

CALIFORNIA COMMISSION ON ACCESS TO JUSTICE

c/o State Bar of California - 180 Howard Street - San Francisco, CA 94105 - (415) 538-2251- (415) 538-2524/fax

HON. RONALD ROBIE
Chair
*Court of Appeal, Third Appellate District
Sacramento*

JOANNE E. CARUSO
Vice Chair
*Jacobs Engineering Group Inc.
Pasadena*

MARY LAVERY FLYNN
Director, Office of Legal Services
*State Bar of California
San Francisco*

Date: April 19, 2012

To: Members, Board Committee on Stakeholder Relations

From: Mary Lavery Flynn, Director, Office of Legal Services
Frank Monti, Senior Administrative Assistant, Office of Legal Services
Lauren Calton, Program Coordinator, Office of Legal Services

Re: **Language Access in the Courts: State and National Developments**

Introduction

This agenda item is intended to make members of this Board Committee aware of efforts to improve language access in court systems, both statewide and national.

California Language Access Developments

In 2005, the California Commission on Access to Justice issued its report, [Language Barriers to Justice in California](#), which described how inadequate language access for Persons with Limited English Proficiency (LEPs) was impeding access to and the quality of justice in the court system, thus damaging its integrity.

The report included several recommendations designed to improve language access including ways to expand the availability of qualified interpreters and translated court documents as well as procedures to help court staff and judges handle the high volume of cases involving LEP litigants.

Although severely limited resources continue to cause some language barriers in the courts, there have been significant improvements in California in recent years:

- There are more services available at the Self-Help Centers in every county.
- The self-help website of the Administrative Office of the Courts is mostly available in Spanish and other key languages spoken by a high percentage of Californians.
- Dedicated statewide funds provide important branch wide resources to increase access for limited English proficient Californians.
- [LawHelpCalifornia](#) is a website for those seeking legal assistance for a broad range of issues and it has a vast amount of information available in English, Spanish, and many other languages used throughout the state.
- Many court interpreters qualified in California's most common languages are now full time employees, giving courts more flexibility in meeting litigants' needs for interpreters and reducing the complete dependence on contractor interpreters which was often more expensive, time-consuming, and cumbersome. Regular employment also offered more stable employment for interpreters, making it a more desirable career choice. [However, for the 220 languages spoken in California that are less-prevalent, many courts still use contract interpreters.]

The Role of the State Bar. The Language Access Report of the Access to Justice Commission also made recommendations about the involvement of the State Bar to work with the Judicial Council to expand language access, and to help prepare attorneys to work with LEP clients. It is incredibly important that attorneys are prepared to work effectively with interpreters and LEP clients. The State Bar of California can take a lead role in training attorneys to work with interpreters on a variety of issues, including interpreter ethics and how to communicate effectively with LEP litigants and witnesses. Attorneys could also benefit from trainings on how to work with interpreters who may speak too fast, use double negatives, or simplify language when litigants do not understand.

New Language Access Standards for Statewide Court Systems:

In February 2012, the American Bar Association adopted the [ABA Standards for Language Access in the Courts](#). The Standing Committee on Legal Aid and Indigent Defendants (SCLAID) and several other ABA groups embarked upon this Language Access Standards Project to create standards for the provision of language access in state courts. The ABA intended these guidelines to be practical, universal, and effective at creating access to state courts for individuals with limited English proficiency.

The Standards and extensive commentary provide guidance to courts in designing, implementing, and enforcing a comprehensive system of language access services that is suited to the needs of the communities they serve. A system of language access services should be considered a fundamental principle of law, fairness, and access to justice, and promotes the integrity and accuracy of judicial proceedings, 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.

There are ten standards recommended in the new Standards:

1. **FUNDAMENTAL PRINCIPLES:** As a fundamental principle of law, fairness, and access to justice, and to promote the integrity and accuracy of judicial proceedings, courts should develop and implement an enforceable system of language access services, so that persons needing to access the court are able to do so in a language they understand, and are able to be understood by the court.
2. **MEANINGFUL ACCESS:** Courts should ensure that persons with limited English proficiency have meaningful access to all the services, including language access services, provided by the court.
3. **IDENTIFYING LEP PERSONS:** Courts should develop procedures to gather comprehensive data on language access needs, identify persons in need of services, and document the need in court records.
4. **INTERPRETER SERVICES IN LEGAL PROCEEDINGS:** Courts should provide competent interpreter services throughout all legal proceedings to persons with limited English proficiency.
5. **LANGUAGE ACCESS IN COURT SERVICES:** Courts should provide appropriate language access services to persons with limited English proficiency in all court services with public contact, including court managed offices, operations, and programs.

6. **LANGUAGE ACCESS IN COURT-MANDATED AND OFFERED SERVICES:** Courts should ensure that persons with limited English proficiency have access to court mandated services, court offered alternative services and programs, and court appointed professionals, to the same extent as persons who are proficient in English.
7. **TRANSLATION:** Courts should establish a process for providing access to translated written information to persons with limited English proficiency to ensure meaningful access to all court services.
8. **QUALIFICATIONS OF LANGUAGE ACCESS PROVIDERS:** The court system and individual courts should ensure that interpreters, bilingual staff, and translators used in legal proceedings and in courthouse, court mandated and court offered services, are qualified to provide services.
9. **TRAINING:** The court system and individual courts should provide all judges, court personnel, and court appointed professionals with training on the following: legal requirements for language access; court policies and rules; language services provider qualifications; ethics; effective techniques for working with language services providers; appropriate use of translated materials; and cultural competency.
10. **STATE-WIDE COORDINATION:** Each court system should establish a Language Access Services Office to coordinate and facilitate the provision of language access services.

The California Commission on Access to Justice voted to endorse these ABA Standards at its meeting on July 12, 2011 and continues to work with all appropriate parties to pursue implementation of the new standards.

Enforcement by the U.S. Department of Justice

In 2010, the U.S. Department of Justice issued a directive, [the Department of Justice Letter to State Courts](#), containing language access standards not yet achieved by our state's court system. The Judicial Council is involved with efforts to improve language access to be in compliance with this directive, although compliance is extremely challenging given the budget crisis and significant reductions in the judiciary's budget.

Two states have been evaluated by the Department of Justice, with different results. The Department of Justice began investigating the North Carolina Administrative Office of the Courts (AOC) in 2007 after receiving a complaint that they were not providing limited English proficient (LEP) individuals with meaningful access to the courts. DOJ's Civil Rights Division did an investigation and issued a [letter finding the North Carolina AOC in violation of Title VI](#) for failing to provide interpreters and appropriate language services to LEP individuals. The letter warns that the North Carolina AOC could lose its federal funding if it does not begin to remedy these violations of federal law.

In March 2012, the Department of Justice approved a language access plan released by the Colorado Supreme Court. The [Strategic Plan for Implementing Enhanced Language Access in the Colorado State Courts](#) will be instructive for other entities adopting or revising plans.

Reference Materials links:

- [Language Barriers to Justice in California](#) – Published by the California Commission on Access to Justice, 2005.
- [US Department of Justice Letter to State Courts](#)
- [ABA Standards for Language Access in the Courts](#)
- [US Department of Justice Letter to North Carolina Administrative Office of the Courts](#)
- [Strategic Plan for Implementing Enhanced Language Access in the Colorado State Courts](#)

For more information, contact Frank Monti, Office of Legal Services,
Frank.Monti@calbar.ca.gov or 415-538-2141.