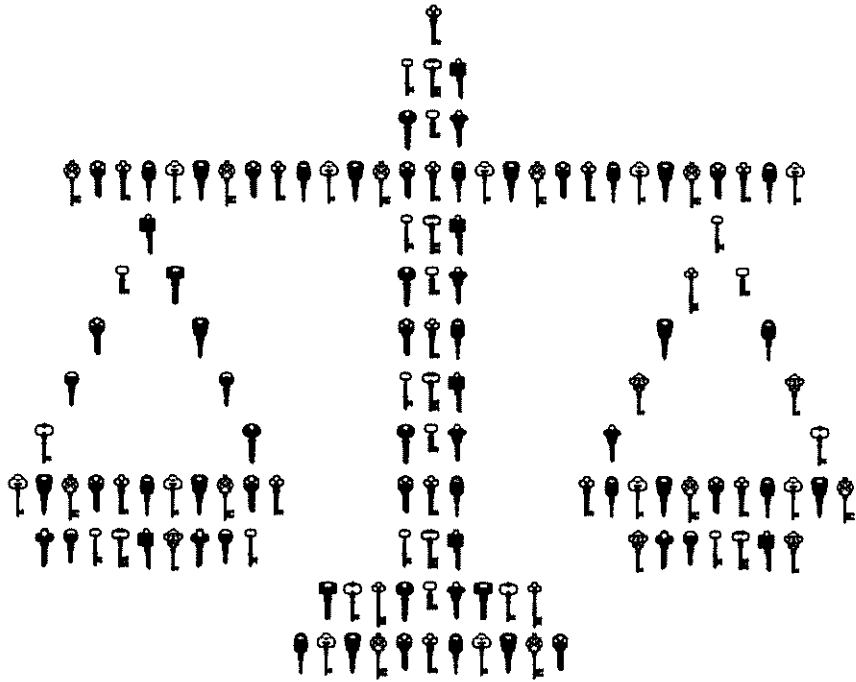


American Bar Association



Standards *for* Language Access *in* Courts

Standing Committee on Legal Aid and Indigent Defendants

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2.3 Courts should provide language access services without charge, and may assess or recoup the cost of such services only in a manner that is consistent with principles of fairness, access to justice and integrity of the judicial process, and that comports with legal requirements.

Commentary

Language access services ensure that all persons have equal access to justice and that information essential for the efficiency and integrity of legal proceedings can be understood by both English speakers and those who are LEP. Many states and courts, as well as the federal government, have endorsed these principles by passing laws and promulgating rules and guidance that expressly require the provision of language access services in both civil and criminal cases regardless of indigency.¹² See Standard 1 for a full examination of these principles and relevant law and jurisprudence.

Courts should avoid placing the burden of paying for language access disproportionately on LEP individuals in a manner that discourages access to court by LEP persons or inhibits requests for language services necessary to enable LEP persons to participate fully in proceedings. The cost of language services, if imposed, should not unduly impact LEP persons. The court may assess or recoup those costs from a well-resourced party who has the ability to pay, as appropriate and where allowed by law. Whatever test the court applies to determine if costs should be assessed or recouped, it cannot have a chilling effect on the rights of the LEP person to access the court system. In all cases, the court has an institutional interest in having adequate language services to capture evidence accurately and determine cases fairly on the merits.

Best Practices

There is broad agreement that justice cannot be achieved in any adjudicatory setting (whether civil or criminal) when persons affected by the proceedings do not comprehend them, when persons with information that is essential to a fair outcome cannot convey that information, when the judge or jury do not have an accurate understanding of relevant evidence, or when persons are subject to a different outcome or penalty, or are denied an otherwise available option or treatment, based only on their language ability. Because language services are essential to the fair and efficient operation of the courts, expenses associated with providing those services should be considered routine, necessary expenses and included in budget requests for judicial

12. See Fn. 2, Laura Abel, *Language Access in State Courts* (2009), pp. 67-68 (identifying Idaho, Kansas, Kentucky, Maine, Minnesota, Nebraska, New Jersey, New York, Oregon and Wisconsin as states in which the courts pay for interpreters without imposing a means test and without assessing interpreter costs on the parties), available at www.brennancenter.org; Colo. Ch. J. Dir. 06-03, (June 2011); COSCA White Paper Appendix A.; DOJ Guidance and Letter from Thomas E. Perez, Assistant Attorney General, to Chief Justices and State Court Administrators 2 (Aug. 16, 2010), http://www.justice.gov/crt/lep/final_courts_ltr_081610.pdf [hereinafter "Letter to Chief Justices and State Court Administrators"].

administration and as part of other court efforts seeking adequate funds for court operations. Courts may seek necessary increases in funding of judicial budgets, or grants from the federal government or other sources.¹³ Courts may include the cost of language access services in the calculation for determining filing fees for all users.

Recognizing that adequate funding might not be immediately available, implementation of these Standards in all tribunals and proceedings may need to be phased over a period of time, and priority should be given to providing interpreter services without charge to low and moderate income persons and unrepresented litigants. Assessment or recoupment of the cost of interpreter services, where allowed by law, should be limited to well-resourced parties who have the ability to pay such costs, because fees imposed upon LEP persons have the strong potential to chill recourse to the courts and inhibit the use of language access services that are necessary or beneficial to the fair administration of justice.

An example of a situation where a court may, where allowed by law, assess or recoup the cost of language access services would be when, in a specific civil proceeding, language access services are provided for the benefit of a well-resourced non-LEP individual or corporate party. In such a situation, the cost of language services can be imposed on that individual/corporation without chilling court access or disproportionately burdening LEP individuals and most would agree that it is fair to require that party to bear the costs, for example, of presenting the testimony of an LEP expert witness. If the well-resourced party was himself/herself LEP, the court would need to evaluate the circumstances to ensure that any assessment of costs would be consistent with the principles articulated in this Standard.

In considering whether to provide an interpreter without charge, courts should be mindful that the poverty/indigency threshold is unrealistically low. For that reason, any effort by a court to impose fees on particular persons and litigants should take into consideration that the cost of interpreter services will burden most people of modest or even “middle class” means, and of many small or moderate-size businesses. Litigants in those categories will not be treated on a par with persons who do not require language services and will effectively be denied access to justice, if they are unable or dissuaded from using the courts, because they are subject to up-front fees or know that they will be assessed fees under an after-the-fact recoupment mechanism.

13. See, e.g., Colorado Judicial Branch, FY 2010-11, Joint Budget Committee Hearing Agenda (Nov. 18, 2010), p. 3 (showing interpreter costs as 2% of the judiciary’s general fund allocation); http://www.courts.state.co.us/userfiles/file/Administration/Financial_Services/Judicial%202012%20Hearing%20Agenda%20-%20FINAL.pdf; Wisconsin Court System, Biennial Budget Summary: Court-Related Items (July 1, 2011), p. 16 (allocating a portion of the Justice Information Systems Surcharge for court interpreter costs), <http://www.wicourts.gov/courts/overview/docs/budgetsummary.pdf>; Texas Courts Online, Remote Interpreter Project, (describing use of federal Violence Against Women Act funding for remote interpretation project), <http://www.courts.state.tx.us/oca/dvra/trip.asp>.