to the fact that some interpreting is
9 done for all in the court to hear, and other interpreting is so that the LEP person can
10 understand the proceedings or speak with counsel. Both technology and ethical considerations
11 determine the number of interpreters needed.

12
13 These interpreter functions within the court setting include witness interpretation, proceedings
14 interpretation, and interview or party interpretation. Witness interpretation occurs “during
15 witness testimony for the purpose of presenting evidence to the court. This interpreting
16 function is performed in the consecutive mode; the English language portions of the
17 interpretation are part of the record of the proceeding.”¹⁵⁹ Proceedings interpretation “is for a
18 non-English speaking litigant in order to make the litigant present and able to participate
19 effectively during the proceeding.”¹⁶⁰ This function “is ordinarily performed in the simultaneous
20 mode” and “the interpreter’s speech is always in the foreign language, in whisper mode (not
21 out loud) to the litigant, and is not part of the record of proceedings.”¹⁶¹ Interview or party
22 interpretation is also not part of the record of the proceedings and “is interpreting to facilitate
23 communication in interview or consultation settings. Interview interpreting may occur in
24 conjunction with court proceedings or before or after court proceedings.”¹⁶²

¹⁵⁹ NCSC, Court Interpretation: Model Guides, at 34.

¹⁶⁰ NCSC, Court Interpretation: Model Guides for Policy and Practice in the State Courts, ch. 2, at 34. 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>

¹⁶¹ 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>

¹⁶² *Id.*

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

9
10 Another consideration in scheduling is the appointment of different interpreters for different
11 aspects of a legal proceeding. Even though each interpreter is bound by confidentiality and
12 neutrality provisions, and should be able to make an accurate interpretation, the appearance of
13 impartiality or neutrality can be compromised when an interpreter has worked for one party or
14 another in preparation for trial and then is brought in to interpret for the legal proceedings.¹⁶³
15 Courts should establish procedures to track the interpreter’s prior contact with the parties and
16 the case, and where possible, use a different interpreter to interpret the court proceedings to
17 uphold the appearance of impartiality. For example, where there are two LEP co-defendants,
18 each with separate counsel, and each of those attorneys has privately retained an interpreter
19 to facilitate attorney-client communication in preparation for trial, it is inappropriate for the
20 court to hire one of these interpreters to interpret for the trial due to the possibility of
21 perceived bias in favor of one of the defendants. Where it is not possible to schedule a different
22 interpreter, courts should inform all parties that the interpreter is “under oath to protect
23 confidentiality of communications”¹⁶⁴ and that the interpreter acts as a neutral party and is not
24 an advocate for either side.¹⁶⁵
25

¹⁶³ See note 2; NCSC, *supra* note 8, 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 is 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.”).

¹⁶⁴ NCSC, *supra* note 8, at 143.

¹⁶⁵ For discussion on the distinct interpreter functions within a legal proceeding, including the Proceedings Interpreter, Witness Interpreter, and Interview Interpreter, see *id.* at 141, and *Standard 3*.

1 Finally, courts should schedule an adequate numbers of interpreters to avoid interpreter
2 fatigue and resulting errors. Interpreting is a cognitively demanding and stressful process: the
3 interpreter must listen, analyze, comprehend, and use contextual clues to convert the spoken
4 word from one language to another, rendering a reproduction of the message in an equivalent
5 meaning in another language. This process leads to fatigue, mental exhaustion, and possible
6 error after approximately 30 minutes of sustained simultaneous interpreting.¹⁶⁶ Courts should
7 ensure the interpreter's ability to uphold the code of conduct's mandate to provide an accurate
8 interpretation by scheduling a team of interpreters¹⁶⁷ for long proceedings. The industry
9 standard where continuous interpreting is required for more than one hour is team
10 interpreting, which refers to the practice of using two rotating interpreters to provide
11 simultaneous or consecutive interpretation for one or more individuals.¹⁶⁸
12

13 Once the interpreter is appointed, courts must ensure that there is adequate time for a pre-
14 session and should inform the interpreter about the nature of the hearing.¹⁶⁹ During the
15 interpreter pre-session, the in-person, telephonic, or video remote interpreter communicates
16 with the LEP person briefly to make sure that they can understand one another and that the
17 technology, either telephonic or video, is not a barrier. The pre-session also covers basic
18 information and routine questions to ensure that the interpreter is not unknowingly exposed to
19 information that may later call into question any ability to remain neutral. The interpreter
20 reviews the basic components of the interpreter's role as part of this process and asks
21 questions about the LEP person's language experience and background. This short exchange
22 allows the interpreter to comply with the ethical obligations to ensure communication and to
23 ascertain that there are no ethical concerns.
24

25 Concerns raised by interpreters, as a result of a pre-session or at a later time, should be treated
26 with serious consideration. Under the model code of conduct, interpreters must "bring to the
27 court's attention any circumstances or conditions that impede full compliance with any canon
28 of the code, including interpreter fatigue, inability to hear, or inadequate knowledge of the
29 specialized terminology."¹⁷⁰ This requirement applies to the interpreter's ability to establish

¹⁶⁶ *Id.*

¹⁶⁷ 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

¹⁶⁸ NAJIT, Position Paper on Team Interpreting in the Courtroom, http://www.najit.org/publications/Team%20Interpreting_052007.pdf

¹⁶⁹ For more on the information interpreters need to determine if they are the appropriate person to interpret, see *Standard 8*.

¹⁷⁰ NAJIT, Code of Ethics and Professional Responsibilities Canon 8.

1 communication with the LEP person as well as the appropriateness of the medium selected. It
2 includes in-person interpreters and extends to contracts with remote interpreter service
3 providers, which should include a requirement consistent with this obligation, noting the ethical
4 obligation to ensure the ability to interpret in the proceeding and to notify the court of any
5 barriers or reasons that the interpreter is not able to adequately interpret. In some instances,
6 the court may need to intervene if the technology and /or the interpretation is inadequate, but
7 the interpreter, for reasons of pecuniary interest, is unwilling to advise the court of the barriers.

8
9 Finally, courts should take special care not to ask the interpreter to perform a task that is
10 outside the limited role of the interpreter. This can sometimes occur unintentionally when
11 interpreters are asked to facilitate communication between two individuals who do not share a
12 common language. A generally accepted part of that task is providing sight translation of
13 documents, either in English or in the second language. This is allowed but only to the extent
14 that the interpreter is not asked to explain the document or answer any questions beyond
15 simply reading it aloud as a sight translation. The model code of court interpreter conduct
16 requires interpreters to remain impartial, avoid unnecessary contact with the parties, and
17 abstain from commenting on matters in which they interpret.¹⁷¹ The code prohibits the giving
18 of advice or otherwise engaging in activities that can be construed as the practice of law.¹⁷²
19 Policies or practices that ask interpreters to go beyond sight translation of forms to explaining
20 forms or court processes violate these provisions.¹⁷³

21 22 **STANDARD 5 LANGUAGE ACCESS IN COURT SERVICES**

23 **5. Courts should provide language access services to persons with limited English proficiency** 24 **in all court services with public contact, including court-managed offices, operations, and** 25 **programs.**

26 While many courts provide interpreters for legal proceedings, federal law and the effective
27 administration of justice also require language access services for all court services used by the
28 general public.¹⁷⁴ These include all services that are provided, managed, supervised, or
29 contracted for by the court. The court should ensure that language access is provided for these

¹⁷¹ NAJIT, Code of Ethics and Professional Responsibilities, Canon 2.

¹⁷² NAJIT, Code of Ethics and Professional Responsibilities, Canon 4

¹⁷³ As discussed 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 avoid the likelihood that they will be asked to answer questions on the materials.

¹⁷⁴ DOJ LEP Guidance, *supra* note 66, at 41,471.

1 court services, even though the court may not be responsible for paying if the providing entity
2 is separately obligated due to federal or state law.

4 **5.1 Courts should provide language access services for the full range of court services.**

5 The provision of language access services in these court managed offices, operations, and
6 programs is necessary to avoid discrimination. The Department of Justice “expects courts to
7 provide meaningful access for LEP persons to such court operated or managed points of public
8 contact in the judicial process, whether the contact at issue occurs inside or outside the
9 courtroom.”¹⁷⁵ Services included are all those necessary to access the courts, ranging from
10 routine matters such as gathering information about court procedures from a court clerk, to
11 filing pleadings, paying court ordered fines, and using any services incidental to the resolution
12 of a legal matter. Services in which access is required include the following: information
13 counters; websites, services for *pro se* individuals; court clerk’s offices; intake or filing offices;
14 cashiers; record rooms; security personnel within the courthouse; and offices to pay fines.¹⁷⁶
15 Courts should also ensure that any screening procedures implemented by a court do not create
16 barriers for LEP persons; for example, security personnel should be provided with signage,
17 video instructions, or a method to contact telephonic interpreters and should be trained on the
18 need for and delivery of these services.

19
20 This obligation is also described in the *DOJ LEP Guidance*, which states that “[p]roviding
21 meaningful access to the legal process for LEP individuals might require more than just
22 providing interpreters in the courtroom,” and that “[r]ecipient courts should assess the need
23 for language services all along the process.”¹⁷⁷ This assessment should determine whether the
24 services are essential to meaningful access. For instance, language access services provided at
25 the filing office are essential for a litigant to be able to access the courts, but a courthouse tour
26 is non-essential. Similarly, accessing information at the clerk’s office or services offered as part

¹⁷⁵ *Id.*

¹⁷⁶ The Letter to Chief Justices and State Court Administrators contains such services in a listing including “any other similar offices, operations, and programs.” Letter to Chief Justices and State Court Administrators, *supra* note 91, 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).

¹⁷⁷ *DOJ LEP Guidance*, *supra* note 66, at 41,471. See also, Letter to Chief Justices and State Court Administrators, *supra* note 91, 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.”).

1 of a *pro se* clinic are instrumental to a *pro se* litigant's ability to navigate the justice system, but
2 information provided by community partners that does not relate to court services is non-
3 essential.

4
5 Where court services with public contact are funded by the court, whether or not they are
6 housed inside the court, courts should ensure that language access services are provided and
7 paid for. In some instances, the court relies on external programs to provide essential court
8 functions.¹⁷⁸ These programs separately may be obligated under Title VI of the Civil Rights Act
9 in which case the court need not pay for the services but should verify that they are available.
10 However, where the court relies on an external program to provide essential court functions
11 and that program does not receive federal assistance, the court should ensure that language
12 access services are provided, and should be responsible for the cost of the services.

13
14 Although services to deaf and hard of hearing individuals are required under a different legal
15 obligation than those for LEP individuals, the processes developed to provide the services is
16 instructive to courts when developing similar services for LEP persons. Interpreter services are
17 provided in and out of court, and include providing interpreter services for deaf and hard-of-
18 hearing persons to participate in court services with public access.¹⁷⁹ Sign language interpreter
19 services are provided for deaf and hard of hearing individuals as a reasonable accommodation
20 for accessing the clerk's office, and for other court services.¹⁸⁰

21
22 **5.2 Courts should determine the most appropriate manner for providing language access**
23 **for services and programs with public contact and should utilize translated brochures,**

¹⁷⁸ For example, some state courts operate drug-testing offices or community service offices within the courthouse, while others contract out for these services.

¹⁷⁹ See also Letter to Chief Justice and State Court Administrators, *supra* note 91, 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.").

¹⁸⁰ For example, the Kentucky Court of Justice appoints and pays for interpreter services for LEP and deaf individuals for all KCOJ court proceedings and direct services as well as for other departments of the AOC. 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).

1 **forms, signs, tape and video recordings, bilingual staff, and interpreters, in**
2 **combination with appropriate technologies.**

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

10
11 Advance Notice of Need

12
13 The availability of advance notice of the need for language assistance varies by court service;
14 some services are requested on an ad hoc basis, such as at a cashier's office, whereas others,
15 such as a courthouse orientation class, are scheduled in advance. Where the service is
16 accessed without advance notice, courts should ensure that LEP persons are not limited to
17 accessing the services on particular days or times if this would result in an unnecessary delay.¹⁸¹
18 Courts can achieve this by employing bilingual staff in the most common languages to work in
19 positions with ad hoc public contact. By adding remote telephonic or video interpreter services
20 for languages in which no bilingual staff are available, courts can be sure that they are providing
21 appropriate language access services that allow for two-way communication as needed.

22
23 Complexity of Communication

24
25 The complexity of the communication will also determine the appropriate language access
26 service necessary to meet the language needs of the LEP person. Court services and programs
27 range from basic to very detailed. For example, the routine services at a cashier's window may
28 be handled differently than the more complicated services at a court intake office. Where
29 courts provide some of their information in written form, translating these documents into the
30 most common languages may be adequate, as long as there is also a system for two way
31 communication (if available to English speaking persons) and for communication to an LEP

¹⁸¹ *DOJ LEP Guidance, supra* note 66, 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.").

1 person who is unable to read the translated information¹⁸² or speaks a language not included in
2 the translated versions.

3
4 Finally, the appropriate language access service in a given court setting depends on the level of
5 interaction between staff and the general public. Some services provide only informational
6 materials, others have staff that interact with the public; each of these requires different
7 language access services. The court service or program may provide language access services
8 through a combination of the options listed below. A multi-faceted approach is recommended
9 since it provides increased access while maximizing cost efficiency. Building language access
10 services into the court's system for providing routine oral and written communications with the
11 public and litigants creates greater certainty that the communication will happen and
12 safeguards the court's promise of access to justice and promotes public confidence.

13 14 Language Access Measures for Court Services

15
16 Courts can employ a variety of services to meet the language needs of LEP persons. The
17 following sections describe the different measures—ranging from signs, handouts, and video or
18 audio recordings, to bilingual staff and interpreters—a court can take. No single measure listed
19 below is intended to be used in isolation but, implemented together, they can create a
20 comprehensive language access program.

21 i. Translated Forms, Signs, and Handouts

22 At the most basic level, language access measures should include provision of translated
23 written materials, such as signage, program information, program application forms, court
24 pleading forms, and other written materials containing information about accessing court
25 services and programs.¹⁸³ The use of translated print materials reduces staff time and the need
26 to provide repeated oral interpretation of basic information, leading to an overall cost savings
27 for courts.¹⁸⁴ Many court services and programs with public contact have developed
28 programmatic information in print formats in multiple languages. For example, the California

¹⁸² A person may be unable to read the translated information because they are illiterate in their spoken language or due to disability.

¹⁸³ 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 necessary to meet certain court obligations under federal law, is further discussed in *Standard 7*.

¹⁸⁴ 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.

1 Court Self-Help Center provides information on many civil law matters in Chinese, Korean,
2 Spanish, and Vietnamese.¹⁸⁵

3
4 While some courts provide this information directly, others provide it in collaboration with
5 outside organizations.¹⁸⁶ Court may also decide to develop and translate into the most common
6 languages a list of Frequently Asked Questions and Answers or basic “Know Your Rights”
7 documents to assist all users of their services and to reduce staff time in answering the most
8 common questions.¹⁸⁷ Providing this information in multiple languages is an effective language
9 access measure, but doing so will not completely eliminate the need to provide for two-way
10 communication if that is offered to English speakers. In languages that are translated, LEP
11 persons may have questions, and in languages where no translated materials are available, LEP
12 persons should still have some means of accessing the information. In all instances, LEP
13 individuals must be able to ask questions and interact with court personnel to the same extent
14 as those who speak English.

15 ii. Audio and Video Recordings

16 Courts should also consider the use of audio or video recordings of commonly asked questions.
17 These methods of communicating can be particularly effective to disseminate information to
18 individuals and communities with low literacy rates. As with translated materials, audio and
19 video recordings reduce the demand on court staff for repeated interpretation but should
20 provide ways to have two-way communication if available to those who speak English. Similar
21 to translated materials, once they are obtained, audio and video recordings are both efficient
22 and economical in reaching a large audience. Examples of these efficiencies are already
23 available for English-speakers. In Santa Clara County Superior Court, the drug court purchased,
24 with grant funds, an audio version of the Alcoholics Anonymous Big Book for use by illiterate,
25 albeit English-speaking, defendants.¹⁸⁸

26 iii. Bilingual Staff

¹⁸⁵ California Courts Self-Help Center, <http://www.courtinfo.ca.gov/selfhelp/languages> (last visited Apr. 19, 2011).

¹⁸⁶ 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* <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.

¹⁸⁷ 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. Document attached as Appendix A. External Site to be added.

¹⁸⁸ Citation pending.

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.¹⁸⁹ 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. 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.¹⁹⁰

Court should ensure that bilingual staff providing these direct services are competent in all languages in which they will communicate.¹⁹¹ Some bilingual staff persons may become certified by the court to work as interpreters, but in these instances, courts should ensure that their two roles are not in conflict, and do not raise ethical concerns.

Even when a bilingual staff member has met court interpreter certification requirements,¹⁹² courts should avoid using them as interpreters in legal proceedings. As discussed in detail in the interpreter section below, bilingual staff will probably be disqualified from interpreting in the courtroom due to the violation of the ethical rules of impartiality and neutrality.¹⁹³ 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."¹⁹⁴

¹⁸⁹ 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.

¹⁹⁰ See *Standard 3.1* for a discussion of the different data sources envisioned here.

¹⁹¹ 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).

¹⁹² According to the COSCA *White Paper on Court Interpretation: Fundamental to Access to Justice*, "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" COSCA, *supra* note 99, at 9. See also The Supreme Court of Ohio, *Interpreters in the Judicial System, A Handbook for Ohio Judges* 54.

¹⁹³ 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."

¹⁹⁴ DOJ LEP Guidance, *supra* note 66, at 41,461.

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.¹⁹⁵ 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. These interpreters in court services may provide services either in-person or telephonically. Courts do not necessarily need to use court certified interpreters for 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 must 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.¹⁹⁶

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,¹⁹⁷ 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 if these interpreters are asked to provide direct assistance or function as bilingual staff,¹⁹⁸ they may become unintentionally involved in matters that 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

¹⁹⁵ This section is not referring to staff interpreters, who are discussed in full in the following section.

¹⁹⁶ For more on the assessment of qualifications, see *Standard 8*.

¹⁹⁷ 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. As an interpreter, the staff person must 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.

¹⁹⁸ 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.

1 contact.¹⁹⁹ Under the model code of conduct, interpreters in their professional capacity “shall
2 limit their participation in those matters in which they serve to interpreting and translating, and
3 shall not give advice to the parties or otherwise engage in activities that can be construed as
4 the practice of law.”²⁰⁰

5
6 A recommended practice is for courts to create systems that prioritize certified interpreters for
7 legal proceedings and provide an opportunity for lesser-credentialed but competent
8 interpreters to develop their skills by interpreting in settings outside of the courtroom. This may
9 be accomplished by coordinating calendars and scheduling interpreters in blocks of time and by
10 the use of a tiered credentialing system.²⁰¹ The practice of hiring interpreters to provide direct
11 services as bilingual staff is increasing due to the growing number of *pro se* LEP litigants and
12 the recognition that, for a *pro se* LEP person, interpretation alone may not be sufficient to
13 overcome barriers due to lack of familiarity with court culture and processes. In some
14 jurisdictions, in response to the overwhelming number of LEP *pro se* litigants, courts are
15 promoting an expanded role for the interpreter who, in addition to facilitating communication,
16 provides the *pro se* individual basic information about the court and the nature of the legal
17 proceeding in which he or she is involved.²⁰² These non-lawyer staff can provide legal
18 *information* but are prohibited from the practice of law. Legal information provided may
19 include helping *pro se* litigants navigate the judicial system, identifying necessary forms, and
20 ensuring that those forms are completed appropriately, at times explaining and clarifying the
21 content, particularly in regards to the court culture. Staff being used in this way are not
22 functioning as interpreters and should never be labeled as such.

23 The Role of Technology in Delivering Language Access Services Outside of the Courtroom
24

¹⁹⁹ It may be possible to avoid this problem by developing pools of interpreters who work in the courtroom in one area of the judicial system and assist in courthouse services in other matters for which they do not normally interpret but it is not a recommended approach.

²⁰⁰ 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.”).

²⁰¹ The tiered credentialing system envisioned in this Standard is fully discussed in *Standard 9*.

²⁰² 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/xbc/cc/Ethics_Manual_4th_Ed_Master.pdf at 26.

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

6. 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.

Courts mandate and offer services in criminal and civil matters because of the recognized benefits of participation for the courts as well as the individual, his or her family, and the community. 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. The DOJ August 16, 2010 *Letter to Chief Justices and State Court Administrators* reiterates that the "meaningful access requirement extends to court functions that are conducted *outside* the courtroom as well."²⁰³ 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. This *Standard* focuses on an area of court services and programs that some jurisdictions have not addressed. *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 in conjunction with a civil matter. *Standard 6.3* discusses the requirement for services for interactions with court-appointed or supervised professionals. *Standard 6.4* discusses the range of approaches courts may undertake to meet these obligations.

²⁰³ Letter to Chief Justices and State Court Administrators, *supra* note 91, at 3. (Emphasis added).

1 Courts play pivotal roles in leadership, education, and resource development to ensure that
2 these services are accessible to LEP communities, not just because of the courts' knowledge of
3 the number and type of services needed, but also because of their authority to offer, require,
4 and contract for those services. Courts are well situated to determine the appropriate provider
5 for referral of an individual litigant, to coordinate with community providers to develop
6 programs, to exercise leadership in assessing current needs and services, and to help develop
7 future resources.²⁰⁴ Where courts have limited contact with provider organizations, they should
8 develop outreach and community contacts to ensure that the LEP individuals they refer are
9 adequately served.

10 Courts should use the information in this *Standard* to determine what language access services
11 are needed. Where the court-mandated or offered service is critical, courts should ensure that
12 language access services are available; however, where language access services are not
13 available and the service is not critical, participation need not be required.²⁰⁵ This is true for
14 court-mandated services or programs in both civil and criminal matters. For example, if
15 requiring parents to enroll in parenting classes is part of a custody determination and the
16 classes are not accessible to an LEP individual, then the court may decide to waive the
17 requirement. However, if the services are necessary for the protection of the children due to
18 domestic violence or risk to the children, then an interpreter should be appointed so the parent
19 can take the class. The same reasons that make these services desirable for both the courts
20 and for English speaking persons apply to those who are LEP; thus, courts should develop
21 language access for these services so that they can be available to all persons, regardless of
22 their ability to speak English.

23
24 **6.1 Courts should require that language access services are provided to persons with**
25 **limited English proficiency who are required to participate in criminal court-**
26 **mandated programs, are eligible for alternative adjudication, sentencing, and other**
27 **optional programs, or must access services in order to comply with court orders.**

28 This section discusses those services that are mandated or offered in conjunction with the
29 disposition of a criminal matter. These include all pre- and post-adjudication programs which
30 are a part of the judicial process, including diversion, pre-trial conditions of release, conditions

²⁰⁴ U.S. Dep't of Justice, Bureau of Justice Assistance, *Strategies for Court Collaboration with Service Communities* (2002), <http://www.ncjrs.gov/pdffiles1/bja/196945.pdf>.

²⁰⁵ Judges should exercise their discretion where language-accessible services are not available as to avoid denying the LEP person a service, benefit, or right as is discussed in the *DOJ LEP Guidance*, *supra* note 66, at 41,446.

on bail, probation or conditions of parole, and alternative sentencing. Court-mandated services and programs include programs such as substance abuse treatment, anger management and other counseling services, parole, and probation.²⁰⁶ 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, nor should they be individually charged for the cost of the language access services provided to make the service accessible to them.

Court-mandated services or programs that are part of the pre- or post-adjudicatory process must all be included. 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 language access services should be provided. Similarly, a person sentenced to participate in a court-ordered work release program must often participate in an interview to find an appropriate work placement.²⁰⁷ This initial interview may prevent the LEP person from complying with the order if the interviewer does not provide appropriate language access services.²⁰⁸ In both instances, denying an otherwise eligible LEP person participation in these programs deprives LEP individuals of “meaningful access” to the courts.²⁰⁹

Though not mandatory, 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.²¹⁰ 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

²⁰⁶ A more complete list of 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.

²⁰⁷ 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).

²⁰⁸ Ideally, the work placement would take place in a location where the LEP person and the provider share a common language.

²⁰⁹ See 28 C.F.R. 42.104 (b).

²¹⁰ 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).

disposition of their case, with approximately one-half of those defendants being released on non-financial conditions, including mandatory compliance with court-ordered services.²¹¹ Such programs provide important benefits and must be made equally available to LEP and non-LEP defendants.²¹² Furthermore, once the individual enrolls in the alternative program, compliance becomes mandatory and non-compliance results in substantial consequences; ensuring that language services are available increases the likelihood that LEP persons can successfully utilize these programs.

6.2 Courts should require language access services to be available to persons with limited English proficiency who are ordered to participate in civil court-mandated or are offered voluntary programs.

In civil cases, court-mandated and voluntary court-offered programs often support 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,²¹³ and non-compliance can prejudice constitutional and other important rights. Providing language access services for these programs is fundamental to ensuring equal access.

²¹¹ 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.).

²¹² 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).

²¹³ 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

1 Similar to the considerations with respect to criminal services discussed above, judges must
2 either ensure that the services are accessible, or not penalize the LEP person for an inability to
3 participate. Thus, when ordering mediation²¹⁴ in a family law matter, judges should consider
4 the availability of bilingual service providers²¹⁵ who can meet the litigant's language needs
5 directly. If language-specific services are not be available for the service needed, the court
6 should ensure that the individual has access to the program with an interpreter, or waive the
7 requirement to participate.

8
9 Just as in the criminal context, increasing access, not waiving participation, should be the goal.
10 Voluntary court-offered services and programs must be made accessible to LEP individuals who
11 are otherwise eligible to participate in order to avoid the "effective denial of the service,
12 benefit, or right at issue" as described in the *DOJ LEP Guidance*.²¹⁶ Programs such as mediation
13 and alternative dispute resolution often provide litigants with a faster, better, and less costly
14 resolution to their legal matter; courts should ensure that these options are also accessible with
15 language access services in place.

16
17 **6.3 Courts should require language access services to be provided for all court-appointed**
18 **professionals in their interactions with persons with limited English proficiency.**

19 Court-appointed or supervised professionals or personnel are an important component of the
20 justice system and courts daily rely upon their services to assist in the adjudication of both
21 criminal and civil matters. The professionals included in this *Standard* include counsel,
22 guardians, guardians *ad litem*, conservators, child advocates, social workers, psychologists,
23 doctors, trustees and other such persons who are employed, paid, or supervised by the courts,
24 and who are required to communicate with LEP persons as part of their case-related functions.
25 Courts appoint these professionals in criminal and civil matters to provide necessary
26 information to the court and their interaction with such litigants promotes the fair and efficient
27 administration of justice.

²¹⁴ 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 separate entities which the court may refer individual litigants to for court-mandated services.

²¹⁵ 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).

²¹⁶ *DOJ LEP Guidance*, *supra* note 66, at 41,461.

1 The Department of Justice August 16, 2010 *Letter to Chief Justices and State Court*
2 *Administrators*, noted that “some recipient court systems have failed to ensure that LEP
3 persons are able to communicate effectively with a variety of individuals involved in a case
4 under a court appointment or order.”²¹⁷ As the letter indicates, a court’s obligation in these
5 circumstances is to appoint a professional with demonstrated bilingual skills or require the use
6 of an interpreter.²¹⁸ Courts can meet this obligation by appointment of an appropriately
7 qualified bilingual professional or appointment and payment of interpreter services to facilitate
8 that communication process.²¹⁹ For example, a court may appoint a bilingual guardian so that
9 communication between the guardian and the LEP person happens directly, or the court should
10 ensure that the appointed guardian follows the court’s procedures for hiring a qualified
11 interpreter for those interactions.

12 The obligation of the court-appointed or supervised professional to communicate is not limited
13 to the parties for whom the professional has been appointed. At times, the professional will
14 need to communicate with the litigant’s family members, advocates, witnesses, and others.
15 Where the professional needs to interview additional persons who can assist the litigant or the
16 court, such interviews must not be limited to those with whom the professional shares a
17 common language, and the need for interpreter services is not a reason to forgo such an
18 interview. Courts should instruct court-appointed personnel on their obligations in cases
19 involving LEP individuals and on the availability of language access services, so that court-
20 appointed personnel may appropriately fulfill their responsibilities.²²⁰

21
22 **6.4 Courts should require the use of the most appropriate manner for providing language**
23 **access for the services and programs contemplated within this *Standard* and should**
24 **promote the use of translated signs, brochures, documents, audio and video**
25 **recordings, bilingual staff, and interpreters.**

²¹⁷ DOJ Letter to Chief Justices and State Court Administrators, *supra* note 91, at 3.

²¹⁸ *Id.*

²¹⁹ *Id.*

²²⁰ These *Standards* recognize that, with the exception of appointing lawyers to represent indigent individuals in criminal cases, courts are not generally involved with the provision of language access services between lawyers and clients. However, the *Standards* set out the expectation that lawyers in civil and criminal cases should communicate with their clients in a language the client understands in order to uphold the lawyers’ obligation to provide competent representation. In that regard they are consistent with the standards established by the ABA in the *Standards for the Provision of Civil Legal Aid*.

1 Courts may utilize a range of approaches, similar to those discussed in *Standard 5*, to ensure
2 that language access services are provided in court-mandated, court-offered alternative
3 programs, and with court-appointed or supervised professionals. When the programs or
4 services are operated or provided by courts directly, *Standard 5* addresses those operations.²²¹
5 This *Standard* addresses the court's obligation to ensure meaningful access to services and
6 programs not necessarily operated by the court but still relied upon as an integral component
7 of the justice system, and discusses alternative procedures for courts.²²²

8 Entities under contract with courts receiving federal funds have the same obligation to ensure
9 meaningful access as court-provided or staffed services.²²³ When contracting out for the
10 services and programs contemplated in this *Standard*, courts should make the following
11 determination: how services within the scope of the contract will be accessible to all persons,
12 including those with limited English proficiency; and how the delivery of those services will be
13 accomplished, *i.e.*, whether through bilingual staff or interpreters. A court should first
14 determine whether there is a community provider with bilingual staff in the languages for
15 which the court refers litigants for services. The obligation to provide meaningful access to LEP
16 persons should be specifically noted in the contract, or contained in written assurances, and the
17 court should monitor the program's compliance by requesting a copy of the contractor's
18 language access policies and procedures and asking for evidence of payment for language
19 access services where appropriate.²²⁴

20 Even when not directly contracting for services, courts should maintain some control over the
21 delivery of those services and retain their obligation to ensure meaningful access. For example,
22 courts have the ability to refer only to certain providers or to indicate a preference for
23 providers who offer language access services. Competition among providers for court referrals
24 may lead to improved services for LEP persons; providers of quality services, including

²²¹ For example, many state 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/>.

²²² 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; certain types of independent service providers 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.

²²³ Information on determining whether an entity is a recipient of federal financial assistance can be found *supra*, note 55.

²²⁴ Both the contract and memorandum of understanding should include a description of the language access services required. See model court assurances at

[\[http://www.justice.gov/crt/about/cor/draft_assurance_language.pdf\]](http://www.justice.gov/crt/about/cor/draft_assurance_language.pdf).

appropriate language services, should be given increased referrals from the court.²²⁵ When referring LEP individuals to such programs, the court should ensure that these providers adequately understand their legal obligations.

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 separately obligated to provide language access services.²²⁶ Where there is no other legal obligation on the provider to provide language access services, and the court cannot identify an alternative language accessible program, the court should either waive the requirement or appoint and pay 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 source of federal financial assistance the court should appoint and pay for an interpreter.

Courts can play an important role in identifying the sources of funding for language access services,²²⁷ and educating and collaborating with providers to develop resources in the community.²²⁸ 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.²²⁹ Increased community outreach and collaboration with community organizations can assist courts in meeting the needs of all litigants in an efficient manner.²³⁰

²²⁵ 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.

²²⁶ 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 a discriminatory charge based on LEP status.

²²⁷ See note 55 for information and resources to determine whether an entity is a recipient of federal financial assistance.

²²⁸ An example of this collaborative approach can be found in the New Mexico Justice System Interpreter Partnership; See New Mexico Justice System Interpreter Partnership Report, *supra*, note 223.

²²⁹ 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.

²³⁰ 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

STANDARD 7 TRANSLATION**7. Courts should provide access to translated written information to persons with limited English proficiency to ensure meaningful access to all court services.**

Courts utilize written documents to provide information about services and programs, to initiate legal proceedings, to protect or pursue 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.²³¹ “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.²³² Another term, “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, without advance notice. Professional “translators” possess the necessary skill set 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 individuals may be proficient in both tasks.

Because translation is a process that takes more time than interpreting and costs more initially, courts have generally not provided translations of written materials as often as they have used interpreters.²³³ This section provides guidance to help courts increase the number of translations available to ensure meaningful access to services. *Standard 7.1* discusses the legal requirements for translating documents, describes how to determine which documents to

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.”).

²³¹ NCSC, *Court Interpretation: Model Guides for Policy and Practice*, at 33.

²³² 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>.

²³³ 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.*

translate, and how 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.

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.

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 determine which documents to translate incorporates the following elements: an assessment of written materials to identify ‘vital’ documents,²³⁴ 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. The following sections describe these considerations.

Identifying Vital Documents for Translation

Identification of a court’s ‘vital documents’ is the necessary first step in meeting the obligation to provide access to written materials to 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 accurately or in a timely manner.”²³⁵ Under these criteria, a broad range of court documents and forms are likely to be determined ‘vital’ if they involve decisions regarding liberty, safety, property, and relationships that have significant consequences for an LEP person. The *DOJ LEP Guidance* provides some examples of vital written materials, including 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,

²³⁴ For a full discussion of the DOJ four-factor analysis as applied to Translations, see *Standard 1*.

²³⁵ *DOJ LEP Guidance* at 41,463.

- 1 • Notices of disciplinary action,
- 2 • Notices advising LEP persons of free language assistance, and
- 3 • Applications to participate in a recipient's program or activity or to receive recipient
- 4 benefits or services.²³⁶

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

10 Information About Court Services And Programs

11 Information regarding court services and programs is critical to meaningful access for LEP
12 persons. Many court brochures, guides, and other documents contain information about
13 accessing court services and programs, rights, responsibilities, and other information that
14 facilitates a litigant's ability to seek relief available through the court. According to the
15 Department of Justice, "[a]wareness of rights or services is an important part of 'meaningful
16 access,'" and "[l]ack of awareness that a particular program, right, or service exists may
17 effectively deny LEP individuals meaningful access."²³⁷

18 Court services and programmatic information should be made widely available in multiple
19 languages. The content of documents such as guides, "Know Your Rights" flyers, self-help
20 materials, and instruction booklets, are less likely to change and should be translated and
21 shared widely.²³⁸ As part of the planning and review process, courts should consider
22 prioritizing for the translation of documents relevant to the protection a litigant's safety or the
23 safety of a child. As noted in *Standard Two*, notice of both the availability of free language
24 access services and the means of access are considered "vital" and should be provided in the
25 languages likely to be encountered in the communities in the court's jurisdiction. The content
26 on a court's public website is often informational in nature and should be considered for
27 translation. Alternate formats for providing translated information, including websites, are
28 discussed in *Standard 7.2*.

²³⁶ *Id.*

²³⁷ *Id.*

²³⁸ 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 the help individuals navigate the California court system. <http://www.courtinfo.ca.gov/selfhelp/espanol/>.

1 Court Forms

2 Court forms are vital to accessing courts and protecting rights, and include pleadings, summons,
3 waiver forms, and any notice that requires action by the person receiving it. The *DOJ LEP*
4 *Guidance* includes court pleading forms used to initiate or respond to a legal matter among
5 those that are considered ‘vital.’ Most courts translate only a relatively small percentage of the
6 court forms they have available in English. The number of translated forms varies by language
7 and by case-type.²³⁹ Many courts are increasing the availability of translated materials,
8 particularly in the area of family and housing law. The Tennessee Administrative Office of the
9 Courts provides translated court forms in Spanish, Vietnamese, and Korean, and is expanding
10 both the languages and forms for which translations are available.²⁴⁰ Other courts have
11 engaged in collaborative efforts with local legal aid providers to create online document
12 preparation materials in languages other than English. For example, a legal aid organization in
13 Idaho, in collaboration with the court, has created four interactive online forms in Spanish,
14 which guide the user through a series of questions to produce the final pleading.²⁴¹

15 Individualized Documents

16 Translation of individualized documents is necessary for the efficient administration of justice
17 and for the enforceability of court orders. In addition, the principles of access to justice and
18 fairness support the notion that courts should provide access to these materials in a language
19 that is understood by the litigant. Individualized documents include foreign language
20 evidentiary documents and court orders. While individualized documents are often considered
21 the most difficult to translate, courts should make every effort to translate these materials and
22 should consider alternate formats to assist in this effort.

23 Foreign language evidentiary documents submitted in a proceeding, including foreign language
24 tape transcriptions, are often governed by court rules regarding sufficiency of evidence. Some
25 courts allow submission of written foreign language documents through the court interpreter
26 who provides a sight translation²⁴² of the written material for the record.²⁴³ In other courts,
27 admission of the foreign-language document is at the discretion of the judge. Transcription of

²³⁹ 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>.

²⁴⁰ Tennessee Administrative Office of the Courts, <http://www.tsc.state.tn.us/geninfo/programs/interpreters/Interpreters3h.htm>; see also, California Courts, link to translated court forms, <http://www.courts.ca.gov/partners/53.htm>.

²⁴¹ Idaho Legal Aid Services, Inc., <http://www.idaholegalaid.org/es/node/1231> (last visited Apr. 19, 2011).

²⁴² NCSC, *Court Interpretation: Model Guides for Policy and Practice*, at 33.

²⁴³ NAJIT, *Modes of Interpreting*, (2006), at 2.

1 foreign language audio recordings should not be done in the manner of sight translations;
2 advance notice, planning, and translation by a qualified translator are required. All courts
3 should ensure that, at a minimum, court rules regarding foreign language documents and audio
4 recordings provide a way for all LEP persons to submit these materials into evidence through
5 sight translation by a qualified interpreter.

6 Translating court orders can help ensure that they are enforceable. When an LEP individual is
7 subject to a court order but the order is only provided in English, there is a risk that court time
8 will be needlessly consumed to deal with non-compliance or that the administration of justice
9 will be frustrated. Even when an oral interpretation of the order has been given, the LEP
10 person must usually rely on memory for the details of the order, placing an unfair burden on
11 the individual and making it difficult to follow specific terms. For example, in a termination of
12 parental rights case, the Supreme Court of Nebraska reversed the lower court's ruling
13 terminating the mother's rights because, among other things, the mother never received a copy
14 of the case plan in her native language, and so her failure to strictly comply with the case plan
15 was insufficient grounds to warrant termination.²⁴⁴ The risk of significant harm to the LEP
16 individual who receives no translation of individualized documents has been recognized in both
17 civil and criminal cases.²⁴⁵

18 Some courts have been recognized for their efforts in providing translations of individualized
19 documents such as domestic violence protection orders. A study conducted by the National
20 Center for State Courts reported that the Eleventh Judicial Circuit, the Circuit Court of Miami-
21 Dade County, and the Superior Court of the District of Columbia were all providing protection
22 orders translated into non-English languages.²⁴⁶ In Miami-Dade County, the Civil Interpreter
23 Unit translates court documents, letters, motions, answers, and orders, and transcribes 911
24 calls and other audio recordings for submission in court. It also provides sight translation for all
25 foreign language documents offered as evidence as well as interpreter services. Individualized
26 translations are provided by staff in the following languages: Spanish, Haitian Creole, Russian,

²⁴⁴ *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.

²⁴⁵ *See, United States v. Mosquera*, 816 F. Supp. 168, (1993). (Upholding a District Court ruling 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 the government.)

²⁴⁶ NSCS, *Serving Limited English Proficient (LEP) Battered Women: A National Survey of the Courts' Capacity to Provide Protection Orders*, (2006), http://www.ncsconline.org/d_research/Documents/LEP_NIJFinalReport.pdf.

1 Portuguese, French, and Italian.²⁴⁷ Courts in California and Texas are also participating in pilot
2 projects to create a process for producing court orders in Spanish.²⁴⁸

3 Determining the Languages for Translation of ‘Vital Documents’

4 In addition to identifying which documents to translate, courts must also determine the
5 languages into which the materials will be translated. Because of the importance of information
6 in written documents, courts should provide information in as many languages as possible
7 based on data on community needs. The *DOJ LEP Guidance* states that “[t]he languages spoken
8 by the LEP individuals with whom the recipient has contact determine the languages into which
9 vital documents should be translated.”²⁴⁹ Using demographic data for its jurisdiction, a court
10 should identify the languages of both the LEP individuals coming into contact with the court *as*
11 *well as those likely to be affected* by the court’s services or programs, even if they do not yet
12 directly access court services. The *DOJ LEP Guidance* directs courts to translate vital documents
13 into “at least several of the more frequently-encountered languages and to set benchmarks for
14 continued translations into the remaining languages over time.”²⁵⁰

15 For recipients of federal financial assistance, the DOJ LEP ‘safe harbor’ provision offer some
16 useful guidance, but it must be read in the context of the guidance’s emphasis on “meaningful
17 access” as the guiding principle to determine the languages into which documents should be
18 translated. Under the “safe harbor” provision, the following circumstances provide strong
19 evidence of compliance with Title VI obligations: “(a) [t]he DOJ recipient provides written
20 translations of vital documents for each eligible LEP language group that constitutes five
21 percent or 1,000, whichever is less, of the population of persons eligible to be served or likely to
22 be affected or encountered. Translation of other documents, if needed, can be provided orally;
23 or (b) [i]f there are fewer than 50 persons in a language group that reaches the five percent
24 trigger in (a), the recipient does not translate vital written material but provides written notice
25 in the primary language of the LEP language group of the right to receive competent oral
26 interpretation of those written materials, free of cost.”²⁵¹

27 The ‘safe harbor’ provision is a guide; however, courts should be mindful that the provision
28 applies “to the translation of written documents only” and “do[es] not affect the requirement
29 to provide meaningful access to LEP individuals through competent oral interpreters where oral

²⁴⁷ *Id.*, pp. 85 – 92.

²⁴⁸ Pilot projects in California and Texas are in current development. Resources will be posted at the ABA website as they become available.

²⁴⁹ *DOJ LEP Guidance* at 41,463.

²⁵⁰ *Id.*

²⁵¹ *DOJ LEP Guidance* at 41,464.

language services are needed and are reasonable.”²⁵² Thus, the *DOJ LEP Guidance* distinguishes between written translation of a document, which may take substantial time and multiple levels of review, and sight translation, which merely provides an oral interpretation of a written document. Thus, courts 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 gather information on the literacy rate of LEP individuals in their native language.²⁵³ Literacy rates are not static and courts should periodically gather data and reevaluate any decision not to provide a written translation on this basis.²⁵⁴ 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, they 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, they should be reviewed for translation before they are issued. In this way courts can ensure that documents are accurate 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, despite budgetary constraints. This system for

²⁵² *Id.*

²⁵³ 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>.

²⁵⁴ 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).

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

The development of a comprehensive translation protocol will assist courts in planning for and providing high quality, efficient translated materials. A comprehensive protocol will also help a court provide language access to written material in an efficient manner. Courts should establish a translation protocol by reviewing their current practices for translations to ensure they have the elements described below.²⁵⁵ Centralized coordination, as discussed in *Standard 10*, can assist with each of these components.²⁵⁶

Review of Document Prior to Translation

Court 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, and only by reviewing the documents in advance would a court 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.²⁵⁷

²⁵⁵ For example, in Washington State, 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.

²⁵⁶ 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>.

²⁵⁷ 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).

Next, courts should review the document to ensure that it contains consistent terminology. The first step in this process is to ensure that the document is written in plain language.²⁵⁸ “Plain language” means “readers understand . . . documents more quickly. Readers call less often for explanations. They make fewer errors filling out forms. They comply more accurately and quickly with requirements.”²⁵⁹ The document 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 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.”²⁶⁰ 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;”²⁶¹ 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

²⁵⁸ “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).

²⁵⁹ 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.

²⁶⁰ 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>.

²⁶¹ *Id.*, at 12.

done externally through translation companies, courts should work closely with the provider to ensure consistent translations and efficient use of resources.²⁶² 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. 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.”²⁶³ Courts should use caution when considering any kind of machine translation, as it has been found to be “unacceptably unreliable” in its current format.²⁶⁴ 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.²⁶⁵ 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.”²⁶⁶ As this technology develops over the coming decades, 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,

²⁶² 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).

²⁶³ MPI, *Communicating*, at 13.

²⁶⁴ 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> - this webpage requires a subscription. It may be preferable to use a citation to the original without the web address, if anyone has access to the original and can provide more information about the article for a complete cite.]

²⁶⁵ 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.

²⁶⁶ MPI, *Communicating*, at 13.

1 and the date of the original translation and any updates.²⁶⁷ Each document should also contain
2 a message that states the court's policy on whether the forms can be submitted in the foreign
3 language.

4 One method for formatting documents involves providing the English text along with the
5 translation in a multilingual format.²⁶⁸ In this approach, courts provide the English and the
6 foreign language text together in one document. This approach has been adopted by many
7 courts due to staff inability to recognize monolingual forms and the administrative complexity
8 of tracking and maintaining translations that are only produced in the foreign languages. In
9 addition, English-speaking professional staff often assist LEP persons with forms; providing the
10 English text next to the foreign language text reduces the risk of using a form in error, and
11 increases the likelihood that the form will be filled out in English.²⁶⁹ Bilingual staff may also
12 have difficulties assisting LEP persons filling out forms that are only provided in the foreign
13 language due to a written literacy level that is lower than their oral proficiency.

14 Technology can be an effective tool for providing access to written materials in alternate
15 formats for individualized court documents, including recording oral interpretations of court
16 orders and sight translations. By coupling the already existing interpreting services with the
17 technology of MP3 devices, cellular phones with advanced capabilities for recording,²⁷⁰ or
18 cassette-recordings, individual litigants would be provided with a recording of the in-court
19 interpretation of the court order or sight translation for future reference. Courts would need to
20 inform the litigant that the oral interpretation can be recorded and allow time for the litigant or
21 the interpreter to prepare the recording device. Courts should consider providing court
22 interpreters or courtrooms with MP3 devices or cassette recorders, or should work with service
23 providers, including domestic violence agencies, to provide recording devices into which the
24 litigant or interpreter can record an audio version of the communication.²⁷¹ Some

²⁶⁷ 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).

²⁶⁸ Multilingual format is used here to denote the practice of having multiple languages on one form; one of which would always be English.

²⁶⁹ 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.

²⁷⁰ 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.

²⁷¹ 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

1 governmental agencies have addressed the need to provide translated orders or
2 determinations by developing systems that create a written notice in the language of the
3 litigant explaining that they may call the number provided on the notice to hear the order read
4 to them by an interpreter.²⁷²

5 Courts should also consider using alternate formats to increase accessibility to their written
6 documents. Alternate format documents include oral or video recordings of generally
7 applicable information. The recordings can then be posted to the court's website and shared
8 internally at information counters and self-help areas. North Dakota is an example of a court
9 that is incorporating video technology to expand the usefulness of their translated materials.
10 The court takes general court information, translates it, and video records the translated
11 information in the most commonly-encountered languages.²⁷³ Another example is the Superior
12 Court of California, County of Contra Costa, which provides videos describing the services of the
13 clerk's office in 7 languages.²⁷⁴

14 iii. Glossaries

15 When translating documents, courts should provide the translator with a glossary of
16 standardized legal terminology in the target language. This requires courts to make available
17 legal terminology glossaries in all languages for which the court provides translated materials. A
18 centralized office should obtain or help develop a legal terminology glossary for each language
19 and require the use of such a glossary by all translators. Providing glossaries increases the
20 likelihood that documents are translated using consistent terminology.²⁷⁵ The National Center
21 for State Courts provides legal terminology glossaries in six languages on its public website, and
22 several state court interpreter programs have developed legal glossaries in a number of

and sight translating all non-translated documents. The program is considering recording a sight-translation of the non-translated documents

²⁷² 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.

²⁷³ [Full citation pending. Example provided by Advisory Group member, Wanda Romberger.]

²⁷⁴ 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).

²⁷⁵ The concept of a centralized office is discussed in *Standard 10*.

languages.²⁷⁶ For example, California, Minnesota, and Washington State Administrative Office of the Courts, have each developed legal glossaries multiple languages and made them available on their publically accessible websites.²⁷⁷

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. Translation of written court documents, similar to the creation of the original document in English, requires editing for accuracy and attention to detail. 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.²⁷⁸ 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.”²⁷⁹

This two-step process is important to ensure the accuracy of the translation prior to distribution. The importance of this type of review is recognized in the *DOJ LEP Guidance*, which states that “[c]ompetence can often be ensured by having a second, independent translator ‘check’ the work of the primary translator. 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.’”²⁸⁰ Courts should also have the reviewing translator compare the translation to the original document for accuracy; a process that is recognized as the standard in the industry and should be a requirement in translation contracts. Due to the cost of printing and production, review of the

²⁷⁶ National Center for State Courts, <http://www.ncsc.org/Education-and-Careers/State-Interpreter-Certification.aspx>

²⁷⁷ 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).

²⁷⁸ Translator certification is discussed more fully in *Standard* 8.3.

²⁷⁹ *DOJ LEP Guidance* at 41,464.

²⁸⁰ *Id.* Back translation can result in slightly different renderings of the message as compared to the original text because of word choices by both translators. There is often more than one correct word choice in an interpretation or translation – therefore, the translator must make choices based on their professional opinion. The same is true for the second translator reviewing this work. Their choices 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 coupled with review of the two texts to check for accuracy.

translated document by a second translator before finalizing the document is critical to identifying and correcting errors in a way that is cost-efficient.

STANDARD 8 QUALIFICATIONS OF LANGUAGE ACCESS PROVIDERS

8. The court system and individual courts in each state 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.

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 must be qualified. According to the Department of Justice, “(r)ecipients [of federal financial assistance] have two main ways to provide language services: oral and written language services. Quality and accuracy of the language service is critical in order to avoid serious consequences to the LEP person and to the recipient.”²⁸¹ It is the responsibility of all courts to ensure that language services providers²⁸² are competent.

The *DOJ LEP Guidance* discusses competency in the delivery of language access services in terms 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. The *DOJ LEP Guidance* states: “(w)hen providing oral assistance, recipients should ensure competency of the language service provider, no matter which of the strategies outlined below are used. Competency requires more than self-identification as bilingual.”²⁸³ Using a formal credentialing process ensures that the appropriate level of credentials is provided: “(w)here individual rights depend on precise, complete, and accurate interpretation or translations, particularly in the contexts of courtrooms ... the use of certified interpreters is strongly encouraged.”²⁸⁴

Credentialing 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 of the ethical rules governing court interpreting. Credentialing the different categories of language services providers—interpreters, bilingual staff, and translators—requires an assessment program for

²⁸¹ *DOJ LEP Guidance*, at 41,461.

²⁸² “[l]anguage 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.

²⁸³ *DOJ LEP Guidance* at 41,461.

²⁸⁴ *Id.*

each; these are described in *Standards 8.1, 8.2, and 8.3*. The comprehensive components of credentialing are discussed in full in *Standards 8.4*. The role of a centralized office in overseeing the implementation and administration of language access provider competency assessment²⁸⁵ and credentialing²⁸⁶ 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 the ethical rules of court interpreting.

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.”²⁸⁷ Existing research on the tasks performed while interpreting has identified the following areas of knowledge, ability, and skill:²⁸⁸

- Grammar—Knowledge of standard and formal grammar of the source and target languages;²⁸⁹
- Fluency —Ability to speak the source and target languages fluently with correct pronunciation, inflection, and in a variety of registers;²⁹⁰
- 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;

²⁸⁵ “Assessment” refers to actual testing of qualifications, such as language competency.

²⁸⁶ Credentialing refers to a determination that the individual is proficient. 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.

²⁸⁷ Bruno G. Romero, *Here Are Your Right Hands: Exploring Interpreter Qualifications*, 34 U. Dayton L. Rev. 15, 18 (2008-09).

²⁸⁸ This list is a compilation of existing research on the issue of interpreter skills, including NCSC, *Court Interpreting: Model Guides for Policy and Practice in the State Courts*, pp. 41 - 44; Romero, 34 U. Dayton L. Rev. 15.

²⁸⁹ 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.

²⁹⁰ Register refers to the level and complexity of vocabulary and sentence construction. Model Guide, ch.3, at 42.

- 1 • Specialized Vocabulary—Knowledge of source and target language specialized
2 vocabulary including: civil and criminal justice system terminology; case-related
3 specialized vocabulary; physical and mental symptoms of illness; tests and laboratory
4 analyses related to alcohol and drugs; ballistics and firearms; and expressions related to
5 crime and drug use.
- 6 • Legal Culture—Knowledge of standards and laws pertaining to court interpreting and
7 basic court procedure;
- 8 • General Culture—Ability to understand and employ the dialectal and cultural nuances of
9 the source and target language;
- 10 • Ethics—Knowledge of and commitment to the ethical codes of interpreters and the
11 protocol of interpreting;
- 12 • Interpretation Modes--Ability to interpret in both consecutive and simultaneous modes,
13 and the knowledge of the appropriate settings to use each mode;²⁹¹
- 14 • Sight Translation—Ability to sight-translate printed, typed, or handwritten
15 documents;²⁹²
- 16 • Cognitive Skills – Possession of the skills of memory, attention, problem solving, and
17 flexibility.
- 18 • Communication Skills – Possession of the skill to provide a timely interpretation in a
19 clear manner.²⁹³

20 According to the National Center for State Courts, Consortium for Language Access in the State
21 Courts, “[a]udits of interpreted court proceedings in several states have revealed that untested
22 and untrained interpreters often deliver inaccurate, incomplete information to both the person
23 with limited English proficiency and the trier of fact ... Every state that has examined
24 interpreted court proceedings has concluded that interpreter certification is the best method to
25 protect the constitutional rights of court participants with limited English proficiency.”²⁹⁴

26 Methods used to assess language services providers’ competency include oral certification
27 examinations and language proficiency examinations, and have been developed by interpreter
28 professional organizations, court administrators, and programs such as the National Center for

²⁹¹ 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.

²⁹² Sight translation requires the interpreter to read a written document in the source language and render it orally into the target language.

²⁹³ NCSC, *Court Interpreting: Model Guides for Policy and Practice in the State Courts*, pp. 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>.

²⁹⁴ NCSC, *Consortium for State Court Interpreter Certification*, (1995, last amended May 2008), http://www.ncsconline.org/d_research/CourtInterp/Agreements2008FinalMay.pdf.

State Courts and the Consortium for Language Access in the State Courts.²⁹⁵ 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 must also establish 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 Interpreter Act of 1978,²⁹⁶ and created the Federal Court Interpreter Certification Exam (FCICE) Program,²⁹⁷ which developed certification exams in Spanish, Navajo, and Haitian-Creole.²⁹⁸ Federal court certification represents one of the highest levels of professional credentialing.²⁹⁹ 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 (AO) in maintaining a list of federally certified court interpreters.

²⁹⁵ NCSC's *Court Interpreting: Model Guides for Policy and Practice in the State Courts* 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 and Component Number 5 – Appointment of credentialed language service providers; and Component Six – Standards of professional conduct for court-related language service providers.

²⁹⁶ 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.

²⁹⁷ The FCICE, which has a minimum duration of two years, includes both written and oral examinations.

²⁹⁸ http://www.ncsconline.org/d_research/fcice_exam/about.htm; *See also*, <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>.

²⁹⁹ 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.

1 Recognizing that language needs exist outside of the three certified languages, the
2 Administrative Office of the United States Courts created additional categories for qualifying
3 interpreters. The categories of “professionally qualified interpreter” and “language skilled
4 interpreter”³⁰⁰ are used for languages other than Spanish, Navajo, and Haitian-Creole.
5 “Professionally qualified interpreters” must either have passed one of two comparable
6 examinations provided by the State Department and the United Nations or be a current
7 member in good standing of one of two professional organizations which require sponsorship
8 and relevant experience as pre-requisites to membership.³⁰¹ “Language skilled interpreters”
9 must demonstrate to the satisfaction of the court the ability to interpret court proceedings
10 from English to a designated language and from that language into English.³⁰²

11 State court certification efforts began as four states³⁰³ collaborated to develop oral testing
12 examinations³⁰⁴ and created the Consortium for State Court Interpreter Certification (CSCIC).³⁰⁵
13 The Consortium’s goal was to “facilitate court interpretation test development and
14 administration standards, to provide testing materials, to develop educational programs and
15 standards, and to facilitate communications among the member states and entities, in order

³⁰⁰<http://www.uscourts.gov/FederalCourts/UnderstandingtheFederalCourts/DistrictCourts/CourtInterpreters/InterpreterCategories.aspx>. [A required 75 percent or higher score on the written portion and an 80 percent or higher score on the oral portion of the exam. N.T.D. - which designation requires this type of score? The required scores for each designation do not appear on the web address cited here.]

³⁰¹

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

³⁰²

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

³⁰³ Minnesota, New Jersey, Oregon, and Washington were the four original states involved in this effort.

³⁰⁴ 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 must hold a generalist certification and must 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).

³⁰⁵ 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.

1 that individual member states and entities may have the necessary tools and guidance to
2 implement certification programs.”³⁰⁶ As of 2011, CSCIC, now called the Consortium for
3 Language Access in State Courts (Consortium), has 41 member states and offers 18 language-
4 specific oral examinations, written examinations, resources, and networking opportunities.³⁰⁷

5 The Consortium’s oral certification examinations are “designed to determine whether
6 candidates possess minimal levels of language knowledge and interpreting skills required to
7 perform competently during court proceedings, to measure a candidate’s ability to faithfully
8 and accurately interpret the range of English ordinarily used in courtrooms into another
9 language and to understand and interpret into English what is said by a native speaker of
10 another language, and are substantially similar in structure and content to tests that have been
11 developed by the federal courts.”³⁰⁸ The examinations are “designed and developed by
12 consultants who have extensive knowledge of courts and court proceedings, the job
13 requirements for court interpreters, and /or advanced training or high levels of fluency in
14 English and the non-English language.”³⁰⁹ These exams are carefully validated to ensure that
15 the testing program meets the “basic needs of all state courts in the area of interpreting
16 services.”³¹⁰ Using these standards, the Consortium provides testing in Arabic, Modern
17 Standard Arabic, Egyptian, Cantonese, Chuukese, Bosnian/Croatian/Serbian, French, Haitian-
18 Creole, Hmong, Ilocano, Korean, Laotian, Mandarin, Marshallese, Polish, Portuguese, Russian,
19 and Somali.

20 Modeled after the rigorous examination system established by the Consortium, court language
21 access programs should incorporate the following requirements: test components and scoring
22 system that have utility for diagnostic evaluation of candidate strengths and weaknesses as well
23 as for summative evaluation; a program that informs candidates and users of interpreter

³⁰⁶ Consortium for Language Access in the Courts, *Agreements for Consortium Organization and Operation*, (2010), http://www.ncsconline.org/D_Research/CourtInterp/Agreements2010FINAL.pdf.

³⁰⁷ 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

³⁰⁸ 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).

³⁰⁹ 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)”).

³¹⁰ 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.

1 services of the names and credentials of all individuals involved in the testing development and
2 administration process; test source materials that are derived exclusively from specimens of
3 court and related justice system language; and test scoring that utilizes a procedure that is
4 readily perceived to be objective and unaffected by personal bias.³¹¹

5 Certification can help identify an interpreters' level of skill, not simply whether the candidate
6 has passed or failed a relevant examination. This allows courts to identify interpreters who
7 exceed, meet, or fall below the minimum passing score for certification, and utilize them
8 accordingly. For example, a state may establish categories based on score ranges above 80
9 percent to identify master-level interpreters, a score between 70 and 80 percent to identify
10 professional interpreters, and a score of 60 – 70 percent to identify qualified interpreters.³¹²
11 New Jersey employs a tiered certification system that gives interpreters who are not quite
12 ready to pass the certification exam a chance to continue to improve their skills by working in
13 other court settings.³¹³ This 'tiered'³¹⁴ approach to certification allows courts to identify the skill
14 level of interpreters along a wider range of abilities, prioritize the highest skilled interpreters for
15 in-court interpreting, and identify areas for improvement and training opportunities for those
16 testing in the lower ranges.³¹⁵ Providing this information to judges helps inform their selection
17 of the highest qualified interpreter available.

18 Assessing Interpreter Qualifications in Non-Certified Languages

19 Due to the availability of Consortium certification exams in only 18 languages³¹⁶ and the limited
20 number of state-developed exams beyond that number, most state courts must determine the

³¹¹ *Id.*

³¹² This is one example of an approach to a tiered certification process for certified languages.

³¹³ New Jersey Courts, Language Services, *Frequently Asked Questions*,
<http://www.judiciary.state.nj.us/interpreters/faq.htm#approved>.

³¹⁴ 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.

³¹⁵ 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 but the interpreter did not pass it, or because the interpreter speaks a language for which an oral examination is not available, but he or she 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 candidates 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.

³¹⁶ 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/ExaminationsAvailableForMembersOfTheConsortiumForStateCourtInterpreterCertification_000.html (last visited Apr. 19, 2011). Expansion beyond these languages is slow due to the high cost of test development.

1 qualifications of interpreters in many other languages for which formal oral certification exams
2 are not available.³¹⁷ Many states use an alternate assessment system for non-certified
3 languages which includes a written exam, language fluency testing, and sometimes, testing of
4 interpreter skills. The states then combine this assessment with other credentialing
5 components (ethics, orientation, and training etc.) to ensure that interpreters are qualified.
6 The written exam is used to test the applicant's understanding of legal terminology, the role of
7 the interpreter, interpreter ethics, and basic interpreting functions and skills, the oral language
8 fluency test is used to assess the applicant's level of proficiency in the foreign language and in
9 English, and most tests include some assessment of the applicant's ability to perform
10 simultaneous and consecutive interpreting.

11 Many states are unable to provide complete certification exams in languages not available by
12 the Consortium, and use a roster or registry process to test language fluency but not
13 interpreting skills. These states test the interpreters' language ability and understanding of
14 basic legal terminology and interpreter role, and create a mechanism to impose orientation,
15 ongoing education, and ethics requirements. Washington State represents one example of a
16 state court's approach to testing interpreters in non-certified languages. Washington offers
17 testing in only 10 of the 18 languages available from the Consortium,³¹⁸ but tests an additional
18 50 languages and classifies these under the category "registered."³¹⁹ To become a registered
19 court interpreter in Washington State, an individual must pass both the written Consortium
20 exam and a separate oral proficiency telephonic interview. The written part of the exam was
21 developed by the National Center for State Courts Consortium for State Court Interpreter
22 Certification, and includes English language vocabulary and court related terms as well as
23 ethics.³²⁰ Candidates must pass the written exam with a score of 80 percent or better.
24 Individuals who pass the written exam are then eligible to take a separate oral exam measuring
25 their foreign language speaking and comprehension skills. This examination is a telephonic

³¹⁷ 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.

³¹⁸ 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.

³¹⁹ 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.

³²⁰ Washington State Courts, Washington Court Interpreter Program 2011 Certification Process, http://www.courts.wa.gov/programs_orgs/pos_interpret/content/pdf/CertifiedProcess2011.pdf.

1 interview with a qualified evaluator of the foreign language and measures how well the
2 interpreter speaks and comprehends the language for which he/she is attempting to become
3 registered. However, the “registered” language interpreters have not had their interpreting
4 skills (from English to the foreign language, and vice versa) assessed.

5 If a state does not have both these kinds of “certification” and “registry” categories, or if a court
6 is working with an interpreter in languages not available in either category, a judge must go
7 through additional questions to determine interpreter language competency (including legal
8 terms) and interpreting skill. These questions are discussed in greater detail in Section 8.4 as
9 part of the voir dire process used to qualify all interpreters when they are in court. When
10 inquiring about language ability, judges may encounter interpreters who have been tested in
11 areas outside of the legal setting. Certification exams have been developed in the areas of
12 healthcare and social and health services and include testing in languages for which court
13 certification is not available. However, courts should be aware that these assessments have not
14 tested legal terminology or the skills needed for court interpreting.³²¹

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

24 Assessing Specialized Skills- Relay Interpreting

25 Relay interpreting is an example of a specialized type of interpreting which requires a distinct
26 skill set. “Relay interpretation involves using more than one interpreter to act as a conduit for

³²¹ These certification programs exist at both the state and national level. For example, Washington State has interpreter certification for medical interpreters through the Department of Social and Health Services, certifies in 8 languages 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.

spoken or sign languages beyond the understanding of a primary interpreter.”³²² 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) then interprets from the second foreign language (in this case Spanish) into English.”³²³ 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. It requires that the communication first be interpreted into a third language, before it can be interpreted into English. Relay interpreting is commonly used for deaf individuals who may not know American Sign Language or any formal system of signed communication.³²⁴ 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.

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 may want to 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 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. Additionally, many of these services are provided in much more informal settings where consecutive interpreting is appropriate. Nevertheless, courts should

³²² 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>.

³²³ *Id.*

³²⁴ 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.

1 still consider the additional screening, ethics training and testing, orientation programs,
2 continuing education, and voir dire (or individual assessment) components used as part of
3 interpreter credentialing to ensure competent services are provided.

4 Including Interpreter Competency in Contracts with Language Services Providers

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

12 13 **8.2 Courts should ensure that bilingual staff used to provide information directly to** 14 **persons with limited English proficiency are competent in the language(s) in which** 15 **they communicate.**

16 Where bilingual staff are providing language services directly to LEP persons, courts should
17 determine the level of fluency needed for the position, and assess the language fluency of the
18 bilingual staff member in both English and the other language(s) in which they are
19 communicating.³²⁵ The level of language fluency needed by bilingual staff to communicate
20 directly with LEP persons depends upon the setting. In some court services and programs, the
21 level of complex legal terminology or subject-matter may be nearly equal to that used in the
22 courtroom. In these instances, courts should assign staff to these positions who are able to
23 speak the language with sufficient accuracy and vocabulary to participate effectively in most
24 formal and informal conversations on practical, social and professional topics. For example, a
25 bilingual staff member conducting an interview, assisting with paperwork, or teaching a class,
26 would need to have a near native-speaker level of fluency in order to ensure that
27 communication is effective. By contrast, for clerical situations in which the bilingual staff
28 member is providing routine and basic information, a lower level of language fluency may be
29 permitted.

³²⁵ 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*.

1 In all situations where courts are relying on bilingual staff to provide services, they must
2 possess a minimum level of language fluency to fully express the relevant concepts and fully
3 understand the communications of the LEP persons involved. An instructive resource to assist
4 in determining the level of language proficiency necessary for different interactions is provided
5 by the Inter-Agency Language Roundtable (ILR), which has developed a comprehensive tool for
6 categorizing the language competency of a non-native speaker based on standardized rating
7 factors including the typical stages in the development of language competency.³²⁶ The ILR
8 identifies categories of proficiency for speaking, reading, writing, listening, interpreting, and
9 translating.

10 Courts should ensure a bilingual staff persons' language fluency by assessing their skill level, by
11 developing internal systems or through external contracts. Language proficiency falls along a
12 continuum and is a fluid concept that can "develop or diminish over time depending on the
13 efforts or circumstances of the individual."³²⁷ Courts should use a valid assessment tool rather
14 than relying on staff self-evaluation. When developing internal language proficiency tools,
15 courts should ensure that the tools are reliable, have been specifically designed to test the
16 relevant skill needed, and are based on the setting in which services will be provided. The
17 assessment tool should be repeatable, fair, and not subject to bias. If bilingual staff are used to
18 assess other staff, by conducting interviews or testing, they should first be independently
19 assessed to ensure their competency to evaluate others.

20 When a court does not develop internal systems to assess bilingual staff, they can contract with
21 external language proficiency testing providers to assess the language proficiency of bilingual
22 staff. Several national companies offer tests which evaluate the language proficiency of the
23 candidate through a combination of oral and written examinations and provide a rating which
24 correlates to a hierarchy of settings in which they are competent to converse.³²⁸ Tests are
25 available in as many as 90 languages³²⁹ and provide a court with independent verification of the
26 staff member's language proficiency.

³²⁶ 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).

³²⁷ Romero, 34 U. Dayton L. Rev. at 18.

³²⁸ 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].

³²⁹ <http://www.altalang.com/language-testing/languages.aspx> (last visited Apr. 19, 2011).

8.3 Courts should ensure that translators are competent and are separately credentialed as translators.

Because translating is a specialized skill, individuals providing translations should be evaluated and credentialed. 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.”³³⁰ 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;³³¹
- Knowledge of common grammatical and syntactical conventions, in addition to dialectal 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.³³²

Translator 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.³³³ Candidates for ATA certification must establish qualifying educational degrees or minimum experience before taking the exams.³³⁴ 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

³³⁰ ATA, *Translations: Getting it Right*, at 22, http://www.atanet.org/docs/Getting_it_right.pdf.

³³¹ ATA, *Code of Professional Conduct and Business Practice*, www.atanet.org/membership/code_of_professional_conduct.php (last visited Apr. 19, 2011).

³³² 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>.

³³³ http://www.atanet.org/certification/aboutcert_overview.php (last visited Apr. 19, 2011).

³³⁴ http://www.atanet.org/certification/eligibility_requirementsform.php (last visited Apr. 19, 2011).

request for translation.³³⁵ 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 Language Roundtable scale.³³⁶

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 ensure competent translations. Using a system such as that described in *Standard Seven* will assist courts in ensuring that translations are competent. The Language Access Services Office (LAS Office), described in *Standard 10*, should establish such a protocol and ensure that translators and bilingual staff used to translate court documents are qualified.³³⁷

8.4 Courts should establish 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.

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 must 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.

³³⁵ http://www.atanet.org/certification/aboutexams_overview.php (last visited Apr. 19, 2011).

³³⁶ <http://www.govtilr.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."

³³⁷ 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.

1 While pre-screening, ethics, orientation, continuing education, and training requirements
2 appropriate for translators need not be as detailed as those used for interpreters and bilingual
3 staff, some should be used as translation of court documents requires specialized language and
4 recognition of unique ethical issues.³³⁸

5 Components of a Comprehensive Credentialing System

6 The LAS Office should use a comprehensive credentialing system to supplement the language
7 assessments provided by the Consortium or other testing entities, as well as to substitute for a
8 complete assessment for languages where no testing is available.

9 i. Pre-Screening

10 Pre-screening measures include criminal background checks and other prerequisites that a
11 court may impose upon individuals seeking to work as interpreters, bilingual staff, or
12 translators. Interpreters, bilingual staff, and translators should be pre-screened with criminal
13 background checks to uphold the public trust and ensure protection and security for courts.
14 Courts may also choose to impose pre-screening written exams to test all applicants on basic
15 interpreting concepts, including the code of ethics, interpreting modes, and vocabulary. This
16 testing can be administered in English to all applicants prior to the applicant moving to the
17 language and interpreting assessment phase. Additional pre-screening measures include
18 language proficiency testing, oral interpreting exams, written translation exams, or completion
19 of training programs or degrees that are applicable to interpreters, bilingual staff, and
20 translators working within the court system.

21 ii. Ethics Testing and Training

22 Ethical standards are an essential aspect of competency; therefore, courts should utilize both
23 testing and training in this area. Testing interpreters' knowledge of ethical requirements is
24 common practice and should be done as a pre-screening tool. Courts should also test bilingual
25 staff and translators' knowledge of ethical requirements that govern their roles. In addition to
26 ethics testing, courts should develop systems to train interpreters, bilingual staff, and
27 translators on ethics.

28 Courts should require training in addition to the ethics assessment as part of the credentialing
29 process; training should be included due to the need for continued exposure to the topic,
30 including opportunities to practice the application of ethical principles, in order to move

³³⁸ Translation raises ethical issues in terms of privacy, record keeping, and representation of qualifications.

beyond a simple introduction to the rules themselves.³³⁹ 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.”³⁴⁰ Accordingly, many state court interpreter programs require court interpreter candidates to participate in ethics training as part of both the certification and credentialing process.³⁴¹ 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 their signed agreement for services.³⁴² The ATA has developed a model code of professional conduct and business practices for translators that include provisions to ensure competency in the language pair of the translation work, render accurate and equivalent translations, engage in fair business practices, and accurately identify relevant skill and training.³⁴³

iii. Orientation

Credentialing should also include appropriate 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.³⁴⁴ Because many orientation programs address many of the testing components in interpreter credentialing, some states require attendance prior to taking either a certification or other credentialing examination. The National Center for State Courts promotes this type of training in its *Court Interpretation: Model Guides for Policy and Practice in the State Courts, Chapter on Training (Model Guides)*.³⁴⁵

The NCSC Guide envisions 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

³³⁹ Many professional certification programs, like attorney licensing programs, require annual participation in ethics training due to the high standards necessary in legal matters.

³⁴⁰ NCSC, *Court Interpretation, Model Guides for Policy and Practice in the State Courts*, ch. 9.

³⁴¹ 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>

³⁴² 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).

³⁴³ http://www.atanet.org/membership/code_of_professional_conduct.php (last visited Apr. 19, 2011).

³⁴⁴ Depending on the court’s program, this orientation may occur prior to an applicant taking an exam.

³⁴⁵ NCSC, *Court Interpretation: Model Guides for Policy and Practice in the State Courts*, ch. 4, Training for Court Interpreters.

1 the introductory workshop is to improve court interpreters' understanding of the skills and
2 appropriate conduct required of them, and to offer a basic orientation to courts and the justice
3 environment.³⁴⁶ As envisioned by NCSC, this introductory workshop contains eight modules,
4 including: an overview of the profession of interpreting; modes of interpreting; court and
5 justice system environment; court procedure; the interpreter's role; court terminology; and an
6 overview of the state court's certification or assessment process.³⁴⁷

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

16 iv. Continuing Education

17 A comprehensive court credentialing system should always include a requirement for all court
18 interpreters, bilingual staff, and translators to participate in ongoing professional development,
19 including continuing education. Many state court interpreter programs require interpreters to
20 complete a minimum number of continuing education training credits in a given cycle in order
21 to maintain their certifications. Given their interest in maintaining good language skills and high
22 ethical standards in bilingual staff, courts should offer these same opportunities and
23 requirements to all language services providers.³⁴⁸ In California, all certified and registered
24 interpreters must complete 30 hours of continuing education within a two year period.³⁴⁹
25 Continuing education requirements are common to many professions, and should be applied to
26 all language services providers, regardless of whether or not they are certified. Continuing

³⁴⁶ *Id.* at 55.

³⁴⁷ *Id.* at 56-59.

³⁴⁸ 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.

³⁴⁸ http://www.rid.org/education/continuing_education/index.cfm/AID/98 (last visited Apr. 19, 2011).

³⁴⁹ <http://www.courtinfo.ca.gov/programs/courtinterpreters/becoming-faq.htm#diff>.

1 education is particularly important in ethics, and annual training in this area is required by
2 many courts. Interpreter organizations increasingly provide ongoing training opportunities, and
3 courts should work collaboratively with these and other community partners to provide
4 opportunities for continuing education.

5 Continuing education should be required for translators. For ATA certified translators,
6 continuing education is a part of the credentialing process and is required to maintain their
7 certification.³⁵⁰ Certified members must obtain 20 hours of credits in a three year cycle.³⁵¹
8 Courts should include provisions regarding ongoing training, including the requirement that the
9 translator keep apprised of technology and current practices to aid in the translation process, in
10 all translator contracts.

11 Voir Dire to Establish Qualifications

12 While pre-screening, ethics training, and continuing education can be done on a regular basis
13 and in a group setting, voir dire is the process by which courts determine that an individual
14 language services provider is competent for a particular task. This fundamental aspect of
15 ensuring competent services involves a process to establish the language services provider's
16 qualifications. This process should be developed to fit the setting: on the record inside the
17 courtroom; by court personnel in court services or programs; and by court-mandated or offered
18 program staff, regardless of where they occur. All language services providers must be asked
19 about their credentials, ability to communicate with the individual LEP— and the process can be
20 initiated by the judge, court personnel, or counsel.

21 These questions are designed to help determine that there are no ethical reasons, such as being
22 related to the LEP person, why the interpreter should not be used in a particular matter, and to
23 confirm that the interpreter and the LEP person have been able to establish communication
24 and understand one another, including any use of dialect by the LEP person. In legal
25 proceedings, the judge should begin the voir dire questioning described below with a brief
26 overview of the subject-matter of the hearing to ascertain if there is a possibility that issues
27 interpreted in the hearing will inhibit the interpreter's ability to faithfully and accurately render
28 the message.³⁵² An interpreter's life experiences may impact his or her ability to remain neutral

³⁵⁰ http://www.atanet.org/certification/aboutcont_overview.php (last visited Apr. 19, 2011).

³⁵¹ http://www.atanet.org/certification/aboutcont_overview.php (last visited Apr. 19, 2011).

³⁵² 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 they 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

1 and can lead to vicarious trauma and an inability to accurately interpret; interpreting a matter
 2 that strikes an emotional nerve based on prior trauma or experiences can be avoided through
 3 use of these preliminary questions.

4 In instances where the interpreter is court certified, the voir dire can be a relatively brief
 5 process. It is used to establish the interpreter's qualifications, appropriate language match, and
 6 to ensure that the interpreter is free from a conflict of interest to interpret in the matter at
 7 hand.³⁵³ After a brief overview of the subject-matter of the case, the court should ask the
 8 following questions of all proposed interpreters:³⁵⁴

- 9 • Do you have any particular training or credentials as an interpreter? If so, please
 10 describe.³⁵⁵
- 11 • How many times have you interpreted in court?
- 12 • How many times have you interpreted for this type of hearing or trial?
- 13 • Please tell me some of the main points of the code of professional responsibility for
 14 court interpreters.
- 15 • Do you know or work for any of the parties? If yes, please explain.
- 16 • Do you have any potential conflicts of interest in this matter? If yes, please explain.
- 17 • Have you had an opportunity to speak with the LEP person and were there any
 18 communication problems?
- 19 • Are you familiar with the dialectical or idiomatic peculiarities of the LEP party or
 20 witness?
- 21 • Based on my overview of this case and information that was provided to you by the
 22 court, is the testimony or evidence likely to create an impediment to your ability to
 23 render a faithful and accurate message? If so, please explain.

24 When the interpreter is not certified, the voir dire should be more detailed. In the longer
 25 inquiry, the judge should establish, on the record, the interpreter's qualifications to interpret in
 26 court in addition to the questions regarding the ability to communicate and conflicts of interest.
 27 The more detailed voir dire is generally used in these circumstances: when a certified
 28 interpreter is not available even though the language is one where court certification exists and

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, which states 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>.

³⁵³ 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.

³⁵⁴ 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.

³⁵⁵ These questions are intended to start a dialog and to elicit a narrative response.

a judge should determine whether an uncertified interpreter can be used;³⁵⁶ and second, when no certification exists for the language needed and the judge should establish the interpreters' qualifications. The following questions should be asked:³⁵⁷

- What is your native language?
- How did you learn the source and target languages?
- Have you spent any time in the foreign country?
- 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?
- 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.³⁵⁸

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 interpreting and because the work can occur remotely, even across national or international boundaries. The following inquiry may 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:

³⁵⁶ 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.

³⁵⁷ 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*.

³⁵⁸ 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.

- 1 ○ What is your native language?
- 2 ○ How did you learn the source and target languages?
- 3 ○ Did you formally study either language in school?
- 4 ○ Have you spent any time in the foreign country?

- 5 • Have you had any formal training as a translator?
- 6 • Tell me about your experience in conducting court translations, including the number of
- 7 years of experience and the types of court document translated.
- 8 • In what other fields have you provided translations?
- 9 • Please tell me some of the main points of the code of professional responsibility for
- 10 translators based on the model of ATA.
- 11 • Do you feel confident that you can match the language in this particular type of
- 12 document?³⁵⁹

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

19

20 **STANDARD 9 TRAINING**

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

26 Mandatory training of judges, court personnel, and court-appointed professionals on the
 27 language access policies and each of the components identified below is necessary to ensure
 28 meaningful access to the justice system for LEP persons. This is partly because the issues
 29 involved in providing interpreters and translated materials are complex and often require the
 30 use of technology. In particular, the Department of Justice explains that training is critical to
 31 ensure compliance since it is really the only way to determine "whether staff knows and

³⁵⁹ *Id.*

1 understands the LEP plan and how to implement it.”³⁶⁰ The following sections describe who
2 should be trained, what the training should cover, and how frequently it should occur.

3 The *DOJ LEP Guidance* emphasizes that training needs to be provided broadly to many different
4 groups and points out that “[s]taff should know their obligations to provide meaningful access
5 to information and services for LEP persons” and “it is important to ensure that all employees in
6 public contact positions are properly trained.”³⁶¹ The Consortium for Language Access in State
7 Courts’ “*Ten Key Components to a Successful Language Access Program in the Courts*” lists
8 education as a needed activity and describes it broadly listing four areas to be covered:

9 “Educate judicial partners such as judges, mediators, arbitrators, court staff, attorneys
10 and others about: (1) the need for and role of language service providers in court
11 proceedings; (2) the knowledge, skills, and abilities of a competent language service
12 provider; (3) the policies, procedures, and rules for the appointment and use of
13 credentialed language service providers in the courts; and (4) the techniques for
14 effectively delivering services to persons facing language barriers in the courts.”³⁶²

15 The Department of Justice noted a model training and orientation program in for court staff in
16 Washington State in their resource, “*Executive Order 13166 Limited English Proficiency*
17 *Resource Document: Tips and Tools from the Field*.” The report highlights King County Superior
18 Court, Office of Interpreter Services, in Seattle, Washington, as providing “orientations to new
19 judges and commissioners regarding the interpreter program and the appropriate use of
20 interpreters. ... The office also strives to ensure that experienced interpreters are assigned to
21 cases with newer judges or commissioners.”³⁶³

22 23 Individuals who Should Receive Training

24 On the question of who should receive training on the court’s language access program, the
25 *DOJ LEP Guidance* points out that, “[t]he more frequent the contact with LEP persons, the
26 greater the need will be for in-depth training. Staff with little or no contact with LEP persons
27 may only have to be aware of an LEP plan. However, management staff, even if they do not
28 regularly interact with LEP persons, should be fully aware of and understand the plan so they

³⁶⁰ *DOJ LEP Guidance* at 41,465.

³⁶¹ *Id.*

³⁶² 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).

³⁶³ 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.

1 can reinforce its importance and ensure its implementation by staff.”³⁶⁴ Training on the court’s
2 language access program, policies, and procedures is critical for all court personnel that come
3 into contact with the public. The Department of Justice recommends that courts train “new
4 interpreters, as well as judges, attorneys and other court personnel.”³⁶⁵

5 In addition to judges and court personnel, courts should provide training to court-appointed or
6 supervised professionals, even when not directly employed by the court. This includes court-
7 appointed attorneys and other court-appointed or supervised professionals who must
8 communicate with LEP persons as part of their court-related duties. According to the
9 Department of Justice, “[i]n order for a court to provide meaningful access to LEP persons, it
10 must ensure language access in all such operations and encounters with professionals.”³⁶⁶

11
12 While the court is not obligated to provide training to justice partners outside of those
13 individuals whom they appoint or supervise, the court is often the most appropriate provider of
14 this training due to its expertise, authority, and control over language access services in the
15 courts. This is also true for trainings to the general public on the availability of language access
16 services. The *Consortium’s Ten Key Components* highlights the need to “[e]ducate persons with
17 limited English proficiency about the availability, role, and use of language service providers in
18 the courts.”³⁶⁷ Some state Administrative Offices of the Courts have taken on the role of
19 providing this training very broadly while others have collaborated with other entities, such as
20 the private bar, to ensure that training is available.³⁶⁸ Local bar associations also provide this
21 training, and should collaborate with the court, given the court’s expertise in the area.

22 23 Components of a Court Language Access Training Program

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

28 iv. Legal Requirements

³⁶⁴ DOJ LEP Guidance at 41,465.

³⁶⁵ 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.

³⁶⁶ Department of Justice, *Letter to Chief Justices and State Court Administrators*, August 16, 2010, at 3.

³⁶⁷ NCSC, *10 Key Components to a Successful Language Access Program in the Courts*.

³⁶⁸ 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.

1 Fundamentally, training should include a discussion of the legal requirement to provide services
2 in a non-discriminatory manner. This component should provide basic information about access
3 to justice imperatives, federal and state laws, legal decisions, and court rules requiring
4 meaningful access. It should include Title VI of the Civil Rights Act of 1964 and all implementing
5 regulations, guidance, and letters, as well as relevant state laws and court rules governing the
6 use of interpreters and translated materials. The training should cover the scope of the services
7 required, including the legal requirement for language access services in court services and
8 court-mandated or offered programs.

9 v. Court Rules and Court Policies

10 Comprehensive training on the relevant court rules and policies is critical to effective
11 implementation of meaningful access. This aspect of the training should describe the court
12 rules regarding the provision of language access services, and the policies, and enforcement of
13 court rules and procedures for implementing those services to LEP persons consistent with the
14 state's policies and language access plan. This section should focus on the requirements of the
15 court rules, and procedures to request services, and to ensure enforcement and resolve
16 complaints of inadequate services.

17 vi. Language Services Provider Qualifications

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

32 vii. Ethics

1 Training on the code of ethics that governs court interpreting should be provided. Judges, court
2 personnel, and court-appointed professionals must understand ethical requirements, including
3 their own responsibilities and those of the interpreter. Discussing the scope of interpreter
4 ethics helps avoid situations where judges, court personnel, or attorneys ask interpreters to
5 perform tasks that are outside their role or in other ways place them in ethical dilemmas.
6 Recognition that ethical areas pose one of the greatest risks for error is one reason that
7 continuing ethics education is required in many professions; therefore including a component
8 of regular and detailed ethical training is strongly recommended.

9 The training should cover the basic components of interpreter ethical codes, including the
10 following: requirement for accuracy and completeness; accurate representation of
11 qualifications; the duty to remain impartial and unbiased; avoidance of conduct that may give
12 an appearance of bias; maintenance of professional demeanor; protection of confidentiality;
13 prohibition of public comment; limitation of the scope of practice to interpreting and
14 translating; assessment and reporting of impediments to performance; and a duty to report
15 ethical violations.³⁶⁹

16 viii. Effective Techniques for working with Language Services Providers

17 Training on how to work with language services providers helps ensure that judges and court
18 personnel understand the role of the interpreter, and how to effectively and efficiently interact
19 with an LEP person through an interpreter. Communicating through an interpreter isn't second
20 nature; yet, by learning some simple tools, judges and court personnel can help facilitate that
21 communication. Knowledge of how to effectively work with interpreters in the courtroom also
22 helps ensure an accurate record.

23
24 This training should include common tips and conventional practices that help facilitate
25 communication when using an interpreter. The practices include: avoiding rapid speech, having
26 one person speak at a time, avoiding speaking over another person, using proper positioning,
27 employing different interpreter modes and registers, bringing issues of interpreter competency
28 to the attention of the court, and understanding special considerations for the use of multiple
29 interpreters, including relay interpreters,³⁷⁰ and technologies such as telephonic and video

³⁶⁹ NCSC, *Court Interpretation: Model Guides for Policy and Practice in the State Courts*, ch. 9, pp. 200-09.

³⁷⁰ 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

remote interpreting. Special attention should be paid to the processes for recording interpreted proceedings and challenges to interpreter accuracy.

ix. 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.

x. Cultural Competence

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 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, lead to 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 consistent and accurate manner.³⁷¹

Cultural competency 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.³⁷²

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

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.

³⁷¹ 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>.

³⁷² U.S. Department of Health and Human Services, Office of Minority Health, <http://minorityhealth.hhs.gov/templates/browse.aspx?lvl=2&lvlid=11> (last visited Apr. 19, 2011).

1 staff providing those services.³⁷³ As recognized by the *ABA Standards for the Provision of Civil*
2 *Legal Aid*, “[a]n essential component of cultural competence is recognizing and resisting the
3 temptation to stereotype individual members of the cultural group.”³⁷⁴ The *COSCA White Paper*
4 *on Court Interpretation* adds the component of cultural competence in its recommendation on
5 training stating that “[s]tate courts should educate and train their judges and court staff on the
6 importance of using competent court interpreters, on cultural diversity and culturally-based
7 behavior differences, and on the importance of following court policies regarding usage of
8 court interpreters.”³⁷⁵

9 Frequency and Duration of Training

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

20 In addition to implementing annual training measures, courts should establish procedures to
21 provide training in instances when policies have changed, new programs or services have been

³⁷³ 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>.

³⁷⁴ 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).

³⁷⁵ 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>.

1 developed, or new technologies have been implemented. This includes trainings needed to
2 respond when monitoring systems or individual complaints have uncovered deficiencies in the
3 services provided. Courts may want to incorporate review of language access training into the
4 performance review standards for all employees as a way to monitor the effectiveness of the
5 training program.³⁷⁶

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

18 Resource Materials and Best Practices

19 Courts should develop or obtain detailed resource manuals that address each of the training
20 components highlighted above and distribute them to all judges, court personnel, and court-
21 appointed professionals. The resources can support the court's ongoing training programs. A
22 court should also consider developing or enhancing its intranet resource materials. Resources
23 are available to assist courts in these efforts from organizations such as the National Center for
24 State Courts, Consortium on Language Access in the State Courts, and the National Association
25 of Judiciary Interpreters and Translators. The Consortium provides a mechanism for member
26 states to share general training materials on many of the subjects listed below.³⁷⁷

27
28 Courts should review and implement existing resources as they either create or strengthen a
29 training program. The resource developed by William Hewitt for the Consortium entitled *Court*
30 *Interpretation: Model Guides for Policy and Practice in the State Courts* covers many of the

³⁷⁶ [Citation pending.]

³⁷⁷ [Drafter's Note: Advisory Group member Wanda Romberger is pursuing whether the Consortium states will share, at a minimum, a list of the training modules that are available to Consortium members or, ideally, all of the training materials currently available to Consortium members. This may take some time as any sharing of resources requires approval from members first.]

topics addressed in this *Standard*.³⁷⁸ The Department of Justice, in the resource 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 court system. The New Jersey Administrative Office of the Courts has created separate training manuals for judges, interpreters, and court administrative staff.³⁷⁹ Some state courts have 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.³⁸⁰ Current efforts to further develop national resources mean that more programs should be available in the near future.

STANDARD 10 STATE-WIDE COORDINATION

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

Statewide coordination of language access services by a centralized Language Access Services Office (LAS Office)³⁸¹ 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.³⁸² The National Center for State Courts Consortium on Language Access (Consortium) lists the establishment of a centralized office within the state court administrator’s office as one of the ten key components for effective language access.³⁸³ It

³⁷⁸ Available at http://www.ncsconline.org/wc/publications/Res_CtInte_ModelGuidePub.pdf.

³⁷⁹ 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.

³⁸⁰ 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

³⁸¹ 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.

³⁸² 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. Courts are encouraged to collaborate with other tribunals in the area of language access.

³⁸³ 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

1 highlights the centralized office's role in determining the need for services and taking steps to
 2 ensure they are provided.³⁸⁴ The Conference of Chief Justices has also endorsed the benefits of
 3 centralized coordination, which is particularly useful as courts deal with the increasing demand
 4 for language access services within already limited budgets.³⁸⁵ Providing adequate staff to the
 5 LAS Office enables it to carry out these tasks.

6 Most state courts have a centralized office that coordinates some aspects of the language
 7 access services outlined in these *Standards*. Of the forty-one member states which are currently
 8 part of the Consortium,³⁸⁶ virtually all of them have a statewide foreign language interpreting
 9 program housed in the Administrative Office of the Courts or one of its subdivisions.³⁸⁷ While
 10 most of these programs play some role in the training, testing,³⁸⁸ and monitoring of

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*.

³⁸⁴ The Consortium for Language Access references this 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/10KeytoSuccessfullLangAccessProgFINAL.pdf.

Component Seven is Program Administration. The guideline for this component suggests: "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."

³⁸⁵ Leadership on access to justice and interpreter issues by the judiciary is highlighted by the Conferences 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>.

³⁸⁶ States that are not yet members 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.

³⁸⁷ 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.

³⁸⁸ Some, 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-

1 interpreters, some also oversee other functions including training, hiring, supervising, and
2 scheduling³⁸⁹ interpreters for courts throughout the state.³⁹⁰

3 A centralized office at the state level assists courts in expanding services beyond legal
4 proceedings to court services and to court-mandated or offered programs, and it also helps in
5 efficiently expanding the availability of translated materials. A centralized office creates a
6 mechanism for collaboration among different components of the court administration and
7 relevant community stakeholders. One example of the benefits of this coordination is the
8 California Administrative Office of the Courts, which has a language access working group that
9 convenes representatives from the following units and divisions: Court Interpreters
10 Unit, Human Resources, Education, Office of the General Counsel, Equal Access
11 Unit, Communications Office, Facilities Division (re: court design and signage), Access and
12 Fairness Advisory Committee, and the Task Force on Self-Represented Litigants. This office
13 developed and updates the AOC's LEP plan,³⁹¹ shares information on different projects, and
14 identifies which member department can take the lead on Language Assistance Plan (LAP)
15 implementation and support of the courts.³⁹²

16 Coordination at the state level promotes collaboration with national entities and among states,
17 allowing them to share best practices and resources and reducing the need to develop costly
18 individualized systems for certification and testing. The Conference of State Court
19 Administrators (COSCA), in its "*White Paper on Court Interpretation: Fundamental to Access To*
20 *Justice*" adopted in November 1997, encouraged all states to join the Consortium "in order to
21 establish nationwide competency standards, use the Consortium's resources to initiate new
22 court interpreter programs or enhance existing programs, and promote efficiencies associated
23 with the "pooling" of limited interpreter and program funding resources."³⁹³

proficiency testing for prospective interpreters, and maintains a real-time database of all registered (*i.e.*, qualified or certified) court interpreters.

³⁸⁹ One such example is Oregon. See Oregon Judicial Department, Court Interpreter Services, <http://courts.oregon.gov/OJD/OSCA/cpsd/InterpreterServices/index.page>.

³⁹⁰ 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.

³⁹¹ 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.

³⁹² 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.

³⁹³ Recommendation Number 7, Conference of State Court Administrators, *White Paper on Court Interpretation: Fundamental to Access to Justice*.

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.³⁹⁴ The tasks of a centralized office are discussed in the following sections: *Standard 10.1*-- communicating information about language access services throughout the state; *Standard 10.2*-- establishing procedures and plans to implement services; *Standard 10.3* -- monitoring for compliance; *Standard 10.4* -- developing resources; *Standard 10.5* --overseeing credentialing and quality assurance for language services providers; and *Standard 10.6* --providing training.

10.1 The office should provide, facilitate, and coordinate statewide communication regarding the need for and availability of language access services.

Communication is a critical component of a successful language access program. The Consortium identified communication as one of the “*Ten Key Components to 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.”³⁹⁵

The LAS Office should communicate to all courts regarding language needs 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 mainstreaming the delivery of language access services across the state. Educating the general public on the availability of language access services in courts removes barriers that are created when LEP persons are unaware of those services.³⁹⁶

³⁹⁴ Even those states with no spoken language offices 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 a 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, is a better approach, particularly as it allows courts to employ more cost-effective language access services rather than always paying for an in-person interpreter.

³⁹⁵ NCSC, *10 Key Components to a Successful Language Access Program in the Courts*. note 364.

³⁹⁶ 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 the public from taking a case to court).

10.2 The office should coordinate and facilitate the development of necessary rules and procedures to implement language access services.

Effective and uniform implementation of language access services throughout the state requires the development of model court rules and model language assistance plans. Model court rules are described in *Standard 2.1* and should be developed and coordinated with judges, court administrators, and state legislators where appropriate.³⁹⁷

Language access plans should be also be developed and used on a statewide basis.³⁹⁸ These plans³⁹⁹ 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.”⁴⁰⁰

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;⁴⁰¹ 2) Language Assistance Measures; 3) Training Staff; 4) Providing Notice to LEP persons; and 5) Monitoring and Updating the LEP Plan.”⁴⁰² One example of the benefits of a plan 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.⁴⁰³

The LAS Office should establish a process for regular review of the court’s written plan. Recipients should consider whether “changes in demographics, types of services, or other

³⁹⁷ This office can also provide support for the provision of quality interpreter services by following the lead of states such as Oregon and Washington, both of which have programs to reimburse courts for a portion of the cost of interpreter services when courts hire certified interpreters.

³⁹⁸ 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.

³⁹⁹ Written language access plans are also referred to commonly as language assistance plans or written plans for serving limited English proficient persons (LEP Plans).

⁴⁰⁰ *DOJ LEP Guidance* at 41,464.

⁴⁰¹ The data described under *Standard 3.1* should be gathered as the first step in developing a written plan.

⁴⁰² *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.

⁴⁰³ The Minnesota LEP Plans is available at: <http://www.mncourts.gov/?page=444>

needs require annual reevaluation of their LEP plan.”⁴⁰⁴ 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 of LEP persons; and whether identified sources for assistance are still available and viable.”⁴⁰⁵ California is one example of a state 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.⁴⁰⁶

10.3 The office should monitor compliance with procedures for providing language access services.

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, 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.”⁴⁰⁷ Monitoring helps ensure that consistent and adequate services are provided statewide and should be utilized regardless of whether a state implements language access policies and procedures at the state or local level.

Monitoring for compliance should be conducted through the use of surveys, evaluations, and complaint forms (including anonymous screenings, assessments, and complaints). To obtain a general overview of services 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.⁴⁰⁸ These surveys should be anonymous given the concerns of many interpreters, translators, and other

⁴⁰⁴ DOJ LEP Guidance at 41465.

⁴⁰⁵ *Id.*

⁴⁰⁶ [<http://www.courtinfo.ca.gov/reference/rfp/documents/2010study-rfp-qna.pdf> - this URL is now invalid].

⁴⁰⁷ Conference of State Court Administrators, *White Paper on Court Interpretation: Fundamental to Access to Justice*.

⁴⁰⁸ 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.

1 providers about potential job loss due to complaints of inadequate services. Individualized
2 evaluations such as those done by a “secret reviewer” should be used to target language access
3 services both in and outside the courtroom.⁴⁰⁹ Courts should use internal or external reviewers
4 throughout the state and in various types of settings to gather detailed information, and to
5 identify and address barriers to the delivery of language access services.

6 In addition to regular surveys and evaluations, the office should provide a system for
7 responding to individual complaints regarding the provision of language access services.⁴¹⁰
8 These include complaints about denials of interpreter services, denial of access to services
9 outside the courtroom, and lack of translated written information. Where the denial concerns a
10 local proceeding or service, complaining to the local courts may be inefficient and will not
11 necessarily result in mobilization of increased resources. Where an individual has filed a
12 complaint about the denial of services, an anonymous complaint mechanism may be
13 appropriate to lessen the fear of reprisal by a court against the reporter. Coordination at the
14 state level should be used to increase the likelihood that measures will be identified to address
15 the problem and that similar problems in other jurisdictions will be discovered.

16
17 **10.4 The office should ensure the statewide development of resources to provide**
18 **language access.**

19 Creation of resources (including translated materials, videos etc.) at the state and national level
20 is one of the most important ways for the LAS Office to improve the functioning of the justice
21 system for all participants. The office should play a role in identifying, funding, and creating
22 such resources. Examples include the establishment of sufficient pools of language access
23 service providers, development of translated materials and other resources, the selection of
24 technology, and the procurement of additional funding.

25 Developing regional and statewide interpreter pools, particularly those that can be used with
26 video remote interpreting, is an effective means of addressing the scarcity of interpreters and
27 the cost of travel. *Recommendation Number 18 of the COSCA White Paper on Court*

⁴⁰⁹ This approach is commonly referred to as a ‘Secret Shopper’ technique. Two projects using this approach are highlighted in the following reports: 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.

⁴¹⁰ A discussion of monitoring and complaints regarding the quality of language access services appears in *Standard* 10.5.

1 *Interpretation* directs the National Center for State Courts and the Consortium to work with
2 state courts to explore the feasibility of establishing regional or national pools of interpreters,
3 as well as community-based interpreter testing programs, as cost-effective alternatives. Other
4 resources that should be developed are translated court brochures, forms, and orders.
5 Statewide development of translation resources results in a significant cost-savings (hiring
6 translators to translate very similar forms in each jurisdiction) and, where translations are done
7 internally, reduces staff time spent on creating nearly identical materials in each location.
8 Examples of coordination of translation of documents can be found in Ohio⁴¹¹ and Washington
9 State⁴¹² and are an impressive demonstration of what can be accomplished with collaboration
10 and coordination.

11 The centralized office should play a role in both identifying grants and sharing that information
12 with courts throughout the state. Funding opportunities present opportunities to improve
13 technology and impact many aspects of the justice system. In Washington State courts were
14 able to use Court Improvement Act funding to purchase headsets for relay interpreting.⁴¹³ The
15 LAS Office should work with community partners to create or facilitate development of
16 resources that are suitable for LEP communities.

17
18 **10.5 The office should oversee the credentialing,⁴¹⁴ recruitment, and monitoring of**
19 **language services providers to ensure that interpreters, bilingual staff, and**
20 **translators possess adequate skills for the setting in which they will be providing**
21 **services.**

22 The centralized oversight of credentialing, recruitment, and monitoring of language services
23 providers within the LAS Office creates efficiencies and improves the delivery of language
24 access services in courts. Each area of oversight is discussed in the following sections.

25 Oversight of Interpreter, Bilingual Staff, and Translator Credentialing
26

27 The LAS Office should be tasked with providing clear standards and procedures regarding
28 interpreter, translator, and bilingual staff competency and should oversee the implementation
29 and administration of language access provider competency assessment⁴¹⁵ and credentialing⁴¹⁶

⁴¹¹ [Citation pending.]

⁴¹² [Citation pending.]

⁴¹³ [Citation pending.]

⁴¹⁴ Credentialing is further discussed in *Standard 9*.

⁴¹⁵ "Assessment" refers to actual testing of qualifications, such as language competency.

1 procedures. Centralized oversight is based on “the premise that it is unreasonable to expect
2 trial judges to be the sole determiners of an interpreter’s qualifications” and that interpreter
3 certification “needs to be available at the local or state level for testing or otherwise assessing
4 the qualifications of interpreter candidates.”⁴¹⁷ The NCSC *Model Guide* also notes that “in most
5 states it would be preferable to locate the responsibility for screening interpreters in the state’s
6 administrative office of the courts. In this way, screening can be conducted by individuals with
7 specialized training, and a statewide register of qualified interpreters can be maintained for the
8 use of all of the state’s courts.”⁴¹⁸

9 Oversight of language services providers’ credentialing in services *outside* of the courtroom is
10 one of the newer areas of leadership for offices coordinating language access services. The
11 Consortium’s *Ten Key Components* can be adapted for this process and describes three tasks
12 necessary for a successful language access program:

- 14 • **Credentialing of language service providers:** Adopt clear standards and
15 procedures for credentialing language service providers through the use of
16 exams and accompanying policies and protocols developed or approved by the
17 Consortium.
- 18 • **Appointment of credentialed language service providers:** Adopt appropriate,
19 legally binding rules, policies, and procedures to require the use of credentialed
20 language service providers for all court proceedings, the translation of court
21 documents, and the translation/transcription of audio and video recordings.
- 22 • **Standards of professional conduct for court-related language service providers:**
23 Adopt and enforce a Code of Professional Conduct for court-related language
24 service providers.⁴¹⁹

25 The LAS Office should also provide oversight of credentialing for bilingual staff when they are
26 hired to provide direct services in English and the other languages they speak. In coordinating in
27 this area, the office should not only oversee testing but should also provide or facilitate training
28 for bilingual staff on their role to ensure they are not providing interpreter services without
29 proper credentialing and training.

⁴¹⁶ “Credentialing” refers to a determination that the individual is proficient. 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.

⁴¹⁷ NCSC, *Court Interpretation: Model Guides for Policy and Practice in the State Courts*, ch. 5, Assessing Interpreter Qualifications: Certification Testing and Other Screening Techniques, pp. 89 – 90.

⁴¹⁸ *Id.*

⁴¹⁹ NCSC, *10 Key Components to a Successful Language Access Program in the Courts*, Elements 4, 5, and 6, note 364.

1 LAS Office oversight of translator qualifications is also necessary to ensure the delivery of
2 appropriate language access services. Although most state court programs accept national
3 translator certification from the American Translators Association (ATA) in lieu of conducting
4 independent certification exams for translators, ATA offers certification in only a limited
5 number of languages. Oversight of translator competency is as important as interpreter
6 competency; quality and accuracy in translations is critical and as the need for translations
7 increases, centralized management becomes increasingly important. The task of the central
8 office in this regard is to promote the systematic use of credentialed translators, develop and
9 implement translation protocols, and generally coordinate the translation process. For more
10 information on translator qualifications, see *Standard 7*.

11 Recruitment of Interpreters, Bilingual Staff, and Translators

12
13 Recruitment of adequate numbers of interpreters, translators, and bilingual staff is a challenge
14 for many courts and is an area where collaboration is needed at the state and regional level.
15 The Consortium's *Ten Key Components* recognizes recruitment as an essential function of an
16 office such as that envisioned by this Standard.⁴²⁰ With their direct awareness of the critical
17 importance and sometimes limited availability of trained interpreters and translators, the LAS
18 Office and state courts are uniquely situated to play a leadership role in encouraging
19 institutions of secondary and higher learning to serve as a pipeline for this need.

20
21 This support for development of language access providers should include working with
22 institutions of higher learning to create community interpreter internship programs, creating
23 and hosting certification programs, and encouraging bilingual students to consider careers in
24 interpretation and translation.⁴²¹ In addition to working with general educational institutions,
25 law schools and courts can collaborate to develop training programs that utilize law students to
26 conduct outreach to community service organizations regarding language access rights and
27 legal obligations. An example of a successful model is Villanova law School,⁴²² which has
28 established a community interpreter program training both law students and interpreters on
29 the need for language access services. States like Alaska⁴²³ and New Mexico⁴²⁴ have also taken

⁴²⁰ *Id.*

⁴²¹ A list of colleges and universities that offer courses in interpretation and/or translation can be found at http://www.ncsconline.org/D_Research/CourtInterp/Web%203%20Colleges%20and%20Universities.pdf.

⁴²² 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).

⁴²³ Alaska Immigration Justice Project, The Language Interpreter Center <http://www.akijp.org/interpreter.html> (last viewed Apr. 19, 2011).

1 innovative approaches to this problem by working with non-legal users of interpreter and
2 translation services in an attempt to create more formal pipelines for the training and
3 development of language services providers.

4
5 Evaluation and Monitoring of Language Services Providers⁴²⁵

6
7 Finally, a centralized office should oversee a statewide complaint process to monitor
8 interpreter, bilingual staff, and translator quality. Monitoring of language access services
9 generally is discussed in *Standard 10.3*, but monitoring of complaints of specific interpreter
10 misconduct, insufficient bilingual staff skills, ethical violations, and translation errors is
11 appropriately discussed in this section because it focuses on language services providers and
12 the LAS Office's obligation to ensure the quality of those services.

13 The LAS Office should be involved in overseeing complaints regarding interpreter quality at the
14 state level because interpreters often interpret in multiple courtrooms and jurisdictions within
15 a state, and local dispute resolution measures are thus inadequate to resolve concerns
16 regarding interpreter quality. Minnesota⁴²⁶ and Washington⁴²⁷ provide models regarding the
17 disciplinary process for interpreters under the auspices of the State Court Administrator.

18 Similarly, the LAS Office should handle complaints about the quality of bilingual staff, who are
19 increasingly used to meet the language access needs of LEP persons in settings outside of the
20 courtroom. While complaints should be monitored by a centralized office, resolution should be
21 done in concert with the local court where the bilingual staff is located. The centralized office
22 should assist in providing training resources to bring the bilingual staff member's competency
23 to an appropriate level, or should recruit other qualified bilingual candidates for the position.

24 The centralized office should also monitor for complaints regarding deficiencies in written
25 translations. This is best handled at the state level to ensure efficient and effective response to
26 these complaints. Because of the nature of translations and the increase in coordination among
27 courts, a centralized complaint process for translations is necessary and increases the likelihood
28 that courts will comply with the established translation protocol and that resources regarding
29 translation will be shared.

⁴²⁴ New Mexico Center for Language Access, <http://www.nmcenterforlanguageaccess.org/> (last viewed Apr. 19, 2011).

⁴²⁵ Monitoring of language access services generally is discussed in *Standard 10.3*.

⁴²⁶ Minnesota Judicial Branch, Interpreter Complaint Process, <http://www.mncourts.gov/?page=448>.

⁴²⁷ Washington State Courts, Disciplinary Policy, http://www.courts.wa.gov/programs_orgs/pos_interpret/index.cfm?fa=pos_interpret.display&fileName=policyManual/disciplinaryPolicyCertified

1

2 **10.6 The office should coordinate and facilitate the education and training of providers,**
3 **judicial officers, court personnel, and the general public on the components of**
4 ***Standard 9.***

5 Whether providing training or simply facilitating it,⁴²⁸ the Language Access Services Office needs
6 to ensure that training is provided to all appropriate groups and that the material covered is
7 comprehensive. Many state programs provide training on a regular basis to judges and court
8 staff, including clerks and clerk staff.⁴²⁹ Coordinating these efforts frees up local court staff time
9 and improves compliance. Sharing knowledge and materials is efficient, avoids duplication of
10 effort, and promotes consistent language access services across the state. It also helps to avoid
11 local practices that are developed in isolation and which may violate language access
12 requirements. The LAS Office should also gather training materials, such as those developed by
13 the National Center for State Courts and the Consortium, to share with local courts.⁴³⁰

14

⁴²⁸ Training is more fully discussed in *Standard 9*.

⁴²⁹ Annual training on language access services in the Minnesota courts is offered to all state court personnel.
<http://www.mncourts.gov/?page=446>.

⁴³⁰ 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).