

Proposed Revised Resolution

AMERICAN BAR ASSOCIATION

STANDING COMMITTEE ON LEGAL AID AND INDIGENT DEFENDANTS
 COMMISSION ON HISPANIC LEGAL RIGHTS & RESPONSIBILITIES
 CRIMINAL JUSTICE SECTION
 COMMISSION ON IMMIGRATION
 COMMISSION ON DOMESTIC VIOLENCE
 AMERICAN JUDICATURE SOCIETY
 NATIONAL LEGAL AID & DEFENDER ASSOCIATION
 HISPANIC NATIONAL BAR ASSOCIATION
 NATIONAL ASIAN PACIFIC AMERICAN BAR ASSOCIATION
 NATIONAL ASSOCIATION OF WOMEN JUDGES
 GENERAL PRACTICE, SOLO AND SMALL FIRM DIVISION
 AMERICAN IMMIGRATION LAWYERS ASSOCIATION
 COALITION ON RACIAL & ETHNIC JUSTICE
 SECTION OF LITIGATION
 STANDING COMMITTEE ON LAWYER REFERRAL AND INFORMATION
 SERVICE
 STANDING COMMITTEE ON FEDERAL JUDICIAL IMPROVEMENTS
 NATIONAL CONFERENCE OF FEDERAL TRIAL JUDGES
 STANDING COMMITTEE ON JUDICIAL INDEPENDENCE
 STANDING COMMITTEE ON PRO BONO AND PUBLIC SERVICE
 NEW YORK STATE BAR ASSOCIATION
 COMMISSION ON MENTAL AND PHYSICAL DISABILITY LAW

REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

1 **RESOLVED**, That the American Bar Association adopts the ABA Standards for Language
 2 Access in Courts, dated August 2011; and

3 ~~**FURTHER RESOLVED**, That the American Bar Association urges that courts and other~~
 4 ~~tribunals give high priority to the prompt implementation of these Standards; and~~

5 **FURTHER RESOLVED**, That the American Bar Association urges that all courts and tribunals
 6 promptly adopt a plan with measurable benchmarks to accomplish full implementation of the
 7 Standards, with priority given to the needs of low and moderate income persons and
 8 unrepresented litigants; and

9 **FURTHER RESOLVED**, That the American Bar Association urges federal and state legislative
 10 and executive branches to take prompt action to provide adequate funding to courts and other
 11 tribunals to fully implement language access services.

Proposed Addition**[Excerpt from] ABA Standards for Language Access in Courts****INTRODUCTION*****Purpose***

These *Standards for Language Access in Courts* are intended to assist courts in designing, implementing, and enforcing a comprehensive system of language access services that is suited to the needs of the communities they serve. Facilitating access to justice is an integral part of the mission of the courts. As American society is comprised of a significant and growing number of persons with limited English proficiency (LEP) in every part of the country, it is increasingly necessary to the fair administration of justice to ensure that courts are language accessible to LEP persons who are brought before, or require access to, the courts.

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

Lack of language access services exacts a serious toll on the justice system. Although there is scant national data on the number of LEP persons involved in court proceedings, there is ample experience and anecdotal evidence to substantiate that many LEP persons regularly come before the courts and are unable, without language access services, to protect or enforce their legal rights, with devastating consequences to life, liberty, family, and property interests.² Persons who are unable to communicate in English are also likely to have limited understanding of their rights and of the role of the courts in ensuring that rights are respected. The language barrier exacerbates this lack of awareness, and effectively prevents many LEP persons from accessing the system of justice. Inability to communicate due to language differences also has an impact on

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

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

the functioning of the courts and the effect of judgments, as proceedings may be delayed, the court record insufficient to meet legal standards, and court orders rendered unenforceable or convictions overturned, if a defendant or other party has not been able to understand or be understood during the proceedings.

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

Scope

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

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

Overall, the *Standards* are intended to provide a guide to assist courts in developing a comprehensive system for language access. Courts are encouraged to adopt requirements for

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).

language access through legislation, court rules, or administrative orders that are clear, effective, and enforceable.

Courts are but one of several actors with responsibility for ensuring that LEP persons are assured access to justice. Legislatures and other funding sources at the federal and state levels must provide the resources necessary for courts to meet their constitutional and legal responsibilities. Courts must seek such resources, informing funders of the needs of LEP persons and the court's constitutional and legal responsibilities to ensure their meaningful access to justice. Because the Standards provide a blueprint for courts, and will need to be adapted to individual courts, they are not expected to be fully implemented immediately. Moreover, courts have historically been underfunded and sometimes face severe budget shortfalls that require cutbacks in other services that are similarly essential to access to justice and the functioning of the courts. Recognizing the reality of limited resources and the most urgent needs of LEP persons whose rights and interests would be adversely affected if language access services are not provided, courts should adopt an implementation plan that gives priority to low and moderate income persons and unrepresented litigants.

Constitutional and Legal Requirements

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

Process

The *Standards* were developed under the auspices of the ABA's Standing Committee on Legal Aid and Indigent Defendants (SCLAID) through an extended consultative process with a broad range of professionals and organizations with deep experience in court administration and language access issues in the courts. The *Standards* build upon resolutions adopted by the ABA in 1997 and 2002 calling for the use of interpreters in courts, the discussion of cultural competence and use of interpreters in attorney-client communication in the *Standards for the Provision of Civil Legal Aid* adopted by the ABA in 2006,⁴ and the *ABA Commission on Domestic Violence, Standards of Practice for Lawyers Representing Victims of 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/migrated/legalservices/sclaid/downloads/civillegalaidstds2007.authcheckdam.pdf>

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

Structure and Organization

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

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").