

ABA Standards for Language Access in Courts

August 2011

NOTE: This copy of the Standards is provided for review purposes only. The ABA Standing Committee on Legal Aid and Indigent Defendants will submit these draft Standards 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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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 needs of the communities they serve. Facilitating access to justice is an integral part of the mission of the courts. As American society is comprised of a significant and growing number of persons with limited English proficiency (LEP) in every part of the country, it is increasingly necessary to the fair administration of justice to ensure that courts are language accessible to LEP persons who are brought before, or require access to, the courts.

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

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

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

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/.

29 of their rights and of the role of the courts in ensuring that rights are respected. The language
30 barrier exacerbates this lack of awareness, and effectively prevents many LEP persons from
31 accessing the system of justice. Inability to communicate due to language differences also has
32 an impact on the functioning of the courts and the effect of judgments, as proceedings may be
33 delayed, the court record insufficient to meet legal standards, and court orders rendered
34 unenforceable or convictions overturned, if a defendant or other party has not been able to
35 understand or be understood during the proceedings.

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

40 **Scope**

41 The *Standards* represent the considered judgment of persons and organizations with
42 experience in and ties to state courts across the country, and the *Commentary* is primarily
43 geared toward those courts. The *Standards* are focused on state courts because, in the United
44 States, the majority of persons who come into contact with the justice system do so in state
45 courts. Moreover, there is an important and vibrant effort in the states to identify and remedy
46 obstacles to access to justice, including those faced by LEP persons. Several national
47 organizations, including the Conference of Chief Justices and the Conference of State Court
48 Administrators, have adopted resolutions identifying language access as an immediate concern,
49 and the National Center for State Courts has directed attention and scarce resources to address
50 the problem.³ Because of the importance of the state courts and state court leadership in this
51 area, the ABA undertook to contribute resources and draw on its national scope and
52 membership to assist the effort to improve language access in state courts.

³ Conferences of Chief Justices, Conference of State Court Administrators, Resolution 2 In Support of Efforts to Increase Access to Justice, <http://ccj.ncsc.dni.us/AccessToJusticeResolutions/resol2IncreaseAccesstoJustice.html> (last visited Apr. 18, 2011), <http://cosca.ncsc.dni.us/Resolutions/AccessToJustice/2Civil%20Gideon%20Proposal.pdf> (last visited Apr. 18, 2011); Conference of Chief Justices, Resolution 7 In Support of Efforts to Ensure Adequate Court Interpretation Services, http://ccj.ncsc.dni.us/AccessToJusticeResolutions/resol7_AdequateCourtInterpretationSvcs.html (last visited Apr. 18, 2011); Conference of Chief Justices, Conferences of State Court Administrators, Resolution 12 In Support of State Courts’ Responsibility to Promote Bias-Free Behavior, <http://ccj.ncsc.dni.us/AccessToJusticeResolutions/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).

53 Notwithstanding the focus on state courts, the access to justice imperative of *Standard 1* and
54 the need for a comprehensive system for language access that addresses the principles in
55 *Standards 2-10* are equally applicable to all adjudicatory bodies that deal with LEP persons:
56 federal courts, territorial courts, administrative tribunals at the federal, state, and local level,
57 military courts and commissions, and tribal courts. It is expected that such courts and tribunals
58 also will conduct a review of their operations in the light of these *Standards* and evaluate their
59 systems and services against the access to justice imperative of *Standard 1*.

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

64 ***Constitutional and Legal Requirements***

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

77 ***Process***

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

⁴ American Bar Association, Standing Committee on Legal Aid and Indigent Defendants, *Standards for the Provision of Civil Legal Aid* (2006).

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

97 ***Structure and Organization***

98 *Standard 1* establishes the imperative that courts must "as a fundamental principle of law,
99 fairness, and access to justice" provide language access services so that courts will be accessible
100 to LEP persons. *Standard 1* is therefore stated in mandatory terms. *Standards 2-10* set out
101 different and essential components of a comprehensive system to address the needs of LEP
102 persons in court and court-related services, and are subdivided to address specific matters
103 included within the overall subject matter of the particular standard. They provide a blueprint
104 for courts to design, implement, and enforce a system adapted to the organization and
105 administration of their court systems and the type of court proceedings they handle, and to
106 discuss the relative benefits and burdens of different approaches, in light of the composition
107 and needs of the LEP communities they serve. *Standards 2-10* are therefore phrased in terms of
108 "should" in order to denote that they are to be adapted to specific courts and communities.
109 However, each of *Standards 2-10* is an essential component of a comprehensive and effective
110 system of language access services, and courts will need to implement all of them in achieving
111 the overarching access to justice imperative of *Standard 1*. Each *Standard* is accompanied by
112 extended *Commentary* intended for courts and practitioners. The *Commentary* gathers legal
113 authority, identifies best practices, discusses legal and practical issues that can arise in specific
114 settings as well as strategies for addressing them, and provides information about additional
115 sources of expertise and assistance.

<http://www.americanbar.org/content/dam/aba/migrated/legalservices/sclaid/downloads/civillegalaidstds2007.authcheckdam.pdf>

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

116 **DEFINITIONS**

117 Bilingual – Using or knowing two languages proficiently.

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

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

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

124 Court – Any tribunal within an adjudicatory system.

125 Court-annexed Proceedings – Court-sponsored proceedings, such as arbitration, which are
126 handled by officers of the court.

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

129 Court-managed Professionals – Persons who are employed, appointed, paid, or supervised by
130 the court. These may include counsel, guardians, guardians ad litem, conservators, child
131 advocates, social workers, psychologists, doctors, trustees, and other similar professionals.

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

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

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

142 Court Services – The full range of court functions, including legal proceedings and other court-
143 operated or managed offices with points of public contact. Examples of such services include
144 information counters; intake or filing offices; cashiers; records rooms; sheriff’s offices;
145 probation and parole offices; alternative dispute resolution programs; pro se clinics; criminal

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

148 Credentialing – The process of establishing, through training and testing programs, the
149 qualifications of an individual to provide a particular service, which designates the individual as
150 qualified, certified, licensed, approved, registered, or otherwise proficient and capable.⁶

151 Cultural Competence – A set of congruent behaviors, attitudes, and policies that come together
152 in a system, agency, or among professionals that enables effective work in cross-cultural
153 situations.⁷

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

157 *Interpreter by Classification:*

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

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

170 *Interpreter Functions:*

171 *Interview Interpreter* – Interprets to facilitate communication in an interview or
172 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).

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

175 *Witness Interpreter* – Interprets during witness testimony for the purpose of presenting
176 evidence to the court.¹⁰

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

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

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

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

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

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

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

197 Language Service Providers – A person or entity who provides qualified court interpreting
198 services, bilingual assistance, and translation services for individuals who are limited English
199 proficient.¹²

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

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

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

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

203 Limited English Proficient Person – A limited English proficient (LEP) person is someone who
204 speaks a language other than English as his or her primary language and has a limited ability to
205 read, write, speak, or understand English.¹³

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

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

211 Modes of Interpreting –

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

214 *Simultaneous Mode* – Rendering the interpreted message continuously at nearly the
215 same time someone is speaking.

216 *Sight Translation* – A hybrid of interpreting and translating in which the interpreter
217 reads a document written in one language while translating it orally into another
218 language, without advance notice.¹⁴

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

221 Persons with Legal Decision-Making Authority – Persons whose participation is necessary to
222 protect their legal decision-making interest and to protect the interest of the individuals they
223 represent.

224 Persons with a Significant Interest in the Matter – Persons whose presence or participation in
225 the matter is necessary or appropriate.

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

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

228 Recipient of Federal Financial Assistance—Recipients of federal funds range from state and
229 local agencies, to nonprofits and other organizations. A list of the types of recipients and the
230 agencies funding them can be found at [Executive Order 12250 Coordination of Grant-Related](#)
231 [Civil Rights Statutes](#). Sub-recipients are also covered, when federal funds are passed from one
232 recipient to a sub-recipient. Federal financial assistance includes grants, training, use of
233 equipment, donations of surplus property, and other assistance.¹⁶

234 Register – The level and complexity of vocabulary and sentence construction.¹⁷

235 Relay Interpreting – Involves using more than one interpreter to act as a conduit for spoken or
236 sign languages beyond the understanding of a primary interpreter.¹⁸

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

241 Source Language – The language of the original speaker, which the interpreter interprets into a
242 second language. This term is always relative, depending on who is speaking.¹⁹

243 Target Language – The language of the listener, into which the interpreter renders the
244 interpretation from the source language. This term is always relative, depending on who is
245 listening.²⁰

246 Transcription - The process of producing a written transcript of an audio or video recording,
247 where the recording is in a language other than English.²¹

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

¹⁶ Definition from DOJ *Commonly Asked Questions and Answers Regarding Limited English Proficient (LEP) Individuals* at <http://www.justice.gov/crt/lep/faqs/faqs.html#OneQ4>

¹⁷ NCSC *Court Interpretation Model Guides*, *supra* note 8, at ch. 2.

¹⁸ 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>

¹⁹ Adapted from NCSC, *supra* note 8, at ch. 2.

²⁰ Adapted from *id.*

²¹ 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>

248 Translation – Converting written text from one language into written text in another language.
249 The source of the text being converted is always a written language.²²

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

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

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

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

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

²² NCSC, *supra* note 8, at ch. 2.

²³ *Id.*

264 **STANDARD 1 FUNDAMENTAL PRINCIPLES**

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

270 These *Standards* are based on the due process protections afforded by the Constitution,
271 including the Fifth, Sixth, and Fourteenth Amendments, the legal requirements of the Civil
272 Rights Act of 1964, and the fundamental principles of integrity of the judicial process, fairness,
273 and access to justice.

274 While the *Standards* focus primarily on access to state court systems, the principles described
275 apply to all adjudicatory tribunals, including federal courts;²⁴ administrative hearings at the
276 federal, state, and local levels;²⁵ tribal courts;²⁶ military courts and commissions;²⁷ territorial

²⁴ The Court Interpreters Act of 1978 provides for government-compensated interpreters in any criminal or civil judicial proceeding initiated by the United States, 28 U.S.C. § 1827, in which a person’s LEP status inhibits understanding of the proceeding, communication with the court or counsel, or a witness’s comprehension of questions or presentation of testimony. Under the Court Interpreters Act of 1978, the presiding judicial officer is required to utilize the services of an interpreter for persons “who speak only or primarily a language other than the English language, in judicial proceedings instituted by the United States.” 28 U.S.C. § 1827 (d)(1) The legislative intent behind the passage of the Court Interpreters Act was concern that the lack of an interpreter would undermine rights protected by the Fifth and Sixth Amendments. However, the Court Interpreters Act of 1978 does not provide for interpreters, at court expense, in civil matters not initiated by the United States; in those instances, the litigants must bring or pay for their own interpreters.

²⁵ 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.).

²⁶ 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>.

²⁷ The Uniform Code of Military Justice (UCMJ) is the guiding document on the provision of language access services in the military court setting. The UCMJ, Section 828, Article 28, provides that the convening authority may employ interpreters to interpret for the court or commission. While Section 828, Article 28 provides that interpreters are permissible in the courtroom during a court martial, appointment and qualification are left to the discretion of the presiding judge or adjudicator. No other provisions govern the qualification of interpreters, access to translated materials, or information to help guide an informed decision whether to appoint an interpreter. See Uniform Code of Military Justice § 828, Art. 28 (“[U]nder like regulations the convening authority of a court-martial, military commission, or court of inquiry may detail or employ interpreters who shall interpret for the court or commission.”).

277 courts; and other tribunals.²⁸

278 Constitutional Protections and Language Access

279 Although the Constitution does not specifically guarantee the right to an interpreter, this right
280 has long been established as “nearly self-evident.”²⁹ For an LEP defendant, an interpreter is
281 necessary to effectuate the guarantee of the Sixth and Fourteenth Amendments’ “right to be
282 present at all stages of the trial where his absence might frustrate the fairness of the
283 proceedings.”³⁰ The Second Circuit has observed that “every criminal defendant – if the right to
284 be present is to have meaning – [must] possess sufficient ability to consult with his lawyer with
285 a reasonable degree of rational understanding,”³¹ a right that is “even more consequential than
286 the right of confrontation. Considerations of fairness, the integrity of the fact-finding process,
287 and the potency of our adversary system of justice forbid that the state should prosecute a
288 defendant who is not present at his own trial.”³²

289 While all courts agree on the constitutional right to an interpreter for LEP persons in criminal
290 cases, some courts have set an unacceptably low threshold for evaluation of the litigant’s
291 English proficiency³³ and the interpreter’s professional competence.³⁴ Courts have also required

²⁸ These Standards are intended to be broadly applicable to all adjudicatory settings, including territorial and commonwealth courts. In instances where a tribunal is conducted in a language other than English, the term “limited English Proficient” or “LEP” should be understood as referring to any person who faces a barrier in accessing the court due to inability to communicate in the language spoken by that court.

²⁹ *United States ex rel. Negron v. State*, 434 F.2d 386,389 (2d Cir. 1970) (holding that Spanish-speaking defendant in State homicide prosecution was entitled to services of interpreter, and failure to provide interpreter 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”). *See also*, *State v. Natividad*, 526 P.2d 730, 733 (Ariz. 1974). (holding 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”); *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.”); *Perez-Lastor v. INS*, 208 F.3d 773, 778 (9th Cir. 2000) (holding that “[i]t is long-settled that a competent translation is fundamental to a full and fair hearing”).

³⁰ *Tennessee v. Lane*, 541 U.S. 509, 523 (2004).

³¹ *Negron*, 434 F.2d at 389.

³² *Id.*

³³ *See State v. Lopez*, 872 P.2d 1131 (Wash. Ct. App. 1994) (holding that 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) (noting that although “better practice” would have been for trial court to hold hearing to evaluate defendant’s English proficiency, record supported that defendant was able to speak and understand English, so that denial of request for interpreter did not violate defendant's due process rights).

292 that LEP litigants fall below certain income requirements before they are eligible for free
293 interpreter services, even in criminal cases.³⁵ The denial of a court-appointed interpreter in
294 each of these instances undermines the provision of necessary interpretation that is
295 independent, professional, accurate, and free. Attention has focused on the need for courts to
296 provide language access services precisely because, without court control and funding, services
297 are inadequate or non-existent, presenting a barrier to access to justice to LEP individuals
298 purely on the basis of their lack of English proficiency.³⁶ The detail and complexity of the
299 relevant issues presented in these *Standards* underscores the imperative for court
300 responsibility and control and is one of the main reasons the ABA has devoted resources to
301 clarify the language access requirements courts should address.

302 The right to an interpreter in criminal cases has been confirmed at the highest level of the
303 judiciary. In *Marino v. Ragen*, the U.S. Supreme Court held that the failure to appoint a neutral
304 interpreter denied a criminal defendant who did not understand English “the due process of
305 law which the Fourteenth Amendment requires,” and reversed a conviction entered after a
306 guilty plea.³⁷ Moreover, every federal court of appeals to address the question has recognized
307 the constitutional issues raised by the failure to provide an interpreter for an LEP person whose
308 rights were to be determined at a trial.³⁸ For example, the First Circuit has explained that the

³⁴ *State v. Rodriguez*, 635 So. 2d 391 (La. Ct. App. 1994) (holding that 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)

³⁵ *Arrieta v. State*, 878 N.E.2d 1238 (Ind. 2008) (distinguishing between interpretation for the benefit of the defendant and interpretation for the benefit of the court, and holding that LEP defendant was not entitled to the appointment of an interpreter for his benefit at the government's expense, where defendant did not present evidence of indigency).

³⁶ One of the reasons underlying a denial of services is the belief that LEP individuals should simply learn English. Many LEP persons do not have access to English language instruction because of poverty, work and family responsibilities. In addition, studies on language acquisition reveal that many factors influence the ability of an individual to learn a language. In some instances, due to age, trauma, and other cognitive impairments, it may be impossible for a non-native speaker of English to learn English sufficiently well to understand and participate in a legal proceeding. See *Language Acquisition in Relation to Cumulative Posttraumatic Stress Disorder Symptom Load over Time in a Sample of Resettled Refugees*, Söndergaard and Theorell, 73 *Psychotherapy and Psychosomatics* (2004) at 320–323.

³⁷ *Marino v. Ragen*, 332 U.S. 561, 562 (1947)(per curiam).

³⁸ *United States v. Edouard*, 485 F.3d 1324, 1338 (11th Cir. 2007) (noting that 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 his 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) (holding 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

309 constitutional right to an interpreter in criminal proceedings “rests most fundamentally . . . on
310 the notion that no defendant should face the Kafkaesque spectre of an incomprehensible ritual
311 which may terminate in punishment.”³⁹ The Second Circuit also pointed out that proceeding in
312 the absence of an interpreter “lacked the basic and fundamental fairness required by the due
313 process clause of the Fourteenth Amendment.”⁴⁰

314 Courts across the country have made similar determinations in connection with the Fifth
315 Amendment right to a fair trial and the Sixth Amendment right to counsel and confrontation.⁴¹
316 The constitutional guarantees of the right to be confronted with adverse witnesses and to
317 cross-examine those witnesses all support the requirement of interpreter services where a
318 defendant and the court do not share a common language. In *State v. Gonzales-Morales*, the
319 court held that the defendant’s right to an interpreter rested upon the “Sixth Amendment
320 constitutional right to confront witnesses and the right inherent in a fair trial to be present at
321 one’s own trial.”⁴² As the Second Circuit has stated, “[i]t is axiomatic that the Sixth
322 Amendment’s guarantee of a right to be confronted with adverse witnesses, now also
323 applicable to the states through the Fourteenth Amendment . . . includes the right to cross-
324 examine those witnesses.”⁴³

325 Many of these principles generally support the provision of interpreter services in civil matters.
326 Federal and state cases have recognized that interpreters are necessary to ensure meaningful
327 participation. While not always holding that civil litigants are entitled to an interpreter under
328 the U.S. Constitution, courts have found such a right in a limited number of circumstances.⁴⁴ In
329 *Augustin v. Sava*, a political asylum proceeding, the Second Circuit held that the “[t]he very
330 essence of due process is a meaningful opportunity to be heard”⁴⁵ and that the “absence of
331 adequate translation” denied the refugee his procedural rights.⁴⁶ In *Lizotte v. Johnson*, a case

clause of the Fourteenth Amendment”); *Cervantes v. Cox*, 350 F.2d 855, 855 (10th Cir. 1965) (noting that Sixth Amendment right to counsel may be denied where the defendant is unable to communicate with counsel).

³⁹ *Carrion*, 488 F.2d at 14.

⁴⁰ *Negron*, 434 F.2d at 389.

⁴¹ See *United States v. Sanchez*, 483 F.2d 1052, 1057 (2d Cir. 1971); *State v. Natividad*, 526 P.2d 730, 733 (Ariz. 1974); *People v. Romero*, 187 P.3d 56, 73-74 (Cal. 2008); *Arrieta*, 878 N.E.2d at 1243-44; *Rodriguez*, 633 N.Y.S.2d at 680; *People v. Robles*, 614 N.Y.S.2d 1 (App. Div. 1994), *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).

⁴² *State v. Gonzales-Morales*, 979 P.2d 826, 828 (Wash. 1999) (internal quotations omitted); see also *Chao v. State*, 604 A.2d 1351, 1362 (Del. 1992) (holding that a defendant has a right to a court-appointed interpreter, where the trial court is put on notice that an indigent defendant may have obvious and significant difficulty with the language).

⁴³ *Negron*, 434 F.2d at 389.

⁴⁴ *Jara v. Municipal Court*, 21 Cal.3d 181 (1978) (stating that generally there is not a constitutional right to an interpreter in civil matters).

⁴⁵ *Augustin v. Sava*, 735 F.2d 32, 37 (2d Cir. 1984).

⁴⁶ *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,

332 involving foster care benefits payments, the New York Supreme Court held that “the failure to
333 provide adequate translation services . . . deprived petitioner of fundamental due process.”⁴⁷ In
334 *Figueroa v. Doherty*, a case involving unemployment benefits, the Appellate Court of Illinois
335 found that “[t]he failure to provide a competent translation of all proceedings deprived [the
336 claimant] of his right to a fair hearing that he understood and at which he would be
337 understood.”⁴⁸

338 The right to an interpreter in civil cases has also been established in many states by statute.⁴⁹ A
339 2009 report by the Brennan Center for Justice at New York University School of Law reported an
340 increasing number of states requiring the appointment of an interpreter in all civil cases.⁵⁰ In
341 passing such statutes, states have reaffirmed the important rights at stake in civil proceedings
342 which adjudicate critical legal matters such as protection from abuse, child custody and
343 support; dependency; termination of parental rights; eviction; and eligibility for unemployment
344 compensation, worker’s compensation, and public benefits.⁵¹

345 Title VI of the Civil Rights Act of 1964

346 In addition to the constitutional protections and statutory provisions described above, the
347 obligation to provide language access services flow from the nondiscrimination provisions of
348 Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, *et seq.* (Title VI), which applies to all

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”).

⁴⁷ *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.”).

⁴⁸ *Figueroa v. Doherty*, 707 N.E.2d 654, 659 (Ill. App. Ct. 1999).

⁴⁹ 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.

⁵⁰ 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).

⁵¹ For example, Oregon provides for the appointment of an interpreter for LEP persons in all civil cases. Or. Rev. Stat. § 45.272 *et seq.* (Interpreters; appointment of interpreters for non-English speaking party or witness).

349 courts that receive federal financial assistance.⁵² In a 1963 national address prior to the
350 enactment of the Civil Rights Act, President John F. Kennedy stated that “simple justice requires
351 that public funds, to which all taxpayers of all races contribute, not be spent in any fashion
352 which encourages, entrenches, subsidizes, or results in racial discrimination.”⁵³

353 Section 601 of Title VI provides that no person shall “on the ground of race, color, or national
354 origin, be excluded from participation in, be denied the benefits of, or be subjected to
355 discrimination under any program or activity receiving Federal financial assistance.”⁵⁴ Section
356 602 of the Act provides that “[e]ach Federal department and agency which is empowered to
357 extend Federal financial assistance . . . is authorized and directed to effectuate the provisions of
358 section 2000d of this title . . . by issuing rules, regulations, or orders of general applicability
359 which shall be consistent with achievement of the objectives of the statute authorizing the
360 financial assistance in connection with which the action is taken.”⁵⁵ Department of Justice
361 regulations implementing Section 602 forbid recipients of federal financial assistance from
362 “utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals
363 to discrimination because of their race, color, or national origin, or have the effect of defeating
364 or substantially impairing accomplishment of the objectives of the program as respects
365 individuals of a particular race, color, or national origin.”⁵⁶ It has long been established that the
366 federal government has the “power to fix the terms on which its money allotments to the
367 states shall be disbursed.”⁵⁷

368 Executive Order 12250 (EO 12250)⁵⁸ charges the Department of Justice with ensuring the
369 consistent and effective implementation of Title VI and delegates the power vested in the

⁵² Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d-1 (2006). For more information on determining if an entity is a recipient of federal financial assistance, see DOJ Civil Rights Division, <http://www.justice.gov/crt/about/cor/federalfundingsources.php> (last visited Apr. 18, 2011) (links to searchable databases for federal financial assistance awards); DOJ Federal Agency/Recipient Overlap Chart, <http://www.justice.gov/crt/about/cor/Federal%20Agency-Recipient%20Chart.pdf> (last visited Apr. 18, 2011); Catalog of Federal Domestic Assistance, <https://www.cfda.gov/> (last visited Apr. 18, 2011); 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.”).

⁵³ *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).

⁵⁴ 42 U.S.C. § 2000d

⁵⁵ 42 U.S.C. § 2000d-1.

⁵⁶ 28 C.F.R. § 42.104(b)(2) (2010).

⁵⁷ *Oklahoma v. United States Civil Service Comm’n*, 330 U.S. 127, 142-43 (1947).

⁵⁸ Exec. Order 12,250, 45 Fed. Reg. 72, 995 (Nov. 2, 1980), <http://www.archives.gov/federal-register/codification/executive-order/12250.html>.

370 President of the United States, pursuant to Section 602—relating to the approval of rules,
371 regulations, and orders of general applicability—to the Attorney General. EO 12250 also gives
372 the Attorney General the task of coordinating the implementation and enforcement of the
373 nondiscrimination provisions of Title VI. The Attorney General’s role in enforcing Title VI
374 disparate impact regulations has become critical since 2001 when the Supreme Court ruled in
375 *Alexander v. Sandoval* that there is no private right of action to enforce the disparate impact
376 regulations promulgated under Title VI.⁵⁹ In 2009, addressing concerns over enforcement post-
377 *Sandoval*, Acting Assistant Attorney General Loretta King stated that, because “victims can only
378 turn to the administrative complaint process . . . agencies must be particularly vigilant in
379 ensuring strong enforcement in this area.”⁶⁰

380 The principle of non-discrimination in the provision of services was extended to federal
381 agencies themselves on August 16, 2000, when President Clinton signed Executive Order 13166.
382 The order directed “each federal agency [to] develop and implement a system by which LEP
383 persons can meaningfully access [the agency's] services”⁶¹ and asked each agency providing
384 federal financial assistance to devise plans on how they will serve LEP persons in their own
385 operations and to issue guidance to recipients of such assistance on their legal obligations to
386 take reasonable steps to ensure meaningful access for LEP persons under the national origin
387 nondiscrimination provisions of Title VI of the Civil Rights Act of 1964 and implementing
388 regulations.⁶² EO 13166 also directs federal agencies to publish guidance on how both they and
389 the recipients of their financial assistance can provide meaningful access to LEP persons.⁶³

390 Pursuant to Executive Order 13166, the Department of Justice issued “*Enforcement of Title VI of*
391 *the Civil Rights Act of 1964 – National Origin Discrimination Against Persons with Limited*
392 *English Proficiency*” (*DOJ LEP Guidance*) in 2000, followed by amended *Guidance* in 2001 and
393 2002.⁶⁴ The purpose of the *DOJ LEP Guidance* is to assist recipients of federal financial
394 assistance in fulfilling their responsibilities to provide meaningful access to LEP persons under

⁵⁹ *Alexander v. Sandoval*, 532 U.S. 275, 293 (2001) (holding that there is no private right of action to enforce Title VI disparate impact regulations, and that only the funding agency issuing the disparate impact regulation has the authority to challenge a recipient’s actions under this theory of discrimination).

⁶⁰ Memorandum from Loretta King, Acting Assistant Attorney General, to Federal Agency Civil Rights Directors and General Counsel 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.

⁶¹ Exec. Order 13,166, 65 Fed. Reg. 50,121 (Aug. 16, 2000), <http://www.lep.gov/13166/eolep.pdf>

⁶² *Id.*

⁶³ *Id.*

⁶⁴ Enforcement of Title VI of the Civil Rights Act of 1964 – National Origin Discrimination Against Persons with Limited English Proficiency. 65 Fed. Reg. 50,123 (Aug. 16, 2000), Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 66 Fed. Reg. 3834 (Jan. 16, 2001). See also Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Person, 67 Fed. Reg. 41,455 (June 18, 2002) [hereinafter *DOJ LEP Guidance*].

395 Title VI and “to suggest a balance that ensures meaningful access by LEP persons to critical
396 services while not imposing undue burdens on small business, small local governments, or small
397 nonprofits.”⁶⁵ The *DOJ LEP Guidance* states, “the starting point is an individualized assessment
398 that balances the following four factors: (1) The number or proportion of LEP persons; (2) the
399 frequency with which LEP individuals come into contact with the program; (3) the nature and
400 importance of the program, activity, or service provided by the program to people’s lives; and
401 (4) the resources available to the grantee/recipient and costs.”⁶⁶

402 While the *DOJ LEP Guidance* is not a regulation, it is intended as a guide that recipients of
403 federal financial assistance may use to comply with statutory and regulatory obligations.⁶⁷ The
404 Department has also issued subsequent opinion letters in 2003, 2009, and 2010 to provide
405 information about the need for appropriate language access services in the court setting.⁶⁸ The
406 *DOJ LEP Guidance* and opinion letters also serve as a measure by which the Department can
407 address and evaluate complaints filed by individuals who allege that interpreter and translation
408 services are not being provided consistent with federal law. While these complaints can lead to
409 the withdrawal of funds, the Department of Justice has generally been able to resolve issues
410 leading to the complaints with an agreement by the agency or court to provide appropriate
411 language access services.⁶⁹

412 The *DOJ LEP Guidance*, memoranda, opinion letters, and legal briefs are cited throughout these
413 *Standards*. The degree of deference accorded to these pronouncements, ranging from binding
414 to persuasive weight, depends on the formality of review and the authority under which the
415 rule was made.⁷⁰ In the case of agency guidelines, interpretations, and opinions, the Supreme

⁶⁵ *DOJ LEP Guidance*, *supra* note 66, at 41,459.

⁶⁶ *Id.* at 41,471 (“Application of the four-factor analysis requires recipient courts to ensure that LEP parties and witnesses receive competent language services, consistent with the four-factor analysis. At a minimum, every effort should be taken to ensure competent interpretation for LEP individuals during all hearings, trials, and motions during which LEP individuals must and/or may be present.”) For examples of the four-factor test applied to court settings, see *DOJ LEP Guidance*.

⁶⁷ *Id.* at 41,457 n.2.

⁶⁸ 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.

⁶⁹ 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.

⁷⁰ The degree of deference given depends on the nature of the document and whether external reviews are a part of the process. An agency’s memoranda, opinion letters, or legal briefs, while not warranting “*Chevron*-type deference” have been awarded a degree of deference in cases. For regulations, the controlling case is *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984) (holding that considerable weight should be accorded to executive department’s construction of statutory scheme it is entrusted to administer). See *Long Island Care at Home, Ltd. v. Coke*, 551 U.S. 158, 162 (2007) (finding third-party regulation was not a mere interpretive rule subject only to nonbinding *Skidmore* deference), *Christensen v. Harris County*, 529 U.S. 576, 587 (2000) (noting that agency’s interpretation of statute which is contained in opinion letters, policy statements,

416 Court has held that, “while not controlling upon the courts by reason of their authority, [they]
417 do constitute a body of experience and informed judgment to which courts and litigants may
418 properly resort for guidance. The weight of such a judgment in a particular case will depend
419 upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency
420 with earlier and later pronouncements, and all those factors which give it power to persuade
421 ...”⁷¹

422 These implementing regulations, agency guidance, and memoranda are often further
423 interpreted by the courts. In *Lau v. Nichols*, the U.S. Supreme Court interpreted agency
424 regulations and memoranda to hold that failing to take reasonable steps to ensure meaningful
425 access for LEP persons is a form of national origin discrimination prohibited by Title VI
426 regulations.⁷² In its ruling, the Supreme Court relied upon a memorandum issued by the
427 Department of Health, Education, and Welfare, Office for Civil Rights, to selected school
428 districts with students of national origin-minority groups.⁷³ The memorandum highlighted four
429 areas of concern in the services provided to “national origin-minority group children deficient in
430 English language skills.”⁷⁴ The memorandum also clarified the school district’s obligations
431 regarding language access pursuant to the Department’s regulations promulgated under Title
432 VI.⁷⁵

433 Other federal laws also ban the discriminatory conduct prohibited by Title VI. Regarding access
434 to federally funded state courts, the *Omnibus Crime Control and Safe Streets Act of 1968* (Safe
435 Streets Act) prohibits national origin discrimination by recipients of federal financial
436 assistance.⁷⁶ Regulations implementing the Safe Streets Act further prohibit recipients from

agency manuals, or enforcement guidelines, all of which lack force of law, do not warrant *Chevron*-style deference); *United States v. Mead Corp.*, 533 U.S. 218, 226-27 (2001); *Auer v. Robbins*, 519 U.S. 452 (1997); (noting that fact that Secretary of Labor’s interpretation of regulation came to Supreme Court in form of legal brief did not compel finding that interpretation was unworthy of deference, where Secretary’s position was not post hoc rationalization advanced to defend past action by Secretary against attack, and there was no reason to suspect that interpretation did not reflect Secretary’s fair and considered judgment on matter in question); *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944) (holding in applying Fair Labor Standards Act, that weight to be given by court to administrator’s ruling is dependent upon thoroughness evident in its consideration, validity of its reasoning, and its consistency with earlier and later pronouncements).

⁷¹ *Skidmore*, 323 U.S. at 140.

⁷² 414 U.S. at 567-69.

⁷³ The regulations referred to in *Lau* were promulgated by 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 LEP students a meaningful opportunity to participate in public educational program in violation of Civil Rights Act of 1964. *Id.* at 567.

⁷⁴ Identification of Discrimination and Denial of Services on the Basis of National Origin, 35 Fed. Reg. 11595, at 11595 (July 18, 1970).

⁷⁵ 45 C.F.R. Part 80.

⁷⁶ Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. § 3789d (2006).

437 administering programs in a manner that has the effect of subjecting individuals to
438 discrimination based on their national origin.⁷⁷ Notwithstanding any state statutory language
439 that may state a contrary position, where a court is a recipient of federal financial assistance,
440 language access services must be provided in a manner consistent with requirements under
441 Title VI and the Safe Streets Act.

442 Integrity of the Judicial Process

443 The provision of language access services is not for the sole benefit of the LEP person.
444 Competent and timely language access services also support the administration of justice by
445 ensuring the integrity of the fact-finding process, accuracy of court records, and efficiency in
446 legal proceedings. The Second Circuit noted the connection between the constitutional
447 protections and both “considerations of fairness” and “the integrity of the fact-finding
448 process.”⁷⁸ If the fact-finder – whether jury or judge – is to make an accurate determination of
449 the facts, the court must rely upon an interpreter, as an officer of the court, to ensure accurate
450 communication with an LEP person in the course of adjudicating the matter.

451 Principle of Fairness

452 The fundamental principle of fairness requires that individuals who are LEP have access to the
453 full spectrum of court services⁷⁹ in a language they understand and to the same extent as their
454 English-speaking counterparts. The principle of equal treatment under the law is a cornerstone
455 of the U.S. judicial system and the legitimacy of the justice system depends upon it. In order for
456 a court system to be open and accessible to individuals who are not proficient in English,
457 language access services, through the use of qualified interpreters and translated materials, are
458 vital. This is true for all courts, regardless of whether the court is a recipient of federal financial
459 assistance subject to Title VI. Language access services do not give LEP persons any advantage
460 over English speakers; they are simply necessary to achieve a fair process in which LEP persons
461 are placed on an equal footing.

462 Access to Justice

463 The principle of access to justice supports the provision of language access services in all court
464 settings, including legal proceedings and services outside the courtroom. Many individuals

⁷⁷ See 28 C.F.R. §§ 42.104(b)(2), 42.203(e); see also 42 U.S.C. § 3789d(c).

⁷⁸ *Negron*, 434 F.2d at 389.

⁷⁹ Court services include the full range of court functions, including legal proceedings and other court-operated or court-managed offices with points of public contact. Examples of such offices, operations, and programs 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 that are operated or managed by courts.

465 come into contact with the court system to gather information about their legal rights and
466 responsibilities, to protect important rights, to participate in court-mandated or court-offered
467 programs, to benefit from mediation and other dispute resolution court-based programs, and
468 to seek out assistance from pro bono or self-help centers operated by the court. Meaningful
469 access at each of these points of contact is critical to achieving justice. A language barrier will
470 effectively close the courthouse doors to LEP persons.

471

472 **STANDARD 2 MEANINGFUL ACCESS**

473 **2. Courts should ensure that persons with limited English proficiency have meaningful access** 474 **to all the services, including language access services, provided by the court.**

475 To ensure meaningful access for LEP persons, courts must implement all of the services covered
476 in these *Standards*. *Standard 2.1* directs courts to promulgate rules to ensure that services are
477 clearly described and are enforceable. *Standard 2.2* provides a detailed description of how
478 courts can provide notice of the availability of language access services. *Standard 2.3* explains
479 the requirement that services be provided free of charge, and *Standard 2.4* describes the steps
480 a court should take to ensure that services are timely.

481

482 **2.1 Courts should promulgate, or support the promulgation of, rules that are enforceable** 483 **in proceedings and binding upon staff, to implement these *Standards*.**

484 Courts' obligation to provide language access have been described in case law as well as in
485 statutes, regulations, and guidance, yet clear and effective implementation of language access
486 services requires the promulgation of comprehensive, clear, and enforceable court rules or
487 administrative orders. This *Standard* recognizes that variation in court administrative structures
488 may necessitate the promulgation of rules by courts, legislatures, or other administrative
489 bodies. The purpose of rules of court is to provide necessary governance of court procedures
490 and practice and to promote justice by establishing a fair and expeditious process. Such rules
491 are useful, whether or not they are supported by current state statute or regulation; they
492 simplify and clarify court obligations, guide those implementing the adjudicatory process, and
493 provide additional mechanisms for enforcement by affected individuals.

494 While many states have some court rules regarding provision of interpreters,⁸⁰ comprehensive
495 model rules need to be developed to ensure that all the services described in these *Standards*
496 are adequately covered. Rather than undertake this effort on an individual basis, courts should
497 work with national agencies such as the National Center for State Courts to adopt a thorough
498 set of court rules regarding language access. Courts should also encourage the adoption of
499 legislative measures, where helpful to implement these *Standards*, and seek adequate funding
500 to implement their language access obligations.

501

502 **2.2 Courts should provide notice of the availability of language access services to all**
503 **persons in a language that they understand.**

504 Knowledge about the availability of language access services is crucial to the ability of LEP
505 persons to exercise their right to request services and promotes the efficient functioning of the
506 court. Courts are required under the *DOJ LEP Guidance* to provide this notice in a language that
507 all persons understand, taking into account the appropriate method to provide the information.

508 Notice to Whom and in Which Languages

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

513 Courts should also provide notice to LEP persons of the availability of the language access
514 services in a language that they understand. Using the most recent language data for their
515 service area,⁸¹ courts should provide *written* notice in the most common languages spoken⁸²
516 and should establish procedures for providing *oral* notice to individuals who speak languages
517 that are less common. This same language needs assessment information should be used to
518 determine when notices in alternate formats, including video and tape recordings for persons
519 with low-literacy in their primary language, should be provided in other languages.

⁸⁰ 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”).

⁸¹ 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.

⁸² For more information on procedures for translation, see *Standard 7*.

520 Notice about Available Language Access Services

521 The content of the notification is as important as the language and manner in which it is
522 communicated. To be meaningful, the notice must be sufficiently detailed, describing the
523 available language services, who is eligible to receive them, methods for obtaining the services,
524 and that the services will be provided in a timely manner and free of charge. The notice should
525 also include how to file a complaint about inadequate language access services, including issues
526 of poor quality, limited availability, and denial of services. Notification about the complaint
527 process should contain both internal procedures for filing a complaint as well as the contact
528 information for the Department of Justice, Civil Rights Division, and any other entity or official
529 exercising oversight.⁸³

530 In addition to notifying LEP persons about the availability of language access services,
531 translated notices can assist the courts in identifying the language spoken by the individual.
532 The multilingual poster developed by the Social Security Administration,⁸⁴ and to a lesser
533 degree, the “Language Identification Flashcard” developed by the U.S. Census Bureau,⁸⁵ are
534 examples of free and efficient ways to both simultaneously communicate the availability of
535 language access services and to identify an individual’s language needs in one document.⁸⁶ A
536 thorough and complete notice should be identified or developed, translated into as many
537 languages spoken in the state as possible, and distributed to courts within the state court
538 system. The National Center for State Courts and other national entities working in this area are
539 encouraged to assist in the development and national distribution of resources such as the
540 detailed notice form described here.⁸⁷

⁸³ For information on filing a complaint, see <http://www.justice.gov/crt/complaint/index.php#five> (last visited Apr. 18, 2011).

⁸⁴ Social Security Administration, Multilingual Poster, http://www.ssa.gov/multilanguage/20x32Poster8_13_03.pdf (last visited Apr. 18, 2011); see also Massachusetts Legal Services, Multilingual Interpreter Rights and Requests for Help Posters and Card, http://www.masslegalservices.org/docs/5948_You_have_a_right_to_an_interpreter_poster_20060130.pdf (last visited Apr. 18, 2011) (“You have a right to an interpreter at no cost to you. Please point to your language. An interpreter will be called. Please wait.”). This notice is translated into 32 languages. The content of this notice could be expanded to include all of the areas of required notification highlighted in this *Standard*.

⁸⁵ U.S. Census Bureau “Language Identification Flashcard” (commonly referred to as “I-Speak”) cards are available electronically at <http://www.lep.gov/ISpeakCards2004.pdf>. See also, Community Partners, “I Speak” cards, used by community healthcare organizations to distribute to LEP persons. The business size card identifies the persons language and requests an interpreter, at http://www.compartners.org/pdf/forms/i_speak_card.pdf

⁸⁶ 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.

⁸⁷ The ABA supports efforts by the Consortium and COSCA to develop such resources at the national level.

541 Notice at All Points of Contact with the Court

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

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

557 Outreach materials containing information about court programs and other important court
558 information that are routinely provided in English should be available in the languages most
559 commonly spoken in the jurisdiction. Outreach to traditionally underserved communities
560 should be designed to increase awareness of court programs and help to eliminate perceived
561 language barriers to access to courts.⁸⁸ If the court uses telephonic recordings in English to
562 communicate with the public, the court should add additional language-specific recordings
563 describing both the court services and the language access services for LEP persons. Benefits of
564 a comprehensive notice and outreach program include increased access for LEP persons,
565 reduced need for bilingual staff to answer questions at a front counter, and reduced need for
566 staff to use telephonic interpreter services to answer frequently asked questions, thereby
567 conserving court resources.

568

569 **2.3 Courts should provide language access services without charge.**

570 Providing language access services free of charge is fundamental to an open and fair justice
571 system. Any imposition of court costs on individuals in need of language access services may
572 discourage the request for needed services and therefore impair an LEP individual’s
573 participation in the proceeding and the court’s ability to accurately determine the facts. When a

⁸⁸ See NCSC, Trust and Confidence in the California Courts: A survey of the Public and Attorneys 21 (2005).

574 court has determined that language access services are necessary, it should make them
575 available free of charge.⁸⁹ Legal proceedings are among the most important activities
576 conducted by recipients of federal financial assistance, and the provision of interpreter services
577 should include arrangement for and payment of those services at no cost to the persons
578 involved.⁹⁰

579 The challenge of operating a court under a limited budget is considerable; however, the
580 Department of Justice has pointed out that language access services should be “treated as a
581 basic and essential operating expense” and that “[b]udgeting adequate funds to ensure
582 language access is fundamental to the business of the courts.”⁹¹ Both the obligation to provide
583 meaningful access pursuant to Title VI and the fundamental principle of access to justice do not
584 allow a court to impose the cost of interpreter services upon a party or limit the provision of
585 free interpreter services to specific case types. State laws to the contrary are superseded by
586 these requirements. In state courts where the current practice includes an *In forma pauperis*
587 (IFP) standard to qualify for free interpreter services, those practices must be changed to
588 comply with applicable federal law.⁹²

589

590 **2.4 Courts should provide language access services in a timely manner.**

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

595 The *Department of Justice LEP Guidance* recognizes that “to be meaningfully effective, language
596 assistance should be timely.”⁹³ To be considered timely, language access services “should be
597 provided at a time and place that avoids the effective denial of the service, benefit, or right at
598 issue or the imposition of an undue burden on or delay in important rights, benefits or services
599 to the LEP person.”⁹⁴ While there is no single definition of “timely” for all interactions with
600 courts and court services, conduct which results in delays for LEP persons that are significantly
601 greater than those for English-speaking persons or materially interferes with the parties’

⁸⁹ 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”].

⁹⁰ *Id.*

⁹¹ *Id.* at 3.

⁹² 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.

⁹³ *DOJ LEP Guidance, supra* note 66, at 41,461.

⁹⁴ *Id.*

602 preparation for a proceeding, application, or petition violates the court’s obligation to provide
603 language access services in a timely manner.

604 The definition of “timely” also depends in part on the urgency of the proceeding, service,
605 benefit, or right at issue. Timely access to a certified interpreter for an LEP domestic violence
606 victim seeking an ex parte order of protection, with a potential risk of serious harm from any
607 delay, requires that the interpreter be available to ensure the same access to the court’s legal
608 remedies as that provided to English speakers. Courts must develop methods to obtain such
609 language access services quickly and balance the need for in-person interpreters against the
610 convenience of telephonic, video remote services, or other technology.⁹⁵

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

622

623 **STANDARD 3 IDENTIFYING LEP PERSONS**

624 **3. Courts should develop procedures to gather comprehensive data on language access** 625 **needs, identify persons in need of services, and document the need in court records.**

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

⁹⁵ For more information on video remote interpreting, see *Standard 4.3*.

633

634 **3.1 Courts should gather comprehensive language access data as well as individualized**
635 **language access data at the earliest point of contact.**

636 Comprehensive Data

637 Courts should develop appropriate data gathering tools to anticipate and determine language
638 access service needs. The *DOJ LEP Guidance* recommends that recipients analyze prior
639 experiences or encounters with LEP persons in addition to other sources of data, including
640 school systems, community organizations, and local governments.⁹⁶ The *COSCA White Paper*
641 *on Court Interpretation* also emphasizes the need for data stating that “the National Center for
642 State Courts and the States should explore and support methods to better identify and track
643 needs for interpreters – in individual cases and overall, including identification of languages for
644 which interpretation is needed, frequency of interpreter use, and types of cases in which
645 interpretation is required.”⁹⁷ These data can be used to assist courts in making decisions about
646 hiring bilingual staff, developing appropriate interpreter pools, reaching out to community
647 organizations to develop additional language access services, and prioritizing additional
648 translations and other resources such as videos and online training.

649 Data gathering can be done internally through the use of systems that monitor trends in the
650 need for and provision of interpreter, bilingual staff, and translation services. This information
651 is needed to meet a court’s current language access needs and to assist in forecasting future
652 trends. Courts should monitor the scheduling and billing of both interpreters and bilingual staff,
653 broken down by language, type of proceeding, and location.⁹⁸ For this task, data on the
654 languages for which interpreters have been *requested* is just as important as data on languages
655 for which interpreters have been *provided*. Data on the availability and use of translations,
656 including the types of materials translated, should include alternatives to translation such as
657 online resources, video recordings, and oral tape-recordings. Additional internal surveys can
658 supplement automatic data gathering systems and should be conducted periodically, in a
659 manner that is consistent with any statewide language assistance plan.⁹⁹

⁹⁶ *DOJ LEP Guidance*, *supra* note 66, at 41,465.

⁹⁷ *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)[hereinafter “*COSCA White Paper*”].

⁹⁸ 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*.

⁹⁹ 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

660 External demographic data should be gathered by the court to supplement internal systems
661 and to help anticipate the language needs of individuals accessing the courts. External data
662 sources include national surveys, state agency demographic data, and community partners.
663 National data, including information from the U.S. Census Bureau and American Community
664 Survey (ACS), should be consulted as it becomes available.¹⁰⁰ In addition to these sources, local
665 governmental agencies, such as health and education departments,¹⁰¹ regularly compile
666 detailed demographic data. Courts should establish mechanisms to coordinate with groups to
667 regularly obtain such data for evaluating language access needs.

668 Individualized Data

669 Courts should develop tools to track and respond to the individual language needs of the LEP
670 persons accessing the courts. Individuals often need to access the court in advance of filing a
671 case, during an ongoing matter, or after the conclusion of a legal proceeding. These encounters
672 may occur at the clerk’s office, an information counter, self-help centers, or other places where
673 the court provides information to the public. In addition, because the need for language access
674 services may develop later in the court process, a comprehensive system for identifying
675 language needs must be able to incorporate language access information throughout the
676 duration of the case. Identifying the needs of LEP persons accessing the court for information-
677 gathering purposes, and tracking that information in a formal way, will assist courts in
678 determining appropriate staffing needs and resource allocation.

679 Courts should incorporate the individualized language needs of LEP persons they encounter
680 into the intake or case management system by asking about the language needs of any litigant,
681 witness, person with legal decision-making authority, and person with a significant interest in
682 the matter.¹⁰² Courts can do this by creating a form to request interpreter services on the initial
683 filing with the court. Courts should avoid requesting or compiling individualized information
684 that may inhibit requests for language access services, such as information or documents
685 potentially reflecting immigration status (i.e., green cards, work permits and social security

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).

¹⁰⁰ 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).

¹⁰¹ 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.

¹⁰² A discussion of each of these categories of individuals is provided in *Standard 4*.

686 numbers). This type of information is irrelevant to determine language access needs and
687 potentially erects a barrier to the courts. Courts should also gather this data from external
688 agencies and court-appointed professionals who may be the first point of contact for an LEP
689 person’s interaction with the court system. Law enforcement officers, jail personnel,
690 prosecutors, court-appointed defense counsel, child protective services staff, domestic violence
691 advocates, guardians ad litem, and treatment providers should identify the language access
692 needs of LEP persons they serve and communicate that information to the court. Courts should
693 develop mechanisms and procedures to allow communication among these groups and should
694 review and modify current documentation systems where necessary.

695 Once the data are gathered, courts must manage and organize the data in an efficient way to
696 determine what services are needed and how to provide them. The following information
697 should be documented: (1) the nature of the legal proceeding or event for which an interpreter
698 is needed;¹⁰³ (2) the location, time frame, and duration of each event; (3) the estimated
699 number of interpreters needed in the matter;¹⁰⁴ (4) any conflicts of interest of interpreters; (5)
700 the names of interpreters (including contact information) assigned to each interpreting event;
701 (6) identification of other individuals involved in the case, including attorneys and court-
702 appointed professionals;¹⁰⁵ and, (7) a system to prioritize or flag a case where there are a
703 limited number of interpreters in the particular language needed since this may require special
704 scheduling considerations.

705 The primary method courts use to track court records and information is a case management
706 system (CMS). Many courts use an electronic CMS; however, some continue to rely on manual
707 files. The extent to which a court must modify its system to meet this standard depends on the
708 level of detail it currently captures. Where a court’s current case management system does not
709 gather the information identified above, the court should modify it or develop additional
710 procedures—including forms or online tracking mechanisms—to track the information
711 comprehensively. Where a court uses a manual case management system, procedures such as
712 color coded files and additional forms should be used. Whether electronic or manual, the
713 documentation systems used by a court should be reviewed to ensure that they gather
714 information in the detailed and comprehensive format outlined above and that the system for

¹⁰³ 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.

¹⁰⁴ 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.

¹⁰⁵ 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.

715 communicating the language access needs of LEP individuals covers all court and court-related
716 services.

717 The case management system in King County Superior Court (KCSC), in Seattle, Washington,
718 illustrates the benefit for courts in using a comprehensive approach. The KCSC Interpreter
719 Services Program’s electronic case management system¹⁰⁶ uses a sophisticated database with
720 all the seven elements listed above in addition to some particularly useful features such as a
721 drop down list for languages¹⁰⁷ and for each person’s role in the case¹⁰⁸ along with a list of all
722 interpreting event locations, including all courtrooms, court-affiliated programs, and out-of-
723 court locations.¹⁰⁹ Reporting and scheduling functions allow case information to be transferred
724 to the scheduling component within the CMS where all essential information is displayed.¹¹⁰
725 The schedule can be sorted by language, location, case type or any combination of those views,
726 creating an instantaneous reporting and documentation system for the court. In addition, the
727 schedule can be sorted by interpreter and sent electronically to each interpreter, with any
728 necessary notes or scheduling reminders included. The CMS also creates reports regarding the
729 frequency of interpreter encounters by language, case type, and settings outside the courtroom
730 to assist courts in evaluating the need for additional services.

731 Courts should be careful to ensure that case management systems include not just courtroom
732 services, but also settings outside of the courtroom where language access is needed.¹¹¹ Ideally,
733 language services at such settings should include the need for translated materials, the use of
734 bilingual staff at information counters, and access to telephonic interpreter services. A
735 documentation system that tracks the encounter rates for different languages can also assist

¹⁰⁶ Each individual is a unique “customer” within the system. Customers are then associated with different events within a case.

¹⁰⁷ Within the language tab, notes can be added to indicate the country of origin or to document specific language needs of an individual.

¹⁰⁸ The list of possible “roles” an individual can have within a particular case is very extensive and includes the following: advocate; agency (community rep); attorney for petitioner; defendant; respondent; case manager; child; co-defendant; commissioner; contact; co-petitioner; co-respondent (juvenile court); counselor; defendant; detective; doctor; evaluator; evictee; friend of defendant; friend of petitioner; friend of respondent; guardian; Guardian ad litem; investigator, adjudicator; juror; mother; other; paralegal; parent/guardian; petitioner; plaintiff; polygraph technician; probation counselor; prosecutor; prosecutor representative; psychologist; relative of defendant; relative of petitioner; relative of respondent; respondent; respondent (juvenile); school district representative; social worker; spouse; victim; witness (defense); witness (petitioner); witness (respondent); witness (by case type, including parent or child in an At Risk Youth Hearing); attorney; *in re*; and alleged incapacitated.

¹⁰⁹ 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.

¹¹⁰ 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

¹¹¹ These settings are discussed in *Standards 5, 6, and 7.*

736 the court in determining the need for services in languages for which neither bilingual staff nor
737 qualified in-person interpreters are available. This tracking can lead to cost-savings (such as the
738 translation of documents which must otherwise be sight translated by an interpreter)¹¹² which
739 might be overlooked when no monitoring occurs.

740

741 **3.2 Courts should ensure that persons with limited English proficiency may self-identify as**
742 **needing language access services.**

743 Courts should allow an LEP person to self-identify as needing services. When an individual or
744 his/her representative requests an interpreter, a judge or adjudicator should presume the need
745 is bona fide.¹¹³ This preference for self-identification recognizes that assessing language
746 proficiency is a difficult and intensive task that requires training in language acquisition and
747 language proficiency assessment – training not usually possessed by a judge or court personnel.
748 For example, a judge might be inclined to deny an interpreter for an individual after observing
749 him or her conversing with an attorney without the aid of an interpreter, or after observing the
750 individual following simple instructions such as “sit down.” Such a denial could be erroneous
751 because it incorrectly assumes that the ability to use English for simple communications and
752 rote statements (which are often memorized) is an indication of the language proficiency
753 necessary for the meaningful comprehension and effective communication that is required to
754 protect a person’s interest in a legal matter.

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

764 Furthermore, the importance of accuracy in legal proceedings outweighs any concern for abuse
765 of the system in those rare instances where an LEP person appears to be unnecessarily
766 requesting an interpreter. Legal proceedings can be confusing and intimidating even for an
767 individual who speaks English fluently; the potential for misunderstanding is more acute for one

¹¹² For more discussion of the efficient use of translation see *Standard 7*.

¹¹³ NCSC, *supra* note 8, at 126.

768 who does not.¹¹⁴ In addition to misunderstanding information due to the language barrier, LEP
769 persons from a country where legal systems and concepts vary substantially from those of the
770 United States may be further confused when an interpreter is not used. The failure to appoint
771 an interpreter when one has been requested not only impairs that person’s access to justice
772 but also can result in costs and inefficiencies to the court system in the form of appeals,
773 reversals, and remands.¹¹⁵

774

775 **3.3 Courts should establish a process that places an affirmative duty on judges and court**
776 **personnel to provide language access services if they or the finder of fact may be**
777 **unable to understand a person or if it appears that the person is not fluent in English.**

778 When LEP persons have been provided a thorough explanation of the availability of free
779 services and the benefits of communicating in their primary language, it is unusual for them to
780 decline the services. However, in some instances, misunderstanding of the complexity of the
781 proceedings, concerns about confidentiality, and fear of misinterpretation and discrimination
782 against non-English speakers may lead LEP persons to declare themselves “proficient” in English
783 and to decline services, resulting in the need for a judge to make an independent
784 determination. While these *Standards* use the term “proficient” in English to refer to the fact
785 that ability to speak a language exists across a range, from “limited” to “highly proficient,” the
786 term “fluent” is used here to emphasize that an individual whose English falls short of fluency
787 should be appointed an interpreter to ensure accuracy of the proceedings. If a judge has
788 concerns about the individual’s fluency in English, or is having difficulty understanding the
789 person’s spoken English, the judge should make an inquiry, on the record, by asking open-
790 ended questions such as:

- 791 • How did you come to court today?
792 • Please tell me about your country of origin.
793 • Describe for me some of the things or people you see in the courtroom.
794 • What is the purpose of your court hearing today?
795 • How did you learn English, and what is most difficult about communicating in English?

¹¹⁴ The U.S. census asks individuals who speak a language other than English at home to say whether they speak English “very well,” “well,” “not well,” or “not at all.” In 2000, 8.1 percent of respondents indicated they spoke English less than “very well;” a number that increased to 8.6 percent in the 2005 American Community Survey.

¹¹⁵ 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.”).

- 796 • Tell me a little bit about how comfortable you feel speaking and understanding
797 English.¹¹⁶

798 These open-ended questions are helpful in determining the need for an interpreter. If a court
799 chooses to use additional questions to those listed above to assess a person’s English fluency
800 and level of comfort using English, it is important to avoid questions that can be appropriately
801 answered with “yes” or “no” and to focus instead on questions that ask “what,” “where,”
802 “who,” and “when,” and call for describing people, places, or events.¹¹⁷ A person who is unable
803 to answer these questions is unable to communicate in English at the level minimally necessary
804 to comprehend even simple legal proceedings. The seriousness of the charges or consequences
805 or the complexity of the proceedings may require even greater proficiency. If the court cannot
806 understand the person’s responses to the questions asked, or the court anticipates that jurors
807 or other participants might not understand, or if the judge has any doubt about the ability of
808 the person to comprehend the proceedings fully or adequately to express him or herself, the
809 judge should appoint a certified or qualified interpreter.

810 If, after being fully advised of the right to language access services free of charge, the
811 importance of the proceeding, and the role of the interpreter (including a short description of
812 interpreter skills, ethical and confidentiality obligations) an LEP person declines these services
813 or is hesitant to use an interpreter, the judge should inquire into the LEP person’s reason to
814 determine if there are measures the court should take to remedy the concern. This
815 communication should be done through an interpreter.

816 In essence, the LEP person in this situation is attempting to waive the right to an interpreter;
817 this must be permitted only in documented circumstances that evidence “an intentional
818 relinquishment or abandonment of a known right.”¹¹⁸ For the waiver to be considered
819 “knowing,” an individual must understand that he or she has the right to an interpreter without
820 charge; passive acquiescence by way of silence or failure to affirmatively assert the right should
821 not be regarded as an “intentional relinquishment, that supports a valid waiver.”¹¹⁹
822 Understanding the right to an interpreter requires a full explanation of the availability of free
823 interpreter services, the role of the interpreter, and the advisability of testifying in one’s native

¹¹⁶ 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.

¹¹⁷ NCSC, *supra* note 8, at 126.

¹¹⁸ *Negron*, 434 F.2d at 390 (citing *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938)).

¹¹⁹ *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.”).

824 language, all of which must be communicated through an interpreter on the record. The court
825 should accept a waiver of the interpreter only upon a finding that it is a knowing waiver and
826 that the court is confident it can communicate effectively with the LEP person; such
827 circumstances should be carefully documented in the record.

828 In situations where the court itself is unable to understand the LEP person’s communication,
829 due to lack of proficiency in English or a strong accent, the judge should decline the waiver; the
830 interpreter is necessary to assist the court in understanding the individual’s testimony.¹²⁰ This
831 interpreter may not need to interpret all the proceedings but is in the courtroom and available
832 should the court not understand the spoken English of the person testifying.

833 In settings outside the courtroom, such as court services, court-mandated programs, and court-
834 offered programs, courts must also provide procedures for LEP persons to self-identify as LEP,
835 and require court personnel to offer language access services. Procedures for self-identification
836 as LEP in these settings should not be formulaic or overly prescriptive; simple awareness or
837 communication of the presence of a language barrier should trigger court personnel to offer
838 the appropriate language access services. This is especially true in those non-court settings
839 where the LEP person may not know services are available or may be embarrassed or afraid to
840 ask for them. The procedures above, including the voir dire questions, should be modified to fit
841 situations outside of the courtroom.

842

843 **STANDARD 4 INTERPRETER SERVICES IN LEGAL PROCEEDINGS**

844 **4. Courts should provide competent interpreter services throughout all legal proceedings to** 845 **persons with limited English proficiency.**

846 The delivery of appropriate language access services in legal proceedings¹²¹ depends upon the
847 provision of competent services provided by professional and well trained interpreters.¹²² The
848 following sections detail the requirements to provide interpreter services in all legal

¹²⁰ See, e.g., S.C. Code Ann. § 15-27-155 (“[W]henver a party or witness to a civil legal proceeding does not sufficiently speak the English language to testify, the court may appoint a qualified interpreter to interpret the proceedings and the testimony of the party or witness. However, the court may waive the use of a qualified interpreter if the court finds that it is not necessary for the fulfillment of justice. The court must first make a finding on the record that the waiver of a qualified interpreter is in the best interest of the party or witness and that this action is in the best interest of justice.”).

¹²¹ See *Standard 5* for language access services in court services, and *Standard 6* for services in court-mandated or offered services.

¹²² See *Standard 8* for a full discussion of Interpreter skills and the necessary components of interpreter credentialing.

849 proceedings, to all persons eligible for services, in a manner that is best suited to the nature of
850 the proceeding, and consistent with the interpreter’s code of conduct.

851
852 **4.1 Courts should provide interpreters in the following: proceedings conducted within a**
853 **court; court-annexed proceedings; and proceedings handled by judges, magistrates,**
854 **masters, commissioners, hearing officers, arbitrators, mediators, and other decision-**
855 **makers.**

856 The terms “legal proceedings” and “courts” are broadly defined. Legal proceedings involve
857 important legal rights and benefits, whether they are adjudicated in a criminal or civil matter, in
858 problem-solving or therapeutic justice courts,¹²³ or in an administrative hearing. The provision
859 of interpreter services in all legal proceedings is supported by the fundamental principles of
860 fairness, access to justice, and integrity of the process and is required by federal law and many
861 state laws.¹²⁴

862
863 The Department of Justice *LEP Guidance* supports the broad definition of legal proceedings
864 stating that “every effort should be taken to ensure competent interpretation for LEP
865 individuals during all hearings, trials, and motions.”¹²⁵ DOJ provides a comprehensive list of
866 legal proceedings including “all court and court-annexed proceedings, whether civil, criminal, or
867 administrative including those presided over by non-judges”¹²⁶ as well as “[p]roceedings
868 handled by officials such as magistrates, masters, commissioners, hearing officers, arbitrators,
869 mediators, and other decision-makers.”¹²⁷

870
871 Courts that currently limit interpreter services by case type should end this practice and move
872 to expand the provision of interpreter services to all legal proceedings. The Department of
873 Justice recognizes that “it takes time to create systems that ensure competent interpretation in
874 all court proceedings and to build a qualified interpreter corps” but also warns that ten years
875 have passed since the issuance of Executive Order 13166 and the *DOJ LEP Guidance* and

¹²³ Specialty, problem-solving, or therapeutic justice courts include drug courts, mental health courts, family treatment courts, domestic violence courts, and courts that address the issues of homeless persons. See Challenges and Solutions to Implementing Problem Solving Courts from the Traditional Court Management Perspective (2008), at http://www.sji.gov/PDF/Problem_Solving_Courts-BJA3-31-08.pdf.

¹²⁴ For a more complete discussion of legal authority, see *Standard One*.

¹²⁵ *DOJ LEP Guidance*, *supra* note 66, at 41,471.

¹²⁶ Letter to Chief Justices and State Court Administrators, *supra* note 91, at 2.

¹²⁷ *Id.*

876 reminds courts that “[w]ith this passage of time, the need to show progress in providing all LEP
877 persons with meaningful access has increased.”¹²⁸

878
879 **4.2 Courts should provide interpreter services to persons with limited English proficiency**
880 **who are in court as litigants, witnesses, persons with legal decision-making authority,**
881 **and persons with a significant interest in the matter.**

882 While most courts are aware of the need to provide an interpreter to a litigant,¹²⁹ some do not
883 recognize that witnesses, persons with legal decision-making authority, and persons with a
884 significant interest in the matter are also persons whose presence or participation in a legal
885 proceeding may be “necessary or appropriate.”¹³⁰ Each of these persons has either information
886 to provide or a stake in the legal proceeding before the court, and the court should facilitate
887 their participation by providing language services.

888
889 Witnesses

890
891 As part of the exercise of their rights to present evidence in a legal proceeding, litigants may call
892 a witness who is limited English proficient; failure to provide an interpreter for the witness
893 would deny the litigant access to the court process and violate the Sixth Amendment
894 Confrontation Clause.¹³¹ In both criminal and civil matters, the court’s ability to rule on legal
895 questions, such as admissibility of evidence, depends on the court’s understanding the
896 testimony of the LEP witness, through the use of a competent interpreter. Where a court

¹²⁸ *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.”).

¹²⁹ See *Standard 1* for case law on the requirement to provide interpreter services to litigants. See also Thomas M. Fleming, *Right of Accused to Have Evidence or Court Proceedings Interpreted, Because Accused or Other Participant in Proceedings is Not Proficient in the Language Used*, 32 A.L.R. 5th 149 (1995) (“[The] well-established precept of due process is that non-English speaking defendants in criminal actions are entitled to an interpreter.” (citing *People v. Torres*, 772 N.Y.S.2d 125 (App. Div. 2004))); *In re Interest of Angelica L.*, 767 N.W. 2d 74 (Neb. 2009).

¹³⁰ “Courts should also provide language assistance to non-party LEP individuals whose presence or participation in a court matter is necessary or appropriate, including parents and guardians of minor victims of crime or of juveniles and family members involved in delinquency proceedings.” Letter to Chief Justices and State Court Administrators, at 2.

¹³¹ *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.)

897 conducts the proceeding without an interpreter, misunderstandings over the use of language
898 can lead to questions about the admissibility of evidence, accuracy of the testimony, and
899 character or veracity of the witness, and the resulting verdict may be challenged.

900

901 Persons with Legal Decision-Making Authority

902

903 Certain LEP persons who are not litigants or witnesses have legal decision-making authority
904 regarding the matter before the court. Such persons are also entitled to interpreter services
905 throughout the proceedings and for all interactions with the court. These include, but are not
906 limited to: parents or legal guardians of minor children where the child is involved in the matter
907 but where the parent or guardian is not a named party; parents and guardians of minor victims
908 of crime; guardians acting pursuant to their authority under guardianship of an incapacitated
909 individual; and guardians ad litem. LEP parents of a minor child involved in a juvenile action are
910 entitled to interpreter services throughout the legal proceeding and to communicate with
911 court-appointed counsel. In all these circumstances, the participation of these individuals is
912 necessary to effectuate their legal decision making authority and to protect the interest of the
913 individuals they represent.¹³²

914

915 Persons with a Significant Interest in the Matter

916

917 Finally, there are LEP persons who have a significant interest in a matter before the court, even
918 if they have no “legally recognized” interest at stake. Examples include non-testifying victims in
919 a criminal case, tenants in a public housing complex in a legal action that affects their tenancy,
920 members of a class action who are not lead plaintiffs, or family members of the victim or the
921 defendant in a trial for murder or other aggravated offense. The court should inquire whether
922 there are individuals in the courtroom who may be in need of interpreter services, and
923 determine whether their interest warrants provision of language services. That determination
924 should take into account the following factors: the relationship of the individual to the matter;
925 the seriousness of the matter; the impact of the outcome on the individual; and whether

¹³² *DOJ LEP Guidance*, at 41,459 (“Examples of populations likely to include LEP persons who are encountered and/or served by DOJ recipients and that should be considered when planning language services, include, but are not limited to: . . . [p]ersons who encounter the court system [and] [p]arents and family members of the above.”). *See also*, Letter to Chief Justices and State Court Administrators (referring to non-party LEP individuals whose presence or participation in a court matter is “necessary or appropriate,” including parents and guardians of minor victims of crime or juveniles and family members involved in delinquency proceedings).

926 interpretation is already being provided to another party in the proceeding and could be easily
927 transmitted with the use of available technology.¹³³

928
929 A review of these factors should be made on the record along with the resulting determination.
930 The presiding judge has discretion in making this initial determination; however, once the court
931 determines that an individual has a significant interest in the matter, competent interpreter
932 services must be provided. Meaningful access to the courts does not require courts to provide
933 free interpreter services to any LEP person who visits the courthouse to observe a case, but
934 does require provision of interpreter services for those persons deemed by the presiding judge
935 to have a significant interest in the matter.

936
937 **4.3 Courts should provide the most competent interpreter services in a manner that is**
938 **best suited to the nature of the proceeding.**

939 Courts should meet their obligation to provide competent interpreter services during all legal
940 proceedings through the use of staff court interpreters and contracted interpreters, who
941 appear either in-person or through the use of remote telephonic or video technology.¹³⁴ The
942 primary consideration for a court in appointing an interpreter for a legal proceeding should be
943 to appoint the most qualified¹³⁵ interpreter available in the most appropriate medium, taking
944 into account the urgency of the matter involved.

945
946 Current practices do not necessarily direct courts to select the most qualified interpreters. For
947 longer hearings, including trials, in-person interpreters are generally preferred, and often
948 required. Many jurisdictions allow only emergency hearings and non-evidentiary hearings to be
949 conducted through remote telephonic or video services, with the preference for in-person
950 interpreters codified in court rule or state statute.¹³⁶ This preference is based on the benefit of
951 seeing the body language and non-verbal communication of the testifying individual and on the
952 recognition that the technology available for remote interpreting has not always been adequate
953 to meet the needs of courts.¹³⁷ However, a preference for in-person interpreters can

¹³³ Interpreter services can often be provided without additional cost by use of headsets that allow the individual to hear the interpretation being provided for other courtroom participants. For more information on telephonic interpreting practices and equipment, see *NCSC Court Interpretation Model Guides* at 189.

¹³⁴ See, *COSCA White Paper*, at ___; *NCSC Court Interpretation Model Guides*, at ___. Interpreter competency is addressed fully in *Standard 8*.

¹³⁵ For a complete discussion of how to determine interpreter qualification, see *Standard 9*.

¹³⁶ 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.

¹³⁷ Inadequate telephone systems that do not allow for private communications between an LEP defendant and counsel, telephone speaker systems that result in garbled speech such that it impairs an interpreter's ability to

954 sometimes mean that a less qualified, or even unqualified, interpreter is used, and it can also
955 result in delayed proceedings.

956
957 With the increasing number of languages spoken across the U.S., courts should recognize that
958 in-person interpreter services may not be sufficient to meet the language needs of all LEP
959 persons in the court’s jurisdiction. Many courts and adjudicatory bodies now encounter LEP
960 persons who speak languages not previously served. In these instances, courts need to
961 ascertain if there are qualified in-person interpreters available to meet the language needs of
962 the LEP person, and if not, should identify qualified interpreters who are able to provide the
963 service remotely.

964
965 Courts, litigants, and interpreters all benefit from the appropriate use of remote interpreting
966 services. Courts pay only for the time spent in actual interpretation and reduce the money
967 spent to reimburse interpreters for traveling and for waiting for the matter to be called.
968 Litigants avoid delays in waiting to schedule an in-person interpreter. Both the court and the
969 litigant benefit from having access to certified or qualified remote interpreter services in
970 languages where there are no certified or qualified interpreters available in-person.
971 Interpreters are able to avoid sometimes stressful traffic and travel, schedule work more
972 efficiently, and interpret more assignments per day, allowing them to increase their income and
973 stay in the profession – a benefit to all involved.

974
975 Some courts are addressing the problem of insufficient in-person interpreters by developing
976 interpreter pools¹³⁸ of certified interpreters who are available by telephone or video. By
977 selecting the interpreters in the pool, the courts can hold them to the same qualification,
978 screening, and training standards as in-person interpreters.¹³⁹ It is important to distinguish this
979 kind of remote interpreter pool from services provided by telephonic interpreting agencies that
980 generally do not share information about the criteria they use to determine interpreter

render an equivalent message in the target language, and concerns about confidentiality, are all reasons cited for avoiding the use of telephonic interpreting in court proceedings. See National Association of Judiciary Interpreters, *Telephonic Interpreting in Legal Settings* (2009), <http://www.najit.org/publications/Telephone%20Interpreting.pdf> (last visited Apr. 19, 2011). Separate concerns are raised by remote *adjudication* practices which are further complicated when the defendant is LEP. The remote location of the interpreter and inadequate equipment can impair the defendant’s ability to participate in the hearing as well as the attorney’s ability to consult with the client. One solution is to establish a policy that courts will default to in-person appearance where an interpreter is required.

¹³⁸ For more information on the development of interpreter pools, see COSCA *White Paper*. One model program is that used by the Alaska Court System. See Alaska Court System, *Language Access Plan* (2010), <http://www.courts.alaska.gov/addinfo/langaccess.pdf> (last visited Apr. 19, 2011).

¹³⁹ 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).

981 qualifications.¹⁴⁰ Even those remote interpreter agencies that have created internal testing and
982 credentialing exams may use assessments that are vastly different from those of national
983 interpreter certification programs. Courts should use caution in accepting alternate testing
984 credentials and should consult with professional interpreter organizations to determine best
985 practices in this regard.¹⁴¹

986
987 When determining whether to use remote interpreter services, courts should consider the
988 appropriateness of the technology and the qualifications of the interpreters. Courts should also
989 determine whether the use of remote technology is appropriate for the setting. As noted
990 above, the preference for in-person interpreting is based on the recognition that non-verbal
991 cues are critical in most communication. Despite the growing use of remote video interpreting,
992 telephonic interpreting, which allows the interpreter to be located away from the proceedings
993 and the interpretation to occur over a standard telephone line using fairly basic equipment, is
994 still the most common remote technology used. To ensure the most efficient and effective use
995 of telephonic interpreters, courts must consider whether lack of visual cues will pose a
996 problem, and when deciding that telephonic interpretation is appropriate, must be sure to
997 provide the proper equipment and training.¹⁴²

998
999 Telephonic remote interpreter services require specialized equipment at both locations to
1000 provide adequate services. For the remote interpreter, the recommended equipment consists
1001 of a headset and microphone, and a telephone system that allows the interpreter to control
1002 both his or her volume as well as the volume of the individual speaking in the courtroom.¹⁴³ To
1003 accommodate attorney-client confidentiality, the equipment also allows for a private three-way
1004 communication between client, attorney, and interpreter, which is not broadcast to the court.
1005 The court's equipment should include headsets and microphones for multiple individuals and
1006 an amplification system that is wired into the courtroom's sound system or is in some way
1007 sufficiently amplified in the courtroom. The headsets allow the interpreter to interpret
1008 simultaneously when the LEP person is listening to the testimony of others, and the

¹⁴⁰ Some telephonic interpreter services have or may develop their own credentialing systems; however, without understanding the nature of the testing involved and the validity of the test as it relates to legal proceedings, courts should not accept this certification / credentialing as a proxy for qualifications to provide interpreter services in court. Courts should consider including certification requirements in a contract for telephonic language access services.

¹⁴¹ An analogous example is 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.

¹⁴² 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

¹⁴³ National Association of Judiciary Interpreters and Translators, *Telephonic Interpreting in Legal Settings*, *supra* note 137.

1009 amplification system allows the interpreter to broadcast into English the testimony of any LEP
1010 witnesses or litigants for the court.¹⁴⁴ In some circumstances telephonic interpretation will
1011 need to be consecutive rather than simultaneous.¹⁴⁵ Equipment used for recording has
1012 advanced to allow for multiple channel recordings that allow isolation of each speaker, one for
1013 the interpreter and the other for the LEP individual. Recording telephonic testimony is
1014 necessary to ensure that any errors in interpretation or communication can be considered on
1015 review and appeal.

1016
1017 Without the proper equipment, the limitations of telephonic interpreting are significant and
1018 often outweigh the benefits. Courts that rely on a standard speaker phone placed in the
1019 courtroom for telephonic interpreting run the risk of delayed and inefficient proceedings as
1020 well as compromised quality. In such situations, the interpretation must be conducted in
1021 consecutive mode throughout the proceedings, doubling the time spent hearing the matter.
1022 Additionally, such a system has no mechanism for private communications between the
1023 attorney and LEP litigant.¹⁴⁶ Finally, the limitations of this equipment can lead to compromised
1024 quality because of the inability of the speaker phone to pick up the utterance of all speakers,
1025 the interruptions in the interpretation from background noise, and the tendency for the
1026 equipment to allow only one speaker at a time. These problems impede both the testimony and
1027 the interpretation and can lead to misinterpretation and misunderstanding.

1028
1029 The increased availability of video remote interpreting, when used appropriately, may help
1030 address some of these problems. These systems are an enhancement over telephonic
1031 interpreting and offer a combination of video and audio connections,¹⁴⁷ allowing the
1032 interpreter to see all of the relevant individuals in the communication. Equipment needed
1033 includes a high-speed internet connection, a computer with television videoconferencing
1034 equipment, and, potentially, additional software.¹⁴⁸ As with telephonic interpreting services,
1035 courts that employ remote video interpreting services must maintain a focus on the quality of
1036 the interpretation, and ensure both that the video and audio quality are sufficient, and that the
1037 system has the capability for interpretation of confidential conversations. Courts are
1038 encouraged to seek out the expertise of other courts that have established video remote

¹⁴⁴ See *Standard 4.4* for more discussion of the different interpreter functions.

¹⁴⁵ Just as in all legal proceedings, the mode of interpreting varies depending on who is speaking. During the proceeding, when the LEP person is listening to the testimony of others, the interpreter will interpret in the simultaneous mode; however, when an LEP person is testifying, the interpreter should interpret in the consecutive mode. Telephonic interpreting conducted over the most basic systems using speaker phones will always require consecutive interpreting. For more information on the modes of interpreting, see NCSC, *Court Interpretation Model Guides*, at 138.

¹⁴⁶ NCSC *Court Interpretation Model Guides*, at 181.

¹⁴⁷ COSCA *White Paper*, at 13.

¹⁴⁸ *Id.*

1039 interpreting systems, as well as the American Sign Language interpreting community, regarding
1040 the development of standards and the lessons learned in providing competent interpreter
1041 services through combined medium of video/audio.¹⁴⁹

1042
1043 Regardless of the type of technology used, court personnel working in courtrooms that are
1044 equipped with either telephonic or video remote interpreting systems should be trained¹⁵⁰ on
1045 the proper use of the system, including appropriate uses of the technology and its limitations.
1046 Each individual LEP person’s language needs vary and may have a bearing on the selection of a
1047 particular interpreter or method by which the interpreter services are delivered. Courts using
1048 remote technology should still require a pre-session¹⁵¹ to allow interpreters to establish
1049 whether they can communicate effectively with each LEP individual for whom interpretation is
1050 being provided. Judges should verify that the selected medium is an appropriate match for the
1051 particular LEP person. Even the most advanced video technology and skilled remote interpreter
1052 will not always be an appropriate fit for a particular LEP individual, who, for example, may not
1053 be able to communicate in this manner due to trauma or disability.

1054
1055 With ongoing technological advancement, courts will continue to encounter new and promising
1056 solutions to meet the language access needs of LEP persons. These should be encouraged as
1057 long as the following protections are implemented: the quality of the communication is not
1058 compromised; courts ensure both that the interpreter services are competent and that the
1059 medium used is appropriate; and, there is opportunity for confidential communication between
1060 counsel and the LEP client or other LEP participants in the proceeding where such
1061 communication is appropriate.

1062

1063 **4.4 Courts should provide interpreter services that are consistent with interpreter codes**
1064 **of professional conduct.**

1065 Interpreters operate under an interpreter code, or set of professional responsibilities, that
1066 carefully guides their actions both in and outside the courtroom.¹⁵² Most states have adopted

¹⁴⁹ 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>

¹⁵⁰ For more information on training, see *Standard 9*.

¹⁵¹ This pre-session is discussed in full in *Standard 4.4*.

¹⁵² For more on interpreter codes of professional conduct, see *Standard 8.4*.

1067 such a code¹⁵³ and national entities, such as the National Center for State Courts and the
1068 National Association for Judiciary Interpreters and Translators, also publish detailed guides for
1069 both judges and interpreters.¹⁵⁴ Common requirements include: maintaining accuracy,
1070 confidentiality, and impartiality; restricting communication to the limited role of interpreter;
1071 and not acting as an advocate, independent commentator, or fact-finder.¹⁵⁵ Interpreters are
1072 also under an ethical duty to inform the court of any conflicts of interest and any inability to
1073 understand any of the persons for whom they are interpreting.¹⁵⁶ These codes of conduct were
1074 developed specifically to reflect the adversarial nature of the legal setting and to protect the
1075 court process and record. Courts must adhere to these ethical requirements in appointing,
1076 scheduling, and working with interpreters. Courts should also develop systems to ensure that
1077 interpreters comply with these ethical requirements, and that individual courts and judges do
1078 not implement procedures to the contrary.¹⁵⁷ Courts can promote compliance with the
1079 interpreter’s ethical obligations by scheduling an adequate number of interpreters, providing
1080 time for a pre-session and addressing any concerns raised, and refraining from asking
1081 interpreters to perform tasks outside of their limited role as interpreters.
1082
1083 Scheduling interpreters for legal proceedings can be a complicated arrangement depending on
1084 the complexity of the case, the number of LEP persons involved, the number of languages
1085 spoken, and the duration of the proceedings. Technology and ethical considerations also dictate

¹⁵³ 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).

¹⁵⁴ NCSC *Court Interpretation Model Guides*, at ch. 9; Model Code of Professional Responsibility for Interpreters in the Judiciary, www.ncsconline.org/wc/publications/Res_CtInte_ModelGuidePub.pdf. See also National Association of Judiciary Interpreters and Translators, <http://www.najit.org/about/NAJITCodeofEthicsFINAL.pdf>

¹⁵⁵ NCSC *Court Interpretation Model Guides*, at 202; Model Code of Professional Responsibility for Interpreters in the Judiciary Canon 3 Cmt. (“The interpreter serves as an officer of the court and the interpreter’s duty in a court proceeding is to serve the court and the public to which the court is a servant. The interpreter should avoid any conduct or behavior that presents the appearance of favoritism toward any of the parties.”).

¹⁵⁶ NCSC *Court Interpretation Model Guides*, at 202; Model Code of Professional Responsibility for Interpreters in the Judiciary Canon 3 Cmt (“Before providing services in a matter, court interpreters must disclose to all parties and presiding officials any prior involvement, whether personal or professional, that could be reasonably construed as a conflict of interest. This disclosure should not include privileged or confidential information. The following are circumstances that are presumed to create actual or apparent conflicts of interest for interpreters where interpreters should not serve: 1) The interpreter is a friend, associate, or relative of a party or counsel for a party involved in the proceedings; 2) The interpreter has served in an investigative capacity for any party involved in the case; 3) The interpreter has previously been retained by a law enforcement agency to assist in the preparation for the criminal case at issue; 4) The interpreter or the interpreter’s spouse or child has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that would be affected by the outcome of the case; or 5) The interpreter has been involved in the choice of counsel or law firm for the case.”). See NAJIT Position Paper on regarding Code of Ethics and Professional Responsibility, Canon 2; Impartiality and Conflicts of Interest, <http://www.najit.org/about/NAJITCodeofEthicsFINAL.pdf>

¹⁵⁷ 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.

1086 the number of interpreters needed, and a court should take into account the different
1087 interpreting functions that occur within a legal proceeding to determine the appropriate
1088 number of interpreters required for the matter. These functions reflect the fact that some
1089 interpretation is for all in the court to hear, whereas other interpretation is for the LEP person
1090 to understand the proceedings or consult with counsel.

1091
1092 Interpreter functions within the court setting include witness interpretation, proceedings
1093 interpretation, and interview or party interpretation. Witness interpretation occurs “during
1094 witness testimony for the purpose of presenting evidence to the court. This interpreting
1095 function is performed in the consecutive mode; the English language portions of the
1096 interpretation are part of the record of the proceeding.”¹⁵⁸ Proceedings interpretation “is for a
1097 non-English speaking litigant in order to make the litigant present and able to participate
1098 effectively during the proceeding.”¹⁵⁹ This function “is ordinarily performed in the simultaneous
1099 mode” and “the interpreter’s speech is always in the foreign language, in whisper mode (not
1100 out loud) to the litigant, and is not part of the record of proceedings.”¹⁶⁰ Interview or party
1101 interpretation is also not part of the record of the proceedings and “is interpreting to facilitate
1102 communication in interview or consultation settings. Interview interpreting may occur in
1103 conjunction with court proceedings or before or after court proceedings.”¹⁶¹

1104
1105 Depending on the number of LEP persons involved in a legal proceeding, a court may need to
1106 appoint separate interpreters for each interpreting function needed in the matter. For
1107 example, where there are two LEP parties that speak the same language, the court may appoint
1108 one proceedings interpreter, so long as the court has the appropriate equipment necessary to
1109 transmit the spoken interpretation (in whisper mode) to both parties at their respective tables.
1110 However, within that same legal proceeding, the court should, when possible, appoint a
1111 separate interpreter for any LEP witnesses, and party interpreters to facilitate attorney-client
1112 communications during the proceeding.

1113
1114 Another consideration in scheduling is the appointment of different interpreters for different
1115 aspects of a legal proceeding, especially in those proceedings involving emotional or sensitive
1116 matters such as domestic violence or sexual abuse. Even though each interpreter is bound by
1117 confidentiality and neutrality provisions, and should be able to make an accurate
1118 interpretation, the appearance of impartiality or neutrality can be compromised when an

¹⁵⁸ NCSC, *Court Interpretation Model Guides*, ch.2 at 34.

¹⁵⁹ *Id.*; See also, Asian and Pacific Islander Institute on Domestic Violence, *Resource Guide for Advocates and Attorneys on Interpretation Services for Domestic Violence Victims*, (2009), at 11, <http://www.apiidv.org/files/Interpretation.Resource.Guide-APIIDV-7.2010.pdf>.

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

1119 interpreter has worked for one party or another in preparation for trial and then is brought in
1120 to interpret for the legal proceedings.¹⁶² Courts should establish procedures to track the
1121 interpreter’s prior contact with the parties and the case, and where possible, use a different
1122 interpreter to interpret the court proceedings to uphold the appearance of impartiality. This is
1123 important in situations where, for example, there are two LEP co-defendants, each with
1124 separate counsel, and each of whom has privately retained an interpreter to facilitate attorney-
1125 client communication in preparation for trial. In such a situation, it is inappropriate for the
1126 court to hire one of these interpreters to interpret for the trial due to the possibility of
1127 perceived bias in favor of one of the defendants. Where it is not possible to schedule a different
1128 interpreter, courts should inform all parties that the interpreter is “under oath to protect
1129 confidentiality of communications”¹⁶³ and that the interpreter acts as a neutral party and is not
1130 an advocate for either side.

1131
1132 Finally, courts should schedule an adequate number of interpreters to avoid interpreter fatigue
1133 and resulting errors. Interpreting is a cognitively demanding and stressful process: the
1134 interpreter must listen, analyze, comprehend, and use contextual clues to convert the spoken
1135 word from one language to another, rendering a reproduction of the message in an equivalent
1136 meaning in another language. This process leads to fatigue and mental exhaustion, and the
1137 possibility of error increases after approximately 30 minutes of sustained simultaneous
1138 interpreting.¹⁶⁴ Courts should support the interpreter’s ability to uphold the code of conduct’s
1139 mandate to provide an accurate interpretation by scheduling a team of interpreters for long
1140 proceedings. The industry standard where continuous interpreting is required for more than
1141 one hour is team interpreting, which refers to the practice of using two rotating interpreters to
1142 provide simultaneous or consecutive interpretation for one or more individuals.¹⁶⁵

1143
1144 Once an interpreter is appointed, courts must ensure that the interpreter is informed of the
1145 nature of the proceeding, that the interpreter and litigant or witness have met to determine
1146 language compatibility, and that the role of the interpreter has been explained to the LEP
1147 person. The court should provide the interpreter, in a timely manner, the relevant case
1148 information, including the nature of the hearing or interpreting assignment and any potentially
1149 emotionally charged content. This information allows the interpreter to assess his or her ability

¹⁶² See note 2; NCSC *Court Interpretation Model Guides*, at 202; Model Code of Professional Responsibility for Interpreters in the Judiciary Canon 3 Cmt., *supra* note 154.

¹⁶³ NCSC *Court Interpretation Model Guides*, at 143.

¹⁶⁴ *Id.*

¹⁶⁵ 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.natjit.org/publications/Team%20Interpreting_052007.pdf

1150 to faithfully interpret the matter.¹⁶⁶ Next, courts should provide adequate time for a pre-
1151 session interview between the interpreter and the LEP individual for whom he or she will
1152 interpret. One function of the pre-session interview is for the in-person, telephonic, or video
1153 remote interpreter to briefly communicate directly with the LEP person to make sure that they
1154 can understand one another and that any technology being used does not create a barrier. The
1155 pre-session interview covers non-case related basic information and routine questions to
1156 ensure that the two can communicate effectively.

1157
1158 Some courts have experimented with asking interpreters to give general information about
1159 their role to the LEP person, but interpreter ethical requirements have generally prohibited this
1160 unless it is simply reading or interpreting from a set script. One way to avoid the ethical
1161 problem is to provide general information in printed or video form, an approach which avoids
1162 the interpreter’s exposure to information or questioning by the LEP person that may later call
1163 into question the interpreter’s ability to remain neutral, and also ensures that the information
1164 provided to LEP persons is consistent. Another preferred method is to have the judge go over
1165 any general information and have the selected interpreter provide an interpretation; this has
1166 the added benefit of modeling the process of interpreting at the same time as the explanation
1167 takes place and can be helpful for many LEP persons who have previously had little to no
1168 experience with formal interpreting.¹⁶⁷

1169
1170 Concerns raised by interpreters, as a result of a pre-session interview or at any time during the
1171 proceeding, should be treated with serious consideration. Under the model code of conduct,
1172 interpreters must “bring to the court’s attention any circumstances or conditions that impede
1173 full compliance with any canon of the code, including interpreter fatigue, inability to hear, or
1174 inadequate knowledge of the specialized terminology.”¹⁶⁸ This requirement applies to the
1175 interpreter’s ability to establish communication with the LEP person as well as to the
1176 appropriateness of the medium selected. The requirement covers both in-person interpreters
1177 and remote interpreter service providers. Contracts for remote services should include a
1178 requirement consistent with ethical obligations, including in particular the ethical obligation to
1179 ensure the ability to interpret in the proceeding and to notify the court of any barriers or
1180 reasons that the interpreter is not able to adequately interpret. In some instances, the court

¹⁶⁶ For more on the information interpreters need to determine if they are the appropriate person to interpret, see *Standard 8*.

¹⁶⁷ When considering the best way to provide basic information on the interpreter’s role, courts should evaluate what is the most efficient use of an interpreter’s time, whether translation of the information into the most common languages spoken in the area would be more efficient, or whether the development of video or audio recordings would provide greater access at a reduced cost. Also, courts should ensure that the interpreters are not inappropriately asked to step outside of their role to provide additional assistance to or information to LEP persons that should be provided by other court staff.

¹⁶⁸ NAJIT, Code of Ethics and Professional Responsibilities Canon 8.

1181 may need to intervene if the technology and /or the interpretation is inadequate, but the
1182 interpreter, for reasons of pecuniary interest, is unwilling to advise the court of the barriers.

1183
1184 Finally, courts should take special care not to ask the interpreter to perform a task that is
1185 outside the limited role of the interpreter. This can sometimes occur unintentionally when
1186 interpreters are asked to facilitate communication between two individuals who do not share a
1187 common language. A generally accepted task is providing sight translation of documents, either
1188 in English or in the second language. This is allowed but only to the extent that the interpreter
1189 is not asked to explain the document or answer any questions beyond simply reading it aloud as
1190 a sight translation. The model code of court interpreter conduct requires interpreters to remain
1191 impartial, avoid unnecessary contact with the parties, and abstain from commenting on matters
1192 in which they interpret.¹⁶⁹ The code prohibits the giving of advice or otherwise engaging in
1193 activities that can be construed as the practice of law.¹⁷⁰ Policies or practices that ask
1194 interpreters to go beyond sight translation of forms to explaining forms or court processes
1195 violate these provisions.¹⁷¹

1196

1197 **STANDARD 5 LANGUAGE ACCESS IN COURT SERVICES**

1198 **5. Courts should provide language access services to persons with limited English proficiency** 1199 **in all court services with public contact, including court-managed offices, operations, and** 1200 **programs.**

1201 While many courts provide interpreters for legal proceedings, federal law and the effective
1202 administration of justice also require language access services for all court services used by the
1203 general public.¹⁷² These include all services that are provided, managed, supervised, or
1204 contracted for by the court. The court should ensure that language access is provided for these
1205 court services, even though the court may not itself be responsible for paying if the providing
1206 entity is separately obligated due to federal or state law.

1207

¹⁶⁹ NAJIT, Code of Ethics and Professional Responsibilities, Canon 2.

¹⁷⁰ NAJIT, Code of Ethics and Professional Responsibilities, Canon 4

¹⁷¹ As discussed above and in *Standard 7*, it is very likely more cost effective to have materials translated and available for unrepresented litigants in written or video format. This avoids the cost of having to pay interpreters to sight translate a form numerous times and the likelihood that interpreters will be asked to answer questions on the materials.

¹⁷² DOJ LEP Guidance, at 41,471.

1208 **5.1 Courts should provide language access services for the full range of court services.**

1209 The provision of language access services in court managed offices, operations, and programs is
1210 necessary to avoid discrimination. The Department of Justice “expects courts to provide
1211 meaningful access for LEP persons to such court operated or managed points of public contact
1212 in the judicial process, whether the contact at issue occurs inside or outside the courtroom.”¹⁷³
1213 Services included are all those necessary to access the courts, ranging from routine matters
1214 such as gathering information about court procedures from a court clerk, filing pleadings,
1215 paying court-ordered fines, and using any services incidental to the resolution of a legal matter.
1216 Points of contact to which access is required include the following: information counters;
1217 websites, services for *pro se* individuals; court clerk’s offices; intake or filing offices; cashiers;
1218 records rooms; security personnel within the courthouse; and offices to pay fines.¹⁷⁴ Courts
1219 should also ensure that any security screening procedures implemented by a court do not
1220 create barriers for LEP persons; for example, security personnel should be provided with
1221 signage, video instructions, or a method to contact telephonic interpreters and should be
1222 trained on the need for and delivery of these services.

1223
1224 This obligation is also described in the *DOJ LEP Guidance*, which states that “[p]roviding
1225 meaningful access to the legal process for LEP individuals might require more than just
1226 providing interpreters in the courtroom,” and that “[r]ecipient courts should assess the need
1227 for language services all along the process.”¹⁷⁵ This assessment should determine whether the
1228 services are essential to meaningful access to the court. For instance, language access services
1229 provided at the filing office are essential for a litigant to be able to access the courts, but a
1230 courthouse tour is non-essential. Similarly, accessing information at the clerk’s office or services
1231 offered as part of a *pro se* clinic are instrumental to a *pro se* litigant’s ability to navigate the
1232 justice system, but information provided by community partners that does not relate to court
1233 services is non-essential.

1234

¹⁷³ *Id.*

¹⁷⁴ The Letter to Chief Justices and State Court Administrators contains such services and adds “any other similar offices, operations, and programs.” Letter to Chief Justices and State Court Administrators, at 3. For an example of the growing number of services available see the San Francisco Superior Court ACCESS (Assisting Court Customers with Education and Self Help Services) Program, a court-based information service which provides information on small claims, civil harassment restraining orders, name changes, gender changes, evictions, guardianship of the person, conservatorship of the person, small claims and limited civil mediation. Family law matters are referred to the Family Law Self-Help Center. See Superior Court of California, County of San Francisco, ACCESS, <http://www.sfsuperiorcourt.org/index.aspx?page=24>. (last visited Apr. 19, 2011). Similar services are available in courts across the country.

¹⁷⁵ *DOJ LEP Guidance*, at 41,471. See also, Letter to Chief Justices and State Court Administrators, at 3 (“Some states provide language assistance only for courtroom proceedings, but the meaningful access requirement extends to court functions that are conducted outside the courtroom as well.”).

1235 Where court services with public contact are funded by the court, whether or not they are
1236 housed inside the court, courts should ensure that language access services are provided and
1237 paid for. In some instances, courts rely on external programs to provide essential court
1238 functions.¹⁷⁶ These programs separately may be obligated under Title VI of the Civil Rights Act
1239 in which case the court need not pay for the services but should verify that they are available.
1240 However, where the court relies on an external program to provide essential court functions
1241 and that program does not receive federal assistance, the court should ensure that language
1242 access services are provided, and should be responsible for the cost of the services.

1243
1244 Although services to deaf and hard of hearing individuals are required under a different legal
1245 obligation than those for LEP individuals, the processes developed to provide services to the
1246 deaf community can provide useful models to courts when developing similar services for LEP
1247 persons. Interpreter services are provided in and out of court, and include interpreter services
1248 for deaf and hard-of-hearing persons to participate in court services with public access.¹⁷⁷ Sign
1249 language interpreter services are provided for deaf and hard of hearing individuals as a
1250 reasonable accommodation for accessing the clerk’s office, and for other court services.¹⁷⁸

1251
1252 **5.2 Courts should determine the most appropriate manner for providing language access**
1253 **for services and programs with public contact and should utilize translated brochures,**
1254 **forms, signs, tape and video recordings, bilingual staff, and interpreters, in**
1255 **combination with appropriate technologies.**

1256 Courts should ensure that the manner in which language access for court services and programs
1257 are provided is appropriate to address the language needs of all LEP persons. Which language
1258 access services are necessary depends on the amount of advance notice the court has regarding
1259 the need, the complexity of the communication, and the setting; however, courts must ensure

¹⁷⁶ For example, some state courts operate drug-testing offices or community service offices within the courthouse, while others contract out for these services.

¹⁷⁷ See also Letter to Chief Justice and State Court Administrators, at 3, (“Most court systems have long accepted their legal duty under the Americans with Disabilities Act (ADA) to provide auxiliary aids and services to persons with disabilities, and would not consciously engage in the practices highlighted in this letter in providing an accommodation to a person with a disability. While ADA and Title VI requirements are not the same, existing ADA plans and policy for sign language interpreting may provide an effective template for managing interpreting and translating needs for some state courts.”).

¹⁷⁸ For example, the Kentucky Court of Justice appoints and pays for interpreter services for LEP and deaf individuals for all court proceedings and direct services. See Kentucky Court of Justice, Frequently Asked Questions, <http://courts.ky.gov/stateprograms/courtinterpreters/faqs.html> (last visited Apr. 19, 2011). For more information on the Kentucky Court of Justice Interpreter Services program, including an example of a notice about the availability of free interpreter services in 31 languages, see Kentucky Court of Justice, Court Interpreting Services, <http://courts.ky.gov/stateprograms/courtinterpreters/> (last visited Apr. 19, 2011).

1260 the availability of two-way communication in all court services and programs with public
1261 contact. This section provides guidance for courts to consider when developing these services
1262 and selecting options to meet these obligations.

1263

1264 Advance Notice of Need

1265

1266 The availability of advance notice of the need for language assistance varies by court service;
1267 some services are requested on an ad hoc basis, such as at a cashier’s office, whereas others,
1268 such as a courthouse orientation class, are scheduled in advance. Where the service is
1269 accessed without advance notice, courts should ensure that LEP persons are not limited to
1270 accessing the services on particular days or times if this would result in an unnecessary delay.¹⁷⁹
1271 Courts can achieve this by employing bilingual staff in the most common languages to work in
1272 positions with ad hoc public contact. By adding remote telephonic or video interpreter services
1273 for languages in which no bilingual staff are available, courts can be sure that they are providing
1274 appropriate language access services that allow for two-way communication as needed.

1275

1276 Complexity of Communication

1277

1278 The complexity of the communication will also influence the selection of the appropriate
1279 language access service to meet the language needs of the LEP person. Court services and
1280 programs range from basic to very detailed. For example, the routine services at a cashier’s
1281 window may be handled differently than the more complicated services at a court intake office.
1282 Where courts provide some of their information in written form, translating these documents
1283 into the most common languages may be adequate, as long as there is also a system for two-
1284 way communication (if available to English speaking persons) and for communication to an LEP
1285 person who is unable to read the translated information¹⁸⁰ or speaks a language not included in
1286 the translated versions.

1287

1288 Finally, the appropriate language access service in a given court setting depends on the level of
1289 interaction between staff and the general public. Some services provide only informational
1290 materials, others have staff that interact with the public; each of these requires different
1291 language access services. The court service or program may provide language access services
1292 through a combination of the options listed below. A multi-faceted approach is recommended

¹⁷⁹ *DOJ LEP Guidance*, at 41,461 (“For example, when the timeliness of services is important . . . a recipient would likely not be providing meaningful access if it had one bilingual staffer available one day a week to provide the service. Such conduct would likely result in delays for LEP persons that would be significantly greater than those for English proficient persons.”).

¹⁸⁰ A person may be unable to read the translated information because they are illiterate in their spoken language or due to disability.

1293 since it provides increased access while maximizing cost efficiency. Building language access
1294 services into the court’s system for providing routine oral and written communications with the
1295 public and litigants creates greater certainty that the communication will occur, safeguards the
1296 court’s promise of access to justice, and promotes public confidence in the courts.

1297

1298 Language Access Measures for Court Services

1299

1300 Courts can employ a variety of services to meet the language needs of LEP persons. The
1301 following sections describe the different measures—ranging from signs, handouts, and video or
1302 audio recordings, to bilingual staff and interpreters—a court can take. No single measure listed
1303 below is intended to be used in isolation but, implemented together, they can create a
1304 comprehensive language access program that is suited to the needs of different situations.

1305 i. Translated Forms, Signs, and Handouts

1306 At the most basic level, language access measures should include provision of translated
1307 written materials, such as signage, program information, program application forms, court
1308 pleading forms, and other written materials containing information about accessing court
1309 services and programs.¹⁸¹ The use of translated print materials reduces staff time and the need
1310 to provide repeated oral interpretation of basic information, leading to an overall cost savings
1311 for courts.¹⁸² Many court services and programs with public contact have developed
1312 programmatic information in print formats in multiple languages. For example, the California
1313 Court Self-Help Center provides information on many civil law matters in Chinese, Korean,
1314 Spanish, and Vietnamese.¹⁸³ While some courts provide this information directly, others
1315 provide it in collaboration with outside organizations.¹⁸⁴

1316

¹⁸¹ For a full discussion of the requirement to provide translated programmatic signage and notification of the availability of interpreter services, see *Standard 2*. Translation of written materials, a component of language access services, is further discussed in *Standard 7*.

¹⁸² 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.

¹⁸³ California Courts Self-Help Center, <http://www.courtinfo.ca.gov/selfhelp/languages> (last visited Apr. 19, 2011).

¹⁸⁴ 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.

1317 Courts should also develop and translate into the most common languages a list of Frequently
1318 Asked Questions and Answers or basic “Know Your Rights” documents to assist all users of their
1319 services and to reduce staff time in answering the most common questions.¹⁸⁵ Providing this
1320 information in multiple languages is an effective language access measure, but doing so will not
1321 completely eliminate the need to provide for two-way communication. In languages that are
1322 translated, LEP persons may have questions, and in languages where no translated materials
1323 are available, LEP persons should have some means of accessing the information. In all
1324 instances, LEP individuals must be able to ask questions and interact with court personnel to
1325 the same extent as those who speak English.

1326 ii. Audio and Video Recordings

1327 Courts should also consider the use of audio or video recordings of commonly asked questions.
1328 These methods of communication can be particularly effective in disseminating information to
1329 individuals and communities with low literacy rates. As with translated materials, audio and
1330 video recordings reduce the demand on court staff for repeated interpretation but should be
1331 supplemented with methods to provide two-way communication if available to those who
1332 speak English. Similar to translated materials, audio and video recordings are both efficient and
1333 economical in reaching a large audience.

1334 iii. Bilingual Staff

1335 Hiring bilingual staff who speak the languages that are frequently encountered in the court’s
1336 jurisdiction is a particularly effective way to provide language access services.¹⁸⁶ Bilingual staff
1337 in a court program can provide the same information they provide to English-speaking
1338 individuals, whether in a clerk’s office, filing office, cashier’s office, or other court service,
1339 directly to LEP persons. Although able to speak another language, bilingual staff are not hired as
1340 interpreters, but instead communicate directly with the LEP person in a shared language. To
1341 determine the appropriate staffing levels and to guide future staff hiring, courts should use
1342 demographic data, including data gathered internally, interpreter usage data, and external
1343 data.¹⁸⁷

1344

¹⁸⁵ 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.

¹⁸⁶ 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.

¹⁸⁷ See *Standard 3.1* for a discussion of the different data sources envisioned here.

1345 Court should ensure that bilingual staff providing these direct services are competent in all
1346 languages in which they will communicate.¹⁸⁸ Some bilingual staff persons may become
1347 certified by the court to work as interpreters,¹⁸⁹ but courts should avoid using them as
1348 interpreters in legal proceedings if possible, as the two roles may be in conflict and could raise
1349 ethical concerns. As discussed in detail in the interpreter section below, bilingual staff would
1350 probably be disqualified from interpreting in the courtroom due to the violation of the ethical
1351 rules of impartiality and neutrality.¹⁹⁰ The Department of Justice recognizes this concern,
1352 emphasizing that “there may be times when the role of the bilingual employee may conflict
1353 with the role of the interpreter (for instance, a bilingual law clerk would probably not be able to
1354 perform effectively the role of a courtroom or administrative hearing interpreter and law clerk
1355 at the same time, even if the law clerk were a qualified interpreter). Effective management
1356 strategies, including any appropriate adjustments in assignments and protocols for using
1357 bilingual staff, can ensure that bilingual staff are fully and appropriately utilized.”¹⁹¹

1358
1359 Courts should also limit the use of a bilingual staff member as an interpreter in situations
1360 outside of the courtroom to very low-risk, basic communications.¹⁹² When a court relies on
1361 bilingual staff, whose primary function is a task other than interpreting, to interpret between
1362 LEP persons and other staff members, the court should train them in the role of the interpreter
1363 and basic interpreter skills.

1364 iv. Interpreters

1365 The final component of a multi-faceted approach to providing language access in court services
1366 is the use of interpreters, either in-person or telephonically. Courts do not necessarily need to
1367 use court-certified interpreters for all services that occur outside of the courtroom and may use
1368 interpreters whose skills match an appropriate level of the court’s registered or tiered scale.
1369 Regardless of who is used, courts must ensure that the individual is qualified to interpret in the

¹⁸⁸ 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).

¹⁸⁹ According to the COSCA *White Paper on Court Interpretation: Fundamental to Access to Justice*, at 9, “good practices, however, support applying the same certification standards to bilingual court staff providing interpreter services in court proceedings as those applied to contract interpreters.” See also The Supreme Court of Ohio, *Interpreters in the Judicial System, A Handbook for Ohio Judges*, at 54.

¹⁹⁰ 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.”

¹⁹¹ DOJ LEP Guidance, at 41,461.

¹⁹² This section is not referring to staff interpreters, who are discussed in full in the following section.

1370 setting; this includes assessing the proficiency of the interpreter’s language skills in both English
1371 and the target language to ensure competence and knowledge of ethical responsibilities.¹⁹³

1372
1373 Courts should take great care that the use of interpreters in settings outside of the courtroom
1374 does not lead to ethical conflicts for interpreters who will appear in court, to confusion as to an
1375 interpreter’s role,¹⁹⁴ and to unnecessary restriction of the pool of qualified courtroom
1376 interpreters. Interpreting for other court staff in settings outside of the courtroom is
1377 permissible, but these interpreters should not be asked to provide direct assistance or function
1378 as bilingual staff,¹⁹⁵ since they might become unintentionally involved in matters that would
1379 later disqualify them from interpreting in legal proceedings.

1380
1381 Thus, hiring a court certified interpreter to provide services directly, such as to LEP persons in a
1382 *pro se* clinic, would only be feasible where the roles are strictly defined, where the likelihood of
1383 working with a litigant in both capacities is reduced to avoid inefficiencies, and where the
1384 interpreter is properly trained to disclose all prior contact.¹⁹⁶ Under the model code of ethics,
1385 interpreters in their professional capacity “shall limit their participation in those matters in
1386 which they serve to interpreting and translating, and shall not give advice to the parties or
1387 otherwise engage in activities that can be construed as the practice of law.”¹⁹⁷

1388
1389 A recommended practice is for courts to create systems that prioritize certified interpreters for
1390 legal proceedings and provide an opportunity for lesser-credentialed but competent
1391 interpreters to develop their skills by interpreting in settings outside of the courtroom. This may
1392 be accomplished by coordinating calendars and scheduling interpreters in blocks of time and by

¹⁹³ For more on the assessment of qualifications, see *Standard 8*.

¹⁹⁴ 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.

¹⁹⁵ 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.

¹⁹⁶ Though courts should proceed with caution due to potential ethical problems that may be presented, it may be possible to achieve some efficiencies by developing pools of interpreters who work in the courtroom in one area of the judicial system and assist in courthouse services in other areas for which they do not normally interpret.

¹⁹⁷ 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.”).

1393 the use of a tiered credentialing system.¹⁹⁸ The practice of hiring interpreters to provide direct
1394 services as bilingual staff is increasing due to the growing number of *pro se* LEP litigants and
1395 the recognition that, for a *pro se* LEP person, interpretation alone may not be sufficient to
1396 overcome barriers due to lack of familiarity with court culture and processes. In some
1397 jurisdictions, in response to the overwhelming number of LEP *pro se* litigants, courts are
1398 promoting an expanded role for the interpreter who, in addition to facilitating communication,
1399 provides the *pro se* individual basic information about the court and the nature of the legal
1400 proceeding in which he or she is involved.¹⁹⁹ These non-lawyer staff can provide legal
1401 *information* but are prohibited from the practice of law. Legal information provided may
1402 include helping *pro se* litigants navigate the judicial system, such as by identifying necessary
1403 forms, and ensuring that those forms are completed appropriately, at times explaining and
1404 clarifying the content, particularly in regards to the court culture. Staff being used in this way
1405 are not functioning as interpreters and should never be labeled as such.

1406

1407 The Role of Technology in Delivering Language Access Services Outside of the Courtroom

1408

1409 Technology can play a role in ensuring equal access to the information provided by courts and
1410 in court programs. Many court websites provide information, including online forms, e-filing,
1411 and self-help materials, in English written text. Millions of LEP individuals in the United States
1412 are barred from accessing this information. To address this problem, courts can incorporate
1413 features that enable LEP users to access the site’s information through use of quality translated
1414 materials and interpreted audio and video recordings. Technology to create simple videos and
1415 audio recordings is advancing quickly. When courts create an online informational piece,
1416 resource, forms, or self-help materials, they should create and post the non-English language
1417 versions without significant delay. Any project to create online content for court users should
1418 include the development of the same content in the most common languages spoken in the
1419 area.

1420

¹⁹⁸ The tiered credentialing system envisioned in this *Standard* is fully discussed in *Standard 9*.

¹⁹⁹ 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/xbcr/cc/Ethics_Manual_4th_Ed_Master.pdf, at 26.

1421 **STANDARD 6 LANGUAGE ACCESS IN COURT-MANDATED AND OFFERED SERVICES**

1422 **6. Courts should ensure that persons with limited English proficiency have access to court-**
1423 **mandated services, court-offered alternative services and programs, and court-appointed**
1424 **professionals, to the same extent as persons who are proficient in English.**

1425 Courts mandate and offer services in criminal and civil matters because of the recognized
1426 benefits of participation for the individuals served, their families, the community, and the
1427 courts themselves. The services and programs described within this *Standard* are a critical
1428 component of the justice system; lack of access to them can result in the loss of liberty and
1429 interference with important rights. The DOJ August 16, 2010 *Letter to Chief Justices and State*
1430 *Court Administrators* reiterates that the “meaningful access requirement extends to court
1431 functions that are conducted *outside* the courtroom as well.”²⁰⁰ An LEP person denied
1432 participation in such programs due to lack of language access may suffer extended jail time, the
1433 delayed return of a child, loss of access to driving and professional licenses, or simply a less
1434 expedient resolution of the case.

1435 This *Standard* focuses on language access services to court services and programs, an area that
1436 some jurisdictions have not addressed. The sections below discuss the unique considerations
1437 that arise in criminal and civil court-mandated and offered services to remind courts of the
1438 requirement to provide language access in civil as well as criminal services. The requirement to
1439 provide language access applies to all types of courts, including specialized courts, therapeutic
1440 justice courts, and problem-solving courts, in addition to traditional criminal and civil matters.
1441 *Standard 6.1* addresses the requirement for services in court-mandated, alternative sentencing
1442 programs, or other optional programs offered in conjunction with a criminal matter. *Standard*
1443 *6.2* addresses the requirement for services in court-mandated programs or voluntary court-
1444 offered programs related to civil matters. *Standard 6.3* discusses the requirement for services in
1445 interactions with court-appointed or supervised professionals and *Standard 6.4* discusses the
1446 range of approaches courts may undertake to meet these obligations.

1447 Courts play pivotal roles in leadership, education, and resource development to ensure that
1448 language access services are accessible to LEP communities, not just because of the courts’
1449 knowledge of the number and type of services needed, but also because of their authority to
1450 offer, require, and contract for those services. Courts are well situated to identify the
1451 appropriate providers for referrals of individual litigants, to coordinate with community
1452 providers to develop programs, to exercise leadership in assessing current needs and services,

²⁰⁰ Letter to Chief Justices and State Court Administrators, at 3. (Emphasis added).

1453 and to help develop future resources.²⁰¹ Courts are also in the best position to identify
1454 providers who have failed to deliver language access services and encourage them to develop
1455 adequate services or discontinue referrals to those organizations. Where courts currently have
1456 limited contact with provider organizations, they should develop outreach and community
1457 contacts to ensure that the LEP individuals they refer are adequately served.

1458 Courts should use the information in this *Standard* to determine the language access services
1459 needed. In general, courts should ensure that language access services are available; however,
1460 where it is impossible to provide language access services and the court offered or ordered
1461 service is not critical, participation by LEP persons may be waived.²⁰² This is true for court-
1462 mandated services or programs in both civil and criminal matters. Courts currently often
1463 require that an LEP person attend a service or program without offering language access
1464 services; the result is that the LEP person is unable to receive the benefits of the service and
1465 sometimes fails to comply with program requirements, leading to further penalties. Courts
1466 must assess all services and seek out resources in order to avoid this predicament. The same
1467 reasons that make court mandated and offered services desirable for both the courts and for
1468 English speaking persons apply to individuals who are LEP; thus, courts should develop
1469 language access for all court services so that they can be available to all persons, regardless of
1470 their ability to speak English.

1471

1472 **6.1 Courts should require that language access services are provided to persons with**
1473 **limited English proficiency who are obligated to participate in criminal court-**
1474 **mandated programs, are eligible for alternative adjudication, sentencing, and other**
1475 **optional programs, or must access services in order to comply with court orders.**

1476 This section discusses those services that are mandated or offered in conjunction with the
1477 disposition of a criminal matter. These include all pre- and post-adjudication programs which
1478 are a part of the judicial process, including diversion, pre-trial conditions of release, conditions
1479 on bail, probation or conditions of parole, and alternative sentencing. Court-mandated services
1480 and programs include programs such as substance abuse treatment, anger management and
1481 other counseling services, parole, and probation.²⁰³ Court-offered alternative services include

²⁰¹ 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>.

²⁰² Judges should exercise their discretion where language-accessible services are not available as to avoid denying the LEP person a service, benefit, or right. See *DOJ LEP Guidance*, at 41,446.

²⁰³ 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

1482 alternative programs or conditions offered in lieu of bail, adjudication, and sentencing, as well
1483 as mediation and dispute resolution services. These services and programs are critical to the
1484 criminal justice process and often result in less time in custody and an increased likelihood of
1485 rehabilitation for a criminal defendant. LEP persons should not be denied participation in
1486 programs for which they are otherwise qualified because of a language barrier, nor should they
1487 be individually charged for the cost of the language services required to make the service
1488 accessible to them.

1489 Court-mandated services or programs that are part of the pre- or post-adjudicatory process
1490 must all be language accessible. For example, where mental health counseling is a condition of
1491 bail, the counseling should be available directly in a language understood by the individual or
1492 appropriate interpretation services should be provided. Similarly, a person sentenced to
1493 participate in a court-ordered work release program must often participate in an interview to
1494 find an appropriate work placement.²⁰⁴ This initial interview may prevent the LEP person from
1495 complying with the order if the interviewer does not provide appropriate language access
1496 services.²⁰⁵ In both instances, denying an otherwise eligible LEP person participation in these
1497 programs deprives LEP individuals of “meaningful access” to court services.²⁰⁶

1498 Optional alternative programs have proliferated in recent years. These services, offered as part
1499 of a diversion program, pre-trial conditions of release, or alternative sentencing programs,
1500 promote justice and result in a significant savings to the justice system.²⁰⁷ According to a
1501 Bureau of Justice Assistance Report, from 1990 to 2004, an estimated 62% of state court felony
1502 defendants in the 75 largest counties surveyed were released prior to the disposition of their
1503 case, with approximately one-half of those defendants released on non-financial conditions,
1504 including mandatory compliance with court-ordered services.²⁰⁸ Such programs provide

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.

²⁰⁴ 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).

²⁰⁵ Ideally, the work placement would take place in a location where the LEP person and the provider share a
common language.

²⁰⁶ See 28 C.F.R. 42.104 (b).

²⁰⁷ 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).

²⁰⁸ 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.).

1505 important benefits and must be made equally available to LEP and non-LEP defendants.²⁰⁹
1506 Furthermore, once a person enrolls in the alternative program, compliance becomes
1507 mandatory and non-compliance results in substantial consequences; ensuring that language
1508 services are available increases the likelihood that LEP persons can successfully utilize and
1509 succeed in these programs.

1510

1511 **6.2 Courts should require that language access services are provided to persons with**
1512 **limited English proficiency who are ordered to participate in civil court-mandated**
1513 **services or who are otherwise eligible for court-offered programs.**

1514 In civil cases, court-mandated and voluntary court-offered programs often support and protect
1515 important rights. Participation in these programs results in less time apart from children,
1516 improved family stability through counseling services and parenting classes, and individual
1517 improvement through participation in alcohol or substance abuse treatment programs.
1518 Examples of services include classes, workshops, information sessions, evaluations, treatment
1519 programs, investigations, arbitrations, mediations and other alternative dispute resolution
1520 programs. Courts mandate participation in these programs for many of the same reasons that
1521 they mandate such services in the criminal context,²¹⁰ and non-compliance can prejudice
1522 constitutional and other important rights. Providing language access services for these
1523 programs is fundamental to ensuring equal access.

1524

1525 Similar to the considerations with respect to criminal services discussed above, judges must
1526 either ensure that services are accessible, or not penalize LEP persons for an inability to
1527 participate. Thus, when ordering mediation²¹¹ in a family law matter, judges should consider

²⁰⁹ 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).

²¹⁰ 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

²¹¹ In many courts, the mediation program is court-operated and the court is obligated to provide meaningful access to those services, as discussed in *Standard 5*. The programs and services included in *Standard 6* are not court-operated but are provided by separate entities to which the court may refer individual litigants for court-mandated services.

1528 the availability of bilingual service providers²¹² who can meet the litigant’s language needs
1529 directly. If language-specific services are not be available for the service needed, the court
1530 should ensure that the individual has access to the program with an interpreter.

1531
1532 Just as in the criminal context, increasing access to LEP persons, not waiving participation,
1533 should be the goal. Voluntary court-offered services and programs must be made accessible to
1534 LEP individuals who are otherwise eligible to participate in order to avoid the “effective denial
1535 of the service, benefit, or right at issue” as described in the *DOJ LEP Guidance*.²¹³ Programs such
1536 as mediation and alternative dispute resolution often provide litigants with a faster, better, and
1537 less costly resolution to their legal matter; courts should ensure that these options are also
1538 accessible with language services in place.

1539

1540 **6.3 Courts should require that language access services are provided for all court-**
1541 **appointed professionals in their interactions with persons with limited English**
1542 **proficiency.**

1543 Court-appointed or supervised professionals or personnel are an important component of the
1544 justice system and courts daily rely upon their services to assist in the adjudication of both
1545 criminal and civil matters. These professionals include counsel, guardians, guardians *ad litem*,
1546 conservators, child advocates, social workers, psychologists, doctors, trustees and other such
1547 persons who are employed, paid, or supervised by the courts, and who are required to
1548 communicate with LEP persons as part of their case-related functions. Courts appoint these
1549 professionals in criminal and civil matters to counsel litigants and provide necessary
1550 information to the court and their interaction with litigants promotes the fair and efficient
1551 administration of justice.

1552 A court’s obligation in these circumstances is to appoint a professional with demonstrated
1553 bilingual skills or require that the professional appointed use an interpreter in communicating
1554 with the client or ward.²¹⁴ Courts can meet this obligation by appointment of an appropriately
1555 qualified bilingual professional or appointment and payment of interpreter services to facilitate

²¹² 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).

²¹³ *DOJ LEP Guidance*, at 41,461.

²¹⁴ DOJ Letter to Chief Justices and State Court Administrators, at 3 (noting that “some recipient court systems have failed to ensure that LEP persons are able to communicate effectively with a variety of individuals involved in a case under a court appointment or order.”).

1556 the communication process.²¹⁵ For example, a court should appoint a bilingual guardian so that
1557 there can be direct communication between the guardian and the LEP person, or the court
1558 should ensure that the appointed English-speaking guardian follows the court’s procedures for
1559 hiring a qualified interpreter.

1560 The obligation of the court-appointed or supervised professional to communicate is not limited
1561 to the parties for whom the professional has been appointed. At times, the professional will
1562 need to communicate with the litigant’s family members, advocates, witnesses, and others.
1563 Where the professional needs to interview additional persons who can assist the litigant or the
1564 court, such interviews must not be limited to those with whom the professional shares a
1565 common language, and the need for interpreter services is not a reason to forgo such an
1566 interview. Courts should instruct court-appointed personnel of their obligations in cases
1567 involving LEP individuals and on the availability of language access services so that court-
1568 appointed professionals may appropriately fulfill their responsibilities.²¹⁶

1569

1570 **6.4 Courts should require the use of the most appropriate manner for providing language**
1571 **access for the services and programs covered by this *Standard* and should promote**
1572 **the use of translated signs, brochures, documents, audio and video recordings,**
1573 **bilingual staff, and interpreters.**

1574 Courts may utilize a range of approaches, similar to those discussed in *Standard 5*, to ensure
1575 that language access services are provided in court-mandated, court-offered alternative
1576 programs, and with court-appointed or supervised professionals. When the programs or
1577 services are operated or provided by courts directly, *Standard 5* addresses those operations.²¹⁷
1578 This *Standard* addresses the court’s obligation to ensure meaningful access to services and
1579 programs not necessarily operated by the court but still relied upon as an integral component
1580 of the justice system, and discusses alternative procedures for courts.²¹⁸

²¹⁵ *Id.*

²¹⁶ These *Standards* recognize that, except where appointment of counsel is required by law, courts are not generally involved with the provision of language access services between lawyers and clients. However, the *Standards* set out the expectation that all lawyers in civil and criminal cases – whether or not they are appointed by the court – should communicate with their clients in a language the client understands in order to uphold the lawyers’ obligation to provide competent representation, consistent with the standards established by the ABA in the *Standards for the Provision of Civil Legal Aid*.

²¹⁷ For example, many courts operate mediation services in the courthouse with court personnel. See Models of Funding for Ohio Court Mediation Programs, <http://www.sconet.state.oh.us/JCS/disputeResolution/funding/>.

²¹⁸ 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

1581 Many entities under contract with courts to provide services are recipients of federal financial
1582 assistance, and have the same obligation to ensure meaningful access as court-provided or
1583 staffed services.²¹⁹ When contracting for the services and programs covered by this *Standard*,
1584 courts should make the following determinations: how services within the scope of the contract
1585 will be accessible to all persons, including those with limited English proficiency; and how the
1586 delivery of those services will be accomplished, *i.e.*, whether through bilingual staff or
1587 interpreters. A court should first identify whether there is a community provider with bilingual
1588 staff in the languages relevant to litigants referred for services. The service providers' obligation
1589 to provide meaningful access to LEP persons should be specifically noted in the contract, or
1590 contained in written assurances, and the court should monitor the program's compliance by
1591 requesting a copy of the contractor's language access policies and procedures and asking for
1592 evidence of payment for language access services where appropriate.²²⁰

1593 Even when not directly contracting for services, courts should maintain some control over the
1594 delivery of those services and retain their obligation to ensure meaningful access. When
1595 referring LEP individuals to such programs, the court should ensure that these providers
1596 adequately understand their legal obligations. In addition, courts have the ability to refer
1597 litigants only to certain providers or to indicate a preference for providers who offer language
1598 access services. Competition among providers for court referrals should lead to improved
1599 services for LEP persons if providers of quality services, including appropriate language services,
1600 are given increased referrals from the court.²²¹

1601 In a few instances, courts may order an LEP individual to participate in a program that the court
1602 neither operates, nor pays for, and that is not a recipient of federal financial assistance
1603 separately obligated to provide language access services.²²² Where there is no other legal
1604 obligation requiring the provider to offer language access services, and the court cannot
1605 identify an alternative language accessible program, the court should either waive the

impact panels; independent service providers that provide services mandated or offered as part of court proceedings, such as mental health agencies, substance abuse and chemical dependency treatment centers, and domestic violence treatment providers, are commonly recipients of federal financial assistance and are themselves subject to the requirements of Title VI.

²¹⁹ Information on determining whether an entity is a recipient of federal financial assistance can be found *supra*, note 52.

²²⁰ 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.

²²¹ 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.

²²² In these instances, the individual participant is responsible for the cost of participating in the program itself; however, an LEP individual may not be charged for the cost of the interpreter service associated with the program, as this would be discrimination based on LEP status/national origin.

1606 requirement or appoint and pay for an interpreter so that the LEP person can participate. For
1607 example, in a civil case where a judge orders a litigant to participate in counseling and the only
1608 local provider is not a recipient of any federal financial assistance, the court should appoint and
1609 pay for an interpreter.

1610 Courts can play an important role in identifying the sources of funding for language access
1611 services,²²³ and in educating and collaborating with providers to develop resources in the
1612 community.²²⁴ Courts should also take a leadership role in collaborating with community-based
1613 organizations and justice partners to develop additional resource capacity in specific areas and
1614 in the most common languages spoken in the surrounding communities.²²⁵ Increased
1615 community outreach and collaboration with community organizations can assist courts in
1616 meeting the needs of all litigants in an efficient manner.²²⁶

1617

1618 **STANDARD 7 TRANSLATION**

1619 **7. Courts should provide access to translated written information to persons with limited** 1620 **English proficiency to ensure meaningful access to all court services.**

1621 Courts utilize written documents to provide information about services and programs, to
1622 initiate legal proceedings, to protect or establish important legal rights, and to inform litigants
1623 of the outcome of court cases. Lack of access to translated materials in the context of legal
1624 proceedings and court services creates impediments to justice and can result in great harm.
1625 Courts should facilitate meaningful access by providing written materials in translated form to
1626 LEP persons.

²²³ See note 52 for information and resources to determine whether an entity is a recipient of federal financial assistance.

²²⁴ 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.

²²⁵ 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.

²²⁶ June B. Kress, *Think Outside the Court: How Nonprofit Organizations Can Benefit Court Systems During Times of Economic Uncertainty*, <http://contentdm.ncsconline.org/cgi-bin/showfile.exe?CISOROOT=/ctcomm&CISOPTR=123> (last visited Apr. 19, 2011) (“While courts have not historically partnered with nonprofit organizations, the latter can augment court services, act as an advocate or conduit for funding, assist with community outreach, provide community education, and engage in research that results in needed justice policy reform.”).

1627 “Translation” is defined as converting a written text from one language into written text in
1628 another language. The source of the text being converted is always a written language.²²⁷
1629 “Transcription” refers to the process of producing a written transcript of an audio or video
1630 recording, where the recording is in a language other than English.²²⁸ “Sight translation” refers
1631 to a hybrid of interpreting and translating in which the interpreter reads a document written in
1632 one language while translating it orally into another language. Professional “translators”
1633 possess the necessary skills to render a document into the target language while retaining the
1634 meaning and accuracy of the document’s source language. The skills and tools used in
1635 translation are not the same as those used in interpretation, although some individuals may be
1636 proficient in both tasks.

1637
1638 Because translation is a process that takes more time than interpretation and has higher initial
1639 costs, courts have generally not provided translations of written materials as often as they have
1640 used interpreters.²²⁹ This section provides guidance to help courts increase the number and
1641 quality of translations available in a cost-efficient manner and to ensure meaningful access to
1642 services. *Standard 7.1* discusses the legal requirements for translating documents and describes
1643 how to determine which documents to translate and to identify the languages into which the
1644 documents should be translated. *Standard 7.2* describes the necessary components of a
1645 translation protocol to ensure that translations are done accurately and efficiently.

1646

1647 **7.1 Courts should establish a system for prioritizing and translating documents that**
1648 **determines which documents should be translated, selects the languages for**
1649 **translation, includes alternative measures for illiterate and low literacy individuals,**
1650 **and provides a mechanism for regular review of translation priorities.**

1651 When determining which documents to translate, courts should consider the importance of the
1652 service, benefit, or activity involved, the nature of the information sought, and the number or
1653 proportion of LEP persons served. A comprehensive approach to determining which documents
1654 to translate incorporates the following elements: an assessment of written materials to identify

²²⁷ NCSC, *Court Interpretation Model Guides*, at 33.

²²⁸ 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>.

²²⁹ 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.*

1655 “vital” documents,²³⁰ the use of demographic data to determine the languages into which
1656 materials will be translated, and the creation of a plan to phase-in additional documents and
1657 languages over time. The following sections describe these considerations.

1658 Identifying Vital Documents for Translation

1659 Identification of a court’s “vital documents” is the necessary first step in meeting the obligation
1660 to provide access to written materials to LEP persons; determining which documents and forms
1661 to translate requires an individualized assessment. The *DOJ LEP Guidance* explains that
1662 “whether or not a document (or the information it solicits) is ‘vital’ may depend upon the
1663 importance of the program, information, encounter, or service involved, and the consequence
1664 to the LEP person if the information in question is not provided accurately or in a timely
1665 manner.”²³¹ Under these criteria, a broad range of court documents and forms are likely to be
1666 considered “vital” if they involve decisions regarding liberty, safety, property, and relationships
1667 that have significant consequences for an LEP person. The *DOJ LEP Guidance* provides some
1668 examples of vital written materials, including the following:

- 1669 • Consent and complaint forms,
- 1670 • Intake forms with the potential for important consequences,
- 1671 • Written notices of rights; denial, loss, or decreases in benefits or services; parole and
1672 other hearings,
- 1673 • Notices of disciplinary action,
- 1674 • Notices advising LEP persons of free language assistance, and
- 1675 • Applications to participate in a program or activity or to receive benefits or services.²³²

1676 This list is not exhaustive, but provides a guide for courts to evaluate their documents in light of
1677 the overarching goal of providing access to “vital” written documents. Court documents that
1678 may be determined to be “vital” fall within three general categories: 1) court information; 2)
1679 court forms; and 3) individualized documents. Considerations in identifying documents as
1680 “vital” within each of these categories are discussed below.

1681 Information About Court Services And Programs

²³⁰ For a discussion of the DOJ four-factor analysis, see *Standard 1*.

²³¹ *DOJ LEP Guidance*, at 41,463.

²³² *Id.*

1682 Information regarding court services and programs is critical to meaningful access for LEP
1683 persons. Many court brochures, guides, and other documents contain information about court
1684 services and programs, rights, responsibilities, and other information that facilitates a litigant’s
1685 ability to seek relief available through the court. According to the Department of Justice,
1686 “[a]wareness of rights or services is an important part of ‘meaningful access,’” and “[l]ack of
1687 awareness that a particular program, right, or service exists may effectively deny LEP individuals
1688 meaningful access.”²³³

1689 Information about court services and programs should be made widely available in multiple
1690 languages. The content of documents such as guides, “Know Your Rights” flyers, self-help
1691 materials, and instruction booklets, is likely to remain fairly constant and should be translated
1692 and distributed widely.²³⁴ As part of the planning and review process, courts should consider
1693 prioritizing the translation of documents relevant to the protection of a litigant’s safety or the
1694 safety of a child. As noted in *Standard Two*, notice of both the availability of free language
1695 access services and the means of obtaining these services are considered “vital” and should be
1696 provided in the languages likely to be encountered in the communities in the court’s
1697 jurisdiction. The content on a court’s public website is often informational in nature and should
1698 be considered for translation. Alternate formats for providing translated information, including
1699 websites, are discussed in *Standard 7.2*.

1700 Court Forms

1701 Court forms are vital to accessing courts and protecting rights, and include pleadings, summons,
1702 waiver forms, and any notice that requires action by the person receiving it. The *DOJ LEP*
1703 *Guidance* lists court pleading forms used to initiate or respond to a legal matter as documents
1704 that are considered “vital.” Most courts translate only a relatively small percentage of the court
1705 forms they have available in English and the number of translated forms varies by language and
1706 case-type.²³⁵ However, many courts are increasing the availability of translated materials,
1707 particularly in the area of family and housing law. For example, the Tennessee Administrative
1708 Office of the Courts provides translated court forms in Spanish, Vietnamese, and Korean, and is

²³³ *Id.*

²³⁴ Many state courts offer programmatic information in a variety of languages. Some of this information is centralized in self-help centers, legal aid resource websites (including the law help network), and other sources. For example, the Centro de Ayuda de las Cortes de California provides materials in Spanish that help individuals navigate the California court system. <http://www.courtinfo.ca.gov/selfhelp/espanol/>.

²³⁵ 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>.

1709 expanding both the languages and forms for which translations are available.²³⁶ Other courts
1710 have engaged in collaborative efforts with local legal aid providers to create online document
1711 preparation materials in languages other than English. In one instance, a legal aid organization
1712 in Idaho, in collaboration with the court, has created four interactive online forms in Spanish,
1713 which guide the user through a series of questions to produce the final pleading.²³⁷

1714 Case-Specific Documents

1715 Translation of documents in a specific proceeding is necessary for the efficient administration
1716 of justice and for the enforceability of court orders. In addition, the principles of access to
1717 justice and fairness require that courts provide access to these materials in a language that is
1718 understood by the litigant. These documents include foreign language evidentiary documents
1719 and court orders. While such documents are often considered the most difficult to translate,
1720 courts should make every effort to have these materials translated and should consider
1721 alternate formats to assist in this effort.

1722 Foreign language evidentiary documents submitted in a proceeding, including foreign language
1723 tape transcriptions, are often governed by court rules regarding sufficiency of evidence. Some
1724 courts allow submission of written foreign language documents through the court interpreter
1725 who provides a sight translation²³⁸ of the written material for the record.²³⁹ In other courts,
1726 admission of the foreign-language document is at the discretion of the judge. Transcription of
1727 foreign language audio recordings should not be done in the manner of sight translations;
1728 advance notice, planning, and translation by a qualified translator are required.²⁴⁰ All courts
1729 should ensure that court rules regarding foreign language documents and audio recordings
1730 provide a way for all LEP persons to submit these materials into evidence through transcription
1731 translation by a qualified translator or through sight translation by a qualified interpreter,
1732 depending on the evidence offered.

1733 Translating court orders helps ensure that they are enforceable. When an LEP individual is
1734 subject to a court order but the order is only provided in English, there is a risk that court time
1735 will be needlessly consumed to deal with non-compliance or that the administration of justice
1736 will be frustrated if the order is unenforceable. Even when an oral interpretation of the order
1737 has been given, the LEP person must usually rely on memory for the details of the order, placing

²³⁶ Tennessee Administrative Office of the Courts, <http://www.tsc.state.tn.us/geninfo/programs/interpreters/Interpreters3h.htm>; see also, California Courts, translated court forms, <http://www.courts.ca.gov/partners/53.htm>.

²³⁷ Idaho Legal Aid Services, Inc., <http://www.idaholegalaid.org/es/node/1231> (last visited Apr. 19, 2011).

²³⁸ NCSC, *Court Interpretation Model Guides*, at 33.

²³⁹ NAJIT, *Modes of Interpreting* (2006), at 2.

²⁴⁰ For more information on tape transcription of foreign language evidence in a legal proceeding, see NAJIT, <http://www.najit.org/publications/Onsite%20Simultaneous%20Interpre.pdf> (website last visited May 6, 2011).

1738 an unfair burden on the individual and making it difficult to follow specific terms. For example,
1739 in a termination of parental rights case, the Supreme Court of Nebraska reversed the lower
1740 court’s ruling terminating the mother’s rights because, among other things, the mother never
1741 received a copy of the case plan in her native language, and so her failure to strictly comply
1742 with the plan was insufficient grounds to warrant termination.²⁴¹ The risk of significant harm to
1743 the LEP individual who receives no translation of operative documents in a legal proceeding has
1744 been recognized in both civil and criminal cases.²⁴²

1745 Some courts have been proactive in their efforts to provide translations of documents in
1746 specific cases such as domestic violence protection orders. A study conducted by the National
1747 Center for State Courts reported that the Eleventh Judicial Circuit, the Circuit Court of Miami-
1748 Dade County, and the Superior Court of the District of Columbia were all providing protection
1749 orders translated into non-English languages.²⁴³ In Miami-Dade County, the Civil Interpreter
1750 Unit translates court documents, letters, motions, answers, and orders, and transcribes 911
1751 calls and other audio recordings for submission in court. It also provides sight translation for all
1752 foreign language documents offered as evidence as well as interpreter services. Translations of
1753 case-specific documents are provided by staff in the following languages: Spanish, Haitian
1754 Creole, Russian, Portuguese, French, and Italian.²⁴⁴ Courts in California and Texas are
1755 participating in pilot projects to create a process for producing court orders in Spanish.²⁴⁵

1756 Determining the Languages for Translation of “Vital Documents”

1757 In addition to identifying which documents to translate, courts must determine the languages
1758 into which the materials will be translated. Because of the importance of information in written
1759 documents, courts should provide information in as many languages as possible based on data
1760 on community needs. The *DOJ LEP Guidance* states that “[t]he languages spoken by the LEP
1761 individuals with whom the recipient has contact determine the languages into which vital
1762 documents should be translated.”²⁴⁶ Using demographic data for its jurisdiction, a court should
1763 identify the languages of both the LEP individuals coming into contact with the court *as well as*

²⁴¹ *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.

²⁴² See *United States v. Mosquera*, 816 F. Supp. 168, (E.D.N.Y. 1993). (holding that the Sixth Amendment required Spanish-speaking defendants to receive written translations of documents including the indictment and any statute referenced therein, any plea agreement and statutes referenced therein, and any pre-sentence report with costs being allocated to several government entities).

²⁴³ NCSC, *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.

²⁴⁴ *Id.*, pp. 85 – 92.

²⁴⁵ Pilot projects in California and Texas are in current development. Resources will be posted at the ABA website as they become available.

²⁴⁶ *DOJ LEP Guidance* at 41,463.

1764 *those likely to be affected* by the court’s services or programs, even if they do not yet directly
1765 access court services. The *DOJ LEP Guidance* directs courts to translate vital documents into “at
1766 least several of the more frequently-encountered languages and to set benchmarks for
1767 continued translations into the remaining languages over time.”²⁴⁷

1768 For recipients of federal financial assistance, the DOJ LEP “safe harbor” provision offers some
1769 useful guidance, but it must be read in the context of the guidance’s emphasis on “meaningful
1770 access” as the guiding principle to determine the languages into which documents should be
1771 translated. Under the “safe harbor” provision, the following circumstances provide strong
1772 evidence of compliance with Title VI obligations: “(a) [t]he DOJ recipient provides written
1773 translations of vital documents for each eligible LEP language group that constitutes five
1774 percent or 1,000, whichever is less, of the population of persons eligible to be served or likely to
1775 be affected or encountered. Translation of other documents, if needed, can be provided orally;
1776 or (b) [i]f there are fewer than 50 persons in a language group that reaches the five percent
1777 trigger in (a), the recipient does not translate vital written material but provides written notice
1778 in the primary language of the LEP language group of the right to receive competent oral
1779 interpretation of those written materials, free of cost.”²⁴⁸

1780 The “safe harbor” provision is a guide; however, courts should be mindful that the provision
1781 applies “to the translation of written documents only” and “do[es] not affect the requirement
1782 to provide meaningful access to LEP individuals through competent oral interpreters where oral
1783 language services are needed and are reasonable.”²⁴⁹ Thus, the *DOJ LEP Guidance* distinguishes
1784 between written translation of a document, which may take substantial time and multiple
1785 levels of review, and sight translation, which provides an oral interpretation of a written
1786 document to a single user. Thus, courts should be aware that they are obligated to provide an
1787 alternative method of translation for an individual who speaks a language in which written
1788 translation is not provided.

1789 Alternatives for Illiterate and Low-Literacy Individuals

1790 A court may be hesitant to translate written materials into a language when low literacy rates in
1791 the particular language may be perceived as limiting the usefulness of a translated written
1792 document. However, before deciding not to translate, courts should have current and reliable
1793 data to support the belief regarding low literacy. Census data generally used to determine LEP
1794 population numbers and trends does not currently include information on the literacy rate of

²⁴⁷ *Id.*

²⁴⁸ *Id.*

²⁴⁹ *Id.*

1795 LEP individuals in their native language.²⁵⁰ Literacy rates are not static and courts should
1796 periodically gather data and reevaluate any decision not to provide a written translation on this
1797 basis.²⁵¹ Courts should also take into account the changing nature of literacy rates among
1798 different immigrant age demographics. Where a court decides to forgo a written translation
1799 because of this reason, it should consider the use of audio or video recordings as a way to
1800 provide access to the information in a useful way.

1801 System for Regular Review of Vital Documents and Languages for Translation

1802 Once a document has been translated, courts should adopt a process to ensure that the
1803 translation is updated any time the original document is revised. In addition, as new forms are
1804 created, courts should consider them for translation. In this way courts can ensure that
1805 translated documents are current and that new forms are available for LEP persons as well as
1806 for English speakers. This review should also include planning for future translations and
1807 expanding the number of translated documents. This system for regular review of documents
1808 should be developed as part of the translation protocol that is described below.

1809

1810 **7.2 To ensure quality in translated documents, courts should establish a translation**
1811 **protocol that includes: review of the document prior to translation for uniformity and**
1812 **plain English usage; selection of translation technology, document formats, and**
1813 **glossaries; and, utilization of both a primary translator and a reviewing translator.**

1814 The development of a comprehensive translation protocol will assist courts in planning for and
1815 providing high quality translated materials. A comprehensive protocol will also help a court
1816 provide language access to written materials in an efficient manner. Centralized management
1817 of translations can also assist courts in providing competent translations. In contracting for
1818 translations, courts should track translations projects, obtain and store translated documents
1819 from individual translators to print on demand, and coordinate updating translations.
1820 Centralized coordination, as discussed in *Standard 10*, can assist with these tasks and with each

²⁵⁰ 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>.

²⁵¹ 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).

1821 of the following components.²⁵² Courts should establish a translation protocol by reviewing
1822 their current practices for translations to ensure they have the elements described below.²⁵³

1823 Review of Document Prior to Translation

1824 Courts should review all documents prior to translation. Many documents within a state court
1825 system are similar in content with only slight differences so translation of each document at the
1826 local level may not be an efficient use of court resources; by reviewing the documents in
1827 advance courts can identify efficiencies and cost-savings. Some courts have begun to address
1828 this issue by standardizing and simplifying court orders. One way to do this is to reduce the
1829 amount of individualized information in the form and develop checklists of commonly used
1830 options. By creating checklists instead of fill-in-the-blank sections, courts can translate the
1831 majority of the form in advance, adding the limited individualized information with little
1832 additional time and cost.²⁵⁴

1833 Next, courts should review documents to ensure that they contain consistent terminology. The
1834 first step in this process is to ensure the documents are written in plain language.²⁵⁵ “Plain
1835 language” means “readers understand . . . documents more quickly. Readers call less often for
1836 explanations. They make fewer errors filling out forms. They comply more accurately and
1837 quickly with requirements.”²⁵⁶ Documents should be reviewed for readability in English to
1838 ensure that a translation will be useful and that the translator will not be asked to create a
1839 “simplified” version of the English document. The second step in creating documents that
1840 contain consistent terminology is the use of legal glossaries. The legal glossary in this context is
1841 the English glossary of legal terminology used by the court, so that written materials produced
1842 by the court refer to topics within a document in a consistent manner. This process will be

²⁵² 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>.

²⁵³ For example, in Washington, the Administrative Office of the Courts adopted a translation protocol for all state court forms which includes each of these elements and requires that the original translation be conducted by a certified translator.

²⁵⁴ 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 1.1015” hyperlink).

²⁵⁵ “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).

²⁵⁶ 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.

1843 coupled with the translator’s use of a legal glossary in the language of the translation. Those
1844 glossaries are discussed below.

1845 Selection of Translation Technology, Document Formats, and Glossaries

1846 i. Technology

1847 A court’s translation system should incorporate technology in a way that promotes efficiencies
1848 for requesting, processing, distributing, and maintaining translated written materials. As noted
1849 in a 2011 Migration Policy Institute report, “translation and interpretation programs have
1850 developed in-house systems to allow them to more effectively manage requests for their
1851 services and to track resource needs and allocation.”²⁵⁷ In determining which kind of translation
1852 technology to use, courts need to be aware of two general categories: translation memory
1853 software and machine translation.

1854
1855 Translation memory software uses “stored memory to reuse pre-translated phrases in
1856 subsequent translations;”²⁵⁸ this allows courts to develop an individualized database of all prior
1857 translations. When translations are done internally, courts can capitalize on translation memory
1858 software to promote efficient and consistent translations that build on prior documents. When
1859 done externally through translation companies, courts should work closely with the provider to
1860 ensure consistent translations and efficient use of resources.²⁵⁹ Most translation companies
1861 utilize translation memory software which assists in the creation of consistent forms, but this
1862 does not always result in cost savings for the court if the forms used in the software are not
1863 relevant to the particular court forms being translated. Working closely with the translation
1864 company will allow a court to capitalize on stored memory of prior translations – making
1865 translations less expensive and quicker to produce.

1866 The second type of common translation technology is machine translation. Machine translation
1867 involves technology that “automatically translates written material from one language to
1868 another without the involvement of a translator.”²⁶⁰ Courts should use caution when
1869 considering any kind of machine translation, as it has been found to be “unacceptably

²⁵⁷ Migration Policy Institute (MPI), National Center on Immigrant Integration Policy, *Communicating More for Less: Using Translation and Interpretation Technology to Serve Limited English Proficient Individuals*, (January 2011), <http://www.migrationpolicy.org/pubs/LEP-translationtechnology.pdf> [hereinafter MPI, *Communicating*].

²⁵⁸ *Id.* at 12.

²⁵⁹ 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).

²⁶⁰ MPI, *Communicating*, at 13.

1870 unreliable” in its current format.²⁶¹ According to a test reported by the Migration Policy
1871 Institute, machine translation’s common use of “roundtrip” translation (translating a phrase
1872 from English to another language and then back to English) results in a phrase that can become
1873 muddled or change altogether.²⁶² This risk is demonstrated in the following example from the
1874 report: “Please fill out the top part of this form,” is changed to “Please fill in this form the
1875 crown.”²⁶³ As this technology develops over the coming years, it may become a viable option
1876 for translating some court information; however, courts should be very cautious in pursuing
1877 this option unless and until it reliably produces excellent quality translations.

1878 ii. Document and Alternate Formats

1879 Utilizing standardized document formatting in producing translations is critical to avoiding
1880 confusion, waste, and inefficiency. Proper document formatting should include a standardized
1881 naming practice for the identification of translated documents. Standardized naming practices
1882 typically include the identification of the form, the language into which translation is provided,
1883 and the date of the original translation and any updates.²⁶⁴ Each document should also contain
1884 a message that states the court’s policy on whether the forms can be submitted in the foreign
1885 language.

1886 One recommended method for formatting documents involves providing the English text along
1887 with the translation in a multilingual format.²⁶⁵ In this approach, courts provide the English and
1888 the foreign language text together in one document. This approach has been adopted by many
1889 courts due to staff inability to recognize monolingual non-English forms and the administrative
1890 complexity of tracking and maintaining translations that are only produced in a foreign
1891 language. In addition, English-speaking professional staff often assist LEP persons with forms;
1892 providing the English text next to the foreign language text reduces the risk of using a form in
1893 error, and increases the likelihood that the form will be filled out in English.²⁶⁶ Bilingual staff

²⁶¹ Clearinghouse Review, *How Effective is Machine Translation of Legal Information* (2010).
[<http://www.povertylaw.org/clearinghouse-review/issues/2010/2010-may-june/mule-johnson.pdf> (subscription
required)].

²⁶² 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.

²⁶³ MPI, *Communicating*, at 13.

²⁶⁴ 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).

²⁶⁵ Multilingual format is used here to denote the practice of having multiple languages on one form; one of which
would always be English.

²⁶⁶ 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.

1894 may also have difficulties assisting LEP persons filling out forms that are only provided in the
1895 foreign language due to a written literacy level that is lower than their oral proficiency.

1896 Technology can be an effective tool for providing access to written materials in alternate
1897 formats for case-specific court documents and can include recording oral interpretations of
1898 court orders and sight translations. By coupling already existing interpreting services with the
1899 technology of MP3 devices, cellular phones with advanced capabilities for recording,²⁶⁷ or
1900 cassette-recordings, individual litigants can be provided with a recording of the in-court
1901 interpretation of the court order or sight translation for future reference. Courts need to
1902 inform the litigant that the oral interpretation can be recorded and allow time for the litigant or
1903 the interpreter to prepare the recording device. Courts should consider providing court
1904 interpreters or courtrooms with MP3 devices or cassette recorders and should work with
1905 service providers, including domestic violence agencies, to provide recording devices into which
1906 the litigant or interpreter can record an audio version of the communication.²⁶⁸ Some
1907 governmental agencies have addressed the need to provide translated orders or
1908 determinations by developing systems that create a written notice in the language of the
1909 litigants explaining that they may call the number provided on the notice to hear the order read
1910 to them by an interpreter.²⁶⁹

1911 Courts should also consider using alternate formats to increase accessibility to their written
1912 documents. Alternate format documents include oral or video recordings of generally
1913 applicable information. The recordings can then be posted to the court's website and shown in
1914 the courthouse at information counters and self-help areas. An example of this approach is the
1915 Superior Court of California, County of Contra Costa, which provides videos describing the
1916 services of the clerk's office in 7 languages.²⁷⁰

²⁶⁷ 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.

²⁶⁸ For more information on this project idea, See Migration Policy Institute, *Communicating More for Less: Using Translation and Interpretation Technology to Serve Limited English Proficient Individuals*, (2011), which cites a proposed project by New York City Administration of Children's Services translating documents into 9 languages and sight translating all non-translated documents. The program is considering recording a sight-translation of the non-translated documents

²⁶⁹ 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.

²⁷⁰ 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

1917 iii. Glossaries

1918 When translating documents, courts should provide the translator with a glossary of
1919 standardized legal terminology in the target language. This requires courts to make available
1920 legal terminology glossaries in all languages for which the court provides translated materials. A
1921 centralized office should obtain or help develop a legal terminology glossary for each language
1922 and require the use of such a glossary by all translators. Providing glossaries increases the
1923 likelihood that documents are translated using consistent terminology.²⁷¹ The National Center
1924 for State Courts provides legal terminology glossaries in six languages on its public website, and
1925 several state court interpreter programs have developed legal glossaries in a number of
1926 languages.²⁷² For example, court administrator offices in California, Minnesota, and
1927 Washington have each developed legal glossaries in multiple languages and made them
1928 available on their publically accessible websites.²⁷³

1929 Selection of Primary and Reviewing Translators; Ensuring Accuracy in Translations

1930
1931 The final component of a comprehensive translation protocol is the use of primary and
1932 reviewing translators. In selecting both a primary and reviewing translator, courts should
1933 ensure that a “qualified” individual, preferably a certified translator, conducts the primary
1934 translation and the review.²⁷⁴ The *DOJ LEP Guidance* recognizes that “particularly where legal or
1935 other vital documents are being translated, competence can often be achieved by use of
1936 certified translators.”²⁷⁵

1937

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

²⁷¹ The concept of a centralized office is discussed in *Standard 10*.

²⁷² National Center for State Courts, <http://www.ncsc.org/Education-and-Careers/State-Interpreter-Certification.aspx>

²⁷³ 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).

²⁷⁴ Translator certification is discussed more fully in *Standard 8.3*.

²⁷⁵ *DOJ LEP Guidance* at 41,464.

1938 Courts should create a two-step process for all translation work which includes both an initial
1939 translation and a review to ensure the accuracy of the translation prior to distribution.
1940 Translation of a written court document, similar to the creation of the original document in
1941 English, requires editing for accuracy and attention to detail at all stages of the translation
1942 process. The importance of this type of review is recognized in the *DOJ LEP Guidance*, which
1943 states that “[c]ompetence can often be ensured by having a second, independent translator
1944 ‘check’ the work of the primary translator.”²⁷⁶ The initial translator should be provided with
1945 details about the purpose of the document, the audience, and other relevant information, as
1946 well as the court’s legal glossary. Courts should then have a separate reviewing translator
1947 compare the initial translation to the original document for accuracy; this process is recognized
1948 as a standard in the industry.²⁷⁷ Due to the cost of printing and production, review of the
1949 translated document by a second translator before finalizing the document is critical to
1950 identifying and correcting errors in a way that is cost-efficient. Requiring the reviewing
1951 translator to compare the translation to the original should be included in all translation
1952 contracts.

1953

1954 **STANDARD 8 QUALIFICATIONS OF LANGUAGE ACCESS PROVIDERS**

1955 **8. The court system and individual courts in each state should ensure that interpreters,**
1956 **bilingual staff, and translators used in legal proceedings and in courthouse, court-**
1957 **mandated and court-offered services, are qualified to provide services.**

1958 Due to the complex nature of legal matters, the high level of skill needed for accurate
1959 interpreting and translating, and the need for strict observance of ethical rules, interpreters,
1960 bilingual staff, and translators must be qualified. According to the Department of Justice,
1961 “(q)uality and accuracy of the language service is critical in order to avoid serious consequences

²⁷⁶ *Id.* The *DOJ LEP Guidance* also refers to using “back translation.” (“Alternatively, one translator can translate the document, and a second, independent translator could translate it back into English to check that the appropriate meaning has been conveyed. This is called ‘back translation’”). Back translation should be avoided as it can lead to slightly different renderings of the message as compared to the original text because of word choices by different translators. There is often more than one correct word choice in an interpretation or translation – therefore, translators must make choices based on their professional opinion. The same is true for all second translators reviewing the work. Their opinions may result in a slightly different word choice in rendering the message back into English. This variation is to be expected and does not necessarily mean that the original translator made an error. The use of back translation should be supplemented by review of the two texts to check for accuracy.

²⁷⁷ MPI, *Communicating*; Consortium for Language Access in the Courts, *Equal Justice: Bridging the Language Divide, Guide to Translation of Legal Materials* (2011), at 8.

1962 to the LEP person and to the recipient.”²⁷⁸ It is the responsibility of all courts to ensure that
1963 language services providers²⁷⁹ are competent.

1964 The *DOJ LEP Guidance* requires competency in the delivery of language access services in the
1965 context of interpretation, bilingual staff providing direct services, and translation services; it
1966 also indicates that the levels of competency required may differ depending on the setting.
1967 Establishing competency is an objective process. “Competency requires more than self-
1968 identification as bilingual.”²⁸⁰

1969 Certification refers to the use of standardized testing to determine that an individual possesses
1970 certain knowledge, skills and abilities. Courts should always utilize an assessment of the
1971 qualifications of all language services providers, and using a formal certification process ensures
1972 that the appropriate level of qualification is provided. “Where individual rights depend on
1973 precise, complete, and accurate interpretation or translations, particularly in the contexts of
1974 courtrooms ... the use of certified interpreters is strongly encouraged.”²⁸¹

1975 Credentialing is an umbrella term which includes assessment and certification along with
1976 additional training and screening, and allows courts to both designate different levels of
1977 qualification and require continuing education. This is necessary to ensure that language
1978 services providers are competent in the languages in which they will communicate, understand
1979 the role of the interpreter and basic interpreting concepts, possess competent interpreting
1980 skills, and know the ethical rules governing court interpreting. Credentialing the different
1981 categories of language services providers—interpreters, bilingual staff, and translators—
1982 requires an assessment program for each; these are described in *Standards 8.1, 8.2, and 8.3*. A
1983 comprehensive discussion of the credentialing components is provided in *Standard 8.4*. The
1984 role of a centralized office in overseeing the implementation and administration of language
1985 access provider competency assessment²⁸² and credentialing²⁸³ procedures is mentioned below
1986 but a full discussion can be found in *Standard 10*.

²⁷⁸ *DOJ LEP Guidance*, at 41,461.

²⁷⁹ “Language service providers” are defined as “[t]hose individuals and/or entities who provide qualified court interpreting services, bilingual assistance, and translation services for court users who are limited English proficient.” NCSC, *10 Keys to a Successful Language Access Program in Courts*.
http://www.ncsonline.org/d_research/CourtInterp/10KeystoSuccessfulLangAccessProgFINAL.pdf.

²⁸⁰ *DOJ LEP Guidance*, at 41,461.

²⁸¹ *Id.*

²⁸² “Assessment” which is a process, rather than a designation, refers to actual testing of qualifications, such as language competency.

²⁸³ Credentialing refers to a determination that the individual is qualified to provide services. As mentioned in *Standard Eight*, NCSC defines credentialing as “[d]esignating as qualified, certified, licensed, approved, registered, or otherwise proficient and capable through training and testing programs.” NCSC, *10 Keys to a Successful Language Access Program in Courts*. *Supra*, note 282.

1987

1988 **8.1 Courts should ensure that all interpreters providing services to persons with limited**
1989 **English proficiency are competent. Competency includes language fluency,**
1990 **interpreting skills, familiarity with technical terms and courtroom culture, and**
1991 **knowledge of codes of professional conduct for court interpreters.**

1992 In the legal setting, competent interpreting includes mastery of legal terms and concepts,
1993 understanding the use of legal arguments, protocols, procedures, laws, and traditions, and
1994 compliance with legal and ethical standards.”²⁸⁴ Research on the tasks performed while
1995 interpreting has identified the following areas of knowledge, ability, and skill: ²⁸⁵

- 1996 • Grammar—Knowledge of standard and formal grammar of the source and target
1997 languages; ²⁸⁶
- 1998 • Fluency —Ability to speak the source and target languages fluently with correct
1999 pronunciation, inflection, and in a variety of registers; ²⁸⁷
- 2000 • Comprehensive Vocabulary—Knowledge of the source and target language vocabulary,
2001 including colloquial slang, idiosyncratic slang, and regionalisms, used in formal,
2002 consultative, and casual modes of communication in justice system contexts;
- 2003 • Specialized Vocabulary—Knowledge of source and target language specialized
2004 vocabulary including: civil and criminal justice system terminology; case-related
2005 specialized vocabulary; physical and mental symptoms of illness; tests and laboratory
2006 analyses related to alcohol and drugs; ballistics and firearms; and expressions related to
2007 crime and drug use.
- 2008 • Legal Culture—Knowledge of standards and laws pertaining to court interpreting and
2009 basic court procedure;
- 2010 • General Culture—Ability to understand and employ the dialectal and cultural nuances of
2011 the source and target language;
- 2012 • Ethics—Knowledge of and commitment to the interpreter codes of professional conduct
2013 and the protocol of interpreting;

²⁸⁴ Bruno G. Romero, *Here Are Your Right Hands: Exploring Interpreter Qualifications*, 34 U. Dayton L. Rev. 15, 18 (2008-09).

²⁸⁵ This list is a compilation of research on the issue of interpreter skills, including NCSC, *Court Interpreting Model Guides*, at 41 - 44; Romero, 34 U. Dayton L. Rev. 15.

²⁸⁶ 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.

²⁸⁷ Register refers to the level and complexity of vocabulary and sentence construction. *NCSC Court Interpretation Model Guides*, ch.3, at 42.

- 2014 • Interpretation Modes--Ability to interpret in both consecutive and simultaneous modes,
- 2015 and the knowledge of the appropriate settings to use each mode;²⁸⁸
- 2016 • Sight Translation—Ability to sight-translate printed, typed, or handwritten
- 2017 documents;²⁸⁹
- 2018 • Cognitive Skills – Possession of the skills of memory, attention, problem solving, and
- 2019 flexibility.
- 2020 • Communication Skills – Possession of the skill of providing a timely interpretation in a
- 2021 clear manner.²⁹⁰

2022 According to the National Center for State Courts Consortium for Language Access in the
2023 Courts, “[a]udits of interpreted court proceedings in several states have revealed that untested
2024 and untrained interpreters often deliver inaccurate, incomplete information to both the person
2025 with limited English proficiency and the trier of fact. . . . Every state that has examined
2026 interpreted court proceedings has concluded that interpreter certification is the best method to
2027 protect the constitutional rights of court participants with limited English proficiency.”²⁹¹

2028 Methods used to assess language services providers’ competency include oral certification
2029 examinations and language proficiency examinations; these have been developed by
2030 interpreter professional organizations, court administrators, and programs such as the
2031 Consortium.²⁹² Oral certification exams for court interpreters should test the skills of
2032 simultaneous interpreting, consecutive interpreting, sight translation, proficiency in legal,
2033 general, and colloquial terminology, and ethics. However, oral certification exams are only
2034 available in a limited number of languages and therefore courts must also establish other
2035 methods to assess interpreter qualification in languages for which oral certification exams are
2036 not available.

2037 The following sections provide a detailed description of the assessment process for certified
2038 and non-certified languages. While there is some overlap between assessment and

²⁸⁸ 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.

²⁸⁹ Sight translation requires the interpreter to read a written document in the source language and render it orally into the target language.

²⁹⁰ NCSC, *Court Interpretation Model Guides*, at 40 – 42. See also *Interpreters in the Judicial System: A Handbook for Ohio Judges*, (2008), http://www.sconet.state.oh.us/publications/interpreter_services/ISHandbook.pdf. The United States federal court system describes a similar list of skills on its webpage. See <http://www.uscourts.gov/FederalCourts/UnderstandingtheFederalCourts/DistrictCourts/CourtInterpreters/InterpreterSkills.aspx>.

²⁹¹ NCSC, *Consortium for State Court Interpreter Certification*, (1995, last amended May 2008), http://www.ncsonline.org/d_research/CourtInterp/Agreements2008FinalMay.pdf.

²⁹² NCSC’s *Court Interpretation Model Guides* provides detailed information regarding the necessary skills and credentialing process for interpreters interpreting in court proceedings; see also *10 Keys to a Successful Language Access Program*, Component Number 4 – Credentialing of Language service providers, Component Number 5 – Appointment of credentialed language service providers, and Component Six – Standards of professional conduct for court-related language service providers.

2039 credentialing, a discussion of the comprehensive system for credentialing language services
2040 providers—which includes candidate pre-screening, ethics training and testing, orientation
2041 programs, and continuing education requirements for both certified and non-certified
2042 interpreters and for a variety of settings —is covered in *Standard 8.4*.

2043 Certification of Court Interpreters

2044 Certification of interpreters within the court setting occurs in both federal and state courts.
2045 Congress passed The Court Interpreters Act of 1978,²⁹³ and created the Federal Court
2046 Interpreter Certification Exam (FCICE) Program,²⁹⁴ which developed certification exams in
2047 Spanish, Navajo, and Haitian-Creole.²⁹⁵ Federal court certification represents one of the highest
2048 levels of professional credentialing.²⁹⁶ Since 1980, the mission of the FCICE has been to define
2049 criteria for certifying interpreters qualified to interpret in federal courts and to assist the
2050 Director of the Administrative Office of the U.S. Courts in maintaining a list of federally certified
2051 court interpreters.

2052 Recognizing that language needs exist outside of the three certified languages, the
2053 Administrative Office of the United States Courts created additional categories for qualifying
2054 interpreters. The categories of “professionally qualified interpreter” and “language skilled
2055 interpreter”²⁹⁷ are used for languages other than Spanish, Navajo, and Haitian-Creole.
2056 “Professionally qualified interpreters” must either have passed one of two comparable
2057 examinations provided by the State Department and the United Nations or be a current
2058 member in good standing of one of two professional organizations which require sponsorship
2059 and relevant experience as pre-requisites to membership.²⁹⁸ “Language skilled interpreters”

²⁹³ 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.

²⁹⁴ The FCICE, which has a minimum duration of two years, includes both written and oral examinations.

²⁹⁵ <http://www.uscourts.gov/federalcourts/understandingthefederalcourts/DistrictCourts/CourtInterpreters.aspx>. As of 2011, the FCICE Program is only available in Spanish; however, prior certifications granted under the program in Navajo and Haitian-Creole remain valid. For more information, see <http://www.uscourts.gov/FederalCourts/UnderstandingtheFederalCourts/DistrictCourts/CourtInterpreters/InterpreterCategories.aspx>; see also http://www.ncsconline.org/d_research/fcice_exam/about.htm.

²⁹⁶ 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.

²⁹⁷ <http://www.uscourts.gov/FederalCourts/UnderstandingtheFederalCourts/DistrictCourts/CourtInterpreters/InterpreterCategories.aspx>.

²⁹⁸ <http://www.uscourts.gov/FederalCourts/UnderstandingtheFederalCourts/DistrictCourts/CourtInterpreters/InterpreterCategories.aspx>; <http://www.taals.net/bylaws.php>.

2060 must demonstrate to the satisfaction of the court the ability to interpret court proceedings
2061 from English to a designated language and from that language into English.²⁹⁹

2062 State court certification efforts began when four states³⁰⁰ collaborated to develop oral testing
2063 examinations³⁰¹ and created the Consortium for State Court Interpreter Certification (CSCIC).³⁰²
2064 The Consortium’s goal was to “facilitate court interpretation test development and
2065 administration standards, to provide testing materials, to develop educational programs and
2066 standards, and to facilitate communications among the member states and entities, in order
2067 that individual member states and entities may have the necessary tools and guidance to
2068 implement certification programs.”³⁰³ As of 2011, CSCIC, now called the Consortium for
2069 Language Access in the Courts (Consortium), has 41 member states and offers 18 language-
2070 specific oral examinations, written examinations, resources, and networking opportunities.³⁰⁴

2071 The Consortium’s oral certification examinations are “designed to determine whether
2072 candidates possess minimal levels of language knowledge and interpreting skills required to
2073 perform competently during court proceedings, to measure a candidate’s ability to faithfully
2074 and accurately interpret the range of English ordinarily used in courtrooms into another
2075 language and to understand and interpret into English what is said by a native speaker of
2076 another language, and are substantially similar in structure and content to tests that have been

²⁹⁹ <http://www.uscourts.gov/FederalCourts/UnderstandingtheFederalCourts/DistrictCourts/CourtInterpreters/InterpreterCategories.aspx>.

³⁰⁰ Minnesota, New Jersey, Oregon, and Washington were the four original states involved in this effort.

³⁰¹ 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).

³⁰² 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.

³⁰³ Consortium for Language Access in the Courts, *Agreements for Consortium Organization and Operation*, (2010), http://www.ncsonline.org/D_Research/CourtInterp/Agreements2010FINAL.pdf.

³⁰⁴ 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

2077 developed by the federal courts.”³⁰⁵ The examinations are “designed and developed by
2078 consultants who have extensive knowledge of courts and court proceedings, the job
2079 requirements for court interpreters, and /or advanced training or high levels of fluency in
2080 English and the non-English language.”³⁰⁶ These exams are carefully validated to ensure that
2081 the testing program meets the “basic needs of all state courts in the area of interpreting
2082 services.”³⁰⁷ Using these standards, the Consortium provides testing in Arabic, Modern
2083 Standard Arabic, Egyptian, Cantonese, Chuukese, Bosnian/Croatian/Serbian, French, Haitian-
2084 Creole, Hmong, Ilocano, Korean, Laotian, Mandarin, Marshallese, Polish, Portuguese, Russian,
2085 and Somali.

2086 Given the documented need for a rigorous examination system like that established by the
2087 Consortium, court language access programs should incorporate the following requirements:
2088 test components and scoring system that have utility for diagnostic evaluation of candidate
2089 strengths and weaknesses as well as for summative evaluation; a program that informs
2090 candidates and users of interpreter services of the names and credentials of all individuals
2091 involved in the testing development and administration process; test source materials that are
2092 derived exclusively from specimens of court and related justice system language; and test
2093 scoring that utilizes a procedure that is readily perceived to be objective and unaffected by
2094 personal bias.³⁰⁸

2095 Certification should help assess and identify an interpreter’s level of skill, not simply whether
2096 the candidate has passed or failed a relevant examination. This allows courts to identify
2097 interpreters who exceed, meet, or fall below the minimum passing score for certification, and
2098 utilize them accordingly. For example, a state may establish categories based on score ranges
2099 above 80 percent to identify master-level interpreters, a score between 70 and 80 percent to
2100 identify professional interpreters, and a score of 60 to 70 percent to identify qualified
2101 interpreters.³⁰⁹ New Jersey employs a tiered certification system that gives interpreters who are
2102 not quite ready to pass the certification exam a chance to continue to improve their skills by

³⁰⁵ 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).

³⁰⁶ 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)”).

³⁰⁷ 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.

³⁰⁸ *Id.*

³⁰⁹ This is one example of an approach to a tiered certification process for certified languages.

2103 working in other court settings.³¹⁰ This ‘tiered’³¹¹ approach to certification allows courts to
2104 identify the skill level of interpreters along a wider range of abilities, prioritize the highest
2105 skilled interpreters for in-court interpreting, and identify areas for improvement and training
2106 opportunities for those testing in the lower ranges.³¹² Providing this information to judges helps
2107 inform their selection of the highest qualified interpreter available.

2108 Assessing Interpreter Qualifications in Non-Certified Languages

2109 Due to the availability of Consortium certification exams in only 18 languages³¹³ and the limited
2110 number of state-developed exams beyond that number, most state courts must determine for
2111 themselves the qualifications of interpreters in many other languages for which no formal oral
2112 certification exams are available.³¹⁴ Many states use an alternate assessment system for non-
2113 certified languages which includes a written exam, language fluency testing, and sometimes,
2114 testing of interpreter skills. Written exams are useful because they can easily and efficiently
2115 determine an interpreter’s level of knowledge of codes of professional conduct and basic
2116 information about interpreting. However, language fluency and interpreter skills require oral
2117 assessments. The written exam is used to test the applicant’s understanding of legal
2118 terminology, the role of the interpreter, interpreter ethics, and basic interpreting functions and
2119 skills; the oral language fluency test is used to assess the applicant’s level of proficiency in the
2120 foreign language and in English, and most tests include some assessment of the applicant’s
2121 ability to perform simultaneous and consecutive interpreting. States should combine these
2122 assessments with other credentialing components (ethics, orientation, and training etc.) to
2123 ensure that interpreters are qualified for the demands of court interpretation.

³¹⁰ New Jersey Courts, Language Services, *Frequently Asked Questions*,
<http://www.judiciary.state.nj.us/interpreters/faq.htm#approved>.

³¹¹ 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.

³¹² For example, the Minnesota courts have a system of interpreter certification which allows an interpreter to be either certified or rostered. An interpreter can be listed on the roster list in a language for which there is an oral examination which the interpreter did not pass, or because the interpreter speaks a language for which an oral examination is not available, if the interpreter has satisfied other minimum requirements. Minnesota Judicial Branch, Court Interpretation, *Frequently Asked Questions*, <http://www.mncourts.gov/?page=455>. Another example is New Jersey, which classifies certified interpreters as Master, Journeyman, and Conditionally Approved based on the candidate’s score on the exam. New Jersey Judiciary Language Services Section, *How Are Interpreters Who Work In Languages For Which There Is No Court Interpreting Performance Examination Classified?* http://www.judiciary.state.nj.us/interpreters/intclass_untested.pdf.

³¹³ As of 2011, the Consortium offers oral examinations in 18 languages. For further information about the current availability of testing and the languages for which certification is available, see http://www.ncsconline.org/D_Research/CourtInterp/ExaminationsAvailableForMembersOfTheConsortiumForStateCourtInterpreterCertificatio_000.html (last visited Apr. 19, 2011). Expansion beyond these languages is slow due to the high cost of test development.

³¹⁴ 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.

2124 Many states are unable to provide complete certification exams in languages not available from
2125 the Consortium, and use a roster or registry process to test language fluency but not
2126 interpreting skills. These states test the interpreter’s language ability and understanding of
2127 basic legal terminology and interpreter role, and create a mechanism to impose court
2128 orientation, ongoing education, and ethics requirements. The state of Washington represents
2129 one example of a state court’s approach to testing interpreters in non-certified languages. It
2130 offers testing in only 10 of the 18 languages available from the Consortium,³¹⁵ but tests an
2131 additional 50 languages and classifies these under the category “registered.”³¹⁶ To become a
2132 registered court interpreter in Washington, an individual must pass both the written
2133 Consortium exam, which includes English language vocabulary and court related terms as well
2134 as ethics,³¹⁷ and a separate oral proficiency telephonic interview. Candidates must pass the
2135 written exam with a score of 80 percent or better and are then eligible to take a separate oral
2136 exam measuring their foreign language speaking and comprehension skills. This examination is
2137 a telephonic interview with a qualified evaluator of the foreign language and measures how
2138 well the interpreter speaks and comprehends the language for which he/she is attempting to
2139 become registered. However, “registered” language interpreters have not had their
2140 interpreting skills (from English to the foreign language, and vice versa) assessed.

2141 If a state does not have both kinds of “certification” and “registry” categories, or if a court is
2142 working with an interpreter in languages not available in either category, a judge must engage
2143 in additional questions to determine interpreter language competency (including legal terms)
2144 and interpreting skill. These questions are discussed in greater detail in Section 8.4 as part of
2145 the voir dire process used to qualify all interpreters in a legal proceeding. When inquiring about
2146 language ability, judges may encounter interpreters who have been tested in areas outside of
2147 the legal setting. Certification exams have been developed in the areas of healthcare and social
2148 and health services and include testing in languages for which court certification is not

³¹⁵ 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.

³¹⁶ 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=registere_dInterpreters.

³¹⁷ Washington State Courts, Washington Court Interpreter Program 2011 Certification Process, http://www.courts.wa.gov/programs_orgs/pos_interpret/content/pdf/CertifiedProcess2011.pdf.

2149 available. However, courts should be aware that these assessments do not test legal
2150 terminology or the skills needed for court interpreting.³¹⁸

2151 The history of interpreter testing demonstrates that even with a strong national effort to
2152 increase the number of languages in which certification is available, many states and courts
2153 must still develop procedures for the large number of non-certified languages. Understanding
2154 that certifying interpreters is complex and requires thoughtful review can help courts and
2155 judges make a better individualized assessment of competence when necessary. Courts should
2156 implement processes to test and train interpreters in languages for which certification exams
2157 are not available to ensure that these interpreters have the same level of oversight as certified
2158 interpreters. This process should include the pre-screening, ethics training, orientation
2159 programs, and continuing education requirements described in *Standard 8.4*.

2160 Assessing Specialized Skills - Relay Interpreting

2161 Relay interpreting is an example of a specialized type of interpreting which requires distinct
2162 skills. It requires that the communication first be interpreted into a third language, before it can
2163 be interpreted into English. “Relay interpretation involves using more than one interpreter to
2164 act as a conduit for spoken or sign languages beyond the understanding of a primary
2165 interpreter.”³¹⁹ In relay interpreting “an interpreter (called the ‘intermediary’ interpreter)
2166 interprets from one foreign language (e.g., Mixtec) to a second foreign language (e.g., Spanish),
2167 then a qualified interpreter (referred to as the ‘primary’ interpreter) interprets from the second
2168 foreign language (in this case Spanish) into English.”³²⁰ Increasingly, relay interpreting is used
2169 for languages of lesser diffusion, where there are no interpreters in the jurisdiction who speak
2170 both English and the other language. Relay interpreting is commonly used for deaf individuals
2171 who may not know American Sign Language or any formal system of signed communication.³²¹
2172 In such cases a Certified Deaf Interpreter relays the information from the deaf individual to the

³¹⁸ These certification programs exist at both the state and national level. For example, Washington has interpreter certification in eight languages for medical interpreters through the Department of Social and Health Services, and verifies language competency in all other languages for which interpreters are provided in the state Medicaid interpreter program. At the national level, two organizations began developing and offering certification for healthcare interpreting in Spanish in 2010. Those organizations are: The National Council on Interpreting in Healthcare (NCIHC) through the Certification Commission on Healthcare Interpreting and the National Medical Interpreter Certification developed in partnership with the International Medical Interpreter Association (IMIA) and Language Line Services.

³¹⁹ 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>.

³²⁰ *Id.*

³²¹ 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.

2173 ASL interpreter, who then interprets the ASL into English.³²² Because relay interpreters are not
2174 fluent in English, their ability to take and pass a certification exam is limited. The court should
2175 determine their qualifications pursuant to the process for non-certified interpreters and require
2176 them to be familiar with the code of professional conduct.

2177 Assessing Interpreter Qualifications for Services Outside of Legal Proceedings

2178 When assessing interpreter qualifications to interpret in settings outside of legal proceedings,
2179 courts should still ensure the interpreter possesses the necessary qualifications, and should
2180 prioritize how resources are used to maximize efficiency. Credentialing interpreters specifically
2181 for settings outside the courtroom is a newly emerging area and resources need to be
2182 developed at the national level. When assessing competency of interpreters in these settings,
2183 courts may rely on a tiered system to evaluate the appropriate match between interpreter and
2184 setting or may develop alternate systems.

2185 Credentialing interpreters for settings outside the courtroom is distinct from credentialing
2186 interpreters for legal proceedings in the following two ways: first, the interpreter’s fluency in
2187 complex legal terminology may not need to be as high; and second, the interpreter’s skills
2188 (particularly the ability to perform simultaneous interpreting) may not need to be as well
2189 developed. Courts using different credentialing for non-courtroom interpreting should still
2190 ensure that the interpreter’s skill is properly matched to the specific communication rather
2191 than assuming that any interpreters at a lower skill level will suffice. For example, an
2192 interpreter may need to know less legal terminology to interpret a parenting class than to
2193 interpret in civil and criminal matters in court, but may need to be able to provide simultaneous
2194 interpreting. These services are sometimes provided in much more informal settings where
2195 consecutive interpreting is not appropriate. Nevertheless, courts should still consider the
2196 additional screening, ethics training and testing, orientation programs, continuing education,
2197 and voir dire (or individual assessment) components used as part of interpreter credentialing to
2198 ensure competent services are provided.

2199 Including Interpreter Competency in Contracts with Language Services Providers

2200 When courts contract out for interpreter services they should ensure that expectations
2201 regarding competency are clearly identified in the contract and that monitoring procedures are
2202 established. Every interpreter who comes into the court to interpret, whether appearing in-
2203 person, by video, or by telephone, or who has been hired as staff, independent contractor, or

³²² See Mathers Esq., Carla, The National Consortium of Interpreter Education Centers, “*Deaf Interpreters in Court: An accommodation that is more than reasonable*” (2009) at http://www.nciec.org/projects/docs/The_Deaf_Interpreter_in_Court62409.pdf

2204 from a third-party agency must be competent for the setting in which he or she will interpret. In
2205 contracting with a third-party provider for interpreter services, these same requirements apply.

2206

2207 **8.2 Courts should ensure that bilingual staff used to provide information directly to**
2208 **persons with limited English proficiency are competent in the language(s) in which**
2209 **they communicate.**

2210 Where bilingual staff are providing language services directly to LEP persons, courts should
2211 determine the level of fluency needed for the position, and assess the language fluency of the
2212 bilingual staff member in both English and the other language(s) in which they are
2213 communicating.³²³ The level of language fluency needed by bilingual staff to communicate
2214 directly with LEP persons depends upon the setting. In some court services and programs, the
2215 level of complex legal terminology or subject matter required may be nearly equal to that used
2216 in the courtroom. In such instances, courts should assign staff to these positions who are able
2217 to speak the language with sufficient accuracy and vocabulary to participate effectively in most
2218 formal and informal conversations on practical, social and professional topics. For example, a
2219 bilingual staff member conducting an interview, assisting with filling out and reviewing forms,
2220 or teaching a class, would need to have a near native-speaker level of fluency in order to ensure
2221 that communication is effective. In contrast, for clerical situations in which the bilingual staff
2222 member is providing routine and basic information, a lower level of language fluency may be
2223 adequate.

2224 In all situations where courts are relying on bilingual staff to provide services, the staff must
2225 possess a minimum level of language fluency to fully express the relevant concepts and fully
2226 understand the communications of the LEP persons involved. An instructive resource to assist
2227 in determining the level of language proficiency necessary for different interactions is provided
2228 by the Inter-Agency Language Roundtable (ILR), which has developed a comprehensive tool for
2229 categorizing the language competency of a non-native speaker based on standardized rating
2230 factors including the typical stages in the development of language competency.³²⁴ The ILR
2231 identifies categories of proficiency for speaking, reading, writing, listening, interpreting, and
2232 translating.

³²³ 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*.

³²⁴ 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).

2233 Courts should verify a bilingual staff person’s language fluency by assessing skill level through
2234 internal systems or external contracts. Language proficiency falls along a continuum and is a
2235 fluid concept that can “develop or diminish over time depending on the efforts or
2236 circumstances of the individual.”³²⁵ Courts should use a valid assessment tool rather than
2237 relying on staff self-evaluation. When developing internal language proficiency tools, courts
2238 should ensure that the tools are reliable, have been specifically designed to test the relevant
2239 skill needed, and are based on the setting in which services will be provided. The assessment
2240 tool should be repeatable, fair, and not subject to bias. If bilingual staff are used to assess other
2241 staff, by conducting interviews or testing, they should first be independently assessed to ensure
2242 their competency to evaluate others.

2243 When a court does not develop internal systems to assess bilingual staff, it can contract with
2244 external language proficiency testing providers to assess the language proficiency of bilingual
2245 staff. Several national companies offer tests which evaluate the language proficiency of the
2246 candidate through a combination of oral and written examinations and provide a rating which
2247 correlates to a hierarchy of settings in which the individual is competent to converse.³²⁶ Tests
2248 are available in as many as 90 languages³²⁷ and provide a court with independent verification of
2249 the staff member’s language proficiency.

2250

2251 **8.3 Courts should ensure that translators are competent in the languages which they**
2252 **translate.**

2253 Because translating is a specialized skill,³²⁸ individuals providing translations should be assessed
2254 and credentialed separately from interpreters. Certification of competency in translation is
2255 available in some languages. For others, courts must use an assessment process such as the voir
2256 dire for translators discussed in *Section 8.4*, which describes how courts can establish broader
2257 credentialing standards for translators similar to those developed for interpreters and bilingual
2258 staff.

³²⁵ Romero, 34 U. Dayton L. Rev. at 18.

³²⁶ 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].

³²⁷ <http://www.altalang.com/language-testing/languages.aspx> (last visited Apr. 19, 2011).

³²⁸ As described in *Standard 7*, translation involves the conversion of a written text in one language into written text in another language. The skills and tools used in translation are not the same as those used in interpretation although an individual may be competent in both.

2259 Professional translators are “fluent in their source languages; are effective bridges between the
2260 languages they work in; can render the message of the original text, with appropriate style and
2261 terminology; and are first and foremost writers.”³²⁹ The skills necessary to be a competent
2262 translator in the court setting include:

- 2263 • Proficiency in reading English and the foreign language;
- 2264 • Mastery of the foreign language equivalent to that of an educated native speaker;³³⁰
- 2265 • Knowledge of common grammatical and syntactical conventions, in addition to
2266 dialectical aspects of English and the foreign language;
- 2267 • Knowledge of formal writing and legal writing conventions in English and the foreign
2268 language;
- 2269 • Knowledge of legal terminology in English and the foreign language;
- 2270 • Professional experience translating complex legal documents; and
- 2271 • Ability to communicate effectively with court personnel.³³¹

2272 Translator Assessment and Certification

2273 Most state courts accept professional translator organization certifications to establish
2274 competency to translate complex court materials and have not created internal testing systems
2275 for translators. One well-respected national organization is the American Translators
2276 Association (ATA), which certifies individuals by language pairs in the following languages: into
2277 English from Arabic, Croatian, Danish, Dutch, French, German, Japanese, Portuguese, Russian,
2278 and Spanish; and from English into Chinese, Croatian, Dutch, Finnish, French, German,
2279 Hungarian, Italian, Japanese, Polish, Russian, Spanish, Swedish, and Ukrainian.³³² Candidates for
2280 ATA certification must establish qualifying educational degrees or minimum experience before
2281 taking the exams.³³³ The ATA certification program tests the professional translation skills
2282 identified above to determine whether a candidate is able to produce a translation that
2283 matches the source document and meets the needs of the requestor, as identified in the
2284 request for translation.³³⁴ By way of comparison, the level of competency that the ATA
2285 certification requires—a passing grade in the ATA examination—is roughly equivalent to a
2286 minimum of Level 3, on a scale of 1 – 5, on the Interagency Language Roundtable scale.³³⁵

³²⁹ ATA, *Translations: Getting it Right*, at 22, http://www.atanet.org/docs/Getting_it_right.pdf (emphasis added).

³³⁰ ATA, *Code of Professional Conduct and Business Practice*,
www.atanet.org/membership/code_of_professional_conduct.php (last visited Apr. 19, 2011).

³³¹ 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>.

³³² http://www.atanet.org/certification/aboutcert_overview.php (last visited Apr. 19, 2011).

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

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

³³⁵ <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

2287 Assessing Translator Qualifications in Non-Certified Languages

2288 Given the limited number of languages for which ATA certification exists and the lack of state
2289 court programs to independently certify translators, courts need to develop and follow internal
2290 protocols to identify qualified translators who can provide the necessary translations. Because
2291 translations do not require the translator to be physically present, courts should identify and
2292 share resources both nationally and internationally. Once a qualified translator is located, using
2293 a system such as that described in *Standard Seven* will assist courts in ensuring that translations
2294 are accurate. The Language Access Services Office (LAS Office), described in *Standard 10*, should
2295 establish such a protocol and use assessment and credentialing to ensure that translators and
2296 bilingual staff used to translate court documents are qualified.³³⁶

2297

2298 **8.4 Courts should establish a comprehensive system for credentialing interpreters,**
2299 **bilingual staff, and translators that includes pre-screening, ethics training, an**
2300 **orientation program, continuing education, and a system to voir dire language**
2301 **services providers' qualifications in all settings for which they are used.**

2302 Assessment tools are helpful in determining a language services provider's fluency; however,
2303 using such tools alone will not ensure that interpreters, bilingual staff, and translators are
2304 competent. A comprehensive credentialing system must include both evaluation and training in
2305 areas not typically included in the language skills assessment processes. Establishing a
2306 thorough and comprehensive credentialing system allows courts to be confident that providers
2307 will possess the skills and knowledge needed, that their competency continues at a consistent
2308 level, and can be monitored over time. The elements of a comprehensive credentialing system
2309 are discussed below.

2310 While pre-screening, ethics, orientation, continuing education, and training requirements
2311 appropriate for translators need not be as detailed as those used for interpreters and bilingual

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.”

³³⁶ 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.

2312 staff, some should be used since translation of court documents requires specialized language
2313 and recognition of unique ethical issues.³³⁷

2314 Components of a Comprehensive Credentialing System

2315 Courts, through a central Language Access Services Office (LAS Office)³³⁸ should use a
2316 comprehensive credentialing system to supplement the language assessments provided by the
2317 Consortium or other testing entities, as well as to substitute for a complete assessment for
2318 languages where no testing is available. The order in which these components are implemented
2319 may vary based on priorities set by the state. For example, a court may determine that the pre-
2320 screening measures are best done early in the process to avoid unnecessary testing and training
2321 of individuals who might be disqualified from interpreter candidacy at a later stage. However,
2322 the comprehensive nature of the program requires the inclusion of each element to be
2323 effective.

2324 i. Pre-Screening

2325 Pre-screening measures include criminal background checks and other prerequisites that a
2326 court may impose upon individuals seeking to work as interpreters, bilingual staff, or
2327 translators. Interpreters, bilingual staff, and translators should be pre-screened with criminal
2328 background checks to uphold the public trust and ensure protection and security for courts.
2329 Courts use background checks to help evaluate the character and fitness of an individual to act
2330 as a court interpreter, who is an officer of the court. A candidate for certification or other
2331 credentialing whose background check identifies conduct involving dishonesty, fraud, deceit, or
2332 misrepresentation should be disqualified from becoming certified to work in the court. As
2333 identified by Minnesota Court policy, “(a) court interpreter should be one whose record of
2334 conduct justifies the trust of the courts, witnesses, jurors, attorneys, parties, and others with
2335 respect to the official duties owed to them. A record manifesting significant deficiency in the
2336 honesty, trustworthiness, diligence, or reliability of an applicant may constitute a basis for
2337 denial of certification.”³³⁹

2338 The LAS Office, as described in *Standard 10*, should develop mechanisms to require a
2339 background check and review the fitness of each candidate’s background. These mechanisms
2340 should include adequate protections for the interpreter candidate. As described above in
2341 *Standard 8.1*, courts should also use pre-screening written exams to test all applicants on basic
2342 interpreting concepts, including the interpreter code of professional responsibility, interpreting

³³⁷ Translation raises ethical issues in terms of privacy, record keeping, and representation of qualifications.

³³⁸ The Language Access Services Office is discussed in full in *Standard 10*.

³³⁹ Minnesota General Rules of Practice, Rule 8.06 (b).

2343 modes, and vocabulary. This testing can be administered in English to all applicants prior to the
2344 applicant moving to the language and interpreting assessment phase. Additional pre-screening
2345 measures include language proficiency testing, oral interpreting exams, written translation
2346 exams, or completion of training programs or degrees that are applicable to interpreters,
2347 bilingual staff, and translators working within the court system.

2348 ii. Ethics Testing and Training

2349 Ethical standards, as defined in the interpreter code of professional conduct, are an essential
2350 aspect of competency; therefore, courts should utilize both testing and training in this area.
2351 Testing an interpreter’s knowledge of the components of the court’s interpreter code of
2352 professional conduct is common practice and should be done as a pre-screening tool. Courts
2353 should also test bilingual staff and translators’ knowledge of ethical requirements that govern
2354 their roles.

2355 Courts should require training, in addition to the ethics assessment, as part of the credentialing
2356 process, including opportunities to practice the application of ethical principles that help
2357 educate language services providers beyond a simple introduction to the rules themselves.³⁴⁰
2358 This training recognizes that “as officers of the court, interpreters help assure that [LEP]
2359 persons may enjoy equal access to justice and that legal proceedings and court support services
2360 function efficiently and effectively.”³⁴¹ Accordingly, many state court interpreter programs
2361 require court interpreter candidates to participate in ethics training as part of both the
2362 certification and credentialing process.³⁴² The components of ethics training programs are
2363 discussed in *Standard 9*.

2364 Although courts may not test translator ethics or provide extensive ethics training to
2365 translators, courts should include compliance with the translator’s code of professional conduct
2366 as part of a signed agreement for services.³⁴³ The ATA has developed a model code of
2367 professional conduct and business practices for translators that include provisions to ensure
2368 translators are competent in the language pair of the translation work, render accurate and
2369 equivalent translations, engage in fair business practices, and accurately identify relevant skills
2370 and training.³⁴⁴

³⁴⁰ Many professional certification programs, like attorney licensing programs, require annual participation in ethics training due to the high standards necessary in legal matters.

³⁴¹ NCSC, *Court Interpretation Model Guides*, ch. 9.

³⁴² 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>

³⁴³ 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).

³⁴⁴ http://www.atanet.org/membership/code_of_professional_conduct.php (last visited Apr. 19, 2011).

2371 iii. Orientation

2372 Credentialing should also include appropriate court orientation programs for interpreters,
2373 bilingual staff and translators. For interpreters, the orientation program introduces them to the
2374 court, identifies common local legal terms and protocols, describes the role of the interpreter,
2375 teaches basic interpreter skills, and may also cover ethical standards for court interpreters.³⁴⁵
2376 Because many orientation programs address some of the testing components in interpreter
2377 credentialing, some states require attendance at orientation prior to taking either a
2378 certification or other credentialing examination. The National Center for State Courts promotes
2379 this requirement in its *Court Interpretation: Model Guides for Policy and Practice in the State*
2380 *Courts, Chapter on Training (Model Guides)*.³⁴⁶

2381 The NCSC Model Guides envision an introductory orientation workshop as a “starting point in
2382 the process of increasing the level of professionalism among bilingual individuals who may work
2383 in courts . . . but who have never received formal training in court interpreting. The primary
2384 goal of the introductory workshop is to improve court interpreters’ understanding of the skills
2385 and appropriate conduct required of them, and to offer a basic orientation to courts and the
2386 justice environment.”³⁴⁷ As envisioned by NCSC, this introductory workshop contains eight
2387 modules, including: an overview of the profession of interpreting; modes of interpreting; court
2388 and justice system environments; court procedures; the interpreter’s role; court terminology;
2389 and an overview of the state court’s certification or assessment process.³⁴⁸

2390 Orientation programs also offer valuable training for bilingual staff and translators. Although
2391 bilingual staff may not need such extensive orientation if they are providing direct services and
2392 not interpreting, it is recommended that they still be offered an orientation to increase their
2393 knowledge of the complexities of interpretation and to help them address ethical issues. For
2394 translators, orientation programs are less common, but can be helpful. An orientation program
2395 for translators should orient them to the type of translation tasks the court routinely requires,
2396 identify common local legal terms and protocols, describe the role of the translator and the
2397 translator protocol, review basic translation and transcription skills, provide and instruct on the
2398 proper use of available glossaries, and may also include ethical standards for court translators.

³⁴⁵ Depending on the court’s program, this orientation may occur prior to an applicant taking an exam.

³⁴⁶ NCSC, *Court Interpretation: Model Guides for Policy and Practice in the State Courts*, ch. 4, Training for Court Interpreters.

³⁴⁷ *Id.* at 55.

³⁴⁸ *Id.* at 56-59.

2399 iv. Continuing Education

2400 A comprehensive court credentialing system should always include a requirement for all court
2401 interpreters, bilingual staff, and translators to participate in ongoing professional development
2402 and continuing education. Many state court interpreter programs require interpreters to
2403 complete a minimum number of continuing education training credits in a given cycle in order
2404 to maintain their certifications. Continuing education requirements are common to many
2405 professions, and should be applied to all language services providers, regardless of whether or
2406 not they are certified. Continuing education is particularly important in ethics, and annual
2407 training in this area is required by many courts. For example, in California all certified and
2408 registered interpreters must complete 30 hours of continuing education within a two year
2409 period.³⁴⁹

2410 Given their interest in maintaining good language skills and high ethical standards in bilingual
2411 staff, courts should offer these same opportunities and requirements to all language services
2412 providers.³⁵⁰ Interpreter organizations increasingly provide ongoing training opportunities, and
2413 courts should work collaboratively with these and other community partners to increase
2414 opportunities for continuing education. Courts should also require continuing education for
2415 translators. For ATA certified translators, continuing education is a part of the credentialing
2416 process and is required to maintain their certification.³⁵¹ Certified members must obtain 20
2417 hours of credits in a three year cycle.³⁵² Courts should include provisions regarding ongoing
2418 training, including the requirement that the translator keep apprised of technology and current
2419 practices to aid in the translation process, in all translator contracts.

2420 Voir Dire to Establish Qualifications

2421 While pre-screening, ethics training, and continuing education can be done on a regular basis
2422 and in a group setting, voir dire is the process by which courts determine that an individual
2423 language services provider is competent for a particular task. This fundamental aspect of
2424 ensuring competent services involves a process to establish the language services provider’s
2425 qualifications. This process should be developed to fit the setting: on the record, inside the

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

³⁵⁰ 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.

³⁵⁰ http://www.rid.org/education/continuing_education/index.cfm/AID/98 (last visited Apr. 19, 2011).

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

³⁵² http://www.atanet.org/certification/aboutcont_overview.php (last visited Apr. 19, 2011).

2426 courtroom for a specific legal proceeding; by court personnel in court services or programs; and
2427 by court-mandated or offered program staff, regardless of where services occur. All language
2428 services providers must be asked about their credentials and ability to communicate with a
2429 specific LEP person. The process can be initiated by the judge, court personnel, or counsel.

2430 These questions are designed to help determine that there are no ethical reasons, such as being
2431 related to the LEP person, why the interpreter should not be used in a particular matter, and to
2432 confirm that the interpreter and the LEP person have been able to establish communication
2433 and understand one another, including any use of dialect by the LEP person. In legal
2434 proceedings, the judge should begin the voir dire questioning described below with a brief
2435 overview of the subject matter of the hearing to ascertain if there is a possibility that issues
2436 interpreted in the hearing will inhibit the interpreter’s ability to faithfully and accurately render
2437 the message.³⁵³ An interpreter’s life experiences may impact his or her ability to remain neutral
2438 and can lead to vicarious trauma and an inability to accurately interpret; appointment of an
2439 interpreter to serve in a matter that strikes an emotional nerve based on prior trauma or
2440 experiences can be avoided through use of these preliminary questions.

2441 In instances where the interpreter is court-certified or has had his or her language fluency and
2442 interpreting skills assessed through a verified examination process, the voir dire can be a
2443 relatively brief process. It is used to establish the interpreter’s qualifications and appropriate
2444 language match with the LEP person, and to ensure that the interpreter is free from a conflict of
2445 interest to interpret in the matter at hand.³⁵⁴ After a brief overview of the subject-matter of the
2446 case, the court should ask the following questions of all proposed interpreters:³⁵⁵

- 2447 • Do you have any particular training or credentials as an interpreter? If so, please
2448 describe.³⁵⁶
- 2449 • How many times have you interpreted in court?

³⁵³ This is a fail-safe measure; ideally, the interpreter should receive some information about the case-type in advance of the interpreting assignment. This measure will protect the efficiency of the proceedings by informing an interpreter of issues that are likely to be raised to ascertain if these issues would present a problem for the interpreter’s ability to remain neutral. For example, in a sexual assault case, an interpreter with a history of sexual assault may decide that the issues are too intense and likely to cause vicarious trauma for the interpreter. Knowing this in advance is the most efficient way of avoiding delays and inaccuracies in the hearing. This introductory information is consistent with common interpreter code of conduct provisions regarding impediments to performance. For example, Canon 10, Impediments to Compliance With Code, of the New Jersey Court Code of Conduct, provides that “Any interpreter, transliterator, or translator who discovers anything that would impede full compliance with this code should immediately report it to his or her employer or the court.” See <http://www.judiciary.state.nj.us/rules/appinterpret.htm>.

³⁵⁴ 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.

³⁵⁵ 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.

³⁵⁶ These questions are intended to start a dialog and to elicit a narrative response.

- 2450 • How many times have you interpreted for this type of hearing or trial?
- 2451 • Please tell me some of the main points of the code of professional conduct for court
- 2452 interpreters.
- 2453 • Do you know or work for any of the parties? If yes, please explain.
- 2454 • Do you have any potential conflicts of interest in this matter? If yes, please explain.
- 2455 • Have you had an opportunity to speak with the LEP person and were there any
- 2456 communication problems?
- 2457 • Are you familiar with the dialectical or idiomatic peculiarities of the LEP party or
- 2458 witness?
- 2459 • Based on my overview of this case and information that was provided to you by the
- 2460 court, is the testimony or evidence likely to create an impediment to your ability to
- 2461 render a faithful and accurate message? If so, please explain.

2462 When the interpreter’s interpreting skills and language fluency have not been assessed, the voir
2463 dire should be more detailed. In the longer inquiry, the judge should establish, on the record,
2464 the interpreter’s qualifications to interpret in court, ability to communicate, and absence of
2465 conflicts of interest. The more detailed voir dire is generally used in these circumstances: when
2466 a certified interpreter is not available even though the language is one where court certification
2467 exists and a judge must determine whether an uncertified interpreter can be used;³⁵⁷ and,
2468 when no certification exists for the language needed and the judge must establish the
2469 interpreter’s qualifications. The following questions should be asked:³⁵⁸

- 2470 • What is your native language?
- 2471 • How did you learn the source and target languages?
- 2472 • Have you spent any time in the/a country where the target language is spoken?
- 2473 • Did you formally study either language in school?
- 2474 • Are you able to interpret simultaneously without leaving out or changing anything that
- 2475 is said?
- 2476 • Are you able to interpret consecutively?
- 2477 • Have you had any legal interpreting training? If yes, please describe.
- 2478 • Have you previously taken any kind of certification exam for interpreting? If so, please
- 2479 tell me the number of times, the dates, and your scores on each occasion.
- 2480 • If you have taken interpreter certification exams, please provide me with any
- 2481 information the testing organization gave you regarding your test results.³⁵⁹

³⁵⁷ 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.

³⁵⁸ 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*.

³⁵⁹ NCSC *Court Interpretation Model Guides*, ch. 6: Judges Guide to Standards for Interpreted Proceedings, Figure 6.2.

2482 While this voir dire is most commonly used in legal proceedings, courts should develop
2483 procedures to adapt it for other legal settings. For bilingual staff who are used not to interpret,
2484 but to provide direct assistance, it is important that some questions be asked if a separate
2485 process to assess language competency (discussed above) cannot be used. These questions
2486 should inquire into the individual’s language fluency, the method used to learn the language,
2487 and the level of understanding of the relevant terminology in both English and the second
2488 language.

2489 Courts should also inquire into the qualifications of translators with whom they will work. The
2490 inquiry differs because translation work involves different skills than interpretation and because
2491 the work can occur remotely, even across national or international boundaries. The following
2492 inquiry should be used to help determine the appropriate fit between translator and the type of
2493 translation work needed by the court:

- 2494 • Do you have any credentials as a translator? If so, please describe.
- 2495 • If no, ask the following questions to determine language proficiency:
 - 2496 ○ What is your native language?
 - 2497 ○ How did you learn the source and target languages?
 - 2498 ○ Did you formally study either language in school?
 - 2499 ○ Have you spent any time in the/a country where the target language is spoken?
- 2500 • Have you had any formal training as a translator?
- 2501 • Tell me about your experience in conducting court translations, including the number of
2502 years of experience and the types of court document translated.
- 2503 • In what other fields have you provided translations?
- 2504 • Please tell me some of the main points of the code of professional responsibility for
2505 translators based on the ATA model code.
- 2506 • Do you feel confident that you can match the language in this particular type of
2507 document?³⁶⁰

2508 For situations where a translator is providing services in connection with a legal proceeding, the
2509 voir dire questions should be used to start a dialog between the court and the language
2510 services provider to allow the court to make a determination, on the record, regarding the
2511 provider’s qualifications and ability to render services in the legal proceeding. Outside the
2512 courtroom, the voir dire should still be used and the translator’s qualifications should be
2513 documented in an appropriate manner.

³⁶⁰ *Id.*

2514 **STANDARD 9 TRAINING**

2515 **9. The court system and individual courts should ensure that all judges, court personnel, and**
2516 **court-appointed professionals receive training on the following: legal requirements for**
2517 **language access; court policies and rules; language services provider qualifications; ethics;**
2518 **effective techniques for working with language services providers; appropriate use of**
2519 **translated materials; and cultural competency.**

2520 Mandatory training of judges, court personnel, and court-appointed professionals on the
2521 court’s language access policies and court rules, as well as on each of the components
2522 identified below, is necessary to ensure meaningful access to the justice system for LEP
2523 persons. Providing interpreters and translated materials is complex, often requires the use of
2524 technology, and depends upon consistent implementation of the court’s policies to be
2525 effective. In particular, the Department of Justice explains that training is critical to ensure
2526 compliance since it is really the only way to determine “whether staff knows and understands
2527 the LEP plan and how to implement it.”³⁶¹ The following sections describe who should be
2528 trained, what the training should cover, and how frequently it should occur.

2529 The *DOJ LEP Guidance* emphasizes that training needs to be provided broadly to many different
2530 groups and points out that “[s]taff should know their obligations to provide meaningful access
2531 to information and services for LEP persons” and emphasizes that “it is important to ensure
2532 that all employees in public contact positions are properly trained.”³⁶² The Consortium for
2533 Language Access in the Courts’ *“Ten Key Components to a Successful Language Access Program*
2534 *in the Courts”* lists education as a needed activity and describes it broadly, listing four areas to
2535 be covered:

2536 Educate judicial partners such as judges, mediators, arbitrators, court staff, attorneys
2537 and others about: (1) the need for and role of language service providers in court
2538 proceedings; (2) the knowledge, skills, and abilities of a competent language service
2539 provider; (3) the policies, procedures, and rules for the appointment and use of
2540 credentialed language service providers in the courts; and (4) the techniques for
2541 effectively delivering services to persons facing language barriers in the courts.³⁶³

2542 The Department of Justice noted a model training and orientation program for court staff in
2543 Washington in their resource, *“Executive Order 13166 Limited English Proficiency Resource*
2544 *Document: Tips and Tools from the Field.”* The report highlights King County Superior Court,

³⁶¹ *DOJ LEP Guidance*, at 41,465.

³⁶² *Id.*

³⁶³ NCSC, Consortium for Language Access in State Courts, 10 Key Components to a Successful Language Access Program in the Courts, http://www.ncsonline.org/D_Research/CourtInterp/10KeystoSuccessfulLangAccessProgFINAL.pdf (website last visited, April 25, 2011).

2545 Office of Interpreter Services, in Seattle, Washington, as providing “orientations to new judges
2546 and commissioners regarding the interpreter program and the appropriate use of interpreters. .
2547 . . The office also strives to ensure that experienced interpreters are assigned to cases with
2548 newer judges or commissioners.”³⁶⁴

2549

2550 Individuals Who Should Receive Training

2551 Regarding who should receive training on the court’s language access program, the *DOJ LEP*
2552 *Guidance* points out that, “[t]he more frequent the contact with LEP persons, the greater the
2553 need will be for in-depth training. Staff with little or no contact with LEP persons may only have
2554 to be aware of an LEP plan. However, management staff, even if they do not regularly interact
2555 with LEP persons, should be fully aware of and understand the plan so they can reinforce its
2556 importance and ensure its implementation by staff.”³⁶⁵ Training on the court’s language access
2557 program, court rules, policies, and procedures is critical for all court personnel that come into
2558 contact with the public. The Department of Justice recommends that courts train “new
2559 interpreters, as well as judges, attorneys and other court personnel.”³⁶⁶

2560 In addition to judges and court personnel, courts should provide training to court-appointed or
2561 supervised professionals, even when not directly employed by the court. This includes court-
2562 appointed attorneys and other court-appointed or supervised professionals who must
2563 communicate with LEP persons as part of their court-related duties. According to the
2564 Department of Justice, “[i]n order for a court to provide meaningful access to LEP persons, it
2565 must ensure language access in all such operations and encounters with professionals.”³⁶⁷

2566

2567 While the court is not obligated to provide training to justice partners outside of those
2568 individuals whom they appoint or supervise, the court is often the most appropriate provider of
2569 this training due to its expertise, authority, and control over language access services in the
2570 courts. This is also true for trainings to the general public on the availability of language access
2571 services. The *Consortium’s Ten Key Components* highlights the need to “[e]ducate persons with
2572 limited English proficiency about the availability, role, and use of language service providers in
2573 the courts.”³⁶⁸ Some state Administrative Offices of the Courts have taken a leadership role in
2574 providing this training very broadly while others have collaborated with other entities, such as

³⁶⁴ 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.

³⁶⁵ *DOJ LEP Guidance*, at 41,465.

³⁶⁶ 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.

³⁶⁷ DOJ, *Letter to Chief Justices and State Court Administrators*, at 3.

³⁶⁸ NCSC, *10 Key Components to a Successful Language Access Program in the Courts*.

2575 the private bar, to ensure that training is available.³⁶⁹ Local bar associations also provide this
2576 training, and should collaborate with the court to enlist the court’s expertise in the area.

2577

2578 Components of a Court Language Access Training Program

2579 A comprehensive training curriculum helps ensure that services are provided correctly. The
2580 components should include: legal requirements to provide language access services, court
2581 policies and rules, language services provider qualifications, ethics, working with language
2582 services providers, translation protocols, and cultural competence.

2583 iv. Legal Requirements

2584 Fundamentally, training should include a discussion of the legal requirement to provide services
2585 in a non-discriminatory manner. This component should provide basic information about access
2586 to justice imperatives, federal and state laws, legal decisions, and court rules requiring
2587 meaningful access. It should include relevant constitutional provisions, Title VI of the Civil Rights
2588 Act of 1964 (with implementing regulations, guidance, and letters), as well as relevant state
2589 laws and court rules governing the use of interpreters and translated materials. The training
2590 should cover the scope of the language access services required, including not only in the
2591 courtroom, but also for court services with public contact and court-mandated or offered
2592 programs.

2593 v. Court Rules and Court Policies

2594 Comprehensive training on the relevant court rules and policies is critical to effective
2595 implementation of meaningful access. This aspect of the training should describe the court
2596 rules and policies regarding the provision of language access services, and cover procedures for
2597 implementing those services to LEP persons consistent with the state’s policies and language
2598 access plan. This section of the training should focus on the requirements of the court rules,
2599 and procedures to request services, and mechanisms to ensure enforcement and resolve
2600 complaints of inadequate services.

2601 vi. Language Services Provider Qualifications

2602 Training should also include information on the language access provider qualification process,
2603 including the credentialing process for all languages including those where state or national
2604 certification does not exist. A basic understanding of the role of the court interpreter, the skills
2605 necessary to interpret competently, and the certification process, is critical to avoiding the

³⁶⁹ 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.

2606 misunderstanding and confusion that occurs with the use of untrained individuals as
2607 interpreters. For example, without an understanding of the skills required to interpret, a judge
2608 may not understand the court policy against the use of ad hoc or untrained family member
2609 interpreters. Training is also necessary to dispel the myth and misunderstanding that
2610 bilingualism is sufficient qualification to interpret: the trained judge or court personnel
2611 understands that not all bilingual persons have the necessary interpreting skills to work in
2612 courts and that the skills needed to interpret are extensive. This training should also provide
2613 guidance on the steps necessary to appoint a qualified interpreter and should describe the
2614 differences between interpreters and bilingual staff and the appropriate roles for each.

2615 vii. Ethics

2616 One of the most important components of training is the interpreter’s code of professional
2617 conduct that governs court interpreting. Judges, court personnel, and court-appointed
2618 professionals must understand these ethical requirements, including their own responsibilities
2619 and those of the interpreter. Discussing the scope of the interpreter code of conduct helps
2620 avoid situations where judges, court personnel, or attorneys ask interpreters to perform tasks
2621 that are outside their role or in other ways place them in ethical dilemmas. Recognition that
2622 ethical areas pose one of the greatest risks for error is one reason that continuing ethics
2623 education is required in many professions; therefore including a component of regular and
2624 detailed ethical training is strongly recommended.

2625 The training should cover the basic components of interpreter codes of professional conduct,
2626 including the following: requirement for accuracy and completeness; accurate representation
2627 of qualifications; duty to remain impartial and unbiased; avoidance of conduct that may give an
2628 appearance of bias; maintenance of professional demeanor; protection of confidentiality;
2629 prohibition of public comment; limitation of the scope of practice to interpreting and
2630 translating; assessment and reporting of impediments to performance; and duty to report
2631 ethical violations.³⁷⁰

2632 viii. Effective Techniques for Working with Language Services Providers

2633 Training on how to work with language services providers helps ensure that judges and court
2634 personnel understand the role of the interpreter, and methods for effectively and efficiently
2635 interacting with an LEP person through an interpreter. Communicating through an interpreter
2636 isn’t intuitive; yet, by learning some simple tools, judges and court personnel can help facilitate
2637 that communication. Knowledge of how to effectively work with interpreters in the courtroom
2638 also helps ensure an accurate record.

³⁷⁰ NCSC, *Court Interpretation: Model Guides for Policy and Practice in the State Courts*, ch. 9, pp. 200-09.

2639

2640 Training on this topic should include common tips and conventional practices that help
2641 facilitate communication when using an interpreter. These practices include: avoiding rapid
2642 speech, having one person speak at a time, avoiding speaking over another person, using
2643 proper positioning, employing different interpreter modes and registers, bringing issues of
2644 interpreter competency to the attention of the court, understanding special considerations for
2645 the use of multiple interpreters including relay interpreters,³⁷¹ and employing technologies
2646 such as telephonic and video remote interpreting. Special attention should be paid to the
2647 processes for recording interpreted proceedings and challenges to interpreter accuracy.

2648 ix. Translation

2649 Training judges, court personnel, and court appointed professionals regarding the court’s
2650 translation policies and procedures is critical to their effective implementation. In particular,
2651 training should include information on the certification available, the skills needed, and the
2652 court’s translation protocol, including the steps to follow as translations are finalized. Special
2653 attention should be paid to the review of newly developing translation technologies with clear
2654 guidelines provided for the appropriate use of these technologies to avoid inadequate
2655 translations.

2656 x. Cultural Competence

2657 Cultural competence has been defined as a set of values, behaviors, attitudes and practices that
2658 allows a system, organization, program or individual to work effectively across cultures.³⁷²
2659 Training on cultural competence helps all participants in the justice system respect the diverse
2660 beliefs, language, interpersonal styles and behaviors of people receiving services as well as the
2661 staff providing those services.³⁷³ As recognized by the *ABA Standards for the Provision of Civil*

³⁷¹ The issue of the appropriate number of interpreters for a particular matter is discussed in *Standard 4*. Relay interpreters are interpreters who interpret from one foreign-language to another foreign language, and vice versa. Another interpreter then interprets from the second language into English, and vice versa. This is also referred to as an “intermediary interpreter.” The use of a relay interpreter is common in two areas: languages of lesser diffusion and ASL. For languages of lesser diffusion or indigenous languages, the relay interpreter speaks the indigenous language fluently and another, more common foreign language, but is not fluent in English. The second interpreter is fluent in the second language (the more common foreign language) and English. It is a common practice in ASL interpreting for deaf litigants who are not proficient in ASL.

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

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,

2662 *Legal Aid*, “[a]n essential component of cultural competence is recognizing and resisting the
2663 temptation to stereotype individual members of the cultural group.”³⁷⁴ The COSCA *White Paper*
2664 *on Court Interpretation* adds the component of cultural competence in its recommendation on
2665 training stating that “[s]tate courts should educate and train their judges and court staff on the
2666 importance of using competent court interpreters, on cultural diversity and culturally-based
2667 behavior differences, and on the importance of following court policies regarding usage of
2668 court interpreters.”³⁷⁵

2669 Cultural competence training helps promote communication that is not prejudiced by different
2670 cultural norms and behaviors. Although cultural competence is separate from interpretation,
2671 many state court administrative agencies have made it a mandatory component of training
2672 about language access services for two reasons: first, interpreters are often incorrectly asked to
2673 provide information about cultural norms as part of their interpreting tasks, in direct violation
2674 of their ethical code; second, misconceptions about the requirements of cultural competence
2675 can result in untrained individuals from a particular country being asked to provide an overview
2676 of the culture, resulting in the introduction of misinformation and bias into legal proceedings.
2677 Providing formal cultural competence training can promote better understanding of LEP
2678 communities while reinforcing the appropriate role of the court interpreter in a consistent and
2679 accurate manner.³⁷⁶

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>.

³⁷⁶ 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>.

2680 Frequency and Duration of Training

2681 Courts should determine the frequency and duration of training on the basis of how much
2682 contact various staff have with the public. An adequate training program should include
2683 training for newly hired staff and ongoing training for all staff. Including language access
2684 training in new staff orientation educates staff at the earliest point in their interactions with the
2685 public and provides an opportunity for courts to set the expectation that staff will implement
2686 language access policies and procedures. Providing ongoing training to all staff reinforces the
2687 initial training and provides an opportunity to discuss in greater detail the complex issues
2688 involved with providing appropriate language access services, and how to do so in an efficient
2689 manner. Some state interpreter programs provide regular trainings to judges through the
2690 state’s judicial college program, a practice which is encouraged.

2691 In addition to implementing annual training measures, courts should establish procedures to
2692 provide training in instances when policies have changed, new programs or services have been
2693 developed, or new technologies have been implemented. This includes trainings needed to
2694 respond when monitoring systems or individual complaints have uncovered deficiencies in the
2695 services provided. Courts may want to incorporate a review of language access training into the
2696 performance review standards for all employees as a way to monitor the effectiveness of the
2697 training program.

2698 The duration of the training is determined in part by the role of the individuals being trained
2699 and by whether the information provided is sufficiently detailed to ensure understanding and
2700 compliance, as required by the person’s position. The more contact the person has with the
2701 public, the more intensive the training should be. Some staff, particularly those responsible for
2702 coordinating, scheduling, or monitoring interpreter services for a particular court may require
2703 training that is of a longer duration, lasting from one to several days. Each of the areas outlined
2704 above could be the focus of individual day-long detailed training sessions; however, recognizing
2705 the time constraints on court staff, each could also be covered in shorter sessions. Where
2706 shorter trainings are provided, courts should supplement the training by providing the
2707 participants with written materials. These sessions may be provided in electronic format to
2708 allow for flexibility in scheduling when the individual takes the training and should be coupled
2709 with an evaluation tool to determine if the information is understood.

2710

2711 Resource Materials and Best Practices

2712 Courts should develop or obtain detailed resource manuals that address each of the training
2713 components highlighted above and distribute them to all judges, court personnel, and court-
2714 appointed professionals. These resources can help support the court’s ongoing training

2715 programs. A court should also consider developing or enhancing its intranet resource materials.
2716 Resources are available to assist courts in these efforts from organizations such as the National
2717 Center for State Courts Consortium on Language Access in the Courts and the National
2718 Association of Judiciary Interpreters and Translators. The Consortium provides a forum for
2719 member states to share general training materials on many of the subjects listed below.

2720 Courts should review and implement existing resources as they either create or strengthen
2721 their training programs. The resource developed by William Hewitt for the Consortium entitled
2722 *Court Interpretation: Model Guides for Policy and Practice in the State Courts* covers many of
2723 the topics addressed in this *Standard* is highly recommended.³⁷⁷ The Department of Justice, in
2724 the manual entitled “*Executive Order 13166 Limited English Proficiency Resource Document:
2725 Tips and Tools from the Field,*” highlighted the resource development efforts of the New Jersey
2726 Administrative Office of the Courts which has created separate training manuals for judges,
2727 interpreters, and court administrative staff.³⁷⁸ Some state courts have also developed bench
2728 books for judges that address many of the issues relevant to working with LEP litigants in the
2729 courtroom, including the proper use of interpreter services.³⁷⁹ Current efforts to further
2730 develop national resources mean that more programs should be available in the near future.

2731

2732 **STANDARD 10 STATE-WIDE COORDINATION**

2733 **10. Each court system should establish a Language Access Services Office to coordinate and** 2734 **facilitate the provision of language access services.**

2735 Statewide coordination of language access services by a centralized Language Access Services
2736 Office (LAS Office)³⁸⁰ creates efficiencies, reduces costs, avoids duplications, and improves the
2737 delivery of services by increasing collaboration both at the state level and between state and

³⁷⁷ Available at http://www.ncsconline.org/wc/publications/Res_CtInte_ModelGuidePub.pdf.

³⁷⁸ 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.

³⁷⁹ 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

³⁸⁰ 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.

2738 national organizations.³⁸¹ The National Center for State Courts Consortium on Language Access
2739 in the Courts lists the establishment of a centralized office within the state court
2740 administrator’s office as one of the ten key components of an effective “Language Access
2741 Program.”³⁸² It highlights the centralized office’s role in determining the need for services and
2742 taking steps to ensure they are provided in the most cost-effective manner.³⁸³ The Conference
2743 of Chief Justices has also endorsed the benefits of centralized coordination, which is particularly
2744 useful as courts deal with the increasing demand for language access services at a time of
2745 limited budgets.³⁸⁴ Providing adequate staff to the LAS Office ensures it has the resources
2746 necessary to carry out these tasks.

2747 Most state courts have a centralized office that coordinates some aspects of the language
2748 access services outlined in these *Standards*. Of the forty-one member states which are currently
2749 part of the Consortium,³⁸⁵ virtually all of them have a statewide foreign language interpreting

³⁸¹ http://www.ncsconline.org/d_research/CourtInterp/1Consort-FAQ.pdf. The effort to centralize, standardize, and enforce language access services can be duplicated in all adjudicatory settings, not only state court systems. Courts are encouraged to collaborate with other tribunals in the area of language access.

³⁸² The Consortium defines a “Language Access Program” as: “A program created to increase access to the courts, its services and activities by eliminating language barriers and increasing education, including, but not limited to the following resources: credentialing court interpreters; developing LEP plans as defined by the Department of Justice; providing interpreters for the Deaf and Hard of Hearing; translating signage, forms, and other vital documents; providing local courts with appropriate means to identify language needs; developing and distributing judicial bench books and/or bench cards; and providing professional development training for interpreters, as well as training on language access for the judiciary, the Bar, and court personnel.” NCSC, *10 Key Components to a Successful Language Access Program in the Courts*.

³⁸³ The Consortium identifies efficiency as a primary motivation for the establishment of centralized testing, explaining that it was “created to counter the high costs of test development and associated proprietary interests by providing a vehicle for exchange of expertise while safeguarding work products.” NCSC, *Consortium for State Court Interpreter Certification, Frequently Asked Questions*.

http://www.ncsconline.org/d_research/CourtInterp/1Consort-FAQ.pdfhttp://www.ncsconline.org/d_research/CourtInterp/10KeystoSuccessfulLangAccessProgFINAL.pdf.

Component Seven of the Consortium’s ten components is Program Administration. The guideline for this component suggests that the LAS Office should: “employ highly competent professional individuals who efficiently and effectively oversee the delivery of language services in accordance with established rules, policies, and procedures. Effective administration includes, but is not limited to: (1) managing program budget and staff; (2) recruiting, hiring, and monitoring the performance of qualified language service providers; (3) collecting, analyzing and disseminating program data and information to court leaders and stakeholders; and (4) actively seeking alternative funding, including grants, to enhance program operations and services.”

³⁸⁴ See Conference of Chief Justices Resolution 2, *Regarding Increase to Access to Justice*, <http://ccj.ncsc.dni.us/AccessToJusticeResolutions/resol2IncreaseAccesstoJustice.html>;

Resolution 7, *Regarding Adequate Court Interpretation Services*,

http://ccj.ncsc.dni.us/AccessToJusticeResolutions/resol7_AdequateCourtInterpretationSvc.html; Resolution 23, *Regarding Access to Justice Leadership*, <http://ccj.ncsc.dni.us/AccessToJusticeResolutions/resol23Leadership.html>.

³⁸⁵ States that are not yet members of the Consortium include Arizona, Kansas, Louisiana, Montana, North Dakota, Oklahoma, Rhode Island, South Dakota, and Wyoming. Many of these states do have some statewide coordination of interpreters but some are limited to ASL interpreters for the deaf and hard of hearing.

2750 program housed in the Administrative Office of the Courts or one of its subdivisions.³⁸⁶ While
2751 most of these programs play some role in the training, testing,³⁸⁷ and monitoring of
2752 interpreters, some also oversee other functions including training, hiring, supervising, and
2753 scheduling³⁸⁸ of interpreters for courts throughout the state.³⁸⁹ A centralized office at the state
2754 level assists courts in expanding services beyond legal proceedings to court services and to
2755 court-mandated or offered programs and helps to efficiently expand the availability of
2756 translated materials. It is the principal point of contact for all issues regarding language access
2757 to the courts.

2758 An important function of a centralized office is to foster collaboration among different
2759 components of the court administration and relevant community stakeholders. One example
2760 of the benefits of this coordination among court components can be seen in California, where
2761 the Administrative Office of the Courts has convened a language access working group that
2762 includes representatives from various court units and divisions, including Court Interpreters
2763 Unit, Human Resources, Education, Office of the General Counsel, Equal Access Unit,
2764 Communications Office, Facilities Division (re: court design and signage), Access and Fairness
2765 Advisory Committee, and the Task Force on Self-Represented Litigants. This office developed
2766 and updates the AOC's LEP plan,³⁹⁰ shares information on different projects, and identifies
2767 which member department should take the lead on Language Assistance Plan (LAP)
2768 implementation and support of the courts.³⁹¹ The LAS Office's ongoing communication with
2769 outside stakeholder groups is also particularly helpful in monitoring for quality of services
2770 (discussed in *Standard 10.3*); and in seeking out information and receiving feedback about the

³⁸⁶ 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.

³⁸⁷ Some states, such as New York, develop their own language testing programs. See New York State Unified Court System, Court Interpreting Services, <http://www.courts.state.ny.us/courtinterpreter/index.shtml>. The NYS Unified Court System's Office of Court Administration (OCA) established its Office of Court Interpreting Services (CIS) in 2001. CIS has statewide oversight of court interpreting issues, and works closely with personnel in the courts and local administrative offices on the provision and scheduling of interpreters, as well as training, quality-assurance, and any related concerns. CIS works in cooperation with the OCA Examination Unit to administer language-proficiency testing for prospective interpreters, and maintains a real-time database of all registered (*i.e.*, qualified or certified) court interpreters.

³⁸⁸ One such example is Oregon. See Oregon Judicial Department, Court Interpreter Services, <http://courts.oregon.gov/OJD/OSCA/cpsd/InterpreterServices/index.page>.

³⁸⁹ 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.

³⁹⁰ As mentioned in *Standard 7*, the terms Language Assistance Plan, Language Access Plan, and LEP Plan are all used to describe comprehensive written plans for language access services to LEP persons. These Standards use the term language access plan as a generic term to refer to these written plans. *Standard 2* provides that aspects of the Plan be codified in court rules for clarity, wide access and enforceability.

³⁹¹ 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.

2771 adequacy of existing court rules, policies, procedures and language access services from the
2772 bar, community advocates, interpreters, and other stakeholders, who are involved with the
2773 courts but not employed there, and provide an additional perspective that differs from those of
2774 judges and staff.

2775 Centralized coordination at the state level in turn promotes collaboration with national entities
2776 and among states, allowing them to share best practices and resources and reducing the need
2777 to develop costly individualized systems for certification and testing. The Conference of State
2778 Court Administrators (COSCA), in its *“White Paper on Court Interpretation: Fundamental to*
2779 *Access To Justice,”* encouraged all states to join the Consortium “in order to establish
2780 nationwide competency standards, use the Consortium’s resources to initiate new court
2781 interpreter programs or enhance existing programs, and promote efficiencies associated with
2782 the “pooling” of limited interpreter and program funding resources.”³⁹²

2783 This *Standard* provides a comprehensive list of the duties of a centralized office as a guide for
2784 states that are establishing or expanding their offices to efficiently develop new services.³⁹³ The
2785 tasks of a centralized office are discussed in the following sections. *Standard 10.1* covers the
2786 communication of information about language access services throughout the state. *Standard*
2787 *10.2* discusses the establishment of procedures and plans to implement services. *Standard 10.3*
2788 describes the office’s role in monitoring for compliance. *Standard 10.4* details how the office
2789 can help develop resources. *Standard 10.5* offers a description of oversight of credentialing and
2790 quality assurance for language services providers, and *Standard 10.6* summarizes the need to
2791 provide training.

2792

2793 **10.1 The office should provide, facilitate, and coordinate statewide communication**
2794 **regarding the need for and availability of language access services.**

2795 Communication is a critical component of a successful language access program. The
2796 Consortium has identified communication as one of the *“Ten Key Components to a Successful*
2797 *Language Access Program in the Courts,”* and noted the importance of maintaining effective

³⁹² Recommendation Number 7, Conference of State Court Administrators, *White Paper on Court Interpretation: Fundamental to Access to Justice* (1997).

³⁹³ Even those states that do not have a centralized office for spoken language access have developed processes, including a centralized office, to coordinate all sign language interpreter services to ensure that interpreter services are provided to deaf individuals in an efficient and comprehensive manner. Programs to serve the deaf and hard of hearing usually rely on an after-the-fact determination of whether the service was effective by reviewing the accommodation after the service is provided. However, a prior evaluation of services, including a determination of which services are essential and the most efficient way to provide quality language access, is a better proactive approach, particularly as it allows courts to employ more cost-effective language access services rather than always paying for an in-person interpreter.

2798 ongoing communication with the following groups: “(1) judicial and court administration
2799 leaders regarding the needs and performance of the language access program; (2) stakeholders
2800 regarding the nature and performance of the program; and (3) Consortium members through
2801 participation in its annual meeting, list serve discussions, and requests for information.”³⁹⁴
2802

2803 The LAS Office should research and communicate to all courts regarding language needs in the
2804 communities served and services offered to meet those needs, including the availability of
2805 existing interpreter and translation services, interpreter lists, translated materials, and training
2806 resources. Communicating with courts about the availability of interpreter services and written
2807 translations assists in incorporating the delivery of language access services into the courts’
2808 core operations across the state. Educating the general public on the availability of language
2809 access services in courts also removes barriers that are created when LEP persons are unaware
2810 of those services.³⁹⁵

2811

2812 **10.2 The office should coordinate and facilitate the development of necessary rules and**
2813 **procedures to implement language access services.**

2814 Effective and uniform implementation of language access services throughout the state
2815 requires the development of court rules, policies, and procedures to support the court’s
2816 language assistance plan. The LAS Office should take the lead in developing court rules,
2817 policies, and procedures, as discussed in *Standard 2.1*, and should coordinate with judges,
2818 court administrators, and state legislators where appropriate to effectively implement the
2819 court’s written language assistance plan.³⁹⁶

2820 Court rules should be developed to establish the language access services required and
2821 available in the court; such rules are needed to facilitate access to and enforceability of
2822 required services. As mentioned in *Standard 2.1* rules need to be developed that address all of
2823 the components of these standards. Court rules, administrative orders, and policies serve to
2824 enhance and support implementation and should be coordinated from a centralized office to
2825 promote efficiency and save staff resources. For example, the requirement that courts identify
2826 LEP persons for whom language access services are needed can be implemented through a
2827 court rule that requires courts to add language needs to all forms that initiate a court action

³⁹⁴ NCSC, *10 Key Components to a Successful Language Access Program in the Courts*.

³⁹⁵ NCSC, *Trust and Confidence in the California Courts, A survey of the Public and Attorneys* (2005), at 21 (identifying difficulty with English as a barrier keeping members of the public from taking a case to court).

³⁹⁶ The LAS Office can also provide financial support to encourage the use of quality interpreter services. States such as Oregon and Washington, for example, have programs to reimburse courts for a portion of the cost of interpreter services when courts hire certified interpreters.

2828 and to provide notice of services to the public; statewide coordination can ensure that the
2829 resources developed can be adapted for use by all courts throughout the state.

2830
2831 The LAS Office should also develop and coordinate the use of Language Access Plans on a
2832 statewide basis.³⁹⁷ These plans are an important part of a coordinated and effective statewide
2833 language access program and should convey information to both court personnel and the
2834 public at large. According to the Department of Justice, “the development and maintenance of
2835 a periodically-updated written plan on language assistance for LEP persons (“LEP plan”) for use
2836 by recipient employees in serving the public will likely be the most appropriate and cost-
2837 effective means of documenting compliance and providing a framework for the provision of
2838 timely and reasonable language assistance. Moreover, such written plans would likely provide
2839 additional benefits to a recipient’s managers in the areas of training, administration, planning,
2840 and budgeting.”³⁹⁸ The *DOJ LEP Guidance* goes on to state that “the following five steps may be
2841 helpful in designing an LEP plan and are typically a part of effective implementation plans: 1)
2842 Identifying LEP individuals Who Need Language Assistance;³⁹⁹ 2) Language Assistance
2843 Measures; 3) Training Staff; 4) Providing Notice to LEP persons; and 5) Monitoring and Updating
2844 the LEP Plan.”⁴⁰⁰ These *Standards* include the five steps identified by DOJ. One example of the
2845 benefits of statewide coordination of plans can be seen in Minnesota, where, like California,
2846 each state court, including the State Court Administrator’s Office, is required to annually
2847 update and post its LEP Plan on the Judicial Branch’s public website.⁴⁰¹

2848 The LAS Office should establish a process for regular review of the court’s rules, policies,
2849 procedures and LEP plan. Courts should consider whether “changes in demographics, types of
2850 services, or other needs require annual reevaluation of their LEP plan.”⁴⁰² Elements to be
2851 evaluated during such a review include “current LEP populations in the service area or
2852 population affected or encountered; frequency of encounters with LEP language groups; nature
2853 and importance of activities to LEP persons; availability of resources, including technological
2854 advances and sources of additional resources, and the costs imposed; whether existing
2855 assistance is meeting the needs of LEP persons; and whether identified sources for assistance
2856 are still available and viable.”⁴⁰³ California is one example of a state with a centralized office

³⁹⁷ 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.

³⁹⁸ *DOJ LEP Guidance*, at 41,464.

³⁹⁹ The data described under *Standard 3.1* should be gathered as the first step in developing a written plan.

⁴⁰⁰ *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.

⁴⁰¹ The Minnesota LEP Plans is available at: <http://www.mncourts.gov/?page=444>

⁴⁰² *DOJ LEP Guidance*, at 41465.

⁴⁰³ *Id.*

2857 that conducts a comprehensive survey to gather data with a large array of data fields including
2858 information on ASL and Deaf and Hard of Hearing individuals as well as those who are LEP.⁴⁰⁴

2859

2860 **10.3 The office should monitor compliance with rules, policies and procedures for**
2861 **providing language access services.**

2862 In addition to the role of monitoring the *quality* of language services providers, discussed in
2863 *Standard 10.5*, the LAS Office should monitor for compliance with the legal requirements, rules,
2864 policies, and procedures for providing language access services. The *COSCA White Paper on*
2865 *Court Interpretation* confirms this important role in *Recommendation Number 4* which states
2866 that “[s]tate courts should establish a process for enforcing judicial compliance with those
2867 policies.”⁴⁰⁵ Monitoring helps ensure that consistent and adequate services are provided
2868 statewide and that barriers are identified and resolved appropriately, and should be utilized
2869 regardless of whether a state implements language access policies and procedures at the state
2870 or local level.

2871 Monitoring for compliance should be conducted through the use of surveys, evaluations, and
2872 complaint forms (including anonymous screenings, assessments, and complaints)⁴⁰⁶ and should
2873 incorporate the groups with whom the LAS Office regularly communicates listed in *Standard*
2874 *10.1* above. To obtain a general overview of services rendered, the LAS Office should survey LEP
2875 individuals, the community organizations assisting them, language services providers
2876 themselves, as well as judges and staff in the courts and in organizations providing court-
2877 ordered and offered services.⁴⁰⁷ These surveys should be anonymous given the concerns of
2878 many interpreters, translators, and other providers about potential job loss due to complaints
2879 of inadequate services or support. Individualized evaluations by anonymous trained observers
2880 may be used to evaluate language access services both in and outside the courtroom.⁴⁰⁸ Courts

⁴⁰⁴ <http://www.courts.ca.gov/xbcr/cc/language-interpreterneed-10.pdf> (website last visited May 6, 2011).

⁴⁰⁵ Conference of State Court Administrators, *White Paper on Court Interpretation: Fundamental to Access to Justice*.

⁴⁰⁶ See *Standard 10.1* for a discussion of the two-way communication procedures that are recommended to facilitate communication between courts and outside groups and stakeholders.

⁴⁰⁷ 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.

⁴⁰⁸ See New York Unified Court System’s “Justice Speaks” project, <http://www.legalservicesnyc.org/storage/lsny/PDFs/justice%20speaks%202010%20survey%20preliminary%20report.pdf>, and University of North Carolina, *An Analysis of the Systemic Problems Regarding Foreign Language Interpretation in the North Carolina Court System and Potential Solutions* (2010), http://brennan.3cdn.net/8ea3a557a5c266e543_pwm6b023o.pdf.

2881 can use internal or external reviewers throughout the state and in various types of settings to
2882 gather detailed information, and to identify and address barriers to the delivery of language
2883 access services.

2884 In addition to regular surveys and evaluations, the LAS Office should provide a system for
2885 responding to individual complaints regarding the provision of language access services.⁴⁰⁹
2886 These include complaints about denials of interpreter services, denial of access to services
2887 outside the courtroom, and lack of translated written information. Where the denial concerns a
2888 local proceeding or service, complaints solely to the local courts may be ineffective and will not
2889 necessarily result in mobilization of increased resources to address issues on a systemic basis.
2890 Where an individual has filed a complaint about the denial of services, an anonymous complaint
2891 mechanism may be appropriate to lessen the fear of reprisal against the complainant.
2892 Coordination at the state level should be used to increase the likelihood that measures will be
2893 identified to address the problem and that similar problems in other jurisdictions will be
2894 prevented or corrected.

2895

2896 **10.4 The office should ensure the statewide development of resources to provide**
2897 **language access.**

2898 Creation of resources (including translated materials, videos etc.) at the state and national level
2899 is one of the most important ways that the LAS Office can improve the functioning of the justice
2900 system for all participants. The Office should play a role in identifying, funding, and creating
2901 such resources. Examples include the establishment of sufficient pools of language access
2902 service providers, translation of materials, development of resources, selection of appropriate
2903 and cost-effective technology, and the procurement of additional funding to meet changing
2904 needs.

2905 Developing regional and statewide interpreter pools, particularly those that can be used with
2906 video remote interpreting, is one example of an effective means of addressing the scarcity of
2907 interpreters and the cost of travel. *Recommendation Number 18* of the *COSCA White Paper on*
2908 *Court Interpretation* directs the National Center for State Courts and the Consortium to work
2909 with state courts to explore the feasibility of establishing regional or national pools of
2910 interpreters, as well as community-based interpreter testing programs, as cost-effective
2911 alternatives. Other resources that should be developed are translated court brochures, forms,
2912 and orders that can be used state-wide. State-wide development of translation resources is
2913 another example of a significant cost-savings (hiring translators to translate very similar forms

⁴⁰⁹ A discussion of monitoring and complaints regarding the quality of language access services appears in *Standard 10.5*.

2914 in each jurisdiction) and, where translations are done internally, reduces staff time spent on
2915 creating nearly identical materials in each location. Examples of coordination of translation of
2916 documents can be found in Ohio⁴¹⁰ and Washington⁴¹¹ and are an impressive demonstration of
2917 what can be accomplished with collaboration and coordination.

2918 The centralized office should play a role in both identifying grants and sharing that information
2919 with courts throughout the state. Additional funding presents opportunities to improve
2920 technology and can have a significant impact on many aspects of the justice system. In the state
2921 of Washington, courts were able to use Court Improvement Act funding to purchase items such
2922 as translated documents and headsets for interpreting.⁴¹² The LAS Office should work with
2923 community partners to create or facilitate development of resources that are suitable for LEP
2924 communities.

2925

2926 **10.5 The office should oversee the credentialing,⁴¹³ recruitment, and monitoring of**
2927 **language services providers to ensure that interpreters, bilingual staff, and**
2928 **translators possess adequate skills for the setting in which they will be providing**
2929 **services.**

2930 The centralized oversight of credentialing, recruitment, and monitoring of language services
2931 providers within the LAS Office creates efficiencies and improves the delivery of language
2932 access services in courts. Each area of oversight is discussed in the following sections.

2933 Oversight of Interpreter, Bilingual Staff, and Translator Credentialing

2934 The LAS Office should provide clear standards and procedures regarding interpreter, translator,
2935 and bilingual staff competency and should oversee the implementation and administration of
2936 language access provider competency assessment⁴¹⁴ and credentialing⁴¹⁵ procedures.

2937 Centralized oversight is based on “the premise that it is unreasonable to expect trial judges to
2938 be the sole determiners of an interpreter’s qualifications” and that interpreter certification

⁴¹⁰ See Ohio project led by the Translation Subcommittee of the Supreme Court Advisory Committee on Interpreter Services and coordinated by the Interpreter Services Program:

<http://www.supremecourt.ohio.gov/JCS/interpreterSvcs/forms/default.asp>.

⁴¹¹ See list of family law forms, translated by a court-led group of judges, administrators and legal services attorneys at <http://www.courts.wa.gov/forms/?fa=forms.contribute&formID=25>.

⁴¹² See 2007 Trial Court Improvement Account Use Report April 2008 at http://www.courts.wa.gov/programs_orgs/pos_bja/cftf/2007TCIAReport.pdf

⁴¹³ Credentialing is further discussed in *Standard 9*.

⁴¹⁴ “Assessment” refers to actual testing of qualifications, such as language competency.

⁴¹⁵ 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.

2939 “needs to be available at the local or state level for testing or otherwise assessing the
2940 qualifications of interpreter candidates.”⁴¹⁶ The NCSC *Model Guides* also note that “in most
2941 states it would be preferable to locate the responsibility for screening interpreters in the state’s
2942 administrative office of the courts. In this way, screening can be conducted by individuals with
2943 specialized training, and a statewide register of qualified interpreters can be maintained for the
2944 use of all of the state’s courts.”⁴¹⁷

2945 Oversight of language services provider credentialing in services *outside* of the courtroom is
2946 one of the newer areas of leadership for offices coordinating language access services. The
2947 Consortium’s *Ten Key Components* can be adapted for this process and describes three tasks
2948 necessary for a successful language access program:

- 2949 • Credentialing of language service providers: Adopt clear standards and
2950 procedures for credentialing language service providers through the use of
2951 exams and accompanying policies and protocols developed or approved by the
2952 Consortium.
- 2953 • Appointment of credentialed language service providers: Adopt appropriate,
2954 legally binding rules, policies, and procedures to require the use of credentialed
2955 language service providers for all court proceedings, the translation of court
2956 documents, and the translation/transcription of audio and video recordings.
- 2957 • Standards of professional conduct for court-related language service providers:
2958 Adopt and enforce a Code of Professional Conduct for court-related language
2959 service providers.⁴¹⁸

2960 The LAS Office should also provide oversight of credentialing for bilingual staff when they are
2961 hired to provide direct services in English and the other languages they speak. In coordinating
2962 the credentialing of bilingual staff, the Office should not only oversee testing but should also
2963 provide or facilitate training for bilingual staff on their role to ensure they are not providing
2964 interpreter services without proper credentialing and training.

2965 LAS Office oversight of translator qualifications is also necessary to ensure the delivery of
2966 appropriate language access services with respect to written materials. Although most state
2967 court programs accept national translator certification from the American Translators
2968 Association (ATA) in lieu of conducting independent certification exams for translators, ATA
2969 offers certification in only a limited number of languages. Oversight of translator competency is
2970 as important as interpreter competency; quality and accuracy in translations is critical and as

⁴¹⁶ NCSC, *Court Interpretation Model Guides*, ch. 5, Assessing Interpreter Qualifications: Certification Testing and Other Screening Techniques, at 89 – 90.

⁴¹⁷ *Id.*

⁴¹⁸ NCSC, *10 Key Components to a Successful Language Access Program in the Courts*, Elements 4, 5, and 6, note 364.

2971 the need for translations increases, centralized management becomes increasingly important.
2972 The task of the LAS Office in this regard is to promote the systematic use of credentialed
2973 translators, develop and implement translation protocols, and generally coordinate the
2974 translation process. For more information on translator qualifications, see *Standard 7*.

2975 Recruitment of Interpreters, Bilingual Staff, and Translators

2976 Recruitment of adequate numbers of interpreters, translators, and bilingual staff is a challenge
2977 for many courts and is an area where collaboration is needed at the state and regional level.
2978 The Consortium’s *Ten Key Components* recognizes recruitment as an essential function of a
2979 centralized office such as that envisioned by this Standard.⁴¹⁹ With their direct awareness of the
2980 critical importance and sometimes limited availability of trained interpreters and translators,
2981 the LAS Office and state courts are uniquely situated to play a leadership role in encouraging
2982 institutions of secondary and higher learning to serve as a pipeline to supply professionals to
2983 meet the need.

2984 This support for development of language access providers should include working with
2985 institutions of higher learning to create community interpreter internship programs, creating
2986 and hosting certification programs, and encouraging bilingual students to consider careers in
2987 interpretation and translation.⁴²⁰ In addition to working with general educational institutions,
2988 law schools and courts can collaborate to develop training programs that utilize law students to
2989 conduct outreach to community service organizations regarding language access rights and
2990 legal obligations. An example of a successful model is Villanova law School,⁴²¹ which has
2991 established a community interpreter program training both law students and interpreters on
2992 the need for language access services. States like Alaska⁴²² and New Mexico⁴²³ have also taken
2993 innovative approaches to this problem by working with non-legal users of interpreter and
2994 translation services in an attempt to create more formal pipelines for the training and
2995 development of language services providers.

⁴¹⁹ *Id.*

⁴²⁰ 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.

⁴²¹ 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).

⁴²² Alaska Immigration Justice Project, The Language Interpreter Center <http://www.akijp.org/interpreter.html> (last viewed Apr. 19, 2011).

⁴²³ New Mexico Center for Language Access, <http://www.nmcenterforlanguageaccess.org/> (last viewed Apr. 19, 2011).

2996 Evaluation and Monitoring of Language Services Providers⁴²⁴

2997 Finally, a centralized office should oversee a statewide complaint process to monitor
2998 interpreter, bilingual staff, and translator quality. Monitoring of language access services
2999 generally is discussed in *Standard 10.3*, but monitoring of complaints of specific interpreter
3000 misconduct, insufficient bilingual staff skills, ethical violations, and translation errors is
3001 appropriately discussed in this section because it focuses on language services providers and
3002 the LAS Office’s obligation to ensure the quality of those services.

3003 The LAS Office should be involved in overseeing complaints regarding interpreter quality at the
3004 state level because interpreters often interpret in multiple courtrooms and jurisdictions within
3005 a state, and local dispute resolution measures are thus inadequate to resolve concerns
3006 regarding interpreter quality. Minnesota⁴²⁵ and Washington⁴²⁶ provide models regarding the
3007 disciplinary process for interpreters under the auspices of the State Court Administrator.

3008 Similarly, the LAS Office should handle complaints about the quality of bilingual staff, who are
3009 increasingly used to meet the language access needs of LEP persons in settings outside of the
3010 courtroom. While complaints should be monitored by a centralized office, resolution should be
3011 done in concert with the local court where the bilingual staff is located. The centralized office
3012 should assist in providing training resources to bring the bilingual staff member’s competency
3013 to an appropriate level, or should recruit other qualified bilingual candidates for the position.

3014 The centralized office should also monitor for complaints regarding deficiencies in written
3015 translations. This is best handled at the state level to ensure efficient and effective response to
3016 these complaints. Because of the nature of translations and the increase in coordination among
3017 courts, a centralized complaint process for translations is necessary and enhance the likelihood
3018 that courts will comply with the established translation protocol and that resources regarding
3019 translation will be shared.

3020 In each instance above, courts should implement procedures for filing a complaint, reviewing
3021 and determining the veracity of the complaint, and determining the appropriate disciplinary
3022 action. The court should also create mechanisms to protect the individuals who are the subject
3023 of the complaint, whether they are court interpreters, bilingual staff, or translators. Not all
3024 complaints are credible and the LAS Office should review and determine the veracity of the
3025 claims. Protections should include a written determination identifying the claim, the

⁴²⁴ Monitoring of language access services generally is discussed in *Standard 10.3*.

⁴²⁵ Minnesota Judicial Branch, Interpreter Complaint Process, <http://www.mncourts.gov/?page=448>.

⁴²⁶ Washington State Courts, Disciplinary Policy, http://www.courts.wa.gov/programs_orgs/pos_interpret/index.cfm?fa=pos_interpret.display&fileName=policyManual/disciplinaryPolicyCertified

3026 information upon which the determination was made, and the decision itself. The LAS Office
3027 should also establish a process for the individual to appeal or request reconsideration.

3028

3029 **10.6 The office should coordinate and facilitate the education and training of providers,**
3030 **judicial officers, court personnel, and the general public on the components of**
3031 **Standard 9.**

3032 Whether providing training or simply facilitating it,⁴²⁷ the LAS Office needs to ensure that
3033 training is received by all appropriate groups and that the material covered is comprehensive
3034 and accurate. Many state programs provide training on a regular basis to judges and court staff,
3035 including clerks and clerk staff.⁴²⁸ Coordinating these efforts frees up local court staff time and
3036 improves compliance. Sharing knowledge and materials is efficient, avoids duplication of effort,
3037 and promotes consistent language access services across the state. It also helps to avoid local
3038 practices which are developed in isolation and may violate language access requirements. The
3039 LAS Office should also gather training materials, such as those developed by the National
3040 Center for State Courts Consortium for Language Access in the Courts to share with local courts.
3041 ⁴²⁹

⁴²⁷ Training is discussed in full in *Standard 9*.

⁴²⁸ Annual training on language access services in the Minnesota courts is offered to all state court personnel.
<http://www.mncourts.gov/?page=446>.

⁴²⁹ 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).