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***VIA ELECTRONIC MAIL***

October 7, 2013

Paula Frederick, Chair  
Standing Committee on Ethics and Professional Responsibility  
American Bar Association  
104 Marietta St. NW, Suite 100  
Atlanta, GA 30303  
[PaulaF@gabar.org](mailto:PaulaF@gabar.org)

***Re: Request to Add Language Access Commentary to ABA Model Rules***

Dear Ms. Frederick:

We are writing to request that the American Bar Association (ABA) Standing Committee on Ethics and Professional Responsibility (Committee) provide guidance to attorneys representing Limited English Proficient (LEP) and Deaf or Hard of Hearing (DHH) clients by adding commentary to several of the ABA Model Rules of Professional Conduct (Model Rules). We are a group of language access experts and stakeholders from across the country who has continued to work with the ABA Standing Committee on Legal Aid and Indigent Defendants (SCLAID) following its development of the ABA Standards for Language Access in Courts.<sup>1</sup> Our group brings extensive experience to this issue, as it includes members of the bench, the bar and institutions of higher learning engaging in strategic language access advocacy on local, state and national levels.

This letter summarizes the growing number of problems involving the representation of LEP and DHH clients; describes the increase of the LEP population in the United States; reviews efforts of the ABA in the area of language access; and finally, points to various ethical obligations of lawyers representing LEP and DHH clients that



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implicate the need for language services and identifies several Rules where a comment should be added to address these ethical concerns. It does not provide proposed commentary at the present time. However, we will gladly forward specific language to the Committee as it becomes available from groups working at the state level.<sup>2</sup>

**1. State Bar associations are seeing an increase in ethical violations in the area of language access.**

A number of the 51 jurisdictions that have adopted the Model Rules<sup>3</sup> are dealing with an increasing number of disciplinary complaints involving language access. Areas of concern include reports of attorneys who falsely claim foreign language proficiency to attract LEP clients and then abandon the client mid-representation without having completed the work for which the attorney was contracted. Where the work is completed, many LEP clients who file bar complaints--in both civil and criminal legal matters--appear to have had no communication in their own language and as a result have little to no understanding of the legal work done on their behalf, or of the potential outcomes and risks involved. As a result, important legal rights can be lost or inadvertently forfeited, cases are not presented effectively, and innocent persons may be convicted.

Some attorneys use bilingual paralegals or legal secretaries without due regard for the requirements of attorney-client communication and the unauthorized practice of law. Ignorance of the importance of working with a qualified and trained interpreter or translator, combined with a disinclination to hire such services due to cost, has meant that some attorneys assume their practice is appropriate and they are somehow relieved of their responsibility to comply with ethical rules. Attorneys with inadequate language proficiency presume that their clients understand even when there is evidence to the contrary. Additionally, some truly bilingual attorneys undertake representation for LEP clients in areas of law in which the attorney is not qualified/competent to provide representation.

These problems are particularly acute as both LEP and DHH individuals can face barriers in access to the legal system and are vulnerable to incompetent and unethical representation due to ignorance of available resources. This has led to disciplinary investigations in several jurisdictions including New York,<sup>4</sup> Utah,<sup>5</sup> California,<sup>6</sup> Michigan<sup>7</sup> and Washington.<sup>8</sup> There are also several jurisdictions, such as South Carolina, which are known to have confronted this issue, but which do not have published complaints at this time. Specific guidance is needed in the Commentary of the Model Rules to address the above and other overlooked ethical considerations.<sup>9</sup>

**2. The United States LEP population continues to grow.**

The need to provide language access in our legal system is growing as rapidly as our national LEP population. English proficiency is regularly captured in census data. "Limited English proficient" refers to an individual who does not speak English as their primary language and who has a limited ability to read, speak, write, or understand English.<sup>10</sup> From 1990 to 2000 our national LEP population grew 80 percent, with the Southeastern and Southwestern United States seeing some of the highest growth rates.<sup>11</sup> In 2010, LEP individuals accounted for 25.2 million, or nine percent, of the U.S. population over age five<sup>12</sup> and Spanish-speaking LEP individuals accounted for 66 percent of the total U.S. LEP population.<sup>13</sup> Overall, Spanish, Chinese, Vietnamese,

Korean, and Tagalog were the top five languages spoken by 79 percent of all LEP individuals in 2010.<sup>14</sup> The sixth through tenth most common languages were Russian, French Creole, Arabic, Portuguese, and African languages.<sup>15</sup> Although California, Texas, New York, Florida, Illinois, and New Jersey remain the top traditional destinations for LEP individuals,<sup>16</sup> every state has significant numbers of persons who are LEP.

**3. Adding commentary to the Model Rules will supplement the ABA's important work in the area of language access.**

Work at the ABA has recognized the impact on access to justice as this growing LEP population comes into contact with the legal system. In February 2012, the ABA adopted the Standards for Language Access in Courts (Standards).<sup>17</sup> 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 in the communities they serve.<sup>18</sup>

The Standards also built on previous ABA efforts. In 2006, SCLAID developed and the House of Delegates adopted as ABA policy, the Standards for the Provision of Civil Legal Aid in 2006.<sup>19</sup> Standard 4.6 addressed civil legal aid providers' responsibility regarding communication with LEP clients, communication with LEP persons receiving non-representational services (e.g. intake), bilingual services, interpreter services, training and evaluation.<sup>20</sup> The Standards also addressed professional responsibility standards of attorneys in legal aid settings.<sup>21</sup>

Adding commentary would extend this guidance to attorneys in private civil practice. Additionally, it would ensure that attorneys in criminal practice are held to equivalent ethical standards. We are encouraged by the Committee's recent consideration of other compelling and timely issues including the work done by the ABA Commission on Ethics 20/20 (Commission). Just as the Commission recognized that the Model Rules needed to be updated to address the increased use of technology in the legal profession,<sup>22</sup> we urge the Committee to recognize the critical importance of updating the Model Rules to address the ethical issues specific to the DHH community as well as the large and increasing LEP client community seeking representation by attorneys.

**4. Adding language access commentary to the Model Rules would provide much needed guidance for attorneys in civil and criminal settings.**

There has been a great deal of conversation about language access in the context of civil rights, due process and access to justice, much of it focusing on the obligation of recipients of federal funds to provide LEP individuals with meaningful access to their services pursuant to Title VI of the Civil Rights Act of 1964<sup>23</sup> and other similar federal laws. The courts, along with state and federal agencies, have been given additional guidance and encouragement to address inadequacies. Meanwhile attorneys undertaking representation of LEP and DHH clients have received little guidance or support. Issuing commentary to the Model Rules can remedy this deficit in a meaningful way.

Many attorneys are unaware that representing LEP and DHH clients requires the use of language access services to fulfill their ethical obligations under the Model Rules

and their jurisdiction's own rules for professional conduct. Specifically, representing an LEP or DHH client highlights an attorney's ethical duty to provide competent representation,<sup>24</sup> communicate effectively,<sup>25</sup> protect the confidentiality of information,<sup>26</sup> avoid conflicts of interest,<sup>27</sup> and take protective action as necessary to assist a client with diminished capacity.<sup>28</sup> It also raises questions about whether an LEP client can be charged for the cost of language access services as an ethical matter.<sup>29</sup>

**5. A review of Model Rules 1.0, 1.1, 1.4, 1.14, 1.6 and 1.7 demonstrates how language access commentary would be helpful.**

***A. Rule 1.0 – Terminology***

Because Rule 1.0 defines the meaning of many frequently used terms throughout the Model Rules, we encourage the Committee to add commentary to this Model Rule addressing the meaning of these terms in the context of representing an LEP or DHH client. Specifically, we encourage the Committee to add commentary to the definitions of “confirmed in writing,”<sup>30</sup> and “informed consent.”<sup>31</sup> In order for an attorney to fulfill the obligation articulated by each of these terms, it is imperative that the attorney communicate effectively with the client. For example, if the attorney cannot communicate effectively with a client who has a limited ability to communicate in English, then it will be impossible for the attorney to communicate adequate information and explanation about the material risks of, and reasonable available alternatives to, proposed attorney conduct.<sup>32</sup> If the attorney does not adequately communicate with the client in that regard, then the client cannot provide informed consent to enter into an agreement to the proposed course of attorney conduct.<sup>33</sup>

***B. Rule 1.1 – Competence***

Attorneys have an ethical duty to provide competent representation. “Competent representation requires the legal knowledge, skill, *thoroughness and preparation* reasonably necessary for the representation. (Emphasis Added)”<sup>34</sup> To be thorough and prepared, “competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem.”<sup>35</sup>

The current Comment to Rule 1.1 does not address how this ethical obligation relates to representing an LEP or DHH client. A comment is necessary to explain that an attorney cannot adequately inquire into or analyze the factual elements of a problem if the attorney and client cannot communicate effectively with each other in the same language (either directly or via an interpreter) because the client is LEP or DHH. Without accurate facts, the attorney cannot properly conduct a legal analysis of the case. The inability to ascertain accurate facts and conduct the proper legal analysis due to a language barrier impedes an attorney from fulfilling her ethical obligation to provide competent representation. To provide competent representation of an LEP or DHH client, an attorney should take the necessary steps to secure a qualified interpreter skilled in the client's language to communicate with the client.

### ***C. Rule 1.4 – Communication***

Rule 1.4 requires attorneys to communicate with their clients promptly and on an ongoing basis in the course of legal representation. Communication can be difficult with any client, but difficulties are increased when the client is LEP or DHH.<sup>36</sup> Specifically, attorneys have an ethical obligation, *inter alia*,<sup>37</sup> to “explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.”<sup>38</sup> The commentary to Rule 1.4 explains that “the client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued, to the extent the client is willing and able to do so.”<sup>39</sup> The comments do not address this obligation as it relates to representing an LEP or DHH client.

Without foreign language or sign language interpretation and other necessary language services to facilitate attorney-client communications, attorneys who do not personally have competent language skills to communicate in their client’s language cannot fulfill their ethical obligation to communicate with their LEP and DHH clients.<sup>40</sup> Necessary language services may include but are not limited to, translation of retainer agreements, letters to clients, pleadings, settlement agreements or any other documents relevant and critical to the representation of the client. An attorney’s failure to communicate effectively with an LEP or DHH client impairs a client’s ability to participate intelligently and fully in their representation. An attorney’s failure to provide language services to LEP or DHH clients may also affect the client’s right to due process, right to be present and right to effective assistance of counsel.<sup>41</sup>

### ***D. Rule 1.14 – Client with Diminished Capacity***

Where a client with diminished capacity, for any reason, is LEP or DHH, it raises language access concerns and attorneys need guidance from the Committee. Specifically, there is lack of guidance in the comments concerning the duty to take protective action.<sup>42</sup> Adding language access commentary to Model Rule 1.14 would provide clarity by providing guidance on taking protective action where the client’s diminished capacity is exacerbated by the fact the client has limited ability to communicate in English. Using a trained and qualified interpreter is critical to ascertaining a client’s capacity in the first place, since impressions about cognitive deficits, degree of comprehension, and capacity itself, are formed by oral communication with a client. An attorney representing an LEP or DHH client with diminished capacity should consider that taking “protective action” will include ensuring clients have adequate language assistance in order to communicate effectively with the attorney, the court or any other relevant entities to the action.

### ***E. Rule 1.6 – Confidentiality of Information***

Attorneys are prohibited from revealing information related to the representation of the client unless an approved exception applies.<sup>43</sup> Furthermore, attorneys are ethically obligated to make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.<sup>44</sup> Transmitting information to and from a client through the use of children, family members, friends or strangers, will reveal confidential information. In addition, attorneys should consider that these individuals may themselves further intentionally or accidentally reveal confidential information to a third party. Attorneys representing

clients with the limited ability to communicate in English should also be aware that the presence of such individuals in the conversation between an attorney and the client will destroy attorney-client privilege, which is not generally the case when the interpreter used is a qualified professional.<sup>45</sup>

Guidance from the Committee on this issue will make attorneys more cognizant that the risk of confidentially being breached is greater when the interpreter being used has not been professionally trained. Equally as important, guidance from the Committee will encourage attorneys representing LEP and DHH clients to become informed of the law in their jurisdiction governing interpreter use and attorney-client privilege.<sup>46</sup>

#### ***F. Rule 1.7 – Conflict of Interest (Current Clients)***

In addition to the duty to provide competent representation, communicate effectively, take protective action as necessary and maintain the confidentiality of information, attorneys must also avoid concurrent conflicts of interest with a current client.<sup>47</sup> When an attorney serves as an interpreter in her own case or asks a client's family member to serve as an interpreter, it creates the potential for a conflict of interest.

Specifically, a concurrent conflict of interest exists when “there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.”<sup>48</sup> Bilingual attorneys are often asked by the court to serve as an interpreter in legal proceedings for their client and sometimes for the opposing party.<sup>49</sup>

Professional training as an interpreter is crucial to ensure that the interpreter is competent, accurate and impartial.<sup>50</sup> Additionally, professional interpreters have the ability to maneuver cultural differences in vocabulary which a bilingual attorney or other bilingual individual may not recognize.<sup>51</sup> It is unwise and unethical for bilingual attorneys to wear simultaneously the hat of interpreter during a legal proceeding. Moreover, an attorney cannot physically do simultaneous interpreting<sup>52</sup> and play the role of an attorney at the same time. The USDOJ has cited several examples of conduct that violated federal law including state Assistant District Attorneys interpreting for LEP defendants which the USDOJ concluded raised “serious conflict of interest concerns.”<sup>53</sup> An interpreter has an ethical duty to be *impartial*.<sup>54</sup>

The roles of an attorney and interpreter are largely antithetical. An attorney has an ethical duty to represent her client competently which includes advocating zealously for the *interests of the client* and presenting the facts of the legal problem in the light most favorable to the client. Conversely, an interpreter is a *neutral* communication medium through which the client and attorney/court communicate. A competent interpreter has an ethical duty to faithfully render the original (source-language) speech to the target language by conserving all the elements of the original message while accommodating the syntactic and semantic patterns of the target language.<sup>55</sup> The rendition should sound natural in the target language, and there should be no distortion of the original message through addition or omission, explanation or paraphrasing.<sup>56</sup> Therefore, an attorney representing a client with an interest in the outcome of case, personally or by virtue of the agency relationship that has formed with the client, cannot objectively serve as interpreter for their own client and especially not for the opposing party. Because such conduct

creates a concurrent conflict of interest, we urge the Committee to add commentary to Model Rule 1.7 addressing this issue.

We appreciate the Committee's time and consideration of these issues. Adding commentary to the Model Rules on attorney ethical obligations to provide language access for LEP and DHH clients is both timely and necessary. Specific guidance from the Committee will assist attorneys in the 51 jurisdictions currently adopting the Model Rules in understanding that LEP and DHH clients are entitled to the same level of representation as other clients. The Committee adding commentary would demonstrate that providing language access services when the client is LEP or DHH is a logical and reasonable incident to the ethical obligations attorneys already undertake under the Model Rules. There are several groups with whom the Committee may consult and/or collaborate in considering adding language access commentary to the Model Rules. In addition to SCLAID and NCSC, N-LAAN<sup>57</sup> would also provide meaningful feedback and further insight regarding language access and guidance for attorneys in the Model Rules. Our group looks forward to your response and would be happy to continue to share ongoing work, in particular proposals for the language of the commentary, as it develops in response to concerns at the state level. Should you have any questions you may contact Jana J. Edmondson-Cooper via e-mail at [jedmondson-cooper@glsp.org](mailto:jedmondson-cooper@glsp.org) or directly by phone at (478) 751-6500, Ext. 6499.

Respectfully,

/s/ Jana J. Edmondson-Cooper  
Jana J. Edmondson-Cooper  
Bilingual Staff Attorney  
Georgia Legal Services Program

/s/ Gillian Dutton (with permission)  
Gillian Dutton  
Associate Professor of Lawyering Skills  
Director, Externship Program  
Seattle University School of Law

/s/ Lisa Wood (with permission)  
Lisa Wood, Chair  
Standing Committee on Legal Aid and Indigent Defendants  
American Bar Association

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<sup>1</sup> The ABA Standards on Language Access deferred the comprehensive treatment of issues of deaf and hard of hearing litigants until a later time but we believe that both efficiency and the similarity of many of the ethical issues in working with interpreters and bilingual staff warrant the need for additional commentary to address both situations.

<sup>2</sup> In the attached Appendix A, the Committee will find a brief background on the work done at the national and state level by entities including, but not limited to, the National Center for State Courts (NCSC), Conference of Chief Justices, and U.S. Department of Justice (USDOJ).

<sup>3</sup> See, Alphabetical List of States Adopting Model Rules available at [http://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct/alpha\\_list\\_state\\_adopting\\_model\\_rules.html](http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/alpha_list_state_adopting_model_rules.html) (Last visited August 1, 2013).

<sup>4</sup> *The Association of the Bar of the City of New York, Formal Opinion 1995-12, Committee on Judicial and Professional Ethics* (July 6, 1995) (A lawyer who represents a client with whom direct communications cannot be maintained in a mutually understood language, must evaluate the need for a qualified interpreter service and take steps to secure the services of an interpreter, when needed for the effective lawyer-client communications, to provide competent and zealous representation, preserve client confidences and avoid unlawful discrimination or prejudice in the practice of law.)

<sup>5</sup> *Utah State Bar Ethics Advisory Opinion Committee, Opinion Number 96-06* (July 6, 1996) (An attorney need not have any personal knowledge of language skills relating to the language ability of the client. It is necessary, however, for an attorney to be able to communicate adequately with the client. [FN1] Therefore, consideration should be given to language impediments that would materially affect the attorney's ability to communicate adequately in the specific circumstances of the client's case. The method by which this must be done will depend upon the circumstances of each situation. [FN2]). \*

FN1 Communication.

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

(b) A lawyer shall explain a matter to the extent reasonably necessary to enable the client to make informed decisions regarding the representation.

Utah Rules of Professional Conduct 1.4.

FN2 The analysis and general conclusion of this opinion apply as well to dealing with clients who are speech- or hearing-impaired.

<sup>6</sup> See, *In the Matter of Whitehead* (Rev. Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354, 368 (Lawyer found culpable of repeatedly failing to perform services competently based, in part, on a finding that the lawyer inadequately supervised associates assigned to perform services for Spanish-speaking clients, where the associates lacked the necessary ability to communicate in Spanish.);

See, *In re Brockway* (Rev. Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944 (Moral turpitude found and aggravated by additional uncharged misconduct as the result of lawyer's overreaching of his clients. Lawyer knew of his clients' English language limitations but nevertheless used technical legalese in his engagement agreements for his own benefit and to the detriment of his clients.);

See, *California State Bar Standing Committee on Professional Responsibility and Conduct, Formal Opinion Number 1984-77* (1984) ("In any matter which requires client understanding, the attorney must take all reasonable steps to insure that the client comprehends the legal concepts involved and the advice given, irrespective of the mode of communication used, so that the client is in a position to make an informed decision. Appreciation of the client's language may have a substantial bearing on the capability of the attorney to communicate with the client concerning such facts, legal concepts and advice. The attorney may need to communicate in a particular language or dialect and for this purpose may need to use an interpreter skilled in particular language or dialect. Other means reasonably available to counsel, such as a person skilled in sign language or in translating a written document, may need to be used in order for counsel to act competently in a particular case. [FN1] Another alternative is to refer the case to or associate a bilingual attorney who can assist with the language problem, as is done in other areas when a lawyer is confronted with a matter calling for skills outside of his or her personal experience or ability.")

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<sup>7</sup> See, *State of Michigan Attorney Discipline Board, Report of Tri-County Hearing Panel #14, Case No. 05-26-GA* (March 23, 2007)(In March 1995, respondent (attorney) instructed his client to sign an authorization to settle the claim against the insurer for \$150,000, of which \$75,000 was due on or before April 1, 1995. The complaint charged that the client's native language is Arabic, that she was not fluent in English, and that respondent did not explain the document to her. Count One of the complaint alleged that respondent failed to explain the matter to the extent reasonably necessary to permit client to make informed decisions about the representation in violations of MRPC 1.4(b).)

<sup>8</sup> See, *Discipline Notice-Mark A. Quigley*, Washington State Bar Association (January 13, 2003) available at <https://www.mywsba.org/DisciplineNotice/DisciplineDetail.aspx?dID=569> (Last visited September 20, 2013) (Washington attorney voluntarily resigned in lieu of disbarment for completely delegating all interactions with Russian speaking clients to Russian speaking non-lawyers and failing to supervise the non-lawyers, among other ethical violations).

<sup>9</sup> See, Uyehara, Paul M. *Legal Help for Speakers of Other Languages: Three Ethical Traps*, Cornerstone Volume 29, Number 1, pp. 8-9 (2007).

<sup>10</sup> [www.lep.gov](http://www.lep.gov) (Last visited July 30, 2013).

<sup>11</sup> Pandya, Chhandasi, Jeanne Batalova, and Margie McHugh. 2011. "Limited English Proficient Individuals in the United States: Number, Share, Growth, and Linguistic Diversity." Washington, DC: Migration Policy Institute. available at <http://www.migrationinformation.org/integration/LEPatabrief.pdf> (Last visited August 6, 2013).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

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

<sup>17</sup> ABA Standards for Language Access in Courts (February 2012) available at [http://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ls\\_sclaid\\_standards\\_for\\_language\\_access\\_proposal.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_standards_for_language_access_proposal.authcheckdam.pdf) (Last visited July 30, 2013).

<sup>18</sup> See, [http://www.americanbar.org/groups/legal\\_aid\\_indigent\\_defendants/initiatives/language\\_access.html](http://www.americanbar.org/groups/legal_aid_indigent_defendants/initiatives/language_access.html) (Last visited July 30, 2013).

<sup>19</sup> Standards for the Provision of Civil Legal Aid, ABA SCLCID (August 2006) available at [http://www.legalaidnc.org/public/participate/legal\\_services\\_community/ABA\\_StandardsfortheProvisionofCivilLegalAid\\_Aug\\_2006.pdf](http://www.legalaidnc.org/public/participate/legal_services_community/ABA_StandardsfortheProvisionofCivilLegalAid_Aug_2006.pdf) (Last visited August 5, 2013).

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> Summary of Actions by the ABA Commission on Ethics 20/20 (December 28, 2011) (p.3) available at [http://www.americanbar.org/content/dam/aba/administrative/ethics\\_2020/20111228\\_summary\\_of\\_ethics\\_20\\_20\\_commission\\_actions\\_december\\_2011\\_final.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/ethics_2020/20111228_summary_of_ethics_20_20_commission_actions_december_2011_final.authcheckdam.pdf) (Last visited August 7, 2013).

<sup>23</sup> 42 U.S.C. 2000-d, et seq.

<sup>24</sup> ABA Model Rule 1.1.

<sup>25</sup> ABA Model Rule 1.4.

<sup>26</sup> ABA Model Rule 1.6.

<sup>27</sup> ABA Model Rule 1.7.

<sup>28</sup> ABA Model Rule 1.14.

<sup>29</sup> ABA Model Rule 1.5 *available at*

[http://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct/rule\\_1\\_5\\_fees.htm](http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_5_fees.htm) (Last visited September 11, 2013).

This would include attorneys charging interpreter fees to an LEP client or billing extra time related to the interpreting. Compliance with the American with Disabilities Act does not permit this in the case of a client who is DHH. 28 C.F.R. Sec. 36.301(c). Furthermore, if a fee is imposed on an LEP client, how will that affect indigent LEP clients?

<sup>30</sup> ABA Model Rule 1.0(b) *available at*

[http://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct/rule\\_1\\_0\\_terminology.html](http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_0_terminology.html) (Last visited September 9, 2013).

<sup>31</sup> ABA Model Rule 1.0(e) *available at*

[http://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct/rule\\_1\\_0\\_terminology.html](http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_0_terminology.html) (Last visited September 9, 2013).

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> ABA Model Rule 1.1 *available at*

[http://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct/rule\\_1\\_1\\_competence.html](http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_1_competence.html) (Last visited August 1, 2013).

<sup>35</sup> ABA Model Rule 1.1, Commentary [5] Thoroughness and Preparation *available at*

[http://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct/rule\\_1\\_1\\_competence/comment\\_on\\_rule\\_1\\_1.html](http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_1_competence/comment_on_rule_1_1.html) (Last visited August 1, 2013).

<sup>36</sup> *See also*, Edmondson, Jana J., “Working with an Interpreter: Providing Effective Communication and Ensuring Limited English Proficient Clients Have Meaningful Access to Justice,” Georgia Bar Journal, Vol. 18,,No. 5, pp. 18-24 (Feb. 2013) *available at*

<http://www.gabar.org/newsandpublications/georgiabarjournal/loader.cfm?csModule=security/getfile&pageID=23251> (Last visited August 1, 2013).

<sup>37</sup> ABA Model Rule 1.4(a) requires an attorney to “(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules; (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished; (3) keep the client reasonably informed about the status of the matter; (4) promptly comply with reasonable requests for information; and (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.” *available at*

[http://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct/rule\\_1\\_4\\_communications.html](http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_4_communications.html) (Last visited August 1, 2013).

<sup>38</sup> ABA Model Rule 1.4(b) *available at*

[http://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct/rule\\_1\\_4\\_communications.html](http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_4_communications.html) (Last visited August 1, 2013)

<sup>39</sup> ABA Model Rule 1.4, Commentary [5] Explaining Matters *available at* [http://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct/rule\\_1\\_4\\_communications/comment\\_on\\_rule\\_1\\_4.html](http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_4_communications/comment_on_rule_1_4.html) (Last visited August 1, 2013).

<sup>40</sup> *See*, Endnote 37, *supra*

<sup>41</sup> *See*, Edmondson, Jana J., “Working with an Interpreter: Providing Effective Communication and Ensuring Limited English Proficient Clients Have Meaningful Access to Justice,” *Georgia Bar Journal*, Vol. 18,,No. 5, pp. 18-24 (Feb. 2013) *available at* <http://www.gabar.org/newsandpublications/georgiabarjournal/loader.cfm?csModule=security/getfile&pageID=23251>. (Last visited August 1, 2013).

<sup>42</sup> ABA Model Rule 1.14, Comment [5] Taking Protective Action – “If a lawyer reasonably believes that a client is at risk of substantial physical, financial or other harm unless action is taken, and that a normal client-lawyer relationship cannot be maintained as provided in paragraph (a) because the client *lacks sufficient capacity to communicate or to make adequately considered decisions in connection with the representation*, then paragraph (b) permits the lawyer to take protective measures deemed necessary.” (Emphasis added) *available at* [http://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct/rule\\_1\\_14\\_client\\_with\\_diminished\\_capacity/comment\\_on\\_rule\\_1\\_14.html](http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_14_client_with_diminished_capacity/comment_on_rule_1_14.html) (Last visited August 1, 2013).

<sup>43</sup> ABA Model Rule 1.6(a) *available at* [http://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct/rule\\_1\\_6\\_confidentiality\\_of\\_information.html](http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_6_confidentiality_of_information.html) (Last visited August 1, 2013).

<sup>44</sup> ABA Model Rule 1.6(c) *available at* [http://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct/rule\\_1\\_6\\_confidentiality\\_of\\_information.html](http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_6_confidentiality_of_information.html) (Last visited August 1, 2013).

<sup>45</sup> *Protecting Privilege: Using Interpreters Responsibly available at* [http://www.americanbar.org/content/dam/aba/migrated/domviol/pdfs/protecting\\_privilege\\_authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/domviol/pdfs/protecting_privilege_authcheckdam.pdf) (Last visited August 1, 2013).

<sup>46</sup> For example, in Georgia communications between client and the attorney are privileged if the interpreter is acting as the agent of the attorney. *See*, *Georgia Supreme Court Code of Responsibility for Interpreters, Standard X (A-D)* *available at* [http://w2.georgiacourts.org/coi/index.php?option=com\\_content&view=article&id=59&Itemid=70](http://w2.georgiacourts.org/coi/index.php?option=com_content&view=article&id=59&Itemid=70) (Last visited August 1, 2013)

<sup>47</sup> Model Rule 1.7 *available at* [http://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct/rule\\_1\\_7\\_conflict\\_of\\_interest\\_current\\_clients.html](http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_7_conflict_of_interest_current_clients.html) (Last visited August 2, 2013)

<sup>48</sup> Model Rule 1.7(a)(2) *available at* *See*, Endnote 67 *supra*.

<sup>49</sup> Additionally, it is not uncommon for attorneys to use family members (who are also clients) to interpret in a case, such as in a divorce.

<sup>50</sup> There is a common misconception that bilingualism equals competency. However, the ABA Standards for Language Access in Courts and the USDOJ have been clear that it does not.

*See*, ABA Standard 4, Commentary (p. 37); Standard 4.1, Commentary (p. 38); Standard 8.1 (p.81) *available at* [http://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ls\\_sclaid\\_standards\\_for\\_language\\_access\\_proposal\\_authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_standards_for_language_access_proposal_authcheckdam.pdf) (Last visited July 30, 2013).

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See also, DOJ Guidance, 67 Fed. Reg. 41455 at 41 461. See also, *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>51</sup> For example, “notario” vs. “notary”. In many Central American and South American countries, a “notario” may have the authority to be a mediator, arbitrator, issue judicial opinions and in some instances intervene in judicial proceedings. The position of “notario” often is achieved through judicial appointment. In the United States, a notary public generally serves the purpose of confirming that the signer of a document is actually who she says she is and that her reasons for signing are genuine. In most states in the U.S., a person becomes a notary by presenting an application, taking an oath and paying the associated fee. An untrained interpreter is less likely to be aware of a linguistic nuance such as this. See also, *Lost in Translation Texas Notary Public vs. Mexico Notario Publico* available at <http://www.sos.state.tx.us/statdoc/notariopublicoarticle.shtml> (Last Visited July 30, 2013). See also, *The Wrong Help Can Hurt: Beware of Immigration Scams*, U.S. Citizenship and Immigration Services available at <http://www.uscis.gov/portal/site/uscis/menuitem.e8b24a3cec33ca34c48bfc10526e0aa0/?vgnextoid=6aaad4aaee6ab210VgnVCM100000b92ca60aRCRD&vgnnextchannel=7bc9d4aaee6ab210VgnVCM100000b92ca60aRCRD> (Last visited September 13, 2013).

<sup>52</sup> See, “*Modes of Interpreting: Simultaneous, Consecutive & Sight Translation*,” National Association of Judicial Interpreters and Translators (NAJIT)(May 15, 2006) available at [http://www.najit.org/publications/Modes\\_of\\_Interpreting200609.pdf](http://www.najit.org/publications/Modes_of_Interpreting200609.pdf) (Last visited September 13, 2013).

<sup>53</sup> See, *DOJ Letter to North Carolina AOC* (March 8, 2012) (p.10) 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>54</sup> See, *NAJIT Code of Ethics and Responsibilities* available at <http://www.najit.org/about/NAJITCodeofEthicsFINAL.pdf> (Last visited August 13, 2013).

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> The National Language Access Advocates Network (N-LAAN) is a national organization that supports and engages in effective advocacy to eradicate language discrimination and promote language rights. N-LAAN provides a forum for language access advocates to develop expertise, share resources and devise strategy. It serves as a voice for its members in advocating for better policies and laws and for more effective enforcement of language rights. Both Ms. Dutton and Ms. Edmondson-Cooper are members and can help facilitate communication between the Committee and N-LAAN if desired. <http://www.probono.net/nlaan/> (Last visited August 30, 2013).