

1 LITIGANTS WITH LIMITED ENGLISH PROFICIENCY

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RECOMMENDATIONS

In formulating the following recommendations, the Committee acknowledges that the implementation of these recommendations is likely to be costly. Nonetheless, they are essential to providing equal access to justice to LEP individuals.

TO THE SUPREME COURT OF PENNSYLVANIA

The Committee recommends that the Court:²⁸

1. Establish for all courts of the Commonwealth of Pennsylvania a policy that all persons, including parties to judicial proceedings, witnesses appearing therein, victims in criminal proceedings, and members of the public seeking information from offices of the courts, shall have equal access to justice in the judicial system of Pennsylvania without regard to their English language proficiency.²⁹
2. Require that all courts provide qualified interpreters to litigants at no charge, in order that LEP parties and witnesses may fully and fairly participate in court proceedings and obtain reasonable access to the court system.
3. Require that the courts translate forms and other documents to the extent necessary to provide access to the court system to those unable to read English.
4. Require that all court interpreters obtain certification pursuant to a recognized statewide certification program, maintain their proficiency through continuing education, and adhere to standards of professional conduct.
5. Require the adoption of a code of professional responsibility for judicial interpreters together with mechanisms to assure that all interpreters are familiar with the code and are subject to discipline for any violation.
6. Establish within the Administrative Office of the Pennsylvania Courts (AOPC) a Language Services Office,³⁰ similar to those established by other states, staffed by professional administrative personnel experienced with issues related to court interpretation and translation, and funded sufficiently to carry out its mission. (Please refer to Endnote 30 at the end of this chapter for a full listing of suggested services to be provided by a Language Services Office.)

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- ²⁵ Louise Story, *Interpreters Balance Scales, Court Interpreters Make Sure Everyone is Heard, and Demand for their Services is Growing*, Osceola Sentinel, July 2, 2001.
- ²⁶ H.R. 718, 2002 Regular Session (Miss. 2002).
- ²⁷ National Center for State Courts, Philadelphia Court Interpreter Services Study, Translating and Bilingual Services Section of the Administrative Office of New Jersey Courts, Robert Joe Lee, Director of Court Interpreting, pp. 16–17.
- ²⁸ In its comments to the proposed Rule of Court Administration relating to Equal Access to Justice in the Courts of the Commonwealth of Pennsylvania, the Supreme Court of Pennsylvania should note that it anticipates that in implementation of that Rule, courts will utilize the guidance which has been provided under Title VI of the Civil Rights Act of 1964 relating to National Origin Discrimination Against Persons With Limited English Proficiency pursuant to United States Presidential Executive Order 13166, “Improving Access to Services for Persons with Limited English Proficiency.”
- ²⁹ The Committee notes that during the study, similar concerns were raised regarding the needs of the hearing impaired. The Committee determined that the needs of the hearing impaired were beyond the scope of its study but urges the Court to consider addressing the needs of the hearing impaired and citizens with limited English proficiency at the same time since they involve similar issues and solutions.
- ³⁰ The Language Services Office shall be responsible for:
- a) Enrolling the Pennsylvania Unified Judicial System as a member of the State Court Interpreter Certification Consortium of the National Center for State Courts;
 - b) Establishing procedures for the employment, training, compensation, qualification, and approval of staff and contracted court interpreters during the transition to statewide certification standards;
 - c) Creating a comprehensive statewide system to assure qualified judicial interpreters, including:
 - i) Adopting standards for the skills and qualifications required for different levels of expertise of interpreters as well as job descriptions for interpreters and supervisors;
 - ii) Assessing the need for and implementing orientation training, certification training, and continuing professional education;
 - iii) Overseeing the administration of consortium certification exams in available languages needed by the courts; and developing testing protocols for languages for which consortium exams are not developed;
 - iv) Determining the advisability of and standards for certifying knowledge of the Code of Professional Responsibility for Judicial Interpreters; and
 - v) Developing guidelines for compensation scales for staff and contracted interpreters at various levels of proficiency and experience.
 - d) Creating and managing a statewide administrative system for interpreting, including:
 - i) Recruiting and hiring staff interpreters and contracted interpreters;
 - ii) Creating a system to assign interpreters efficiently, as needed, to proceedings across the state to assure maximum use of the most qualified interpreters and the avoidance of delay for the courts, the litigants, and the interpreters;
 - iii) Supervising the work of interpreters to maintain quality and professionalism; and
 - iv) Gathering and analyzing data on the need for, use of, and cost of the interpreter program, and making recommendations for improvement of the system.
 - e) Developing protocols for the use of interpreters in courts and courthouses, including:
 - i) Adopting a bench guide for judges to consult in the proper utilization and supervision of interpreters in judicial proceedings, including standard *voir dire* questions for court interpreters and for witnesses and/or litigants to determine whether appointment of an interpreter is necessary;

- ii) Adopting standards for such matters as the techniques to be used by interpreters; the correction of interpreter errors and objecting interpretation; and avoidance of interpreter fatigue;
 - iii) Consistent with published Title VI guidances, identifying those vital written documents, forms, posted notices, and signs utilized by the courts that should be required to be translated to other languages and into which other languages such written materials should be translated;
 - iv) Developing a system to create reviewable interpreting records, including (1) appropriate tape recording of witnesses and interpreters and the proceedings to the extent feasible, so as to have a complete record for judicial review and challenges to the adequacy of interpretation; and (2) video recording of the witness and interpreter where sign language interpretation or other assistance to hearing impaired persons is provided;
 - v) Developing policies and procedures for the use of video telephone conferencing systems for court interpretation when qualified on-site interpreters are not available, assuring with those policies that video interpreters are qualified;
 - vi) Determining means to provide meaningful access to LEP persons who are *pro se* litigants; and
 - vii) Adopting procedures to assure that language services are provided to assist court-appointed counsel in communicating with LEP clients in criminal and other matters.
- f) Promoting increased hiring of bilingual and bicultural court staff able to deliver services to LEP parties without the need for an interpreter, including development of job descriptions for bilingual positions, providing fiscal support for upgrading skills of existing bilingual employees, and recommending practices to facilitate recruitment and retention of bilingual staff.
- g) Working with continuing legal education providers and the administrative office of the Pennsylvania Courts to develop training and educational systems for attorneys, judges, court administrators, and others as to issues relating to the equal access to justice for LEP persons and for the utilization of court interpreters.
- h) Engaging in study of other issues relating to providing equal access to LEP litigants and making further recommendations in such areas as:
- i) Assessing how the cultural norms of immigrant communities may adversely impact their ability to obtain equal justice in the judicial system and what remedial action is appropriate;
 - ii) Determining how foreign-born litigants' immigration status may affect their rights to equal access to justice in Pennsylvania judicial proceedings and how the adverse aspects of such impact may be minimized; and
 - iii) Establishing mechanisms for providing members of LEP immigrant communities with accurate information about their legal rights and options open to them, which could include an explanation of the possibility of free or *pro bono* representation, lists of competent referrals for different kinds of translation or other services, and types of problems which can be addressed through the legal system.
- i) Ensuring that all Pennsylvania courts and Commonwealth administrative departments or agencies which conduct hearings that are subject to judicial review on the record also develop procedures to comply with Title VI of the Civil Rights Act of 1964 and its implementing regulations.