

# Conference of Chief Justices Conference of State Court Administrators

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July 8, 2011

Mr. Stephen N. Zack  
President  
American Bar Association  
321 North Clark Street  
Chicago, IL 60654

Dear Mr. Zack:

On behalf of the Conference of Chief Justices and the Conference of State Court Administrators, we are writing regarding the draft Standards for Language Access in Courts (“Standards”). We appreciate that the American Bar Association is taking very seriously the issue of improving access to justice for all people in the United States, regardless of jurisdiction. This has been a priority issue for the Conferences for many years. Our Conferences led the development of the Consortium for Language Access in the Courts. In 2007, COSCA issued the “White Paper on Court Interpretation: Fundamental to Access to Justice.” The National Center for State Courts has developed education programs for judges and court administrators. State courts across the country have established commissions to improve access to justice. These are just a few examples of state court initiatives that illustrate the degree to which we share common ground and common concern. Access to justice is a critical issue that must be embraced by all levels and branches of government. We have concerns with the Standards as proposed, however, that encompass three general areas: (1) resource constraints; (2) the disparity of the perceived mandate; and (3) legal and technical concerns.

First, the courts are not immune to the current crisis in state funding. At the very time the Standards propose absolute access to interpreters--both in and out of court--, state courts are furloughing staff, shuttering courthouses, and sometimes requiring litigants to bring their own paper for copies. We believe the Standards should, therefore, focus on indigent litigants. Absent significant increases in resources, the state courts cannot meet the more far-reaching Standards without cannibalizing other critical programs in such areas as domestic violence, juvenile justice, information technology, and problem-solving courts, to name a few. In this budgetary climate, we should spend precious resources on improving access to justice for those least able to afford it. Without a significant infusion of resources, most likely from the federal government, these Standards will not be realized.

We know that you are aware of the funding crisis facing state courts, and we have appreciated your efforts on behalf of state courts through your Preservation of the Justice System Initiative and the planned Kentucky Law Journal Symposium on Court Funding. As you know from your work related to the funding crisis, the Standards promote an access mandate that no state court in the nation will be able to meet. In this respect, your assistance is vital in procuring additional funding from the federal government, targeted particularly to the obvious need to expand language access in the courts.

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Second, the stated purpose of the Standards and their commentary is to promote universal access. However, we note that the Standards promote a level of access on the part of state courts that appears inapplicable to either the federal courts or the many administrative agencies throughout government that have adjudicatory authority. The Standards advocate that state courts adopt the recommendations wholesale, but only encourage others to consider reforms. Any Standards that are promulgated should have broad application to all courts and adjudicatory authorities if they are to be meaningful and operationalized.

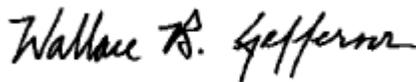
Finally, technical and legal problems plague the Standards as drafted. The Standards reflect neither current policy guidance nor appreciate the limited extent of state court authority. The positions advocated could quite quickly place state courts on a collision course with legislatures and executive branch agencies. Such a collision would not further our mutual desire to increase language services in the state courts. Additionally, we believe several of the Standards would require state judiciaries to exceed their authority with respect to private entities and executive and administrative agencies.

We expressed many of these concerns when we met with Attorney General Eric Holder on July 6, 2011 and expect to have further dialogue with the Department of Justice. We share common ground with the ABA, the Department, and others in seeking to improve access to justice for limited English proficient individuals. However, we do not believe that the Standards as drafted will further that effort without additional dialogue, including input from Governors and state legislatures who would be called upon to appropriate money to support the Standards requirements and state Attorneys General who may be required to defend federal enforcement actions.

Access to justice is a national concern. We believe the Standards should reflect this national imperative. Equally important, the Standards must recognize the practical realities state courts face. Otherwise, we fear that the Standards will not enjoy the broad-based legitimacy necessary to effectuate their goals. For these reasons, we cannot at this time support the Standards and request further dialogue before they are presented to the House of Delegates for approval at your August 2011 meeting. We would like to work with you on this critical element of our justice system, engage the federal courts and Congress, and bring state executive and legislative authorities into this conversation. We think focusing on the immediate concerns of citizens who are indigent makes the most sense, as they are most susceptible to denial of basic needs like housing, and more likely to require protection from abuse or neglect.

If you have any additional questions, please do not hesitate to contact us or Ms. Kay Farley of the National Center for State Courts at (202) 684-2622 or [kfarley@ncsc.org](mailto:kfarley@ncsc.org).

Sincerely,



President  
Conference of Chief Justices



President  
Conference of State Court Administrators

c: Mr. William T. (Bill) Robinson, III, President-Elect  
Ms. Linda A. Klein, Chair of the House of Delegates