

# Request to Add Language Access Commentary to Model Rules

## *APPENDIX A*

### **I. Ongoing efforts at the national level have led to new initiatives in state courts.**

Groups at the national level have demonstrated a commitment to providing language access services as a fundamental principle of law, fairness and access to justice. The National Center for State Courts (NCSC), starting in 1995, established the Consortium for Language Access in the Courts (Consortium) which was dedicated to interpreter testing issues.<sup>1</sup> In December 2012, in recognition of language access as a vital and fundamental court service, the Conference of Chief Justices and the Conference of State Court Administrators transitioned from the Consortium and established Language Access Advisory Committee (LAAC) and the Council for Language Access Coordinators (CLAC) both of which are staffed by the Language Access Services Section (LASS).<sup>2</sup> Among the goals of these groups are the development of valid testing instruments for court interpreters in multiple languages and the identification of best practices, and associated resource materials, related to the recruitment; training; testing and managing of interpreters and other language access issues in the courts. The NCSC 2012 National Summit on Language Access in the Courts assisted in further defining the goals of LAAC and CLAC.<sup>3</sup>

As presented by the recently-released NCSC National Call to Action,<sup>4</sup> nearly 300 court leaders from 49 states, three territories and the District of Columbia participated in the summit from which emanated state action plans focused on, among other issues, training and educating court staff, stakeholders, and interpreters; enhancing collaboration and information sharing; implementing video remote interpreting technology; ensuring compliance with legal requirements; and exploring strategies to obtain funding. The Call to Action sets forth in detail the nine action steps which are shaping the agenda of LAAC and CLAC and which states are using to facilitate the implementation and improvement of their language access services.

### **II. State court systems are also improving services in response to increased enforcement.**

In conjunction with the work of national groups, several state court systems have significantly improved their assistance to limited English proficient court users in response to USDOJ guidance documents, warning letters, and investigations pursuant to Title VI of the Civil Rights Act of 1964.<sup>5</sup>

The Supreme Court of Georgia provided guidance to Georgia courts by issuing a set of rules entitled “Use of Interpreters for Non-English Speaking Persons” in 2001.<sup>6</sup> The rules were last amended in 2012 to include deaf and hard of hearing individuals.<sup>7</sup> The rules have provided much needed guidance to Georgia courts regarding provision of

language services, especially in light of the fact that Georgia has a non-unified court system with over 600 trial courts.<sup>8</sup> Because of the non-unified court system, language access practices, policies and procedures vary from judicial circuit to judicial circuit within the state, including counties in some judicial circuits having no language access policy or procedure at all. Georgia continues to make additional strides toward ensuring that LEP and DHH individuals have meaningful access to justice.

In 2007, the Supreme Court of Washington approved a model language access plan developed by the Washington (WA) Administrative Office of the Courts, WA Interpreter Commission, Northwest Justice Project and Columbia Legal Services.<sup>9</sup> The model plan was developed to meet the needs of the LEP population in WA courts because the quality of the services in courts across the state had been inconsistent and at times fell below the level necessary to meet federal and state standards for providing meaningful access to the courts by LEP individuals. Like Georgia, Washington also has a non-unified court system and contains approximately 250 state courts.

In August 2010, U.S. Assistant Attorney General Thomas E. Perez issued a letter to all chief justices and administrators of state courts clarifying the obligation of courts that receive federal financial assistance to provide oral interpretation, written translation and other language assistance services to people who are LEP in all proceedings and court operations.<sup>10</sup> The USDOJ's Civil Rights Division's Federal Coordination and Compliance Section investigated this matter as part of its Courts Language Access Initiative.<sup>11</sup>

In June 2011, the USDOJ and Colorado Judicial Department entered into an agreement to settle a civil rights investigation.<sup>12</sup> The investigation arose after a complaint was filed under Title VI of the Civil Rights Act of 1964 and the nondiscrimination provisions of the Omnibus Crime Control and Safe Streets Act of 1968 alleging that the courts were engaged in national origin discrimination by failing to provide comprehensive language access to all proceedings and court operations. In March 2012 the USDOJ approved a language access plan released by the Colorado Supreme Court.<sup>13</sup>

In March 2012, the USDOJ issued a letter to the North Carolina Administrative Office of the Courts where the USDOJ "determined after a comprehensive investigation that the AOC's policies and practices discriminate on the basis of national origin, in violation of federal law, by failing to provide limited English proficient (LEP) individuals with meaningful access to state court proceedings and operations."<sup>14</sup>

In July 2012, the Rhode Island Supreme Court took an important step toward full and equal access in its state courts by issuing an Executive Order that ensures limited English proficient (LEP) individuals seeking services throughout the state court system will have access to timely and competent language assistance services.<sup>15</sup> This critical step was taken in response to the Justice Department's investigation of the Rhode Island Judiciary's language access practices, in response to complaints of alleged national origin discrimination prohibited by Title VI of the Civil Rights Act of 1964.<sup>16</sup>

In May 2013, the USDOJ issued a letter to the Judicial Council of California, the Administrative Office of the Courts and the Superior Court of Los Angeles County (LASC) finding that “several policies, practices and procedures regarding the provision of language assistance services in LASC appear to be inconsistent with Title VI of the Civil Rights Act of 1964 and its implementing regulations.”<sup>17</sup>

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<sup>1</sup> See, [www.ncsc.org](http://www.ncsc.org) (Last visited September 9, 2013).

<sup>2</sup> See, <http://www.ncsc.org/Services-and-Experts/Areas-of-expertise/Language-access/About-us.aspx> (Last visited September 9, 2013).

<sup>3</sup> See, <http://www.ncsc.org/languagesummit> (Last visited September 9, 2013).

<sup>4</sup> See, <http://www.ncsc.org/services-and-experts/areas-of-expertise/language-access/a-national-call-to-action.aspx> (Last visited September 9, 2013).

<sup>5</sup> See, Abel, Laura K. and Lombardi, Matthew, *Language Access in Courts: 2009-2012*, 46 Clearinghouse Rev. 334 (2012).

<sup>6</sup> See, Edmondson, Jana J. and Krisher, Lisa K., “*Seen But Often Unheard: Limited-English-Proficiency Advocacy in Georgia*,” 46 Clearinghouse Rev. 343 (2012).

<sup>7</sup> See, *Supreme Court of Georgia Rules on Use of Interpreters for Non-English Speaking and Hearing Impaired Persons* (July 3, 2012) available at [http://w2.georgiacourts.org/coi/files/Rule%20on%20Interpreters%20-%20FINAL\\_JULY.pdf](http://w2.georgiacourts.org/coi/files/Rule%20on%20Interpreters%20-%20FINAL_JULY.pdf) (Last visited July 30, 2013).

<sup>8</sup> See, Edmondson, Jana J. and Krisher, Lisa K., “*Seen But Often Unheard: Limited-English-Proficiency Advocacy in Georgia*,” 46 Clearinghouse Rev. 343 (2012).

<sup>9</sup> See, *Washington State Court Interpreter Services, “Limited English Proficiency (LEP) Plan,”* (July 2007) available at <http://sites.lawhelp.org/documents/380461WA%20Statewide%20LEP%20Plan%20PDF.pdf> (Last visited August 5, 2013).

<sup>10</sup> See, *Working with State Courts to Remove Language Barriers to Justice* (July 15, 2012) available at <http://blogs.justice.gov/main/archives/2294> (Last visited July 30, 2013).

<sup>11</sup> *Id.*

<sup>12</sup> Memorandum of Agreement Between the United States of America and the Colorado Judicial Department, Department of Justice 171-13-63 (June 28, 2011) available at [http://www.justice.gov/crt/about/cor/agreements/Colorado\\_MOA\\_6\\_28\\_11.pdf](http://www.justice.gov/crt/about/cor/agreements/Colorado_MOA_6_28_11.pdf) (Last visited July 30, 2013).

<sup>13</sup> Strategic Plan for Implementing Enhanced Language Access in the Colorado State Courts (March 2012) available at [http://www.justice.gov/crt/about/cor/agreements/Colorado\\_Language\\_Access\\_Plan\\_031512\\_FINAL508.pdf](http://www.justice.gov/crt/about/cor/agreements/Colorado_Language_Access_Plan_031512_FINAL508.pdf) (Last visited July 30, 2013).

<sup>14</sup> See, *DOJ Letter to North Carolina AOC* (March 8, 2012) available at [http://www.justice.gov/crt/about/cor/TitleVI/030812\\_DOJ\\_Letter\\_to\\_NC\\_AOC.pdf](http://www.justice.gov/crt/about/cor/TitleVI/030812_DOJ_Letter_to_NC_AOC.pdf) (Last visited July 30, 2013).

<sup>15</sup> See, *Working with State Courts to Remove Language Barriers to Justice* (July 15, 2012) available at <http://blogs.justice.gov/main/archives/2294> (Last visited July 30, 2013).

<sup>16</sup> *Id.*

<sup>17</sup> See, *DOJ Investigators Seek Language Access Compliance from California* (June 6, 2013) available at <http://www.calinterpreters.org/doj-investigators-seek-language-access-compliance-from-california/> (Last visited July 30, 2013). See also, *DOJ Letter to California* (May 22, 2013) available at <http://www.calinterpreters.org/wp-content/uploads/2013/06/DOJ-Investigation-171-12C-31-5-22-13-Letter-2.pdf> (Last visited July 30, 2013).