U.S. Department of Justice

Civil Rights Division

Coordination and Review Section - NWB
950 Pennsylvania Avenue, NW
Washington, DC 20530

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Ms. Wanda Romberger
Manager
Court Interpreting Services
National Center for State Courts
300 Newport Avenue
Williamsburg, VA 23185

Dear Ms. Romberger:

Some time ago, you provided the Department of Justice's Civil Rights Division a copy of the National Center for State Courts' "Model Judges Bench Book on Court Interpreting" and asked for our comments. This book is an impressive compilation of information regarding state courts' provision of interpreter services for limited English proficient ("LEP") people and individuals with hearing disabilities. As you know, the Coordination and Review Section (COR) has focused a great deal of effort over the past several years to improving access for LEP persons to a wide array of programs and activities of recipients of federal financial assistance, including courts. The following comments focus exclusively on access to interpretation and translation for LEP persons. We are sorry for the delay in our response.

Interpreters for LEP Individuals

The bench book includes helpful information on interpreters' obligations and ethical responsibilities and is a guide to many best practices for judges to follow when working with interpreters.

As you are aware, the Department of Justice has published guidance concerning compliance with Title VI of the Civil Rights Act of 1964, issued pursuant to Executive Order 13166. In part, the guidance states:

> ...At a minimum, every effort should be taken to ensure competent interpretation for LEP individuals during all hearings, trials, and motions during which the LEP individual must and/or may be present. (67 FR 41455, 41471)

We suggest that the authors review and modify the bench book with this in mind, as there are places throughout the bench book that appear to limit the situations in which interpreters are needed, or which appear to encourage or allow courts to charge LEP persons for interpretation costs.

As you know, many state court systems receive direct or indirect financial assistance from the Department of Justice or another federal agency. Recipients of such federal financial assistance must comply with Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000, et seq, and its implementing regulations, which prohibit discrimination on the basis of race, color, and national origin in programs that receive federal financial assistance. Under Executive Order 13166, reprinted at 65 FR 50121 (August 16, 2000), each federal agency that extends federal financial assistance is required to issue guidance explaining the obligations of their recipients to ensure meaningful access by LEP persons to their federally assisted programs and activities. On June 18, 2002, the Department of Justice issued its final guidance to its recipients regarding the requirement to take reasonable steps to provide meaningful access to LEP individuals. (67 FR 41455). The DOJ Guidance outlines four factors that should be considered to determine when language assistance might be required to ensure such meaningful access, and identifies cost effective measures to address those language needs.

Those factors are:

1. The number or proportion of LEP persons in the eligible service population;
2. The frequency with which LEP individuals come into contact with the program;
3. The importance of the program or activity to the LEP person (including the consequences of lack of language services or inadequate interpretation/translation); and
4. The resources available to the recipient and the costs.

Clearly, court interactions are amongst the most important interactions an LEP person may have. While we recognize that resources are a concern across every court system, and that increasing access can be a process that takes some time, we note that the first LEP guidance was issued in early 2001. Our outreach to the courts, in concert with the Center's, should have put all court systems on notice of the Title VI obligations years ago. With the passing of time, the need to show progress in providing all LEP persons with meaningful access is amplified.

In addition, the DOJ Guidance discusses the value and possible format of written language assistance plans, options for

identifying language services and ensuring competency of interpretation and translation services, and also includes DOJ's insights on when translations of certain vital documents should be considered. The DOJ Guidance also includes an Appendix that contains examples of how courts can provide appropriate services to LEP individuals.

The DOJ Guidance further provides specific information regarding when courts should utilize interpreters for LEP individuals:

> Application of the four-factor analysis requires recipient courts to ensure that LEP parties and witnesses receive competent language services, consistent with the four-factor analysis. At a minimum, every effort should be taken to ensure competent interpretation for LEP individuals during all hearings, trials, and motions during which the LEP individual must and/or may be present. When a recipient court appoints an attorney to represent an LEP defendant, the court should ensure that either the attorney is proficient in the LEP person's language or that a competent interpreter is provided during consultations between the attorney and the LEP person...(67 FR 41455, 41471)

COR has noted a disturbing number of courts and court systems engaging in a practice of charging LEP persons for interpretation costs - a practice which implicates national origin discrimination concerns. DOJ's Guidance focuses on a huge range of types of recipients. The consequences of lack of access to some of these programs is much greater than others. The guidance was written for, and intended to apply flexibly to, everything from bicycle safety courses to criminal trials, and even to serve as a model for the enormous variety of recipients of funds from other federal agencies. In this context, nearly every encounter an LEP person has with a court is of great importance or consequence to the LEP person. Thus, the guidance emphasizes the need for courts to provide language services free of cost to LEP persons:

> ... [W]hen oral language services are necessary, recipients [of any federal funds] should generally offer competent interpreter services free of cost to the LEP person. For DOJ recipient programs and activities, this is particularly true in a courtroom, administrative hearing, pre- and post-trial proceedings, situations in which health, safety, or access to important benefits and services are at stake, or when credibility and accuracy are

important to protect an individual's rights and access to important services (67 FR 41455, 41462)

We therefore think that the legally sound approach to providing access to LEP persons can be found in states in which courts are providing interpretation free of cost to all LEP persons encountering the system (including parents of non-LEP minors), whether it be in a criminal or civil setting. In addition, courts should be providing translation of vital documents and signage. Many states are moving in this direction, and we are pleased to continue to work independently and with the Center to send the message of compliance and best practices to all state courts, and to provide technical assistance wherever we are able. As you are aware, we also conduct investigations into allegations of national origin discrimination in courts, and are working with some states in that capacity, as well.

For your convenience, we have enclosed DOJ's "Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons" and DOJ's "Executive Order 13166-Limited English Proficiency Resource Document: Tips and Tools from the Field" for you to review and share with your colleagues. The Appendix to the guidance includes a section, at page 41471, on the application of Title VI to federally assisted courts. The Tips and Tools document similarly includes a section, Chapter 5, that is specific to federally assisted state courts. Please feel free to include a reference or relevant portions of these documents in the Appendix portion of the bench book.

We share your commitment to ensuring that state courts provide fully trained, bilingual interpreters for LEP individuals with business before these courts and assuring that vital documents are provided in relevant languages. Giving LEP persons the opportunity to have meaningful, equal access to the state judicial system is one of the core values and requirements of Title VI.

The Civil Rights Division welcomes the opportunity to collaborate with the Center and the Consortium to ensure that state courts provide LEP people with the assistance they need to communicate effectively with state courts across the United States. By working together to provide state courts the information they need to comply with Title VI, we safeguard the rights of LEP individuals, save courts the time and expense of responding to federal funding agency investigations, and advance the letter and spirit of the law. We look forward to continue working with you in encouraging state court systems to voluntarily meet their Title VI obligations. Should you have any

information they need to comply with Title VI, we safeguard the rights of LEP individuals, save courts the time and expense of responding to federal funding agency investigations, and advance the letter and spirit of the law. We look forward to continue working with you in encouraging state court systems to voluntarily meet their Title VI obligations. Should you have any questions about our comments on LEP access, please feel free to contact me at (202) 307-2222.

Sincerely

Merrily A. Friedlander

Merrily A. Friedlander
Chief
Coordination and Review Section