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# Providing Services to Language Minority Clients

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**California State Bar**  
**Standing Committee On Professional Responsibility and Conduct**  
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**\*1 ISSUE: IS AN ATTORNEY ACTING COMPETENTLY IF THE ATTORNEY UNDERTAKES REPRESENTATION OF A CLIENT WHEN THE ATTORNEY IS NOT ABLE TO COMMUNICATE DIRECTLY WITH THE CLIENT IN A LANGUAGE CLEARLY UNDERSTOOD BY THAT CLIENT?**  
Formal Opinion Number 1984-77  
1984

DIGEST: As a general rule, the attorney need not have any personal knowledge or language skills relating to the language ability of the client. It is necessary, however, for the attorney to be able to communicate adequately with the client. Therefore, consideration should be given to language impediments which would materially impact on the attorney's ability to communicate adequately in the specific circumstance. The method in which this is done depends upon the circumstances of each situation.

AUTHORITIES INTERPRETED: [Rule 6-101 of the Rules of Professional Conduct of the State Bar of California.](#)

DISCUSSION

In the last several decades, California's non-English speaking population has increased dramatically. The law itself has become much more complex, necessitating the need for better and more complex communications with non-English speakers and non-native speakers of the English language. A lawyer should, therefore, be sensitive to the non-English or limited English-speaking client's communication difficulties in explaining his or her legal problem and in understanding the legal advice to be provided by the lawyer. Such sensitivity is an important aspect of attorney competence under [rule 6-101](#), as well as all other duties and obligations of attorneys requiring communication. (See Rules [Prof. Conduct, rules 2-107\(B\)\(9\)](#), [2-108\(A\)](#), [2-111\(C\)\(5\)](#), [4-101](#), [5-101](#), and [5-102](#).)

An attorney must have or must acquire sufficient time, resources and ability so that he can apply the sufficient learning, skill and diligence necessary to discharge the duties arising from the attorney's employment or representation ([rule 6-101](#)). However, the inability to communicate directly with the client in a language clearly understood by the client does not always preclude the attorney from discharging the attorney's duties within the meaning of the preceding sentence. It should be noted that difficulty in communication can occur even between those who speak the same language, since a client may not immediately grasp the import of the words used by counsel.

It is the responsibility of the attorney to gather all of the relevant facts, undertake reasonable research in an effort to ascertain legal principals and make an informed decision as to a course of conduct based upon an intelligent assessment of the problem. (See [Smith v. Lewis \(1975\) 13 Cal.3d 349](#).) The client may have selected the attorney knowing that direct communication may be limited, or even not possible. However, this does not reduce the attorney's duty to communicate adequately. If direct communication in a language clearly understood by the client is not possible, the attorney must take into account the fact that means other than direct communication will be required to discuss the client's case and to meet the responsibilities noted above. Although relevant, the means used are not controlling with respect to the issue of lawyer competency; however, adequate communication is

necessary in order to render "competent" legal services.

\*2 On 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 a 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 his or her personal experience or ability.

This opinion is issued by the Standing Committee on Professional Responsibility and Conduct of the State Bar of California. It is advisory only. It is not binding upon the courts, The State Bar of California, its Board of Governors, any persons or tribunals charged with regulatory responsibilities, or any member of the State Bar.

FN1 For example, such a translation may be essential for critical documents, such as a contingency fee agreement ([Bus. & Prof. Code, § 6147](#)), a general release of claims ([Civ. Code, § 1541](#)), or a written waiver of a conflict of interest ([Rules Prof. Conduct, rule 4-101](#)).

**Pennsylvania Bar Association Committee on Legal Ethics and Professional  
Responsibility**

Informal Opinion Number 93-122  
Inquiry No. 93-122  
July 16, 1993

You requested an opinion from the PBA Committee on Legal Ethics and Professional Responsibility concerning several questions about your professional translation credentials. I have been asked to respond to your inquiry regarding the ethical ramifications resulting from your dual credentials as a licensed attorney and a certified **translator**.

Specifically, you question whether the following activities constitute the practice of law and, hence, are governed by the Pennsylvania Rules of Professional Conduct (Rules): translating legal or business documents, editing translated documents to ensure that they have been properly translated, providing information about foreign substantive law or legal structures while translating a document, summarizing or annotating foreign language documents, statutes, or opinions, and researching foreign law in the original language. If any one does constitute the practice of law, you ask whether you can publicize your dual certification and whether any ethical issues arise which might limit your translation work which does not constitute the practice of law. I address each question in turn.

What constitutes the practice of law is defined by law and varies from one jurisdiction to another. Rule 5.5, cmt. In Pennsylvania, "one is engaged in the practice of law whenever and wherever the services require legal knowledge, training, skill, and ability beyond those possessed by the average man." In re Arthur, 15 B.R. 541, 546 (Bankr. E.D.Pa. 1981). Although it may be difficult to distinguish between lay and legal judgements, "[e]ach given case must turn on a careful analysis of the particular judgment involved and the expertise that must be brought to bear on its exercise." Dauphin County Bar Ass'n v. Mazzacaro, 465 Pa. 545, \_\_\_\_\_, 351 A.2d 229, 233 (1976). Thus, if your consulting work as a **translator** requires an understanding of legal principles and a skill for applying those principles, then that work constitutes the practice of law.

In applying this definition of "practice of law", then, your practice of simply translating documents, whether they are legal or business documents or other types of documents, would not constitute the practice of law. Similarly, editing previously translated documents to ensure that they have been properly translated, by checking for correct terminology and conformity with the original, does not constitute the practice of law. Providing information about foreign substantive law, even in the context of translating a document, would probably entail the practice of law since it would require you to use your legal training to analyze the law involved. General information about foreign legal structures, however, should be available to the average person and should not require legal expertise or an understanding of legal principles; thus, that activity would not involve you in the practice of law. Whether summarizing or annotating foreign language documents, statutes, or opinions, rather than just translating them, constitutes the practice of law depends on precisely what the activity entails. If you are referring to the simple act of summarizing the document which you have just translated and read, this would not involve the practice of law as most people can summarize a document which they have just read and this does not involve your legal expertise. On the other hand, if you are suggesting summarizing or annotating which would include injection of your legal opinion, this would constitute the practice of law since it requires your understanding of legal principles which are not ordinarily available to the average person. Similarly, whether researching foreign law in the original language involves the practice of law depends. Simply researching and finding the law does not seem to involve the practice of law. If you find the law and issue advice or an opinion based on the found law, however, that would constitute the practice of law. Although these last two scenarios depend on a seemingly fuzzy line, the distinguishing factor is whether the work involves any legal analysis and the rendering of a legal opinion, both of which require your legal expertise.

\*2 Since some of your proposed work might involve the practice of law, the next question is whether you can publicize your dual certification. This Committee has previously concluded that "a dual degree can be disclosed on your stationery, calling cards and promotional materials." PBA Committee On Legal Ethics and Professional Responsibility, Op. 87-125 (1987). The Committee

stressed, however, that an attorney must clearly disclose to her non-legal clients that she is not acting in her capacity as attorney. Id. You ask specifically if your publicizing your dual certification would violate Rule 7.4. As Rule 7.4 (b) indicates, the permission to advertise certification set forth in that rule concerns certification by an organization which certifies lawyers. Rule 7.4 (b). That is not at issue in your inquiry. Though you can do no more than simply disclose your dual certification, as long as that communication complies with the remaining dictates of Rule 7.4 as well as Rules 7.1 and 7.2, you may publicize both credentials.

Even if you limit your translating work to those activities which do not constitute the practice of law, you still are a licensed attorney in Pennsylvania and, as such, are still governed by the Rules. A few other ethical considerations might arise, and I mention them for you to keep in mind as you practice both as a lawyer and as a **translator**.

First, you must keep your non-legal business separate from your legal business. This Committee previously concluded that "[a] lawyer is entitled to engage in business other than the practice of law provided that the lawyer keeps such enterprises entirely separate from the lawyer's independent practice of law." PBA Committee On Legal Ethics and Professional Responsibility, Op. 92-53 (1992); see also PBA Committee On Legal Ethics and Professional Responsibility, Op. 87-125 (1987). I suggest that you make a full disclosure in writing.

Second, although you present no information suggesting that you plan to do so, remember that "[a] lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law." Rule 5.4 (b). You are also prohibited from sharing legal fees with nonlawyers. Rule 5.4 (a). Further, neither you nor your intermediary can solicit legal business from your non-legal clients, Rule 7.3 (a), and you cannot pay a referral fee to one recommending your services, Rule 7.2\*\*\* (c).

Last, though this opinion refers to the practice of law, as defined in Pennsylvania, you are precluded from "practic[ing] law in a jurisdiction where to do so would be in violation of regulations of the profession in that jurisdiction." Rule 5.5 (b). It is unclear from your inquiry what exactly you intend to do with foreign law, but this rule might be one for you to keep in mind as you proceed.

**\*3 CAVEAT: THE FOREGOING OPINION IS ADVISORY ONLY AND IS NOT BINDING ON THE DISCIPLINARY BOARD OF THE SUPREME COURT OF PENNSYLVANIA OR ANY COURT. IT CARRIES ONLY SUCH WEIGHT AS AN APPROPRIATE REVIEWING AUTHORITY MAY CHOOSE TO GIVE IT. MOREOVER, THIS IS THE OPINION OF ONLY ONE MEMBER OF THE COMMITTEE AND IS NOT AN OPINION OF THE FULL COMMITTEE.**

**Utah State Bar  
Ethics Advisory Opinion Committee**

\*1 Opinion Number 96-06  
Approved July 3, 1996

Issue: What are the ethical obligations if an attorney undertakes representation of a client when the attorney is not able to communicate directly with the client in a language clearly understood by that client?

Opinion: 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]

Discussion: A lawyer must be sensitive to the non-English or limited English-speaking client's communication difficulties in explaining legal problems and in understanding the legal advice to be provided by the lawyer. A lawyer must also be sensitive to the lawyer's limitations in understanding communications that come from a non-English or limited English-speaking client. Such sensitivity is an important aspect of attorney competence, as well as other duties and obligations of attorneys requiring communication with clients. In this context, a lawyer must also be sensitive to the limited communication abilities of hearing-impaired or speech-impaired clients.

An attorney must have or must acquire sufficient time, resources and ability to apply the sufficient learning, skill and diligence necessary to discharge

the duties arising from the attorney-client relationship. [FN3] However, the inability to communicate directly with the client in a language clearly understood by the client does not always preclude an attorney from discharging such duties. Clearly, a client has the right to retain the services of an attorney, knowing that direct communication with that particular attorney may be limited or impossible. Also, clearly, difficulty in communication can occur even between those who speak the same language. [FN4]

It is the responsibility of any attorney to gather all of the relevant facts, undertake reasonable research in an effort to ascertain legal principles and make an informed decision as to a course of conduct based upon an intelligent assessment of the client's problems. A language barrier does not reduce the attorney's duty to communicate adequately with the client, as required by Rule 1.4. If direct communication in a language clearly understood by the client is not possible, the attorney must take into account the fact that means other than direct communication will be required to discuss the client's case and to meet the attorney's responsibilities. The means by which an attorney may do this are varied.

On any matter that requires client understanding, the attorney must take all reasonable steps to insure that the client comprehends the legal concepts involved and the advice given by the attorney. The attorney must take all reasonable steps to insure that the attorney understands what the client is saying, so that the attorney can make intelligent judgments about the case and so that the client can make informed decisions. If the attorney cannot communicate fluently in the client's own language, the attorney should communicate through an **interpreter** skilled in the client's particular language or dialect. The attorney may accomplish this by associating with a bilingual attorney who can assist with the language problem or by working with an employee or staff member who can assist the attorney with the language problem. However, an attorney must be cautious in insuring that the attorney and client are communicating with each other through the **interpreter**, rather than the **interpreter** giving legal advice independent of the attorney. To allow such a result would be to assist in the unauthorized practice of law in violation of Rule 5.5(b).

**\*2** On any matter that requires the use of an **interpreter**, the attorney must take all reasonable steps to insure that other ethical considerations such as client confidentiality and conflict of interest are addressed. For example, the **interpreter** should have a clear understanding of the obligation to keep the client's communications confidential. An attorney should use care in selecting an **interpreter** to insure that the **interpreter** does not have a personal interest in the outcome of litigation. Attorneys are cautioned that use of the client's close friends and family members may often give rise to such potential problems under Rules 1.6 and 1.7.

Attorneys should also be aware of the issue of whether there would be a waiver of the attorney-client privilege when a non-employee **interpreter** is used and should review the law governing this issue. [FN5]

Finally, attorneys should be sensitive to the possibility that non-English speaking clients may not readily understand legal principles described by the attorney, because the non-English speaking client may interpret communications based on a different social and cultural foundation than that assumed by the attorney. Attorneys should, therefore, take greater care in explaining complex legal communications to clients who are non-English speaking, because the client may have no social or cultural background or understanding of the United States, so as to put the attorney's communications into proper context.

It should be noted that the attorney may generally bill the client for

**interpreter** services, so long as the attorney acts consistently with Rule 1.5. There are some exceptions to this, such as representation as appointed counsel for an indigent criminal defendant, and the Americans with Disabilities Act may require that attorneys provide **interpreter** services for hearing-impaired clients free of charge.

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.

FN3 Id. Rules 1.1, 1.3.

FN4 See Cal. St. Bar Comm. on Prof. Responsibility and Conduct, Formal Op. 1984-77, 1984 WL 5101; see also [Assoc. of Bar of N.Y.C. Comm. on Prof. and Jud. Ethics, Formal Op. 1995-12, 1995 WL 607777.](#)

FN5 Whether the privilege would be waived in any particular set of circumstances is a question of law and, therefore, beyond the scope of this opinion.

**THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK  
FORMAL OPINION 1995-12  
COMMITTEE ON PROFESSIONAL AND JUDICIAL ETHICS**

**July 6, 1995**

**ACTION: FORMAL OPINION**

OPINION:

**TOPIC:** Competent and zealous representation; Unlawful discrimination in the practice of law; Confidentiality; Use of interpreters.

**DIGEST:** A lawyer who undertakes to represent a client with whom effective direct lawyer-client communication can only be maintained through an interpreter must consider the need for interpreter services and when necessary take steps to secure the services of a qualified interpreter.

**CODE:** DRs 1-102(A)(6), 4-101(D), 6-101(A)(2), 7-101(A)(3); ECs 1-7, 6-3; 7-1, 7-8, 7-11.

QUESTION

Must a lawyer, who cannot communicate directly with a client in a mutually understood language, consider the need for the services of an interpreter and take steps to secure the services of a qualified interpreter to insure competent and zealous representation, to preserve client confidences, and to avoid unlawful discrimination?

OPINION

Lawyers are increasingly being called upon to advise and represent persons with whom they cannot communicate directly because the lawyer and the client do not share a common language. Often, the only effective method of communication is through a language (foreign or sign) interpreter.

The strongest indication of this development in the practice of law is the dramatic rise in the use of interpreters for court proceedings. In 1991 alone, more than 68,000 federal court proceedings required interpreters, see *United States v. Mosquera*, 816 F. Supp. 168, 171 (E.D.N.Y. 1993). Currently in New

York City, both federal and state courts employ interpreters. Additionally, the state courts use per diem interpreters for as many as 64 foreign languages. See *Equal Justice and the Non English-Speaking Litigant: A Call for Adequate Interpretation Services in the New York State Courts*, 49 Record 306, 3077 (1994). The need for most of these interpreters is directly related to a significant increase in our non-English speaking population. Nationally, nearly 31 million people do not use English as their primary language and locally nearly 40 percent of New York City's population speaks a language other than English. See *Mosquera*, 816 F. Supp. at 171.

Hearing impaired or deaf persons may also require the services of interpreters to effectively participate in legal proceedings. Approximately 10 percent of our population, or 21 million Americans, are hearing impaired and more than 2 million of these Americans are "profoundly deaf." See John V. McCoy, *Communicating with Your Deaf Client*, 65 Wisconsin Lawyer 16 (1992) (hereinafter "McCoy"). Although not all deaf persons communicate in sign language, many require the services of sign language interpreters in order to communicate effectively. See *Improving the Access of Deaf and Hearing-Impaired Litigants to the Justice System*, 48 Record 834, 835 (1993).

The role of interpreters in the administration of justice is well established under our legal system. In criminal cases, our courts have long recognized that meaningful participation in legal proceedings, for defendants who cannot understand English, is not possible unless testimony is translated for these defendants. Failure to provide interpreters for these defendants has been found to be a deprivation of due process. See *United States ex rel. Negron v. New York*, 434 F.2d 386 (2d Cir. 1970) (interpreter required for non-English-speaking defendants); *People v. Ramos* 26 N.Y.2d 272, 309 N.Y.S.2d 906 (1970) (translation of trial testimony a due process right); *Mosquera*, 816 F. Supp. at 178 (translation of indictment, relevant statute, plea agreements and other documents required for non-English-speaking criminal defendants). Although the assignment of court interpreters in civil cases may not raise due process concerns, see *Jara v. Municipal Court*, 21 Cal. 3d 181, 145 Cal. Rptr. 847, 578 P.2d 94 (1978), cert. denied, 439 U.S. 1067 (1979), our courts recognize the important role interpreters play in insuring meaningful participation in these proceedings and routinely assign interpreters for non-English speaking litigants and witnesses. Moreover, the right to have an interpreter assigned during court proceedings is also provided under federal and New York statutes. The Judiciary and Judicial Procedure Act, 28 U.S.C. §§ 1827, 1828, allows the assignment of an interpreter during federal trials and proceedings. Although New York's Constitution does not guarantee persons unable to understand English a right to an interpreter in criminal cases -- unlike California, for example, see California Const. art. 1, § 14, *People v. Carreon*, 151 Cal. App. 3d 559, 567, 198 Cal. Rptr. 843, 847 (5th Dist. 1984) -- New York laws provide for the hiring of court interpreters and the appointment of interpreters for deaf parties or witnesses. See N.Y. Judiciary Law, art. 12.

For the non-English-speaking litigant or the deaf litigant, meaningful participation during a legal proceeding is not possible if what the judge, witnesses, and lawyers are saying during the proceeding is in a language the litigants cannot understand. Similarly, meaningful legal assistance may not be possible when the lawyer does not fully understand what the client is telling or asking him or her or the client does not fully understand the lawyer's advice or explanation, because of a language barrier.

The inability to communicate directly with the client in a mutually understood language does not automatically preclude the lawyer's representation of that client. See California 1984-77. However, to provide adequate legal services, there must be an effective mode of communication. Although the mode of communication between lawyer and client is for the lawyer and client to determine, once the lawyer

agrees to represent a client with whom effective and meaningful direct communications can only be maintained through an interpreter, the need for qualified interpreter services cannot be ignored.

Since communication with a non-English-speaking client or a deaf client may only be effective or even possible if conducted with an interpreter, it is questionable whether a lawyer can competently represent his or her client without considering the need for, and, in some instances, securing the services of, an interpreter.

It is axiomatic that adequate communication between lawyer and client, is necessary to render competent legal services. Cf. ABA Model Rules of Professional Conduct, Rule 1.4. In addition to being the means by which a client is provided with the advice and information needed to make informed decisions, see EC 7-8, adequate communication is the means by which the lawyer obtains the information necessary to prepare for the handling of the client's legal matter.

DR 6-101(A)(2) mandates that "[a] lawyer shall not . . . [h]andle a legal matter without preparation adequate in the circumstances." Adequate preparation requires, not only that a lawyer conduct necessary legal research, but also that he or she gather information material to the claims or defenses of the client. See *Mason v. Balcom*, 531 F.2d 717, 724 (5th Cir. 1976). The lawyer's inability, because of a language barrier, to understand fully what the client is telling him or her may unnecessarily impede the lawyer's ability to gather the information from the client needed to familiarize the lawyer with the circumstances of the case. This makes communication via the interpreter vital since it may be the only practical way that a free-flowing dialogue can be maintained with the client, and the only means by which the lawyer can actually and substantially assist the client.

The duty to represent a client competently, embodied in DR 6-101(A)(1), requires a lawyer confronted with a legal matter calling for legal skills or knowledge outside the lawyer's experience or ability, to associate with lawyers with skills or knowledge necessary to handle the legal matter. When a lawyer is confronted with a legal matter requiring non-legal skills or knowledge outside the lawyer's experience or ability and these skills or knowledge are necessary for the proper preparation of the legal matter, DR 6-101(A)(2) appears to require that the lawyer associate with professionals in other disciplines who possess the requisite skills or knowledge needed by the lawyer to prepare the legal matter. The interpreter appears to be the type of professional envisioned by EC 6-3's observation that "[p]roper preparation and representation may require the association by the lawyer of professionals in other disciplines." When the need for an interpreter is apparent or it is reasonable to conclude that an interpreter is required for effective communication, failure to take steps with the client to secure an interpreter may be a breach of the duty to represent the client competently.

Moreover, the lawyer may not passively leave the decision as to the need for or the securing of an interpreter entirely to the client's discretion. Once it is evident that, without an interpreter, effective lawyer-client communications are questionable or not possible, failure of a lawyer to take steps to help the client understand the significance of the interpreter for adequate communication and to take, when necessary, steps to secure interpreter services may violate the lawyer's duty to represent the client zealously.

The mandate of DR 7-101(A)(3) that "[a] lawyer shall not intentionally . . . [p]rejudice or damage the client during the course of the professional relationship. . . ." embodies the concept that a lawyer must actively assist the client "to secure and protect available legal rights and benefits." EC 7-1. When the lawyer fails to take steps to bridge a communication barrier with a client, knowing that it can be bridged

by the association with an interpreter, it is reasonable to expect that the client will be damaged or prejudiced by this inaction.

Clearly, the duty to represent a client zealously requires the lawyer to take special care with respect to communications with clients. As EC 7-8 observes in part, "[a] lawyer should exert best efforts to insure that decisions of the client are made only after the client has been informed of relevant considerations." Although the lawyer may never know what the client fully understands, at a minimum, the lawyer must present information in a language the client understands. See Robert E. Lutz, *Ethics and International Practice: A Guide to the Professional Responsibilities of Practitioners*, 16 *Fordham Int'l L.J.* 53 (1992-93). Indeed, EC 7-11 reminds lawyer that "[t]he responsibilities of a lawyer may vary according to the intelligence, experience, mental condition or age of a client. . . ." When direct communications with the client require an interpreter, the lawyer bears an additional responsibility of taking steps to secure these services rather than unnecessarily risk prejudice or damage to the client.

Whether the failure to consider the need for and, when necessary, to secure the services of an interpreter is unlawful discrimination in the practice of law and thus a violation of DR 1-102(A)(6) n1 may present questions about what constitutes disparate treatment or what constitutes a public or a reasonable accommodation under existing anti-discrimination statutes. These are questions of law, upon which we do not opine. See generally Robert T. Begg, *Revoking the Lawyers' License to Discriminate in New York: The Demise of a Traditional Professional Prerogative*, 7 *Geo. J. Legal Ethics* 275 (1993); *The Americans With Disabilities Act*, 42 U.S.C. § 12181(7)(F); 28 CFR Part 36 (1995) (Rules and Regulations, Department of Justice, Office of the Attorney General); Jordan Hochstadt, *Compliance with Title III of the ADA on \$5 a Year or Less*, 21 *Colorado Lawyer* 1897 (1992).

n1 DR 1-102(A)(6) provides that "[a] lawyer shall not . . . [u]nlawfully discriminate in the practice of law, including in hiring, promoting or otherwise determining conditions of employment, on the basis of age, race, creed, color, national origin, sex, disability, or marital status."

Even if failure to consider the need for and to secure the services of an interpreter may not constitute unlawful discrimination, it may show biased or condescending conduct towards the client, which should be avoided. See EC 1-7. For example, exclusive reliance on family members, friends or even strangers to interpret, or attempts to communicate solely using a rudimentary personal knowledge of a foreign or sign language may not only be unwise, but may reflect bias or condescension towards the client because such a practice could tend to minimize the importance of what the client has to say to the lawyer and the client's role in decision making, and to treat the client with less care than other clients because of the language barrier between lawyer and client. Lawyers should be aware of the risk of inaccuracies in translation if amateur interpreters are used, and should proceed cautiously in light of their inability to determine the layperson's or lawyer's proficiency in the foreign or sign language. See generally L. Felipe Restrepo, *Attorneys Working with Translators Must Watch Over Defendant's Rights*, *Nat'l L.J.*, Sept. 28, 1992, at 17 (hereinafter "Restrepo"); Bill Piatt, *Attorney as Interpreter: A Return to Babble*, 20 *New Mexico L. Rev.* 1 (1990). Similarly, the exclusive use of note-taking with a deaf client can be a poor substitute for a qualified sign-language interpreter, because this practice may have prejudicial results for the deaf client. Note-taking presents several problems. It may hinder the "free flow of ideas common to verbal communications" and, for some deaf clients, it may be of very limited use. See McCoy, *supra*. For deaf persons who communicate in sign language, the sign-language interpreter makes the free flow of ideas with the lawyer possible and avoid the prejudicial effects of the exclusive use of note-taking.

There are obvious benefits to communicating through professionals, who have formal training in languages, experience with legal terminology and concepts, and skill. They do not consider the greater assurance of accuracy in translation possible with trained interpreters, because often they belong to professional associations which adhere to professional and ethical standards. See generally Roseann D. Gonzalez, Victoria F. Vazquez & Holly Mikkelson, *Fundamentals of Court Interpretation: Theory, Policy and Practice* (1991); *Professional Standards for Court Interpreters in the New York State Unified Court System*, New York State Unified Court System, *Court Interpreter Manual* 8 (July 1994). n2

n2 These practices may also unnecessarily imperil the preservation of non-English speaking or deaf clients' secrets and confidences, in violation of the fiduciary relationship between lawyer and client. They impinge on the lawyer's ability to "exercise reasonable care to prevent . . . others whose services are utilized by the lawyer from disclosing or using confidences or secrets of the client," since the lawyer may have little or no control over these persons. See DR 4-101(D).

Lastly, the practice of limiting communications with the client to periods when the lawyer and client are in court and a court interpreter is available has a prejudicial effect on the client. It may unfairly limit the opportunity for the lawyer to fully familiarize himself or herself with the facts of the matter being handled and to advise the client accordingly. It may also limit the client's access to the lawyer and the opportunity for the client to obtain the full advantage of our legal system. The detrimental effects of this practice are uniquely related to the inability of the lawyer and client to communicate in a mutually understood language. See Restrepo, *supra*, at 1.

In sum, when a language barrier impedes the ability for the lawyer and the client to communicate effectively, the lawyer must be sensitive to the needs for interpreter and take steps to secure interpreter services, when needed, to avoid unlawful discrimination or prejudice.

## CONCLUSION

A lawyer who represents a client with whom direct communications cannot be maintained in a mutually understood language, must evaluate the need for qualified interpreter service and take steps to secure the services of an interpreter, when needed for effective lawyer-client communications, to provide competent and zealous representation, preserve client confidences and avoid unlawful discrimination or prejudice in the practice of law.

**ABA/SCLAID Standard of Practice on LEP clients**

**SECOND DRAFT  
STANDARD 4.6 ON COMMUNICATION IN THE  
PRIMARY LANGUAGES OF PERSONS SERVED**

**DECEMBER 22, 2005**

**STANDARD**

*A provider should assure that all language groups within its low income communities have access to its services and should assist persons using its services in their primary language.*

**COMMENTARY**

**General considerations**

A legal aid provider has a responsibility to communicate in the language of persons seeking and using its services. A provider should have the capacity to communicate with all clients who are not proficient in English, either through bi-lingual staff or qualified interpreters. It should offer legal information and other forms of non-representational services in the predominant languages of the low income communities it serves. Its processes for intake should be accessible to persons from all the language groups in its service area.

The challenge of communicating effectively with members of the low income community in their own language can be complex as many legal aid providers witness diverse immigrant populations settling in their service area. Effectively serving persons with limited English proficiency is often complicated by the fact that many recent immigrant communities are not familiar with the American legal system and distrust lawyers and legal process, because of their experience in their home country. In addition to addressing potential language barriers, therefore, a provider needs to be responsive to cultural issues that may inhibit some persons from accessing its service.<sup>1</sup>

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<sup>1</sup> See Standard 2.4 on Cultural Competence.

It requires sustained and comprehensive effort for a provider to be accessible to all persons who have limited proficiency in English, if it is in an area with many language groups. Providers which operate in an area with only a few low income persons who do not speak English also have a responsibility to communicate effectively with the occasional individuals it serves who have limited English proficiency.

### **Communication with low income persons with limited proficiency in English**

***Communication with clients.*** A provider needs to assure that its practitioners have the tools necessary to represent their clients, including being able to communicate effectively with those who are not proficient in English. Clear communication between the practitioner and client is at the core of effective practice. A practitioner has a responsibility to understand the client's circumstances fully and to suggest an appropriate course of action. The responsibility to inquire into the client's circumstance exists whether the provider is offering limited or full representation.<sup>2</sup> A practitioner who—because of a language barrier—cannot understand fully what the client is saying and asking may not be able to determine the full circumstances of the case or legal matter. There is an equal risk that the client will not fully understand the practitioner's advice or explanation.

In order for its practitioners to meet their professional responsibilities to provide competent representation to the client, therefore, the practitioner either needs to communicate in the client's language directly or through a competent interpreter. This responsibility attaches both to persons who speak a language other than English and to persons who rely on American Sign Language (ASL) to communicate.

The provider should make certain that its practitioners who are not fluent in the language used by their clients understand their responsibility to use interpreters, whenever it is evident that without an interpreter, effective communication is not possible. Practitioners should not leave the decision as to the need for or the securing of an interpreter to their clients' discretion.<sup>3</sup>

Critical documents, such as correspondence explaining the client's rights and responsibilities, should be translated into the client's language. If the client is unable to read in either language or if requested by the client, oral interpretation of documents should be provided. The provider should also be prepared to accommodate the needs of persons who are sight impaired and should recognize, for example, the need to put essential documents in a readable form, such as in Braille for persons who are blind.

In court and in administrative hearings, a provider representing a client who is not proficient in English or is deaf should either provide a competent interpreter or assure one is provided by the court or administrative agency. In some situations, even when an interpreter is provided by the court or administrative agency, the provider may need to have its own interpreter present to so that the proceedings may be explained to the client. Meaningful participation in legal proceedings generally depends on the person being able to understand what the judge or hearing officer, the witnesses and the advocates are saying, as well as being able to communicate with the advocate in a confidential manner.

***Communication with persons receiving non-representational services.*** Some low income persons seeking assistance will not be accepted as clients but will be given non-representational services in the

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<sup>2</sup> Rule 1.2 of the Model Rules of Professional Conduct. See also Standard 3.1 on Full Representation and Standards 3.4 to 3.4-2 on Various Forms of Limited Representation.

<sup>3</sup> See The Association of the Bar of the City of New York, Formal Opinion 1995-12 Committee on Professional and Judicial Ethics (July 6, 1995).

form of legal information. Legal information may be offered in group settings or to individuals on-line or in writing, such as a brochure or a disposition letter.<sup>4</sup> The provider may also offer instructions through clinics or other means as to how pro se litigants can represent themselves before a court or administrative body.<sup>5</sup>

A provider should make its non-representational assistance available in the principal languages used by persons in the low income communities it serves. Written and on-line legal information should be translated into the predominant languages used by low income persons in the service area. To the degree possible, the provider should have the capacity to hold community legal education sessions and pro se clinics in the principal languages of the communities served. The provider should be cognizant of the degree to which the lack of capacity in English will be a factor in the course of self-representation and should instruct the person receiving the pro se support in how to obtain the participation of a competent interpreter. In some cases, a provider may determine that it will represent persons with limited knowledge of English in matters in which it would instruct others who are proficient in English to represent themselves.

It will not be possible in all instances to translate legal information materials into every language spoken in the low income community. Some persons who are not proficient in English will speak a language that is not spoken by a significant number of individuals in the low income community. In addition, some languages are not written or are read and written primarily by scholars so that translation is not practical. If legal information materials are not available in the language of a person whom the provider seeks to help, they should be orally translated, if possible.

***Intake.*** The provider should be accessible at intake to all persons regardless of their primary language. The degree to which a provider is capable of communicating in the language of persons who are not proficient in English may determine whether such persons seek assistance in the first place and whether they follow through to get the assistance they need. It is important, therefore, that the provider signal its openness to all language groups. Signs identifying the provider should be in the major written languages of the communities it serves. The provider should have language capability among its intake personnel either in the form of bi-lingual staff or readily accessible interpreter services. Telephone intake systems should offer options for major languages that are identified early in any menu of options, so that non-English callers will learn that services are available in their language and not be discouraged by lengthy announcements in a language they do not understand.

### **Responsibilities of the provider**

***Provider planning to serve persons with limited proficiency in English.*** In planning its service delivery methods,<sup>6</sup> a legal services provider should identify the points of contact where language barriers may exist for persons seeking and receiving services and should develop strategies to respond. As noted, some means of delivering services, such as centralized telephone intake, computers and pro se clinics, may be of little use to persons with limited English proficiency unless appropriate adjustments are made to provide meaningful services to them. Program priorities, methods of providing services, and outreach programs should be designed so that legal issues of importance to language minorities are addressed by

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<sup>4</sup> See Standard 3.6 on Provision of Legal Information.

<sup>5</sup> See Standard 3.5 on Assistance to Pro Se Litigants.

<sup>6</sup> See Standard 2.1 on Identifying Legal Needs and Planning to Respond and Standard 2.2 on Delivery Structure.

the provider at least as well as issues of English proficient clients. Providers should consider targeting outreach at underserved language populations and developing partnerships with community based organizations that serve such groups.

The provider should have a clear protocol for how it will respond to the needs of persons who are not proficient in English and should train its staff in its proper application. Some providers will operate in an area with few low income persons who are not proficient in English. Such providers should, nevertheless, have a protocol for responding to the needs of the occasional person who seeks services and who has limited proficiency in English. Providers should be aware of and abide by statutory provisions which exist under state and federal law that prohibit discrimination against persons on the basis of English language ability in the provision of services and benefits.<sup>7</sup>

Staff should be trained in the fundamental importance of responding effectively to the language needs of its low income communities and serving clients in their own language if they are not proficient in English. The provider should assure that a person with appropriate authority is assigned responsibility for assuring the effective application of the language protocol.

***Bi-lingual services.*** The most effective way to communicate is directly in a language that is mutually understood by both the person being served and the provider's staff. Bilingual staff capable of providing services without the need for interpreting are, therefore, the preferred method of communicating with persons with limited proficiency in English. To enhance its capacity for bi-lingual representation, a legal services provider should make fluency in pertinent languages, a preferred or, where appropriate, required skill in evaluating applicants for employment.

***Interpreter services.*** It is generally not possible to hire bi-lingual staff in every language used by persons eligible for the provider's services or to have enough bi-lingual practitioners to serve every client with limited proficiency in English. The provider, therefore, needs to have ready access to competent interpreter services. Competent interpreting requires individuals with a range of skills. They need to be proficient in both languages, to be familiar with legal terms and their meaning and to understand the role of an interpreter and the need for neutrality, accuracy and completeness. They also need to be aware that they are an agent of the provider bound by its duty to maintain the confidentiality of the communication.

Interpreter services can be provided in several ways. Trained, bilingual staff can provide interpreting for other staff members who are not proficient in the language of the person being served. The provider can use professional in-person and telephone interpreters when bilingual staff are not available. In-person interpreting is preferable to telephone based interpreters.

The provider should avoid the use of informal or untrained interpreters, including family members and friends of the person being served. The provider should not allow the use of minors as interpreters, absent exigent circumstances. Use of family and friends to interpret gives rise to serious risks that the interpretation will not be neutral and that the interpreter will not fully understand or be able to translate the legal options available. Furthermore, there may be times when the person doing the interpreting will have an unexpected conflict with the person being served by the provider.

***Training.*** The provider should train staff regarding the fundamental importance of responding effectively to the language needs of its low income communities and serving clients in their own language if they are

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<sup>7</sup> See e.g., Title VI of the Civil Rights Act of 1964 and the regulations promulgated thereunder.

not proficient in English. They should be trained as well regarding how to assess the need for language services by clients and others and how to work with interpreters. Bilingual staff who act as interpreters for others should receive training in interpreting skills, ethics and the role of an interpreter.

***Evaluation.*** The provider should periodically evaluate its effectiveness responding to the language needs of its low income population. It should gather data regarding the languages used in the low income populations in its service area and by the persons actually served by it. The data should be used to identify underserved language groups, to assist in prioritizing the languages most frequently encountered and to help the provider measure progress responding to the various language groups in its service area. If significant language groups are identified which are not being adequately served, the provider should develop and implement a plan to address the deficiency.

### **CALIFORNIA Proposed Bill Regarding Interpreters**

BILL NUMBER: AB 2302      INTRODUCED  
BILL TEXT

INTRODUCED BY    Committee on Judiciary (Jones (Chair), Evans, Laird,  
Levine, Lieber, and Montanez)

FEBRUARY 22, 2006

An act to amend Section 755 of the Evidence Code, relating to evidence.

LEGISLATIVE COUNSEL'S DIGEST

AB 2302, as introduced, Committee on Judiciary Evidence: court interpreters.

Existing law requires that in any action or proceeding pursuant to specified provisions of law, an interpreter be provided by the court for a party who is incapable of understanding or speaking the English language to interpret the proceedings in a language that the party understands and to assist communication between the party and his or her attorney.

This bill would revise the above provision to specify that in any civil action or proceeding, including, but not limited to, any family court proceeding or service, any juvenile court proceeding, any action involving a traffic or other infraction, any small claims court proceeding, any proceeding to determine the mental competency of a person, or any court-ordered or court-provided alternative dispute resolution, including mediation and arbitration, in which a party does not proficiently speak or understand the English language, an interpreter be present to interpret the proceedings, as specified. The bill would also require a court to provide the interpreter, unless a party has notified the court that he or she has made arrangements for a private interpreter. The bill would also make related changes to that provision of law and would set forth

findings and declarations of the Legislature.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares as follows:

(a) California is emblematic of the American dream, a place of stunning natural beauty, a seat of international commerce, a land of unparalleled opportunity. As a result, California is the most populous and demographically diverse state in the nation, a meeting place of cultures, ethnicities, and ideas unlike any other in the world. Of the state's 34 million people, about 26 percent (roughly 8.8 million people) are foreign born. Californians speak more than 220 languages, and 40 percent of the state's population speaks a language other than English in the home. This extraordinary diversity is among the state's greatest assets and has helped make California an international leader in business, the arts, entertainment, engineering, medicine, and other fields. The state's diversity also poses unique challenges for the delivery of government services, particularly for the courts.

(b) For Californians not proficient in English, the prospect of navigating the legal system is daunting, especially for the growing number of parties who do not have access to legal services and therefore have no choice but to represent themselves in court, which is a virtually impossible task for people who are unable to understand the proceedings. Nearly seven million Californians cannot access the courts without significant language assistance, cannot understand pleadings, forms, or other legal documents, cannot communicate with clerks or court staff and cannot understand or participate meaningfully in court proceedings much less effectively present their cases without a qualified interpreter. People with limited English proficiency are also often members of groups whose cultural traits or economic circumstances make them more likely to be subjected to legal problems, in part because perpetrators recognize their victims' limited ability to access judicial protection.

(c) The Legislature has previously recognized that the number of non-English speaking persons in California is increasing, and recognized the need to provide equal justice under the law to all California residents and to provide for their special needs in their relations with the judicial and administrative law system. The Legislature has likewise recognized that the effective maintenance of a democratic society depends on the right and ability of its residents to communicate with their government and the right and ability of the government to communicate with them.

(d) Inadequate resources to assist litigants with limited English proficiency affects the court's ability to function properly, causing delays in proceedings, inappropriate defaults, and faulty interpretation that can ultimately subvert justice. Our judicial system relies on the adversarial process in which neutral arbiters decide disputes based upon competing presentations of facts and law. Conducting court proceedings when one party is incapable of fully participating significantly impairs the quality and efficiency of the

process and its results, including compliance with court orders. The courts have made significant efforts to assist litigants with limited English proficiency, including steps to increase the number of certified and registered interpreters and to provide interpreters in civil cases, if resources are available. Nevertheless, court proceedings are required to be conducted in English, and most crucial court forms and documents are available only in English, while the number of skilled interpreters has actually declined over the past decade and the number of persons requiring interpreter services has increased. As a result, a qualified interpreter is not provided in most civil proceedings.

(e) The inability to respond to the language needs of parties in court impairs trust and confidence in the judicial system and undermines efforts to secure justice for all. The authority of the courts depends on public perceptions of fairness and accessibility. Any significant erosion of public trust and confidence in the fairness of judicial outcomes threatens the future legitimacy of the legal system. By excluding a large segment of the population from participation in an institution that shapes and reflects our values, we threaten the integrity of the judicial process. Resentment fostered by the inability to access the benefits of the court system can ultimately impair enforcement of judicial decrees and attenuate the rule of law.

(f) Reliance on untrained interpreters, such as family members or children, can lead to faulty translations and threaten the court's ability to ensure justice. Court interpretation is extremely difficult and takes a rare combination of skills, experience, and training. Apart from the possibility of fraud, unqualified interpreters often fail to accurately and comprehensively convey questions and distort testimony by omitting or adding information, or by stylistically altering the tone and intent of the speaker, thereby preventing courts from hearing the testimony properly. These problems compromise the fact-finding process and can result in genuine injustice.

(g) An overwhelming number of Californians believe that interpreters should be made available to assist non-English speakers in all court proceedings, and that interpreters should be provided free of charge to low income non-English speakers.

(h) California law currently mandates appointment of an interpreter for all witnesses in civil cases, and for parties with hearing impairments. In addition, California statutes mandate the appointment of an interpreter in adjudicative proceedings before state agencies, boards, and commissions at no charge to the parties whenever a party or the party's witness does not proficiently speak or understand English. Other states by contrast provide both witnesses and parties with a right to a court appointed interpreter in all civil matters at no cost to the party.

SEC. 2. Section 755 of the Evidence Code is amended to read:

755. (a) In any *civil* action or proceeding ~~under Division 10 (commencing with Section 6200) of the Family Code, and in any action or proceeding under the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12 of the Family Code) or for dissolution or nullity of marriage or legal separation of the parties in which a protective order has been granted or is being~~

~~sought pursuant to Section 6221 of the Family Code , including, but not limited to, any family court proceeding or service, any juvenile court proceeding, any action involving a traffic or other infraction, any small claims court proceeding, any proceeding to determine the mental competency of a person, or any court-ordered or court-provided alternative dispute resolution, including mediation and arbitration, in which a party does not proficiently speak or understand the English language, and that party is present, an interpreter, as provided in this section, shall be present to interpret the proceedings in a language that the party understands, and to assist communication between the party and his or her attorney. Notwithstanding this requirement, a court may issue an ex parte order pursuant to Sections 2045 and 7710 of, and Article 1 (commencing with Section 6320) of Chapter 2 of Part 4 of Division 10 of the Family Code, without the presence of an interpreter. Unless a party has notified the court that he or she has made arrangements for a private interpreter, the court shall provide the interpreter. The interpreter ~~selected~~ shall be certified pursuant to Article 4 (commencing with Section 68560) of Chapter 2 of Title 8 of the Government Code, ~~unless the court in its discretion appoints an interpreter who is not certified~~ except as provided in subdivision (c) of Section 68561 of the Government Code~~

(b) The fees of interpreters , other than court employees, utilized under this section shall be paid as provided in subdivision (b) of Section 68092 of the Government Code. However, the fees of an interpreter shall be waived for a party who needs an interpreter and appears in forma pauperis pursuant to Section 68511.3 of the Government Code. ~~The Judicial Council shall amend subdivision (i) of California Rule of Court 985 and revise its forms accordingly by July 1, 1996.~~

(c) In any civil action in which an interpreter is required under this section, the court shall not commence proceedings until the appointed interpreter is present and situated near the party and his or her attorney. However, this section shall not prohibit the court from doing any of the following:

(1) Issuing an order when the necessity for the order outweighs the necessity for an interpreter.

(2) Extending the duration of a previously issued temporary order if an interpreter is not readily available.

~~(3) Issuing a permanent order where a party who requires an interpreter fails to make appropriate arrangements for an interpreter after receiving proper notice of the hearing with information about obtaining an interpreter.~~

(d) This section does not prohibit the presence of any other person to assist a party.

(e) A local public entity may, and the Judicial Council shall, apply to the appropriate state agency that receives federal funds authorized pursuant to the federal Violence Against Women Act (P.L. 103-322) for these federal funds or for funds from sources other than the state to implement this section. ~~A local public entity and the Judicial Council shall comply with the requirements of this section only to the extent that any of these funds are made~~



~~available.~~

(f) The Judicial Council shall draft rules and modify forms necessary to implement this section, including those for the petition for a temporary restraining order and related forms, to inform both parties of their right to an interpreter pursuant to this section.

## LANGUAGE ACCESS POLICY

### I. GENERAL POLICY

- A. **Policy.** CLS delivers quality legal services to clients in their preferred language. CLS shall provide language services as needed to ensure that limited English proficient (“LEP”) clients have meaningful access to CLS services.
- B. **Responsibility.** It is the responsibility of the program and not the client to ensure that communications between staff and clients are not impaired as a result of the limited English proficiency of the client.
- C. **Non-discrimination; supplemental services.** The program shall not provide legal services to LEP clients that are restricted, delayed or inferior as compared to services provided to English proficient clients. The program may need to provide supplemental services to LEP clients that would not ordinarily be provided to an English proficient client so that they can reasonably benefit from CLS services.
- D. **Notice.** CLS shall post waiting room notices in multiple languages that free bilingual or interpreting services are available, and CLS shall note on its website and in materials distributed to potential clients or to those who may refer clients that CLS will provide bilingual help or interpreters at no cost as needed and that immigration status is not relevant to determining client eligibility.

### II. LANGUAGE DATA

- A. **Kemps.** All staff who open files or receive open files from other staff must ensure that the intake sheet and Kemps data correctly identify the primary language of the client and the need for an interpreter.

1. **Primary Language:** A person's preferred or primary language is the language in which they are most comfortable speaking. A client able to speak English may have a primary language other than English. If not obvious, the preferred or primary language should generally be chosen by the client herself. When in doubt as to which language is primary, enter the foreign language.
  2. **Interpreter box:** Check this box if the client is not fluent in English and therefore needs interpreting or bilingual services to assure effective communication. A check mark signals the need for language services. The box should be checked for any client who cannot communicate *fluently* in English himself — regardless of whether past interpreting assistance was performed by CLS or some other party. Note that a client whose primary language is not English may or may not need an interpreter.
- B. **File notes.** All case handlers must make conspicuous notes in case files to indicate each client's primary language, the need for an interpreter, and whether correspondence and other documents should be translated.
- C. **File notes - translation.** Staff shall inquire of all LEP clients, and record in Kemps notes and on the file whether the client is able to *read* in English, read in her preferred language, and which language is preferred for written communication such as correspondence. This information is essential to determine when document translations are needed to assure good communications.
- D. **Timekeeping.** All time spent by bilingual staff providing language services in cases must be recorded in Kemps under the Interpreting activity code for the client's file. Time spent on language services not related to specific client files (e.g. interpreting at an outreach session or translating community education materials) must be recorded as well (the time can be charged to Special Grants - Language Access Project file number with the Interpreting activity code).

### III. IMMIGRATION AND CITIZENSHIP STATUS

- A. **General rule.** A client's presence as a citizen, immigrant, refugee or other status, lawful or otherwise, is not relevant to determine eligibility for service except to the extent that the legal issue is based upon a particular status.
- B. **Status inquiry restriction.** Staff shall not inquire as to the citizenship or immigration status of a client unless it is directly relevant to the client's case or problem or if the information is necessary to determine the client's eligibility for referral to another program.
- C. **SSN.** Clients are entitled to service without the need to provide a Social Security number. Staff should follow existing protocol to "create" the required last 4 digits for clients who do not have or decline to provide a SSN (see attached Pennsylvania Legal Services protocol).
- D. **Confidentiality.** When a client's status is relevant to the case or problem, staff are

required to treat it as privileged information not to be disclosed to third parties without the client's expressed consent. The consent must be documented in the file.

#### IV. BILINGUAL CASE HANDLERS

- A. **Bilingual case handlers preferred.** The preferred method of providing services to LEP clients is to use bilingual case handlers and support staff who are proficient in the client's preferred language. This method is much more efficient than the use of interpreters and translators.
- B. **Language sensitive case assignment.** Systems to assign clients to case handlers at intake and following intake should provide for assignment of clients to bilingual staff to the extent feasible, subject to controls to avoid overburdening bilingual staff, or creation of significant delays in service to clients based upon language ability.
- C. **Hiring.** CLS considers second language proficiency as a preferred quality in considering applicants for employment for all positions that have client contact. CLS seeks to enhance its ability to deliver services in multiple languages through the hiring of bilingual staff.
- D. **Workload adjustments.** Workload adjustments shall be made to reflect the additional work which may be required of bilingual and monolingual staff in delivering services to LEP clients.

#### V. DETERMINING NEED FOR LANGUAGE SERVICES

- A. **Types of language service:** Language services includes: assignment of bilingual advocates to LEP clients; interpreting by staff, contracted professional in-person and telephone based interpreters; volunteer community based interpreters; and translation services.
- B. **Initial assessment.** Staff at the point of first contact with clients shall make an initial assessment of the need for language services, and shall procure such services if they are needed to effectively communicate with the client at that stage of the process.
  - 1. **Determining primary language.** If difficulty is encountered by staff in identifying the primary language of the client, staff should use "I Speak" cards, multi-lingual interpreter posters, or call the telephone based interpreting service for assistance.
  - 2. **Subsequent assessment.** Case handlers who have subsequent contact with LEP clients shall review language needs.
- C. **Client request.** Language services shall be provided to any client upon request at no cost, unless it is apparent that the request is wholly unfounded.
  - 1. Staff shall encourage LEP clients to use language services whenever there is any doubt as to the client's English language proficiency.

2. Staff are prohibited from encouraging or requiring clients to bring others with them to interpret.
- D. **Staff decision.** Services shall also be provided when staff determines that such services appear necessary in order to communicate effectively with the client, despite the lack of a request from the client. Failure to provide language services when needed could impair the program's ability to provide quality legal services and may present ethical issues for the case handler.
1. In such cases, language services should be provided even if the client says it is not necessary.
  2. Staff may need to explain that language services will be provided to assist the case handler in providing quality legal services.
  3. Staff are encouraged to seek assistance from supervisory personnel or the Language Access Project to respond to such situations if difficulties are encountered.
- E. **Translation.** Translations shall be provided for LEP clients who can read better in languages other than English.
1. Translations need not be provided to clients unable to read in their primary language, unless this will facilitate communication with others who are assisting the client.
  2. Translations of client documents from another language into English shall be procured as needed. Should any question exist as to the nature or relevance of the document, staff should consider obtaining a sight (oral) translation first to determine if the cost of a written translation is justified.
- F. **Staff authority.** All staff are authorized to procure language services without the need for pre-approval from supervisory or administrative staff.

## VI. WHO MAY PROVIDE LANGUAGE SERVICES

- A. **Program responsibility.** The program must assure that competent language services are provided at no cost to the client and as an essential component of providing quality legal services.
- B. **Staff language competency.** Bilingual staff providing services in the client's language must be fluent in that language, with the exception of occasional, emergency or minor communications such as making an appointment.
- C. **Preferences - interpreters.** Interpreting service should be provided in the following preferential order:

1. Bilingual case handlers who deliver services in the client's primary language, without the need for interpreting, should be used whenever possible and consistent with the provisions of section IV of this policy;
2. In house bilingual staff with interpreter training;
3. Contracted professional in person or telephone based interpreters, the selection of which shall follow protocols for obtaining interpreter services;
4. Community based organization or referring agency staff
  - a. Only at the insistence of the staff or client and after notice that CLS prefers to provide free in-house or contracted professional services;
  - b. Kemps notation of circumstances is required.
5. Client friends and relatives. The use of adult relatives or friends of the client as interpreters shall be strongly discouraged by the case handler.
  - a. Such interpreters are permissible only after notice of our willingness to provide free professional assistance and at the client's insistence, both of which must be documented in Kemps and reported to LAP.
  - b. It may be necessary for the advocate to bring in an interpreter in addition to or instead of that provided by the client when necessary to ensure good communication or to avoid a conflict of interest between the interpreter and the client.
6. Child interpreters restricted. The use of minor children or other clients to interpret is prohibited absent exceptional or emergency circumstances or at the insistence of the client.
  - a. The circumstances must be documented in the file, in Kemps and reported to Language Access Project staff in writing. The client must also have been notified of the availability of free language services. It is recommended that this notice be provided with the assistance of an interpreter other than the child, including a telephone based interpreter.
  - b. It may be necessary for the advocate to bring in an interpreter in addition to or instead of that provided by the client when necessary to ensure good communication or to avoid a conflict of interest between the interpreter and the client.

D. **Training.** Staff must be trained before working with interpreters.

E. **Translations**

1. Translations should be done by in house staff when available, in accordance with the translation protocol.
2. Translations may also be done, in accordance with protocol, by contractors.
3. No preapproval is needed to procure translation services.

## VII. SCOPE OF LANGUAGE SERVICES

A. **General rule.** Language services shall be provided to the extent necessary to assure the quality of legal services rendered while minimizing delay or discomfort to the client.

### B. **Interpreting**

1. **Conduit function.** Interpreters are expected to function solely as a conduit between the advocate and the client. Advocates should not expect interpreters to communicate with the client in the absence of the advocate with the exception of in-house interpreters who ordinarily communicate directly with English speaking clients for others.
2. **When required.** Staff should use interpreters to communicate with LEP clients during telephone calls, for intake, and for client interviews and meetings.
3. **Hearings.** Monolingual advocates should consider the need to bring an interpreter to hearings to facilitate client communication even if a court interpreter will be present to interpret the proceedings.

### C. **Translations**

1. **Vital forms**
  - a. CLS shall prepare and make available vital forms in an English/Spanish version, and obtain translations over time in other languages regularly encountered. The other languages shall be determined based on demographic, intake and other data and shall be reviewed periodically.
  - b. Examples: intake sheet; retainer agreement; release forms; and any forms signed by the client.
  - c. For other languages, staff should ensure that sight translation of English forms is provided in the client's preferred language.
2. **Letters and other documents**
  - a. Routine correspondence to the client and to others should generally be translated.

- b. Translation of large documents such as a brief or bankruptcy petition should be provided at the discretion of the case handler, provided that any document that is to be signed by the client, at a minimum, shall be sight translated.
3. Community education - CLS shall undertake a process to translate all general client education materials into Spanish, and then into the other languages designated for vital forms.

## VIII. TRAINING

- A. **General rule:** CLS shall provide language access training to all existing staff who have regular contact with clients and to all such newly hired staff.
- B. **Scope:** The training will cover this policy, protocols for use of language services, how to work with interpreters, and other topics that are needed.
- C. **Bilingual staff:** CLS shall provide training for bilingual staff who may be called upon to provide interpreting assistance to other staff on the techniques used in interpreting, interpreter ethics, and other topics as needed.

## IX. MONITORING AND ASSESSMENT

- A. **Staff Responsibility**
  1. Staff assigned to the Language Access Project shall be primarily responsible for monitoring program compliance with this policy.
  2. LAP staff shall report regularly to the Executive Director.
- B. **Client Needs and Program Resources**
  1. At least annually, CLS shall
    - a. generate intake statistics by primary language and by unit to determine the extent to which the program and its units are providing services to LEP clients
    - b. tabulate the number of bilingual staff on the payroll, and the number of languages spoken
    - c. tabulate the amount of staff time used to provide language services, the costs to procure outside language services and the extent to which services are utilized throughout the program
  2. Every five years, CLS shall review available demographic data regarding the

potentially eligible client population in terms of its linguistic makeup.

- a. Such data will be compared to the existing client base to determine if apparent disparities exist
  - b. Legal management and the Language Access staff shall consider whether special efforts are needed to provide greater service to underserved language groups
- C. **Annual Review.** The language access policy and the supporting protocols shall be reviewed annually and amended as needed.

**Addenda:**

1. Spanish and Cambodian Interpreting and Translating protocol
2. Language Services at CLS for Clients with Limited English Proficiency (protocol on telephone interpreting, in person interpreting and translation)
3. Quantum Request for Interpreting Services form
4. Language Line Document Translation Service Fax Order Form
5. CLS Staff Language Directory
6. Pennsylvania Legal Services Eligibility Manual excerpt: protocol for Developing an Unknown Social Security Number

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# LEGAL AID FOUNDATION OF LOS ANGELES POLICY & PROCEDURES ON PROVIDING LEGAL SERVICES TO LIMITED ENGLISH PROFICIENT CLIENTS

## LAFLA'S MISSION STATEMENT

The Legal Aid Foundation of Los Angeles (LAFLA) is the frontline law firm for low-income people in Los Angeles. LAFLA is committed to promoting access to justice, strengthening communities, combating discrimination and effecting systemic change through representation, advocacy, and community education.

## VALUES

**Justice.** Justice must be equal. We fight poverty, discrimination, and other barriers to justice.

**Dignity.** Dignity is the right of everyone. We are respectful, compassionate, and accountable toward the communities we serve.

**Results.** Actions and results are what count. We act on our beliefs. We improve lives and strengthen communities with dedication and professionalism.

**Client driven.** Client needs drive our work. The needs of low-income communities define and inspire what we do.

## GUIDING PRINCIPLES

LAFLA's commitment to equal justice and opportunity demands that we address and remove barriers to equal and meaningful access for our clients. To this end, LAFLA adopts the following guiding principles in providing services to clients with limited English proficiency.

1. LEP clients shall not be denied timely services at LAFLA.
2. LEP clients shall receive appropriate and meaningful services at LAFLA.
3. LAFLA staff shall collaborate and cooperate to provide quality services to LEP clients.
4. Staff members who receive the bilingual supplement shall use their language skills, in accordance with their supplement level, to assist LAFLA staff and LEP clients. This will include, at times, assisting staff outside bilingual staff member's office and unit.

## **ASSESSMENT OF NEEDS**

LAFLA's LEP Policy & Procedures is based on Census 2000 data, information from state and local entities, and information received from various community based organizations and social service agencies serving non-English speaking monolingual populations in Los Angeles County. The assessment of Census 2000 data includes looking at the following categories: persons who speak a language other than English at home, persons who are linguistically isolated, and poverty rates.

Based on this information, LAFLA has identified and prioritized the following languages to be the most needed in the LAFLA service area: Spanish, Korean, Cantonese, Mandarin, Japanese, Vietnamese, and Khmer. As a result, LAFLA has bilingual staff who speak each of these languages. LAFLA does not limit its services to these languages and is committed to providing access and services to all LEP clients. LAFLA will continue to monitor and assess language needs in its service area and make changes as needed.

### **LAFLA'S ASIAN/PACIFIC ISLANDER (API) INTAKE NUMBERS**

Cambodian (Khmer – pronounced KAMAI)	(213) 640-3887
Chinese (Cantonese & Mandarin)	(323) 801-7912
Japanese	(323) 801-7913
Korean	(323) 801-7987
Vietnamese	(323) 801-7923

## **PROCEDURES REGARDING ACCESS TO LAFLA SERVICES**

### **Walk-Ins**

1. All lobby areas must have the large language poster hanging in clear view.
2. All receptionists must have readily available LAFLA brochures and intakes in all available languages (Spanish, Korean, Chinese, Vietnamese, Japanese, Khmer).
3. All receptionists must have a list of staff and their languages.
4. If a limited-English proficient (LEP) applicant walks into a LAFLA lobby, the receptionist must:
  - a. Identify the language and ask the applicant to wait while an interpreter is called.
  - b. Refer to the list of staff and their languages and get a person on the line who speaks that language.
  - c. If no one is available, use Language Line (see below).
  - d. With the interpreter, assess the client's needs.
5. What is done next will depend on how each office handles walk-ins. With the interpreter present or available by phone, the receptionist must give the LEP individual the same level of service given to other walk-ins. Here are some sample scenarios:
  - a. If the case is LAFLA eligible, and there is no immediate emergency:
    - i. Refer the client to the appropriate unit (if the client speaks Spanish) or the appropriate LAFLA API intake number (see above) if the client speaks one of the API languages listed (which is written on the LAFLA brochure in that language). Allow the client to call the number and leave a message

- if no one picks up and let them know that this is the proper way that LAFLA conducts intake.
  - ii. If the client does not speak Spanish or one of the API languages listed, take down the client's contact information and give it to the appropriate unit's intake screener indicating that language assistance is required.
- b. If the case is LAFLA eligible, and there is an emergency, fill out the intake form. If there is no one available to provide immediate assistance, give or fax the intake form to the appropriate unit with clear indication that language assistance is required.
- c. If the case is not LAFLA eligible, give the client the appropriate referral information.

### **Phone Calls**

1. If a limited-English proficient (LEP) applicant calls an intake line or the receptionist, the intake screener or receptionist must:
  - a. Identify the language and ask the applicant to wait while an interpreter is called. If you cannot identify the language, call Language Line immediately.
  - b. Refer to the API intake numbers (see above) and/or the list of staff and their languages and get a person on the line who speaks that language.
  - c. If no one is available, use Language Line (see below).
  - d. With the interpreter, assess the client's needs.
2. With the interpreter on the line, the intake screener or receptionist shall conduct an intake as s/he would do with an English speaking caller. The LEP caller must receive the same level of service given to other callers.
3. If the caller needs follow-up and/or it is a case that LAFLA would retain, the intake screener, receptionist, or the LAFLA advocate assigned to the case should refer to the policies on using LAFLA bilingual staff for future interpretative needs (see below).
4. If the caller has a problem that is appropriate for a different LAFLA unit, refer the caller to the appropriate unit and/or the appropriate language line.
5. If the caller does not have a case with which LAFLA can assist, make the appropriate referral.

### **Using Language Line**

Be aware that the cost is over \$2 a minute, so this service is not for lengthy interviews. But it is a perfectly appropriate way to get basic information and make other interpreter arrangements. Here are the instructions:

1. With your client there or on the phone (if on the phone, ask her/him to hold, press Transfer), dial: 1 (800) 874-9426.
2. You will then be asked to enter LAFLA's account number (or client ID): **501240**
3. Choose the needed language.
4. You will then be asked for your personal code, which is your four digit telephone long distance code. (If you do not have this code, ask your office manager or other staff to assist you.)
5. If the client is on the phone, hit the Conference button to bring back the client into the three-way conference call.

## **PROVIDING ONGOING SERVICES TO LEP CLIENTS**

### **Determining and Documenting Language Needs**

1. Ongoing language services shall be provided to any client upon reasonable request at no cost.
2. All staff who open files or receive open files from other staff must insure that the intake sheet and the data in KEMP correctly identifies the client's primary language and need for an interpreter.
3. The file should also contain information regarding whether the client can *read* English and in which language the client prefers to receive written materials.
4. All case files must contain continuous documentation of how the client's language needs were met.

### **Choosing the Appropriate Advocate and Interpretation/Translation Services**

1. Use of Family and Friends
  - a. Adult Family and Friends. LAFLA discourages the use of adult family or friends to serve as interpreters. Family and friends are not trained interpreters, may not be proficient in English or the other language, and may not understand legal terminology or situations. It also carries the risk of bias in the translation process, inadvertently through choice of word or emphasis, or through intentional omission of facts. It may also diminish the client's willingness to be candid. Therefore, use of adult relatives and friends are only permissible after notice of LAFLA's willingness to provide free language assistance and at the client's insistence, both of which must be documented in the case file.
  - b. Child or Other Client Interpreters Prohibited. The use of minor children or other clients to interpret is prohibited absent exceptional or emergency circumstances, which must be documented in the file and reported to the Directing Attorney.
2. The preferred method of providing services to LEP clients is to use bilingual advocates who are proficient in the client's preferred language. Bilingual staff, however, should not be overburdened with cases, nor should LEP clients experience delays in service due to the unavailability of bilingual staff.
3. When a LAFLA staff member needs assistance with oral interpretation or written translation to assist an LEP client, the staff member should:
  - a. First, ask your secretary or support person assigned to assist you if s/he can do the interpretation or translation for you. If not, then:
  - b. Ask your office manager for help. Your office manager shall take the following steps to help you:
    - i. Ask support staff in your office to assist you;
    - ii. Ask support staff in another office to assist you;
    - iii. Ask the API Unit to assist you;
    - iv. Ask the Director of PAI if there are any trained volunteers who can assist you;
    - v. Ask your Directing Attorney for help from advocates in your unit;
    - vi. Submit a request to get outside assistance with interpretation or translation. This will require approval from Dennis or Bruce, and it is the option of last resort.

- c. If a LAFLA staff member needs immediate assistance with oral interpretation and there are no other resources immediately available, staff may use the Language Line at their discretion.
4. Except in an emergency situation, and with prior written approval, support staff should not be used for interpretation or translation if it will result in their working overtime.
5. Staff members who receive the bilingual supplement shall use their language skills, in accordance with their supplement level, to assist LAFLA staff and LEP clients. This will include, at times, assisting staff outside bilingual staff member's office and unit.

### **Translation of Documents**

LAFLA shall provide written versions of all vital documents in English and Spanish. Other languages shall be determined based on demographic, intake, and other data and shall be reviewed periodically. Examples of vital documents are: intake sheet, retainer agreement, release forms, and closing letters. For other documents and languages, staff shall ensure that thorough oral interpretation of the document is provided in the client's preferred language.

All vital documents of each unit shall be translated in the manner prescribed in paragraphs 3, 4 and 5 of "Choosing the Appropriate Advocate and Interpretation/ Translation Services." Office Managers shall ensure that any newly created vital documents be translated in a prompt manner.

### **Supervision/Evaluation**

At the time of case closure, all staff and supervisors shall review each case to determine if the need for language services was addressed.

## **TRAINING**

LAFLA shall provide appropriate training to staff on working with interpreters, language resources, and other issues pertaining to LEP clients. LAFLA shall also provide trainings for bilingual staff on appropriate techniques and ethics on interpretation and translation. LAFLA shall ensure that all new staff, as well as "temps", are made aware of these procedures.

## **REVIEW OF LEP POLICY**

LAFLA's LEP Task Force shall review its LEP policy on an annual basis and shall be amended as needed to ensure compliance and effectiveness.