

**National
Center for
Access to
Justice**
at Cardozo Law School

|

**“Thou Shalt Not Ration Justice”
--Hon. Learned Hand**

BRENNAN
CENTER
FOR JUSTICE

LANGUAGE ACCESS
IN STATE COURTS

Laura Abel

Conference of State Court Administrators

White Paper on Court Interpretation: Fundamental to Access to Justice (2007)

“Our promise of justice for all must be supported by a commitment to provide all individuals accessing our court systems with a means for true communication and understanding, and not through a mere babble of unintelligible voices.”

Court interpreters need to be:

Fluent in both languages

Court interpreters need to be:

Able to keep
the meaning, style and tone
of the original source

Court interpreters need to be:

Able to perform whichever interpretation skill is needed

- simultaneous
- consecutive
- sight translation of written materials

Court interpreters need to be:

Familiar with:

- unique culture of the court
- any legal matters that will need to be interpreted
- an interpreter's ethical duties

Court Interpreter Ethics

- Interpret accurately and objectively. Don't reveal your opinion.
- Don't give advice.
- Maintain confidentiality.
- Maintain impartiality. Don't interpret if you have a conflict of interest.

from the NY Unified Court System's Canons of Professional Responsibility for Court Interpreters

Civil Rights Act of 1964, Title VI

“No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”

“Simple justice requires that public funds, to which all taxpayers of all races contribute, not be spent in any fashion which encourages, entrenches, subsidizes, or results in racial discrimination.”

***Lau v. Nichols*, 414 U.S. 563, 569 (1974) (quoting Sen. Humphrey during floor debates on Civil Rights Act of 1964))**



U. S. Department of Justice

Civil Rights Division

Assistant Attorney General

Washington, D.C. 20530

August 16, 2010

Dear Chief Justice/State Court Administrator:

In the past decade, increasing numbers of state court systems have sought to improve their capacity to handle cases and other matters involving parties or witnesses who are limited English proficient (LEP). In some instances the progress has been laudable and reflects increased recognition that language access costs must be treated as essential to sound court management. However, **the Department of Justice (DOJ) continues to encounter state court language access policies or practices that are inconsistent with federal civil rights requirements.** Through this letter, DOJ intends to provide greater clarity regarding the requirement that courts receiving federal financial assistance provide meaningful access for LEP individuals.

Dispensing justice fairly, efficiently, and accurately is a cornerstone of the judiciary. Policies and practices that deny LEP persons meaningful access to the courts undermine that



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

MAR 08 2012

BY EMAIL AND CERTIFIED MAIL

Honorable John W. Smith
Director
North Carolina Administrative Office of the Courts
P.O. Box 2448
Raleigh, NC 27602

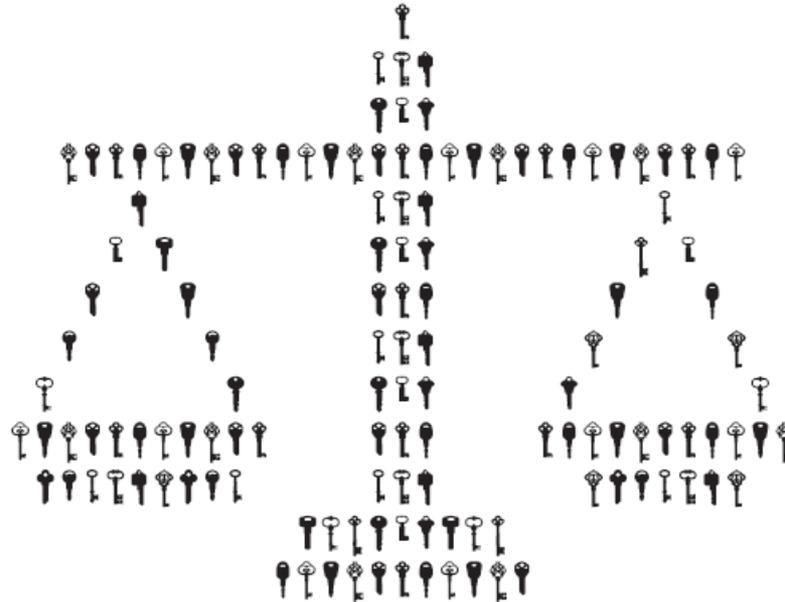
Re: Investigation of the North Carolina Administrative Office of the Courts
Complaint No. 171-54M-8

Dear Judge Smith:

We write to report the findings of the Civil Rights Division's investigation of the North Carolina Administrative Office of the Courts (AOC), an office within the North Carolina Judicial Department. As the enclosed findings report explains, we have determined after a comprehensive investigation that the AOC's policies and practices discriminate on the basis of national origin, in violation of federal law, by failing to provide limited English proficient (LEP) individuals with meaningful access to state court proceedings and operations.

The AOC's policies and practices have significant consequences for LEP individuals who are parties or witnesses to North Carolina state court proceedings. Among the harms we identified in the course of our investigation are longer incarceration as a result of continuances

American Bar Association



Standards *for* Language Access *in* Courts

Standing Committee on Legal Aid and Indigent Defendants

FEBRUARY 2012



← Rules

Part & Title:

200

Uniform Rules for Courts Exercising Criminal Jurisd.

201

[Reserved]

202

Uniform Civil Rules for the Supreme Court and County Court

203

[Reserved]

204

[Reserved]

205

Uniform Rules for the Family Court

206

Uniform Rules for the Court of Claims

207

Uniform Rules of the Surrogate's Court

208

Uniform Rules for the New York City Civil Court

209

[Reserved]

Uniform Rules for N.Y.S. Trial Courts

PART 217. Access To Court Interpreter Services for Persons With Limited English Proficiency

§217.1 Obligation to appoint interpreter in court proceedings in the trial courts.

(a) In all civil and criminal cases, when a court determines that a party or witness, or an interested parent or guardian of a minor party in a Family Court proceeding, is unable to understand and communicate in English to the extent that he or she cannot meaningfully participate in the court proceedings, the court shall appoint an interpreter. The court may permit an interpreter to interpret by telephone or live audiovisual means.

(b) A person with limited English proficiency, other than a person testifying as a witness, may waive a court-appointed interpreter, with the consent of the court, if the person provides his or her own interpreter.

§217.2 Provision of interpreting services in clerk's offices.

A court clerk shall provide interpreting services to a person with limited English proficiency seeking assistance at the court clerk's office in accordance with the needs of the person seeking assistance and the availability of court interpreting services. Such services may be provided by telephone or live audiovisual means.

Historical Note

Added Section 217 on [Oct. 16, 2007](#).

COURTS

LITIGANTS

ATTORNEYS

JURORS

JUDGES

CAREERS

SEARCH

DOJ says:

1

In the courtroom

- Provide interpreters for criminal and civil matters at which LEP individuals may be present.
- Don't charge for interpreters.
- Ensure that the interpreters are competent.

Court Interpreting in New York

A Plan of Action: Moving Forward



JUNE 2011



NY policy & practice

Interpreters are provided for all court proceedings, free of charge.

*Uniform Rules for N.Y.S. Trial Courts, Rule
217.1*

DOJ says:

Outside of the courtroom

Provide language access for critical encounters outside of the courtroom, including

- clerks' offices
- services offered or required by the court.

ABA Standards:

For clerks' offices:

- Use translated forms, signs and handouts
- Use audio and video recordings to explain answers to frequently asked questions
- Bilingual staff can communicate directly with LEP individuals (but the staff must be competent in both languages)
- Use interpreters. They don't have to be as highly trained as courtroom interpreters.

ABA Standards:

Interpreters used outside of the courtroom need to be competent to perform the task asked of them. The court should:

- Assess their skills in English and the other language
- Ensure that the interpreters don't have a conflict of interest

ABA Standards:

Keep a clear demarcation between interpreters and bilingual staff.

- Bilingual staff can provide information to LEP individuals in their native language.
- Interpreters can only interpret what the LEP individual and other staff are saying. When an interpreter is being used, there needs to be another staff person who is providing information.

NY policy & practice

- Clerks must:
 - “provide interpreting services to a person with limited English proficiency seeking assistance at the court clerk's office in accordance with the needs of the person seeking assistance and the availability of court interpreting services.”
- “Such services may be provided by telephone or live audiovisual means.”

Uniform Rules for N.Y.S. Trial Courts, Rule 217.2

DOJ says:

Judges and other court personnel
encountering LEP individuals must
know how and when to use
interpreters

DOJ says:

Translate critical documents into
the languages commonly
spoken by court users



New York State Unified Court System

← Portal del tribunal civil

Administración

Información acerca del tribunal civil

Información legal

Auto Representación

Jueces

Servicios comunitarios

Publicaciones y videos del tribunal civil

Rincón infantil

Consejo asesor

Enlaces a otros portales

Tribunal Civil de la Ciudad de Nueva York División de la Vivienda

Información Legal

[Información General](#)

[Información Sobre Desalojos Ilegales](#)

[Demandas por Incumplimiento del Pago del Alquiler](#)

[Información Sobre Procesos de Apelación](#)

[Información Sobre Procesos en Desalojo](#)

[Formularios del Tribunal de la Vivienda](#)

[Información Sobre Demandas HP \(para obtener reparaciones\)](#)

[Directrices y Asesoría Legal](#)

[Directorio Telefónico](#)

[Información Sobre Demandas Basadas en el Artículo 7A](#)

[Definiciones](#)

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U. S. Department of Justice

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Assistant Attorney General

Washington, D.C. 20530

August 16, 2010

Dear Chief Justice/State Court Administrator:

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The DOJ guidance encourages recipients to develop and maintain a periodically-updated written plan on language assistance for LEP persons as an appropriate and cost-effective means of documenting compliance and providing a framework for the provision of timely and reasonable language assistance. Such written plans can provide additional benefits to recipients' managers in the areas of training, administering, planning, and budgeting. The DOJ Guidance goes on to note that these benefits should lead most recipients to document in a written LEP plan their language assistance services, and how staff and LEP persons can access those services. In

**CLARK COUNTY COURTS
LANGUAGE ASSISTANCE PLAN (LAP)**

I. LEGAL BASIS AND PURPOSE

This document serves as the plan for Clark County Courts to provide services to Limited English Proficient (LEP), deaf or hearing impaired individuals in compliance with Title VI of the Civil Rights Act of 1964; 45 C.F.R. § 80 et seq.; 28 C.F.R. § 42 et seq.; and RCW 2.42 and 2.43. The purpose of this plan is to provide a framework for the provision of timely and reasonable language assistance to LEP, deaf or hearing-impaired persons who come in contact with Clark County Courts.

This LAP Plan was developed to ensure equal access to court services for persons with limited English proficiency and deaf and hearing-impaired persons. Although deaf and hearing-impaired individuals are covered under the Americans with Disabilities Act (ADA) rather than Title VI of the Civil Rights Act, they have been included in this plan insofar as they relate to RCW 2.42 and 2.43.

II. NEEDS ASSESSMENT

A. Statewide

Washington State provides court services to a wide range of persons, including people who do not speak English or who are deaf or hearing impaired. Service providers include the trial courts at the Superior, District and Municipal Court levels.

According to 2000 U.S. Census data, the most widely used languages for interpreters in Washington State were (in descending order of frequency):

1. Spanish
2. Russian
3. Vietnamese
4. Chinese