

ABA Standards for Language Access in Courts

February 2012

Adopted as American Bar Association policy by the House of Delegates on February 6, 2012.

TABLE OF CONTENTS

INTRODUCTION 1

STANDARD 1 FUNDAMENTAL PRINCIPLES 12

1. As a fundamental principle of law, fairness, and access to justice, and to promote the integrity and accuracy of judicial proceedings, courts should develop and implement an enforceable system of language access services, so that persons needing to access the court are able to do so in a language they understand, and are able to be understood by the court. 12

STANDARD 2 MEANINGFUL ACCESS 21

2. Courts should ensure that persons with limited English proficiency have meaningful access to all the services, including language access services, provided by the court. 21

2.1 Courts should promulgate, or support the promulgation of, rules that are enforceable in proceedings and binding upon staff, to implement these *Standards*. 21

2.2 Courts should provide notice of the availability of language access services to all persons in a language that they understand. 22

2.3 Courts should provide language access services without charge, and may assess or recoup the cost of such services only in a manner that is consistent with principles of fairness, access to justice and integrity of the judicial process, and that comports with legal requirements. 25

2.4 Courts should provide language access services in a timely manner. 27

STANDARD 3 IDENTIFYING LEP PERSONS..... 28

3. Courts should develop procedures to gather comprehensive data on language access needs, identify persons in need of services, and document the need in court records. 28

3.1 Courts should gather comprehensive language access data as well as individualized language access data at the earliest point of contact. 28

3.2 Courts should ensure that persons with limited English proficiency may self-identify as needing language access services. 33

3.3 Courts should establish a process that places an affirmative duty on judges and court personnel to provide language access services if they or the finder of fact may be unable to understand a person or if it appears that the person is not fluent in English... 34

STANDARD 4 INTERPRETER SERVICES IN LEGAL PROCEEDINGS..... 37

ABA Standards for Language Access in Courts

4. Courts should provide competent interpreter services throughout all legal proceedings to persons with limited English proficiency. 37

4.1 Courts should provide interpreters in legal proceedings conducted within courts and court-annexed proceedings..... 38

4.2 Courts should provide interpreter services to persons with limited English proficiency who are in court as litigants, witnesses, persons with legal decision-making authority, and persons with a significant interest in the matter..... 39

4.3 Courts should provide the most competent interpreter services in a manner that is best suited to the nature of the proceeding. 41

4.4 Courts should provide interpreter services that are consistent with interpreter codes of professional conduct..... 45

STANDARD 5 LANGUAGE ACCESS IN COURT SERVICES..... 50

5. Courts should provide appropriate language access services to persons with limited English proficiency in all court services with public contact, including court-managed offices, operations, and programs..... 50

5.1 Courts should provide language access services for the full range of court services..... 51

5.2 Courts should determine the most appropriate manner for providing language access for services and programs with public contact and should utilize translated brochures, forms, signs, tape and video recordings, bilingual staff and interpreters, in combination with appropriate technologies. 53

STANDARD 6 LANGUAGE ACCESS IN COURT-MANDATED AND OFFERED SERVICES..... 59

6. Courts should ensure that persons with limited English proficiency have access to court-mandated services, court-offered alternative services and programs, and court-appointed professionals, to the same extent as persons who are proficient in English. 59

6.1 Courts should require that language access services are provided to persons with limited English proficiency who are obligated to participate in criminal court-mandated programs, are eligible for alternative adjudication, sentencing, and other optional programs, or who need to access services in order to comply with court orders. 61

6.2 Courts should require that language access services are provided to persons with limited English proficiency who are ordered to participate in civil court-mandated services or who are otherwise eligible for court-offered programs..... 62

ABA Standards for Language Access in Courts

6.3 Courts should require that language access services are provided for all court-appointed or supervised professionals in their interactions with persons with limited English proficiency. 64

6.4 Courts should require the use of the most appropriate manner for providing language access for the services and programs covered by this *Standard* and should promote the use of translated signs, brochures, documents, audio and video recordings, bilingual staff, and interpreters. 65

STANDARD 7 TRANSLATION 67

7. Courts should establish a process for providing access to translated written information to persons with limited English proficiency to ensure meaningful access to all court services. 67

7.1 Courts should establish a system for prioritizing and translating documents that determines which documents should be translated, selects the languages for translation, includes alternative measures for illiterate and low literacy individuals, and provides a mechanism for regular review of translation priorities. 68

7.2 To ensure quality in translated documents, courts should establish a translation protocol that includes: review of the document prior to translation for uniformity and plain English usage; selection of translation technology, document formats, and glossaries; and, utilization of both a primary translator and a reviewing translator. 74

STANDARD 8 QUALIFICATIONS OF LANGUAGE ACCESS PROVIDERS 80

8. The court system and individual courts should ensure that interpreters, bilingual staff, and translators used in legal proceedings and in courthouse, court-mandated and court-offered services, are qualified to provide services. 80

8.1 Courts should ensure that all interpreters providing services to persons with limited English proficiency are competent. Competency includes language fluency, interpreting skills, familiarity with technical terms and courtroom culture and knowledge of codes of professional conduct for court interpreters. 81

8.2 Courts should ensure that bilingual staff used to provide information directly to persons with limited English proficiency are competent in the language(s) in which they communicate. 90

8.3 Courts should ensure that translators are competent in the languages which they translate. 92

8.4 Courts should establish or participate in a comprehensive system for credentialing interpreters, bilingual staff, and translators that includes pre-screening,

ABA Standards for Language Access in Courts

ethics training, an orientation program, continuing education, and a system to verify language services providers' qualifications in all settings for which they are used. 94

STANDARD 9 TRAINING 102

9. The court system and individual courts should provide all judges, court personnel, and court-appointed professionals with training on the following: legal requirements for language access; court policies and rules; language services provider qualifications; ethics; effective techniques for working with language services providers; appropriate use of translated materials; and cultural competency. 102

STANDARD 10 STATE-WIDE COORDINATION 110

10. Each court system should establish a Language Access Services Office to coordinate and facilitate the provision of language access services. 110

10.1 The office should provide, facilitate, and coordinate statewide communication regarding the need for and availability of language access services..... 113

10.2 The office should coordinate and facilitate the development of necessary rules and procedures to implement language access services. 113

10.3 The office should monitor compliance with rules, policies and procedures for providing language access services..... 115

10.4 The office should ensure the statewide development of resources to provide language access..... 117

10.5 The office should coordinate the credentialing, recruitment, and monitoring of language services providers to ensure that interpreters, bilingual staff, and translators possess adequate skills for the setting in which they will be providing services. 118

10.6 The office should coordinate and facilitate the education and training of providers, judicial officers, court personnel, and the general public on the components of *Standard 9*. 122

ABA Standards for Language Access in 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 and Purpose***

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

51 The fundamental access to justice principle articulated in *Standard 1* and the comprehensive
52 system for language access described in *Standards 2-10* are applicable to all adjudicatory bodies
53 that deal with LEP persons: federal courts, state courts, territorial courts, administrative

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).

ABA Standards for Language Access in Courts

54 tribunals at the federal, state, and local level, military courts and commissions, and tribal
55 courts. Courts and tribunals are encouraged to conduct a review of their operations in the light
56 of these *Standards* and evaluate their systems and services against the principles described
57 herein. Courts should then adopt requirements for language access through legislation, court
58 rules, or administrative orders that are clear, effective, and enforceable.

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

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

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

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 state courts. The *Standards* build upon resolutions adopted by the
82 ABA 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).

http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_civillegal_aidstds2007.pdf.

ABA Standards for Language Access in Courts

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
87 first time, undertake a comprehensive approach to the issue of language access. They were
88 drafted 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 foundation for what follows, stating that courts should "as a
99 fundamental principle of law, fairness, and access to justice" provide language access services
100 so that courts will be accessible to LEP persons. *Standards 2-10* set out essential components of
101 a comprehensive system to address the needs of LEP persons in court and court-related
102 services, and are subdivided to address specific matters included within the overall subject
103 matter of the particular standard. Although *Standards 2-10* are to be adapted to specific courts
104 and communities, each being an essential component of a comprehensive and effective system
105 of language access services; courts should implement all of them in achieving the overarching
106 access to justice principle of *Standard 1*. Each *Standard* is accompanied by extended
107 *Commentary* intended for courts and practitioners. Where appropriate, *Best Practices* are also
108 described. The *Commentary* gathers legal authority, discusses legal and practical issues that can
109 arise in specific settings as well as strategies for addressing them, and provides information
110 about additional sources of expertise and assistance. The *Best Practices* sections provide
111 examples for courts to use in designing, implementing, and enforcing a system adapted to the
112 organization and administration of their court systems and the type of court proceedings they
113 handle, and for discussing the relative benefits and burdens of different approaches, in light of
114 the composition and needs of the LEP communities they serve. The *Commentary* is intended to
115 provide context and explanation of the black letter statements. The *Commentary* and *Best*
116 *Practices* are not intended to create any additional obligations beyond those set forth in the

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").

ABA Standards for Language Access in Courts

117 black letter *Standards*, but merely to illustrate, illuminate and clarify.

ABA Standards for Language Access in Courts

118 **DEFINITIONS**

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

123 Bilingual – Using or knowing two languages proficiently.

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

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

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

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

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

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

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

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

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

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

ABA Standards for Language Access in Courts

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

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

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

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

163 Interpreter by Classification:

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

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

176 Interpreter Functions:

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).

ABA Standards for Language Access in Courts

177 *Interview Interpreter* – Interprets to facilitate communication in an interview or
178 consultation setting.⁸

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

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

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

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

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

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

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

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

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

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.*

ABA Standards for Language Access in Courts

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

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

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

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

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

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

220 Modes of Interpreting –

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

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

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

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

¹³ See Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Person. 67 Fed. Reg. 41455 (June 18, 2002).

¹⁴ NCSC *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.

ABA Standards for Language Access in Courts

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

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

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

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

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

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

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

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

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

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.

ABA Standards for Language Access in Courts

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

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

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

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

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

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

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

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

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>

²² NCSC, *supra* note 8, at ch. 2.

²³ *Id.*

274 **STANDARD 1** **FUNDAMENTAL PRINCIPLES**

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

280 Commentary

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

285 The *Standards* apply to all adjudicatory tribunals, including state and federal courts;²⁴
286 administrative tribunals at the state, federal, and local levels;²⁵ tribal courts;²⁶ military courts
287 and commissions;²⁷ territorial courts; and other tribunals.²⁸

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

288 **Principle of Fairness**

289 The fundamental principle of fairness requires that individuals who are LEP have access to court
290 services in a language they understand and to the same extent as their English-speaking
291 counterparts. This fairness requires that an LEP individual be able to be fully present during a
292 legal proceeding: an interpreter is provided in order for him to understand what is discussed
293 and decided (including questions asked of him, the statements of the judge, and testimony of
294 others), and to participate in the proceedings (including consultations with an attorney, cross-
295 examination of witnesses, and delivery of his own testimony).²⁹

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

304 **Access to Justice**

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

312 Provision of language access services also ensures access for all groups of people.
313 Discriminating against one group of individuals on the basis of language is against the
314 fundamental principle of equal treatment exemplified in laws which seek to end discrimination.

of a court-martial, military commission, or court of inquiry may detail or employ interpreters who shall interpret for the court or commission.”).

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

ABA Standards for Language Access in Courts

315 In speaking about civil rights and discrimination, President John F. Kennedy stated that “simple
316 justice requires that public funds, to which all taxpayers of all races contribute, not be spent in
317 any fashion which encourages, entrenches, subsidizes, or results in racial discrimination.”³⁰ The
318 U. S. Supreme court in *Lau v. Nichols*³¹ held that failing to take reasonable steps to ensure
319 meaningful access to LEP persons is a form of national origin discrimination prohibited by Title
320 VI regulations. For all courts, regardless of funding or legal requirement, adherence to the
321 principles of access to justice and non-discrimination based upon national origin supports
322 ensuring that court interpretation provided is independent, professional, accurate, and
323 whenever possible, free. Attention has focused on the need for courts to provide language
324 access services because, without court control and funding, services are less likely to be
325 adequate, which can present a barrier to access to justice to LEP individuals purely on the basis
326 of their lack of English proficiency.

327 **Integrity of the Judicial Process**

328 The provision of language access services is not for the sole benefit of the LEP individual.
329 Competent and timely language access services also support the administration of justice by
330 ensuring the integrity of the fact-finding process, accuracy of court records, and efficiency in
331 legal proceedings. Both LEP persons and English speakers alike benefit, as courts often decide
332 issues which affect the interests of both. The Second Circuit noted the connection between the
333 constitutional protections and both “considerations of fairness” and “the integrity of the fact-
334 finding process.”³² If the fact-finder – whether jury or judge – is to make an accurate
335 determination of the facts, the court should rely upon an interpreter, as an officer of the court,
336 to ensure accurate communication with an LEP person in the course of adjudicating the matter.

337 Preserving the integrity of the judicial process as a whole is also the reason why language
338 access services must be provided in a comprehensive manner, not simply in one part of the
339 legal proceedings or in one part of the courthouse. As the Conference of State Court
340 Administrators noted in their “*White Paper on Court Interpretation, Fundamental to Access to*
341 *Justice*,” “[c]ase law has provided that a criminal defendant has the right to an interpreter at
342 every crucial stage of the criminal proceedings.”³³ Extending language access services to all
343 parts of the legal system, to civil and criminal, to court mandated services and court offered

³⁰ President Kennedy’s Address, H.R. Misc. Doc. No 124, 88th Cong., 1st Sess. 3, 12 (1963)

³¹ 414 U.S. 563, 569 (1974)

³² *Negron*, 434 F.2d at 389.

³³ 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*”]The *White Paper* cites cases that require courts to provide interpreters for jury instructions, sentencing, arraignment, entry of a guilty plea, hearings to change or and withdraw a plea, though not for a probation interview or out of court discussions with counsel. (Cites omitted)

ABA Standards for Language Access in Courts

344 services, to written documents as well as oral testimony, ensures that the judicial process can
345 meet its goal of the administration of justice for all. The detail and complexity of the language
346 access services presented in these *Standards* underscores the imperative for court
347 responsibility and control and is one of the main reasons the ABA has devoted resources to
348 clarify the language access requirements courts should address.

349 **Constitutional Protections and Language Access**

350 Although the U.S. Constitution does not expressly guarantee the right to an interpreter in
351 criminal cases, courts have found that an interpreter is necessary to effectuate the guarantees
352 of the Fifth, Sixth and Fourteenth Amendments' right to a fair trial, right to be present at trial,
353 right to confrontation, right to effective assistance of counsel, and right to due process.³⁴
354 Accordingly, the right to an interpreter in criminal proceedings has been addressed by the
355 following case law:

- 356 • *State v. Gonzales-Morales* (defendant's right to an interpreter rested upon the "Sixth
357 Amendment constitutional right to confront witnesses and the right inherent in a fair trial to
358 be present at one's own trial");³⁵
- 359 • *United States v. Edouard* (denial of interpreter for LEP defendant implicates the "rights to
360 due process, confrontation of witnesses, effective assistance of counsel, and to be present
361 at trial");³⁶
- 362 • *United States ex rel. Negron v. State* (proceeding in absence of an interpreter, where the
363 defendant was LEP, "lacked the basic and fundamental fairness required by the due process
364 clause of the Fourteenth Amendment");³⁷
- 365 • *Perez-Lastor v. INS* ("[i]t is long-settled that a competent translation is fundamental to a full
366 and fair hearing");³⁸

³⁴ With respect to the Fifth Amendment right to a fair trial and the Sixth Amendment right to counsel and confrontation, in addition to the cases cited below *see also* *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).

³⁵ *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).

³⁶ *United States v. Edouard*, 485 F.3d 1324, 1338 (11th Cir. 2007)

³⁷ *United States ex rel. Negron v. State*, 434 F.2d at 389 (2d Cir. 1970).

³⁸ *Perez-Lastor v. INS*, 208 F.3d 773, 778 (9th Cir. 2000)

ABA Standards for Language Access in Courts

- 367 • *United States v. Mayans* (defendant’s right to testify on his own behalf was violated when
368 the court denied him an interpreter);³⁹
- 369 • *United States v. Martinez* (recognized that “defendants’ constitutional rights to due process
370 and confrontation” are involved when considering the use of court interpreters);⁴⁰
- 371 • *United States v. Carrion* (acknowledged that a criminal defendant has a constitutional right
372 to an interpreter);⁴¹ and
- 373 • *Cervantes v. Cox* (noted that Sixth Amendment right to counsel may be denied where the
374 defendant is unable to communicate with counsel).⁴²

375 The constitutional right to an interpreter in all civil proceedings is less settled. In consideration
376 of due process protections, courts are required to consider the need for language access
377 services within the context of a myriad of factors, including state and federal statutes and case
378 law. While some state and federal cases have recognized that interpreters are necessary to
379 ensure meaningful participation, courts have not uniformly held that civil litigants are entitled
380 to an interpreter under the Constitution.⁴³ Courts have addressed such a right in a limited
381 number of cases, including the following:

- 382 • *Augustin v. Sava* (in political asylum proceeding, court held that the “[t]he very essence of
383 due process is a meaningful opportunity to be heard” and that the “absence of adequate
384 translation” denied the refugee his procedural rights);⁴⁴
- 385 • *Lizotte v. Johnson* (in foster care benefits case, court held that “the failure to provide
386 adequate translation services . . . deprived petitioner of fundamental due process.”);⁴⁵
- 387 • *Figueroa v. Doherty* (in unemployment benefits case, court found that “[t]he failure to
388 provide a competent translation of all proceedings deprived [the claimant] of his right to a
389 fair hearing that he understood and at which he would be understood.”);⁴⁶
- 390 • *Abdullah v. INS* (noted that when courts consider claims involving due process, they are to
391 consider the factors enumerated in *Mathews v. Eldridge*: “1) the interests of the claimant,

³⁹ *United States v. Mayans*, 17 F.3d 1174, 1180-81 (9th Cir. 1994).

⁴⁰ *United States v. Martinez*, 616 F.2d 185, 188 (5th Cir. 1980).

⁴¹ *United States v. Carrion*, 488 F.2d 12, 14 (1st Cir. 1971).

⁴² *Cervantes v. Cox*, 350 F.2d 855, 855 (10th Cir. 1965).

⁴³ See *Jara v. Municipal Court*, 21 Cal.3d 181 (1978) (stating that generally there is not a constitutional right to an interpreter in civil matters).

⁴⁴ *Augustin v. Sava*, 735 F.2d 32, 37 (2d Cir. 1984).

⁴⁵ *Lizotte v. Johnson*, 777 N.Y.S.2d 580, 586 (Sup. Ct. 2004).

⁴⁶ *Figueroa v. Doherty*, 707 N.E.2d 654, 659 (Ill. App. Ct. 1999).

ABA Standards for Language Access in Courts

- 392 2) the risk of erroneous deprivation absent the benefit of the procedures sought and the
393 probable value of such additional safeguards, and 3) the government's interest in avoiding
394 the burdens entailed in providing the additional procedures claimed”);⁴⁷
- 395 • *In re Doe* (in family court proceedings where parental rights are substantially affected, court
396 held that parents must be provided with an interpreter);⁴⁸ and
- 397 • *Yellen v. Baez* (in a landlord-tenant case, court held that “[t]o require a tenant to proceed
398 when it is obvious that an interpreter is needed would violate due process of law.”).⁴⁹
- 399 The right to an interpreter in civil cases has also been established in many states by statute.⁵⁰ A
400 2009 report by the Brennan Center for Justice at New York University School of Law reported an
401 increasing number of states requiring the appointment of an interpreter in all civil cases.⁵¹ At
402 the time these standards are being written, half of the states have a state statute or court rule
403 that requires that interpreters be provided in both civil and criminal cases.⁵² In passing such
404 statutes, states have reaffirmed the important rights at stake in civil proceedings which
405 adjudicate critical legal matters such as protection from abuse; child custody and support;
406 dependency; termination of parental rights; eviction; and eligibility for unemployment
407 compensation, worker’s compensation, and public benefits.⁵³

⁴⁷ *Abdullah v. INS*, 184 F.3d 158, 164 (2d Cir. 1999)

⁴⁸ *In re Doe*, 57 P.3d 447 (Haw. 2002)

⁴⁹ *Yellen v. Baez*, 676 N.Y.S.2d 724 (Civ. Ct. 1997)

⁵⁰ Am. Bar Ass’n, Commission on Domestic Violence, State Statutes Requiring the Provision of Foreign Language Interpreters to Parties in Civil Proceedings (June 2007),

http://apps.americanbar.org/domviol/trainings/Interpreter/Binder-Materials/Tab9/foreign_language_interpreters_with_disclaimer_language.pdf.

⁵¹ Abel, *supra* note 2. See also Emily Kirby et al., *An Analysis of the Systemic Problems Regarding Foreign Language Interpretation in the North Carolina Court System and Potential Solutions*, North Carolina School of Law, (2010), D.C. Code § 2-1902(a); Idaho Code Ann. § 9-205; Ind. Code § 34-45-1-3; Iowa Code § 622A.2; Kan. Stat. Ann. § 75-4351 ; Ky. Rev. Stat. Ann. § 30A.410; La. Code. Civ. Proc. art. 192.2(A); Mass. Gen. Laws Ch 221C, §2; Minn. Stat. §§ 546.42, 546.43; Miss. Code. Ann. §§ 9-21-71, 9-21-79; Mo. Rev. Stat. § 476. 803; Neb. Rev. Stat. § 25-2403; Or. Rev. Stat. § 45.275; 42 Pa. Cons. Stat. § 4401; Tex. Gov’t Code § 57.002; Utah Code Ann. § 78B-1-146; Wash. Rev. Code § 2.43.030; Wis. Stat. Ann. §§ 885.37, 885.38; Georgia State Court Unif. Rules for Interpreter Programs I(A), app. A; Maine State Judicial Court, Administrative Order JB-06-03 (Oct. 11, 2006); Maryland Rules of Procedure, R. 16-819; N.J. Judicial Directive 3-04, std. 1.2 (Mar. 22, 2004).

⁵² These states include: Colorado, Washington DC, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Massachusetts, Maryland, Maine, Minnesota, Missouri, Nebraska, New Jersey, New Mexico , New York, Oregon, Pennsylvania, South Carolina, Texas, Utah, Washington, and Wisconsin.

⁵³ 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).

408 **Federal Statutes and DOJ Regulations**

409 In addition to the constitutional protections and statutory provisions identified above, the
410 obligation to provide language access services stems from the nondiscrimination provisions of
411 Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, *et seq.* (Title VI), which applies to all
412 courts that receive federal financial assistance,⁵⁴ Executive Order 12250, Executive Order
413 13166, the Omnibus Crime Control and Safe Streets Act of 1968, and the Court Interpreters Act.

414 *Title VI of the Civil Rights Act of 1964*

415 Section 601 of Title VI provides that no person shall “on the ground of race, color, or national
416 origin, be excluded from participation in, be denied the benefits of, or be subjected to
417 discrimination under any program or activity receiving Federal financial assistance.”⁵⁵ Section
418 602 of the Act provides that “[e]ach Federal department and agency which is empowered to
419 extend Federal financial assistance . . . is authorized and directed to effectuate the provisions of
420 section 2000d of this title . . . by issuing rules, regulations, or orders of general applicability
421 which shall be consistent with achievement of the objectives of the statute authorizing the
422 financial assistance in connection with which the action is taken.”⁵⁶ The Department of Justice
423 regulations which implement Section 602 forbid recipients of federal financial assistance from
424 “utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals
425 to discrimination because of their race, color, or national origin, or have the effect of defeating
426 or substantially impairing accomplishment of the objectives of the program as respects
427 individuals of a particular race, color, or national origin.”⁵⁷

⁵⁴ 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.”).

⁵⁵ 42 U.S.C. § 2000d

⁵⁶ 42 U.S.C. § 2000d-1.

⁵⁷ 28 C.F.R. § 42.104(b)(2) (2010).

ABA Standards for Language Access in Courts

428 *Executive Order 12250*

429 Executive Order 12250 (EO 12250)⁵⁸ charges the Department of Justice with ensuring the
430 consistent and effective implementation of Title VI and delegates the power vested in the
431 President of the United States, pursuant to Section 602—relating to the approval of rules,
432 regulations, and orders of general applicability—to the Attorney General. EO 12250 also gives
433 the Attorney General the task of coordinating the implementation and enforcement of the
434 nondiscrimination provisions of Title VI. Courts play a key role in adopting rules and procedures
435 to guard against disparate impact and discrimination, as the Supreme Court has ruled that
436 there is no private right of action to enforce the disparate impact regulations promulgated
437 under Title VI.⁵⁹

438 *Executive Order 13166*

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

443 EO 13166 specifically directed federal agencies to publish guidance on how both they and the
444 recipients of their financial assistance can provide “meaningful access” to LEP persons.⁶⁰ In
445 response, the Department of Justice issued “*Enforcement of Title VI of the Civil Rights Act of*
446 *1964 – National Origin Discrimination Against Persons with Limited English Proficiency*” (*DOJ*
447 *LEP Guidance*) in 2000, followed by amended *Guidance* in 2001 and 2002.⁶¹ The *DOJ LEP*
448 *Guidance* utilizes the following four factors to determine whether recipients have taken
449 reasonable steps to ensure “meaningful access:” (1) the number or proportion of LEP persons;
450 (2) the frequency with which LEP individuals come into contact with the program; (3) the nature

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

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 *Id.*

⁶¹ 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*].

ABA Standards for Language Access in Courts

451 and importance of the program, activity, or service provided by the program to people’s lives;
452 and (4) the resources available to the grantee/recipient and costs.”⁶²

453 The *DOJ LEP Guidance* as well as memoranda, opinion letters⁶³ and legal briefs are cited
454 throughout these *Standards*. The degree of deference accorded to these pronouncements,
455 ranging from binding to persuasive weight, depends on the formality of review and the
456 authority under which the rule was made.⁶⁴ Implementing regulations, agency guidance, and
457 memoranda are often further interpreted by the courts.⁶⁵

⁶² *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*.

⁶³ 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.

⁶⁴ The degree of deference given depends on the nature of the document and whether external reviews are a part of the process. An agency’s memoranda, opinion letters, or legal briefs, while not warranting “*Chevron*-type deference” have been awarded a degree of deference in cases. For regulations, the controlling case is *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984) (holding that considerable weight should be accorded to executive department’s construction of statutory scheme it is entrusted to administer). See *Long Island Care at Home, Ltd. v. Coke*, 551 U.S. 158, 162 (2007) (finding third-party regulation was not a mere interpretive rule subject only to nonbinding *Skidmore* deference), *Christensen v. Harris County*, 529 U.S. 576, 587 (2000) (noting that agency’s interpretation of statute which is contained in opinion letters, policy statements, agency manuals, or enforcement guidelines, all of which lack force of law, do not warrant *Chevron*-style deference); *United States v. Mead Corp.*, 533 U.S. 218, 226-27 (2001); *Auer v. Robbins*, 519 U.S. 452 (1997); (noting that fact that Secretary of Labor’s interpretation of regulation came to Supreme Court in form of legal brief did not compel finding that interpretation was unworthy of deference, where Secretary’s position was not post hoc rationalization advanced to defend past action by Secretary against attack, and there was no reason to suspect that interpretation did not reflect Secretary’s fair and considered judgment on matter in question); *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944) (holding in applying Fair Labor Standards Act, that weight to be given by court to administrator’s ruling is dependent upon thoroughness evident in its consideration, validity of its reasoning, and its consistency with earlier and later pronouncements). *Skidmore*, 323 U.S. at 140 (holding that agency guidelines, interpretations and opinions, while not controlling upon the courts by reason of their authority, do constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance. The weight of such a judgment in a particular case will depend upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade.

⁶⁵ One such example is *Lau v. Nichols*, 414 U.S. at 567-69. (holding that failing to take reasonable steps to ensure meaningful access for LEP persons is a form of national origin discrimination prohibited by Title VI regulations.) In its ruling, the Supreme Court relied upon a memorandum issued by the Department of Health, Education, and Welfare, Office for Civil Rights, highlighting areas of concern in the services provided to “national origin-minority group children deficient in English language skills.” The memorandum also clarified the school district’s obligations regarding language access pursuant to the Department’s regulations promulgated under Title VI.

458 *The Omnibus Crime Control and Safe Streets Act of 1968*

459 The *Omnibus Crime Control and Safe Streets Act of 1968* (Safe Streets Act) prohibits national
460 origin discrimination by recipients of federal financial assistance.⁶⁶ Regulations implementing
461 the Safe Streets Act further prohibit recipients from administering programs in a manner that
462 has the effect of subjecting individuals to discrimination based on their national origin.⁶⁷

463 *The Court Interpreters Act*

464 The Court Interpreters Act of 1978 requires federal courts to appoint an interpreter in criminal
465 and civil actions brought by the federal government in U.S. District Courts. Pursuant to this Act,
466 the right to an interpreter in federal courts in such cases is broad and extends to pretrial and
467 grand jury proceedings.⁶⁸

468 **STANDARD 2 MEANINGFUL ACCESS**

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

471 Commentary

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

480 **2.1 Courts should promulgate, or support the promulgation of, rules that are enforceable**
481 **in proceedings and binding upon staff, to implement these *Standards*.**

482 Commentary

483 Courts' obligation to provide language access have been described in case law as well as in
484 statutes, regulations, and guidance, yet clear and effective implementation of language access
485 services requires the promulgation of comprehensive, clear, and enforceable court rules or
486 administrative orders. This *Standard* recognizes that variation in court administrative structures

⁶⁶ Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. § 3789d (2006).

⁶⁷ See 28 C.F.R. §§ 42.104(b)(2), 42.203(e); see also 42 U.S.C. § 3789d(c).

⁶⁸ Court Interpreters Act, 28 U.S.C.A. § 1827 (1978).

ABA Standards for Language Access in Courts

487 may necessitate the promulgation of rules by courts, legislatures, or other administrative
488 bodies. The purpose of rules of court is to provide necessary governance of court procedures
489 and practice and to promote justice by establishing a fair and expeditious process. Rules
490 governing procedures and practices for the provision of language access services by courts are
491 useful; they simplify and clarify court obligations, guide those implementing the adjudicatory
492 process, and provide additional mechanisms for enforcement by affected individuals.

493 Best Practices

494 While many states have some court rules regarding provision of interpreters,⁶⁹ comprehensive
495 model rules should 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 **2.2 Courts should provide notice of the availability of language access services to all**
502 **persons in a language that they understand.**

503 Commentary

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 should provide this notice in a language that all persons understand, taking into
507 account the appropriate method to provide the information.⁷⁰

508 Best Practices

509 Notice to Whom and in Which Languages

510 Notice about the court's language access services should be provided so that all individuals who
511 need to access the court are aware of the availability of services. This includes providing notice

⁶⁹ 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").

⁷⁰ Where a court is a recipient of federal financial assistance, the Department of Justice takes the position that such financial assistance is conditioned upon compliance with the *DOJ LEP Guidance*, interpreting Title VI as requiring notices as described here.

ABA Standards for Language Access in Courts

512 to the English-speaking public at large, and to attorneys and advocates who are working with
513 LEP persons. Courts can do this through the use of clear and comprehensive English signage.

514 Courts should also provide notice to LEP persons of the availability of the language access
515 services in a language that they understand. Using the most recent language data for their
516 service area,⁷¹ courts should provide *written* notice in the most common languages spoken⁷²
517 and should establish procedures for providing *oral* notice to individuals who speak languages
518 that are less common. This same language needs assessment information should be used to
519 determine when notices in alternate formats, including video and tape recordings for persons
520 with low-literacy in their primary language, should be provided in other languages.

521 Notice about Available Language Access Services

522 The content of the notification is as important as the language and manner in which it is
523 communicated. To be meaningful, the notice needs to be sufficiently detailed, describing the
524 available language services, who is eligible to receive them, methods for obtaining the services,
525 the time when services are expected to be provided, and any policies related to costs.⁷³ The
526 notice should also include how to file a complaint about inadequate language access services,
527 including issues of poor quality, limited availability, and denial of services. Notification about
528 the complaint process should contain both internal procedures for filing a complaint as well as
529 the contact information for the Department of Justice, Civil Rights Division, and any other entity
530 or official exercising oversight.⁷⁴

531 In addition to notifying LEP persons about the availability of language access services,
532 translated notices can assist the courts in identifying the language spoken by the individual.
533 The multilingual poster developed by the Social Security Administration,⁷⁵ and to a lesser

⁷¹ 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.

⁷² For more information on procedures for translation, see *Standard 7*.

⁷³ See Standard 2.3 for discussion of criteria to be applied in determining whether or when it is appropriate to assess our recoup the cost of language access services

⁷⁴ For information on filing a complaint, see <http://www.justice.gov/crt/complaint/index.php#five> (last visited Apr. 18, 2011).

⁷⁵ 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*.

ABA Standards for Language Access in Courts

534 degree, the “Language Identification Flashcard” developed by the U.S. Census Bureau,⁷⁶ are
535 examples of free and efficient ways to both simultaneously communicate the availability of
536 language access services and to identify an individual’s language needs in one document.⁷⁷ A
537 thorough and complete notice should be identified or developed, translated into as many
538 languages spoken in the state as possible, and distributed to courts within the state court
539 system. The National Center for State Courts and other national entities working in this area are
540 encouraged to assist in the development, and national distribution, of resources such as the
541 detailed notice form described here.⁷⁸

542 Notice at All Points of Contact with the Court

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

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

559 Outreach materials containing information about court programs and other important court
560 information that are routinely provided in English should be available in the languages most
561 commonly spoken in the jurisdiction. Outreach to traditionally underserved communities
562 should be designed to increase awareness of court programs and help to eliminate perceived

⁷⁶ 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

⁷⁷ 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.

⁷⁸ The ABA supports efforts by the Consortium and COSCA to develop such resources at the national level.

ABA Standards for Language Access in Courts

563 language barriers to access to courts.⁷⁹ If the court uses telephonic recordings in English to
564 communicate with the public, the court should add additional language-specific recordings
565 describing both the court services and the language access services for LEP persons. Benefits of
566 a comprehensive notice and outreach program include increased access for LEP persons,
567 reduced need for bilingual staff to answer questions at a front counter, and reduced need for
568 staff to use telephonic interpreter services to answer frequently asked questions, thereby
569 conserving court resources.

570 **2.3 Courts should provide language access services without charge, and may assess or**
571 **recoup the cost of such services only in a manner that is consistent with principles of**
572 **fairness, access to justice and integrity of the judicial process, and that comports with**
573 **legal requirements.**

574 Commentary

575 Language access services ensure that all persons have equal access to justice and that
576 information essential for the efficiency and integrity of legal proceedings can be understood by
577 both English speakers and those who are LEP. Many states and courts, as well as the federal
578 government, have endorsed these principles by passing laws and promulgating rules and
579 guidance that expressly require the provision of language access services in both civil and
580 criminal cases regardless of indigency.⁸⁰ See Standard 1 for a full examination of these
581 principles and relevant law and jurisprudence.

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

⁷⁹ See NCSC, *Trust and Confidence in the California Courts: A survey of the Public and Attorneys* 21 (2005).

⁸⁰ See Fn. 2, Laura Abel, *Language Access in State Courts* (2009), pp. 67-68 (identifying Idaho, Kansas, Kentucky, Maine, Minnesota, Nebraska, New Jersey, New York, Oregon and Wisconsin as states in which the courts pay for interpreters without imposing a means test and without assessing interpreter costs on the parties), available at www.brennancenter.org; Colo. Ch. J. Dir. 06-03, (June 2011); COSCA White Paper Appendix A.; DOJ Guidance and Letter from Thomas E. Perez, Assistant Attorney General, to Chief Justices and State Court Administrators 2 (Aug. 16, 2010), http://www.justice.gov/crt/lep/final_courts_itr_081610.pdf [hereinafter "Letter to Chief Justices and State Court Administrators"].

ABA Standards for Language Access in Courts

591 Best Practices

592 There is broad agreement that justice cannot be achieved in any adjudicatory setting (whether
593 civil or criminal) when persons affected by the proceedings do not comprehend them, when
594 persons with information that is essential to a fair outcome cannot convey that information,
595 when the judge or jury do not have an accurate understanding of relevant evidence, or when
596 persons are subject to a different outcome or penalty, or are denied an otherwise available
597 option or treatment, based only on their language ability. Because language services are
598 essential to the fair and efficient operation of the courts, expenses associated with providing
599 those services should be considered routine, necessary expenses and included in budget
600 requests for judicial administration and as part of other court efforts seeking adequate funds
601 for court operations. Courts may seek necessary increases in funding of judicial budgets, or
602 grants from the federal government or other sources.⁸¹ Courts may include the cost of language
603 access services in the calculation for determining filing fees for all users.

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

612 An example of a situation where a court may, where allowed by law, assess or recoup the cost
613 of language access services would be when, in a specific civil proceeding, language access
614 services are provided for the benefit of a well-resourced non-LEP individual or corporate party.
615 In such a situation, the cost of language services can be imposed on that individual/corporation
616 without chilling court access or disproportionately burdening LEP individuals and most would
617 agree that it is fair to require that party to bear the costs, for example, of presenting the
618 testimony of an LEP expert witness. If the well-resourced party was himself/herself LEP, the

⁸¹ See, e.g., Colorado Judicial Branch, FY 2010-11, Joint Budget Committee Hearing Agenda (Nov. 18, 2010), p. 3 (showing interpreter costs as 2% of the judiciary's general fund allocation); http://www.courts.state.co.us/userfiles/file/Administration/Financial_Services/Judicial%202012%20Hearing%20Agenda%20-%20FINAL.pdf; Wisconsin Court System, Biennial Budget Summary: Court-Related Items (July 1, 2011), p. 16 (allocating a portion of the Justice Information Systems Surcharge for court interpreter costs), <http://www.wicourts.gov/courts/overview/docs/budgetsummary.pdf>; Texas Courts Online, Remote Interpreter Project, (describing use of federal Violence Against Women Act funding for remote interpretation project), <http://www.courts.state.tx.us/oca/dvra/trip.asp>.

ABA Standards for Language Access in Courts

619 court would need to evaluate the circumstances to ensure that any assessment of costs would
620 be consistent with the principles articulated in this Standard.

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

630 **2.4 Courts should provide language access services in a timely manner.**

631 Commentary

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

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

642 The *Department of Justice LEP Guidance* states that “to be meaningfully effective, language
643 assistance should be timely” and that to be considered timely, language access services “should
644 be provided at a time and place that avoids the effective denial of the service, benefit, or right
645 at issue or the imposition of an undue burden on or delay in important rights, benefits or
646 services to the LEP person.”⁸²

647 Best Practices

648 Timely access to a certified interpreter for an LEP domestic violence victim seeking an ex parte
649 order of protection, with a potential risk of serious harm from any delay, requires that the

⁸² DOJ LEP Guidance, *supra* note 66, at 41,461.

650 interpreter be available to ensure the same access to the court’s legal remedies as that
651 provided to English speakers. Courts should develop methods to obtain such language access
652 services quickly and balance the need for in-person interpreters against the convenience of
653 telephonic, video remote services or other technology.⁸³

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

663 **STANDARD 3 IDENTIFYING LEP PERSONS**

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

666 Commentary

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

674 **3.1 Courts should gather comprehensive language access data as well as individualized**
675 **language access data at the earliest point of contact.**

676 Commentary

677 Courts should develop appropriate data gathering tools to anticipate and determine language
678 access service needs. Courts should develop tools to track and respond to the individual
679 language needs of the LEP persons accessing the courts. Individuals often need to access the
680 court in advance of filing a case, during an ongoing matter, or after the conclusion of a legal

⁸³ For more information on video remote interpreting, see *Standard 4.3*.

ABA Standards for Language Access in Courts

681 proceeding. These encounters may occur at the clerk’s office, an information counter, self-help
682 centers, or other places where the court provides information to the public. In addition,
683 because the need for language access services may develop later in the court process, a
684 comprehensive system for identifying language needs should incorporate language access
685 information throughout the duration of the case. Identifying the needs of LEP persons accessing
686 the court for information-gathering purposes, and tracking that information in a formal way,
687 will assist courts in determining appropriate staffing needs and resource allocation.

688 Comprehensive Data

689 The *DOJ LEP Guidance* recommends that recipients analyze prior experiences or encounters
690 with LEP persons in addition to other sources of data, including school systems, community
691 organizations and local governments.⁸⁴ The COSCA *White Paper on Court Interpretation* also
692 emphasizes the need for data stating that “the National Center for State Courts and the States
693 should explore and support methods to better identify and track needs for interpreters – in
694 individual cases and overall, including identification of languages for which interpretation is
695 needed, frequency of interpreter use, and types of cases in which interpretation is required.”⁸⁵
696 These data can be used to assist courts in making decisions about hiring bilingual staff,
697 developing appropriate interpreter pools, reaching out to community organizations to develop
698 additional language access services and prioritizing additional translations and other resources
699 such as videos and online training.

700 Data gathering can be done internally through the use of systems that monitor trends in the
701 need for and provision of interpreter, bilingual staff and translation services. This information is
702 needed to meet a court’s current language access needs and to assist in forecasting future
703 trends. Courts should monitor the scheduling and billing of both interpreters and bilingual staff,
704 broken down by language, type of proceeding and location.⁸⁶ For this task, data on the
705 languages for which interpreters have been *requested* is just as important as data on languages
706 for which interpreters have been *provided*. Data on the availability and use of translations,
707 including the types of materials translated, should include alternatives to translation such as
708 online resources, video recordings and oral tape-recordings. Additional internal surveys can

⁸⁴ *DOJ LEP Guidance, supra* note 66, at 41,465.

⁸⁵ COSCA, *White Paper*”.

⁸⁶ 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*.

ABA Standards for Language Access in Courts

709 supplement automatic data gathering systems and should be conducted periodically, in a
710 manner that is consistent with any statewide language assistance plan.⁸⁷

711 External demographic data should be gathered by the court to supplement internal systems
712 and to help anticipate the language needs of individuals accessing the courts. External data
713 sources include national surveys, state agency demographic data and community partners.
714 National data, including information from the U.S. Census Bureau and American Community
715 Survey (ACS), should be consulted as it becomes available.⁸⁸ In addition to these sources, local
716 governmental agencies, such as health and education departments,⁸⁹ regularly compile detailed
717 demographic data. Courts should establish mechanisms to coordinate with groups to regularly
718 obtain such data for evaluating language access needs.

719 Individualized Data

720 Courts should incorporate the individualized language needs of LEP persons they encounter
721 into the intake or case management system by asking about the language needs of any litigant,
722 witness, person with legal decision-making authority and person with a significant interest in
723 the matter.⁹⁰ Courts can do this by creating a form to request interpreter services on the initial
724 filing with the court. Courts should avoid requesting or compiling individualized information
725 that may inhibit requests for language access services, such as information or documents
726 potentially reflecting immigration status (i.e., green cards, work permits and social security
727 numbers). This type of information is irrelevant to determine language access needs and
728 potentially erects a barrier to the courts. Courts should also gather this data from external
729 agencies and court-appointed professionals who may be the first point of contact for an LEP
730 person's interaction with the court system. Law enforcement officers, jail personnel,
731 prosecutors, court-appointed defense counsel, child protective services staff, domestic violence

⁸⁷ Some states, such as California, require individual courts to adopt a Language Assistance Plan and update it on an annual basis. For example, the Superior Court of Sacramento County LEP plan may be changed or updated at any time but is reviewed not less frequently than once a year. The evaluation includes identification of any problem areas and development of corrective action strategies. Elements of the evaluation include the number of LEP persons requesting court interpreters and language assistance and an assessment of current language needs to determine if additional services or translated materials should be provided, solicitation and review of feedback from LEP communities within the county, and an assessment of the implementation of the LEP plan itself. See Superior Court of Sacramento County, Limited English Proficiency (LEP) Plan,

<http://www.saccourt.ca.gov/outreach/docs/lep-plan.pdf> (last visited Apr. 18, 2011).

⁸⁸ 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).

⁸⁹ 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.

⁹⁰ A discussion of each of these categories of individuals is provided in *Standard 4*.

ABA Standards for Language Access in Courts

732 advocates, guardians ad litem and treatment providers should identify the language access
733 needs of LEP persons they serve and communicate that information to the court. Courts should
734 develop mechanisms and procedures to allow communication among these groups and should
735 review and modify current documentation systems where necessary.

736 Once the data are gathered, courts should manage and organize the data in an efficient way to
737 determine what services are needed and how to provide them. The following information
738 should be documented: (1) the nature of the legal proceeding or event for which an interpreter
739 is needed;⁹¹ (2) the location, time frame, and duration of each event; (3) the estimated number
740 of interpreters needed in the matter;⁹² (4) any conflicts of interest of interpreters; (5) the
741 names of interpreters (including contact information) assigned to each interpreting event; (6)
742 identification of other individuals involved in the case, including attorneys and court-appointed
743 professionals;⁹³ and, (7) a system to prioritize or flag a case where there are a limited number
744 of interpreters in the particular language needed since this may require special scheduling
745 considerations.

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

758 The case management system in King County Superior Court (KCSC), in Seattle, Washington,
759 illustrates the benefit for courts in using a comprehensive approach. The KCSC Interpreter

⁹¹ 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.

⁹² 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.

⁹³ 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.

ABA Standards for Language Access in Courts

760 Services Program’s electronic case management system⁹⁴ uses a sophisticated database with all
761 the seven elements listed above in addition to some particularly useful features such as a drop
762 down list for languages⁹⁵ and for each person’s role in the case⁹⁶ along with a list of all
763 interpreting event locations, including all courtrooms, court-affiliated programs, and out-of-
764 court locations.⁹⁷ Reporting and scheduling functions allow case information to be transferred
765 to the scheduling component within the CMS where all essential information is displayed.⁹⁸ The
766 schedule can be sorted by language, location, case type or any combination of those views,
767 creating an instantaneous reporting and documentation system for the court. In addition, the
768 schedule can be sorted by interpreter and sent electronically to each interpreter, with any
769 necessary notes or scheduling reminders included. The CMS also creates reports regarding the
770 frequency of interpreter encounters by language, case type, and settings outside the courtroom
771 to assist courts in evaluating the need for additional services.

772 Courts should be careful to ensure that case management systems include not just courtroom
773 services, but also settings outside of the courtroom where language access is needed.⁹⁹ Ideally,
774 language services at such settings should include the need for translated materials, the use of
775 bilingual staff at information counters and access to telephonic interpreter services. A
776 documentation system that tracks the encounter rates for different languages can also assist
777 the court in determining the need for services in languages for which neither bilingual staff nor
778 qualified in-person interpreters are available. This tracking can lead to cost-savings (such as the

⁹⁴ Each individual is a unique “customer” within the system. Customers are then associated with different events within a case.

⁹⁵ Within the language tab, notes can be added to indicate the country of origin or to document specific language needs of an individual.

⁹⁶ 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.

⁹⁷ 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.

⁹⁸ 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

⁹⁹ These settings are discussed in *Standards 5, 6, and 7.*

779 translation of documents which would otherwise need to be sight translated by an
780 interpreter)¹⁰⁰ which might be overlooked when no monitoring occurs.

781 **3.2 Courts should ensure that persons with limited English proficiency may self-identify as**
782 **needing language access services.**

783 Commentary

784 Courts should allow an LEP person to self-identify as needing services. When an individual or
785 his/her representative requests an interpreter, a judge or adjudicator should presume the need
786 is bona fide.¹⁰¹ This preference for self-identification recognizes that assessing language
787 proficiency is a difficult and intensive task that requires training in language acquisition and
788 language proficiency assessment – training not usually possessed by a judge or court personnel.
789 For example, a judge might be inclined to deny an interpreter for an individual after observing
790 him or her conversing with an attorney without the aid of an interpreter, or after observing the
791 individual following simple instructions such as “sit down.” Such a denial could be erroneous
792 because it incorrectly assumes that the ability to use English for simple communications and
793 rote statements (which are often memorized) is an indication of the language proficiency
794 necessary for the meaningful comprehension and effective communication that is required to
795 protect a person’s interest in a legal matter.

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

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

¹⁰⁰ For more discussion of the efficient use of translation see *Standard 7*.

¹⁰¹ NCSC, *supra* note 8, at 126.

ABA Standards for Language Access in Courts

809 who does not.¹⁰² In addition to misunderstanding information due to the language barrier, LEP
810 persons from a country where legal systems and concepts vary substantially from those of the
811 United States may be further confused when an interpreter is not used. The failure to appoint
812 an interpreter when one has been requested not only impairs that person’s access to justice
813 but also can result in costs and inefficiencies to the court system in the form of appeals,
814 reversals, and remands.¹⁰³

815 **3.3 Courts should establish a process that places an affirmative duty on judges and court**
816 **personnel to provide language access services if they or the finder of fact may be**
817 **unable to understand a person or if it appears that the person is not fluent in English.**

818 Commentary

819 In some instances, LEP persons may declare themselves “proficient” in English and decline
820 interpreter services resulting in the need for a judge to make an independent determination.
821 This may occur, for example, due to an LEP person’s misunderstanding of the complexity of the
822 proceedings, concerns about confidentiality, and fear of misinterpretation and discrimination
823 against non-English speakers. However, when LEP persons have been provided a thorough
824 explanation of the availability of interpreter services and the benefits of communicating in their
825 primary language, it is unusual for them to decline interpreter services. While these *Standards*
826 use the term “proficient” in English to refer to the fact that ability to speak a language exists
827 across a range, from “limited” to “highly proficient,” the term “fluent” is used here to
828 emphasize that an individual whose English falls short of the ability to communicate in a
829 language easily and effectively should be appointed an interpreter to ensure accuracy of the
830 proceedings. If a judge has concerns about the person’s fluency in English, the judge should
831 make an inquiry, on the record, to determine the need for an interpreter. The seriousness of
832 charges involved in a case, or of the consequences or the complexity of the proceedings, may
833 require a high level of proficiency. If the judge cannot understand the person’s responses to the
834 questions asked, or the court anticipates that jurors or other participants might not understand
835 the LEP person, or if the judge has any doubt about the ability of the LEP person to comprehend

¹⁰² 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.

¹⁰³ 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.”).

ABA Standards for Language Access in Courts

836 the proceedings fully or adequately to express him or herself, the court should appoint a
837 certified or qualified interpreter.

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

843 If the LEP person in this situation is attempting to decline the appointment of an interpreter;
844 that request should be permitted only in documented circumstances similar to "an intentional
845 relinquishment or abandonment of a known right."¹⁰⁴ The right to an interpreter in criminal
846 cases is well established under the Fifth Amendment right to a fair trial and the Sixth
847 Amendment right to counsel and confrontation. While the constitutional right to an interpreter
848 in civil matters, however, is not as well settled as in criminal matters, the right to an interpreter
849 in civil matters has been established in many states by statute. Therefore, understanding the
850 need for an interpreter, the availability of interpreter services, the role of the interpreter and
851 the advisability of testifying in one's native language should be communicated through in
852 interpreter on the record. The court should allow an LEP person to decline the use of an
853 interpreter only upon a finding that it is done knowingly and that the court is confident it can
854 communicate effectively with the LEP person; such circumstances should be carefully
855 documented on the record.

856 In situations where the court itself is unable to understand the LEP person's communication,
857 due to lack of proficiency in English or a strong accent, the judge should refuse to allow the
858 person to decline interpreter services, as such services are necessary to assist the court in
859 understanding the individual's testimony.¹⁰⁵

860 Similar advisements regarding interpreter availability should be made for court-mandated
861 services outside the courtroom and procedures should be provided for LEP persons to self-
862 identify as LEP, and thus receive services in those settings. Procedures for self-identification as
863 LEP in these settings should not be overly prescriptive. Simple awareness or communication of
864 the presence of a language barrier should trigger court personnel to offer the appropriate

¹⁰⁴ *Negron*, 434 F.2d at 390 (citing *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938)).

¹⁰⁵ *See, e.g.*, S.C. Code Ann. § 15-27-155 ("[W]henever a party or witness to a civil legal proceeding does not sufficiently speak the English language to testify, the court may appoint a qualified interpreter to interpret the proceedings and the testimony of the party or witness. However, the court may waive the use of a qualified interpreter if the court finds that it is not necessary for the fulfillment of justice. The court must first make a finding on the record that the waiver of a qualified interpreter is in the best interest of the party or witness and that this action is in the best interest of justice.").

ABA Standards for Language Access in Courts

865 language access services. This is especially true in those non-court settings where the LEP
866 person may not know interpreter services are available or may be embarrassed or afraid to ask
867 for assistance. The procedures should be modified to fit situations outside of the courtroom.

868 Best Practices

869 Determining Fluency

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

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

880 These open-ended questions are helpful in determining the need for an interpreter. If a court
881 chooses to use additional questions to those listed above to assess a person's English fluency
882 and level of comfort using English, it is important to avoid questions that can be appropriately
883 answered with "yes" or "no" and to focus instead on questions that ask "what," "where,"
884 "who," and "when," and call for descriptions of people, places or events. A person who is
885 unable to answer these questions is unable to communicate in English at the level minimally
886 necessary to comprehend even simple legal proceedings.

887 Declining Interpreter Services

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

- 891 • The LEP person intentionally declined interpreter services through verbal
892 communication rather than passively or through silence;
- 893 • The LEP person knew¹⁰⁶ that interpreter services were available;

¹⁰⁶ For a declination of interpreter services to be considered "knowing," an individual must understand that he or she has the right to an interpreter without charge; passive acquiescence by way of silence or failure to affirmatively assert the right should not be regarded as an "intentional relinquishment, that supports a valid waiver." *Negron*, 434 F. 2d at 390 (citing *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938)); see also, *Neave*, 344 Wis.2d at 189 (holding that "[i]f the court determines that an interpreter is necessary, it must make certain that the defendant is aware that he has a right to an interpreter and that an interpreter will be provided for him if he

ABA Standards for Language Access in Courts

- 894 • The LEP person knew about the costs (if any) of interpreter services;¹⁰⁷
895 • The LEP person was advised of the role of the interpreter, including the
896 obligation of the interpreter to maintain confidentiality; and
897 • The LEP person was aware of the advisability of communicating in one’s native
898 language.

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

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

909 Settings Outside the Courtroom

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

- 912 • Court-managed services, including clerk and informational offices;
913 • Court-mandated programs and services; and
914 • Court-offered services

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

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

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

921 Commentary

922 The delivery of appropriate language access services in legal proceedings¹⁰⁸ depends upon the
923 provision of competent services provided by professional and well trained interpreters.¹⁰⁹ The

cannot afford one. Any waiver of the right to an interpreter must be made voluntarily in open court on the record.”).

¹⁰⁷ See Standard 2.3 for discussion of when costs might be assessed.

924 following sections detail the requirements to provide interpreter services in all legal
925 proceedings, to all persons eligible for services, in a manner that is best suited to the nature of
926 the proceeding, and consistent with the interpreter’s code of conduct.

927 **4.1 Courts should provide interpreters in legal proceedings conducted within courts and**
928 **court-annexed proceedings.**

929 Commentary

930 The terms “legal proceedings” and “courts” are intended to encompass all legal proceedings
931 where important legal rights and benefits are involved, whether they are adjudicated in a
932 criminal or civil matter, in problem-solving or therapeutic justice courts,¹¹⁰ or in an
933 administrative hearing.

934 Best Practices

935 The Department of Justice LEP Guidance states that “every effort should be taken to ensure
936 competent interpretation for LEP individuals during all hearings, trials, and motions.”¹¹¹
937 Subsequently, DOJ elaborated on this *Guidance*, writing that legal proceedings include “all court
938 and court-annexed proceedings, whether civil, criminal, or administrative including those
939 presided over by non-judges”¹¹² as well as “[p]roceedings handled by officials such as
940 magistrates, masters, commissioners, hearing officers, arbitrators, mediators, and other
941 decision-makers.”¹¹³

942 Courts that currently limit interpreter services by case type should move to expand the
943 provision of interpreter services to all legal proceedings. Clearly, as the Department of Justice
944 recognized, “it takes time to create systems that ensure competent interpretation in all court
945 proceedings and to build a qualified interpreter corps” but over the years some progress should

¹⁰⁸ See *Standard 5* for language access services in court services, and *Standard 6* for services in court-mandated or offered services.

¹⁰⁹ See *Standard 8* for a full discussion of Interpreter skills and the necessary components of interpreter credentialing.

¹¹⁰ 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.

¹¹¹ *DOJ LEP Guidance*, *supra* note 66, at 41,471.

¹¹² Letter to Chief Justices and State Court Administrators, *supra* note 91, at 2.

¹¹³ *Id.*

946 be made, since “[w]ith ... passage of time, the need to show progress in providing all LEP
947 persons with meaningful access has increased.”¹¹⁴

948 **4.2 Courts should provide interpreter services to persons with limited English proficiency**
949 **who are in court as litigants, witnesses, persons with legal decision-making authority,**
950 **and persons with a significant interest in the matter.**

951 Commentary

952 While most courts are aware of the need to provide an interpreter to a litigant,¹¹⁵ some do not
953 recognize that witnesses, persons with legal decision-making authority and persons with a
954 significant interest in the matter are also persons whose presence or participation in a legal
955 proceeding may be “necessary or appropriate.”¹¹⁶ Each of these persons has either information
956 to provide or a stake in the legal proceeding before the court, and the court should facilitate
957 their participation by providing language services.

958 Best Practices

959 Witnesses

960 As part of the exercise of their rights to present evidence in a legal proceeding, litigants may call
961 a witness who is limited English proficient; failure to provide an interpreter for the witness
962 would deny the litigant access to the court process and violate the Sixth Amendment
963 Confrontation Clause.¹¹⁷ In both criminal and civil matters, the court’s ability to rule on legal

¹¹⁴ *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.”).

¹¹⁵ 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).

¹¹⁶ “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.

¹¹⁷ *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.)

ABA Standards for Language Access in Courts

964 questions, such as admissibility of evidence, depends on the court’s understanding the
965 testimony of the LEP witness, through the use of a competent interpreter. Where a court
966 conducts the proceeding without an interpreter, misunderstandings over the use of language
967 can lead to questions about the admissibility of evidence, accuracy of the testimony, and
968 character or veracity of the witness, and the resulting verdict may be challenged.

969 Persons with Legal Decision-Making Authority

970 Certain LEP persons who are not litigants or witnesses have legal decision-making authority
971 regarding the matter before the court. Such persons should also be provided interpreter
972 services throughout the proceedings and for all interactions with the court. These include, but
973 are not limited to: parents or legal guardians of minor children where the child is involved in
974 the matter but where the parent or guardian is not a named party; parents and guardians of
975 minor victims of crime; guardians acting pursuant to their authority under guardianship of an
976 incapacitated individual; and guardians ad litem. LEP parents of a minor child involved in a
977 juvenile action should be provided interpreter services throughout the legal proceeding and to
978 communicate with court-appointed counsel. In all these circumstances, the participation of
979 these individuals is necessary to effectuate their legal decision making authority and to protect
980 the interest of the individuals they represent.¹¹⁸

981 Persons with a Significant Interest in the Matter

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

¹¹⁸ *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).

991 interpretation is already being provided to another party in the proceeding and could be easily
992 transmitted with the use of available technology.¹¹⁹

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

1000 **4.3 Courts should provide the most competent interpreter services in a manner that is**
1001 **best suited to the nature of the proceeding.**

1002 Commentary

1003 Courts should provide competent interpreter services during all legal proceedings through the
1004 use of staff court interpreters and contracted interpreters, who appear either in-person or
1005 through the use of remote telephonic or video technology.¹²⁰ The primary consideration for a
1006 court in appointing an interpreter for a legal proceeding should be to appoint the most
1007 qualified¹²¹ interpreter available in the most appropriate medium, taking into account the
1008 urgency of the matter involved.

1009 Best Practices

1010 Current practices do not necessarily direct courts to select the most qualified interpreters. For
1011 longer hearings, including trials, in-person interpreters are generally preferred, and often
1012 required. Many jurisdictions allow only emergency hearings and non-evidentiary hearings to be
1013 conducted through remote telephonic or video services, with the preference for in-person
1014 interpreters codified in court rule or state statute.¹²² This preference is based on the benefit of
1015 seeing the body language and non-verbal communication of the testifying individual and on the
1016 recognition that the technology available for remote interpreting has not always been adequate

¹¹⁹ 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.

¹²⁰ See, *COSCA White Paper*, at 9, 23; *NCSC Court Interpretation Model Guides*, at 11-13, 127. Interpreter competency is addressed fully in *Standard 8*.

¹²¹ For a complete discussion of how to determine interpreter qualification, see *Standard 9*.

¹²² 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.

ABA Standards for Language Access in Courts

1017 to meet the needs of courts.¹²³ However, a preference for in-person interpreters can
1018 sometimes mean that a less qualified, or even unqualified, interpreter is used, and it can also
1019 result in delayed proceedings.

1020 With the increasing number of languages spoken across the U.S., courts should recognize that
1021 in-person interpreter services may not be sufficient to meet the language needs of all LEP
1022 persons in the court's jurisdiction. Many courts and adjudicatory bodies now encounter LEP
1023 persons who speak languages not previously served. In these instances, courts need to
1024 ascertain if there are qualified in-person interpreters available to meet the language needs of
1025 the LEP person, and if not, should identify qualified interpreters who are able to provide the
1026 service remotely.

1027 Courts, litigants and interpreters all benefit from the appropriate use of remote interpreting
1028 services. Courts pay only for the time spent in actual interpretation and reduce the money
1029 spent to reimburse interpreters for traveling and for waiting for the matter to be called.
1030 Litigants avoid delays in waiting to schedule an in-person interpreter. Both the court and the
1031 litigant benefit from having access to certified or qualified remote interpreter services in
1032 languages where there are no certified or qualified interpreters available in-person.
1033 Interpreters are able to avoid sometimes stressful traffic and travel, schedule work more
1034 efficiently, and interpret more assignments per day, allowing them to increase their income and
1035 stay in the profession – a benefit to all involved.

1036 Some courts are addressing the problem of insufficient in-person interpreters by developing
1037 interpreter pools¹²⁴ of certified interpreters who are available by telephone or video. By
1038 selecting the interpreters in the pool, the courts can hold them to the same qualification,
1039 screening and training standards as in-person interpreters.¹²⁵ It is important to distinguish this

¹²³ Inadequate telephone systems that do not allow for private communications between an LEP defendant and counsel, telephone speaker systems that result in garbled speech such that it impairs an interpreter's ability to render an equivalent message in the target language, and concerns about confidentiality, are all reasons cited for avoiding the use of telephonic interpreting in court proceedings. See National Association of Judiciary Interpreters, *Telephonic Interpreting in Legal Settings* (2009), <http://www.najit.org/publications/Telephone%20Interpreting.pdf> (last visited Apr. 19, 2011). Separate concerns are raised by remote *adjudication* practices which are further complicated when the defendant is LEP. The remote location of the interpreter and inadequate equipment can impair the defendant's ability to participate in the hearing as well as the attorney's ability to consult with the client. One solution is to establish a policy that courts will default to in-person appearance where an interpreter is required.

¹²⁴ 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).

¹²⁵ 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).

ABA Standards for Language Access in Courts

1040 kind of remote interpreter pool from services provided by telephonic interpreting agencies that
1041 generally do not share information about the criteria they use to determine interpreter
1042 qualifications.¹²⁶ Even those remote interpreter agencies that have created internal testing and
1043 credentialing exams may use assessments that are vastly different from those of national
1044 interpreter certification programs. Courts should use caution in accepting alternate testing
1045 credentials and should consult with professional interpreter organizations to determine best
1046 practices in this regard.¹²⁷

1047 When determining whether to use remote interpreter services, courts should consider the
1048 appropriateness of the technology and the qualifications of the interpreters. Courts should also
1049 determine whether the use of remote technology is appropriate for the setting. As noted
1050 above, the preference for in-person interpreting is based on the recognition that non-verbal
1051 cues are critical in most communication. Despite the growing use of remote video interpreting,
1052 telephonic interpreting, which allows the interpreter to be located away from the proceedings
1053 and the interpretation to occur over a standard telephone line using fairly basic equipment, is
1054 still the most common remote technology used. To ensure the most efficient and effective use
1055 of telephonic interpreters, courts need to consider whether lack of visual cues will pose a
1056 problem and when deciding that telephonic interpretation is appropriate, should provide the
1057 proper equipment and training.¹²⁸

1058 Telephonic remote interpreter services require specialized equipment at both locations to
1059 provide adequate services. For the remote interpreter, the recommended equipment consists
1060 of a headset and microphone, and a telephone system that allows the interpreter to control
1061 both his or her volume as well as the volume of the individual speaking in the courtroom.¹²⁹ To
1062 accommodate attorney-client confidentiality, the equipment also allows for a private three-way
1063 communication between client, attorney and interpreter which is not broadcast to the court.
1064 The court's equipment should include headsets and microphones for multiple individuals and
1065 an amplification system that is wired into the courtroom's sound system or is in some way

¹²⁶ Some telephonic interpreter services have or may develop their own credentialing systems; however, without understanding the nature of the testing involved and the validity of the test as it relates to legal proceedings, courts should not accept this certification / credentialing as a proxy for qualifications to provide interpreter services in court. Courts should consider including specific minimum certification requirements in a contract for telephonic language access services.

¹²⁷ An analogous example is the national certification exam for American Sign Language (ASL) interpreters, available through a joint project with the Registry of Interpreters for the Deaf and the National Association of the Deaf. Many states accept this national certification as a proxy for certification in the state system. These programs do not offer direct interpreter services.

¹²⁸ 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

¹²⁹ National Association of Judiciary Interpreters and Translators, *Telephonic Interpreting in Legal Settings*, *supra* note 137.

ABA Standards for Language Access in Courts

1066 sufficiently amplified in the courtroom. The headsets allow the interpreter to interpret
1067 simultaneously when the LEP person is listening to the testimony of others, and the
1068 amplification system allows the interpreter to broadcast into English the testimony of any LEP
1069 witnesses or litigants for the court.¹³⁰ In some circumstances telephonic interpretation will
1070 need to be consecutive rather than simultaneous.¹³¹ Equipment used for recording has
1071 advanced to allow for multiple channel recordings that allow isolation of each speaker, one for
1072 the interpreter and the other for the LEP individual. Recording telephonic testimony is
1073 necessary to ensure that any errors in interpretation or communication can be considered on
1074 review and appeal.

1075 Without the proper equipment, the limitations of telephonic interpreting are significant and
1076 often outweigh the benefits. Courts that rely on a standard speaker phone placed in the
1077 courtroom for telephonic interpreting run the risk of delayed and inefficient proceedings as
1078 well as compromised quality. In such situations, the interpretation should be conducted in
1079 consecutive mode throughout the proceedings, doubling the time spent hearing the matter.
1080 Additionally, such a system has no mechanism for private communications between the
1081 attorney and LEP litigant.¹³² Finally, the limitations of this equipment can lead to compromised
1082 quality because of the inability of the speaker phone to pick up the utterance of all speakers,
1083 the interruptions in the interpretation from background noise, and the tendency for the
1084 equipment to allow only one speaker at a time. These problems impede both the testimony and
1085 the interpretation and can lead to misinterpretation and misunderstanding.

1086 The increased availability of video remote interpreting, when used appropriately, may help
1087 address some of these problems. These systems are an enhancement over telephonic
1088 interpreting and offer a combination of video and audio connections,¹³³ allowing the
1089 interpreter to see all of the relevant individuals in the communication. Equipment needed
1090 includes a high-speed internet connection, a computer with television videoconferencing
1091 equipment, and, potentially, additional software.¹³⁴ As with telephonic interpreting services,
1092 courts that employ remote video interpreting services should maintain a focus on the quality of
1093 the interpretation, and ensure both that the video and audio quality are sufficient, and that the

¹³⁰ See *Standard 4.4* for more discussion of the different interpreter functions.

¹³¹ 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.

¹³² NCSC *Court Interpretation Model Guides*, at 181.

¹³³ COSCA *White Paper*, at 13.

¹³⁴ *Id.*

1094 system has the capability for interpretation of confidential conversations. Courts are
1095 encouraged to seek out the expertise of other courts that have established video remote
1096 interpreting systems, as well as the American Sign Language interpreting community, regarding
1097 the development of standards and the lessons learned in providing competent interpreter
1098 services through combined medium of video/audio.¹³⁵

1099 Regardless of the type of technology used, court personnel working in courtrooms that are
1100 equipped with either telephonic or video remote interpreting systems should be trained¹³⁶ on
1101 the proper use of the system, including appropriate uses of the technology and its limitations.
1102 Each individual LEP person's language needs vary and may have a bearing on the selection of a
1103 particular interpreter or method by which the interpreter services are delivered. Courts using
1104 remote technology should still require a pre-session¹³⁷ to allow interpreters to establish
1105 whether they can communicate effectively with each LEP individual for whom interpretation is
1106 being provided. Judges should verify that the selected medium is an appropriate match for the
1107 particular LEP person. Even the most advanced video technology and skilled remote interpreter
1108 will not always be an appropriate fit for a particular LEP individual, who, for example, may not
1109 be able to communicate in this manner due to trauma or disability.

1110 With ongoing technological advancement, courts will continue to encounter new and promising
1111 solutions to meet the language access needs of LEP persons. These should be encouraged as
1112 long as the following protections are implemented: the quality of the communication is not
1113 compromised; courts ensure both that the interpreter services are competent and that the
1114 medium used is appropriate; and, there is opportunity for confidential communication between
1115 counsel and the LEP client or other LEP participants in the proceeding where such
1116 communication is appropriate.

1117 **4.4 Courts should provide interpreter services that are consistent with interpreter codes**
1118 **of professional conduct.**

1119 Commentary

1120 Interpreters operate under an interpreter code, or set of professional responsibilities, that
1121 carefully guides their actions both in and outside the courtroom.¹³⁸ Most states have adopted

¹³⁵ 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>

¹³⁶ For more information on training, see *Standard 9*.

¹³⁷ This pre-session is discussed in full in *Standard 4.4*.

¹³⁸ For more on interpreter codes of professional conduct, see *Standard 8.4*.

ABA Standards for Language Access in Courts

1122 such a code¹³⁹ and national entities, such as the National Center for State Courts and the
1123 National Association for Judiciary Interpreters and Translators, also publish detailed guides for
1124 both judges and interpreters.¹⁴⁰ Common requirements include: maintaining accuracy,
1125 confidentiality, and impartiality; restricting communication to the limited role of interpreter;
1126 and not acting as an advocate, independent commentator, or fact-finder.¹⁴¹ Interpreters are
1127 also under an ethical duty to inform the court of any conflicts of interest and any inability to
1128 understand any of the persons for whom they are interpreting.¹⁴² These codes of conduct were
1129 developed specifically to reflect the adversarial nature of the legal setting and to protect the
1130 court process and record. Courts need to be aware of and to take into account these ethical
1131 requirements in appointing, scheduling, and working with interpreters. Courts should also
1132 develop systems to ensure that interpreters comply with these ethical requirements, and that
1133 individual courts and judges do not implement procedures to the contrary.¹⁴³ Courts can
1134 promote compliance with the interpreter's ethical obligations by scheduling an adequate
1135 number of interpreters, providing time for a pre-session and addressing any concerns raised
1136 and refraining from asking interpreters to perform tasks outside of their limited role as
1137 interpreters.

¹³⁹ 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).

¹⁴⁰ 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>

¹⁴¹ 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.”).

¹⁴² 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>

¹⁴³ 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.

ABA Standards for Language Access in Courts

1138 Best Practices

1139 Scheduling interpreters for legal proceedings can be a complicated arrangement depending on
1140 the complexity of the case, the number of LEP persons involved, the number of languages
1141 spoken and the duration of the proceedings. Technology and ethical considerations also dictate
1142 the number of interpreters needed, and a court should take into account the different
1143 interpreting functions that occur within a legal proceeding to determine the appropriate
1144 number of interpreters required for the matter. These functions reflect the fact that some
1145 interpretation is for all in the court to hear, whereas other interpretation is for the LEP person
1146 to understand the proceedings or consult with counsel.

1147 Interpreter functions within the court setting include witness interpretation, proceedings
1148 interpretation, and interview or party interpretation. Witness interpretation occurs “during
1149 witness testimony for the purpose of presenting evidence to the court. This interpreting
1150 function is performed in the consecutive mode; the English language portions of the
1151 interpretation are part of the record of the proceeding.”¹⁴⁴ Proceedings interpretation “is for a
1152 non-English speaking litigant in order to make the litigant present and able to participate
1153 effectively during the proceeding.”¹⁴⁵ This function “is ordinarily performed in the simultaneous
1154 mode” and “the interpreter’s speech is always in the foreign language, in whisper mode (not
1155 out loud) to the litigant, and is not part of the record of proceedings.”¹⁴⁶ Interview or party
1156 interpretation is also not part of the record of the proceedings and “is interpreting to facilitate
1157 communication in interview or consultation settings. Interview interpreting may occur in
1158 conjunction with court proceedings or before or after court proceedings.”¹⁴⁷

1159 Depending on the number of LEP persons involved in a legal proceeding, a court may need to
1160 appoint separate interpreters for each interpreting function needed in the matter. For
1161 example, where there are two LEP parties that speak the same language, the court may appoint
1162 one proceedings interpreter, so long as the court has the appropriate equipment necessary to
1163 transmit the spoken interpretation (in whisper mode) to both parties at their respective tables.
1164 However, within that same legal proceeding, the court should, when possible, appoint a
1165 separate interpreter for any LEP witnesses, and party interpreters to facilitate attorney-client
1166 communications during the proceeding.

¹⁴⁴ NCSC, *Court Interpretation Model Guides*, ch.2 at 34.

¹⁴⁵ *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>.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

ABA Standards for Language Access in Courts

1167 Another consideration in scheduling is the appointment of different interpreters for different
1168 aspects of a legal proceeding, especially in those proceedings involving emotional or sensitive
1169 matters such as domestic violence or sexual abuse. Even though each interpreter is bound by
1170 confidentiality and neutrality provisions, and should be able to make an accurate
1171 interpretation, the appearance of impartiality or neutrality can be compromised when an
1172 interpreter has worked for one party or another in preparation for trial and then is brought in
1173 to interpret for the legal proceedings.¹⁴⁸ Courts should establish procedures to track the
1174 interpreter's prior contact with the parties and the case and, where possible, use a different
1175 interpreter to interpret the court proceedings to uphold the appearance of impartiality. This is
1176 important in situations where, for example, there are two LEP co-defendants, each with
1177 separate counsel, and each of whom has privately retained an interpreter to facilitate attorney-
1178 client communication in preparation for trial. In such a situation, it is inappropriate for the
1179 court to hire one of these interpreters to interpret for the trial due to the possibility of
1180 perceived bias in favor of one of the defendants. Where it is not possible to schedule a different
1181 interpreter, courts should inform all parties that the interpreter is "under oath to protect
1182 confidentiality of communications"¹⁴⁹ and that the interpreter acts as a neutral party and is not
1183 an advocate for either side.

1184 Finally, courts should schedule an adequate number of interpreters to avoid interpreter fatigue
1185 and resulting errors. Interpreting is a cognitively demanding and stressful process: the
1186 interpreter needs to listen, analyze, comprehend, and use contextual clues to convert the
1187 spoken word from one language to another, rendering a reproduction of the message in an
1188 equivalent meaning in another language. This process leads to fatigue and mental exhaustion,
1189 and the possibility of error increases after approximately 30 minutes of sustained simultaneous
1190 interpreting.¹⁵⁰ Courts should support the interpreter's ability to uphold the code of conduct's
1191 mandate to provide an accurate interpretation by scheduling a team of interpreters for long
1192 proceedings. The industry standard where continuous interpreting is required for more than
1193 one hour is team interpreting, which refers to the practice of using two rotating interpreters to
1194 provide simultaneous or consecutive interpretation for one or more individuals.¹⁵¹

1195 Once an interpreter is appointed, courts should ensure that the interpreter is informed of the
1196 nature of the proceeding, that the interpreter and litigant or witness have met to determine

¹⁴⁸ 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.

¹⁴⁹ NCSC *Court Interpretation Model Guides*, at 143.

¹⁵⁰ *Id.*

¹⁵¹ 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

ABA Standards for Language Access in Courts

1197 language compatibility and that the role of the interpreter has been explained to the LEP
1198 person. The court should provide the interpreter, in a timely manner, the relevant case
1199 information, including the nature of the hearing or interpreting assignment and any potentially
1200 emotionally charged content. This information allows the interpreter to assess his or her ability
1201 to faithfully interpret the matter.¹⁵² Next, courts should provide adequate time for a pre-
1202 session interview between the interpreter and the LEP individual for whom he or she will
1203 interpret. One function of the pre-session interview is for the in-person, telephonic, or video
1204 remote interpreter to briefly communicate directly with the LEP person to make sure that they
1205 can understand one another and that any technology being used does not create a barrier. The
1206 pre-session interview covers non-case related basic information and routine questions to
1207 ensure that the two can communicate effectively.

1208 Some courts have experimented with asking interpreters to give general information about
1209 their role to the LEP person, but interpreter ethical requirements have generally prohibited this
1210 unless it is simply reading or interpreting from a set script. One way to avoid the ethical
1211 problem is to provide general information in printed or video form, an approach which avoids
1212 the interpreter's exposure to information or questioning by the LEP person that may later call
1213 into question the interpreter's ability to remain neutral, and also ensures that the information
1214 provided to LEP persons is consistent. Another preferred method is to have the judge go over
1215 any general information and have the selected interpreter provide an interpretation; this has
1216 the added benefit of modeling the process of interpreting at the same time as the explanation
1217 takes place and can be helpful for many LEP persons who have previously had little to no
1218 experience with formal interpreting.¹⁵³

1219 Concerns raised by interpreters, as a result of a pre-session interview or at any time during the
1220 proceeding, should be treated with serious consideration. Under the model code of conduct,
1221 interpreters are required to "bring to the court's attention any circumstances or conditions that
1222 impede full compliance with any canon of the code, including interpreter fatigue, inability to
1223 hear, or inadequate knowledge of the specialized terminology."¹⁵⁴ This requirement applies to
1224 the interpreter's ability to establish communication with the LEP person as well as to the
1225 appropriateness of the medium selected. The requirement covers both in-person interpreters

¹⁵² For more on the information interpreters need to determine if they are the appropriate person to interpret, see *Standard 8*.

¹⁵³ 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.

¹⁵⁴ NAJIT, Code of Ethics and Professional Responsibilities Canon 8.

ABA Standards for Language Access in Courts

1226 and remote interpreter service providers. Contracts for remote services should include a
1227 requirement consistent with ethical obligations, including in particular the ethical obligation to
1228 ensure the ability to interpret in the proceeding and to notify the court of any barriers or
1229 reasons that the interpreter is not able to adequately interpret. In some instances, the court
1230 may need to intervene if the technology and /or the interpretation is inadequate, but the
1231 interpreter, for reasons of pecuniary interest, is unwilling to advise the court of the barriers.

1232 Finally, courts should take special care not to ask the interpreter to perform a task that is
1233 outside the limited role of the interpreter. This can sometimes occur unintentionally when
1234 interpreters are asked to facilitate communication between two individuals who do not share a
1235 common language. A generally accepted task is providing sight translation of documents, either
1236 in English or in the second language. This is allowed but only to the extent that the interpreter
1237 is not asked to explain the document or answer any questions beyond simply reading it aloud as
1238 a sight translation. The model code of court interpreter conduct requires interpreters to remain
1239 impartial, avoid unnecessary contact with the parties, and abstain from commenting on matters
1240 in which they interpret.¹⁵⁵ The code prohibits the giving of advice or otherwise engaging in
1241 activities that can be construed as the practice of law.¹⁵⁶ Policies or practices that ask
1242 interpreters to go beyond sight translation of forms to explaining forms or court processes
1243 violate these provisions.¹⁵⁷

1244 **STANDARD 5 LANGUAGE ACCESS IN COURT SERVICES**

1245 **5. Courts should provide appropriate language access services to persons with limited**
1246 **English proficiency in all court services with public contact, including court-managed**
1247 **offices, operations, and programs.**

1248 Commentary

1249 While many courts provide interpreters for legal proceedings, the effective administration of
1250 justice also requires appropriate language access services for all court services used by the
1251 general public.¹⁵⁸ These should include all services that are provided, managed, supervised, or
1252 contracted for by the court. The court should ensure that language access is provided for these
1253 court services, even though the court may not itself be responsible for paying for these

¹⁵⁵ NAJIT, Code of Ethics and Professional Responsibilities, Canon 2.

¹⁵⁶ NAJIT, Code of Ethics and Professional Responsibilities, Canon 4

¹⁵⁷ 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.

¹⁵⁸ See *DOJ LEP Guidance*, at 41,471.

1254 services. The providing entity may be obligated to provide such services due to federal or state
1255 law.

1256 **5.1 Courts should provide language access services for the full range of court services.**

1257 Commentary

1258 The provision of language access services in court managed offices, operations, and programs is
1259 necessary to ensure equal access to justice for all and to provide for the effective
1260 administration of justice. In addition, the Department of Justice “expects courts to provide
1261 meaningful access for LEP persons to such court operated or managed points of public contact
1262 in the judicial process, whether the contact at issue occurs inside or outside the courtroom.”¹⁵⁹
1263 Services covered by this guidance include all those necessary to access the courts, ranging from
1264 routine matters such as gathering information about court procedures from a court clerk, filing
1265 pleadings, paying court-ordered fines, and using any court services incidental to the resolution
1266 of a legal matter. Where court services with public contact are funded by the court, whether or
1267 not they are housed inside the court, courts should ensure that language access services are
1268 provided. In some instances, courts rely on external programs to provide essential court
1269 functions.¹⁶⁰ The court should verify that these programs are providing language access
1270 services, even if they are paid for by the programs themselves.

1271 Best Practices

1272 Courts should determine points of contact for which language services may need to be
1273 provided. These include: information counters; websites, services for *pro se* individuals; court
1274 clerk’s offices; intake or filing offices; cashiers; records rooms; security personnel within the
1275 courthouse; and offices to pay fines.¹⁶¹ Courts should then assess all their services to determine

¹⁵⁹ *Id.* See also COSCA White Paper at 20. “For example, the inability of a clerk to convey to the defendant, because of language difficulties, the need to return to the court for a later hearing, or to make payments on court-ordered fees on a certain date, often results in serious consequences to the defendant and negatively impact the court process.”

¹⁶⁰ For example, some state courts operate drug-testing offices or community service offices within the courthouse, while others contract out for these services.

¹⁶¹ Points of contact may also include, depending upon how a court is structured: probation offices; alternative dispute resolution programs; *pro se* clinics; criminal diversion programs; anger management classes; and other similar offices, operations, and other programs that are operated or managed by courts. The DOJ 2010 Letter to Chief Justices and State Court Administrators also includes an enumeration of such services and adds “any other similar offices, operations, and programs.” Letter to Chief Justices and State Court Administrators, at 3. For an example of the growing number of services available see the San Francisco Superior Court ACCESS (Assisting Court Customers with Education and Self Help Services) Program, a court-based information service which provides information on small claims, civil harassment restraining orders, name changes, gender changes, evictions, guardianship of the person, conservatorship of the person, small claims and limited civil mediation. Family law matters are referred to the Family Law Self-Help Center. See Superior Court of California, County of San Francisco,

ABA Standards for Language Access in Courts

1276 which are essential to meaningful access to the court. The *DOJ LEP Guidance* states that
1277 “[p]roviding meaningful access to the legal process for LEP individuals might require more than
1278 just providing interpreters in the courtroom,” and that “[r]ecipient courts should assess the
1279 need for language services all along the process.”¹⁶² In the first instance, security screening
1280 procedures implemented by a court should not create barriers for LEP persons; for example,
1281 court security personnel should be provided with signage, video instructions, or a method to
1282 contact telephonic interpreters and should be trained on the need for and delivery of these
1283 services. In addition, language access services provided at the filing office are essential for a
1284 litigant to be able to access the courts. In contrast, courthouse tours are non-essential.
1285 Similarly, accessing information at the clerk’s office or services offered as part of a *pro se* clinic
1286 are instrumental to a *pro se* litigant’s ability to navigate the justice system, but information
1287 provided by community partners that does not relate to court services is non-essential.

1288 In some instances, courts rely on external programs to provide essential court functions.¹⁶³
1289 These programs may separately be obligated under Title VI of the Civil Rights Act to provide
1290 such services, in which case the court should verify that they are available. However, where the
1291 court relies on an external program to provide essential court functions and that program does
1292 not receive federal assistance, the court should ensure that language access services are
1293 provided. For example, a court could assign its staff interpreters to assist in providing language
1294 access services to the program.

1295 Although services to deaf and hard of hearing individuals are required under a different legal
1296 obligation than those for LEP individuals, the processes developed to provide services to the
1297 deaf community can provide useful models to courts when developing similar services for LEP
1298 persons. Interpreter services are provided in and out of court, and include interpreter services
1299 for deaf and hard-of-hearing persons to participate in court services with public access.¹⁶⁴ Sign

ACCESS, <http://www.sfsuperiorcourt.org/index.aspx?page=24>. (last visited Apr. 19, 2011). Similar services are available in courts across the country.

¹⁶² *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.”).

¹⁶³ For example, some state courts operate drug-testing offices or community service offices within the courthouse, while others contract out for these services.

¹⁶⁴ *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.”).

1300 language interpreter services are provided for deaf and hard of hearing individuals as a
1301 reasonable accommodation for accessing the clerk’s office, and for other court services.¹⁶⁵

1302 **5.2 Courts should determine the most appropriate manner for providing language access**
1303 **for services and programs with public contact and should utilize translated brochures,**
1304 **forms, signs, tape and video recordings, bilingual staff and interpreters, in**
1305 **combination with appropriate technologies.**

1306 Commentary

1307 Courts should ensure that the manner in which language access for court services and programs
1308 are provided is appropriate to address the language needs of all LEP persons. Which language
1309 access services are necessary depends on the amount of advance notice the court has regarding
1310 the need, the complexity of the communication, and the setting; however, courts should
1311 ensure the availability of two-way communication in all court services and programs with public
1312 contact. This section provides guidance for courts to consider when developing these services
1313 and selecting options to meet these obligations.

1314 Best Practices

1315 Advance Notice of Need

1316 The availability of advance notice of the need for language assistance varies by court service;
1317 some services are requested on an ad hoc basis, such as at a cashier’s office, whereas others,
1318 such as a courthouse orientation class, are scheduled in advance. Where the service is
1319 accessed without advance notice, courts should ensure that LEP persons are not limited to
1320 accessing the services on particular days or times if this would result in an unnecessary delay.¹⁶⁶
1321 Courts can achieve this by employing bilingual staff in the most common languages to work in
1322 positions with ad hoc public contact. By adding remote telephonic or video interpreter services
1323 for languages in which no bilingual staff are available, courts can be sure that they are providing
1324 appropriate language access services that allow for two-way communication as needed.

¹⁶⁵ 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).

¹⁶⁶ 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.”).

1325 Complexity of Communication

1326 The complexity of the communication will also influence the selection of the appropriate
1327 language access service to meet the language needs of the LEP person. Court services and
1328 programs range from basic to very detailed. For example, the routine services at a cashier's
1329 window may be handled differently than the more complicated services at a court intake office.
1330 Where courts provide some of their information in written form, translating these documents
1331 into the most common languages may be adequate, as long as there is also a system for two-
1332 way communication (if available to English speaking persons) and for communication to an LEP
1333 person who is unable to read the translated information¹⁶⁷ or speaks a language not included in
1334 the translated versions.

1335 Finally, the appropriate language access service in a given court setting depends on the level of
1336 interaction between staff and the general public. Some services provide only informational
1337 materials, others have staff that interact with the public; each of these requires different
1338 language access services. The court service or program may provide language access services
1339 through a combination of the options listed below. A multi-faceted approach is recommended
1340 since it provides increased access while maximizing cost efficiency. Building language access
1341 services into the court's system for providing routine oral and written communications with the
1342 public and litigants creates greater certainty that the communication will occur, safeguards the
1343 court's promise of access to justice, and promotes public confidence in the courts.

1344 Language Access Measures for Court Services

1345 Courts can employ a variety of services to meet the language needs of LEP persons. The
1346 following sections describe the different measures—ranging from signs, handouts, and video or
1347 audio recordings, to bilingual staff and interpreters—a court can take. No single measure listed
1348 below is intended to be used in isolation but, implemented together, they can create a
1349 comprehensive language access program that is suited to the needs of different situations.

1350 i. Translated Forms, Signs, and Handouts

1351 At the most basic level, language access measures should include provision of translated
1352 written materials, such as signage, program information, program application forms, court
1353 pleading forms and other written materials containing information about accessing court

¹⁶⁷ A person may be unable to read the translated information because they are illiterate in their spoken language or due to disability.

ABA Standards for Language Access in Courts

1354 services and programs.¹⁶⁸ The use of translated print materials reduces staff time and the need
1355 to provide repeated oral interpretation of basic information, leading to an overall cost savings
1356 for courts.¹⁶⁹ Many court services and programs with public contact have developed
1357 programmatic information in print formats in multiple languages. For example, the California
1358 Court Self-Help Center provides information on many civil law matters in Chinese, Korean,
1359 Spanish, and Vietnamese.¹⁷⁰ While some courts provide this information directly, others
1360 provide it in collaboration with outside organizations.¹⁷¹

1361
1362 Courts should also develop and translate into the most common languages a list of Frequently
1363 Asked Questions and Answers or basic “Know Your Rights” documents to assist all users of their
1364 services and to reduce staff time in answering the most common questions.¹⁷² Providing this
1365 information in multiple languages is an effective language access measure, but doing so will not
1366 completely eliminate the need to provide for two-way communication. In languages that are
1367 translated, LEP persons may have questions, and in languages where no translated materials
1368 are available, LEP persons should have some means of accessing the information. In all
1369 instances, LEP individuals should be able to ask questions and interact with court personnel to
1370 the same extent as those who speak English.

1371 ii. Audio and Video Recordings

1372 Courts should also consider the use of audio or video recordings of commonly asked questions.
1373 These methods of communication can be particularly effective in disseminating information to
1374 individuals and communities with low literacy rates. As with translated materials, audio and
1375 video recordings reduce the demand on court staff for repeated interpretation but should be

¹⁶⁸ 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*.

¹⁶⁹ 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.

¹⁷⁰ California Courts Self-Help Center, <http://www.courtinfo.ca.gov/selfhelp/languages> (last visited Apr. 19, 2011).

¹⁷¹ For example, LawHelp.org helps low and moderate income people find free legal aid programs in their communities and answers questions about their legal rights. All fifty states, plus the District of Columbia, Guam, Virgin Islands, and Puerto Rico have either a Law Help Website or a link from the law help site to their state’s legal aid provider. Many of these sites offer information in multiple languages. See *generally* [Helplaw.org](http://www.lawhelp.org/), <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.

¹⁷² 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.

ABA Standards for Language Access in Courts

1376 supplemented with methods to provide two-way communication if available to those who
1377 speak English. Similar to translated materials, audio and video recordings are both efficient and
1378 economical in reaching a large audience.

1379 iii. Bilingual Staff

1380 Hiring bilingual staff who speak the languages that are frequently encountered in the court’s
1381 jurisdiction is a particularly effective way to provide language access services.¹⁷³ Bilingual staff
1382 in a court program can provide the same information they provide to English-speaking
1383 individuals, whether in a clerk’s office, filing office, cashier’s office, or other court service,
1384 directly to LEP persons. Although able to speak another language, bilingual staff are not hired as
1385 interpreters, but instead communicate directly with the LEP person in a shared language. To
1386 determine the appropriate staffing levels and to guide future staff hiring, courts should use
1387 demographic data, including data gathered internally, interpreter usage data, and external
1388 data.¹⁷⁴

1389 Courts should ensure that bilingual staff providing these direct services are competent in all
1390 languages in which they will communicate.¹⁷⁵ Some bilingual staff persons may become
1391 certified by the court to work as interpreters,¹⁷⁶ but courts should avoid using them as
1392 interpreters in legal proceedings if possible, as the two roles may be in conflict and could raise
1393 ethical concerns. As discussed in detail in the interpreter section below, bilingual staff would
1394 probably be disqualified from interpreting in the courtroom due to the violation of the ethical
1395 rules of impartiality and neutrality.¹⁷⁷ The Department of Justice recognizes this concern,
1396 emphasizing that “there may be times when the role of the bilingual employee may conflict
1397 with the role of the interpreter (for instance, a bilingual law clerk would probably not be able to
1398 perform effectively the role of a courtroom or administrative hearing interpreter and law clerk
1399 at the same time, even if the law clerk were a qualified interpreter). Effective management

¹⁷³ 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.

¹⁷⁴ See *Standard 3.1* for a discussion of the different data sources envisioned here.

¹⁷⁵ 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).

¹⁷⁶ 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.

¹⁷⁷ 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.”

ABA Standards for Language Access in Courts

1400 strategies, including any appropriate adjustments in assignments and protocols for using
1401 bilingual staff, can ensure that bilingual staff are fully and appropriately utilized.”¹⁷⁸

1402 Courts should also limit the use of a bilingual staff member as an interpreter in situations
1403 outside of the courtroom to very low-risk, basic communications.¹⁷⁹ When a court relies on
1404 bilingual staff, whose primary function is a task other than interpreting, to interpret between
1405 LEP persons and other staff members, the court should train them in the role of the interpreter
1406 and basic interpreter skills.

1407 iv. Interpreters

1408 The final component of a multi-faceted approach to providing language access in court services
1409 is the use of interpreters, either in-person or telephonically. Courts do not necessarily need to
1410 use court-certified interpreters for all services that occur outside of the courtroom and may use
1411 interpreters whose skills match an appropriate level of the court’s registered or tiered scale.
1412 Regardless of who is used, courts should ensure that the individual is qualified to interpret in
1413 the setting; this includes assessing the proficiency of the interpreter’s language skills in both
1414 English and the target language to ensure competence and knowledge of ethical
1415 responsibilities.¹⁸⁰

1416 Courts should take great care that the use of interpreters in settings outside of the courtroom
1417 does not lead to ethical conflicts for interpreters who will appear in court, to confusion as to an
1418 interpreter’s role,¹⁸¹ and to unnecessary restriction of the pool of qualified courtroom
1419 interpreters. Interpreting for other court staff in settings outside of the courtroom is
1420 permissible, but these interpreters should not be asked to provide direct assistance or function
1421 as bilingual staff,¹⁸² since they might become unintentionally involved in matters that would
1422 later disqualify them from interpreting in legal proceedings.

¹⁷⁸ DOJ LEP Guidance, at 41,461.

¹⁷⁹ This section is not referring to staff interpreters, who are discussed in full in the following section.

¹⁸⁰ For more on the assessment of qualifications, see *Standard 8*.

¹⁸¹ Examples of this problem have occurred when a bilingual staff person has received or given information in a court service and is later asked to interpret for that same individual in a court hearing. Ethical obligations require the staff person, when working as an interpreter, to disclose this other prior role to the judge and all parties and may be disqualified from interpreting should one of the parties feel that the prior contact with the opposing party renders the interpreter partial to one party and unable to remain neutral. Concerns that such conflicts may lead to the inability to interpret in court generally result in court certified interpreters declining positions as bilingual staff for fear of ethical conflicts.

¹⁸² 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.

ABA Standards for Language Access in Courts

1423 Thus, hiring a court certified interpreter to provide services directly, such as to LEP persons in a
1424 *pro se* clinic, would only be feasible where the roles are strictly defined, where the likelihood of
1425 working with a litigant in both capacities is reduced to avoid inefficiencies, and where the
1426 interpreter is properly trained to disclose all prior contact.¹⁸³ Under the model code of ethics,
1427 interpreters in their professional capacity “shall limit their participation in those matters in
1428 which they serve to interpreting and translating, and shall not give advice to the parties or
1429 otherwise engage in activities that can be construed as the practice of law.”¹⁸⁴

1430 A recommended practice is for courts to create systems that prioritize certified interpreters for
1431 legal proceedings and provide an opportunity for lesser-credentialed but competent
1432 interpreters to develop their skills by interpreting in settings outside of the courtroom. This may
1433 be accomplished by coordinating calendars and scheduling interpreters in blocks of time and by
1434 the use of a tiered credentialing system.¹⁸⁵ The practice of hiring interpreters to provide direct
1435 services as bilingual staff is increasing due to the growing number of *pro se* LEP litigants and
1436 the recognition that, for a *pro se* LEP person, interpretation alone may not be sufficient to
1437 overcome barriers due to lack of familiarity with court culture and processes. In some
1438 jurisdictions, in response to the overwhelming number of LEP *pro se* litigants, courts are
1439 promoting an expanded role for the interpreter who, in addition to facilitating communication,
1440 provides the *pro se* individual basic information about the court and the nature of the legal
1441 proceeding in which he or she is involved.¹⁸⁶ These non-lawyer staff can provide legal
1442 *information* but are prohibited from the practice of law. Legal information provided may
1443 include helping *pro se* litigants navigate the judicial system, such as by identifying necessary
1444 forms, and ensuring that those forms are completed appropriately, at times explaining and
1445 clarifying the content, particularly in regards to the court culture. Staff being used in this way
1446 are not functioning as interpreters and should never be labeled as such.

¹⁸³ 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.

¹⁸⁴ 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.”).

¹⁸⁵ The tiered credentialing system envisioned in this *Standard* is fully discussed in *Standard 9*.

¹⁸⁶ 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.

1447 The Role of Technology in Delivering Language Access Services Outside of the Courtroom

1448 Technology can play a role in ensuring equal access to the information provided by courts and
1449 in court programs. Many court websites provide information, including online forms, e-filing
1450 and self-help materials, in English written text. Millions of LEP individuals in the United States
1451 are barred from accessing this information. To address this problem, courts can incorporate
1452 features that enable LEP users to access the site's information through use of quality translated
1453 materials and interpreted audio and video recordings. Technology to create simple videos and
1454 audio recordings is advancing quickly. When courts create an online informational piece,
1455 resource, forms or self-help materials, they should create and post the non-English language
1456 versions without significant delay. Any project to create online content for court users should
1457 include the development of the same content in the most common languages spoken in the
1458 area.

1459 **STANDARD 6 LANGUAGE ACCESS IN COURT-MANDATED AND OFFERED SERVICES**

1460 **6. Courts should ensure that persons with limited English proficiency have access to court-**
1461 **mandated services, court-offered alternative services and programs, and court-appointed**
1462 **professionals, to the same extent as persons who are proficient in English.**

1463 Commentary

1464 Courts mandate and offer services in criminal and civil matters because of the recognized
1465 benefits of participation for the individuals served, their families, the community and the courts
1466 themselves. The services and programs described within this *Standard* are a critical component
1467 of the justice system; lack of access to them can result in the loss of liberty and interference
1468 with important rights. An LEP person denied participation in such programs due to lack of
1469 language access may suffer extended jail time, the delayed return of a child, loss of access to
1470 driving and professional licenses or simply a less expedient resolution of the case.¹⁸⁷

1471 This *Standard* focuses on language access services to court services and programs, an area that
1472 some jurisdictions have not addressed. The sections below discuss the unique considerations
1473 that arise in criminal and civil court-mandated and offered services to remind courts of the
1474 need to provide language access in civil as well as criminal services. The requirement to provide
1475 language access applies to all types of courts, including specialized courts, therapeutic justice
1476 courts, and problem-solving courts, in addition to traditional criminal and civil matters.
1477 *Standard 6.1* addresses the requirement for services in court-mandated, alternative sentencing

¹⁸⁷ The DOJ August 16, 2010 Letter to Chief Justices and State Court Administrators states that the “meaningful access requirement extends to court functions that are conducted outside the courtroom as well.” Letter to Chief Justices and State Court Administrators, at 3.

ABA Standards for Language Access in Courts

1478 programs, or other optional programs offered in conjunction with a criminal matter. *Standard*
1479 6.2 addresses the requirement for services in court-mandated programs or voluntary court-
1480 offered programs related to civil matters. *Standard 6.3* discusses the requirement for services in
1481 interactions with court-appointed or supervised professionals and *Standard 6.4* discusses the
1482 range of approaches courts may undertake to meet these obligations.

1483 Courts play pivotal roles in leadership, education, and resource development to ensure that
1484 language access services are accessible to LEP communities, not just because of the courts'
1485 knowledge of the number and type of services needed, but also because of their authority to
1486 offer, require, and contract for those services. Courts are well situated to identify the
1487 appropriate providers for referrals of individual litigants, to coordinate with community
1488 providers to develop programs, to exercise leadership in assessing current needs and services
1489 and to help develop future resources.¹⁸⁸ Courts are also in the best position to identify
1490 providers who have failed to deliver language access services and encourage them to develop
1491 adequate services or discontinue referrals to those organizations. Where courts currently have
1492 limited contact with provider organizations, they should develop outreach and community
1493 contacts to ensure that the LEP individuals they refer are adequately served.

1494 Courts should use the information in this *Standard* to determine the language access services
1495 needed. In general, courts should ensure that language access services are available; however,
1496 where it is impossible to provide language access services and the court offered or ordered
1497 service is not critical, participation by LEP persons may be waived.¹⁸⁹ This is true for court-
1498 mandated services or programs in both civil and criminal matters. If courts require that an LEP
1499 person receive a service or attend a program without ensuring that language access services
1500 are provided, the LEP person may not receive the intended benefit and may fail to comply with
1501 program requirements, which could expose the person to further penalties or other adverse
1502 consequences. Courts should assess all services and seek out resources in order to avoid this
1503 predicament. The same reasons that make court mandated and offered services desirable for
1504 both the courts and for English speaking persons apply to individuals who are LEP; thus, courts
1505 should develop language access for all court services so that they can be available to all
1506 persons, regardless of their ability to speak English. Refer to Standard 2.3 for discussion of
1507 criteria to be applied in determining whether and when it is appropriate to assess or recoup
1508 costs for language access services. In providing these language services, courts should be
1509 careful not to impose any limitations, including costs, that would have a chilling effect on the
1510 ability of LEP persons to access court-mandated and offered programs.

¹⁸⁸ 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>.

¹⁸⁹ Judges should exercise their discretion where language-accessible services are not available so as to avoid denying the LEP person a service, benefit, or right. See *DOJ LEP Guidance*, at 41,446.

1511 **6.1 Courts should require that language access services are provided to persons with**
1512 **limited English proficiency who are obligated to participate in criminal court-**
1513 **mandated programs, are eligible for alternative adjudication, sentencing, and other**
1514 **optional programs, or who need to access services in order to comply with court**
1515 **orders.**

1516 *Commentary*

1517 This section discusses those services that are mandated or offered in conjunction with the
1518 disposition of a criminal matter. These include all pre- and post-adjudication programs which
1519 are a part of the judicial process, including diversion, pre-trial conditions of release, conditions
1520 on bail, probation or conditions of parole, and alternative sentencing. Court-mandated services
1521 and programs include those in which a defendant may be required to participate by a court,
1522 such as substance abuse treatment, anger management and other counseling services, parole,
1523 and probation. Court-offered alternative services include alternative programs or conditions
1524 offered in lieu of bail, adjudication, and sentencing, as well as mediation and dispute resolution
1525 services. These services and programs are critical to the criminal justice process and often result
1526 in less time in custody and an increased likelihood of rehabilitation for a criminal defendant.
1527 LEP persons should not be denied participation in programs for which they are otherwise
1528 qualified because of a language barrier.

1529 *Best Practices*

1530 Court-mandated services or programs¹⁹⁰ that are part of the pre- or post-adjudicatory process
1531 should all be language accessible. For example, where mental health counseling is a condition
1532 of bail, the counseling should be available directly in a language understood by the individual or
1533 appropriate interpretation services should be provided. Similarly, a person sentenced to
1534 participate in a court-ordered work release program is often required to participate in an
1535 interview to find an appropriate work placement.¹⁹¹ This initial interview may prevent the LEP
1536 person from complying with the order if the interviewer does not provide appropriate language

¹⁹⁰ A more complete list of court mandated services includes: Alcoholics Anonymous, Alcohol Assessment, Alcohol Information School, Alternative Dispute Resolution Programs, Anger Management - Assessment/Evaluation/Treatment, Arbitration, Behavioral Therapy Program, Chemical Dependency Assessment / Evaluation / Treatment, Community service, Counseling Services – general, Diversion programs, Divorce / Co-parenting classes, Domestic Violence- Assessment / Treatment, Drug – Evaluation / Assessment/ Treatment, Family Counseling, Marriage Counseling, Mediation, Mental Health- Assessment/ Evaluation/ Counseling, Monitored Supervised / Unsupervised Probation, Parenting Classes, Parole, Probation, Victims Panel (also commonly referred to as Victim Impact Panels), Work Crew.

¹⁹¹ 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).

1537 access services.¹⁹² In both instances, denying an otherwise eligible LEP person participation in
1538 these programs may deprive LEP individuals of “meaningful access” to court services.¹⁹³

1539 Optional alternative programs have proliferated in recent years. These services, offered as part
1540 of a diversion program, pre-trial conditions of release, or alternative sentencing programs,
1541 promote justice and result in a significant savings to the justice system.¹⁹⁴ According to a
1542 Bureau of Justice Assistance Report, from 1990 to 2004, an estimated 62% of state court felony
1543 defendants in the 75 largest counties surveyed were released prior to the disposition of their
1544 case, with approximately one-half of those defendants released on non-financial conditions,
1545 including mandatory compliance with court-ordered services.¹⁹⁵ Such programs provide
1546 important benefits and should be made equally available to LEP and non-LEP defendants.¹⁹⁶
1547 Furthermore, once a person enrolls in the alternative program, compliance becomes
1548 mandatory and non-compliance may result in substantial consequences; ensuring that language
1549 services are available increases the likelihood that LEP persons can successfully utilize and
1550 succeed in these programs.

1551 **6.2 Courts should require that language access services are provided to persons with**
1552 **limited English proficiency who are ordered to participate in civil court-mandated**
1553 **services or who are otherwise eligible for court-offered programs.**

1554 Commentary

1555 In civil cases, court-mandated and voluntary court-offered programs often support and protect
1556 important rights. Participation in these programs results in less time apart from children,
1557 improved family stability through counseling services and parenting classes, and individual
1558 improvement through participation in alcohol or substance abuse treatment programs.

¹⁹² Ideally, the work placement would take place in a location where the LEP person and the provider share a common language.

¹⁹³ See 28 C.F.R. 42.104 (b).

¹⁹⁴ 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).

¹⁹⁵ 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.).

¹⁹⁶ 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).

ABA Standards for Language Access in Courts

1559 Examples of services include classes, workshops, information sessions, evaluations, treatment
1560 programs, investigations, arbitrations, mediations and other alternative dispute resolution
1561 programs. Courts mandate participation in these programs for many of the same reasons that
1562 they mandate such services in the criminal context,¹⁹⁷ and non-compliance can prejudice
1563 constitutional and other important rights. Providing language access services for these
1564 programs is fundamental to ensuring equal access. While not required, voluntary court-offered
1565 services and programs in civil cases are also important in that they allow litigants to have faster
1566 and cheaper solutions to their legal issues, often also reducing financial and caseload burdens
1567 for courts. To the extent that these services offer a benefit for English speaking litigants, they
1568 should also be made accessible to LEP individuals who are otherwise eligible to participate.¹⁹⁸

1569 Best Practices

1570 Similar to the considerations with respect to criminal services discussed above, judges should
1571 either ensure that services are accessible, or not penalize LEP persons for an inability to
1572 participate. Thus, when ordering mediation¹⁹⁹ in a family law matter, judges should consider
1573 the availability of bilingual service providers²⁰⁰ who can meet the litigant's language needs
1574 directly. If language-specific services are not be available for the service needed, the court
1575 should ensure that the individual has access to the program with an interpreter.

1576 Just as in the criminal context, increasing access to LEP persons, not waiving participation,
1577 should be the goal. Programs such as mediation and alternative dispute resolution often
1578 provide litigants with a faster, better, and less costly resolution to their legal matter; courts
1579 should ensure that these options are also accessible with language services in place.

¹⁹⁷ 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

¹⁹⁸ See also, discussion in *DOJ LEP Guidance*, at 41,461.

¹⁹⁹ 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.

²⁰⁰ 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).

1580 **6.3 Courts should require that language access services are provided for all court-**
1581 **appointed or supervised professionals in their interactions with persons with limited**
1582 **English proficiency.**

1583 Commentary

1584 Court-appointed or supervised professionals or personnel are an important component of the
1585 justice system and courts daily rely upon their services to assist in the adjudication of both
1586 criminal and civil matters. Court-appointed or supervised professionals include counsel,
1587 guardians, guardians *ad litem*, conservators, child advocates, social workers, psychologists,
1588 doctors, trustees and other such persons who are employed, paid, or supervised by the courts,
1589 and who are required to communicate with LEP persons as part of their case-related functions.
1590 Courts appoint these professionals in criminal and civil matters to counsel litigants and provide
1591 necessary information to the court and their interaction with litigants promotes the fair and
1592 efficient administration of justice.

1593 Best Practices

1594 A court's obligation in these circumstances is to appoint a professional with demonstrated
1595 bilingual skills or require that the professional appointed use an interpreter in communicating
1596 with the client or ward.²⁰¹ Courts can meet this obligation by appointment of an appropriately
1597 qualified bilingual professional or appointment and payment of interpreter services to facilitate
1598 the communication process.²⁰² For example, a court should appoint a bilingual guardian so that
1599 there can be direct communication between the guardian and the LEP person, or the court
1600 should ensure that the appointed English-speaking guardian follows the court's procedures for
1601 hiring a qualified interpreter.

1602 The obligation of the court-appointed or supervised professional to communicate is not limited
1603 to the parties for whom the professional has been appointed. At times, the professional will
1604 need to communicate with the litigant's family members, advocates, witnesses, and others.
1605 Where the professional needs to interview additional persons who can assist the litigant or the
1606 court, such interviews should not be limited to those with whom the professional shares a
1607 common language, and the need for interpreter services is not a reason to forgo such an
1608 interview. Courts should instruct court-appointed personnel of their obligations in cases

²⁰¹ 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.").

²⁰² *Id.*

ABA Standards for Language Access in Courts

1609 involving LEP individuals and on the availability of language access services so that court-
1610 appointed professionals may appropriately fulfill their responsibilities.²⁰³

1611 **6.4 Courts should require the use of the most appropriate manner for providing language**
1612 **access for the services and programs covered by this *Standard* and should promote**
1613 **the use of translated signs, brochures, documents, audio and video recordings,**
1614 **bilingual staff, and interpreters.**

1615 Commentary

1616 Courts may utilize a range of approaches, similar to those discussed in *Standard 5*, to ensure
1617 that language access services are provided in court-mandated, court-offered alternative
1618 programs, and with court-appointed or supervised professionals. When the programs or
1619 services are operated or provided by courts directly, *Standard 5* addresses those operations.²⁰⁴
1620 This *Standard* addresses the court's obligation to ensure meaningful access to services and
1621 programs not necessarily operated by the court but still relied upon as an integral component
1622 of the justice system, and discusses alternative procedures for courts to use when they
1623 encounter shortcomings in language services available within such programs.²⁰⁵

1624 Best Practices

1625 Many entities under contract with courts to provide services are recipients of federal financial
1626 assistance, and may have an obligation to ensure meaningful access similar to that of court-
1627 provided or staffed services.²⁰⁶ When contracting for the services and programs covered by this
1628 *Standard*, courts should make the following determinations: how services within the scope of
1629 the contract will be accessible to all persons, including those with limited English proficiency;

²⁰³ 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 of 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*.

²⁰⁴ 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/>.

²⁰⁵ Research is ongoing to determine the scope of services provided by courts, services generally provided by separate entities which are likely recipients of federal financial assistance, and services which may be provided by separate entities that do not have a legal obligation to provide language access services. Initial research has shown that some courts directly provide the following court-mandated services: mediation, parenting classes and victim impact panels; independent service providers that provide services mandated or offered as part of court proceedings, such as mental health agencies, substance abuse and chemical dependency treatment centers and domestic violence treatment providers, are commonly recipients of federal financial assistance and are themselves subject to the requirements of Title VI.

²⁰⁶ Information on determining whether an entity is a recipient of federal financial assistance can be found *supra*, note 52.

ABA Standards for Language Access in Courts

1630 and how the delivery of those services will be accomplished, *i.e.*, whether through bilingual
1631 staff or interpreters. A court should first identify whether there is a community provider with
1632 bilingual staff in the languages relevant to litigants referred for services. The service providers'
1633 obligation to provide meaningful access to LEP persons should be specifically noted in the
1634 contract, or contained in written assurances, and the court should monitor the program's
1635 compliance by requesting a copy of the contractor's language access policies and procedures
1636 and asking for evidence of payment for language access services where appropriate.²⁰⁷

1637 Even when not directly contracting for services, courts should maintain some control over the
1638 delivery of those services and retain their obligation to ensure meaningful access. When
1639 referring LEP individuals to programs not operated or provided by the courts directly but still
1640 relied upon as a critical component of the justice system, the court should ensure that these
1641 providers adequately understand their obligations. In addition, courts have the ability to refer
1642 litigants only to certain providers or to indicate a preference for providers who offer language
1643 access services. Competition among providers for court referrals should lead to improved
1644 services for LEP persons if providers of quality services, including appropriate language services,
1645 are given increased referrals from the court.²⁰⁸

1646 In a few instances, courts may order an LEP individual to participate in a program that the court
1647 neither operates, nor pays for, and that is not a recipient of federal financial assistance or
1648 otherwise obligated to provide language access services.²⁰⁹ Where there is no legal obligation
1649 requiring the provider to offer language access services, and the court cannot identify an
1650 alternative language accessible program, the court should waive the requirement or provide for
1651 an interpreter so that the LEP person can participate. For example, in a civil case where a judge
1652 orders a litigant to participate in counseling and the only local provider is not a recipient of any
1653 federal financial assistance, the court should ensure that interpreter services are available.

1654 Courts can play an important role in identifying the sources of funding for language access
1655 services, and in educating and collaborating with providers to develop resources in the
1656 community. Courts should also take a leadership role in collaborating with community-based
1657 organizations and justice partners to develop additional resource capacity in specific areas and

²⁰⁷ Both the contract and memorandum of understanding should include a description of the language access services required. See model court assurances at [\[http://www.justice.gov/crt/about/cor/draft_assurance_language.pdf\]](http://www.justice.gov/crt/about/cor/draft_assurance_language.pdf).

²⁰⁸ 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.

²⁰⁹ 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.

ABA Standards for Language Access in Courts

1658 in the most common languages spoken in the surrounding communities.²¹⁰ Increased
1659 community outreach and collaboration with community organizations can assist courts in
1660 meeting the needs of all litigants in an efficient manner.²¹¹

1661 **STANDARD 7 TRANSLATION**

1662 **7. Courts should establish a process for providing access to translated written information to**
1663 **persons with limited English proficiency to ensure meaningful access to all court services.**

1664 Commentary

1665 Courts utilize written documents to provide information about services and programs, to
1666 initiate legal proceedings, to protect or establish important legal rights, and to inform litigants
1667 of the outcome of court cases. Lack of access to translated materials in the context of legal
1668 proceedings and court services creates impediments to justice and can result in great harm.
1669 Courts should facilitate meaningful access by providing written materials in translated form to
1670 LEP persons.

1671 “Translation” is defined as converting a written text from one language into written text in
1672 another language. The source of the text being converted is always a written language.²¹²

1673 “Transcription” refers to the process of producing a written transcript of an audio or video
1674 recording, where the recording is in a language other than English.²¹³ “Sight translation” refers
1675 to a hybrid of interpreting and translating in which the interpreter reads a document written in
1676 one language while translating it orally into another language. Professional “translators”
1677 possess the necessary skills to render a document into the target language while retaining the
1678 meaning and accuracy of the document’s source language. The skills and tools used in

²¹⁰ 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.

²¹¹ 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.”).

²¹² NCSC, *Court Interpretation Model Guides*, at 33.

²¹³ 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>.

1679 translation are not the same as those used in interpretation, although some individuals may be
1680 proficient in both tasks.

1681 Because translation is a process that takes more time than interpretation and has higher initial
1682 costs, courts have generally not provided translations of written materials as often as they have
1683 used interpreters.²¹⁴ This section provides guidance to help courts increase the number and
1684 quality of translations available in a cost-efficient manner and to ensure meaningful access to
1685 services. *Standard 7.1* discusses the need for translating documents and describes how to
1686 determine which documents to translate and to identify the languages into which the
1687 documents should be translated. *Standard 7.2* describes the necessary components of a
1688 translation protocol to ensure that translations are done accurately and efficiently. *Standard*
1689 *2.3* describes criteria to be considered in determining whether and when the cost of translating
1690 individualized documents prepared in a particular proceeding may appropriately be assessed or
1691 recouped.

1692 **7.1 Courts should establish a system for prioritizing and translating documents that**
1693 **determines which documents should be translated, selects the languages for**
1694 **translation, includes alternative measures for illiterate and low literacy individuals,**
1695 **and provides a mechanism for regular review of translation priorities.**

1696 Commentary

1697 When determining which documents to translate, courts should consider the importance of the
1698 service, benefit, or activity involved, the nature of the information sought, and the number or
1699 proportion of LEP persons served. A comprehensive approach to determining which documents
1700 to translate incorporates an assessment of written materials to identify “vital” documents,²¹⁵
1701 the use of demographic data to determine the languages into which materials will be
1702 translated, and the creation of a plan to phase-in additional documents and languages over
1703 time.

²¹⁴ 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.*

²¹⁵ For a discussion of the DOJ four-factor analysis, see *Standard 1*.

1704 Best Practices

1705 Identifying Vital Documents for Translation

1706 Identification of a court’s “vital documents” is the necessary first step in providing access to
1707 written materials for LEP persons. Determining which documents and forms to translate
1708 requires an individualized assessment. The *DOJ LEP Guidance* explains that “whether or not a
1709 document (or the information it solicits) is ‘vital’ may depend upon the importance of the
1710 program, information, encounter, or service involved, and the consequence to the LEP person if
1711 the information in question is not provided accurately or in a timely manner.”²¹⁶ Under these
1712 criteria, a broad range of court documents and forms may be considered “vital” if they involve
1713 decisions regarding liberty, safety, property, and relationships that have significant
1714 consequences for an LEP person. Examples of vital written materials, include the following:

- 1715 • Consent and complaint forms,
- 1716 • Intake forms with the potential for important consequences,
- 1717 • Written notices of rights; denial, loss, or decreases in benefits or services; parole and
1718 other hearings,
- 1719 • Notices of disciplinary action,
- 1720 • Notices advising LEP persons of free language assistance, and
- 1721 • Applications to participate in a program or activity or to receive benefits or services.²¹⁷

1722 This list is not exhaustive, but provides a guide for courts to evaluate their documents in light of
1723 the overarching goal of providing access to “vital” written documents. Court documents that
1724 may be determined to be “vital” fall within three general categories: 1) court information; 2)
1725 court forms; and 3) individualized documents. Considerations in identifying documents as
1726 “vital” within each of these categories are discussed below.

1727 Information About Court Services And Programs

1728 Information regarding court services and programs is critical to meaningful access for LEP
1729 persons. Many court brochures, guides and other documents contain information about court
1730 services and programs, rights, responsibilities, and other information that facilitates a litigant’s
1731 ability to seek relief available through the court. “Awareness of rights or services is an
1732 important part of ‘meaningful access.’”²¹⁸

1733 Information about court services and programs should be made widely available in multiple
1734 languages. The content of documents such as guides, “Know Your Rights” flyers, self-help

²¹⁶ *DOJ LEP Guidance*, at 41,463.

²¹⁷ *Id.*

²¹⁸ *Id.*

ABA Standards for Language Access in Courts

1735 materials, and instruction booklets, is likely to remain fairly constant and should be translated
1736 and distributed widely.²¹⁹ As part of the planning and review process, courts should consider
1737 prioritizing the translation of documents relevant to the protection of a litigant’s safety or the
1738 safety of a child. As noted in *Standard Two*, notice of both the availability of language access
1739 services and the means of obtaining these services are considered “vital” and should be
1740 provided in the languages likely to be encountered in the communities in the court’s
1741 jurisdiction. The content on a court’s public website is often informational in nature and should
1742 be considered for translation. Alternate formats for providing translated information, including
1743 websites, are discussed in *Standard 7.2*.

1744 Court Forms

1745 Court forms are vital to accessing courts and protecting rights, and include pleadings, summons,
1746 waiver forms and any notice that requires action by the person receiving it. Generally court
1747 pleading forms used to initiate or respond to a legal matter are documents that are considered
1748 “vital.” Most courts translate only a relatively small percentage of the court forms they have
1749 available in English and the number of translated forms varies by language and case-type.²²⁰
1750 However, many courts are increasing the availability of translated materials, particularly in the
1751 area of family and housing law. For example, the Tennessee Administrative Office of the Courts
1752 provides translated court forms in Spanish, Vietnamese, and Korean, and is expanding both the
1753 languages and forms for which translations are available.²²¹ Other courts have engaged in
1754 collaborative efforts with local legal aid providers to create online document preparation
1755 materials in languages other than English. In one instance, a legal aid organization in Idaho, in
1756 collaboration with the court, has created four interactive online forms in Spanish, which guide
1757 the user through a series of questions to produce the final pleading.²²²

1758 Case-Specific Documents

1759 Translation of documents in a specific proceeding may be necessary for the efficient
1760 administration of justice and for the enforceability of court orders. In addition, the principles of

²¹⁹ 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/>.

²²⁰ 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>.

²²¹ 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>.

²²² Idaho Legal Aid Services, Inc., <http://www.idaholegalaid.org/es/node/1231> (last visited Apr. 19, 2011).

ABA Standards for Language Access in Courts

1761 access to justice and fairness require that courts provide access to these materials in a language
1762 that is understood by the litigant. These documents include foreign language evidentiary
1763 documents and court orders. While such documents are often considered the most difficult to
1764 translate, courts should make every effort to have these materials translated and should
1765 consider alternate formats to assist in this effort.

1766 Foreign language evidentiary documents submitted in a proceeding, including foreign language
1767 tape transcriptions, are often governed by court rules regarding sufficiency of evidence. Some
1768 courts allow submission of written foreign language documents through the court interpreter
1769 who provides a sight translation²²³ of the written material for the record.²²⁴ In other courts,
1770 admission of the foreign-language document is at the discretion of the judge. Transcription of
1771 foreign language audio recordings should not be done in the manner of sight translations;
1772 advance notice, planning and translation by a qualified translator are required.²²⁵ All courts
1773 should ensure that court rules regarding foreign language documents and audio recordings
1774 provide a way for all LEP persons to submit these materials into evidence through transcription
1775 translation by a qualified translator or through sight translation by a qualified interpreter,
1776 depending on the evidence offered.

1777 Translating court orders helps ensure that they are enforceable. When an LEP individual is
1778 subject to a court order but the order is only provided in English, there is a risk that court time
1779 will be needlessly consumed to deal with non-compliance or that the administration of justice
1780 will be frustrated if the order is unenforceable. Even when an oral interpretation of the order
1781 has been given, the LEP person usually needs to rely on memory for the details of the order,
1782 placing an unfair burden on the individual and making it difficult to follow specific terms. For
1783 example, in a termination of parental rights case, the Supreme Court of Nebraska reversed the
1784 lower court's ruling terminating the mother's rights because, among other things, the mother
1785 never received a copy of the case plan in her native language, and so her failure to strictly
1786 comply with the plan was insufficient grounds to warrant termination.²²⁶ The risk of significant
1787 harm to the LEP individual who receives no translation of operative documents in a legal
1788 proceeding has been recognized in both civil and criminal cases.²²⁷

²²³ NCSC, *Court Interpretation Model Guides*, at 33.

²²⁴ NAJIT, *Modes of Interpreting* (2006), at 2.

²²⁵ 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).

²²⁶ *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.

²²⁷ 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

ABA Standards for Language Access in Courts

1789 Some courts have been proactive in their efforts to provide translations of documents in
1790 specific cases such as domestic violence protection orders. A study conducted by the National
1791 Center for State Courts reported that the Eleventh Judicial Circuit, the Circuit Court of Miami-
1792 Dade County, and the Superior Court of the District of Columbia were all providing protection
1793 orders translated into non-English languages.²²⁸ In Miami-Dade County, the Civil Interpreter
1794 Unit translates court documents, letters, motions, answers, and orders, and transcribes 911
1795 calls and other audio recordings for submission in court. It also provides sight translation for all
1796 foreign language documents offered as evidence as well as interpreter services. Translations of
1797 case-specific documents are provided by staff in the following languages: Spanish, Haitian
1798 Creole, Russian, Portuguese, French, and Italian.²²⁹ Courts in California and Texas are
1799 participating in pilot projects to create a process for producing court orders in Spanish.²³⁰

1800 Determining the Languages for Translation of “Vital Documents”

1801 In addition to identifying which documents to translate, courts should determine the languages
1802 into which the materials will be translated. Because of the importance of information in written
1803 documents, courts should provide information in as many languages as possible based on data
1804 on community needs.²³¹ Using demographic data for its jurisdiction, a court should identify the
1805 languages of the LEP individuals commonly coming into contact with the court as well as those
1806 additional LEP individuals likely to be affected by the court’s services or programs, even if they
1807 do not yet directly access court services. Courts should translate vital documents into “at least
1808 several of the more frequently-encountered languages and ... set benchmarks for continued
1809 translations into the remaining languages over time.”²³²

1810 For recipients of federal financial assistance, the DOJ LEP “safe harbor” provision offers some
1811 useful guidance, but it should be read in the context of the guidance’s emphasis on “meaningful
1812 access” as the guiding principle to determine the languages into which documents should be
1813 translated. Under the “safe harbor” provision, the following circumstances provide strong
1814 evidence of compliance with Title VI obligations: “(a) [t]he DOJ recipient provides written
1815 translations of vital documents for each eligible LEP language group that constitutes five
1816 percent or 1,000, whichever is less, of the population of persons eligible to be served or likely to

statute referenced therein, any plea agreement and statutes referenced therein, and any pre-sentence report with costs being allocated to several government entities).

²²⁸ 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.

²²⁹ *Id.*, pp. 85 – 92.

²³⁰ Pilot projects in California and Texas are in current development. Resources will be posted at the ABA website as they become available.

²³¹ *DOJ LEP Guidance* at 41,463.

²³² *Id.*

ABA Standards for Language Access in Courts

1817 be affected or encountered. Translation of other documents, if needed, can be provided orally;
1818 or (b) [i]f there are fewer than 50 persons in a language group that reaches the five percent
1819 trigger in (a), the recipient does not translate vital written material but provides written notice
1820 in the primary language of the LEP language group of the right to receive competent oral
1821 interpretation of those written materials, free of cost.”²³³

1822 The “safe harbor” provision is a guide; however, courts should be mindful that the provision
1823 applies “to the translation of written documents only” and “do[es] not affect the requirement
1824 to provide meaningful access to LEP individuals through competent oral interpreters where oral
1825 language services are needed and are reasonable.”²³⁴ The *DOJ LEP Guidance* setting forth a
1826 “safe harbor” distinguishes between written translation of a document, which may take
1827 substantial time and multiple levels of review, and sight translation, which provides an oral
1828 interpretation of a written document to a single user. Thus, courts receiving federal financial
1829 assistance should be aware that they are obligated to provide an alternative method of
1830 translation for an individual who speaks a language in which written translation is not provided.

1831 Alternatives for Illiterate and Low-Literacy Individuals

1832 A court may be hesitant to translate written materials into a language when low literacy rates in
1833 the particular language may be perceived as limiting the usefulness of a translated written
1834 document. However, before deciding not to translate, courts should have current and reliable
1835 data to support the belief regarding low literacy. Census data generally used to determine LEP
1836 population numbers and trends does not currently include information on the literacy rate of
1837 LEP individuals in their native language.²³⁵ Literacy rates are not static and courts should
1838 periodically gather data and reevaluate any decision not to provide a written translation on this
1839 basis.²³⁶ Courts should also take into account the changing nature of literacy rates among
1840 different immigrant age demographics. Where a court decides to forgo a written translation
1841 because of this reason, it should consider the use of audio or video recordings as a way to
1842 provide access to the information in a useful way.

²³³ *Id.*

²³⁴ *Id.*

²³⁵ 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>.

²³⁶ 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).

1843 System for Regular Review of Vital Documents and Languages for Translation

1844 Once a document has been translated, courts should adopt a process to ensure that the
1845 translation is updated any time the original document is revised. In addition, as new forms are
1846 created, courts should consider them for translation. In this way courts can ensure that
1847 translated documents are current and that new forms are available for LEP persons as well as
1848 for English speakers. This review should also include planning for future translations and
1849 expanding the number of translated documents. This system for regular review of documents
1850 should be developed as part of the translation protocol that is described below.

1851 **7.2 To ensure quality in translated documents, courts should establish a translation**
1852 **protocol that includes: review of the document prior to translation for uniformity and**
1853 **plain English usage; selection of translation technology, document formats, and**
1854 **glossaries; and, utilization of both a primary translator and a reviewing translator.**

1855 Commentary

1856 The development of a comprehensive translation protocol will assist courts in planning for and
1857 providing high quality translated materials. A comprehensive protocol will also help a court
1858 provide language access to written materials in an efficient manner. Centralized management
1859 of translations can also assist courts in providing competent translations. In contracting for
1860 translations, courts should track translations projects, obtain and store translated documents
1861 from individual translators to print on demand, and coordinate updating translations.

1862 Best Practices

1863 Centralized coordination, as discussed in *Standard 10*, can assist with these tasks and with each
1864 of the following components.²³⁷ Courts should establish a translation protocol by reviewing
1865 their current practices for translations to ensure they have the elements described below.²³⁸

1866 Review of Document Prior to Translation

1867 Courts should review all documents prior to translation. Many documents within a state court
1868 system are similar in content with only slight differences so translation of each document at the
1869 local level may not be an efficient use of court resources; by reviewing the documents in
1870 advance courts can identify efficiencies and cost-savings. Some courts have begun to address

²³⁷ 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/interpreterSvcs/forms/default.asp>.

²³⁸ 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.

ABA Standards for Language Access in Courts

1871 this issue by standardizing and simplifying court orders. One way to do this is to reduce the
1872 amount of individualized information in the form and develop checklists of commonly used
1873 options. By creating checklists instead of fill-in-the-blank sections, courts can translate the
1874 majority of the form in advance, adding the limited individualized information with little
1875 additional time and cost.²³⁹

1876 Next, courts should review documents to ensure that they contain consistent terminology. The
1877 first step in this process is to ensure the documents are written in plain language.²⁴⁰ “Plain
1878 language” means “readers understand . . . documents more quickly. Readers call less often for
1879 explanations. They make fewer errors filling out forms. They comply more accurately and
1880 quickly with requirements.”²⁴¹ Documents should be reviewed for readability in English to
1881 ensure that a translation will be useful and that the translator will not be asked to create a
1882 “simplified” version of the English document. The second step in creating documents that
1883 contain consistent terminology is the use of legal glossaries. The legal glossary in this context is
1884 the English glossary of legal terminology used by the court, so that written materials produced
1885 by the court refer to topics within a document in a consistent manner. This process will be
1886 coupled with the translator’s use of a legal glossary in the language of the translation. Those
1887 glossaries are discussed below.

1888 Selection of Translation Technology, Document Formats, and Glossaries

1889 i. Technology

1890 A court’s translation system should incorporate technology in a way that promotes efficiencies
1891 for requesting, processing, distributing, and maintaining translated written materials. As noted
1892 in a 2011 Migration Policy Institute report, “translation and interpretation programs have
1893 developed in-house systems to allow them to more effectively manage requests for their

²³⁹ 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).

²⁴⁰ “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).

²⁴¹ 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.

ABA Standards for Language Access in Courts

1894 services and to track resource needs and allocation.”²⁴² In determining which kind of translation
1895 technology to use, courts need to be aware of two general categories: translation memory
1896 software and machine translation.

1897

1898 Translation memory software uses “stored memory to reuse pre-translated phrases in
1899 subsequent translations;”²⁴³ this allows courts to develop an individualized database of all prior
1900 translations. When translations are done internally, courts can capitalize on translation memory
1901 software to promote efficient and consistent translations that build on prior documents. When
1902 done externally through translation companies, courts should work closely with the provider to
1903 ensure consistent translations and efficient use of resources.²⁴⁴ Most translation companies
1904 utilize translation memory software which assists in the creation of consistent forms, but this
1905 does not always result in cost savings for the court if the forms used in the software are not
1906 relevant to the particular court forms being translated. Working closely with the translation
1907 company will allow a court to capitalize on stored memory of prior translations – making
1908 translations less expensive and quicker to produce.

1909 The second type of common translation technology is machine translation. Machine translation
1910 involves technology that “automatically translates written material from one language to
1911 another without the involvement of a translator.”²⁴⁵ Courts should use caution when
1912 considering any kind of machine translation, as it has been found to be “unacceptably
1913 unreliable” in its current format.²⁴⁶ According to a test reported by the Migration Policy
1914 Institute, machine translation’s common use of “roundtrip” translation (translating a phrase
1915 from English to another language and then back to English) results in a phrase that can become
1916 muddled or change altogether.²⁴⁷ This risk is demonstrated in the following example from the
1917 report: “Please fill out the top part of this form,” is changed to “Please fill in this form the

²⁴² 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*].

²⁴³ *Id.* at 12.

²⁴⁴ 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).

²⁴⁵ MPI, *Communicating*, at 13.

²⁴⁶ 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)].

²⁴⁷ 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.

ABA Standards for Language Access in Courts

1918 crown.”²⁴⁸ As this technology develops over the coming years, it may become a viable option
1919 for translating some court information; however, courts should be very cautious in pursuing
1920 this option unless and until it reliably produces excellent quality translations.

1921 ii. Document and Alternate Formats

1922 Utilizing standardized document formatting in producing translations is critical to avoiding
1923 confusion, waste, and inefficiency. Proper document formatting should include a standardized
1924 naming practice for the identification of translated documents. Standardized naming practices
1925 typically include the identification of the form, the language into which translation is provided
1926 and the date of the original translation and any updates.²⁴⁹ Each document should also contain
1927 a message that states the court’s policy on whether the forms can be submitted in the foreign
1928 language.

1929 One recommended method for formatting documents involves providing the English text along
1930 with the translation in a multilingual format.²⁵⁰ In this approach, courts provide the English and
1931 the foreign language text together in one document. This approach has been adopted by many
1932 courts due to staff inability to recognize monolingual non-English forms and the administrative
1933 complexity of tracking and maintaining translations that are only produced in a foreign
1934 language. In addition, English-speaking professional staff often assist LEP persons with forms;
1935 providing the English text next to the foreign language text reduces the risk of using a form in
1936 error, and increases the likelihood that the form will be filled out in English.²⁵¹ Bilingual staff
1937 may also have difficulties assisting LEP persons filling out forms that are only provided in the
1938 foreign language due to a written literacy level that is lower than their oral proficiency.

1939 Technology can be an effective tool for providing access to written materials in alternate
1940 formats for case-specific court documents and can include recording oral interpretations of
1941 court orders and sight translations. By coupling already existing interpreting services with the
1942 technology of MP3 devices, cellular phones with advanced capabilities for recording,²⁵² or
1943 cassette-recordings, individual litigants can be provided with a recording of the in-court

²⁴⁸ MPI, *Communicating*, at 13.

²⁴⁹ 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).

²⁵⁰ Multilingual format is used here to denote the practice of having multiple languages on one form; one of which would always be English.

²⁵¹ 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.

²⁵² 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.

ABA Standards for Language Access in Courts

1944 interpretation of the court order or sight translation for future reference. Courts need to
1945 inform the litigant that the oral interpretation can be recorded and allow time for the litigant or
1946 the interpreter to prepare the recording device. Courts should consider providing court
1947 interpreters or courtrooms with MP3 devices or cassette recorders and should work with
1948 service providers, including domestic violence agencies, to provide recording devices into which
1949 the litigant or interpreter can record an audio version of the communication.²⁵³ Some
1950 governmental agencies have addressed the need to provide translated orders or
1951 determinations by developing systems that create a written notice in the language of the
1952 litigants explaining that they may call the number provided on the notice to hear the order read
1953 to them by an interpreter.²⁵⁴

1954 Courts should also consider using alternate formats to increase accessibility to their written
1955 documents. Alternate format documents include oral or video recordings of generally
1956 applicable information. The recordings can then be posted to the court's website and shown in
1957 the courthouse at information counters and self-help areas. An example of this approach is the
1958 Superior Court of California, County of Contra Costa, which provides videos describing the
1959 services of the clerk's office in 7 languages.²⁵⁵

1960 iii. Glossaries

1961 When translating documents, courts should provide the translator with a glossary of
1962 standardized legal terminology in the target language. This requires courts to make available

²⁵³ 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

²⁵⁴ 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.

²⁵⁵ Multi-lingual videos in English, Spanish, Vietnamese, Punjabi, Korean, Tagalog, and Mandarin welcoming litigants to the court and introducing the court's online self help services are available on the Superior Court's website, <http://www.cc-courts.org/index.cfm?fuseaction=Page.viewPage&pageID=2285> (last visited Apr. 19, 2011). See also, "Best Practices in Court-Based Programs for the Self-Represented: Concepts, Attributes, Issues for Exploration, Examples, Contacts, and Resources" (2008), at 20. (describing the use of video to provide court information, and giving examples of courts, self-help services, and legal aid providers using this technology); http://www.americanbar.org/content/dam/aba/migrated/legalservices/sclaid/atjresourcecenter/downloads/best_practices_7_08.authcheckdam.pdf, Contra Costa Virtual Self Help Center, <http://virtual.cc-courthelp.org/index.cfm?fuseaction=page.viewPage&pageID=5434>, Minnesota Judicial Branch, Self Help Center, Video information <http://www.mncourts.gov/selfhelp/?page=1913>.

ABA Standards for Language Access in Courts

1963 legal terminology glossaries in all languages for which the court provides translated materials. A
1964 centralized office should obtain or help develop a legal terminology glossary for each language
1965 and require the use of such a glossary by all translators. Providing glossaries increases the
1966 likelihood that documents are translated using consistent terminology.²⁵⁶ The National Center
1967 for State Courts provides legal terminology glossaries in six languages on its public website, and
1968 several state court interpreter programs have developed legal glossaries in a number of
1969 languages.²⁵⁷ For example, court administrator offices in California, Minnesota, and
1970 Washington have each developed legal glossaries in multiple languages and made them
1971 available on their publically accessible websites.²⁵⁸

1972 Selection of Primary and Reviewing Translators; Ensuring Accuracy in Translations

1973 The final component of a comprehensive translation protocol is the use of primary and
1974 reviewing translators. In selecting both a primary and reviewing translator, courts should
1975 ensure that a “qualified” individual, preferably a certified translator, conducts the primary
1976 translation and the review.²⁵⁹ The *DOJ LEP Guidance* recognizes that “particularly where legal or
1977 other vital documents are being translated, competence can often be achieved by use of
1978 certified translators.”²⁶⁰

1979 Courts should create a two-step process for all translation work which includes both an initial
1980 translation and a review to ensure the accuracy of the translation prior to distribution.
1981 Translation of a written court document, similar to the creation of the original document in
1982 English, requires editing for accuracy and attention to detail at all stages of the translation
1983 process. “Competence can often be ensured by having a second, independent translator ‘check’
1984 the work of the primary translator.”²⁶¹ The initial translator should be provided with details

²⁵⁶ The concept of a centralized office is discussed in *Standard 10*.

²⁵⁷ National Center for State Courts, <http://www.ncsc.org/Education-and-Careers/State-Interpreter-Certification.aspx>

²⁵⁸ 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).

²⁵⁹ Translator certification is discussed more fully in *Standard 8.3*.

²⁶⁰ *DOJ LEP Guidance* at 41,464.

²⁶¹ *Id.* The *DOJ LEP Guidance* also refers to using “back translation.” (“Alternatively, one translator can translate the document, and a second, independent translator could translate it back into English to check that the appropriate meaning has been conveyed. This is called ‘back translation’”). Back translation should be avoided as it can lead to slightly different renderings of the message as compared to the original text because of word choices by different translators. There is often more than one correct word choice in an interpretation or translation – therefore, translators need to make choices based on their professional opinion. The same is true for all second translators

ABA Standards for Language Access in Courts

1985 about the purpose of the document, the audience, and other relevant information, as well as
1986 the court's legal glossary. Courts should then have a separate reviewing translator compare the
1987 initial translation to the original document for accuracy; this process is recognized as a standard
1988 in the industry.²⁶² Due to the cost of printing and production, review of the translated
1989 document by a second translator before finalizing the document is critical to identifying and
1990 correcting errors in a way that is cost-efficient. Requiring the reviewing translator to compare
1991 the translation to the original should be included in all translation contracts.

1992 **STANDARD 8 QUALIFICATIONS OF LANGUAGE ACCESS PROVIDERS**

1993 **8. The court system and individual courts should ensure that interpreters, bilingual staff, and**
1994 **translators used in legal proceedings and in courthouse, court-mandated and court-**
1995 **offered services, are qualified to provide services.**

1996 Commentary

1997 Due to the complex nature of legal matters, the high level of skill needed for accurate
1998 interpreting and translating, and the need for strict observance of ethical rules, interpreters,
1999 bilingual staff, and translators should be qualified. Quality and accuracy of the language service
2000 is critical in order to avoid serious consequences to the LEP person and to the recipient.²⁶³ It is
2001 the responsibility of all courts to ensure that language services providers²⁶⁴ are competent.

2002 Best Practices

2003 The *DOJ LEP Guidance* requires competency in the delivery of language access services in the
2004 context of interpretation, bilingual staff providing direct services, and translation services; it
2005 also indicates that the levels of competency required may differ depending on the setting.
2006 Establishing competency is an objective process. "Competency requires more than self-
2007 identification as bilingual."²⁶⁵

2008 Certification refers to the use of standardized testing to determine that an individual possesses
2009 certain knowledge, skills and abilities. Courts should always utilize an assessment of the

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.

²⁶² MPI, *Communicating*; Consortium for Language Access in the Courts, *Equal Justice: Bridging the Language Divide, Guide to Translation of Legal Materials* (2011), at 8.

²⁶³ See *DOJ LEP Guidance*, at 41,461.

²⁶⁴ "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.

²⁶⁵ *DOJ LEP Guidance*, at 41,461.

ABA Standards for Language Access in Courts

2010 qualifications of all language services providers, and using a formal certification process ensures
2011 that the appropriate level of qualification is provided. “Where individual rights depend on
2012 precise, complete, and accurate interpretation or translations, particularly in the contexts of
2013 courtrooms ... the use of certified interpreters is strongly encouraged.”²⁶⁶

2014 Credentialing is an umbrella term which includes assessment and certification along with
2015 additional training and screening, and allows courts to both designate different levels of
2016 qualification and require continuing education. This is necessary to ensure that language
2017 services providers are competent in the languages in which they will communicate, understand
2018 the role of the interpreter and basic interpreting concepts, possess competent interpreting
2019 skills, and know the ethical rules governing court interpreting. Credentialing the different
2020 categories of language services providers—interpreters, bilingual staff, and translators—
2021 requires an assessment program for each; these are described in *Standards 8.1, 8.2, and 8.3*. A
2022 comprehensive discussion of the credentialing components is provided in *Standard 8.4*. The
2023 role of a centralized office in coordinating the implementation and administration of language
2024 access provider competency assessment²⁶⁷ and credentialing²⁶⁸ procedures is mentioned below
2025 but a full discussion can be found in *Standard 10*.

2026 **8.1 Courts should ensure that all interpreters providing services to persons with limited**
2027 **English proficiency are competent. Competency includes language fluency,**
2028 **interpreting skills, familiarity with technical terms and courtroom culture and**
2029 **knowledge of codes of professional conduct for court interpreters.**

2030 Commentary

2031 In the legal setting, competent interpreting includes mastery of legal terms and concepts,
2032 understanding the use of legal arguments, protocols, procedures, laws, and traditions, and
2033 compliance with legal and ethical standards.”²⁶⁹

2034 Best Practices

2035 Research on the tasks performed while interpreting has identified the following areas of
2036 knowledge, ability, and skill: ²⁷⁰

²⁶⁶ *Id.*

²⁶⁷ “Assessment” which is a process, rather than a designation, refers to actual testing of qualifications, such as language competency.

²⁶⁸ 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.

²⁶⁹ Bruno G. Romero, *Here Are Your Right Hands: Exploring Interpreter Qualifications*, 34 U. Dayton L. Rev. 15, 18 (2008-09).

ABA Standards for Language Access in Courts

- 2037 • Grammar—Knowledge of standard and formal grammar of the source and target
2038 languages;²⁷¹
- 2039 • Fluency —Ability to speak the source and target languages easily and effectively with
2040 correct pronunciation, inflection, and in a variety of registers;²⁷²
- 2041 • Comprehensive Vocabulary—Knowledge of the source and target language vocabulary,
2042 including colloquial slang, idiosyncratic slang and regionalisms, used in formal,
2043 consultative, and casual modes of communication in justice system contexts;
- 2044 • Specialized Vocabulary—Knowledge of source and target language specialized
2045 vocabulary including: civil and criminal justice system terminology; case-related
2046 specialized vocabulary; physical and mental symptoms of illness; tests and laboratory
2047 analyses related to alcohol and drugs; ballistics and firearms; and expressions related to
2048 crime and drug use.
- 2049 • Legal Culture—Knowledge of standards and laws pertaining to court interpreting and
2050 basic court procedure;
- 2051 • General Culture—Ability to understand and employ the dialectal and cultural nuances of
2052 the source and target language;
- 2053 • Ethics—Knowledge of and commitment to the interpreter codes of professional conduct
2054 and the protocol of interpreting;
- 2055 • Interpretation Modes--Ability to interpret in both consecutive and simultaneous modes,
2056 and the knowledge of the appropriate settings to use each mode;²⁷³
- 2057 • Sight Translation—Ability to sight-translate printed, typed, or handwritten
2058 documents;²⁷⁴
- 2059 • Cognitive Skills – Possession of the skills of memory, attention, problem solving, and
2060 flexibility.
- 2061 • Communication Skills – Possession of the skill of providing a timely interpretation in a
2062 clear manner.²⁷⁵

²⁷⁰ 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.

²⁷¹ 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.

²⁷² Register refers to the level and complexity of vocabulary and sentence construction. *NCSC Court Interpretation Model Guides*, ch.3, at 42.

²⁷³ 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.

²⁷⁴ Sight translation requires the interpreter to read a written document in the source language and render it orally into the target language.

²⁷⁵ 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

ABA Standards for Language Access in Courts

2063 According to the National Center for State Courts Consortium for Language Access in the
2064 Courts, “[a]udits of interpreted court proceedings in several states have revealed that untested
2065 and untrained interpreters often deliver inaccurate, incomplete information to both the person
2066 with limited English proficiency and the trier of fact. . . . Every state that has examined
2067 interpreted court proceedings has concluded that interpreter certification is the best method to
2068 protect the constitutional rights of court participants with limited English proficiency.”²⁷⁶

2069 Methods used to assess language services providers’ competency include oral certification
2070 examinations and language proficiency examinations; these have been developed by
2071 interpreter professional organizations, court administrators, and programs such as the
2072 Consortium.²⁷⁷ Oral certification exams for court interpreters should test the skills of
2073 simultaneous interpreting, consecutive interpreting, sight translation, proficiency in legal,
2074 general, and colloquial terminology and ethics. However, oral certification exams are only
2075 available in a limited number of languages and therefore courts should also establish other
2076 methods to assess interpreter qualification in languages for which oral certification exams are
2077 not available.

2078 The following sections provide a detailed description of the assessment process for certified
2079 and non-certified languages. While there is some overlap between assessment and
2080 credentialing, a discussion of the comprehensive system for credentialing language services
2081 providers—which includes candidate pre-screening, ethics training and testing, orientation
2082 programs, and continuing education requirements for both certified and non-certified
2083 interpreters and for a variety of settings —is covered in *Standard 8.4*.

2084 Certification of Court Interpreters

2085 Certification of interpreters within the court setting occurs in both federal and state courts.
2086 Congress passed The Court Interpreters Act of 1978,²⁷⁸ and created the Federal Court

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

²⁷⁶ NCSC, *Consortium for State Court Interpreter Certification*, (1995, last amended May 2008),

http://www.ncsonline.org/d_research/CourtInterp/Agreements2008FinalMay.pdf.

²⁷⁷ 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.

²⁷⁸ 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.

ABA Standards for Language Access in Courts

2087 Interpreter Certification Exam (FCICE) Program,²⁷⁹ which developed certification exams in
2088 Spanish, Navajo, and Haitian-Creole.²⁸⁰ Federal court certification represents one of the highest
2089 levels of professional credentialing.²⁸¹ Since 1980, the mission of the FCICE has been to define
2090 criteria for certifying interpreters qualified to interpret in federal courts and to assist the
2091 Director of the Administrative Office of the U.S. Courts in maintaining a list of federally certified
2092 court interpreters.

2093 Recognizing that language needs exist outside of the three certified languages, the
2094 Administrative Office of the United States Courts created additional categories for qualifying
2095 interpreters. The categories of “professionally qualified interpreter” and “language skilled
2096 interpreter”²⁸² are used for languages other than Spanish, Navajo, and Haitian-Creole.
2097 “Professionally qualified interpreters” are required to either have passed one of two
2098 comparable examinations provided by the State Department and the United Nations or be a
2099 current member in good standing of one of two professional organizations which require
2100 sponsorship and relevant experience as pre-requisites to membership.²⁸³ “Language skilled
2101 interpreters” are required to demonstrate to the satisfaction of the court the ability to interpret
2102 court proceedings from English to a designated language and from that language into English.²⁸⁴

2103 State court certification efforts began when four states²⁸⁵ collaborated to develop oral testing
2104 examinations²⁸⁶ and created the Consortium for State Court Interpreter Certification (CSCIC).²⁸⁷

²⁷⁹ The FCICE, which has a minimum duration of two years, includes both written and oral examinations.

²⁸⁰ <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.

²⁸¹ 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.

²⁸² <http://www.uscourts.gov/FederalCourts/UnderstandingtheFederalCourts/DistrictCourts/CourtInterpreters/InterpreterCategories.aspx>.

²⁸³ <http://www.uscourts.gov/FederalCourts/UnderstandingtheFederalCourts/DistrictCourts/CourtInterpreters/InterpreterCategories.aspx>; <http://www.taals.net/bylaws.php>.

²⁸⁴ <http://www.uscourts.gov/FederalCourts/UnderstandingtheFederalCourts/DistrictCourts/CourtInterpreters/InterpreterCategories.aspx>.

²⁸⁵ Minnesota, New Jersey, Oregon, and Washington were the four original states involved in this effort.

²⁸⁶ 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

ABA Standards for Language Access in Courts

2105 The Consortium’s goal was to “facilitate court interpretation test development and
2106 administration standards, to provide testing materials, to develop educational programs and
2107 standards, and to facilitate communications among the member states and entities, in order
2108 that individual member states and entities may have the necessary tools and guidance to
2109 implement certification programs.”²⁸⁸ As of 2011, CSCIC, now called the Consortium for
2110 Language Access in the Courts (Consortium), has 43 member states and offers 18 language-
2111 specific oral examinations, written examinations, resources, and networking opportunities.²⁸⁹

2112 The Consortium’s oral certification examinations are “designed to determine whether
2113 candidates possess minimal levels of language knowledge and interpreting skills required to
2114 perform competently during court proceedings, to measure a candidate’s ability to faithfully
2115 and accurately interpret the range of English ordinarily used in courtrooms into another
2116 language and to understand and interpret into English what is said by a native speaker of
2117 another language, and are substantially similar in structure and content to tests that have been
2118 developed by the federal courts.”²⁹⁰ The examinations are “designed and developed by
2119 consultants who have extensive knowledge of courts and court proceedings, the job
2120 requirements for court interpreters, and /or advanced training or high levels of fluency in
2121 English and the non-English language.”²⁹¹ These exams are carefully validated to ensure that
2122 the testing program meets the “basic needs of all state courts in the area of interpreting

minimum competence in interpreting and/or transliterating. Certification as a *specialist* signifies skill in a particular area or specialty of interpretation and holders of specialty certificates have demonstrated specialized knowledge in a specific area of interpreting, including legal and the performing arts. Candidates for specialized certifications need to hold a generalist certification and need to have a combination of advanced degrees and legal mentoring and legal interpreter training. For more information on ASL interpreter certification, see http://www.rid.org/education/edu_certification/index/cfm/, and for more information on ASL continuing education requirements, see, <http://www.rid.org/education/testing/> (both websites last visited Apr. 19, 2011).

²⁸⁷ 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.

²⁸⁸ Consortium for Language Access in the Courts, *Agreements for Consortium Organization and Operation*, (2010), http://www.ncsonline.org/D_Research/CourtInterp/Agreements2010FINAL.pdf.

²⁸⁹ 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_Consor tMemberStatesPub2010.ashx

²⁹⁰ 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).

²⁹¹ 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)”).

ABA Standards for Language Access in Courts

2123 services.”²⁹² Using these standards, the Consortium provides testing in Arabic, Modern
2124 Standard Arabic, Egyptian, Cantonese, Chuukese, Bosnian/Croatian/Serbian, French, Haitian-
2125 Creole, Hmong, Ilocano, Korean, Laotian, Mandarin, Marshallese, Polish, Portuguese, Russian
2126 and Somali.

2127 Given the documented need for a rigorous examination system like that established by the
2128 Consortium, court language access programs should incorporate the following requirements:
2129 test components and scoring system that have utility for diagnostic evaluation of candidate
2130 strengths and weaknesses as well as for summative evaluation; a program that informs
2131 candidates and users of interpreter services of the names and credentials of all individuals
2132 involved in the testing development and administration process; test source materials that are
2133 derived exclusively from specimens of court and related justice system language; and test
2134 scoring that utilizes a procedure that is readily perceived to be objective and unaffected by
2135 personal bias.²⁹³

2136 Certification should help assess and identify an interpreter’s level of skill, not simply whether
2137 the candidate has passed or failed a relevant examination. This allows courts to identify
2138 interpreters who exceed, meet, or fall below the minimum passing score for certification, and
2139 utilize them accordingly. For example, a state may establish categories based on score ranges
2140 above 80 percent to identify master-level interpreters, a score between 70 and 80 percent to
2141 identify professional interpreters, and a score of 60 to 70 percent to identify qualified
2142 interpreters.²⁹⁴ New Jersey employs a tiered certification system that gives interpreters who are
2143 not quite ready to pass the certification exam a chance to continue to improve their skills by
2144 working in other court settings.²⁹⁵ This ‘tiered’²⁹⁶ approach to certification allows courts to
2145 identify the skill level of interpreters along a wider range of abilities, prioritize the highest
2146 skilled interpreters for in-court interpreting, and identify areas for improvement and training
2147 opportunities for those testing in the lower ranges.²⁹⁷ Providing this information to judges helps
2148 inform their selection of the highest qualified interpreter available.

²⁹² 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.

²⁹³ *Id.*

²⁹⁴ This is one example of an approach to a tiered certification process for certified languages.

²⁹⁵ New Jersey Courts, Language Services, *Frequently Asked Questions*,
<http://www.judiciary.state.nj.us/interpreters/faq.htm#approved>.

²⁹⁶ 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.

²⁹⁷ 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

2149 Assessing Interpreter Qualifications in Non-Certified Languages

2150 Due to the availability of Consortium certification exams in only 18 languages²⁹⁸ and the limited
2151 number of state-developed exams beyond that number, most state courts have to determine
2152 for themselves the qualifications of interpreters in many other languages for which no formal
2153 oral certification exams are available.²⁹⁹ Many states use an alternate assessment system for
2154 non-certified languages which includes a written exam, language fluency testing, and
2155 sometimes, testing of interpreter skills. Written exams are useful because they can easily and
2156 efficiently determine an interpreter's level of knowledge of codes of professional conduct and
2157 basic information about interpreting. However, language fluency and interpreter skills require
2158 oral assessments. The written exam is used to test the applicant's understanding of legal
2159 terminology, the role of the interpreter, interpreter ethics, and basic interpreting functions and
2160 skills; the oral language fluency test is used to assess the applicant's level of proficiency in the
2161 foreign language and in English, and most tests include some assessment of the applicant's
2162 ability to perform simultaneous and consecutive interpreting. States should combine these
2163 assessments with other credentialing components (ethics, orientation, and training etc.) to
2164 ensure that interpreters are qualified for the demands of court interpretation.

2165 Many states are unable to provide complete certification exams in languages not available from
2166 the Consortium, and use a roster or registry process to test language fluency but not
2167 interpreting skills. These states test the interpreter's language ability and understanding of
2168 basic legal terminology and interpreter role, and create a mechanism to impose court
2169 orientation, ongoing education, and ethics requirements. The state of Washington represents
2170 one example of a state court's approach to testing interpreters in non-certified languages. It
2171 offers testing in only 10 of the 18 languages available from the Consortium,³⁰⁰ but tests an
2172 additional 50 languages and classifies these under the category "registered."³⁰¹ To become a

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.

²⁹⁸ As of 2011, the Consortium offers oral examinations in 18 languages. For further information about the current availability of testing and the languages for which certification is available, see http://www.ncsconline.org/D_Research/CourtInterp/ExaminationsAvailableForMembersOfTheConsortiumForStateCourtInterpreterCertification_000.html (last visited Apr. 19, 2011). Expansion beyond these languages is slow due to the high cost of test development.

²⁹⁹ 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.

³⁰⁰ 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.

³⁰¹ 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,

ABA Standards for Language Access in Courts

2173 registered court interpreter in Washington, an individual is required to pass both the written
2174 Consortium exam, which includes English language vocabulary and court related terms as well
2175 as ethics,³⁰² and a separate oral proficiency telephonic interview. Candidates are required to
2176 pass the written exam with a score of 80 percent or better and are then eligible to take a
2177 separate oral exam measuring their foreign language speaking and comprehension skills. This
2178 examination is a telephonic interview with a qualified evaluator of the foreign language and
2179 measures how well the interpreter speaks and comprehends the language for which he/she is
2180 attempting to become registered. However, “registered” language interpreters have not had
2181 their interpreting skills (from English to the foreign language, and vice versa) assessed.

2182 If a state does not have both kinds of “certification” and “registry” categories, or if a court is
2183 working with an interpreter in languages not available in either category, a judge should engage
2184 in additional questions to determine interpreter language competency (including legal terms)
2185 and interpreting skill. These questions are discussed in greater detail in Section 8.4 as part of
2186 the voir dire process used to qualify all interpreters in a legal proceeding. When inquiring about
2187 language ability, judges may encounter interpreters who have been tested in areas outside of
2188 the legal setting. Certification exams have been developed in the areas of healthcare and social
2189 and health services and include testing in languages for which court certification is not
2190 available. However, courts should be aware that these assessments do not test legal
2191 terminology or the skills needed for court interpreting.³⁰³

2192 The history of interpreter testing demonstrates that even with a strong national effort to
2193 increase the number of languages in which certification is available, many states and courts still
2194 need to develop procedures for the large number of non-certified languages. Understanding
2195 that certifying interpreters is complex and requires thoughtful review can help courts and
2196 judges make a better individualized assessment of competence when necessary. Courts should

Gujarati, Haitian Creole, Hausa, Hebrew, Hindi, Hmong, Hungarian, Igbo, Indonesian, Japanese, Kurdish-Kurmanji, Malay, Nepali, Norwegian, Polish, Portuguese, Punjabi, Romanian, Samoan, Sindhi, Sinhalese, Slovak, Swahili, Tagalog (Filipino), Tajik, Tamil, Tausug, Telugu, Thai, Turkish, Turkmen, Ukrainian, Urdu, Wu, Yoruba. Washington State Courts, Registered Interpreters, http://www.courts.wa.gov/programs_orgs/pos_interpret/index.cfm?fa=pos_interpret.display&fileName=registeredInterpreters.

³⁰² Washington State Courts, Washington Court Interpreter Program 2011 Certification Process, http://www.courts.wa.gov/programs_orgs/pos_interpret/content/pdf/CertifiedProcess2011.pdf.

³⁰³ 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.

ABA Standards for Language Access in Courts

2197 implement processes to test and train interpreters in languages for which certification exams
2198 are not available to ensure that these interpreters have the same level of oversight as certified
2199 interpreters. This process should include the pre-screening, ethics training, orientation
2200 programs, and continuing education requirements described in *Standard 8.4*.

2201 Assessing Specialized Skills - Relay Interpreting

2202 Relay interpreting is an example of a specialized type of interpreting which requires distinct
2203 skills. It requires that the communication first be interpreted into a third language, before it can
2204 be interpreted into English. “Relay interpretation involves using more than one interpreter to
2205 act as a conduit for spoken or sign languages beyond the understanding of a primary
2206 interpreter.”³⁰⁴ In relay interpreting “an interpreter (called the ‘intermediary’ interpreter)
2207 interprets from one foreign language (e.g., Mixtec) to a second foreign language (e.g., Spanish),
2208 then a qualified interpreter (referred to as the ‘primary’ interpreter) interprets from the second
2209 foreign language (in this case Spanish) into English.”³⁰⁵ Increasingly, relay interpreting is used
2210 for languages of lesser diffusion, where there are no interpreters in the jurisdiction who speak
2211 both English and the other language. Relay interpreting is commonly used for deaf individuals
2212 who may not know American Sign Language or any formal system of signed communication.³⁰⁶
2213 In such cases a Certified Deaf Interpreter relays the information from the deaf individual to the
2214 ASL interpreter, who then interprets the ASL into English.³⁰⁷ Because relay interpreters are not
2215 fluent in English, their ability to take and pass a certification exam is limited. The court should
2216 determine their qualifications pursuant to the process for non-certified interpreters and require
2217 them to be familiar with the code of professional conduct.

2218 Assessing Interpreter Qualifications for Services Outside of Legal Proceedings

2219 When assessing interpreter qualifications to interpret in settings outside of legal proceedings,
2220 courts should still ensure the interpreter possesses the necessary qualifications, and should
2221 prioritize how resources are used to maximize efficiency. Credentialing interpreters specifically
2222 for settings outside the courtroom is a newly emerging area and resources need to be

³⁰⁴ 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>.

³⁰⁵ *Id.*

³⁰⁶ 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.

³⁰⁷ 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

ABA Standards for Language Access in Courts

2223 developed at the national level. When assessing competency of interpreters in these settings,
2224 courts may rely on a tiered system to evaluate the appropriate match between interpreter and
2225 setting or may develop alternate systems.

2226 Credentialing interpreters for settings outside the courtroom is distinct from credentialing
2227 interpreters for legal proceedings in the following two ways: first, the interpreter's fluency in
2228 complex legal terminology may not need to be as high; and second, the interpreter's skills
2229 (particularly the ability to perform simultaneous interpreting) may not need to be as well
2230 developed. Courts using different credentialing for non-courtroom interpreting should still
2231 ensure that the interpreter's skill is properly matched to the specific communication rather
2232 than assuming that any interpreters at a lower skill level will suffice. For example, an
2233 interpreter may need to know less legal terminology to interpret a parenting class than to
2234 interpret in civil and criminal matters in court, but may need to be able to provide simultaneous
2235 interpreting. These services are sometimes provided in much more informal settings where
2236 consecutive interpreting is not appropriate. Nevertheless, courts should still consider the
2237 additional screening, ethics training and testing, orientation programs, continuing education
2238 and voir dire (or individual assessment) components used as part of interpreter credentialing to
2239 ensure competent services are provided.

2240 Including Interpreter Competency in Contracts with Language Services Providers

2241 When courts contract out for interpreter services they should ensure that expectations
2242 regarding competency are clearly identified in the contract and that monitoring procedures are
2243 established. Every interpreter who comes into the court to interpret, whether appearing in-
2244 person, by video, or by telephone, or who has been hired as staff, independent contractor, or
2245 from a third-party agency needs to be competent for the setting in which he or she will
2246 interpret. In contracting with a third-party provider for interpreter services, these same
2247 requirements apply.

2248 **8.2 Courts should ensure that bilingual staff used to provide information directly to**
2249 **persons with limited English proficiency are competent in the language(s) in which**
2250 **they communicate.**

2251 Commentary

2252 Where bilingual staff are providing language services directly to LEP persons, courts should
2253 determine the level of fluency needed for the position, and assess the language fluency of the
2254 bilingual staff member in both English and the other language(s) in which they are

ABA Standards for Language Access in Courts

2255 communicating.³⁰⁸ The level of language fluency needed by bilingual staff to communicate
2256 directly with LEP persons depends upon the setting. In some court services and programs, the
2257 level of complex legal terminology or subject matter required may be nearly equal to that used
2258 in the courtroom. In such instances, courts should assign staff to these positions who are able
2259 to speak the language with sufficient accuracy and vocabulary to participate effectively in most
2260 formal and informal conversations on practical, social and professional topics. For example, a
2261 bilingual staff member conducting an interview, assisting with filling out and reviewing forms,
2262 or teaching a class, would need to have a near native-speaker level of fluency in order to ensure
2263 that communication is effective. In contrast, for clerical situations in which the bilingual staff
2264 member is providing routine and basic information, a lower level of language fluency may be
2265 adequate.

2266 In all situations where courts are relying on bilingual staff to provide services, the staff should
2267 possess a minimum level of language fluency to express fully the relevant concepts and fully
2268 understand the communications of the LEP persons involved.

2269 Best Practices

2270 An instructive resource to assist in determining the level of language proficiency necessary for
2271 different interactions is provided by the Inter-Agency Language Roundtable (ILR), which has
2272 developed a comprehensive tool for categorizing the language competency of a non-native
2273 speaker based on standardized rating factors including the typical stages in the development of
2274 language competency.³⁰⁹ The ILR identifies categories of proficiency for speaking, reading,
2275 writing, listening, interpreting, and translating.

2276 Courts should verify a bilingual staff person's language fluency by assessing skill level through
2277 internal systems or external contracts. Language proficiency falls along a continuum and is a
2278 fluid concept that can "develop or diminish over time depending on the efforts or
2279 circumstances of the individual."³¹⁰ Courts should use a valid assessment tool rather than
2280 relying on staff self-evaluation. When developing internal language proficiency tools, courts
2281 should ensure that the tools are reliable, have been specifically designed to test the relevant
2282 skill needed, and are based on the setting in which services will be provided. The assessment

³⁰⁸ 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*.

³⁰⁹ 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).

³¹⁰ Romero, 34 U. Dayton L. Rev. at 18.

2283 tool should be repeatable, fair, and not subject to bias. If bilingual staff are used to assess other
2284 staff, by conducting interviews or testing, they should first be independently assessed to ensure
2285 their competency to evaluate others.

2286 When a court does not develop internal systems to assess bilingual staff, it can contract with
2287 external language proficiency testing providers to assess the language proficiency of bilingual
2288 staff. Several national companies offer tests which evaluate the language proficiency of the
2289 candidate through a combination of oral and written examinations and provide a rating which
2290 correlates to a hierarchy of settings in which the individual is competent to converse.³¹¹ Tests
2291 are available in as many as 90 languages³¹² and provide a court with independent verification of
2292 the staff member’s language proficiency.

2293 **8.3 Courts should ensure that translators are competent in the languages which they**
2294 **translate.**

2295 Commentary

2296 Because translating is a specialized skill,³¹³ individuals providing translations should be assessed
2297 and credentialed separately from interpreters. Certification of competency in translation is
2298 available in some languages. For others, courts will need to use an assessment process such as
2299 the voir dire for translators discussed in *Section 8.4*, which describes how courts can establish
2300 broader credentialing standards for translators similar to those developed for interpreters and
2301 bilingual staff.

2302 Best Practices

2303 Professional translators are “fluent in their source languages; are effective bridges between the
2304 languages they work in; can render the message of the original text, with appropriate style and
2305 terminology; and are first and foremost writers.”³¹⁴ The skills necessary to be a competent
2306 translator in the court setting include:

³¹¹ 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].

³¹² <http://www.altalang.com/language-testing/languages.aspx> (last visited Apr. 19, 2011).

³¹³ 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.

³¹⁴ ATA, *Translations: Getting it Right*, at 22, http://www.atanet.org/docs/Getting_it_right.pdf (emphasis added).

ABA Standards for Language Access in Courts

- 2307 • Proficiency in reading English and the foreign language;
- 2308 • Mastery of the foreign language equivalent to that of an educated native speaker;³¹⁵
- 2309 • Knowledge of common grammatical and syntactical conventions, in addition to
- 2310 dialectal aspects of English and the foreign language;
- 2311 • Knowledge of formal writing and legal writing conventions in English and the foreign
- 2312 language;
- 2313 • Knowledge of legal terminology in English and the foreign language;
- 2314 • Professional experience translating complex legal documents; and
- 2315 • Ability to communicate effectively with court personnel.³¹⁶

2316 Translator Assessment and Certification

2317 Most state courts accept professional translator organization certifications to establish
2318 competency to translate complex court materials and have not created internal testing systems
2319 for translators. One well-respected national organization is the American Translators
2320 Association (ATA), which certifies individuals by language pairs in the following languages: into
2321 English from Arabic, Croatian, Danish, Dutch, French, German, Japanese, Portuguese, Russian,
2322 and Spanish; and from English into Chinese, Croatian, Dutch, Finnish, French, German,
2323 Hungarian, Italian, Japanese, Polish, Russian, Spanish, Swedish, and Ukrainian.³¹⁷ Candidates for
2324 ATA certification are required to establish qualifying educational degrees or minimum
2325 experience before taking the exams.³¹⁸ The ATA certification program tests the professional
2326 translation skills identified above to determine whether a candidate is able to produce a
2327 translation that matches the source document and meets the needs of the requestor, as
2328 identified in the request for translation.³¹⁹ By way of comparison, the level of competency that
2329 the ATA certification requires—a passing grade in the ATA examination—is roughly equivalent
2330 to a minimum of Level 3, on a scale of 1 – 5, on the Interagency Language Roundtable scale.³²⁰

³¹⁵ ATA, *Code of Professional Conduct and Business Practice*,

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

³¹⁶ 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>.

³¹⁷ http://www.atanet.org/certification/aboutcert_overview.php (last visited Apr. 19, 2011).

³¹⁸ http://www.atanet.org/certification/eligibility_requirementsform.php (last visited Apr. 19, 2011).

³¹⁹ http://www.atanet.org/certification/aboutexams_overview.php (last visited Apr. 19, 2011).

³²⁰ <http://www.govtilr.org/Skills/AdoptedILRTranslationGuidelines.htm> (last visited Apr. 19, 2011). “Professional Performance Level 3 - Can translate texts that contain not only facts but also abstract language, showing an emerging ability to capture their intended implications and many nuances. Such texts usually contain situations and events which are subject to value judgments of a personal or institutional kind, as in some newspaper editorials, propaganda tracts, and evaluations of projects. Linguistic knowledge of both the terminology and the means of expression specific to a subject field is strong enough to allow the translator to operate successfully within that field. Word choice and expression generally adhere to target language norms and rarely obscure meaning. The resulting product is a draft translation, subject to quality control.”

2331 Assessing Translator Qualifications in Non-Certified Languages

2332 Given the limited number of languages for which ATA certification exists and the lack of state
2333 court programs to independently certify translators, courts need to develop and follow internal
2334 protocols to identify qualified translators who can provide the necessary translations. Because
2335 translations do not require the translator to be physically present, courts should identify and
2336 share resources both nationally and internationally. Once a qualified translator is located, using
2337 a system such as that described in *Standard 7* will assist courts in ensuring that translations are
2338 accurate. The Language Access Services Office (LAS Office), described in *Standard 10*, should
2339 establish such a protocol and use assessment and credentialing to ensure that translators and
2340 bilingual staff used to translate court documents are qualified.³²¹

2341 **8.4 Courts should establish or participate in a comprehensive system for credentialing**
2342 **interpreters, bilingual staff, and translators that includes pre-screening, ethics**
2343 **training, an orientation program, continuing education, and a system to voir dire**
2344 **language services providers' qualifications in all settings for which they are used.**

2345 Commentary

2346 Assessment tools are helpful in determining a language services provider's fluency; however,
2347 using such tools alone will not ensure that interpreters, bilingual staff, and translators are
2348 competent. A comprehensive credentialing system should include both evaluation and training
2349 in areas not typically included in the language skills assessment processes. Establishing a
2350 thorough and comprehensive credentialing system allows courts to be confident that providers
2351 will possess the skills and knowledge needed, that their competency continues at a consistent
2352 level, and can be monitored over time. The elements of a comprehensive credentialing system
2353 are discussed below.

2354 While pre-screening, ethics, orientation, continuing education and training requirements
2355 appropriate for translators need not be as detailed as those used for interpreters and bilingual
2356 staff, some should be used since translation of court documents requires specialized language
2357 and recognition of unique ethical issues.³²²

³²¹ 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.

³²² Translation raises ethical issues in terms of privacy, record keeping, and representation of qualifications.

2358 Best Practices

2359 Components of a Comprehensive Credentialing System

2360 Courts, through a central Language Access Services Office (LAS Office),³²³ should use a
2361 comprehensive credentialing system to supplement the language assessments provided by the
2362 Consortium or other testing entities, as well as to substitute for a complete assessment for
2363 languages where no testing is available. The order in which these components are implemented
2364 may vary based on priorities set by the state. For example, a court may determine that the pre-
2365 screening measures are best done early in the process to avoid unnecessary testing and training
2366 of individuals who might be disqualified from interpreter candidacy at a later stage. However,
2367 the comprehensive nature of the program requires the inclusion of each element to be
2368 effective.

2369 i. Pre-Screening

2370 Pre-screening measures include criminal background checks and other prerequisites that a
2371 court may impose upon individuals seeking to work as interpreters, bilingual staff, or
2372 translators. Interpreters, bilingual staff, and translators should be pre-screened with criminal
2373 background checks to uphold the public trust and ensure protection and security for courts.
2374 Courts use background checks to help evaluate the character and fitness of an individual to act
2375 as a court interpreter, who is an officer of the court. A candidate for certification or other
2376 credentialing whose background check identifies conduct involving dishonesty, fraud, deceit, or
2377 misrepresentation should be disqualified from becoming certified to work in the court. As
2378 identified by Minnesota Court policy, “(a) court interpreter should be one whose record of
2379 conduct justifies the trust of the courts, witnesses, jurors, attorneys, parties, and others with
2380 respect to the official duties owed to them. A record manifesting significant deficiency in the
2381 honesty, trustworthiness, diligence, or reliability of an applicant may constitute a basis for
2382 denial of certification.”³²⁴

2383 The LAS Office, as described in *Standard 10*, should develop mechanisms to require a
2384 background check and review the fitness of each candidate’s background. These mechanisms
2385 should include adequate protections for the interpreter candidate. As described above in
2386 *Standard 8.1*, courts should also use pre-screening written exams to test all applicants on basic
2387 interpreting concepts, including the interpreter code of professional responsibility, interpreting
2388 modes, and vocabulary. This testing can be administered in English to all applicants prior to the
2389 applicant moving to the language and interpreting assessment phase. Additional pre-screening

³²³ The Language Access Services Office is discussed in full in *Standard 10*.

³²⁴ Minnesota General Rules of Practice, Rule 8.06 (b).

ABA Standards for Language Access in Courts

2390 measures include language proficiency testing, oral interpreting exams, written translation
2391 exams, or completion of training programs or degrees that are applicable to interpreters,
2392 bilingual staff, and translators working within the court system.

2393 ii. Ethics Testing and Training

2394 Ethical standards, as defined in the interpreter code of professional conduct, are an essential
2395 aspect of competency; therefore, courts should utilize both testing and training in this area.
2396 Testing an interpreter's knowledge of the components of the court's interpreter code of
2397 professional conduct is common practice and should be done as a pre-screening tool. Courts
2398 should also test bilingual staff and translators' knowledge of ethical requirements that govern
2399 their roles.

2400 Courts should require training, in addition to the ethics assessment, as part of the credentialing
2401 process, including opportunities to practice the application of ethical principles that help
2402 educate language services providers beyond a simple introduction to the rules themselves.³²⁵
2403 This training recognizes that "as officers of the court, interpreters help assure that [LEP]
2404 persons may enjoy equal access to justice and that legal proceedings and court support services
2405 function efficiently and effectively."³²⁶ Accordingly, many state court interpreter programs
2406 require court interpreter candidates to participate in ethics training as part of both the
2407 certification and credentialing process.³²⁷ The components of ethics training programs are
2408 discussed in *Standard 9*.

2409 Although courts may not test translator ethics or provide extensive ethics training to
2410 translators, courts should include compliance with the translator's code of professional conduct
2411 as part of a signed agreement for services.³²⁸ The ATA has developed a model code of
2412 professional conduct and business practices for translators that include provisions to ensure
2413 translators are competent in the language pair of the translation work, render accurate and
2414 equivalent translations, engage in fair business practices, and accurately identify relevant skills
2415 and training.³²⁹

³²⁵ Many professional certification programs, like attorney licensing programs, require annual participation in ethics training due to the high standards necessary in legal matters.

³²⁶ NCSC, *Court Interpretation Model Guides*, ch. 9.

³²⁷ 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>

³²⁸ 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).

³²⁹ http://www.atanet.org/membership/code_of_professional_conduct.php (last visited Apr. 19, 2011).

2416 iii. Orientation

2417 Credentialing should also include appropriate court orientation programs for interpreters,
2418 bilingual staff and translators. For interpreters, the orientation program introduces them to the
2419 court, identifies common local legal terms and protocols, describes the role of the interpreter,
2420 teaches basic interpreter skills, and may also cover ethical standards for court interpreters.³³⁰

2421 Because many orientation programs address some of the testing components in interpreter
2422 credentialing, some states require attendance at orientation prior to taking either a
2423 certification or other credentialing examination. The National Center for State Courts promotes
2424 this requirement in its *Court Interpretation: Model Guides for Policy and Practice in the State*
2425 *Courts, Chapter on Training (Model Guides)*.³³¹

2426 The NCSC Model Guides envision an introductory orientation workshop as a “starting point in
2427 the process of increasing the level of professionalism among bilingual individuals who may work
2428 in courts . . . but who have never received formal training in court interpreting. The primary
2429 goal of the introductory workshop is to improve court interpreters’ understanding of the skills
2430 and appropriate conduct required of them, and to offer a basic orientation to courts and the
2431 justice environment.”³³² As envisioned by NCSC, this introductory workshop contains eight
2432 modules, including: an overview of the profession of interpreting; modes of interpreting; court
2433 and justice system environments; court procedures; the interpreter’s role; court terminology;
2434 and an overview of the state court’s certification or assessment process.³³³

2435 Orientation programs also offer valuable training for bilingual staff and translators. Although
2436 bilingual staff may not need such extensive orientation if they are providing direct services and
2437 not interpreting, it is recommended that they still be offered an orientation to increase their
2438 knowledge of the complexities of interpretation and to help them address ethical issues. For
2439 translators, orientation programs are less common, but can be helpful. An orientation program
2440 for translators should orient them to the type of translation tasks the court routinely requires,
2441 identify common local legal terms and protocols, describe the role of the translator and the
2442 translator protocol, review basic translation and transcription skills, provide and instruct on the
2443 proper use of available glossaries, and may also include ethical standards for court translators.

³³⁰ Depending on the court’s program, this orientation may occur prior to an applicant taking an exam.

³³¹ NCSC, *Court Interpretation: Model Guides for Policy and Practice in the State Courts*, ch. 4, Training for Court Interpreters.

³³² *Id.* at 55.

³³³ *Id.* at 56-59.

ABA Standards for Language Access in Courts

2444 iv. Continuing Education

2445 A comprehensive court credentialing system should always include a requirement for all court
2446 interpreters, bilingual staff, and translators to participate in ongoing professional development
2447 and continuing education. Many state court interpreter programs require interpreters to
2448 complete a minimum number of continuing education training credits in a given cycle in order
2449 to maintain their certifications. Continuing education requirements are common to many
2450 professions, and should be applied to all language services providers, regardless of whether or
2451 not they are certified. Continuing education is particularly important in ethics, and annual
2452 training in this area is required by many courts. For example, in California all certified and
2453 registered interpreters are required to complete 30 hours of continuing education within a two
2454 year period.³³⁴

2455 Given their interest in maintaining good language skills and high ethical standards in bilingual
2456 staff, courts should offer these same opportunities and requirements to all language services
2457 providers.³³⁵ Interpreter organizations increasingly provide ongoing training opportunities, and
2458 courts should work collaboratively with these and other community partners to increase
2459 opportunities for continuing education. Courts should also require continuing education for
2460 translators. For ATA certified translators, continuing education is a part of the credentialing
2461 process and is required to maintain their certification.³³⁶ Certified members are required to
2462 obtain 20 hours of credits in a three year cycle.³³⁷ Courts should include provisions regarding
2463 ongoing training, including the requirement that the translator keep apprised of technology and
2464 current practices to aid in the translation process, in all translator contracts.

2465 Voir Dire to Establish Qualifications

2466 While pre-screening, ethics training, and continuing education can be done on a regular basis
2467 and in a group setting, voir dire is the process by which courts determine that an individual
2468 language services provider is competent for a particular task. This fundamental aspect of
2469 ensuring competent services involves a process to establish the language services provider's

³³⁴ <http://www.courtinfo.ca.gov/programs/courtinterpreters/becoming-faq.htm#diff>.

³³⁵ 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.

³³⁵ http://www.rid.org/education/continuing_education/index.cfm/AID/98 (last visited Apr. 19, 2011).

³³⁶ http://www.atanet.org/certification/aboutcont_overview.php (last visited Apr. 19, 2011).

³³⁷ http://www.atanet.org/certification/aboutcont_overview.php (last visited Apr. 19, 2011).

ABA Standards for Language Access in Courts

2470 qualifications. This process should be developed to fit the setting: on the record, inside the
2471 courtroom for a specific legal proceeding; by court personnel in court services or programs; and
2472 by court-mandated or offered program staff, regardless of where services occur. All language
2473 services providers should be asked about their credentials and ability to communicate with a
2474 specific LEP person. The process can be initiated by the judge, court personnel, or counsel.

2475 These questions are designed to help determine that there are no ethical reasons, such as being
2476 related to the LEP person, why the interpreter should not be used in a particular matter, and to
2477 confirm that the interpreter and the LEP person have been able to establish communication
2478 and understand one another, including any use of dialect by the LEP person. In legal
2479 proceedings, the judge should begin the voir dire questioning described below with a brief
2480 overview of the subject matter of the hearing to ascertain if there is a possibility that issues
2481 interpreted in the hearing will inhibit the interpreter's ability to faithfully and accurately render
2482 the message.³³⁸ An interpreter's life experiences may impact his or her ability to remain neutral
2483 and can lead to vicarious trauma and an inability to accurately interpret; appointment of an
2484 interpreter to serve in a matter that strikes an emotional nerve based on prior trauma or
2485 experiences can be avoided through use of these preliminary questions.

2486 In instances where the interpreter is court-certified or has had his or her language fluency and
2487 interpreting skills assessed through a verified examination process, the voir dire can be a
2488 relatively brief process. It is used to establish the interpreter's qualifications and appropriate
2489 language match with the LEP person, and to ensure that the interpreter is free from a conflict of
2490 interest to interpret in the matter at hand.³³⁹ After a brief overview of the subject-matter of the
2491 case, the court should ask the following questions of all proposed interpreters:³⁴⁰

³³⁸ 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>.

³³⁹ 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.

³⁴⁰ 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.

ABA Standards for Language Access in Courts

- 2492 • Do you have any particular training or credentials as an interpreter? If so, please
2493 describe.³⁴¹
- 2494 • How many times have you interpreted in court?
- 2495 • How many times have you interpreted for this type of hearing or trial?
- 2496 • Please tell me some of the main points of the code of professional conduct for court
2497 interpreters.
- 2498 • Do you know or work for any of the parties? If yes, please explain.
- 2499 • Do you have any potential conflicts of interest in this matter? If yes, please explain.
- 2500 • Have you had an opportunity to speak with the LEP person and were there any
2501 communication problems?
- 2502 • Are you familiar with the dialectical or idiomatic peculiarities of the LEP party or
2503 witness?
- 2504 • Based on my overview of this case and information that was provided to you by the
2505 court, is the testimony or evidence likely to create an impediment to your ability to
2506 render a faithful and accurate message? If so, please explain.

2507 When the interpreter's interpreting skills and language fluency have not been assessed, the voir
2508 dire should be more detailed. In the longer inquiry, the judge should establish, on the record,
2509 the interpreter's qualifications to interpret in court, ability to communicate, and absence of
2510 conflicts of interest. The more detailed voir dire is generally used in these circumstances: when
2511 a certified interpreter is not available even though the language is one where court certification
2512 exists and a judge needs to determine whether an uncertified interpreter can be used;³⁴² and,
2513 when no certification exists for the language needed and the judge needs to establish the
2514 interpreter's qualifications. The following questions should be asked:³⁴³

- 2515 • What is your native language?
- 2516 • How did you learn the source and target languages?
- 2517 • Have you spent any time in the/a country where the target language is spoken?
- 2518 • Did you formally study either language in school?
- 2519 • Are you able to interpret simultaneously without leaving out or changing anything that
2520 is said?
- 2521 • Are you able to interpret consecutively?
- 2522 • Have you had any legal interpreting training? If yes, please describe.
- 2523 • Have you previously taken any kind of certification exam for interpreting? If so, please
2524 tell me the number of times, the dates, and your scores on each occasion.

³⁴¹ These questions are intended to start a dialog and to elicit a narrative response.

³⁴² 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.

³⁴³ 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*.

ABA Standards for Language Access in Courts

- 2525 • If you have taken interpreter certification exams, please provide me with any
2526 information the testing organization gave you regarding your test results.³⁴⁴

2527 While this voir dire is most commonly used in legal proceedings, courts should develop
2528 procedures to adapt it for other legal settings. For bilingual staff who are used not to interpret,
2529 but to provide direct assistance, it is important that some questions be asked if a separate
2530 process to assess language competency (discussed above) cannot be used. These questions
2531 should inquire into the individual's language fluency, the method used to learn the language,
2532 and the level of understanding of the relevant terminology in both English and the second
2533 language.

2534 Courts should also inquire into the qualifications of translators with whom they will work. The
2535 inquiry differs because translation work involves different skills than interpretation and because
2536 the work can occur remotely, even across national or international boundaries. The following
2537 inquiry should be used to help determine the appropriate fit between translator and the type of
2538 translation work needed by the court:

- 2539 • Do you have any credentials as a translator? If so, please describe.
2540 • If no, ask the following questions to determine language proficiency:
- 2541 ○ What is your native language?
 - 2542 ○ How did you learn the source and target languages?
 - 2543 ○ Did you formally study either language in school?
 - 2544 ○ Have you spent any time in the/a country where the target language is spoken?
- 2545 • Have you had any formal training as a translator?
2546 • Tell me about your experience in conducting court translations, including the number of
2547 years of experience and the types of court document translated.
2548 • In what other fields have you provided translations?
2549 • Please tell me some of the main points of the code of professional responsibility for
2550 translators based on the ATA model code.
2551 • Do you feel confident that you can match the language in this particular type of
2552 document?³⁴⁵

2553 For situations where a translator is providing services in connection with a legal proceeding, the
2554 voir dire questions should be used to start a dialog between the court and the language
2555 services provider to allow the court to make a determination, on the record, regarding the
2556 provider's qualifications and ability to render services in the legal proceeding. Outside the

³⁴⁴ NCSC *Court Interpretation Model Guides*, ch. 6: Judges Guide to Standards for Interpreted Proceedings, Figure 6.2.

³⁴⁵ *Id.*

2557 courtroom, the voir dire should still be used and the translator’s qualifications should be
2558 documented in an appropriate manner.

2559 **STANDARD 9 TRAINING**

2560 **9. The court system and individual courts should provide all judges, court personnel, and**
2561 **court-appointed professionals with training on the following: legal requirements for**
2562 **language access; court policies and rules; language services provider qualifications; ethics;**
2563 **effective techniques for working with language services providers; appropriate use of**
2564 **translated materials; and cultural competency.**

2565 Commentary

2566 Mandatory training of judges, court personnel, and court-appointed professionals on the
2567 court’s language access policies and court rules, as well as on each of the components
2568 identified below, is necessary to ensure meaningful access to the justice system for LEP
2569 persons. Providing interpreters and translated materials is complex, often requires the use of
2570 technology, and depends upon consistent implementation of the court’s policies to be
2571 effective. Training is critical since it is really the only way to determine “whether staff knows
2572 and understands the LEP plan and how to implement it.”³⁴⁶

2573 Best Practices

2574 The following sections describe who should be trained, what the training should cover, and how
2575 frequently it should occur. The *DOJ LEP Guidance* emphasizes that training needs to be
2576 provided broadly to many different groups and points out that “[s]taff should know their
2577 obligations to provide meaningful access to information and services for LEP persons” and “it is
2578 important to ensure that all employees in public contact positions are properly trained.”³⁴⁷ The
2579 Consortium for Language Access in the Courts’ “*Ten Key Components to a Successful Language*
2580 *Access Program in the Courts*” lists education as a needed activity, listing four areas to be
2581 covered:

2582 Educate judicial partners such as judges, mediators, arbitrators, court staff, attorneys
2583 and others about: (1) the need for and role of language service providers in court
2584 proceedings; (2) the knowledge, skills, and abilities of a competent language service
2585 provider; (3) the policies, procedures, and rules for the appointment and use of

³⁴⁶ *DOJ LEP Guidance*, at 41,465.

³⁴⁷ *Id.*

ABA Standards for Language Access in Courts

2586 credentialed language service providers in the courts; and (4) the techniques for
2587 effectively delivering services to persons facing language barriers in the courts.³⁴⁸

2588 The Department of Justice noted a model training and orientation program for court staff in
2589 Washington in their resource, “*Executive Order 13166 Limited English Proficiency Resource*
2590 *Document: Tips and Tools from the Field.*” The report highlights King County Superior Court,
2591 Office of Interpreter Services, in Seattle, Washington, as providing “orientations to new judges
2592 and commissioners regarding the interpreter program and the appropriate use of interpreters.
2593 ... The office also strives to ensure that experienced interpreters are assigned to cases with
2594 newer judges or commissioners.”³⁴⁹

2595 Individuals Who Should Receive Training

2596 Regarding who should receive training on the court’s language access program, “[t]he more
2597 frequent the contact with LEP persons, the greater the need will be for in-depth training. Staff
2598 with little or no contact with LEP persons may only have to be aware of an LEP plan. However,
2599 management staff, even if they do not regularly interact with LEP persons, should be fully
2600 aware of and understand the plan so they can reinforce its importance and ensure its
2601 implementation by staff.”³⁵⁰ Training on the court’s language access program, court rules,
2602 policies, and procedures is critical for all court personnel that come into contact with the public.
2603 The Department of Justice recommends that courts train “new interpreters, as well as judges,
2604 attorneys and other court personnel.”³⁵¹

2605 In addition to judges and court personnel, courts should provide training to court-appointed or
2606 supervised professionals, even when not directly employed by the court. This includes court-
2607 appointed attorneys and other court-appointed or supervised professionals who need to
2608 communicate with LEP persons as part of their court-related duties. According to the
2609 Department of Justice, “[i]n order for a court to provide meaningful access to LEP persons, it
2610 must ensure language access in all such operations and encounters with professionals.”³⁵²

2611 While the court is not obligated to provide training to justice partners outside of those
2612 individuals whom they appoint or supervise, the court is often the most appropriate provider of

³⁴⁸ NCSC, Consortium for Language Access in State Courts, 10 Key Components to a Successful Language Access Program in the Courts, http://www.ncsconline.org/D_Research/CourtInterp/10KeystoSuccessfulLangAccessProgFINAL.pdf (website last visited, April 25, 2011).

³⁴⁹ 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.

³⁵⁰ DOJ LEP Guidance, at 41,465.

³⁵¹ 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.

³⁵² DOJ, *Letter to Chief Justices and State Court Administrators*, at 3.

ABA Standards for Language Access in Courts

2613 this training due to its expertise, authority, and control over language access services in the
2614 courts. This is also true for trainings to the general public on the availability of language access
2615 services. The *Consortium's Ten Key Components* highlights the need to “[e]ducate persons with
2616 limited English proficiency about the availability, role, and use of language service providers in
2617 the courts.”³⁵³ Some state Administrative Offices of the Courts have taken a leadership role in
2618 providing this training very broadly while others have collaborated with other entities, such as
2619 the private bar, to ensure that training is available.³⁵⁴ Local bar associations also provide this
2620 training, and should collaborate with the court to enlist the court’s expertise in the area.

2621 Components of a Court Language Access Training Program

2622 A comprehensive training curriculum helps ensure that services are provided correctly. The
2623 components should include: legal requirements to provide language access services, court
2624 policies and rules, language services provider qualifications, ethics, working with language
2625 services providers, translation protocols, and cultural competence.

2626 i. Legal Requirements

2627 Fundamentally, training should include a discussion of the legal requirement to provide services
2628 in a non-discriminatory manner. This component should provide basic information about access
2629 to justice imperatives, federal and state laws, legal decisions, and court rules requiring
2630 meaningful access. It should include relevant constitutional provisions, Title VI of the Civil Rights
2631 Act of 1964 (with implementing regulations, guidance, and letters), as well as relevant state
2632 laws and court rules governing the use of interpreters and translated materials. The training
2633 should cover the scope of the language access services required, including not only in the
2634 courtroom, but also for court services with public contact and court-mandated or offered
2635 programs.

2636 ii. Court Rules and Court Policies

2637 Comprehensive training on the relevant court rules and policies is critical to effective
2638 implementation of meaningful access. This aspect of the training should describe the court
2639 rules and policies regarding the provision of language access services, and cover procedures for
2640 implementing those services to LEP persons consistent with the state’s policies and language
2641 access plan. This section of the training should focus on the requirements of the court rules,
2642 and procedures to request services, and mechanisms to ensure enforcement and resolve
2643 complaints of inadequate services.

³⁵³ NCSC, *10 Key Components to a Successful Language Access Program in the Courts*.

³⁵⁴ 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.

ABA Standards for Language Access in Courts

2644 iii. Language Services Provider Qualifications

2645 Training should also include information on the language access provider qualification process,
2646 including the credentialing process for all languages including those where state or national
2647 certification does not exist. A basic understanding of the role of the court interpreter, the skills
2648 necessary to interpret competently, and the certification process, is critical to avoiding the
2649 misunderstanding and confusion that occurs with the use of untrained individuals as
2650 interpreters. For example, without an understanding of the skills required to interpret, a judge
2651 may not understand the court policy against the use of ad hoc or untrained family member
2652 interpreters. Training is also necessary to dispel the myth and misunderstanding that
2653 bilingualism is sufficient qualification to interpret: the trained judge or court personnel
2654 understands that not all bilingual persons have the necessary interpreting skills to work in
2655 courts and that the skills needed to interpret are extensive. This training should also provide
2656 guidance on the steps necessary to appoint a qualified interpreter and should describe the
2657 differences between interpreters and bilingual staff and the appropriate roles for each.

2658 iv. Ethics

2659 One of the most important components of training is the interpreter's code of professional
2660 conduct that governs court interpreting. Judges, court personnel, and court-appointed
2661 professionals should develop a full understanding of these ethical requirements, including their
2662 own responsibilities and those of the interpreter. Discussing the scope of the interpreter code
2663 of conduct helps avoid situations where judges, court personnel, or attorneys ask interpreters
2664 to perform tasks that are outside their role or in other ways place them in ethical dilemmas.
2665 Recognition that ethical areas pose one of the greatest risks for error is one reason that
2666 continuing ethics education is required in many professions; therefore including a component
2667 of regular and detailed ethical training is strongly recommended.

2668 The training should cover the basic components of interpreter codes of professional conduct,
2669 including the following: requirement for accuracy and completeness; accurate representation
2670 of qualifications; duty to remain impartial and unbiased; avoidance of conduct that may give an
2671 appearance of bias; maintenance of professional demeanor; protection of confidentiality;
2672 prohibition of public comment; limitation of the scope of practice to interpreting and
2673 translating; assessment and reporting of impediments to performance; and duty to report
2674 ethical violations.³⁵⁵

2675 v. Effective Techniques for Working with Language Services Providers

³⁵⁵ NCSC, *Court Interpretation: Model Guides for Policy and Practice in the State Courts*, ch. 9, pp. 200-09.

ABA Standards for Language Access in Courts

2676 Training on how to work with language services providers helps ensure that judges and court
2677 personnel understand the role of the interpreter, and methods for effectively and efficiently
2678 interacting with an LEP person through an interpreter. Communicating through an interpreter
2679 isn't intuitive; yet, by learning some simple tools, judges and court personnel can help facilitate
2680 that communication. Knowledge of how to effectively work with interpreters in the courtroom
2681 also helps ensure an accurate record.

2682
2683 Training on this topic should include common tips and conventional practices that help
2684 facilitate communication when using an interpreter. These practices include: avoiding rapid
2685 speech, having one person speak at a time, avoiding speaking over another person, using
2686 proper positioning, employing different interpreter modes and registers, bringing issues of
2687 interpreter competency to the attention of the court, understanding special considerations for
2688 the use of multiple interpreters including relay interpreters,³⁵⁶ and employing technologies
2689 such as telephonic and video remote interpreting. Special attention should be paid to the
2690 processes for recording interpreted proceedings and challenges to interpreter accuracy.

2691 vi. Translation

2692 Training judges, court personnel, and court appointed professionals regarding the court's
2693 translation policies and procedures is critical to their effective implementation. In particular,
2694 training should include information on the certification available, the skills needed, and the
2695 court's translation protocol, including the steps to follow as translations are finalized. Special
2696 attention should be paid to the review of newly developing translation technologies with clear
2697 guidelines provided for the appropriate use of these technologies to avoid inadequate
2698 translations.

2699 vii. Cultural Competence

2700 Cultural competence has been defined as a set of values, behaviors, attitudes and practices that
2701 allows a system, organization, program or individual to work effectively across cultures.³⁵⁷
2702 Training on cultural competence helps all participants in the justice system respect the diverse

³⁵⁶ 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.

³⁵⁷ 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).

ABA Standards for Language Access in Courts

2703 beliefs, language, interpersonal styles and behaviors of people receiving services as well as the
2704 staff providing those services.³⁵⁸ As recognized by the *ABA Standards for the Provision of Civil*
2705 *Legal Aid*, “[a]n essential component of cultural competence is recognizing and resisting the
2706 temptation to stereotype individual members of the cultural group.”³⁵⁹ The *COSCA White Paper*
2707 *on Court Interpretation* adds the component of cultural competence in its recommendation on
2708 training stating that “[s]tate courts should educate and train their judges and court staff on the
2709 importance of using competent court interpreters, on cultural diversity and culturally-based
2710 behavior differences, and on the importance of following court policies regarding usage of
2711 court interpreters.”³⁶⁰

2712 Cultural competence training helps promote communication that is not prejudiced by different
2713 cultural norms and behaviors. Although cultural competence is separate from interpretation,
2714 many state court administrative agencies have made it a mandatory component of training
2715 about language access services for two reasons: first, interpreters are often incorrectly asked to
2716 provide information about cultural norms as part of their interpreting tasks, in direct violation
2717 of their ethical code; second, misconceptions about the requirements of cultural competence
2718 can result in untrained individuals from a particular country being asked to provide an overview
2719 of the culture, resulting in the introduction of misinformation and bias into legal proceedings.
2720 Providing formal cultural competence training can promote better understanding of LEP
2721 communities while reinforcing the appropriate role of the court interpreter in a consistent and
2722 accurate manner.³⁶¹

³⁵⁸ “Cultural and linguistic competence is a set of congruent behaviors, attitudes, and policies that come together in a system, agency, or among professionals that enables effective work in cross-cultural situations. ‘Culture’ refers to integrated patterns of human behavior that include the language, thoughts, communications, actions, customs, beliefs, values, and institutions of racial, ethnic, religious, or social groups. ‘Competence’ implies having the capacity to function effectively as an individual and an organization within the context of the cultural beliefs, behaviors, and needs presented by consumers and their communities,” U.S. Department of Health and Human Services, Office of Minority Health, <http://minorityhealth.hhs.gov/templates/browse.aspx?lvl=2&lvlID=11>.

³⁵⁹ 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.”)

³⁶⁰ 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>.

³⁶¹ 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

ABA Standards for Language Access in Courts

2723 Frequency and Duration of Training

2724 Courts should determine the frequency and duration of training on the basis of how much
2725 contact various staff have with the public. An adequate training program should include
2726 training for newly hired staff and ongoing training for all staff. Including language access
2727 training in new staff orientation educates staff at the earliest point in their interactions with the
2728 public and provides an opportunity for courts to set the expectation that staff will implement
2729 language access policies and procedures. Providing ongoing training to all staff reinforces the
2730 initial training and provides an opportunity to discuss in greater detail the complex issues
2731 involved with providing appropriate language access services, and how to do so in an efficient
2732 manner. Some state interpreter programs provide regular trainings to judges through the
2733 state's judicial college program, a practice which is encouraged.

2734 In addition to implementing annual training measures, courts should establish procedures to
2735 provide training in instances when policies have changed, new programs or services have been
2736 developed, or new technologies have been implemented. This includes trainings needed to
2737 respond when monitoring systems or individual complaints have uncovered deficiencies in the
2738 services provided. Courts may want to incorporate a review of language access training into the
2739 performance review standards for all employees as a way to monitor the effectiveness of the
2740 training program.

2741 The duration of the training is determined in part by the role of the individuals being trained
2742 and by whether the information provided is sufficiently detailed to ensure understanding and
2743 compliance, as required by the person's position. The more contact the person has with the
2744 public, the more intensive the training should be. Some staff, particularly those responsible for
2745 coordinating, scheduling or monitoring interpreter services for a particular court may require
2746 training that is of a longer duration, lasting from one to several days. Each of the areas outlined
2747 above could be the focus of individual day-long detailed training sessions; however, recognizing
2748 the time constraints on court staff, each could also be covered in shorter sessions. Where
2749 shorter trainings are provided, courts should supplement the training by providing the
2750 participants with written materials. These sessions may be provided in electronic format to
2751 allow for flexibility in scheduling when the individual takes the training and should be coupled
2752 with an evaluation tool to determine if the information is understood.

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>.

ABA Standards for Language Access in Courts

2753 Resource Materials and Best Practices

2754 Courts should develop or obtain detailed resource manuals that address each of the training
2755 components highlighted above and distribute them to all judges, court personnel and court-
2756 appointed professionals. These resources can help support the court's ongoing training
2757 programs. A court should also consider developing or enhancing its intranet resource materials.
2758 Resources are available to assist courts in these efforts from organizations such as the National
2759 Center for State Courts Consortium on Language Access in the Courts and the National
2760 Association of Judiciary Interpreters and Translators. The Consortium provides a forum for
2761 member states to share general training materials on many of the subjects listed below.

2762 Courts should review and implement existing resources as they either create or strengthen
2763 their training programs. The resource developed by William Hewitt for the Consortium entitled
2764 *Court Interpretation: Model Guides for Policy and Practice in the State Courts* covers many of
2765 the topics addressed in this *Standard* is highly recommended.³⁶² The Department of Justice, in
2766 the manual entitled "*Executive Order 13166 Limited English Proficiency Resource Document:
2767 Tips and Tools from the Field*," highlighted the resource development efforts of the New Jersey
2768 Administrative Office of the Courts which has created separate training manuals for judges,
2769 interpreters, and court administrative staff.³⁶³ Some state courts have also developed bench
2770 books for judges that address many of the issues relevant to working with LEP litigants in the
2771 courtroom, including the proper use of interpreter services.³⁶⁴ Current efforts to further
2772 develop national resources mean that more programs should be available in the near future.

³⁶² Available at http://www.ncsconline.org/wc/publications/Res_CtInte_ModelGuidePub.pdf.

³⁶³ U.S. Department of Justice, Civil Rights Division, Coordination and Review Section, *Executive Order 13166 Limited English Proficiency Resource Document: Tips and Tools from the Field* (2004), at 63.

³⁶⁴ 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

2773 **STANDARD 10 STATE-WIDE COORDINATION**

2774 **10. Each court system should establish a Language Access Services Office to coordinate and**
2775 **facilitate the provision of language access services.**

2776 Commentary

2777 Statewide coordination of language access services by a centralized Language Access Services
2778 Office (LAS Office)³⁶⁵ creates efficiencies, reduces costs, avoids duplications, and improves the
2779 delivery of services by increasing collaboration both at the state level and between state and
2780 national organizations.³⁶⁶ The National Center for State Courts Consortium on Language Access
2781 in the Courts lists the establishment of a centralized office within the state court
2782 administrator's office as one of the ten key components of an effective "Language Access
2783 Program."³⁶⁷ It highlights the centralized office's role in determining the need for services and
2784 taking steps to ensure they are provided in the most cost-effective manner.³⁶⁸ The Conference
2785 of Chief Justices has also endorsed the benefits of centralized coordination, which is particularly
2786 useful as courts deal with the increasing demand for language access services at a time of

³⁶⁵ 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.

³⁶⁶ 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.

³⁶⁷ 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*.

³⁶⁸ 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."

ABA Standards for Language Access in Courts

2787 limited budgets.³⁶⁹ Providing adequate staff to the LAS Office ensures it has the resources
2788 necessary to carry out these tasks.

2789 This Standard provides a comprehensive list of the duties of a centralized office as a guide for
2790 states that are establishing or expanding their offices to efficiently develop new services.³⁷⁰

2791 The tasks of a centralized office are discussed in the following sections. Standard 10.1 covers
2792 the communication of information about language access services throughout the state.

2793 Standard 10.2 discusses the establishment of procedures and plans to implement services.

2794 Standard 10.3 describes the office's role in monitoring for compliance. Standard 10.4 details

2795 how the office can help develop resources. Standard 10.5 offers a description of coordination

2796 of credentialing and quality assurance for language services providers, and Standard 10.6

2797 summarizes the need to provide training.

2798 Most state courts have a centralized office that coordinates some aspects of the language

2799 access services outlined in these *Standards*. Of the forty-one member states which are currently

2800 part of the Consortium,³⁷¹ virtually all of them have a statewide foreign language interpreting

2801 program housed in the Administrative Office of the Courts or one of its subdivisions.³⁷² While

2802 most of these programs play some role in the training, testing,³⁷³ and monitoring of

³⁶⁹ 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/resol7AdequateCourtInterpretationSvc.html>; Resolution 23,
Regarding Access to Justice Leadership, <http://ccj.ncsc.dni.us/AccessToJusticeResolutions/resol23Leadership.html>.

³⁷⁰ 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.

³⁷¹ 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.

³⁷² 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.

³⁷³ 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.

ABA Standards for Language Access in Courts

2803 interpreters, some also coordinate other functions including training, hiring, supervising, and
2804 scheduling³⁷⁴ of interpreters for courts throughout the state.³⁷⁵ A centralized office at the state
2805 level assists courts in expanding services beyond legal proceedings to court services and to
2806 court-mandated or offered programs and helps to efficiently expand the availability of
2807 translated materials. It is the principal point of contact for all issues regarding language access
2808 to the courts.

2809 An important function of a centralized office is to foster collaboration among different
2810 components of the court administration and relevant community stakeholders. One example
2811 of the benefits of this coordination among court components can be seen in California, where
2812 the Administrative Office of the Courts has convened a language access working group that
2813 includes representatives from various court units and divisions, including Court Interpreters
2814 Unit, Human Resources, Education, Office of the General Counsel, Equal Access Unit,
2815 Communications Office, Facilities Division (re: court design and signage), Access and Fairness
2816 Advisory Committee, and the Task Force on Self-Represented Litigants. This office developed
2817 and updates the AOC's LEP plan,³⁷⁶ shares information on different projects, and identifies
2818 which member department should take the lead on Language Assistance Plan (LAP)
2819 implementation and support of the courts.³⁷⁷ The LAS Office's ongoing communication with
2820 outside stakeholder groups is also particularly helpful in monitoring for quality of services
2821 (discussed in *Standard 10.3*); and in seeking out information and receiving feedback about the
2822 adequacy of existing court rules, policies, procedures and language access services from the
2823 bar, community advocates, interpreters, and other stakeholders, who are involved with the
2824 courts but not employed there, and provide an additional perspective that differs from those of
2825 judges and staff.

2826 Centralized coordination at the state level in turn promotes collaboration with national entities
2827 and among states, allowing them to share best practices and resources and reducing the need
2828 to develop costly individualized systems for certification and testing. The Conference of State
2829 Court Administrators (COSCA), in its "*White Paper on Court Interpretation: Fundamental to*
2830 *Access To Justice*," encouraged all states to join the Consortium "in order to establish

³⁷⁴ One such example is Oregon. See Oregon Judicial Department, Court Interpreter Services, <http://courts.oregon.gov/OJD/OSCA/cpsd/InterpreterServices/index.page>.

³⁷⁵ 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.

³⁷⁶ 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.

³⁷⁷ 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.

2831 nationwide competency standards, use the Consortium’s resources to initiate new court
2832 interpreter programs or enhance existing programs, and promote efficiencies associated with
2833 the “pooling” of limited interpreter and program funding resources.”³⁷⁸

2834 **10.1 The office should provide, facilitate, and coordinate statewide communication**
2835 **regarding the need for and availability of language access services.**

2836 Commentary

2837 Communication is a critical component of a successful language access program. The
2838 Consortium has identified communication as one of the “*Ten Key Components to a Successful*
2839 *Language Access Program in the Courts*,” and noted the importance of maintaining effective
2840 ongoing communication with the following groups: “(1) judicial and court administration
2841 leaders regarding the needs and performance of the language access program; (2) stakeholders
2842 regarding the nature and performance of the program; and (3) Consortium members through
2843 participation in its annual meeting, list serve discussions, and requests for information.”³⁷⁹

2844 Best Practices

2845 The LAS Office should research and communicate to all courts regarding language needs in the
2846 communities served and services offered to meet those needs, including the availability of
2847 existing interpreter and translation services, interpreter lists, translated materials, and training
2848 resources. Communicating with courts about the availability of interpreter services and written
2849 translations assists in incorporating the delivery of language access services into the courts’
2850 core operations across the state. Educating the general public on the availability of language
2851 access services in courts also removes barriers that are created when LEP persons are unaware
2852 of those services.³⁸⁰

2853 **10.2 The office should coordinate and facilitate the development of necessary rules and**
2854 **procedures to implement language access services.**

2855 Commentary

2856 Effective and uniform implementation of language access services throughout the state
2857 requires the development of court rules, policies, and procedures to support the court’s
2858 language assistance plan. The LAS Office should take the lead in developing court rules, policies,

³⁷⁸ Recommendation Number 7, Conference of State Court Administrators, *White Paper on Court Interpretation: Fundamental to Access to Justice* (1997).

³⁷⁹ NCSC, *10 Key Components to a Successful Language Access Program in the Courts*.

³⁸⁰ 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).

ABA Standards for Language Access in Courts

2859 and procedures, as discussed in *Standard 2.1*, and should coordinate with judges, court
2860 administrators and state legislators where appropriate to implement effectively the court’s
2861 written language assistance plan.³⁸¹

2862 Best Practices

2863 Court rules should be developed to establish the language access services required and
2864 available in the court; such rules are needed to facilitate access to and enforceability of
2865 required services. As mentioned in *Standard 2.1* rules need to be developed that address all of
2866 the components of these standards. Court rules, administrative orders, and policies serve to
2867 enhance and support implementation and should be coordinated from a centralized office to
2868 promote efficiency and save staff resources. For example, the requirement that courts identify
2869 LEP persons for whom language access services are needed can be implemented through a
2870 court rule that requires courts to add language needs to all forms that initiate a court action
2871 and to provide notice of services to the public; statewide coordination can ensure that the
2872 resources developed can be adapted for use by all courts throughout the state.

2873 The LAS Office should also develop and coordinate the use of Language Access Plans on a
2874 statewide basis.³⁸² These plans are an important part of a coordinated and effective statewide
2875 language access program and should convey information to both court personnel and the
2876 public at large. According to the Department of Justice, “the development and maintenance of
2877 a periodically-updated written plan on language assistance for LEP persons (“LEP plan”) for use
2878 by recipient employees in serving the public will likely be the most appropriate and cost-
2879 effective means of documenting compliance and providing a framework for the provision of
2880 timely and reasonable language assistance. Moreover, such written plans would likely provide
2881 additional benefits to a recipient’s managers in the areas of training, administration, planning,
2882 and budgeting.”³⁸³ The *DOJ LEP Guidance* goes on to state that “the following five steps may be
2883 helpful in designing an LEP plan and are typically a part of effective implementation plans: 1)
2884 Identifying LEP individuals Who Need Language Assistance;³⁸⁴ 2) Language Assistance
2885 Measures; 3) Training Staff; 4) Providing Notice to LEP persons; and 5) Monitoring and Updating
2886 the LEP Plan.”³⁸⁵ These *Standards* include the five steps identified by DOJ. One example of the

³⁸¹ 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.

³⁸² 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.

³⁸³ *DOJ LEP Guidance*, at 41,464.

³⁸⁴ The data described under *Standard 3.1* should be gathered as the first step in developing a written plan.

³⁸⁵ *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.

2887 benefits of statewide coordination of plans can be seen in Minnesota, where, like California,
2888 each state court, including the State Court Administrator’s Office, is required to annually
2889 update and post its LEP Plan on the Judicial Branch’s public website.³⁸⁶

2890 The LAS Office should establish a process for regular review of the court’s rules, policies,
2891 procedures and LEP plan. Courts should consider whether “changes in demographics, types of
2892 services, or other needs require annual reevaluation of their LEP plan.”³⁸⁷ Elements to be
2893 evaluated during such a review include “current LEP populations in the service area or
2894 population affected or encountered; frequency of encounters with LEP language groups; nature
2895 and importance of activities to LEP persons; availability of resources, including technological
2896 advances and sources of additional resources, and the costs imposed; whether existing
2897 assistance is meeting the needs of LEP persons; and whether identified sources for assistance
2898 are still available and viable.”³⁸⁸ California is one example of a state with a centralized office
2899 that conducts a comprehensive survey to gather data with a large array of data fields including
2900 information on ASL and Deaf and Hard of Hearing individuals as well as those who are LEP.³⁸⁹

2901 **10.3 The office should monitor compliance with rules, policies and procedures for**
2902 **providing language access services.**

2903 Commentary

2904 In addition to the role of monitoring the *quality* of language services providers, discussed in
2905 *Standard 10.5*, the LAS Office should monitor for compliance with the legal requirements, rules,
2906 policies, and procedures for providing language access services. The *COSCA White Paper on*
2907 *Court Interpretation* confirms this important role in *Recommendation Number 4* which states
2908 that “[s]tate courts should establish a process for enforcing judicial compliance with those
2909 policies.”³⁹⁰ Monitoring helps ensure that consistent and adequate services are provided
2910 statewide and that barriers are identified and resolved appropriately, and should be utilized
2911 regardless of whether a state implements language access policies and procedures at the state
2912 or local level.

³⁸⁶ The Minnesota LEP Plans is available at: <http://www.mncourts.gov/?page=444>

³⁸⁷ *DOJ LEP Guidance*, at 41465.

³⁸⁸ *Id.*

³⁸⁹ <http://www.courts.ca.gov/xbcr/cc/language-interpreterneed-10.pdf> (website last visited May 6, 2011).

³⁹⁰ Conference of State Court Administrators, *White Paper on Court Interpretation: Fundamental to Access to Justice*.

ABA Standards for Language Access in Courts

2913 Best Practices

2914 Monitoring for compliance should be conducted through the use of surveys, evaluations, and
2915 complaint forms (including anonymous screenings, assessments, and complaints)³⁹¹ and should
2916 incorporate the groups with whom the LAS Office regularly communicates listed in *Standard*
2917 *10.1* above. To obtain a general overview of services rendered, the LAS Office should survey LEP
2918 individuals, the community organizations assisting them, language services providers
2919 themselves, as well as judges and staff in the courts and in organizations providing court-
2920 ordered and offered services.³⁹² These surveys should be anonymous given the concerns of
2921 many interpreters, translators, and other providers about potential job loss due to complaints
2922 of inadequate services or support. Individualized evaluations by anonymous trained observers
2923 may be used to evaluate language access services both in and outside the courtroom.³⁹³ Courts
2924 can use internal or external reviewers throughout the state and in various types of settings to
2925 gather detailed information, and to identify and address barriers to the delivery of language
2926 access services.

2927 In addition to regular surveys and evaluations, the LAS Office should provide a system for
2928 responding to individual complaints regarding the provision of language access services.³⁹⁴
2929 These include complaints about denials of interpreter services, denial of access to services
2930 outside the courtroom, and lack of translated written information. Where the denial concerns a
2931 local proceeding or service, complaints solely to the local courts may be ineffective and will not
2932 necessarily result in mobilization of increased resources to address issues on a systemic basis.
2933 Where an individual has filed a complaint about the denial of services, an anonymous complaint
2934 mechanism may be appropriate to lessen the fear of reprisal against the complainant.
2935 Coordination at the state level should be used to increase the likelihood that measures will be
2936 identified to address the problem and that similar problems in other jurisdictions will be
2937 prevented or corrected.

³⁹¹ 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.

³⁹² 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.

³⁹³ 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.

³⁹⁴ A discussion of monitoring and complaints regarding the quality of language access services appears in *Standard 10.5*.

2938 **10.4 The office should ensure the statewide development of resources to provide**
2939 **language access.**

2940 Commentary

2941 Creation of resources (including translated materials, videos etc.) at the state and national level
2942 is one of the most important ways that the LAS Office can improve the functioning of the justice
2943 system for all participants. The Office should play a role in identifying, funding, and creating
2944 such resources. Examples include the establishment of sufficient pools of language access
2945 service providers, translation of materials, development of resources, selection of appropriate
2946 and cost-effective technology, and the procurement of additional funding to meet changing
2947 needs.

2948 Best Practices

2949 Developing regional and statewide interpreter pools, particularly those that can be used with
2950 video remote interpreting, is one example of an effective means of addressing the scarcity of
2951 interpreters and the cost of travel. *Recommendation Number 18* of the *COSCA White Paper on*
2952 *Court Interpretation* directs the National Center for State Courts and the Consortium to work
2953 with state courts to explore the feasibility of establishing regional or national pools of
2954 interpreters, as well as community-based interpreter testing programs, as cost-effective
2955 alternatives. Other resources that should be developed are translated court brochures, forms,
2956 and orders that can be used state-wide. State-wide development of translation resources is
2957 another example of a significant cost-savings (hiring translators to translate very similar forms
2958 in each jurisdiction) and, where translations are done internally, reduces staff time spent on
2959 creating nearly identical materials in each location. Examples of coordination of translation of
2960 documents can be found in Ohio³⁹⁵ and Washington³⁹⁶ and are an impressive demonstration of
2961 what can be accomplished with collaboration and coordination.

2962 The centralized office should play a role in both identifying grants and sharing that information
2963 with courts throughout the state. Additional funding presents opportunities to improve
2964 technology and can have a significant impact on many aspects of the justice system. In the state
2965 of Washington, courts were able to use Court Improvement Act funding to purchase items such
2966 as translated documents and headsets for interpreting.³⁹⁷ The LAS Office should work with

³⁹⁵ 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>.

³⁹⁶ 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>.

³⁹⁷ See 2007 Trial Court Improvement Account Use Report April 2008 at http://www.courts.wa.gov/programs_orgs/pos_bja/cftf/2007TCIARreport.pdf

2967 community partners to create or facilitate development of resources that are suitable for LEP
2968 communities.

2969 **10.5 The office should coordinate the credentialing,³⁹⁸ recruitment, and monitoring of**
2970 **language services providers to ensure that interpreters, bilingual staff, and**
2971 **translators possess adequate skills for the setting in which they will be providing**
2972 **services.**

2973 Commentary

2974 The centralized coordination of credentialing, recruitment and monitoring of language services
2975 providers within the LAS Office creates efficiencies and improves the delivery of language
2976 access services in courts. Each area of coordination is discussed in the following sections. In
2977 some instances development of such credentialing service may be necessary.

2978 Best Practices

2979 Interpreter, Bilingual Staff, and Translator Credentialing

2980 The LAS Office should provide clear standards and procedures regarding interpreter, translator,
2981 and bilingual staff competency and should coordinate the implementation and administration
2982 of language access provider competency assessment³⁹⁹ and credentialing⁴⁰⁰ procedures.
2983 Centralized coordination is necessary because “it is unreasonable to expect trial judges to be
2984 the sole determiners of an interpreter’s qualifications and that interpreter certification “needs
2985 to be available at the local or state level for testing or otherwise assessing the qualifications of
2986 interpreter candidates.”⁴⁰¹ The NCSC *Model Guides* also note that “in most states it would be
2987 preferable to locate the responsibility for screening interpreters in the state’s administrative
2988 office of the courts. In this way, screening can be conducted by individuals with specialized
2989 training, and a statewide register of qualified interpreters can be maintained for the use of all
2990 of the state’s courts.”⁴⁰²

2991 Coordination of language services provider credentialing in services *outside* of the courtroom is
2992 one of the newer areas of leadership for offices coordinating language access services. The

³⁹⁸ Credentialing is further discussed in *Standard 9*.

³⁹⁹ “Assessment” refers to actual testing of qualifications, such as language competency.

⁴⁰⁰ 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.

⁴⁰¹ NCSC, *Court Interpretation Model Guides*, ch. 5, Assessing Interpreter Qualifications: Certification Testing and Other Screening Techniques, at 89 – 90.

⁴⁰² *Id.*

ABA Standards for Language Access in Courts

2993 Consortium's *Ten Key Components* can be adapted for this process and describes three tasks
2994 necessary for a successful language access program:

- 2995 • Credentialing of language service providers: Adopt clear standards and
2996 procedures for credentialing language service providers through the use of
2997 exams and accompanying policies and protocols developed or approved by the
2998 Consortium.
- 2999 • Appointment of credentialed language service providers: Adopt appropriate,
3000 legally binding rules, policies and procedures to require the use of credentialed
3001 language service providers for all court proceedings, the translation of court
3002 documents, and the translation/transcription of audio and video recordings.
- 3003 • Standards of professional conduct for court-related language service providers:
3004 Adopt and enforce a Code of Professional Conduct for court-related language
3005 service providers.⁴⁰³

3006 The LAS Office should also provide coordination of credentialing for bilingual staff when they
3007 are hired to provide direct services in English and the other languages they speak. In
3008 coordinating the credentialing of bilingual staff, the Office should not only coordinate testing
3009 but should also provide or facilitate training for bilingual staff on their role to ensure they are
3010 not providing interpreter services without proper credentialing and training.

3011 LAS Office review of translator qualifications is also necessary to ensure the delivery of
3012 appropriate language access services with respect to written materials. Although most state
3013 court programs accept national translator certification from the American Translators
3014 Association (ATA) in lieu of conducting independent certification exams for translators, ATA
3015 offers certification in only a limited number of languages. Translator competency is as
3016 important as interpreter competency; quality and accuracy in translations is critical and as the
3017 need for translations increases, centralized management becomes increasingly important. The
3018 task of the LAS Office in this regard is to promote the systematic use of credentialed translators,
3019 develop and implement translation protocols, and generally coordinate the translation process.
3020 For more information on translator qualifications, see *Standard 7*.

3021 Recruitment of Interpreters, Bilingual Staff, and Translators

3022 Recruitment of adequate numbers of interpreters, translators, and bilingual staff is a challenge
3023 for many courts and is an area where collaboration is needed at the state and regional level.
3024 The Consortium's *Ten Key Components* recognizes recruitment as an essential function of a
3025 centralized office such as that envisioned by this Standard.⁴⁰⁴ With their direct awareness of the

⁴⁰³ NCSC, *10 Key Components to a Successful Language Access Program in the Courts*, Elements 4, 5, and 6, note 364.

⁴⁰⁴ *Id.*

ABA Standards for Language Access in Courts

3026 critical importance and sometimes limited availability of trained interpreters and translators,
3027 the LAS Office and state courts are uniquely situated to play a leadership role in encouraging
3028 institutions of secondary and higher learning to serve as a pipeline to supply professionals to
3029 meet the need.

3030 This support for development of language access providers should include working with
3031 institutions of higher learning to create community interpreter internship programs, creating
3032 and hosting certification programs, and encouraging bilingual students to consider careers in
3033 interpretation and translation.⁴⁰⁵ In addition to working with general educational institutions,
3034 law schools and courts can collaborate to develop training programs that utilize law students to
3035 conduct outreach to community service organizations regarding language access rights and
3036 legal obligations. An example of a successful model is Villanova law School,⁴⁰⁶ which has
3037 established a community interpreter program training both law students and interpreters on
3038 the need for language access services. States like Alaska⁴⁰⁷ and New Mexico⁴⁰⁸ have also taken
3039 innovative approaches to this problem by working with non-legal users of interpreter and
3040 translation services in an attempt to create more formal pipelines for the training and
3041 development of language services providers.

3042 Evaluation and Monitoring of Language Services Providers⁴⁰⁹

3043 Finally, a centralized office should support the establishment of a statewide complaint process
3044 to monitor interpreter, bilingual staff and translator quality. Monitoring of language access
3045 services generally is discussed in *Standard 10.3*, but monitoring of complaints of specific
3046 interpreter misconduct, insufficient bilingual staff skills, ethical violations, and translation errors
3047 is appropriately discussed in this section because it focuses on language services providers and
3048 the LAS Office's obligation to ensure the quality of those services.

3049 The LAS Office should be made aware of and participate in the process for resolution of
3050 complaints regarding interpreter quality at the state level because interpreters often interpret
3051 in multiple courtrooms and jurisdictions within a state, and local dispute resolution measures

⁴⁰⁵ 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.

⁴⁰⁶ 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).

⁴⁰⁷ Alaska Immigration Justice Project, The Language Interpreter Center <http://www.akijp.org/interpreter.html> (last viewed Apr. 19, 2011).

⁴⁰⁸ New Mexico Center for Language Access, <http://www.nmcenterforlanguageaccess.org/> (last viewed Apr. 19, 2011).

⁴⁰⁹ Monitoring of language access services generally is discussed in *Standard 10.3*.

ABA Standards for Language Access in Courts

3052 are thus inadequate to resolve concerns regarding interpreter quality. Minnesota⁴¹⁰ and
3053 Washington⁴¹¹ provide models regarding the disciplinary process for interpreters under the
3054 auspices of the State Court Administrator.

3055 Similarly, the LAS Office should handle complaints about the quality of bilingual staff, who are
3056 increasingly used to meet the language access needs of LEP persons in settings outside of the
3057 courtroom. While complaints should be monitored by a centralized office, resolution should be
3058 done in concert with the local court where the bilingual staff is located. The centralized office
3059 should assist in providing training resources to bring the bilingual staff member's competency
3060 to an appropriate level, or should recruit other qualified bilingual candidates for the position.

3061 The centralized office should also monitor for complaints regarding deficiencies in written
3062 translations. This is best handled at the state level to ensure efficient and effective response to
3063 these complaints. Because of the nature of translations and the increase in coordination among
3064 courts, a centralized complaint process for translations is necessary and enhance the likelihood
3065 that courts will comply with the established translation protocol and that resources regarding
3066 translation will be shared.

3067 In each instance above, courts should implement procedures for filing a complaint, reviewing
3068 and determining the veracity of the complaint, and determining the appropriate disciplinary
3069 action. The court should also create mechanisms to protect the individuals who are the subject
3070 of the complaint, whether they are court interpreters, bilingual staff, or translators. Not all
3071 complaints are credible and the LAS Office should review and determine the veracity of the
3072 claims. Protections should include a written determination identifying the claim, the
3073 information upon which the determination was made, and the decision itself. The LAS Office
3074 should also support the establishment of a process for the individual to appeal or request
3075 reconsideration.

⁴¹⁰ Minnesota Judicial Branch, Interpreter Complaint Process, <http://www.mncourts.gov/?page=448>.

⁴¹¹ Washington State Courts, Disciplinary Policy, http://www.courts.wa.gov/programs_orgs/pos_interpret/index.cfm?fa=pos_interpret.display&fileName=policyManual/disciplinaryPolicyCertified

3076 **10.6**The office should coordinate and facilitate the education and training of providers,
3077 **judicial officers, court personnel, and the general public on the components of**
3078 ***Standard 9.***

3079 *Commentary*

3080 Whether providing training or simply facilitating it,⁴¹² the LAS Office needs to ensure that
3081 training is received by all appropriate groups and that the material covered is comprehensive
3082 and accurate. Many state programs provide training on a regular basis to judges and court staff,
3083 including clerks and clerk staff.⁴¹³ Coordinating these efforts frees up local court staff time and
3084 improves compliance. Sharing knowledge and materials is efficient, avoids duplication of effort,
3085 and promotes consistent language access services across the state. It also helps to avoid local
3086 practices which are developed in isolation and may violate language access requirements. The
3087 LAS Office should also gather training materials, such as those developed by the National
3088 Center for State Courts Consortium for Language Access in the Courts to share with local
3089 courts.⁴¹⁴

⁴¹² Training is discussed in full in *Standard 9*.

⁴¹³ Annual training on language access services in the Minnesota courts is offered to all state court personnel.
<http://www.mncourts.gov/?page=446>.

⁴¹⁴ 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).