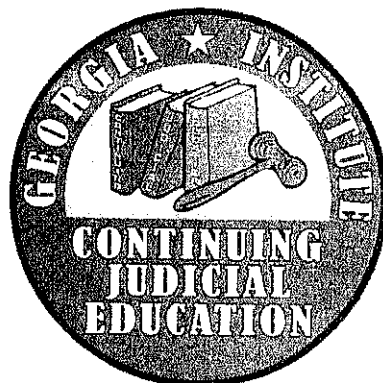


Best Practices in the Use of Court Interpreters



**Hon. Dax Lopez &
Atty. Jana Edmondson - Cooper**

Language Access Demystified: Beneficial Insight on the Necessity of Qualified Interpreters & Best Practices

I. Introduction

The current policy of the State of Georgia requires courts to provide qualified interpreters, without cost, to limited English proficient (LEP) and Deaf/Hard of Hearing (DHH) litigants and witnesses.¹ As of 2011, the right to an interpreter in Georgia applies in all cases, criminal and civil, as well as administrative forums.² The expense of providing an interpreter in any legal proceeding is borne by the local court or appropriate governing body.³ The Supreme Court of Georgia Commission on Interpreters (“COI” / “Georgia Commission on Interpreters”/ “the Commission”) provides interpreter licensing, regulatory and education services for Georgia courts so they can ensure the rights of non-English speaking and DHH persons.⁴ The Commission is available to provide guidance to courts in order to help courts meet their language access needs. Courts are encouraged to contact the Commission regarding their language access questions, concerns and/or needs.⁵

A. Commonly Used Terms

1. Limited English Proficient (LEP)

- a. Individuals who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English are limited English proficient, or "LEP."

2. Deaf/Hard of Hearing (DHH)

¹ See, Supreme Court of Georgia Rule for the Use of Interpreters for Non-English Speaking and Hearing Impaired Persons (“Rule”), Appendix A (II).

² See, Rule, Appendix A.

³ See, Rule, Appendix A (VII)(B).

⁴ See, COI Mission Statement available at [Committee on Interpreters – Office of Court Professionals \(georgiacourts.gov\)](http://Committee.on.Interpreters-Office.of.Court.Professionals.georgiacourts.gov). (Last visited September 26, 2021).

⁵ COI - Administrative Office of the Courts, 244 Washington Street, SW - Suite 300, Atlanta, Georgia 30334 / E-mail: coi@gaoc.us / Telephone: (404) 463-6478 / Fax: (404) 651-6449 / Website: [Committee on Interpreters – Office of Court Professionals \(georgiacourts.gov\)](http://Committee.on.Interpreters-Office.of.Court.Professionals.georgiacourts.gov)

- a. Individuals with the audiological condition of not hearing and/or individuals with mild-to-moderate hearing loss.

3. **Interpretation/Interpreter⁶**

- a. The process by which *oral* communication is rendered from one language to another. The original (source) language is either spoken or signed language, and the rendition is delivered into the (target) spoken language or in a signed language.
- b. The individual performing this task is an “interpreter.”

4. **Translation /Translator⁷**

- a. The process by which *written* text is rendered from one language to another. The original (source) language is in written form, and the translation into the other (target) language is also produced in written form.
- b. The individual performing this task is a “translator.”

II. Legal Underpinnings

- A. Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d
- B. *Lau v. Nichols*, 444 U.S. 563 (1974)
- C. Executive Order 13166, 65 FR 50121, (August 2000)
- D. U.S. Department of Justice Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 F.R. 41,455 (June 2002) (DOJ Guidance)
- E. *Liese v. Indian River Cnty. Hosp. Dist.*, 701 F.3d 334, 336 (11th Cir. 2012)
- F. *Ramos v. Terry*, 279 Ga. 889, 622 S.E.2d 339 (2005)

⁶ See, National Association of Judicial Interpreters and Translators (NAJIT) “*Frequently Asked Questions about Court and Legal Interpreting and Translating- What is the Difference Between Interpretation and Translation?*” available at [About the Profession - NAJIT](#) . (Last Visited September 26, 2021).

⁷ *Id.*

G. *Ling v. State*, 288 Ga. 299; 702 S.E.2d 881 (2010)

H. Supreme Court of Georgia Rule on Use of Interpreters for Non-English Speaking and Hearing Impaired Persons (Rule)

I. O.C.G.A. §§ 24-6-652 through 658; O.C.G.A. § 15-6-77(e)(4)

J. USCR 7.3 (amended July 2017)

III. Supreme Court of Georgia Commission on Interpreters

A. Created in 2003 to secure the rights of non-English speaking persons utilizing the state court system by establishing a statewide plan for the use of interpreters in Georgia courts during the presentation of civil or criminal matters.

B. **Mission:** provide interpreter licensing, regulatory and education services for Georgia Courts so they can ensure the rights of non-English speaking persons.

C. 18 members composed of judges, lawyers, academia, legislators, and interpreters.

D. Staff persons available to provide assistance to judges and court personnel, including:⁸

1. Mr. John Botero, Program Director, Office of Court Professionals

E. Commission restructured to become a standing committee of the Judicial Council of Georgia. Currently operates as **Standing Committee on Court Interpreters (effective August 2021). Chaired by Justice Carla McMillian**

1. Ms. Edmondson-Cooper and Judge Lopez (ret.) serve currently as Attorney-Advisory Members

⁸ COI - Administrative Office of the Courts, 244 Washington Street, SW - Suite 300, Atlanta, Georgia 30334 / E-mail: coi@gaaoc.us / Telephone: (404) 463-6478 / Fax: (404) 651-6449 / Website: <http://w2.georgiacourts.org/coi/>

IV. Appointment of Interpreters

A. Appointment of Sign Language Interpreters

1. **“Court qualified” or “Qualified”** - To be recognized as a court qualified interpreter or qualified interpreter in Georgia, an interpreter must hold a current certification from the Registry of Interpreters for the Deaf (RID).⁹ These designations are defined by the Official Code of Georgia. *See*, O.C.G.A. §§ 24-6-652 through 658. (*Rule*, Appendix B (III))

B. Appointment of Foreign Language Interpreters

1. Licensing Designations by the Commission¹⁰

- a. **Certified** - individuals competent in court interpretation as demonstrated by successful completion of an oral and written examination demonstrating competence in interpreting as provided for by the Georgia Commission on Interpreters and the completion of required continuing education providing familiarity with the Georgia court system and the roles and responsibilities of interpreters within that system. In lieu of the examination, the Commission may recognize federal certification or certification of states participating in the national Consortium for State Court Interpreter Certification. (*Rule*, Appendix B (II)(A))
- b. **Conditionally Approved** - individuals appearing competent in court interpretation that have completed mandatory classroom training and passed a written examination demonstrating familiarity with the Georgia court system and the roles and responsibilities of interpreters within that system. Also, such individuals must have achieved a sufficient score on an oral examination as determined by the Georgia Commission on Interpreters. **It is intended that a court will choose an interpreter from this category only if a Certified Interpreter is not available.** (*Rule*, Appendix B (II)(B) (Emphasis Added))

⁹ A list of “court qualified” or “qualified” sign language interpreters in Georgia is available at - [ASL Interpreters – Office of Court Professionals \(georgiacourts.gov\)](https://www.georgiacourts.gov) (Last visited September 26, 2021).

¹⁰ The Commission maintains a registry of all foreign language interpreters in Georgia licensed by the Commission as well as licensed American Sign Language interpreters. *See*, Appendix A *infra* at p. 10– *List of Interpreter Registries, Commercial Vendors and Other Resources*

- c. **Registered** – individuals appearing competent in court interpretation that have completed mandatory classroom training and passed a written examination demonstrating familiarity with the Georgia court system and the roles and responsibilities of interpreters within that system. This list will only include those interpreters interpreting a language for which no oral examination is given. Qualification tests for this list may also test language and interpretation skills. **It is intended that a court will choose an interpreter from this category only if a Certified Interpreter or Conditionally Approved Interpreter is not available.** (*Rule*, Appendix B (II)(C)(Emphasis Added))

NOTE: The Rule requires courts to make a diligent effort to appoint a Certified interpreter. If a Certified interpreter is unavailable, a Conditionally Approved interpreter or a Registered interpreter is to be given preference. There will be occasions when it is necessary to utilize a telephonic language service or a less qualified interpreter. Faced with a need, where no interpreter is available locally, courts should weigh the need for immediacy in conducting a hearing against the potential compromise of due process, or the potential of substantive injustice, if interpreting is inadequate. Unless immediacy is a primary concern, some delay might be more appropriate than the use of a telephonic language service. (*Rule*, Section I)

2. **Rare or other Languages for which the Commission has no Licensed Interpreter**

- a. On occasions where a foreign language interpreter is needed for a rare/indigenous language or other language for which COI has no licensed interpreter, courts are encouraged to contact COI. COI frequently assists courts in securing a qualified interpreter who speaks a language that is not included on the COI Registry.
- b. Where COI is unable to assist the court with securing an interpreter in the needed language, the court may consider contacting a commercial interpretation/translation service provider who can provide an in-person interpreter.¹¹
- c. The court should consider the following before appointing an individual who is not licensed, or otherwise qualified, to interpret and who is a member of the rare language community:

¹¹ See, Appendix A in Supplemental Materials– *List of Interpreter Registries, Commercial Vendors and Other Resources*

- i. Potential conflicts of interest (e.g., the interpreter may know the litigant or witness that requires the interpretation services) possibly resulting in the interpreter's inability to be impartial
 - ii. Heightened risk of breach of confidentiality
 - iii. Interpreters' ability to interpret accurately and competently (e.g., familiarity with legal terms of art).
- d. *Other Resources for Finding Interpreters of Rare Languages*
- i. NCSC National Registry

C. Appointment of Non-Licensed Interpreters

1. If after a diligent search by the court a certified or other licensed interpreter cannot be found or is unavailable, the court should weigh the necessity of having the proceeding at that time without a licensed interpreter or with an unlicensed interpreter against continuing the proceeding to a later date when a qualified, licensed interpreter is available.
 - a. If the court determines that the use of a non-licensed interpreter is warranted then:
 - i. Refer to COI's Instructions for Use of a Non-Licensed Interpreter.¹²
 - ii. At the end of the proceeding, the court/ clerk should make a diligent effort to secure a certified or other licensed interpreter for any future legal proceedings regarding that case.
2. **Being bilingual does not qualify an individual to serve as an interpreter automatically.**¹³

¹² Direct Link - [Model-Form-Instructions-for-Use-of-Non-licensed-Interpreter.doc \(live.com\)](#)

¹³ "It is critically important to ensure that interpreters are competent and not merely bilingual. A bilingual person may inaccurately interpret or roughly interpret a summary of communications between the court and an LEP person, they may have a conflict of interest, or they may even be adverse. Under these circumstances, an LEP person is denied meaningful access to court operations in a way that a fluent English speaker is not. The DOJ Guidance emphasizes the importance of interpreter competency and states: 'Competency requires more than self-identification as bilingual. Some bilingual staff and community volunteers, for instance, may be able to communicate effectively in a different language when communicating information directly in that language, but not be competent to interpret in and out of English.' DOJ Guidance, 67 Fed. Reg. at 41,461." *U.S. DOJ Letter to NC Administrative Office of the Courts*, p. 9 (March 8, 2012) available at

3. **Children should never be used to interpret. It is also inappropriate for bilingual attorneys, relatives or friends of the LEP/DHH party/witness, judges and courthouse staff to serve as an interpreter in a legal proceeding.**¹⁴

NOTE: Keep a copy of the Interpreter's Oath in the case file.

"Do you solemnly swear or affirm that you will faithfully interpret from (state the language) into English and from English into (state the language) the proceeding before this court in an accurate manner to the best of your skill and knowledge?"

V. Determining if a foreign language or sign language interpreter is required

A. Request by Counsel/*Pro Se* Litigant

1. Protocol varies from judicial circuit to judicial circuit. Examples include:
 - a. Verbal/Written request to Judge's Law Clerk /Administrative Assistant
 - b. Verbal/Written request to the District Court Administrator
 - c. Verbal/Written request to specified point-person within the judicial circuit
 - d. Verbal/Written request to the court's Clerk's office

B. *Sua Sponte*

1. Determination by the Judge
 - a. Upon request, or *sua sponte*, the decision maker (usually the judge presiding over the case) should voir dire the litigant or witness to determine his/her level of English comprehension. To make that determination, the decision maker should normally include questions on the following:

http://www.justice.gov/crt/about/cor/TitleVI/030812_DOJ_Letter_to_NC_AOC.pdf (Last visited September 26, 2021).

¹⁴ See, Commission on Interpreters Bench Cards (Working with LEP/ Foreign Language Interpreters and Working with DHH/Sign Language Interpreters)

- i. Identification (e.g., name, address, DOB, place of birth)
- ii. Active Vocabulary
 1. *“How did you come to the proceeding today?”*
 2. *“What kind of work do you do?”*
 3. *“Describe what you see in the room.”*
 4. *“What have you eaten today?”*
 5. **Questions should be phrased to avoid “yes” or “no” replies.**
- iii. The civil or criminal proceeding
 1. *“What is your understanding of the nature of the charge or the type of proceeding we are having today?”*
 2. *“What is the purpose of the proceedings?”*
 3. *“What is your understanding of my role as the judge?”*
 4. *“What is your understanding of the legal rights you have as a party or defendant in this case?”*
 5. *“What is your understanding of your responsibilities as a witness in this case?”*

Rule, Appendix A (II)(C).

- b. After examination the decision maker should state his or her conclusion on the record, and the file in the case should be clearly marked and data entered electronically when appropriate by personnel to ensure that an interpreter will be present when needed in any subsequent proceeding. *Rule, Appendix A (II)(D).*

NOTE: In some instances, the decision-maker may skip the voir dire process and appoint the interpreter based solely on counsel’s or the pro se litigant’s written and/or verbal request. The Rule does not mandate the court to voir dire the LEP/DHH individual.

NOTE: The fact that an individual speaks or understands some English does not preclude the individual from the right to have an interpreter appointed by the court.

NOTE: Please see *Rule*, Appendix A (III-IV) regarding specific requirements for foreign language interpreters in Criminal and Civil cases, respectively.

C. Record of Interpreter Testimony

1. Foreign Language Interpreters

- a. **Generally** - Where a Certified interpreter is used, no record shall generally be made of the non-English testimonial statements. (*Rule*, Section VII(A)(1))
 - i. Where a challenge is made to the accuracy of an interpretation, the court shall first determine whether the interpreter is able to communicate accurately with and interpret information to and from the non-English speaking person. *Id.*
 - ii. If it is determined that the interpreter cannot perform these functions, arrangements for another interpreter should be made, unless testimony that is cumulative, irrelevant, or immaterial is involved. *Id.*
 - iii. Where the court determines that the interpreter has the ability to communicate effectively with the non-English speaker, the court shall resolve the issue of the contested interpretation and the record to be made of the contested testimony in its discretion. *Id.*
 - iv. Any transcript prepared shall consist only of the English language spoken in court. *Id.*
- b. **Criminal Cases** – In criminal cases, whenever a Certified interpreter is not utilized, the court shall make an audio or audio-visual recording of any testimony given in a language other than English. (*Rule*, Section VII(A)(2))
- c. **Civil Cases** – In civil cases, whenever a Certified interpreter is not utilized and the party was denied the right to an interpreter of his or her own choosing, the court shall make an audio or audio-visual recording of any testimony given in a language other than English. (*Rule*, Section VII (A)(3))

2. **Sign Language Interpreters**

- a. **Generally** – the testimony of a hearing impaired person may be recorded as provided for in the Official Code of Georgia.¹⁵ (*Rule*, Section VII (B))

VI. Is it Reversible Error?

A. Courts are encouraged to consider that the risks involved in appointing an unqualified interpreter or no interpreter at all, including the case being reversed or remanded on appeal.

B. Interpreter Issues on Appeal

1. Primary Issues include:¹⁶
 - a. 1) failure to appoint an interpreter;
 - b. 2) ineffective assistance of counsel;
 - c. 3) bias and conflict of interest;
 - d. 4) confidentiality;
 - e. 5) appointment of uncertified interpreters;
 - f. 6) bilingual attorneys serving as interpreters;
 - g. 7) “borrowed interpreters”; and
 - h. 8) accuracy of interpretation.
2. Based on the review and analysis of several hundred appellate opinions from across the country, according to the National Association of Judicial Interpreters and Translators, it has been concluded that the majority of issues raised on appeal are procedural and beyond the interpreter’s control.¹⁷
3. Objections to interpreting errors must be made during the proceedings and preserved for the record.¹⁸ Many interpreting issues are in fact resolved at the trial court level.¹⁹

¹⁵ O.C.G.A. § 24-6-657

¹⁶ Benmaman, Virginia, *Interpreter Issues on Appeal*, PROTEUS Vol. IX, No. 4 -- FALL 2000 available at <https://najit.org/wp-content/uploads/2016/09/ProteusFall2000.pdf> (Last Visited September 26, 2021)

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

4. Errors not preserved on the record cannot be raised on an appeal to which the "abuse of discretion" standard applies.²⁰ Review under the "plain error" standard is far more stringent, and for the appeal to succeed a showing must be made of a substantial violation of the fundamental rights to a fair trial.²¹

C. What Does the Supreme Court of Georgia Say?

1. *Ramos v. Terry*, 279 Ga. 889, 893 (2005).

- a. "a court abuses its discretion when it selects an interpreter who is not qualified, sworn, and impartial. *Gopar-Santana v. State*, 862 So.2d 54 (Fla.App.2003). We conclude it is an abuse of discretion to appoint someone to serve as interpreter who is neither certified nor registered as an interpreter without ensuring that the person appointed is qualified to serve as an interpreter, without apprising the appointee of the role s/he is to play, without verifying the appointee's understanding of the role, and without having the appointee agree in writing to comply with the interpreters' code of professional responsibility."
- b. In *Ramos*, the opinion also notes "in the case at bar, the habeas court quickly determined Ramos was in need of an interpreter and sought the services of an interpreter who had a history of satisfactory participation in court proceedings. When that interpreter proved unavailable, the habeas court, concerned about inconvenience to the sole witness, resorted to using a prison employee whose qualifications to serve as an interpreter were her ability to speak Spanish and her presence. No information about her background in language skills, e.g., whether she was a native of a country where Spanish is spoken, whether she was fluent in English, whether she previously had translated in a court proceeding, whether she had taken and passed the interpreter exams administered by Georgia or another state, whether the Spanish she spoke was compatible with the Spanish spoken by Ramos, and her professional standing in the interpreter community, was obtained before the habeas court decided to appoint her as the interpreter in this matter . . . Following her appointment, the prison employee/interpreter was not given the suggested instructions on interpreting in a courtroom setting and her understanding of the interpreter's role was not verified, and she was not required to agree in writing to comply with the court interpreters' code of professional responsibility." *Id.* at 892.
- c. *Additionally*, *Ramos* highlights the failure to interpose a timely objection to an interpreter's qualifications constitutes a waiver of the issue on appeal.²²

²⁰ *Id.*

²¹ *Id.*

²² *Id.* at 893.

2. *Ling v. State*, 288 Ga. 299; 702 S.E.2d 881 (2010).

- a. Meaningful access to justice must be provided in *all* Georgia courts, including civil courts, for persons who are limited English proficient in order to comply with federal law.
- b. Specifically, the Court's opinion stated "vigilance in protecting the rights of non-English speakers is required in all of our courts." *Id.* at 884.

VII. Best Practices

A. Excerpt from Chapter 11 of State Court Benchbook

11.46 Additional Practical Considerations

- A. *Direct questions, in the first person, to the participant and not to the interpreter.*
- B. *Avoid the use of jargon/colloquialisms and slang.*
- C. *Speak at a moderate pace and use succinct statements or phrases.*
- D. *Permit the interpreter to finish speaking before asking a follow-up question or making additional statements.*
- E. *When the court knows a case requires the use of an interpreter, the court should schedule the case to allow for more time.*
- F. *Breaks: Courts are encouraged to be mindful that interpreters should be permitted to take breaks, as needed, to ensure continuous competent interpretation. According to the National Association of Judicial Interpreters and Translators, scientific studies have shown that mental*

fatigue sets in after approximately 30 minutes of sustained simultaneous interpretation, resulting in a marked loss in accuracy. This is regardless of how experienced or talented the interpreter may be.[19]

G. Use of Multiple Interpreters: *When proceedings are expected to take significant amounts of time, courts are encouraged to appoint more than one interpreter. According to the National Association of Judicial Interpreters and Translators, "it is unrealistic to expect interpreters to maintain high accuracy rates for hours, or days, at a time without relief. If interpreters work without relief in proceedings lasting more than 30-45 minutes, the ability to continue to provide a consistently accurate translation may be compromised."*[20]

H. *A participant may be able to speak or understand some English; however the court should be attentive to the possibility that participant will need an interpreter later in the legal proceeding or other future legal proceeding.*

I. *The court should be aware that an LEP or DHH participant may refuse court-provided interpretation and/or translation services for various reasons, including but not limited to:*

- 1. The participant may not identify as LEP/DHH and does not believe that she or he needs the assistance of an interpreter.*
- 2. The participant does not understand the interpreter is neutral, appointed by the court, because opposing counsel requested that the court appoint an interpreter. (This is most frequent where one party is represented by counsel and the opposing party is pro se.)*

J. *If the participant refuses to use the court-appointed interpreter, the court should **establish on the record** that:*

1. *The participant is LEP/ DHH.*
2. *The court provided the participant with a certified or other qualified interpreter (if no certified interpreter was available) free of charge.*
3. *The participant refuses to use the interpreter and insists on communicating without any language assistance from the court-appointed interpreter.*
4. *This preserves the record in case of an appeal asserted by the participant that his or her right to due process was violated because he or she was prevented from fully participating in a legal proceeding due to a language barrier.*
5. *The court should be aware that court may need to appoint an interpreter - despite the participant's refusal - to ensure that due process is not jeopardized.*

K. *If the participant insists on using his or her own interpreter (e.g., family member, friend, etc.), then the court should inform the participant that it is inappropriate to use a non-licensed interpreter in a legal proceeding when a certified or other qualified interpreter is available.*

L. *When the court has documents it would like translated for a proceeding, courts should provide those documents to a qualified translator as much in advance of the hearing as practicably possible. Certified translators may be found through the American Translators Association, www.atanet.org, or the Atlanta Association of Interpreters and Translators, www.aait.org.*

M. If the court would like the interpreter appointed in the case to sight translate the documents, then the court is encouraged to notify the interpreter of this request as soon as is practicable in advance of the proceeding. The court is encouraged to provide the documents, in advance, to the interpreter so that the interpreter may determine if she has the required skills to serve as a translator and if so, familiarize herself with the documents and vocabulary prior to the legal proceeding.

N. **Remember** – The Supreme Court Rule applies to “all criminal and civil proceedings in Georgia where there are non-English speaking persons in need of interpreters. See also Ling v. State, 288 Ga. 299 (702 SE2d 881) (2010). All other court-managed functions, including information counters, intake or filing offices, cashiers, records rooms, sheriff’s offices, probation and parole offices, alternative dispute resolution programs, pro se clinics, criminal diversion programs, anger management classes, detention facilities, and other similar offices, operations and programs, shall comply with Title VI of the Civil Rights Act of 1964.” Rule, Appendix A (II)(Emphasis Added).

NOTE: The terms “interpreter”/“interpretation” and “translator”/“translation” should not be used interchangeably. The former specifically refers to the oral rendering of verbal communications from one language to another. The latter refers specifically to the written rendering of written communications from one language to another. This is an important distinction for courts to consider when they are requesting assistance from commercial and other interpretation and/or translation service providers in order to ensure they solicit the appropriate type of language assistance desired.

B. Other Considerations (A Discussion)

_____ Judicial Circuit

Amended effective October 9, 1997.

Rule 7.3. Interpreters

(A) In all civil and criminal cases, the party or party's attorney shall inform the court in the form of a notice of the need for a qualified interpreter, if known, within a reasonable time — at least 5 days where practicable—before any hearing, trial, or other court proceeding. Such notice shall be filed and shall comply with any other service requirements established by the court. The notice shall (1) designate the participants in the proceeding who will need the services of an interpreter, (2) estimate the length of the proceeding for which the interpreter is required, (3) state whether the interpreter will be needed for all proceedings in the case, and (4) indicate the language(s), including sign language for the Deaf/Hard of Hearing, for which the interpreter is required.

(B) Upon receipt of such notice, the court shall make a diligent effort to locate and appoint a licensed interpreter, at the court's expense, in accordance with the Supreme Court of Georgia's Rule on Use of Interpreters for Non-English Speaking and Hearing Impaired Persons. If the court determines that the nature of the case (e.g., an emergency) warrants the use of a non-licensed interpreter, then the court shall follow the procedures as outlined in the Supreme Court of Georgia's Commission on Interpreters' Instructions for Use of a Non-Licensed Interpreter. Despite its use of a non-licensed interpreter, the court shall make a diligent effort to ensure that a licensed interpreter is appointed for all subsequently scheduled proceedings, if one is available.

(C) If a party or party's attorney fails to timely notify the court of a need for a court interpreter, the court may assess costs against that party for any delay caused by the need to obtain a court interpreter unless that party establishes good cause for the delay. When timely notice is not provided or on other occasions when it may be necessary to utilize an interpreter not licensed by the Supreme Court of Georgia's Commission on Interpreters (COI), the Registry for Interpreters of the Deaf (RID), or other industry-recognized credentialing entity, such as a telephonic language service or a less qualified interpreter, the court should weigh the need for immediacy in conducting a hearing against the potential compromise of due process, or the potential of substantive injustice, if interpreting is inadequate. Unless immediacy is a primary concern, some delay might be more appropriate than the use of an interpreter not licensed by the COI, RID, or other recognized credentialing entity.

(D) Notwithstanding any failure of a party or party's attorney to notify the court of a need for a court interpreter, the court shall appoint a court interpreter whenever it becomes apparent from the court's own observations or from disclosures by any other person that a participant in a proceeding is unable to hear, speak, or otherwise communicate in the English language to the extent reasonably necessary to meaningfully participate in the proceeding.

(E) If the time or date of a proceeding is changed or canceled by the parties, and interpreter services have been arranged by the court, the party that requested the interpreter must notify the court 24 hours in advance of the change or cancellation. Timely notice of any changes is essential in order to cancel or reschedule an interpreter, thus precluding unnecessary travel by the interpreter and a fee payment by the court. If a party fails to timely notify the court of a change or cancellation, the court may assess any reasonable interpreter expenses it may have incurred upon that party unless the party can show good cause for its failure to provide a timely notification.

Amended effective November 8, 2001; amended effective July 13, 2017.

Rule 7.4. Criminal Matters

At or after the arraignment, pre-trial conferences may be scheduled as the judge deems appropriate. Such pre-trial conferences shall be attended by the attorneys who will actually try the case. At the pre-trial conference:

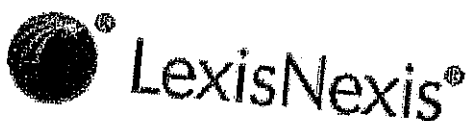
(A) All motions, special pleas and demurrers not previously determined shall be presented to and heard by the judge. Any and all pending motions not called to the judge's attention at the pre-trial conference shall be deemed to have been abandoned and waived; however, at the judge's discretion and for good cause, such matters may subsequently be heard. At the discretion of the judge, the disposition of any matter brought before the court may be postponed.

(B) To the extent possible without revealing confidential trial strategies, the attorneys shall inform the judge of probable evidentiary problems known to them or any other matter which might delay the trial so the judge may take any necessary action before the trial to avoid a delay.

(C) If possible, the judge shall set a firm trial date.

(D) Counsel are encouraged to enter into reasonable stipulations.

Amended effective October 9, 1997; renumbered from 7.3 effective November 8, 2001.



RAMOS v. TERRY.

S05A1123.

SUPREME COURT OF GEORGIA

279 Ga. 889; 622 S.E.2d 339; 2005 Ga. LEXIS 850; 2005 Fulton County D. Rep. 3528

November 21, 2005, Decided

PRIOR HISTORY: [***1] Habeas corpus. Tattnall Superior Court. Before Judge Taylor, Senior Judge.

DISPOSITION: Judgment affirmed.

HEADNOTES

Georgia Advance Headnotes

(1) Governments. Courts. Court Personnel & Judges. It is an abuse of discretion to appoint someone to serve as interpreter who is neither certified nor registered as an interpreter without ensuring that the person appointed is qualified to serve as an interpreter, without apprising the appointee of the role s/he is to play, and without having the appointee's understanding of the role, and without having the appointee agree in writing to comply with the interpreters' code of professional responsibility.

(2) Criminal Law & Procedure. Appeals. Reviewability. Waiver. Failure to interpose a timely objection to an interpreter's qualifications constitutes a waiver of the issue on appeal. Accordingly, a judgment of the habeas court denying relief was affirmed.

COUNSEL: Roberto Ramos, *pro se*.

Thurbert E. Baker, Attorney General, Jason C. Fisher, Assistant Attorney General, for appellee.

Sarah L. Gerwig-Moore, Leigh S. Schrope, amici curiae.

JUDGES: Benham, Justice. All the Justices concur, except Hines, J., who concurs in Division 2 and in the judgment.

OPINION BY: BENHAM

OPINION

[**340] [*889] BENHAM, Justice.

We granted petitioner Roberto Ramos's request for a certificate of probable cause to appeal the denial of his petition for a writ of habeas corpus in order to determine whether Ramos was denied a full and fair habeas hearing due to inadequacies of the interpreter used at the habeas hearing.

Ramos was convicted of aggravated assault and reckless driving in the Superior Court of Clayton County in April 2002 and sentenced to eleven years' imprisonment. Following the affirmance of the judgment of [**341] conviction by the Court of Appeals in an unpublished opinion (*Ramos v. State*, 260 Ga. App. XXVI) (2003)), Ramos filed a petition for a writ of habeas corpus in which he contested the sufficiency of the indictment and the sufficiency of the evidence and contended his trial counsel had rendered ineffective assistance of counsel. After the habeas court set a date for a hearing to be held at the prison where Ramos was incarcerated, Ramos filed a motion seeking the appointment of an interpreter [***2] to serve at the hearing because Ramos, of Mexican descent, was not an American citizen and could not speak or understand English well. '

1 The services of an interpreter were used during Ramos's Clayton County trial. The lawyer who represented Ramos at trial testified he volunteered to take the case because the attorney "had some Spanish skills."

[*890] No interpreter was appointed prior to the hearing and the habeas judge first became aware of the

279 Ga. 889, *; 622 S.E.2d 339, **;
2005 Ga. LEXIS 850, ***; 2005 Fulton County D. Rep. 3528

motion for an interpreter when Ramos mentioned it at the commencement of his hearing, four months after the motion had been filed. The habeas court then attempted to converse with Ramos in English and obtained information about Ramos's English-speaking capabilities from Ramos's bilingual trial counsel, who was present as a witness in the habeas hearing. After being informed the Superior Court of Tattall County had a Spanish interpreter it used when needed but the interpreter's whereabouts were unknown and noting the distance trial counsel had traveled to be present, the [***3] habeas court recessed the hearing in order that an interpreter might be found. After a 100-minute recess, a prison employee who spoke Spanish was presented to the court and was administered an oath whereby the employee swore to translate correctly English into Spanish and Spanish into English. The 37-page transcript of the hearing reflects the interpreter and Ramos repeatedly conferred with one another, after which the interpreter gave a summary of the conversation to the court; the court told the interpreter several times she was not to have a conversation with Ramos but was just to repeat the questions and answers; and the sole witness, the attorney who was Ramos's trial and appellate counsel, was directed on numerous occasions to slow down his responses to questions so that the interpreter could keep up. The habeas court concluded the hearing with an oral ruling which denied the petition for a writ of habeas corpus.

1. In his application for certificate of probable cause, Ramos contends, among other things, that the interpreter was not of Mexican descent and spoke a different dialect of Spanish than he, causing a communications gap that resulted in the termination of the habeas [***4] hearing before Ramos presented all of his grounds for relief.

Ramos's petition sought habeas relief on the ground his liberty was being restrained by virtue of a sentence imposed on him by a state court of record following proceedings in which he allegedly was denied constitutionally-guaranteed rights. Accordingly, the adjudication of his habeas petition had to be preceded by a statutorily-required hearing (*OCGA § 9-14-47; Rickett v. State*, 276 Ga. 609 (2) (581 SE2d 32) (2003)), which had to comport with the fundamental requirements of due process -- notice and opportunity to be heard (see *Armstrong v. Marzoo*, 380 U. S. 545, 550 (85 S. Ct. 1187, 14 LE2d 62) (1965)), as well as the petitioner's right to meaningful access to the courts and meaningful communications with the courts. *Howard v. [***5] Sharpe*, 266 Ga. 771 (1) (470 SE2d 678) (1996). See also *Augustin v. Sava*, 735 F2d 32, 37 (2nd Cir. 1984) ("The very essence of due process is a 'meaningful opportunity to be heard.'").

In an effort to secure the rights of non-English-speaking persons in judicial proceedings,

this Court exercised its inherent [***5] power "to maintain a court system capable of providing for the administration of justice in an orderly and efficient manner" (*Garcia v. Miller*, 261 Ga. 531 (3) (408 SE2d 97) (1991)), and its constitutional authority to adopt rules providing for "the speedy, efficient, and inexpensive resolution of disputes and prosecutions" (1983 Ga. Const., Art. VI, Sec. IX, Par. 1), to promulgate rules establishing a statewide plan for the use of interpreters in proceedings involving non-English speakers before any court or grand jury hearing in [***342] Georgia. Briefly summarized, when a party or witness to a covered proceeding requests an interpreter, the rules on use of interpreters envisage a pre-hearing examination of the non-English-speaking person by the court and appointment of an interpreter upon a judicial determination that the requestor does not understand and speak English well enough to participate fully in the proceeding. Use of Interpreters for Non-English Speaking Persons, Appendix A, Uniform Rule for Interpreter Programs, Sec. I (A), (D). A court should make a "diligent effort" to appoint an interpreter certified by the Georgia Commission on Interpreters; ² if one is not [***6] available, the court is to give preference to a person on the list of registered interpreters. ³ Commentary to Rule I, Use of Interpreters for Non-English Speaking Persons; Appendix B, Powers and Duties of the Georgia Commission on Interpreters, Sec. X. Where, as was the situation in the case at bar, neither a certified nor a registered interpreter is available, the court "should weigh the need for immediacy in conducting a hearing against the potential compromise of due process, or the potential of substantive injustice, if interpreting is inadequate." Commentary to Rule I, Use of Interpreters for Non-English Speaking Persons. If the court decides to proceed with a less qualified interpreter, the court should give the less [***892] qualified interpreter specified written or oral instructions on basic rules of interpreting in a judicial setting (Appendix A, Sec. I (F)), and when a non-professional interpreter is used, the court should, on the record, "personally verify a basic understanding of the interpreter's role... ? Commentary to Appendix A, Uniform Rule for Interpreter Programs, Sec. I (F). Every interpreter who serves in a Georgia court "shall agree in writing to comply with the Code of Professional Responsibility for Court Interpreters." Rule VI (E), [***7] Use of Interpreters for Non-English Speaking Persons.

2 A certified interpreter is one who has successfully completed an oral and written exam demonstrating competence in interpreting and who has completed required continuing education that provides familiarity with the Georgia court system and the roles and responsibilities of interpreters within that system. Federal certification or

certification by states participating in the national Consortium for State Court Interpreter Certification may be recognized in lieu of a Georgia-administered examination. Use of Interpreters for Non-English Speaking Persons, Appendix B, Powers and Duties of the Georgia Commission on Interpreters, Sec. IV.

³ A registered interpreter is one who has completed mandatory classroom training and has passed a written exam demonstrating familiarity with the Georgia court system and the roles and responsibilities of interpreters within that system, or is one who interprets a language for which no exam is given. Use of Interpreters for Non-English Speaking Persons, Appendix B, Powers and Duties of the Georgia Commission on Interpreters, Sec. V.

[***8] In the case at bar, the habeas court quickly determined Ramos was in need of an interpreter and sought the services of an interpreter who had a history of satisfactory participation in court proceedings. When that interpreter proved unavailable, the habeas court, concerned about inconvenience to the sole witness, resorted to using a prison employee whose qualifications to serve as an interpreter were her ability to speak Spanish and language skills, e.g., whether she was a native of a country where Spanish is spoken, whether she was fluent in English, whether she had taken and passed the interpreter exams administered by Georgia or another state, whether the Spanish she spoke was compatible with the Spanish spoken by Ramos,⁴ and her professional standing in the interpreter community, was obtained before the habeas court decided to appoint her as the interpreter in this matter. Compare *Choi v. State*, 269 Ga. 376 (3) (497 SE2d 563) (1998), and *Holliday v. State*, 263 Ga. App. 664, 668 (588 SE2d 833) [***343] (2003). Following her appointment, the [***9] prison employee/interpreter was not given the suggested instructions on interpreting in a courtroom setting and her understanding of the interpreter's role was not verified, and she was not required to agree in writing to comply with the court interpreters' code of professional responsibility.

⁴ In *State v. Velasquez*, 2004 Wash. App. LEXIS 237, 2004 WL 295227 (Wash. App. 2004), the Court of Appeals of Washington noted the importance of nuance in translation by repeating a comment made by a bilingual trial judge re-

prising an incident from his years as a practicing attorney:

I had many cases involving disputed issues of translation... My favorite story was one where a woman was overcome by fumes in a potato factory. And she testified ... [in Spanish] "I was overcome by fumes." But that was translated by someone who went to the Royal Academy in Spain as, "I was drunk in the factory," which would be an alternate meaning, but a totally different meaning, that she was drunk on the job as opposed to being overcome by these fumes.

[***10] The use of qualified interpreters is necessary to preserve meaningful access to the legal system for persons who speak and understand only languages other than English. *State v. Douangmala*, 253 Wis. 2d 173, 191-192 (646 NW2d 1) (2002). The competence of an interpreter is a matter for the trial court and that determination is [*893] subject to appellate review for abuse of discretion. See *La Count v. State*, 237 Ga. 181 (2) (227 SE2d 31) (1976). A court abuses its discretion when it selects an interpreter who is not qualified, sworn, and impartial. *Gopar-Santana v. State*, 862 S2d 54 (Fla. App. 2003). (1) We conclude it is an abuse of discretion to appoint someone to serve as interpreter who is neither certified nor registered as an interpreter without ensuring that the person appointed is qualified to serve as an interpreter, without apprising the appointee of the role s/he is to play, without verifying the appointee's understanding of the role, and without having the appointee agree in writing to comply with the interpreters' code of professional responsibility.

2. The Warden points out Ramos waived any concern he had about the interpreter's [***11] abilities by failing to object at the habeas hearing. The failure to interpose a timely objection to an interpreter's qualifications constitutes a waiver of the issue on appeal. *Duran v. State*, 274 Ga. App. 876 (4) (619 SE2d 388) (2005). (2) Accordingly, the judgment of the habeas court denying relief is affirmed.

Judgment affirmed. All the Justices concur, except Hines, J., who concurs in Division 2 and in the judgment.

LING v. THE STATE.

S10G0460.

SUPREME COURT OF GEORGIA

288 Ga. 299; 702 S.E.2d 881; 2010 Ga. LEXIS 890; 2010 Fulton County D. Rep. 3806

November 22, 2010, Decided

SUBSEQUENT HISTORY: Judgment entered by *Ling v. State*, 307 Ga. App. 621, 705 S.E.2d 726, 2011 Ga. App. LEXIS 36 (Ga. Ct. App., Jan. 26, 2011)

PRIOR HISTORY: Certiorari to the Court of Appeals of Georgia -- 300 Ga. App. 726, 686 S.E.2d 356. *Ling v. State*, 300 Ga. App. 726, 686 S.E.2d 356, 2009 Ga. App. LEXIS 1254 (2009)

DISPOSITION: Judgment vacated and case remanded with direction.

COUNSEL: J. Scott Key, for appellant.

Scott L. Ballard, District Attorney, Robert W. Smith, Jr., Assistant District Attorney, for appellee.

King & Spalding, Robert K. Woo, Jr., James A. Broussard, Chara F. Jackson, Azadeh N. Shahshahani, David Wakukawa, Jennifer C. Newell, Araceli Martinez-Olguin, Brian Steel, amici curiae.

JUDGES: [***1] HUNSTEIN, Chief Justice. All the Justices concur, except Carley, P.J., Thompson and Hines, JJ., who dissent.

OPINION BY: HUNSTEIN

OPINION

[*299] [**882] Hunstein, Chief Justice.

After a Spalding County jury convicted her of one count of cruelty to children in the first degree, Annie Ling, whose native language is Mandarin Chinese, filed a motion for new trial, arguing that her trial counsel was ineffective in failing to secure an interpreter for trial and

in relying on her husband to help convey the State's last minute plea agreement offer. The trial court issued an order summarily denying Ling's motion without explanation, and the Court of Appeals affirmed in *Ling v. State*, 300 Ga. App. 726 (686 SE2d 356) (2009). We granted certiorari to determine "[w]hether the trial court found as a matter of fact that the defendant spoke and understood English well enough 'to understand the nature and object of the proceedings against [her], to consult with counsel, and to assist in preparing [her] defense.'" *Drope v. Missouri*, 420 U.S. 162, 171 (95 SCt 896, 43 LE2d 103) (1975). Accord *Biggs v. State*, 281 Ga. 627, 629 (642 SE2d 74) (2007). We also posed the questions of whether Ling, if she does not satisfy the competence standard in [***2] *Drope*, (a) was denied her right to be present at trial by the lack of an interpreter at trial and (b) received ineffective assistance of counsel due to her trial counsel's failure to secure an interpreter for trial.

For the reasons that follow, we hold that one who cannot communicate effectively in English may be effectively incompetent to proceed in a criminal matter and rendered effectively absent at trial if no interpreter is provided. We also now hold that trial courts must state and explain their findings when an issue concerning the need for an interpreter that implicates foundational due process rights is raised and decided at the motion for new trial stage. Accordingly, we hold that the trial court's order denying the new trial motion must be vacated and the case remanded to the trial court to apply the standard in *Drope* and to state its findings on the record. [*300] Should the trial court find that Ling did not satisfy the *Drope* standard at the time of trial, it follows that she was denied her right to be present at trial, and, under the circumstances here, received ineffective assistance from her trial counsel. On remand, the trial court should also explain its disposition of the [***3] separate issue of whether Ling received ineffective assistance due to her

trial counsel's failure to adequately convey the State's last minute plea agreement offer to her.

1. To succeed on an ineffective assistance of counsel claim, a criminal defendant must show that her counsel's performance was professionally deficient and that, but for such deficient performance, a reasonable probability exists that the outcome of the trial would have been different. *Strickland v. Washington*, 466 U.S. 668 (104 S.Ct. 2052, 80 LE2d 674) (1984). Ling argued both in the trial court and Court of Appeals that her trial counsel performed deficiently in failing to secure an interpreter for trial and that she was prejudiced as a result because she was effectively absent from her own trial.

We stated unequivocally in *Ramos v. Terry*, 279 Ga. 889, (622 SE2d 339) (2005) that "[t]he use of qualified interpreters is necessary to preserve meaningful access to the legal system for persons who speak and understand only languages other than English. [Cit.]" *Id.* at 892 (1). It was to secure the rights of non-English [**883] speaking persons that this Court exercised its inherent and constitutional authority to promulgate rules establishing [***4] a statewide plan for the use of interpreters in proceedings in Georgia courts. *Id.* at 891 (1). Both this Court and the Court of Appeals also have expressly acknowledged that failure to provide adequate interpretation services to a defendant in criminal proceedings implicates due process concerns. *Puga-Cerantes v. State*, 281 Ga. 78 (5) (635 SE2d 118) (2006); *Holliday v. State*, 263 Ga. App. 664, 668 (588 SE2d 833) (2003), although we have not previously elaborated on those concerns.

A criminal defendant's "right to be present at all stages of the trial where his absence might frustrate the fairness of the proceedings" is guaranteed by the Sixth Amendment and the due process clause of the Fourteenth Amendment to the United States Constitution. (Citation and punctuation omitted.) *Tennessee v. Lane*, 541 U.S. 509, 523 (124 S.Ct. 1978, 158 LE2d 820) (2004); see also Ga. Const. of 1983, Art. I, Sec. I, Par. I. The due process clause also precludes trial and conviction of an accused while he or she is mentally incompetent. *Pate v. Robinson*, 383 U.S. 375, 378 (86 S.Ct. 836, 15 LE2d 815) (1966); *Biggs, supra*, 281 Ga. at 629 (3). While Ling did not expressly couch her arguments below in terms of the right not to [***5] be tried while incompetent, that issue is interrelated [*301] with her right to be present. In *Drope, supra*, for example, the United States Supreme Court discussed the history of the prohibition against trying mentally incompetent individuals, noting that some have viewed it "as a by-product of the ban against trials in absentia; the mentally incompetent defendant, though physically present in the courtroom, is in reality afforded no opportunity to defend himself." (Citation omitted.) *Id.*, 420 U.S. at 171. As courts in other jurisdictions have explained in addressing the constitutional

concerns raised by failing to provide an interpreter for an accused, "every criminal defendant - if the right to be present is to have meaning - [must] possess sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding." (Punctuation omitted.) *United States ex rel. Negron v. State of New York*, 434 F.2d 386, 389 (1970), citing *Dusky v. United States*, 362 U.S. 402 (80 S.Ct. 788, 4 LE2d 824) (1960); accord *Kansas v. Calderon*, 270 Kan. 241, 13 P.3d 871, 874-875 (Kan. 2000); *Giraldo-Rincon v. Dugger*, 707 F.Supp. 504, 507 (M.D. Fla. 1989). One who is unable to communicate effectively in English and does [***6] not receive an interpreter's assistance is no more competent to proceed than an individual who is incompetent due to mental incapacity. See *Gonzalez v. Phillips*, 195 F.Supp. 2d 893, 903 (E.D. Mich. 2001) ("The Court sees little difference between trying a mentally incompetent [defendant] and trying a defendant who cannot understand the proceedings against him because he does not understand the language"); *Louisiana v. Lopes*, 805 So2d 124, 128 (2001) (non-English speaking defendants confront same barriers as those who are mentally incompetent); *United States v. Mosquera*, 816 F.Supp. 168, 173 (E.D.N.Y. 1993) (prohibition against trying incompetent defendants also refers to "those who are hampered by their inability to communicate in the English language"); see also *New Hampshire v. Staples*, 121 N.H. 959, 437 A2d 266, 268 (N.H. 1981) ("Though the defendant in this case was not mentally deficient, his hearing impairment presents us with an analogous and equally serious problem").

The evidence before the trial court regarding the issues Ling raised concerning her English abilities was conflicting but sufficient to cast doubt on her competency to be tried without an interpreter. Given that our prior cases [***7] did not explain in detail that language deficiencies implicate the right to be present at trial and the right not to proceed while incompetent, we cannot conclude that the trial court, in summarily denying Ling's motion for new trial, necessarily found that she was competent. Rather, this case must be remanded to the trial court to apply the standard in *Drope* and explain the bases for its ruling on the motion for new trial, as we now require. [*302] See Division 2, *infra*.¹

1 Should the trial court conclude that Ling was incompetent due to deficiencies in her ability to speak or understand English, it would follow that Ling was deprived of her right to be present at trial. In that event, it likewise follows that Ling would prevail on her claim of ineffective assistance of counsel based on her trial counsel's failure to secure an interpreter for trial. Trial counsel was aware of Ling's language limitations and explained his failure to secure an interpreter on the

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basis that he was concerned using an interpreter might cause the jury to grow impatient and did not want to draw too much attention to the fact that she was not a native English speaker given the media attention on immigration laws [***8] at the time. It is not professionally reasonable to decide to forego obtaining an interpreter for an otherwise incompetent criminal defendant based on speculative fears of juror bias, especially where, as here, there is no evidence that the defendant participated in or consented to the decision.

[**884] 2. We hold that when a question is raised in a motion for new trial as to whether a criminal defendant's due process rights have been violated by the absence of a qualified interpreter, the trial court must make and explain its findings on the issue on the record. Remand is therefore warranted given that the trial court denied the new trial motion without explanation.

The rules promulgated by this Court for use of interpreters in court proceedings provide that after a court examines a party or witness on the record to determine whether an interpreter is needed, the court should then "state its conclusion on the record," Appendix A, Uniform Rule for Interpreters Programs, § I (A), (D). The rules thereby recognize that such a procedure best secures the rights of non-English speakers. The same holds true at the motion for new trial stage. Certainly, a trial judge who has the opportunity to observe [***9] the proceedings, the parties, and their counsel deserve an appropriate degree of deference in assessing in the first instance whether an interpreter should be provided or, following a trial, whether the absence of an interpreter raises constitutional concerns. But when an appellate court is left to imply, assume, or surmise the nature of the trial court's findings, its ability to guard against violations of constitutional rights is compromised.

We also remind the bench that, as a recipient of federal funding, the court system in this State is obligated to provide persons who are "limited English proficient" with meaningful access to the courts in order to comply with Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d et seq., and the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. § 3789d (c), which prohibit national origin discrimination. Courts' compliance is subject to review by the Department of Justice. 28 C.F.R. Part 42, Subparts C and D. For this reason as well, vigilance in protecting the rights of non-English speakers is required in all of our courts.

3. Evidence was presented at the motion for new trial hearing that just before [***10] trial, trial counsel met with Ling, her husband, and [*303] several repre-

sentatives from the Spalding County Department of Family and Children Services to discuss a plea agreement offer from the State involving a one-year sentence. Trial counsel relied on Ling's husband to explain the offer to Ling in Chinese. According to trial counsel, the meeting lasted ten minutes before the group was summoned and told they needed to make a decision. Ling's trial counsel agreed that it was a "stressful, nervous moment." The record raises questions as to whether Ling's trial counsel reasonably relied on Ling's husband to convey the plea agreement offer and whether Ling can show prejudice on the basis that she would have accepted the plea agreement offer had she understood it. While Ling did not testify directly that she would have accepted the offer, her repeated statements that she thought she had to go to trial give rise to at least an inference that she would have preferred accepting the offer. See *Lloyd v. State*, 258 Ga. 645 (2) (b) (373 SE2d 1) (1988). On remand, the trial court should explain its resolution of Ling's ineffectiveness claim concerning trial counsel's alleged failure to convey the State's [***11] final plea agreement offer. *Talbot v. State*, 261 Ga. App. 12 (2) (c) (581 SE2d 669) (2003) (remanding for further findings when trial court's findings did not address claim that trial counsel failed to convey plea offer and it was unclear whether trial court addressed matter at all).

For the reasons set forth above, we vacate the Court of Appeals' opinion with direction [***885] that it vacate the trial court's order denying Ling's motion for new trial and remand for proceedings consistent with this opinion.

Judgment vacated and case remanded with direction. All the Justices concur, except Carley, P. J., Thompson and Hines, JJ., who dissent.

DISSENT BY: HINES

DISSENT

Hines, Justice, dissenting.

The opinion of the majority is premised upon the precarious and ill-founded assumption that the trial court defaulted in its duty in determining the sufficiency of Ling's understanding of the English language, and thereby, in denying her motion for new trial. This assumption is unsupported by both the facts of this case and well established law. In addition, the majority adds an unwarranted and unnecessary burden for the trial courts of this State. For these reasons, I respectfully dissent.

As noted by the majority, this Court [***12] granted certiorari to the Court of Appeals to consider whether the trial court, in the context of a claim of the ineffective assistance of trial counsel, made a finding of fact that defendant, Annie Ling, spoke and understood

English well enough "to understand the nature and object of the proceedings against [her], to consult with counsel, and to assist in preparing [her] defense." See *Drope v. Missouri*, 420 U.S. 162, 171 (95 SCt 896, 43 [*304] LE2d 103)(1975). Accord *Biggs v. State*, 281 Ga. 627, 629 (642 SE2d 74) (2007). And, examination of the record in light of the applicable legal principles compels the conclusions that the trial court implicitly made such a finding and that it is supported by the evidence.

The opinion of the Court of Appeals set forth the salient facts. After receiving allegations that Ling had physically abused her young son and daughter, the Spalding County Department of Family and Children Services ("DFCS") began an investigation. In January 2007, Gilmore, a DFCS social services worker, interviewed Ling and her husband at the restaurant where they worked. Also present were Bales and Mason, who were employed by the City of Griffin Police Department. With the Lings' permission, [***13] Gilmore, accompanied by Bales, went to their home to see the children. When the two women arrived at the Ling residence, the children's grandmother, who did not speak English, initially denied them entry into the house, but she then allowed them to enter after she spoke with Ling on the telephone.

Subsequently, Ling arrived at the home and permitted Gilmore and Bales to inspect her 22-month-old daughter, who was sleeping in a locked room. Gilmore and Bales observed that the baby had visible bruising on both sides of her face, the bridge of her nose, the backs of her legs, her ankles, her feet, and her back. She also had burns on both of her hands, was very thin, and appeared unhealthy. In the presence of Gilmore and Bales, Ling "took [her daughter] by her arm and snatched her up to a standing position" and then "took the child's bangs and forced them back on top of her head very forcibly, very harsh, and then placed her hands on [the child's] cheeks and jerked her from side to side. . . . It appeared to be very painful." Ling also picked the child up by one arm and "kind of tossed her" onto a bed in the room. Ling admitted that she struck her daughter in the face and spanked her using an [***14] inch-wide leather belt, which Ling showed to Gilmore and Bales, but she claimed that the child had burned her hands with hot soup while she was with a babysitter. However, Ling's husband told Gilmore that the little girl had sustained the burns while she was at home with Ling and the grandmother. He also reported that Ling "did not mean to hurt [the girl]" and that it was an accident."

Ling was arrested and charged with two counts of cruelty to a child, and her children were removed from the home and placed in foster care. Following a 2008 trial, Ling was convicted of one count of cruelty to a child, and she was sentenced to fifteen years, with ten to serve in prison. Ling then filed a motion for new trial,

alleging the ineffectiveness of her trial counsel because he failed to secure an interpreter for her before and during her trial. Following an evidentiary hearing, the trial court denied the motion, and Ling appealed to [*305] the Court of Appeals, [**886] enumerating as error the ineffectiveness claim. The Court of Appeals held that the trial court did not err in concluding that trial counsel was not ineffective for failing to obtain an official interpreter for Ling's use. *Ling v. State*, 300 Ga. App. 726, 731 (686 SE2d 356) (2009).

In [***15] order for Ling to prevail on her claim that her trial counsel was ineffective for failing to secure the pre-trial and trial services of a certified interpreter, she has to show that her attorney's performance was deficient and that such deficiency prejudiced her so that there was a reasonable likelihood that, but for counsel's errors, the outcome of her trial would have been different; she has to overcome the strong presumption that her attorney's conduct fell within the broad range of reasonable professional conduct. *Sarford v. State*, 287 Ga. 351, 356 (5) (695 SE2d 579) (2010), citing *Strickland v. Washington*, 466 U.S. 668 (104 SCt 2052, 80 LE2d 674) (1984). The appellate court gives deference to the trial court's factual findings, which must be upheld unless clearly erroneous, but it is to review the lower court's legal conclusions de novo. Id.

Certainly, both this Court and the Court of Appeals have made plain that due process concerns are raised when a foreign defendant cannot understand the language spoken to that defendant and when the accuracy of a translation is subject to doubt. See *Puga-Cerantes v. State*, 281 Ga. 78, 80-81 (5) (635 SE2d 118) (2006); *Holliday v. State*, 263 Ga. App. 664, 669 (588 SE2d 833) (2003). [***16] And, such due process concerns are inextricably tied to the issue of a defendant's competency to stand trial. *Biggs v. State*, supra at 629 (3). The issue of Ling's comprehension of the English language for the purpose of her understanding of both her pre-trial and trial proceedings, and thus, an assessment of her competency to stand trial, was squarely before the trial court in its consideration of Ling's motion for new trial because the sole basis of the motion was her claim that her trial counsel was ineffective for failing to provide her with the needed assistance of an interpreter. *Biggs v. State*, supra at 630 (3). The trial court conducted a full hearing in the matter, at which the court had ample opportunity to observe Ling, before rejecting her claim that her trial attorney had been deficient for not securing the assistance of an official interpreter. That the court's order doing so did not contain express findings that Ling spoke and understood English sufficiently to be competent to assist in her defense and to stand trial does not negate the fact that such findings are implicit in the court's ruling. It had to find Ling competent, otherwise she could not constitu-

tionally [***17] have been subjected to trial. *Biggs v. State, supra at 629-630 (3)*. A trial court is presumed to know the law and to faithfully and lawfully perform the duties devolved upon it by law. *In the Interest of I.W., 304 Ga. App. 225, 229 (3) (695 SE2d 739) (2010)*.

[*306] The majority acknowledges that the evidence regarding the quality of Ling's comprehension of English was in dispute. And, unquestionably the resolution of conflicting evidence and determinations of the credibility of the witnesses testifying about Ling's language proficiency for the purpose of her motion were properly for the trial court. *Copeland v. State, 281 Ga. App. 11, 14 (3) (d) (635 SE2d 283) (2006)*. The trial court was in the optimal position to assess the credibility of all of the witnesses, including their potential for bias or self-interest; for example the trial court was able to assess the testimony of Ling's husband about Ling's lack of English skills, in the face of the fact that there was no evidence that the husband voiced concern about any language deficiencies prior to his wife's conviction and her quest for a new trial. And again, it should not be minimized that the trial court was in the unique position of being able to [***18] hear and see Ling for itself, and thereby assess independently the extent of her ability with the English language. The majority states that "a trial judge who has the opportunity to observe the proceedings, the parties, and their counsel deserves an appropriate degree of deference" in assessing the need for an interpreter. Yet, this is plainly no more than lip service because the majority then usurps the role of the trial court in this case and gives no deference whatsoever to the trial court's rejection of Ling's claim that she deserves [***887]—another trial because she did not have the services of an official interpreter.

In any event, as noted by the Court of Appeals, Ling is from Malaysia, and Mandarin Chinese is her native language; but, there was evidence fully supporting a determination that Ling's command of English was sufficient to stand trial without the assistance of an official interpreter. Ling began to learn English when she moved to the United States in 2000 -- eight years before her trial; trial counsel communicated with Ling in English, and counsel believed that they "communicated effectively"; not only did trial counsel speak and otherwise interact with Ling in regard to [***19] her criminal prosecution, but he also represented her in a related deprivation proceeding; in addition, in an abundance of caution, trial counsel had his Chinese wife interpret during his first meeting with the Lings about the criminal and DFCS deprivation matters; counsel also had Mr. Ling translate his pretrial discussions with Ling; the prosecutor offered Ling a plea deal that would have required her to serve one year in custody, and trial counsel communicated the offer to Ling in the presence of Mr. Ling, the

DFCS caseworker, and counsel for DFCS; Gilmore had been able to communicate with Ling and believed that there was no language barrier between them; Bales testified that Ling could speak English and that Ling had no problems communicating with Gilmore or the officers; also a DFCS case manager [*307] assigned to the Ling case testified that although she had some difficulties in communicating with Ling, once she spoke slowly any communication problems improved, and Ling was able to comprehend their conversations. Furthermore, at the motion for new trial hearing, Ling, through an interpreter, acknowledged that her husband had functioned as an interpreter between herself and trial counsel; [***20] that she was able to understand "a little bit" what her lawyer was telling her during the meeting at which the decision to go to trial had been discussed; that she believed that she had to go to trial but did not know why she believed that; and that she "[thought that] it happened" that her lawyer explained to her that there was a one-year plea offer and that taking such offer would result in not going to trial. This evidence plainly supports the finding that Ling did speak and understand English well enough to understand the nature and object of her criminal prosecution and to meaningfully participate in both pre-trial decisions and her defense at trial. *Drope v. Missouri, supra at 171; Biggs v. State, supra at 629 (3)*.

Specifically, in the context of a claim of ineffective assistance of counsel, the trial court is to be the judge of witness credibility, and its denial of an ineffectiveness claim based on conflicting evidence cannot be said to be clearly erroneous. *Hartley v. State, 299 Ga. App. 534, 538 (2) (683 SE2d 109) (2009)*. At the hearing before the trial court, defense counsel also explained that his decision not to use an official interpreter was strategic: he felt [***21] that it would cause the trial to take longer and make the jury impatient which would impact negatively on his goal of having the jury like Ling as much as possible; also, at the time of trial there was a lot of negative media reports concerning immigration laws and issues, so counsel did not want to draw more attention, impliedly, to the fact that Ling was an immigrant. A determination of deficient performance by counsel based upon strategy is supportable only if the tactical decision is so patently unreasonable that no competent attorney would have chosen it. *Williams v. State, 286 Ga. 884, 887 (4) (a) (692 SE2d 374) (2010)*.

Even assuming the deficiency of counsel for failing to secure the services of an official interpreter, Ling has failed to show that, but for such deficiency, the outcome of her trial would have been different. *Sanford v. State, supra at 356 (5)*. She failed to present evidence that she would have accepted the State's plea offer or entered a non-negotiated plea in order to avoid trial. Indeed, the record supports a conclusion to the contrary. As noted, at

the motion for new trial hearing, Ling admitted that trial counsel had explained to her the plea offer on the [***22] table, and that accepting the offer would have resulted in her avoiding a trial; the testimony permits the clear inference that Ling made a knowledgeable and voluntary decision to [*308] reject the plea offer and take her [**888] chances at trial. Moreover, the evidence at trial that she had committed the alleged brutality and cruelty to her baby daughter was overwhelming, and she has failed to demonstrate that the presence of an interpreter would have, in some meaningful manner, mitigated the damaging evidence, so that she would have had a more favorable outcome in any trial. *Sanford v. State*, *supra* at 356 (5).

Certainly, it would be difficult to find fault with a trial court making express findings in its ruling on a motion for new trial as to whether a criminal defendant's due process rights have been abridged by the absence of an official interpreter either pre-trial or at trial; but, the absence of such findings should not fatally flaw an otherwise legally and factually based ruling in this regard. Furthermore, the whole basis of the majority's created requirement does not withstand scrutiny; the majority takes a uniform rule regarding the use of interpreters in court proceedings which was promulgated [***23] by this Court for that limited purpose, and without explanation or appropriate legal support, transforms it into a

mandate with due process implications and of constitutional dimension. Refusing to engraft the requirements of express findings and supporting explanations into the well-worn body of governing law in no manner compromises the ability of persons, who are non-native speakers of the English language, to have meaningful access to the American court system. In fact, quite the contrary. It allows the trial courts to perform their legal duty of determining competency without adding yet another layer of labor for the already overburdened trial judiciary; to require otherwise potentially impedes rather than promotes, vigilance in protecting the rights of not only those whose English is limited but of all who rely upon the judiciary for reasonable speed and access to their day in court and the due process of law.

Simply, this case boils down to a battle of the evidence, and the evidence supports the trial court's fundamental findings that Ling was competent to stand trial and had the benefit of due process. It should not be used as a vehicle for this Court to add precedent where [***24] none is required. The Court of Appeals' affirmation of the trial court's rejection of Ling's claim of the ineffective assistance of trial counsel should stand.

I am authorized to state that Presiding Justice Carley and Justice Thompson join in this dissent.

In the Supreme Court of Georgia

Decided: February 1, 2016

S15A1715. THE STATE v. TUNKARA.

MELTON, Justice.

Following a jury trial, Mahamadou Tunkara was found guilty of malice murder, felony murder, aggravated assault, and possession of a knife during the commission of a felony, with regard to the death of Mohamed Turay. Subsequently, Tunkara filed a motion for new trial, contending, among other things, that his court-appointed interpreter inadequately translated the proceedings to him. After a hearing, the trial court granted Tunkara's motion, finding that Tunkara was not able to understand what was happening at his trial. The State appeals this ruling, contending that the trial court applied an incorrect standard of review and abused its discretion by granting a new trial pursuant to

OCGA §§ 5-5-20¹ and 5-5-21.² For the reasons set forth below, we affirm.

¹ “In any case when the verdict of a jury is found contrary to evidence

In more detail, the record shows that, on March 7, 2008, Tunkara was indicted for malice murder, felony murder, aggravated assault, and possession of a knife during the commission of a felony. Tunkara's first trial began on January 13, 2010, with a certified interpreter assigned to translate the trial proceedings into Soninke, Tunkara's native language. The trial ended in a mistrial when the jury was unable to reach a unanimous verdict. The state chose to try Tunkara again, and his second trial began on November 15, 2010. Tunkara was provided with a different non-certified interpreter, as the interpreter from the first trial was out of the country and unavailable. At the second trial, the interpreter sat with Tunkara and purportedly translated the events and testimony to him as the trial proceeded. Shortly before closing arguments, Tunkara moved for a mistrial, arguing that his interpreter was

and the principles of justice and equity, the judge presiding may grant a new trial before another jury." OCGA § 5-5-20.

² "The presiding judge may exercise a sound discretion in granting or refusing new trials in cases where the verdict may be decidedly and strongly against the weight of the evidence even though there may appear to be some slight evidence in favor of the finding." OCGA § 5-5-21.

inadequate. Tunkara's attorney explained that, although he did not want to make the motion, he had become aware that the interpreter was giving Tunkara incomplete and inaccurate information, culminating in Tunkara's belief that the murder weapon had Tunkara's blood on it rather than that of the victim (the latter of which the testimony actually showed).³ The trial court denied the motion, finding that, based on his general demeanor, Tunkara appeared to understand the proceedings. On November 19, 2010, Tunkara was convicted and sentenced to life for the murder charge.

Subsequently, Tunkara filed a motion for new trial, and, after obtaining new counsel, he filed an amended motion for new trial on October 29, 2014. Tunkara again contended that, during the course of the second trial, the court-appointed interpreter gave incomplete and inaccurate information, resulting in a deprivation of Tunkara's due process rights and his right to be present and understand all proceedings under the Sixth and Fourteenth Amendments to the United States Constitution.

On April 30, 2015, the trial court conducted a hearing on Tunkara's

³ Earlier in the trial, during voir dire, a potential juror who understood Soninke expressed concern that the interpreter's translation might be faulty.

motion for new trial. At this hearing, the trial court considered the testimony of Tunkara's trial counsel, the arguments of both sides, and the transcripts from trial. In an order entered on May 4, 2015, the trial court made the finding of fact that "there was a complete breakdown of [Tunkara's] understanding of what was transpiring at trial due to the interpreter, and that this prejudiced [Tunkara] at trial." Citing its discretion under OCGA §§ 5-5-20 and 5-5-21, the trial court granted Tunkara's motion for a new trial on this basis.

On appeal, the State argues that the trial court abused its discretion, contending that the trial court made no finding that the verdict at trial was strongly against the weight of the evidence against Tunkara and, in fact, the evidence actually supported Tunkara's conviction. In other words, the State argues that the trial court did not make appropriate findings to support, and the evidence does not allow, the grant of a new trial under the general grounds reviewable under OCGA §§ 5-5-20 and 5-5-21.⁴

⁴ The trial court has the right to reassess the granting of a new trial, and may effectively sit as the "thirteenth juror." Allen v. State, 296 Ga. 738, 740 (2) (770 SE2d 625) (2015) *citing* White v. State, 293 Ga. 523, 524 (2) (753

As a general matter, the discretion given to the trial judge when considering a motion for new trial is broad:

The right and power of a court, upon a motion for a new trial, to review its own rulings in the case, and where the same are erroneous, to grant a new trial, exists by virtue of its own constitution and establishment, without any act of the legislature; it is an inherent power in all courts to do right.

(Citation and punctuation omitted.) Hipp v. State, 293 Ga. 415, 416 (746 SE2d 95) (2013).

The trial judge made a factual finding that Tunkara did not understand what was transpiring during the trial. Based on this fact and “principles of justice and equity,” the trial judge granted Tunkara’s motion for new trial, relying on OCGA §§ 5-5-20 and 5-5-21. These two statutes apply to considerations about the weight of the evidence- the general grounds. Here, however, it is largely undisputed that the trial court’s ruling was premised on a *special* ground- the inadequacy of the interpreter. As such, the trial court’s discretion lies more squarely under OCGA § 5-5-25. That statute provides: “In all motions for a new trial on other grounds not provided for in this Code, the presiding judge must exercise a sound legal discretion in granting or

SE2d 115) (2013).

refusing the same according to the provisions of the common law and practice of the courts.” The inadequacy of an interpreter is one of the “other grounds not provided for in this Code.” Accordingly, this statutory provision authorized the trial court to grant a new trial on this ground in this matter.

Although the trial court mistakenly cited the wrong statutory provisions in its order, the State actually conceded at the motion for new trial that the trial court could exercise its authority under OCGA § 5-5-25 in order to consider granting a new trial. The record shows that trial court employed this broad discretion to grant a new trial after a full hearing and the consideration of evidence, and we affirm that ruling under the right-for-any-reason rule. See, e.g., Mathis v. State, 279 Ga. 100, 102 (610 SE2d 62) (2005) (“[This Court] will affirm a trial court’s ruling if it is right for any reason.”)

Judgment affirmed. All the Justices concur.

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*** Current Through the 2015 Regular Session ***

TITLE 15. COURTS
CHAPTER 6. SUPERIOR COURTS
ARTICLE 2. CLERKS OF SUPERIOR COURTS

GO TO GEORGIA STATUTES ARCHIVE DIRECTORY

O.C.G.A. § 15-6-77 (2015)

§ 15-6-77. Fees; construction of other fee provisions

(a) The clerks of the superior courts of this state shall be entitled to charge and collect the sums enumerated in this Code section.

(b) All sums as provided for in this Code section shall be inclusive of the sums that the clerks of the superior courts may be required to collect pursuant to *Code Section 36-15-9* and *Code Section 15-6-77.4*. The sums provided in this Code section are exclusive of costs for service of process or other additional sums as may be provided by law.

(c) In all counties in this state where the clerk of the superior court is paid or compensated on a salary basis, the fees provided for in this Code section shall be paid into the county treasury less and except such sums as are otherwise directed to be paid pursuant to *Code Section 15-6-61* and such sums as are collected pursuant to *Code Section 36-15-9* and *Code Section 15-6-77.4*, which sums shall be remitted to such authorities as provided by law. Fees, sums, or other remuneration for the performance of duties provided for under the laws of the United States or regulations promulgated pursuant to such laws shall be as provided in such laws or regulations as personal compensation to the clerk of the superior court for the performance of such duties.

(d) Except for the filing of civil cases in which the filing party is indigent as provided in subsection (e) of this Code section, all sums specified in this Code section shall be paid to the clerk at the time of filing or other service.

(e) Costs in civil cases:

(1) As used in this subsection, the term "civil cases" shall include all actions, cases, proceedings, motions, or filings civil in nature, including but not limited to actions for divorce, domestic relations actions, modifications on closed civil cases, adoptions, condemnation actions, and actions for the validation and confirmation of revenue bonds. Any postjudgment proceeding filed more than 30 days after judgment or dismissal in an action shall be considered as a new case for the purposes of this Code section.

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(2) Except as provided in paragraphs (3) and (4) of this subsection, the total sum for all services rendered by the clerk of the superior court through entry of judgment in civil cases shall be \$58.00. Such sum shall not be required if the party desiring to file such case or proceeding is unable, because of indigence, to pay such sum and such party files with the clerk an affidavit to such effect, as provided by law. Nothing contained in this subsection shall be deemed to require advance payment of such sum by the state, its agencies, or political subdivisions.

(3) In all cases involving condemnations or the validation and confirmation of revenue bonds, the following additional sums shall be charged at the conclusion of the action:

- (A) Validation and confirmation of revenue bonds pursuant to Code
Section 36-82-79, first 500 bonds, each.....\$ 1.00
 All bonds over 500, each..... .50
 (B) Recording on final record, per page.....1.50

(4) No fee or cost shall be assessed for any service rendered by the clerk of superior court through entry of judgment in family violence cases under Chapter 13 of Title 19 or in connection with the filing, issuance, registration, or service of a protection order or a petition for a prosecution order to protect a victim of domestic violence, stalking, or sexual assault. A petitioner seeking a temporary protective order or a respondent involved in a temporary protective order hearing under the provisions of *Code Section 19-13-3* or *19-13-4* shall be provided with a foreign language or sign language interpreter when necessary for the hearing on the petition. The reasonable cost of the interpreter shall be paid by the local victim assistance funds as provided by Article 8 of Chapter 21 of this title. The provisions of this paragraph shall control over any other conflicting provisions of law and shall specifically control over the provisions of *Code Sections 15-6-77.1*, *15-6-77.2*, and *15-6-77.3*.

(5) Nothing contained in this Code section shall be construed so as to prohibit the collection of any other costs authorized by law for postjudgment proceedings or for any other services which the clerk or the sheriff shall perform. Nothing contained in this Code section shall be construed to affect in any way the power and authority of the superior courts from taxing costs in accordance with law, but no costs shall be refunded by the clerk unless and until the same have been paid to the clerk by the losing party.

(f) Sums for filing documents, instruments, etc., pertaining to real estate or personal property, such sums to include recording and returning where applicable, shall be as follows:

- (1)(A)(i) Filing all instruments pertaining to real estate including deeds, deeds of trust, affidavits, releases, notices and certificates, and cancellation of deeds, first page....\$ 9.50
 Each page, after the first.....2.00
 (ii) Filing all instruments pertaining to real estate and personal property including liens on real estate and personal property, notice filings for Uniform Commercial Code related real estate, tax liens, hospital liens, writs of fieri facias, notices of lis pendens, written information on utilities, cancellations of liens, and writs of fieri facias, first page.....4.50
 Each page, after the first.....2.00
 (B) Filing and indexing financing statements, amendments to financing statements, continuation statements, termination statements, release of collateral, or other filing pursuant to Article 9 of Title 11, first page.....10.00
 Each page, after the first.....2.00
 (2) Filing maps or plats, each page.....7.50
 (3) For processing an assignment of a security deed, for each deed assigned.....4.50

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(g) Miscellaneous fees:

- (1) Recording any instrument or writing, fee not otherwise specified, first page.....\$ 5.00
Each page, after the first.....2.00
- (2) Uncertified copies of documents, if no assistance is required from the office of the clerk of superior court, per page..... .50
Uncertified copies, if assistance is required.....1.00
Uncertified copies, if transmitted telephonically or electronically, first page.....2.50
Each page, after the first.....1.00
- (3) Uncertified copies of documents, drawings, or plats, copy larger than 8.5 x 14 inches.....2.00
- (4) Certification or exemplification of record, including certificates and seals, first page.....2.50
Each page, after the first..... .50
- (5) Clerk's certificate.....1.00
- (6) Court's seal.....1.00
- (7) The clerk may provide computer data or computer generated printouts of public records subject to disclosure maintained on computer by, or available to, the clerk, for each page or partial page of printed data or copies of such or its equivalent.....2.50
Nothing in this paragraph shall be construed to require any clerk to provide computer generated reports nor shall any clerk be required to prepare custom or individualized computer compilations or reports for any person or entity which would require preparation of a computer program which is not a standard existing computer program in use by the clerk. The clerk shall not be required to permit access to, or to provide copies of, copyrighted computer programs or any other computer programs in violation of any software license agreement or containing confidential records otherwise excluded or exempted by this Code section or any other applicable law.
- (8) Issuing certificate of pending or unsatisfied judgment, as provided in *Code Section 40-9-40*.....3.00
- (9) Issuing certificate of appointment and reappointment to notaries public, as provided by *Code Section 45-17-4*.....20.00
- (10) Registering and filing trade names pursuant to *Code Section 10-1-490*.....15.00
- (11) Issuing subpoena, signed and sealed, notwithstanding subsection (e) of this Code section, each.....5.00
- (12) Preparation of record and transcript to the Supreme Court and Court of Appeals, per page.....1.00
Where a transcript of the evidence and proceedings is filed with the clerk and does not require recopying, the clerk shall not receive the fee herein prescribed with respect to such transcript but shall receive, for filing and transmission of such transcript, a fee of.....35.00
- (13) Reserved.
- (14) Reserved.

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- (15) For performing the duties required of them by Article 2 of Chapter 2 of Title 44, the clerks shall receive the same sums as in civil cases.
- (16) For performing the duties required of them by Article 1 of Chapter 9A of Title 14, the "Uniform Limited Partnership Act," and for filing statements of partnership pursuant to Code Section 14-8-10.1, the clerks shall receive the sums as in civil cases.

(h) Fees in criminal cases:

- (1) Entering and docketing bills of indictment, presentments, no-bills, accusations.....\$ 3.00
- (2) Reserved.
- (3) Reserved.
- (4) Reserved.
- (5) Reserved.
- (6) Preparation and furnishing copy of the record of appeal in criminal cases where the accused was convicted of capital felony, except when provided in accordance with subsection (b) of Code Section 5-6-43, per page.....1.00
Clerk's certificate.....1.00
The clerk shall not receive compensation for the transcript of evidence and proceedings.
- (7) When costs are assessed by the court the minimum amount assessed as court costs in the disposition of any criminal case in the superior court shall be \$100.00. Any surcharge provided for by law shall be in addition to such sum.

(i) No fees shall be charged for the following:

- (1) Recording discharge certificates of veterans, as provided in *Code Section 15-6-78*;
- (2) Filing a petition as provided in *Code Section 42-8-66*;
- (3) Recording and certifying documents in connection with admission to practice law; and
- (4) Costs associated with the filing of criminal charges by an alleged victim of a violation of *Code Section 16-5-90, 16-5-91, 16-6-1, 16-6-2, 16-6-3, 16-6-4, 16-6-5.1, 16-6-22.1, or 16-6-22.2* or an alleged victim of any domestic violence offense or for the issuance or service of a warrant, protective order, or witness subpoena arising from the violation of *Code Section 16-5-90, 16-5-91, 16-6-1, 16-6-2, 16-6-3, 16-6-4, 16-6-5.1, 16-6-22.1, or 16-6-22.2* or the incident of domestic violence.

(j) All laws in force in this state which provide compensation for clerks of the superior courts for the discharge of duties not enumerated in this Code section nor in conflict with this Code section shall remain in full force and effect.

(k) No fees, assessments, or other charges may be assessed or collected except as authorized in this Code section or some other general law expressly providing for same.

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(l) The clerk of superior court may provide such additional services for which there is no fee specified by statute in connection with the operation of the clerk's offices as may be requested by the public and agreed to by the clerk. Any charges for such additional services shall be as agreed to between the clerk and the party making the request. Nothing in this subsection shall be construed to require any clerk to provide any such service not otherwise required by law.

(m) The sheriffs of this state shall not be required to pay recording fees for criminal bonds and writs of fieri facias issued on criminal bond forfeitures.

(n) The clerk of superior court shall not be required to refund excess sums tendered to the clerk as payment of costs or fees enumerated in this Code section when such payment exceeds the amount required by this Code section by less than \$15.00.

(o) In addition to the fees required by this Code section:

(1) When any instrument that is statutorily required to be cross-indexed, canceled, satisfied, or released or when a party requests the clerk to cross-index an instrument that is not otherwise required by law to be cross-indexed to any other previously recorded or affected document, the clerk of superior court shall charge an additional fee of \$2.00 for each additional cross-indexed entry;

(2) For recording any instrument that includes a request for cancellation, satisfaction, or release of more than one instrument as described in division (f)(1)(A)(i) of this Code section, the filing fee specified in division (f)(1)(A)(i) of this Code section shall be charged for each such instrument which is to be canceled, satisfied, or released;

(3) For recording any instrument that includes a request for cancellation, satisfaction, or release of more than one instrument as described in division (f)(1)(A)(ii) of this Code section, the filing fee specified in division (f)(1)(A)(ii) of this Code section shall be charged for each such instrument which is to be canceled, satisfied, or released;

(4) For any instrument that includes a request for the clerk to cross-index the instrument to a previously recorded or affected instrument but for which cross-indexing is not otherwise required by law, the clerk shall file, index, record, and cross-index each such instrument for which a request has been made upon receiving payment from the requesting party as specified by paragraph (1) of this subsection and written information specifying accurately the instrument to be cross-indexed;

(5) With respect to any instrument that includes a request for cancellation, satisfaction, or release of any instrument described in division (f)(1)(A)(i) or (f)(1)(A)(ii) of this Code section, the clerk shall file, index, and record the cancellation of each such instrument identified and requested to be canceled provided that the requesting party pays the filing fee specified by paragraph (2) or (3) of this subsection, as applicable, and that such instrument accurately identifies the recording information for such instrument to be canceled, satisfied, or released; and

(6) For the purposes of this subsection and any other Code section requiring the clerk of superior court to cross-index, cross-reference, or make any other notation affecting any instrument filed in the clerk's office, including, but not limited to, real estate, personal property, liens, plats, and any other instruments, the clerk shall be authorized to make such entry or notation through electronic or automated means in lieu of entering such information manually in paper books or dockets.

(p) Notwithstanding any provision of this Code section to the contrary, the filing fee for an application to be appointed as a certified process server pursuant to paragraph (2) of subsection (h) of *Code Section 9-11-4.1* shall be \$58.00.

HISTORY: Laws 1792, *Cobb's 1851 Digest*, pp. 353, 354; Ga. L. 1857, p. 49, § 2; Code 1863, § 3619; Code 1868, § 3644; Ga. L. 1870, p. 67, § 1; Code 1873, § 3695; Ga. L. 1880-81, p. 87, § 1; Code 1882, § 3695; Civil Code 1895, § 5397; Penal Code 1895, § 1106; Civil Code 1910, § 5995; Penal Code 1910, § 1133; Ga. L. 1921, p. 184, § 1; Code

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1933, § 24-2727; Ga. L. 1939, p. 345, § 2; Ga. L. 1946, p. 225, § 1; Ga. L. 1946, p. 726, § 1; Ga. L. 1947, p. 1177, §§ 2, 3; Ga. L. 1953, Jan.-Feb. Sess., p. 32, § 2; Ga. L. 1955, p. 421, § 1; Ga. L. 1957, p. 321, § 1; Ga. L. 1965, p. 525, §§ 1, 2; Ga. L. 1970, p. 497, § 1; Ga. L. 1971, p. 214, § 1; Ga. L. 1971, p. 699, § 1; Ga. L. 1971, p. 774, § 1; Ga. L. 1972, p. 664, §§ 1, 4; Ga. L. 1977, p. 1098, § 4; Ga. L. 1978, p. 1787, § 2; Ga. L. 1980, p. 1045, § 1; Code 1933, §§ 24-2727.1, 24-2727.2, 24-2727.3, 24-2727.4, 24-2727.5, 24-2727.6, 24-2727.7, enacted by Ga. L. 1981, p. 1396, § 1; Ga. L. 1982, p. 3, § 15; Ga. L. 1982, p. 879, § 1; Ga. L. 1983, p. 3, § 12; Ga. L. 1983, p. 1210, § 1; Ga. L. 1986, p. 1002, §§ 1, 2; Ga. L. 1987, p. 320, § 3; Ga. L. 1988, p. 320, § 2; Ga. L. 1989, p. 14, § 15; Ga. L. 1989, p. 395, § 5; Ga. L. 1989, p. 498, § 3; Ga. L. 1989, p. 931, § 3; Ga. L. 1989, p. 946, § 109; Ga. L. 1990, p. 805, § 2; Ga. L. 1991, p. 1051, § 3; Ga. L. 1991, p. 1324, § 1; Ga. L. 1992, p. 1311, § 1; Ga. L. 1993, p. 1550, § 9; Ga. L. 1994, p. 1693, § 15; Ga. L. 1995, p. 260, § 1; Ga. L. 1995, p. 863, § 1; Ga. L. 1996, p. 883, §§ 1, 2; Ga. L. 1996, p. 1502, § 2; Ga. L. 2001, p. 362, § 27; Ga. L. 2001, p. 885, §§ 1, 2; Ga. L. 2002, p. 799, § 3; Ga. L. 2002, p. 832, § 2; Ga. L. 2003, p. 140, § 15; Ga. L. 2003, p. 258, § 1; Ga. L. 2004, p. 900, § 1; Ga. L. 2006, p. 532, § 1/ HB 989; Ga. L. 2007, p. 595, § 4/ HB 197; Ga. L. 2008, p. 164, § 1/ HB 1018; Ga. L. 2009, p. 135, § 1/ HB 453; Ga. L. 2010, p. 9, § 1-38/ HB 1055; Ga. L. 2011, p. 24, § 2/ HB 41; Ga. L. 2012, p. 216, § 1/ HB 198; Ga. L. 2012, p. 819, § 2/ HB 1048; Ga. L. 2015, p. 422, § 5-5/ HB 310.

NOTES: THE 2015 AMENDMENT, effective July 1, 2015, in subsection (i), added paragraph (i)(2) and redesignated former paragraphs (i)(2) and (i)(3) as present paragraphs (i)(3) and (i)(4), respectively. See editor's note for applicability.

CROSS REFERENCES. --Court costs generally, § 9-15-1 et seq. Deposits of court costs, § 9-15-4. Giving of receipts for fees, and penalty for charging excessive fees, § 15-13-30 et seq. Charges for purpose of providing funds for purchasing books for county law libraries, § 36-15-9. Civil actions and remedies for the collections of fines, costs, restitution, and reparation ordered as a condition of probation, § 42-8-34.2.

CODE COMMISSION NOTES. --Pursuant to *Code Section 28-9-5*, in 1993, "and" was added to the end of paragraph (i)(2).

Pursuant to *Code Section 28-9-5*, in 2008, "canceled" was substituted for "cancelled" throughout subsection (o).

EDITOR'S NOTES. --Ga. L. 1995, p. 260, § 6, not codified by the General Assembly, provided that Section 1 of that Act, which amended subsection (f) of this Code section, would be repealed on July 1, 1996; this repeal provision was amended by Ga. L. 1996, p. 1502, § 4, and by Ga. L. 1997, p. 565, § 5, neither of which sections was codified by the General Assembly, so as to delete the reference to the repeal of Section 1 of the 1995 Act. Ga. L. 1996, p. 1502, § 2, effective July 1, 1998, amended the version of subparagraph (f)(1)(A) of this Code section enacted by Ga. L. 1995, p. 260, § 1. The delayed effective date of the 1996 amendment to subparagraph (f)(1)(A) was changed to January 1, 2004, by Ga. L. 1997, p. 565, § 6.

Ga. L. 2002, p. 832, § 1, not codified by the General Assembly, provides: "It is the general intent of this Act to codify and to extend for a further period of two years the future 'sunset' of certain provisions relating to superior court clerks' fees and the Georgia Superior Court Clerks' Cooperative Authority."

Ga. L. 2002, p. 832, § 5, not codified by the General Assembly, provided: "The following provisions of law are repealed:

"(1) Section 6 of an Act amending Title 15 of the Official Code of Georgia Annotated, relating to courts, approved April 7, 1995 (Ga. L. 1995, p. 260), as amended, which now repealed section would have provided for a future repeal or sunset of certain provisions relating to fees of superior court clerks and the Georgia Superior Court Clerks' Cooperative Authority; and

"(2) Section 2 of an Act amending Article 2 of Chapter 6 of Title 15 of the Official Code of Georgia Annotated, relating to clerks of superior courts, approved April 16, 1996 (Ga. L. 1996, p. 1502), as amended, which now repealed section would have provided for a future change in the fees of superior court clerks."

Ga. L. 2007, p. 595, § 5/ HB 197, not codified by the General Assembly, provides that this Act shall apply to all trials which occur on or after July 1, 2007.

Ga. L. 2011, p. 24, § 4/ HB 41, not codified by the General Assembly, provides, in part, that: "This Act shall apply

O.C.G.A. § 15-6-77

retroactively to all cases for which fees have not been assessed." The effective date of this Act was March 16, 2011.

Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides, in part, that the amendment by this Act shall apply to sentences entered on or after July 1, 2015.

LAW REVIEWS. --For survey article on real property law, see *59 Mercer L. Rev. 371 (2007)*.

For note on 1989 amendment to this Code section, see *6 Ga. St. U.L. Rev. 184 (1989)*. For note on 1993 amendment of this Code section, see *10 Ga. St. U.L. Rev. 41 (1993)*. For note on the 1994 amendment of this Code section, see *11 Ga. St. U.L. Rev. 70 (1994)*.

JUDICIAL DECISIONS

SUPERIOR COURT CLERKS ARE CHARGED WITH DUTY OF RECEIVING AMOUNTS of all costs due in court. *Whitsett v. Hester-Bowman Enters., Inc., 94 Ga. App. 78, 93 S.E.2d 788 (1956)*.

CONSTRUCTION WITH O.C.G.A. § 44-14-361.1(A)(3). --Because a notice under O.C.G.A. § 44-14-361.1(a)(3) was not filed within 14 days of a lien claimant's suit being initiated, the lien was unenforceable, and the trial court did not err in granting a developer's motion for partial summary judgment against the lien claimant; while the appeals court sympathized with the lien claimant's argument that the claimant received a file-stamped copy and as a result believed no fee was due, ultimately it was the responsibility of plaintiff and plaintiff's counsel to see that the appropriate fees were paid in a timely manner. *Kendall Supply, Inc. v. Pearson Cmtys., Inc., 285 Ga. App. 863, 648 S.E.2d 158 (2007)*.

RIGHT TO MAKE EXAMINATIONS OR ABSTRACTS WHEN PAYING FEES. --Private citizen has no right without consent of the clerk and payment of fees to make abstracts of books of record. *Buck & Spencer v. Collins, 51 Ga. 391, 21 Am. R. 236 (1874)*.

This section does not deny the right of members of the public to make examinations and abstracts, but only imposed charges or fees for services which the clerk may render in making such examination and abstracts. *Atlanta Title & Trust Co. v. Tidwell, 173 Ga. 499, 160 S.E. 620 (1931)*.

WHEN CASES ARE CONSOLIDATED, CLERK IS ENTITLED TO FEE IN EACH CASE. *Williams, Birnie & Co. v. Officers of Court, 61 Ga. 95 (1878)*.

CLERK NOT AUTHORIZED TO CHARGE FOR COPY RETAINED BY CLERK. --Under paragraph (g)(12) of O.C.G.A. § 15-6-77, the clerk should only have charged for preparing the record to be sent to this court and was not authorized to charge the additional fee for preparing the copy of the record to be retained by the clerk. *Rewis v. Shaw, 208 Ga. App. 876, 432 S.E.2d 617 (1993)*.

CLERK NOT ENTITLED TO COSTS FOR TRANSMITTING SURPLUS PARTS OF RECORD not specified in bill of exceptions (see now O.C.G.A. §§ 5-6-49 and 5-6-50), unless the transmission was at instance of party or counsel. *Waldrop v. Wolff & Happ, 114 Ga. 610, 40 S.E. 830 (1902)*; *Riley v. Wrightsville & T.R.R., 133 Ga. 413, 65 S.E. 890, 24 L.R.A. (n.s.) 379, 18 Ann. Cas. 208 (1909)*.

FEE FOR ENTERING CASE ON DOCKET CANNOT BE CLAIMED IN ADVANCE. *Ball v. Duncan, 30 Ga. 938 (1860)*.

UNDER THIS SECTION, WORD "SUMMONS" MEANT "SUBPOENA" and did not refer to civil process or a summons issued by a justice of the peace, or to summons issued by municipal forums. *Owens v. Maddox, 80 Ga. App. 867, 57 S.E.2d 826 (1950)*.

FAILURE TO CHARGE SUFFICIENT COSTS NOT TO AFFECT RIGHTS OF PARTIES. --In cases when the clerks are on a salary basis and the costs belong to the county, failure to charge sufficient costs would be a matter between the

O.C.G.A. § 15-6-77

clerk and the county, and might subject the clerk to a contempt proceeding, but would not affect the rights of parties litigant. *Whitsett v. Hester-Bowman Enters., Inc.*, 94 Ga. App. 78, 93 S.E.2d 788 (1956); *Sirmans v. Sirmans*, 222 Ga. 202, 149 S.E.2d 101 (1966).

CLERK'S FILING WITHOUT FEES IS NOT A WAIVER OF FEES. --Clerk's filing of complaint without having received deposit or affidavit of indigence did not constitute a waiver of assessment of court costs against complainant. *Whitehead v. Lavoie*, 176 Ga. App. 666, 337 S.E.2d 357 (1985).

NO FURTHER AFFIDAVIT OF INDIGENCE REQUIRED FOR RENEWAL ACTION. --Provision in O.C.G.A. § 9-15-2(a) that an affidavit of indigence relieves a party of "any deposit, fee, or other cost" requires that, when a plaintiff files such an affidavit upon bringing an action, takes a voluntary dismissal, then seeks to renew the action, no payment of accrued costs and no further affidavit of indigence are required for the filing of the renewal action. *McKenzie v. Seaboard Sys. R.R.*, 173 Ga. App. 402, 326 S.E.2d 502 (1985).

CONTEMPT ACTION NOT NEW CIVIL ACTION. --Provision of O.C.G.A. § 15-6-77 defining "civil cases" for determining when clerks may charge and collect fees was not authority for a court to designate a contempt notice as a new civil action requiring 30 days notice of a hearing. *Brown v. King*, 266 Ga. 890, 472 S.E.2d 65 (1996).

CONTEMPT MOTION FILED MORE THAN 30 DAYS AFTER JUDGMENT. --Plaintiff's motion for contempt for failure to comply with court-ordered postjudgment discovery that was submitted more than 30 days after judgment was considered a new proceeding within the meaning of O.C.G.A. § 15-6-77(e)(1) for purposes of calculating the costs the superior court clerk was entitled to charge and collect. *McFarland & Assocs., P.C. v. Hewatt*, 242 Ga. App. 454, 529 S.E.2d 902 (2000).

CITED in *Neisler v. Loudon*, 83 Ga. 196, 9 S.E. 682 (1889); *McMichael v. Southern Ry.*, 117 Ga. 518, 43 S.E. 850 (1903); *Godfrey v. City of Cochran*, 208 Ga. 149, 65 S.E.2d 605 (1951); *Richmond County v. Pierce*, 234 Ga. 274, 215 S.E.2d 665 (1975); *Rucker v. Fuller*, 247 Ga. 423, 276 S.E.2d 600 (1981); *McBride v. Wetherington*, 199 Ga. App. 7, 403 S.E.2d 873 (1991).

OPINIONS OF THE ATTORNEY GENERAL

CLERK MAY COLLECT APPROPRIATE FEE FOR ALL PLEADINGS which have been filed and recorded prior to dismissal of case. 1970 Op. Att'y Gen. No. U70-200.

CLERK OF SUPERIOR COURT MUST REFUND that portion of advance costs deposit that exceeds actual costs. 1976 Op. Att'y Gen. No. U76-61.

SUPERIOR COURT CLERK CANNOT CHARGE LESS THAN PRESCRIBED. --Superior court clerk does not have discretion to charge less than fees prescribed by this section for preparation of case records on appeal when the clerk is on salary as opposed to "fee system." Under such circumstances, the statutory fees are no longer the property of the clerk, but are public property for which the clerk is responsible. 1973 Op. Att'y Gen. No. U73-43.

FAILURE OF SUPERIOR COURT CLERK TO COLLECT COSTS ON APPEAL did not affect outcome of appeal despite former Code 1933, § 24-2729 (see now O.C.G.A. § 15-6-80). 1973 Op. Att'y Gen. No. U73-43.

PASSPORT APPLICATION FEES TO BE PAID INTO COUNTY TREASURY. --Passport application fees collected by superior court clerk who is compensated on a salary basis must be paid into county treasury. 1978 Op. Att'y Gen. No. U78-20.

FILING FEE BASED ON ORIGINAL NUMBER OF PAGES. --This section permits the clerk to charge a filing fee for

O.C.G.A. § 15-6-77

each lien, mortgage, and deed recorded; this fee is based upon original (typed) pages, and if the matter is printed so as to reduce the number of pages filed, the fee should still be based upon what space would have been occupied by the material if on original pages. 1971 Op. Att'y Gen. No. U71-88.

BURDEN OF COST DEPOSIT ON PARTY FILING NOTICE OF APPEAL. --Party who filed notice of appeal under former Code 1933, § 92-6912 (see now *O.C.G.A. § 48-5-311(f)*) was party bearing burden of cost of deposit. 1974 Op. Att'y Gen. No. U74-46.

NOTICE OF ARRAIGNMENT TO BE TREATED AS SUMMONS. --Notice of arraignment required by former Code 1933, § 27-1401 (see now *O.C.G.A. § 17-7-91*) to be sent to all defendants in criminal cases was to be treated as a summons rather than as a subpoena in determining the correct fee to be charged by the clerk of court pursuant to former Code 1933, § 24-2727 (see now *O.C.G.A. § 15-6-77*). 1967 Op. Att'y Gen. No. 67-42.

NO FILING OR RECORDING FEE CAN BE CHARGED FOR DEPOSITIONS OR INTERROGATORIES. 1970 Op. Att'y Gen. No. U70-232.

O.C.G.A. § 15-6-77 does not prescribe a fee for filing interrogatories or answers to interrogatories. It follows that no fee may be charged for this service. 1981 Op. Att'y Gen. No. U81-50.

NO FEE CAN BE COLLECTED FOR THE FILING OF INTERROGATORIES. 1971 Op. Att'y Gen. No. U71-93.

HOW FEE FOR ENTERING FIERI FACIAS TO BE CHARGED. --Intent of the General Assembly in enacting the provision entitling clerks of superior courts to charge a fee for entering fieri facias on a general execution docket is that for each fieri facias entered against a given defendant the clerk is entitled to charge the authorized fee. 1976 Op. Att'y Gen. No. U76-51.

CLERK IS ENTITLED ONLY TO FEE FOR EACH ACCUSATION, and not for each warrant. 1957 Op. Att'y Gen. p. 49.

IN NO CASE IS FEE COLLECTIBLE FROM BOARD OF OFFENDER REHABILITATION for per diem court attendance. 1963-65 Op. Att'y Gen. p. 450.

FEE IN NOLLE PROSEQUI CASE. --Fee for services in cases "where the defendant is tried, or pleads guilty, or there is a settlement" would certainly be applicable in a situation whereby the nolle prosequi was contingent upon payment of costs. 1963-65 Op. Att'y Gen. p. 609.

BOND FORFEITURE CASE IS NOT "SETTLEMENT". 1963-65 Op. Att'y Gen. p. 486.

SUPERIOR COURT CLERK NOT ENTITLED TO FEE FOR EACH JUROR summoned by sheriff. 1945-47 Op. Att'y Gen. p. 99.

ADDITIONAL FILING FEE FOR CORPORATE DOCUMENTS. --Additional sum authorized by Ga. L. 1977, p. 1098, §§ 1 and 2 and former Code 1933, § 24-2727 (see now *O.C.G.A. §§ 15-6-77* and *47-14-51*) to be paid to the clerks of the superior courts should be charged and collected upon the filing of articles of amendment, articles of merger, and articles of dissolution. 1978 Op. Att'y Gen. No. 78-63.

FEES FOR RECORDING OF WORKERS' COMPENSATION PROCEEDINGS. --*O.C.G.A. § 15-6-62* requires recordation of pleadings and proceedings filed during pendency of workers' compensation appeals in superior courts, and the clerk is authorized to collect fees for such recordation pursuant to *O.C.G.A. § 15-6-77*. 1982 Op. Att'y Gen. No. U82-29.

O.C.G.A. § 15-6-77

WHEN FILING FEES NOT REQUIRED. --When child support petitions and other documents on behalf of the state are filed in the superior courts, filing fees may not be required. 1984 Op. Att'y Gen. No. U84-7.

AUTHORIZATION TO CHARGE MORE SUPERSEDES COURT-ORDERED FEE. --Authorization to charge maximum fee for processing alimony or child support payments supersedes previous court-ordered fees for the same purpose, insofar as they are inconsistent. 1970 Op. Att'y Gen. No. U70-216.

SHERIFF'S FEES SET FORTH IN FORMER CODE 1933, § 24-2823 (SEE NOW *O.C.G.A. § 15-16-21*) should be paid at clerk's office at time of filing, if required in a particular case, and that payment of the sheriff's fees was required in addition to the deposit for the clerk's fees which was payable at the time of filing in appropriate cases. 1976 Op. Att'y Gen. No. U76-37.

APPLICABILITY TO DEPARTMENT OF LABOR. --Department of Labor is liable for fees and costs in superior court except for recordation fees for records of the Board of Review in unemployment insurance cases and fees in civil cases as set forth in subsection (b) of *O.C.G.A. § 15-6-77*. 1986 Op. Att'y Gen. No. 86-43.

ADVANCE COURT COST DEPOSIT. --Appellants contesting a decision rendered by a county board of equalization in superior court must pay the advance court cost deposit set forth in *O.C.G.A. §§ 9-15-4 and 15-6-77*. 1985 Op. Att'y Gen. No. U85-17.

Appellants contesting the award of a special master need not pay the advance court cost deposit set forth in *O.C.G.A. §§ 9-15-4 and 15-6-77* if the appellants have properly paid the required costs for filing the initial condemnation petition. 1985 Op. Att'y Gen. No. U85-17.

Taxpayers appealing from decisions of the state revenue commissioner pursuant to *O.C.G.A. § 48-2-59* need only comply with the specific requirements of that section with regard to court costs; taxpayers need not pay the advance court cost deposit set forth in *O.C.G.A. §§ 9-15-4 and 15-6-77*. 1985 Op. Att'y Gen. No. U85-17.

FILING FEE FOR FAMILY VIOLENCE ACT PETITIONS. --Former paragraphs (b)(1) and (2) of *O.C.G.A. § 15-6-77*, which provide that the total cost for all services rendered by the clerk of superior court in civil cases shall be either \$40 or \$55, should be construed together with, and do not repeal, *O.C.G.A. § 19-13-3*, which provides for a \$16 filing fee for petitions filed under the Family Violence Act, *O.C.G.A. § 19-13-1* et seq. 1988 Op. Att'y Gen. No. U88-11.

RESEARCH REFERENCES

AM. JUR. 2D. --*15A Am. Jur. 2d, Clerks of Court, § 14* et seq.

C.J.S. --*21 C.J.S., Courts, §§ 229, 333* et seq.

ALR. --Statute regarding security for costs as mandatory or permitting exercise of discretion, 84 ALR 252.

Exception as regards payments to officers of court to rule preventing recovery back of payments made under mistake of law, 111 ALR 637.

Title Note

Chapter Note

Article Note

111HTZ

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WORKING WITH LIMITED ENGLISH PROFICIENT PERSONS AND FOREIGN-LANGUAGE INTERPRETERS IN THE COURTROOM

— A Bench Card for Judges —

The Law on Foreign-Language Interpreters for Participants in Court Proceedings

Under Federal law, including Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, and Georgia statutory law, case law, and Supreme Court rules, Georgia courts are required to provide qualified foreign-language interpreters to participants in court proceedings who are limited English proficient (LEP). They must provide these services when necessary to ensure effective communication by and with LEP participants. LEP participants can include litigants, witnesses, and spectators. Court proceedings include all court services, programs, and activities. LEP participants:

- Cannot be required to arrange or pay for their own interpreters, nor can their attorneys be required to do so;
- Must be provided an interpreter for any criminal or civil proceeding;
- Can waive their right to an appointed interpreter if the waiver is in writing and is approved by the court, and can revoke that waiver at any time;
- Do not waive their right to an appointed interpreter simply because they do not request one;
- Do not lose the right to an appointed interpreter because they speak or understand some English.

Identifying the Language of LEP Participants

LEP participants in court proceedings can self-identify their preferred language by using a Language Identification Guide: coi.georgiacourts.gov/content/language-identification-guide

Determining the Need for a Foreign-Language Interpreter

An interpreter shall be appointed when the decision maker, which would include the judge, magistrate, special master, commissioner, hearing officer, arbitrator, neutral, or mediator, determines, after an examination of the participant in the court proceeding, that:

- The party cannot understand and speak English well enough to participate fully in the proceedings and to assist counsel; or
- The witness cannot speak English so as to be understood directly by counsel, the decision maker, and/or

Sample Questions to Assess the English Proficiency of a Participant

- How did you learn English?
- Please tell me about your native country.
- Describe some of the things you see in this courtroom.

After examination, the decision maker should state his or her conclusion on the record, and the case file should be clearly marked and data entered electronically to ensure that an interpreter will be present when needed in any subsequent proceeding.

In some instances, the decision maker may appoint an interpreter based solely on a participant's written or verbal request.

Courts should encourage participants to alert the court to their need for an interpreter and the language needed as soon as possible so the court has adequate time to locate a qualified interpreter. Participants should not be required to wait to make their first request for an interpreter in person in court.

Finding a Qualified Foreign-Language Interpreter

The Supreme Court Commission on Interpreters (Commission) maintains an online database of state-licensed interpreters that can be searched by language and by county, at coi.georgiacourts.gov.

Interpreters licensed through the Commission have fully satisfied rigorous examinations, training, and court observation, and have undergone background checks.

If there is no interpreter on the registry for the language you need, contact the Commission at 404-463-3808 or gcir.interpreters@georgiacourts.gov.

Credentials of Foreign-Language Interpreters

Courts should make a diligent effort to appoint a "Certified" interpreter. If a Certified interpreter is unavailable, a "Conditionally Approved" or "Registered" interpreter should be given preference. If the court is unsure of an interpreter's qualifications, the court should *voir dire* the interpreter:

Sample Voir Dire to Assess an Interpreter's Qualifications

- "What training/credentials do you have?"
- "What is your native language?"
- "State some canons from the Code of Professional Responsibility for Interpreters."
- "How many times have you interpreted in court?"
- "What types of cases have you interpreted?"

If, after a diligent search by the court, a Certified or other licensed interpreter is unavailable, the court should weigh the need for immediacy in conducting a hearing without a licensed interpreter or with an unlicensed interpreter or telephonic interpreter, against the potential compromise of due process, or the potential of substantive injustice, if the quality of interpreting is inadequate. Failure to appoint a qualified interpreter or no interpreter at all can result in reversible error on appeal.

If the court determines that the use of a non-licensed interpreter is warranted, refer to the Commission's Instructions for Use of a Non-Licensed Interpreter: coi.georgiacourts.gov/content/forms-brochures. When a non-professional interpreter is used, the court should personally verify the interpreter's basic understanding of his or her role, on the record.

Additional Considerations When Selecting Foreign-Language Interpreters

Courts should consider other factors to determine whether an interpreter is suited to work in court. For example:

- The interpreter's prior professional and/or social contact or association with the LEP participants;
- Education, professional training, and formal legal training completed by the interpreter; and
- The types of court proceedings in which the interpreter has experience.

Courts should also consider that:

- The ability to speak a foreign language does not equal the ability to interpret nor qualify a person to interpret;
- Relatives or friends of LEP parties, witness, judges, or attorneys should not interpret court proceedings. Minor children should never be used to interpret;
- Court personnel or bilingual staff should not function as interpreters unless they are Certified and employed as staff interpreters;
- Court interpreting is strenuous, so it is advisable to schedule regular breaks. Sometimes, appointing more than one interpreter may be necessary for proceedings expected to last more than two hours;
- The interpreter is a neutral party whose sole job is to facilitate communication by interpreting everything said during the proceedings;

- The interpreter cannot participate in any capacity other than as the interpreter;
- The interpreter may not provide advice or explanations about what was said or done in court;
- The interpreter is a conduit for information exchange, and not a direct participant in the proceeding.

Recording the Proceedings

Where a Certified interpreter is used, no audio or audiovisual record of the non-English testimony is required, but the court may authorize the making of a recording.

Where a non-Certified (e.g., Conditionally Approved, Registered, or unlicensed) interpreter is used, the court shall make an audio or audiovisual recording of any non-English testimony. This recording shall become part of the record of the proceeding: coi.georgiacourts.gov/content/supreme-court-rules.

Foreign-Language Interpreter's Ethics

All Georgia-licensed court interpreters are subject to the Code of Professional Responsibility for Interpreters: coi.georgiacourts.gov/content/supreme-court-rules.

Foreign-Language Interpreter's Oath

The court should administer an oath prior to the start of court proceedings. Below is an example:

"Do you solemnly swear or affirm that you will faithfully interpret from (the foreign language) into English and from English into (the foreign language) the proceedings before this court in an accurate manner to the best of your skill and knowledge?"

Resources

Georgia Supreme Court Rule on Interpreters

coi.georgiacourts.gov/content/supreme-court-rules

"Is It Reversible Error?" *Georgia Courts Journal* (March 2015)

w2.georgiacourts.gov/journal/index.php/march-2015/322-is-it-reversible-error

Georgia Council of State Court Judges 2016 Benchbook, Chapter on Appointing Qualified Interpreters (appropriate for all trial courts)

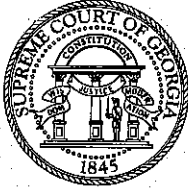
statecourt.georgiacourts.gov/content/chapter-1-1-appointing-qualified-interpreters

National Association of Judiciary Interpreters & Translators Code of Ethics and Professional Responsibilities

www.najit.org/about/NAJITCodeofEthicsFINAL.pdf

Federal Interagency Website on Limited English Proficiency

www.fep.gov/



WORKING WITH DEAF OR HARD OF HEARING PERSONS AND SIGN LANGUAGE INTERPRETERS IN THE COURTROOM

— A Bench Card for Judges —

The Law on Sign Language Interpreters for Participants in Court Proceedings

Under the Americans with Disabilities Act (ADA) and state law (O.C.G.A. § 24-6-650 to 658), Georgia courts must provide auxiliary aids or services – such as qualified sign language interpreters – to participants in court proceedings who are deaf or hard of hearing (DHH). They must provide these aids or services when necessary to ensure effective communication by and with DHH participants. DHH participants can include litigants, witnesses, and spectators. Court proceedings include all court services, programs, and activities. DHH participants:

- Cannot be required to arrange or pay for their own interpreters;
- Must be provided an interpreter for any criminal or civil proceeding;
- Can waive their right to an interpreter if the waiver is in writing and it is approved by the court;
- Do not waive their right to an interpreter simply because they do not request an interpreter.

Establishing the Communication Preference of the Participants

The court must ask DHH participants to identify the type of reasonable accommodation needed.¹ If a request for an interpreter is not made, but the participants could benefit from the services of an interpreter, the judge should address the need on the record:

- “Please tell the court your name.”
- “You have the right to participate and understand these proceedings. Tell the court the best way to communicate with you, so you know what is being said.”
- “Do you need an interpreter?”
- Do not waive their right to an interpreter simply because they do not request an interpreter.

Finding a Qualified Foreign-Language Interpreter

The Registry for Interpreters for the Deaf (RID), the national certification organization for all sign language interpreters, has a searchable database of certified members on its website, www.rid.org

Credentials of Sign Language Interpreters

An ability to sign does not equate to being able to interpret. To effectively communicate, the interpreter must possess the necessary skills to process spoken language into equivalent sign language and to process sign language into equivalent spoken language. Family members or friends of DHH participants should never be called upon to interpret court proceedings. Court personnel should not function as interpreters unless they are certified and employed as staff interpreters.

A court official or designee should assess an interpreter’s qualifications prior to scheduling the interpreter’s appearance in court. To be recognized as qualified in Georgia, an interpreter must hold a current certification from the Registry of Interpreters for the Deaf (RID). For legal proceedings, courts should first try to use certified sign language interpreters who hold this credential:

- SC:L (Specialist Certificate: Legal) *Preferred and recommended credential based on demonstrated specialized knowledge of legal system, language, and settings.*

If an SC:L interpreter cannot be located, interpreters with these RID certifications may also be used. However, it is recommended that they have additional specialized training in legal interpreting:

- NIC (National Interpreter Certification), Master
- NAD V (National Association of the Deaf: Certification –Master)
- CI and CT (Certificate of Interpretation and Certificate of Transliteration)
- CDI (Certified Deaf Interpreter)
- CSC (Comprehensive Skills Certificate)

If the court is unsure of an interpreter’s qualifications, the court should *voir dire* the interpreter:

Sample Voir Dire to Assess an Interpreter’s Qualifications

- “Are you certified by RID?”
- “What specialized training have you completed?”
- “How long have you been an interpreter?”
- “How many times have you interpreted in court?”
- “Describe the Code of Ethics as it applies to legal interpreters.”
- “How did you learn American Sign Language?”

Additional Considerations When Selecting Sign Language Interpreters

Courts should take additional steps to determine whether a particular interpreter is suited to work in a court setting. Some considerations could include:

- Prior professional and/or social contact or association with the DHH participants.
- Education, professional training, and formal legal training completed by the interpreter.
- The types of court proceedings in which the interpreter has experience.

(A full list of suggested *voir dire* questions, considerations, and acceptable answers may be requested from the Judicial Council/Administrative Office of the Courts.)

Sign Language Interpreter's Ethics

The Registry of Interpreters for the Deaf and the National Association of the Deaf (NAD) together have enacted a Code of Professional Conduct for interpreters that comprises seven ethical tenets:

1. Adhere to standards of confidential communication.
2. Possess the professional skills and knowledge required for the specific interpreting situation.
3. Conduct themselves in a manner appropriate to the specific interpreting situation.
4. Demonstrate respect for consumers.
5. Demonstrate respect for colleagues, interns, and students of the profession.
6. Maintain ethical business practices.
7. Engage in professional development.

The Code applies to RID's certified and associate members and NAD's certified members; is superseded by any local, state, or federal laws and regulations; and applies to both face-to-face and remote interpretations.

Sign Language Interpreter's Oath

The court should administer an oath prior to the start of court proceedings. Below is an example:

"Do you solemnly swear or affirm that you will interpret accurately, completely and impartially, using your best skill and judgment in accordance with the standards prescribed by law, follow all official guidelines established by this court for legal interpreting, and discharge all of the solemn duties and obligations of legal interpretation?"

Best Practices for Interacting with DHH Persons²

- DHH persons experience differing levels of hearing loss and may prefer varying methods of communication. Ask DHH persons which method they prefer.
- When speaking with DHH persons, whether through a sign language interpreter or not, speak directly to them, look directly at them, and maintain eye contact. Natural facial expressions and gestures will be helpful in facilitating your conversation.
- The role of a sign language interpreter is only to facilitate communication between DHH and hearing people. Therefore, the interpreter should never be asked to participate in any activity other than interpreter for the DHH individual.

Resources

Georgia Supreme Court Rule on Interpreters

col.georgiacourts.gov/content/supreme-court-rules

State of Georgia ADA Coordinator's Office

<http://ada.ga.gov>

Georgia Registry of Interpreters for the Deaf

www.guid.org

Georgia Council for the Hearing Impaired

www.gchil.org

National Association of the Deaf

www.nad.org

Registry of Interpreters for the Deaf/National Assoc. for the Deaf Code of Professional Conduct

http://col.georgiacourts.gov/sites/default/files/col/NAD_RID_ETHICS.pdf

National Association of Judiciary Interpreters & Translators Code of Ethics and Professional Responsibilities

<http://www.najit.org/about/NAJITCodeofEthicsPROF.pdf>

Working with Sign Language Interpreters in Texas: A Bench Card for Judges

<http://www.rsjt.org/ast/bc/adcbenchcardexas.pdf>

U.S. Dept. of Justice/Americans with Disabilities Act

www.ada.gov

¹ As set out in the final ADA Title II rule, "[t]he type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the method of communication used by the individual, the nature, length, and complexity of the communication involved, and the context in which the communication is taking place. In determining what types of auxiliary aids and services are necessary, a public entity shall give primary consideration to the requests of individuals with disabilities." 28 C.F.R. 35.160(b)(2) (analysis).

² Best Practices when Interacting with Persons with Disabilities: A Customer Service Guide for State Government Agencies – Georgia State Financing and Investment Commission, State ADA Coordinator's Office. <http://ada.ga.gov/ast/bc/adcbenchcardexas.pdf>

Is it Reversible Error?

Hits: 394



Due Process and Access to Justice for LEP and DHH Individuals[i]

Jana J. Edmondson-Cooper, Esq.[ii]

In administering justice each day, Georgia's courts face a number of challenges, including ensuring access to justice for limited English proficient (LEP) and Deaf/Hard of Hearing (DHH) litigants. Georgia has ten (10) judicial districts and forty-nine (49) judicial circuits in which approximately 1,400 judges enter their respective courtrooms each day committed to reaching just decisions and ensuring all Georgians have meaningful access to justice. From 1990 to 2000 our national LEP population grew 80 percent, with the Southeastern and Southwestern United States seeing some of the highest growth rates.[iii] Specifically, Georgia ranked among the top ten states (#3) with the largest number of LEP residents.[iv]

Additionally, Georgia ranked among the top ten states (#3) with the sharpest growth - its LEP population growing 379% between 1990 and 2010.[v] The current policy of the State of Georgia requires all courts to provide qualified sign language and foreign language interpreters, without cost, to LEP and DHH litigants and witnesses.[vi] A court's failure to provide qualified interpreters, as needed, in any legal proceeding in Georgia can result in reversible error on appeal.[vii]

Because Georgia has a non-unified court system as well as fiscal and other restraints, our courts face additional challenges with uniformly ensuring language access across our state. However, it is important to note, according to the U.S. Department of Justice (DOJ), that "fiscal pressures are not a blanket exemption from civil rights requirements." [viii] Additionally, the DOJ encourages courts to focus not only on the costs involved with providing interpreters, but the significant costs involved when interpreters are not provided, including the waste of money, time and resources of court staff when cases have to be continued or retried.[ix]

Georgia's current language access policy stems from several federal and state laws, statutes and case law.[x] Title VI of the Civil Rights Act of 1964 prohibits any recipient of federal funding, like Georgia's courts, from discriminating on the basis of a number of protected classes, including national origin.[xi]

Moreover, Title VI requires our courts to provide language access services, at no cost to LEP and DHH litigants.[xii] In 2003, the Supreme Court of Georgia created the Commission on Interpreters (Commission) to secure the rights of non-English speaking persons utilizing the state court system by establishing a statewide plan for the use of interpreters in Georgia courts during the presentation of civil or criminal matters. Subsequently, the Court held that an interpreter must be appointed for those who cannot communicate effectively in English in criminal cases.[xiii] In *Ling* the Court strongly stated that meaningful access to justice must be provided in *all* Georgia courts, including civil courts, for persons who are limited English proficient in order to comply with federal law. Specifically, the Court's opinion stated "vigilance in protecting the rights of non-English speakers is required in all of our courts." [xiv]

The holding in *Ling* resulted in the following general rule being added to the Supreme Court of Georgia

Rule on the Use of Interpreters for Non-English Speaking and Hearing Impaired Persons (hereinafter "Rule")[xv] in May 2011:

The following rules apply to all criminal and civil proceedings in Georgia where there are non-English speaking persons in need of interpreters. See also, *Ling v. State*, 288 Ga. 299 (702 SE2d 881) (2010). *All other court-managed functions including information counters, intake or filing offices, cashiers, record rooms, sheriffs' offices, probation and parole offices, alternative dispute resolution programs, pro se clinics, criminal diversion programs, anger management classes, detention facilities and other similar offices, operations and programs,* shall comply with Title VI of the Civil Rights Act of 1964. (Emphasis Added)

Additionally, Georgia's language access policy affords specific protections for DHH litigants/witnesses generally[xvi] and LEP and DHH litigants/witnesses involved in cases brought under Georgia's Family Violence Act, O.C.G.A. § 19-13-1 *et seq.*, in particular.[xvii] The fact that a litigant or witness, for whom English is a second language, knows some English does not prevent him or her from being entitled to a court-appointed interpreter.[xviii]

Despite the rulings in *Ling* and *Ramos v. Terry*[xix] and the 2011 amendment to the Rule, LEP and DHH individuals are inconsistently provided with qualified interpreters in Georgia courts. Courts are encouraged to consider that the risks involved in appointing an unqualified interpreter or no interpreter at all include the case being reversed or remanded on appeal. According to the National Association of Judicial Interpreters and Translators (NAJIT), the primary interpreter issues on appeal include 1) failure to appoint an interpreter; 2) ineffective assistance of counsel; 3) bias and conflict of interest; 4) confidentiality; 5) appointment of uncertified interpreters; 6) bilingual attorneys serving as interpreters; 7) "borrowed interpreters" and 8) accuracy of interpretation.[xx] Based on the review and analysis of several hundred appellate opinions from across the country, according to NAJIT, it has been concluded that the majority of issues raised on appeal are procedural and beyond the interpreter's control.[xxi] Additionally, according to NAJIT, objections to interpreting errors must be made during the proceedings and preserved for the record and many interpreting issues are in fact resolved at the trial court level.[xxii] Errors not preserved on the record cannot be raised on an appeal to which the "abuse of discretion" standard applies.[xxiii] Review under the "plain error" standard is far more stringent, and for the appeal to succeed a showing must be made of a substantial violation of the fundamental right to a fair trial.[xxiv]

Specifically, the Supreme Court of Georgia has held "a court abuses its discretion when it selects an interpreter who is not qualified, sworn, and impartial. *Gopar-Santana v. State*, 862 So.2d 54 (Fla.App.2003)."[xxv] In *Ramos*, the Court also noted that "in the case at bar, the habeas court quickly determined Ramos was in need of an interpreter and sought the services of an interpreter who had a history of satisfactory participation in court proceedings. When that interpreter proved unavailable, the habeas court, concerned about inconvenience to the sole witness, resorted to using a prison employee whose qualifications to serve as an interpreter were her ability to speak Spanish and her presence." [xxvi] Furthermore, "no information about her background in language skills, e.g., whether she was a native of a country where Spanish is spoken, whether she was fluent in English, whether she previously had translated in a court proceeding, whether she had taken and passed the interpreter exams administered by Georgia or another state, whether the Spanish she spoke was compatible with the Spanish spoken by Ramos, and her professional standing in the interpreter community, was obtained before the habeas court decided to appoint her as the interpreter in this matter . . . following her appointment, the prison employee/interpreter was not given the suggested instructions on interpreting in a courtroom setting and her understanding of the interpreter's role was not verified, and she was not required to agree in writing to comply with the court interpreters' code of professional responsibility." [xxvii] Consequently, the Court concluded in *Ramos* that "it is an abuse of discretion to appoint someone to serve as interpreter who is neither certified nor registered

as an interpreter without ensuring that the person appointed is qualified to serve as an interpreter, without apprising the appointee of the role s/he is to play, without verifying the appointee's understanding of the role, and without having the appointee agree in writing to comply with the interpreters' code of professional responsibility." [xxviii] Ramos also highlighted that the failure to interpose a timely objection to an interpreter's qualifications constitutes a waiver of the issue on appeal. [xxix]

Licensed interpreters in Georgia are not only trained on technical interpreting skills but also their ethical obligations. Their ethical obligations include interpreting completely and accurately, maintaining impartiality and maintaining confidentiality. [xxx] Currently the Commission has three licensing designations for legal interpreters in Georgia – Certified, Conditionally Approved and Registered. [xxxi] Courts are required to make a diligent effort to appoint interpreters from the Certified category first. [xxxii] It is intended that interpreters from the Conditionally Approved category will be appointed only after a diligent search for a Certified interpreter has been made and none is available. [xxxiii] Likewise, it is intended that an interpreter from the Registered category will only be appointed if no Certified or Conditionally Approved interpreter is available. [xxxiv]

The Commission recognizes that there will be instances when courts will need to use a telephonic or other less-qualified interpreter. In those instances, courts are encouraged to reference the Commission's *Instructions for Use of Non-Licensed Interpreters* and make a diligent effort to ensure a licensed interpreter is secured for any future legal proceedings associated with the case. [xxxv] It is important to note that while telephonic interpreters are often very helpful, especially in rural areas where access to qualified interpreters is limited, telephonic interpreters are best suited for when no certified or other qualified interpreter is available in-person. [xxxvi] Telephonic interpreters are also best suited for legal proceedings of short duration. [xxxvii] Additionally, according to NAJIT, telephone interpreting can be problematic in some circumstances. [xxxviii] For example, if individuals are hard of hearing or elderly, or struggling with mental illness, telephone interpreting can be too confusing. [xxxix] It is also important to consider that interpreters accessed through commercial services may not necessarily be specialists in legal interpreting specifically. [xli] When a non-licensed or other less-qualified interpreter is used, it is recommended that the decision maker personally verify a basic understanding of the interpreter's role on the record. [xlii] The term "decision maker" includes judges, magistrates, special masters, commissioners, hearing officers, arbitrators, neutrals or mediators. [xliii] Additionally, when the use of a non-licensed interpreter is necessary, courts are reminded that it is not appropriate to use children, family or friends of an LEP or DHH individual. [xliv] Furthermore, it is inappropriate for bilingual attorneys, judges, bailiffs or other court personnel to serve as interpreters during a legal proceeding. [xlv] When faced with a need, where no interpreter is available locally, courts should weigh the need for immediacy in conducting a hearing against the potential compromise of due process, or the potential of substantive injustice, if interpreting is inadequate. [xlv] Unless immediacy is a primary concern, some delay might be more appropriate than the use of a telephonic language service or other less-qualified interpreter. [xlvi]

Courts may find themselves in situations where the LEP or DHH individual insists on using a friend or family member in lieu of a qualified court-appointed interpreter. In this instance, the court is encouraged to still appoint a qualified interpreter who can monitor the non-licensed interpreter's competency and accuracy. Courts may also find themselves in a situation where all parties involved have stipulated to the use of a non-licensed interpreter. When faced with this situation, courts are encouraged to remind the parties that the court has a legal obligation to make a diligent search for a licensed interpreter, and appoint one if available, before the use of a non-licensed interpreter may be considered. [xlvii]

Lastly, courts may also find themselves in a situation where there is a bilingual attorney of record on the case who speaks the same language as his or her client or the opposing party. As previously

mentioned, it is inappropriate for a bilingual attorney to also serve as an interpreter in his or her own case. In addition to the attorney likely not being licensed to interpret, the roles of attorney and interpreter are largely antithetical. For example, an attorney has an ethical obligation to represent his or her client's interests. Conversely, an interpreter is ethically bound to be impartial. Furthermore, professional interpreters are ethically required to avoid having undue contact with witnesses, parties, attorneys and jurors before, during and until the case is concluded.[xlviii] Conversely, an attorney is ethically bound to communicate effectively with his or her client, which requires frequent attorney/client communication before, during and until the case is concluded.[xlix]

Additionally, the U.S. Department of Justice has noted that "it is critically important to ensure that interpreters are competent and *not merely bilingual*. A bilingual person may inaccurately interpret or roughly interpret a summary of communications between the court and an LEP person, they may have a conflict of interest, or they may even be adverse. Under these circumstances, an LEP person is denied meaningful access to court operations in a way that a fluent English speaker is not. The [U.S.] DOJ Guidance emphasizes the importance of interpreter competency and states: 'Competency requires more than self-identification as bilingual. Some bilingual staff and community volunteers, for instance, may be able to communicate effectively in a different language when communicating information directly in that language, but not be competent to interpret in and out of English.' [U.S.] DOJ Guidance, 67 Fed. Reg. at 41,461." [i]

Language access stakeholders are not limited to members of the bench and court personnel. Attorneys also play a vital role in protecting the rights of LEP and DHH individuals. In civil cases, courts and attorneys are required to provide advanced notice of the use of/need for an interpreter to all parties and the decision maker as soon as practicably possible.[ii] To promote judicial efficiency, courts and attorneys are strongly encouraged to provide advanced notice to all parties and the decision maker in all other types of cases including but not limited to criminal and administrative.

In addition to its regulatory duties, the Commission is available to all Georgia courts to assist with language access needs or concerns. Courts are encouraged to contact Commission staff if they are having a difficult time finding an interpreter.[iii] The Commission may be able to assist in finding a qualified individual with the right language and skill set.[iiii] Furthermore, the Commission may also be able to provide guidance to the court on how to budget and allocate the interpreter's time and resources.[liv] For example, the Commission may be able to assist the court with assessing, on a case by case basis, whether it would be effective to use some remote or telecommunications services for the preliminary hearings and save the in-person interpreter for the more evidentiary hearings.[v]

Georgia is considered a leader in language access, largely because of our current Supreme Court rule (which is more comprehensive than many other jurisdictions) as well as the trailblazing work of our Judicial Council/Administrative Office of the Courts (AOC) both statewide and nationally. Through continued collaboration with local courts, trial court councils, court administrators and other pertinent stakeholders, the Commission and AOC endeavor to continue to work toward developing effective solutions to language access challenges in our legal system. The Commission welcomes feedback from all stakeholders so that Georgia may continue its leadership in this area and ensure due process and access to justice for LEP and DHH individuals.

[i] The views expressed herein are based on interpretations of cited authority and may not reflect the views

of the Supreme Court or the Commission on Interpreters.

[ii] Ms. Edmondson-Cooper, a member of the Supreme Court of Georgia Commission on Interpreters, is a Bilingual Staff Attorney with Georgia Legal Services Program. Ms. Edmondson-Cooper draws upon her past experience as a professional legal interpreter and current role as a bilingual legal services attorney to engage in strategic access to justice advocacy, including but not limited to contributing to the development of statewide and national curricula for training attorneys and judges on language access as an access to justice issue as well as the development of local, state and federal language access policies. Further details about her advocacy may be found at www.linkedin.com/in/jjecesq/ .

[iii] Pandya, Chhandasi, Jeanne Batalova, and Margie McHugh. 2011. "Limited English Proficient Individuals in the United States: Number, Share, Growth, and Linguistic Diversity." Washington, DC: Migration Policy Institute. *available at* <http://www.migrationinformation.org/integration/LEPdatbrief.pdf> (Last visited February 5, 2015).

[iv] *Id.*

[v] *Id.*

[vi] *See*, Supreme Court of Georgia Rule for the Use of Interpreters for Non-English Speaking and Hearing Impaired Persons (hereinafter "Rule"), Appendix A (II) *available at* http://w2.georgiacourts.org/coi/files/Rule%20on%20Interpreters%20-%20FINAL_JULY.pdf (Last visited February 5, 2015). *See also*, Georgia Administrative Office of the Courts – Committee on Access and Fairness in the Courts, *available at* <http://www.georgiacourts.org/index.php/aoc/directors-office/committee-on-access-and-fairness-in-the-courts/95> . (Last visited February 5, 2015) *See also*, O.C.G.A. §§ 24-6-652 through 658; 15-6-77(e)(4).

[vii] *See, Ling v. State*, 288 Ga. 299; 702 S.E.2d 881 (2010); *See also, Ramos v. Terry*, 279 Ga. 889, 622 S.E.2d 339 (2005) (holding the use of qualified interpreters is necessary to preserve meaningful access to the legal system for persons who speak and understand only languages other than English).

[viii] *See, U.S. DOJ Letter to NC Administrative Office of the Courts, p. 2 (March 8, 2012) available at* http://www.justice.gov/crt/about/cor/TitleVI/030812_DOJ_Letter_to_NC_AOC.pdf (Last visited February 5, 2015). Additionally, the DOJ stated "any focus only on the financial costs of providing additional interpreter services ignores the significant fiscal and other costs of non-compliance with the AOC's obligation to take reasonable steps to ensure access to court operations for LEP individuals. It costs money and time to handle appeals and reversals based on the failure to ensure proper interpretation and effective communication. Similarly, delays in providing interpreters often result in multiple continuances, which needlessly waste the time and resources of court staff. And ineffective communication deprives judges and juries of the ability to make reliable decisions; renders victims, witnesses, and defendants effectively absent from proceedings that affect their rights; and causes other significant costs in terms of public safety, child welfare, and confidence in the judicial system." *Id.* at p. 3.

[ix] *Id.*

[x] *See, Lau v. Nichols*, 444 U.S. 563 (1974); *See also*, Executive Order 13166, 65 F.R. 50121(2000); *See also*, O.C.G.A. §§ 24-6-652 through 658; 15-6-77(e)(4).

[xi] 42 U.S.C. § 2000d.

[xii] *Id.*

[xiii] See, *Ling v. State*, 288 Ga. 299; 702 S.E.2d 881 (2010); See also, *Ramos v. Terry*, 279 Ga. 889, 892 (2005)(holding the use of qualified interpreters is necessary to preserve meaningful access to the legal system for person who speak and understand only languages other than English).

[xiv] See, *Ling v. State*, 288 Ga. 299; 702 S.E.2d 881, 884 (2010).

[xv] See, *supra*, Endnote 5 at Appendix A.

[xvi] See, O.C.G.A. §§ 24-6-652 through 658.

[xvii] See, O.C.G.A. § 15-6-77(e)(4).

[xviii] Rule, Appendix A (II)(B).

[xix] 279 Ga. 889 (2005).

[xx] Benmaman, Virginia, *Interpreter Issues on Appeal*, PROTEUS Vol. IX, No. 4 -- FALL 2000 available at <http://www.najit.org/certification/FAQarticleBenmaman.htm> (Last visited February 12, 2015).

[xxi] *Id.*

[xxii] *Id.*

[xxiii] *Id.*

[xxiv] *Id.*

[xxv] *Ramos*, 279 Ga. 889, 893 (2005).

[xxvi] *Id.* at 892.

[xxvii] *Id.* at 892.

[xxviii] *Id.* At 892.

[xxix] *Id.* at 893.

[xxx] See, Interpreter Code of Professional Responsibility, Standard VI (Interpreters shall interpret accurately and faithfully without indicating any personal bias. In doing so, interpreters shall: (A) Preserve the level of language used and the ambiguities and nuances of the speaker without editing; (B) Request clarification of ambiguous statements or unfamiliar vocabulary from the judge or counsel; (C) Refrain from expressing personal opinion in a matter before the court; and (D) Promptly notify the court of any error in their interpretation). See also, Standard VII (Interpreters shall maintain impartiality by avoiding undue contact with witnesses, attorneys, interested parties, and jurors before, during and until the case is concluded) available at <http://w2.georgiacourts.gov/coi/files/Code%20of%20Professional%20Responsibility%20for%20Interpreters.doc> (Last visited February 5, 2015).

[xxxi] See, Rule at Appendix B (II)(A)-(C) . The Commission maintains a registry of all foreign language

interpreters in Georgia licensed by the Commission as well as licensed American Sign Language interpreters. The registry is available at http://w2.georgiacourts.org/coi/index.php?option=com_content&view=article&id=47&Itemid=71 (Last visited February 5, 2015).

[xxxii] *Id.*

[xxxiii] *Id.*

[xxxiv] *Id.*

[xxxv] Direct Link: [http://w2.georgiacourts.org/coi/files/model%20form\(1\).doc](http://w2.georgiacourts.org/coi/files/model%20form(1).doc). (Last visited February 5, 2015). See also, *Rule*, Appendix A (II)(F)

[xxxvi] See, *National Association of Judicial Interpreters & Translators (NAJIT) Position Paper-Telephone Interpreting in Legal Settings* (February 2009) available at <http://www.najit.org/documents/Telephone%20Interpreting.pdf> (Last visited February 23, 2015).

[xxxvii] *Id.*

[xxxviii] *Id.*

[xxxix] *Id.*

[xl] *Id.*

[xli] *Rule*, Appendix A (II)(F) Commentary.

[xlii] *Rule*, Appendix A (II)(A).

[xliii] GA Administrative Office of the Courts Brochure: *Working with Foreign Language Interpreters in the Courtroom* available at http://w2.georgiacourts.org/coi/index.php?option=com_content&view=article&id=94&Itemid=104 (Last visited February 5, 2015).

[xliv] *Id.*

[xlv] *Rule*, Section I.

[xlvi] *Id.*

[xlvii] If any interpreter, other than a Certified interpreter, is used, Courts are required to make an audio or audio-visual recording of all non-English testimony. *Rule*, Section VII (A)-(B).

[xlviii] See *also*, Interpreter Code of Professional Responsibility, Standard VII (Interpreters shall maintain impartiality by avoiding undue contact with witnesses, attorneys, interested parties, and jurors before, during and until the case is concluded) available at <http://w2.georgiacourts.org/coi/files/Code%20of%20Professional%20Responsibility%20for%20Interpreters.doc> (Last visited February 5, 2015).

[xlix] See, Georgia Rules of Professional Conduct (GRPC) Rule 1.4 available at <http://www.gabar.org/barrules/georgia-rules-of-professional-conduct.cfm> (Last visited February 5, 2015).

[i] See, U.S. DOJ Letter to NC Administrative Office of the Courts, p. 9 (March 8, 2012) available at http://www.justice.gov/crt/about/cor/TitleVI/030812_DOJ_Letter_to_NC_AOC.pdf (Last visited February 5, 2015).

[ii] Rule, Appendix (A)(IV)(B).

[iii] Supreme Court of Georgia Commission on Interpreters- Administrative Office of the Courts, 244 Washington Street, SW - Suite 300, Atlanta, Georgia 30334 / E-mail: coi@gaaoc.us / Telephone: (404) 463-6478 / Fax: (404) 651-6449 / Website: <http://w2.georgiacourts.org/coi/> A full list of current Commission staff is available on the Commission website.

[liii] Edmondson-Cooper, Jana J., "Justice Melton in Q&A on Language as a Barrier to Access," Daily Report (February 19, 2014) available at <http://www.dailyreportonline.com/id=1202643381739/Justice%20Melton%20in%20Q%20%20A%20on%20Language%20as%20A%20Barrier%20to%20Access?mcode=1202617074542&curindex=3&curpage=ALL> (Last visited February 12, 2015); Also available at <http://www.gisp.org/2014/02/19/justice-melton-answers-questions-from-gisp-on-language-access-in-the-courts/> (Last visited February 12, 2015).

[liv] *Id.*

[lv] *Id.*

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Supreme Court of Georgia Commission on Interpreters Creates New Model Protocol Addressing Language Barriers in Georgia Courts

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Supreme Court of Georgia Commission on Interpreters Creates New Model Protocol Addressing Language Barriers in Georgia Courts

September 1, 2020

Atlanta, GA – Thanks to a \$15,000 technical assistance grant awarded by the National Center for State Courts (NCSC) and the State Justice Institute (SJI) in 2015, the Supreme Court of Georgia Commission on Interpreters developed a “Model Administrative Protocol” or MAP, the first of its kind in Georgia and widely believed to be the first of its kind in any non-unified court system in the nation. Justice Keith Blackwell, who serves as Chair to the Commission on Interpreters, said, “This newly developed model protocol was developed to ensure persons who are limited English proficient (LEP) or Deaf/Hard of Hearing (DHH) have unhindered access to justice.”

The Commission’s MAP is part of a larger national initiative supported by NCSC and SJI to help state courts meet their obligation of providing interpreters and other language assistance services. The Judicial Council of the State of Georgia endorsed the MAP unanimously as a model guide for all Georgia courts. The MAP has been distributed statewide and published on the Commission’s website. “Georgia courts have been and continue to be committed to improving access, promoting equity, and preserving justice,” said Jana J. Edmondson-Cooper, an attorney and member of the Commission, who initiated and led the development of the MAP. “The MAP has been made available to our courts at a critical time, as Georgia courts – like their counterparts across the nation –, work diligently to continue serving Georgians during a global pandemic,” said Edmondson-Cooper.

The NCSC issued guidance recently regarding remote court operations and access to justice considerations during COVID 19. Regarding LEP litigants and litigants with disabilities, the NCSC noted, “people with disabilities, with limited English proficiency, or with limited access to technology are still entitled to the use of the court system, even in a time of crisis. Planning should center them because decisions made that allow their continued use of the court will also necessarily result in conditions that improve the experience for all court patrons.” Edmondson-Cooper said, “the MAP does exactly that – it is an available resource tool Georgia courts may utilize to assess and address access to justice challenges as courts continue remote operations and make plans to re-open once it is safe.” The MAP, which is easily adapta

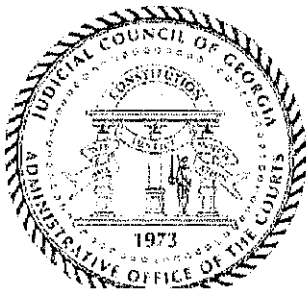
non-unified court systems in the country as they address their own access to justice challenges involving LEP and DHH court participants.

In the coming months, Commission members and staff will provide training to stakeholders on how adopting the MAP can help bridge communication barriers and create sustainable language access plans. The Commission extends special gratitude to the Cobb Judicial Circuit for being long-time access to justice leader and serving as the first circuit to adopt the MAP during its pilot phase in 2018.

The Georgia Commission on Interpreters is the policy-making body appointed by the Georgia Supreme Court to oversee the development of a statewide plan for the use of interpreters in Georgia courts during the presentation of civil or criminal matters. The Commission is composed of judges, lawyers, non-lawyers, legislators, court administrators, and interpreters.

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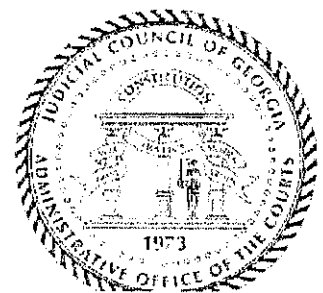


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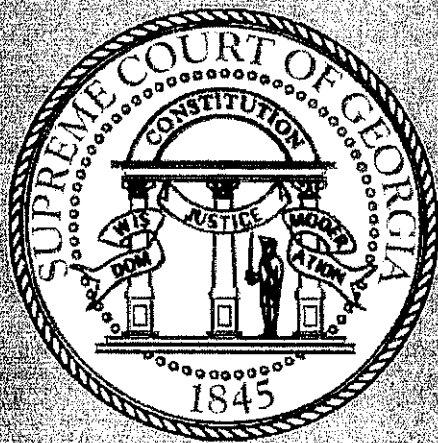
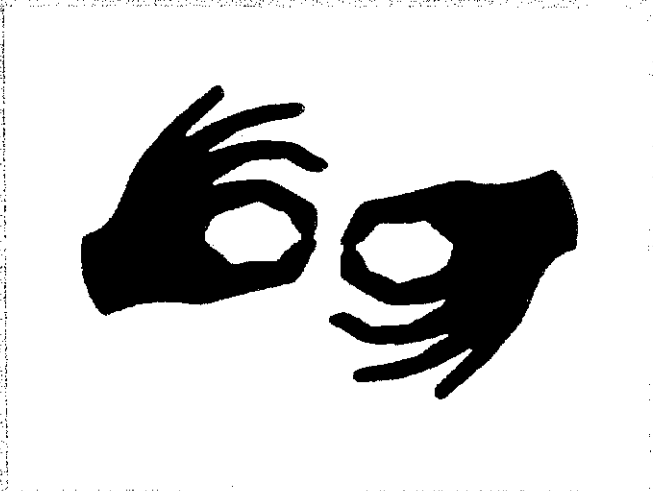
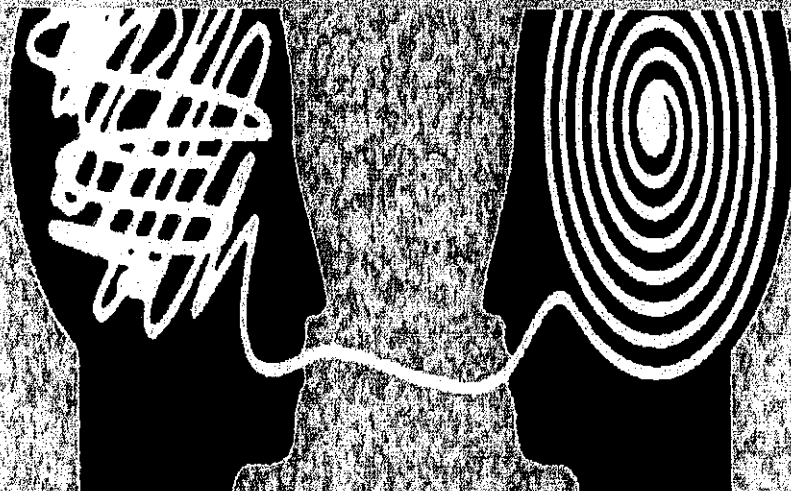
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Supreme Court of Georgia Administrative Procedures

Model Administrative Protocol

for the Provision of Language Assistance Services to Limited English Proficient and
Deaf/Hard of Hearing Persons in Georgia Courts





Judicial Council of Georgia Administrative Office of the Courts

Chief Justice Harold D. Melton

Cynthia H. Clanton

As Chair of the Judicial Council of Georgia, I am pleased to present this Model Administrative Protocol for the Provision of Language Assistance Services for Limited English Proficient and Deaf/Hard of Hearing Persons in Georgia Courts (MAP). Developed by the Supreme Court Commission on Interpreters with assistance from the National Center for State Courts and State Justice Institute, the MAP is a comprehensive, step-by-step guide to the provision of language assistance services to parties, witnesses, victims, and other participants in judicial proceedings and court-managed programs. In recognition of the varying circumstances of courts throughout Georgia, the MAP is fully customizable to accommodate local needs. The MAP reflects Georgia's ongoing commitment to access to justice for all, and it is our hope that it will promote the reliable and efficient provision of language assistance services as required by Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, and Georgia law.

I encourage all Georgia courts to consider adopting the MAP as modified to accommodate local needs. The Commission on Interpreters and Administrative Office of the Courts stand ready to assist any local court with adoption, customization, and implementation of the MAP. I thank all who worked to make the MAP possible and encourage all Georgia Courts to use this comprehensive resource tool.

Sincerely,

Harold D. Melton

Chief Justice of the Supreme Court

Supreme Court of Georgia Commission on Interpreters

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Justice Sarah H. Warren (Co-Chair)

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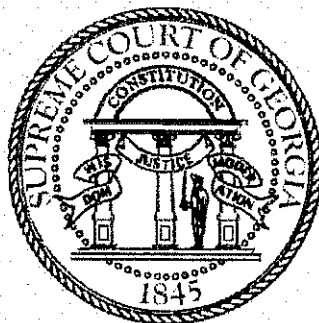
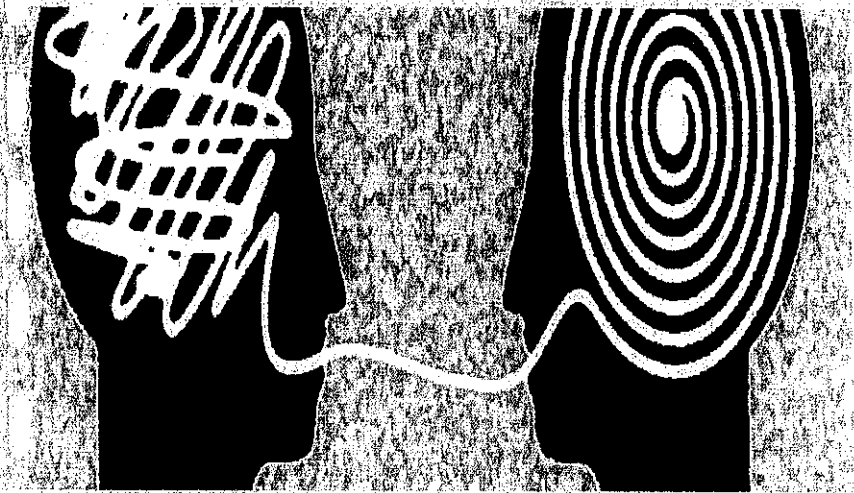
Acknowledgements:

The Commission on Interpreters (Commission) extends gratitude to the National Center for State Courts and State Justice Institute for the grant awarded to the Commission in May 2015, without which, the Model Administrative Protocol's development would not have been possible. We thank each judge, court administrator, attorney, interpreter, community organization, and access to justice stakeholder that provided feedback. We thank especially the following access to justice stakeholders for their invaluable insight:

Judicial Council of Georgia /Administrative Office of the Courts

Judicial Council of Georgia Access to Justice Committee

Georgia Council of Superior Court Judges	Georgia Council of State Court Judges
Georgia Council of Magistrate Court Judges	Georgia Council of Municipal Court Judges
Georgia Council of Probate Court Judges	Georgia Council of Juvenile Court Judges
Georgia Council of Court Administrators	Georgia Legal Services Program
Atlanta Assoc. of Interpreters and Translators	Georgia Registry of Interpreters for the Deaf
State of Georgia ADA Coordinator's Office	Macon Judicial Circuit
Northern Judicial Circuit	Duluth Municipal Court
Middle Judicial Circuit	Cobb Judicial Circuit



Companion to the Model Administrative Protocol *Template* for the Provision of Language Assistance Services to Limited English Proficient and Deaf and Hard of Hearing Persons in the Georgia Courts

Developed By:

Supreme Court of Georgia Commission on Interpreters MAP Development Committee

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I. Introduction

The purpose of the Model Administrative Protocol (MAP) is to provide Georgia courts with a standardized guide for the administrative handling of the provision of court interpreters as a language access resource in the local courts. The MAP applies to the provision of language assistance services, including interpreters, for limited English proficient (LEP) court users and those who are deaf or hard of hearing (DHH). It is important to note that courts have certain obligations to all persons with sensory/communication disabilities (beyond foreign language or the deaf/hard of hearing). Courts are strongly encouraged to review the Judicial Council of Georgia Access to Justice Committee's *A Meaningful Opportunity to Participate: A Handbook for Georgia Court Officials on Courtroom Accessibility for Individuals with Disabilities (2017 Edition)* (hereafter "ADA GA Judicial Handbook 2017")¹ as well as the Committee's *A Meaningful Opportunity to Participate: A Mental Illness and Cognitive Disabilities Companion Guide to the Handbook for Georgia Court Officials on Courtroom Accessibility for Individuals with Disabilities*² to understand their obligations in providing fair and equal access to persons needing accommodations.

The MAP is provided as a template, for guidance purposes, that courts are encouraged to use or modify in any way they deem appropriate based on local needs and resources. Should courts decide to create their own administrative protocol, they can do so while still benefiting from the guidance and language access resources the MAP provides.³

This document serves as a companion to the MAP Template, and describes Georgia law and policy regarding the language access services in the courts and best practices in the provision of those services. It proposes guidance for courts in a manner that takes into account the great diversity among the ten judicial districts in our state while complying with Georgia law and federal law with regard to the provision of language access services in the Georgia courts.

The MAP Template and this Companion use certain common concepts as defined below (in alphabetical order):

Alternative Dispute Resolution (ADR) – alternatives to traditional litigation, including mediation, non-binding arbitration, and case evaluation.⁴

¹ Also available directly in PDF format at [http://a2j.georgiacourts.gov/sites/default/files/afptc/ADA Judicial Handbook 2017 Oct-Update.pdf](http://a2j.georgiacourts.gov/sites/default/files/afptc/ADA%20Judicial%20Handbook%202017%20Oct-Update.pdf). (Note: The Judicial Council's Access to Justice Committee was formerly known as the Access, Fairness, Public Trust and Confidence Committee.)

² Also available directly in PDF format at [http://a2j.georgiacourts.gov/sites/default/files/afptc/ADA Judicial Handbook 2017 files/A Meaningful Opportunity to Participate Accessible pdf final.pdf](http://a2j.georgiacourts.gov/sites/default/files/afptc/ADA%20Judicial%20Handbook%202017%20files/A%20Meaningful%20Opportunity%20to%20Participate%20Accessible%20pdf%20final.pdf).

³ Appendix A provides a list of Georgia language access resources identified throughout this MAP.

⁴ See, [Georgia Commission on Dispute Resolution \(www.godr.org\)](http://www.godr.org).

Bilingual (and Multilingual) Staff⁵ – staff proficient in English and a second (or more) language(s), and able to communicate effectively and accurately, orally and in writing, in all working languages. The language proficiency of bilingual and multilingual staff should be determined by the court through valid assessment tools,⁶ rather than reliance on a staff person’s self-evaluation.

Deaf or Hard of Hearing (DHH) – any person whose hearing is totally impaired or whose hearing is so seriously impaired as to prohibit him or her from understanding oral communication when spoken in a normal conversational tone. Pursuant to guidance from the National Association of the Deaf, DHH is the preferred term over “hearing impaired,” which is widely considered to be pejorative within Deaf culture.⁷

Deaf Interpreter – a specialist, who is deaf, who provides interpreting, translation, and transliteration services in American Sign Language (ASL) and other visual and tactual communication forms used by persons who are deaf, hard of hearing, and deaf-blind. Deaf interpreters most often work in tandem with hearing sign language interpreters. The National Consortium of Interpreter Education Center (NCIEC) studies indicate that in many situations, use of a deaf interpreter enables a level of linguistic and cultural bridging that is often not possible when hearing ASL-English interpreters work alone.

Decision Maker – includes judges, magistrates, special masters, commissioners, hearing officers, arbitrators, neutrals, and mediators.⁸

Interpretation – the process of rendering verbal communications from one language (source language) into another language (target language) effectively, accurately, and impartially. Interpreting effectively and accurately means rendering any specialized vocabulary precisely so that the meaning of the communication is clear and conceptually correct in the target language. Additionally, interpreting effectively, accurately, and impartially means correctly expressing the voice, tone, emotion, and non-spoken message of the communication audibly and/or visually. The person who performs this task is an *interpreter*.

Licensed Interpreter – any person on the Certified foreign-language interpreter registry of the Supreme Court of Georgia Commission on Interpreters (Commission); any person on the

⁵ For purposes of the MAP and this Companion document, the term “bilingual staff” includes staff who may be multilingual and fully proficient in more than two languages.

⁶ Courts may develop their own assessment tools and/or utilize tools or standards developed by other organizations such as the Oral Proficiency Interview (OPI) administered by Language Testing International (and utilized for licensing Registered interpreters in Georgia) and the Interagency Language Roundtable (ILR).

⁷ National Association of the Deaf, Frequently Asked Questions, “What is wrong with the terms “deaf-mute,” “deaf-dumb,” or “hearing-impaired?”

⁸ See, *Supreme Court of Georgia Rules: Use of Interpreters for Non-English Speaking and Hearing Impaired Persons (Rules)*, Appendix A, II (A).

Commission's Conditionally Approved foreign-language interpreter registry;⁹ any person on the Commission's Registered foreign-language interpreter registry; or any person certified through the Registry of Interpreters for the Deaf (RID), National Association of the Deaf (NAD), or other industry-recognized credentialing entity. The Commission extends reciprocity to foreign-language interpreters licensed by any active member state of the Council of Language Access Coordinators (CLAC),¹⁰ or by the Administrative Office of the United States Courts through its Federal Court Interpreter Certification Examination (FCICE).

Limited English Proficient (LEP) – any person who speaks English “less than very well,” cannot readily understand or communicate in spoken English, and who consequently cannot equally participate in or benefit from the proceedings without an interpreter to assist him or her. The fact that a person for whom English is not a primary language knows some English does not mean that person does not need an interpreter or should not be allowed to have an interpreter.

Non-Licensed Interpreter – any person not licensed by the Commission through its established licensing requirements or through licensing reciprocity considerations as mentioned above in the definition of “Licensed Interpreter.” Any person not certified through RID, NAD, or other industry-recognized credentialing entity mentioned in the definition of “Licensed Interpreter.”

Qualified Interpreter – a person who is able to orally interpret effectively, accurately, and impartially. Interpreting effectively and accurately means rendering any specialized vocabulary precisely so that the meaning of the communication is clear and conceptually correct in the language into which it is interpreted. Interpreting effectively, accurately, and impartially also means correctly expressing the voice, tone, emotion, and non-spoken message of the communication audibly and/or visually. A qualified interpreter will also be knowledgeable of and abide by industry-recognized ethical and professional standards of conduct for interpreters.

NOTE: Per O.C.G.A. § 24-6-651 (6), a *qualified* sign language interpreter means “any person certified as an interpreter for hearing impaired persons by the Registry of Interpreters for the Deaf or a court qualified interpreter.”

NOTE: Per O.C.G.A. § 24-6-651 (2), a *court qualified* sign language interpreter means “any person licensed as an interpreter for the hearing impaired pursuant to Code Section 15-1-14.”

Qualified Translator – a person who can translate written text effectively, accurately, and impartially. A qualified translator preserves the tone and level of language used in both languages, renders specialized vocabulary precisely so that the meaning of the written communication is clear and conceptually correct, and abides by industry-recognized ethical and professional standards of conduct for translators.

⁹ The interpreter registry maintained by the Commission may be found at <https://gcr.onegovcloud.com/public/directory/#/>.

¹⁰ Formerly known as the Consortium for Language Access in the Courts.

Registry of Interpreters for the Deaf (RID) – a national membership organization that plays a leading role in advocating for excellence in the delivery of interpretation and transliteration services between people who are deaf or hard of hearing and people who use spoken language. In collaboration with the Deaf community, RID supports members and encourages the growth of the profession through the establishment of a national standard for qualified sign language and deaf interpreters and transliterators, ongoing professional development and adherence to a code of professional conduct.

Source Language – the native or primary language of the individual initiating the verbal communication. For written documents, the language of the original document that requires translation. *Example:* Attorney (English speaking), through an interpreter, asks the witness (Spanish speaking) a question. English is the source language. Birth record (in Spanish) needs translation into English. Spanish is the source language for the translation.

Specialist Certificate: Legal (SC:L) – holders of this specialist RID certification have demonstrated specialized knowledge of legal settings and greater familiarity with language used in the legal system. These persons are recommended for a broad range of assignments in the legal setting. (This credential has been available since 1998, but was placed under moratorium by RID as of January 1, 2016. The SC:L credential remains fully recognized by RID, but the designation is not currently available to persons who do not already have it.)¹¹

Target Language – the language into which the verbal communication needs to be interpreted. For written documents, the language into which the original document needs translating. *Example:* Attorney (English speaking), through an interpreter, asks the witness (Spanish speaking) a question. Spanish is the target language. Birth record (in Spanish) needs translation into English. English is the target language for the translation.

Translation - the process of rendering a written communication from the source language to the target language effectively, accurately, and impartially. Translating effectively and accurately means rendering any specialized vocabulary precisely so that the meaning of the communication is clear and conceptually correct in the target language. Additionally, translating effectively and accurately requires preserving the tone and level of language used in both languages. The person who performs this task is a *translator*.

Transliteration – in American Sign Language (ASL), transliteration means English signing that incorporates grammatical features of ASL, and is often used for making auditory information accessible in a visual way. Transliteration is performed by a *transliterator*.¹²

¹¹ See, RID website "Certifications Under Moratorium" (<http://www.rid.org/rid-certification-overview/certifications-under-moratorium/>).

¹² See, <https://en.wikipedia.org/wiki/Transliteration>.

Vital Document – a document, paper or electronic, that contains information that is critical for executing a federal-funding recipient’s mission, including pleadings and letters or notices that require a response from party, witness, or other intended individual; also, documents that inform parties or witnesses of their right to, and the availability of, free language assistance.

II. Legal Basis for Interpreter Provision and Language Access

Both federal law and Georgia law address the provision of language access in the Georgia court system for DHH persons as well as LEP persons.

A. Federal Law

Title VI of the Civil Rights Act of 1964¹³ prohibits discrimination on the basis of race, color, or national origin in any program, service, or activity receiving financial assistance from the federal government. Subsequent U.S. Supreme Court decisions clarified that the prohibition against national origin discrimination includes discrimination based on an inability to speak English;¹⁴ therefore, discrimination based on language is national origin discrimination and violates Title VI.

Executive Order 13166, issued in 2000, established that denying access to federally funded programs to LEP persons violates Title VI.¹⁵ Corresponding implementing regulations¹⁶ include a policy guidance document from the Department of Justice (DOJ)¹⁷ establishing the compliance standards that recipients of federal financial assistance must follow to ensure that their programs and activities are accessible to LEP persons at no cost. As recipients of federal financial assistance, the Georgia courts are required to ensure meaningful access to their programs and activities by LEP persons. Georgia case law, as discussed below, reiterates that Georgia courts must comply with Title VI.

DHH court users are protected under the Americans with Disabilities Act (ADA) of 1990. The ADA requires courts to provide reasonable accommodations to court users. Therefore, sign language interpreters must be provided to all DHH court users at no cost, in compliance with the ADA. For comprehensive information on court accessibility requirements for DHH persons and persons with other disabilities as defined by the ADA, please review the *ADA GA Judicial Handbook 2017*.¹⁸

B. Georgia Law

In 2003, the Supreme Court of Georgia formed the Georgia Commission on Interpreters

¹³ 42 U.S.C. § 2000d.

¹⁴ *Lau v. Nichols*, 414 U. S. 563 (1974).

¹⁵ Exec. Order No. 13166, 65 Fed. Reg. 159 (Aug. 16, 2000).

¹⁶ 28 C.F.R. Part 42, Subpart C.

¹⁷ <https://www.govinfo.gov/content/pkg/FR-2002-06-18/pdf/02-15207.pdf>.

¹⁸ Also available directly in HTML format at <http://afptc.georgiacourts.gov/>.

(discussed in more depth below) to address the statewide plans and procedures for providing qualified interpreters to Georgia's LEP and DHH court users in criminal and civil court proceedings. Subsequent Supreme Court decisions have reaffirmed the importance of providing qualified interpreters to ensure meaningful access to justice.

In 2005, the Supreme Court of Georgia ruled that a qualified interpreter was necessary for meaningful access¹⁹ for LEP litigants. Five years later, in *Ling v. State*,²⁰ the Court found that Georgia courts, as recipients of federal funding, must comply with Title VI of the Civil Rights Act. The Supreme Court specifically addressed the need to provide meaningful access to LEP persons in all Georgia courts, including civil proceedings. As a result of the *Ling* decision, the Supreme Court of Georgia Rules regarding the use of interpreters for LEP persons was amended to ensure compliance with Title VI. In 2012, the Rules were amended again, to their current version, to include the provision of qualified interpreters for DHH persons.

Georgia statutory law²¹ provides for the free provision of an interpreter for LEP and DHH litigants in actions filed under Georgia's Family Violence Act.²² With regard to access for DHH persons, Georgia law also requires that qualified sign language interpreters be provided at no cost to the DHH person needing the service.²³

Effective July 13, 2017, Uniform Superior Court Rule 7.3 imposes new requirements for attorneys and *pro se* litigants to notify the courts of their need for language assistance. Additionally, the revised Rule 7.3 clarifies the courts' obligations to secure and pay for interpreters in civil and criminal matters.²⁴

C. Supreme Court of Georgia Rules and Commission on Interpreters

As stated above, after its decision in *Ling*, the Supreme Court of Georgia amended its Rules on the Use of Interpreters for Non-English Speaking and Hearing Impaired Persons (Rules).²⁵ The Rules confirm the existence of the Supreme Court of Georgia Commission on Interpreters (Commission) and its duties and responsibilities, and establishes a uniform rule for interpreter programs. The current Rules also require that LEP and DHH litigants and witnesses be provided an interpreter at each critical stage of a court proceeding at no cost, in all matters, criminal, civil, and juvenile.

¹⁹ *Ramos v. Terry*, 279 Ga. 889, 622 S.E.2d 339 (2005).

²⁰ 288 Ga. 299, 702 S.E.2d 881 (2010).

²¹ O.C.G.A. § 15-6-77(e)(4).

²² O.C.G.A. § 19-13-1 *et seq.*

²³ O.C.G.A. § 24-6-650 *et seq.*

²⁴ See Appendix D. Also available at http://www.gasupreme.us/wp-content/uploads/2015/05/USCR_7-3_and_31_amendments-FINAL_Order_with_ID.pdf.

²⁵ Available at <http://coi.georgiacourts.gov/content/supreme-court-rules>.

Appendix B of the Rules²⁶ clearly delineates the licensing powers and duties of the Commission. It includes a description of the three foreign-language interpreter designations,²⁷ establishes an interpreter roster, and grants the Commission the power to license, train, and discipline interpreters in the state. Appendix C of the Rules²⁸ provides Georgia with a Code of Professional Responsibility for Interpreters.

III. Needs Assessment and Early Identification

Courts have an affirmative duty to actively determine language access needs of court users, to notify users of the services available to meet those needs, and to offer those services at no cost to the users. An effective administrative protocol for the provision of interpreters in the Georgia courts should start with a comprehensive assessment and data collection effort regarding language needs for LEP and DHH persons throughout the state. The early identification of a person's language access needs throughout every point of contact with the court system is similarly critical for the provision of meaningful language access. It is important to note that "reasonable accommodations" for persons with disabilities, per the ADA, includes the provision of auxiliary aids and services and not just interpretation services.

A. Data Collection and Needs Assessment

Data collection and needs assessment will inform the court's provision of language access services as well as the practices described in the MAP. The judicial branch and courts must understand the demographics of the population they serve to better anticipate the need for language access services and provide these services in a timely, consistent, effective, and efficient manner. To gather this information, the branch and local courts shall establish data collection standards and determine reliable sources of data regarding the communities served by the court.

First, courts should ensure they have standards for internal data collection regarding the LEP and DHH persons accessing their court. These standards should include the collection of information regarding the court's LEP and DHH users; requests for, and use of, language access services at all points of contact with the court; and use of all language access services, including court interpreters, bilingual staff, and translations. The collection of this data should continue throughout a person's contact with the court, ongoing from initial contact until last.

To gather this information, courts should ensure that LEP and DHH court users are identified in the case management system, court file, and any other mechanism of record-keeping used by the court gathering the information (discussed in the next section below). Courts should, whenever possible, track this information by:

²⁶ Id.

²⁷ Certified, Conditionally Approved, and Registered.

²⁸ Id.

- Case type and proceeding, or court service or program, for which an interpreter is needed;
- Duration of interpreting event;
- Interpreter usage and billing;
- Requests for bilingual staff at the various points of contact;
- Web “hits” on translated web pages or any other posted translated material; and
- Usage of materials, including multilingual videos, telephonic interpreting, etc.

In addition, courts should identify reliable external sources of data, at the state and local level, and collect information from these sources regarding the communities served by the court. The information gathered will help inform court efforts to deliver the most appropriate language access services given that court’s LEP and DHH users. Some of these potential sources may include national data collection efforts, such as the U.S. Census and American Community Survey (ACS); state agencies and community partners, including the district attorney, public defender, legal services agencies, county jails, law enforcement, etc.; school districts, health providers, and public assistance and other social services agencies; and agencies that target refugee or immigrant groups, and may therefore be in a better position to accurately capture language trends, immigration patterns, and emerging languages. Note that language services, including, but not limited to, interpretation, translation, signage, brochures, and other information provided to the court, should not automatically be limited to English and Spanish. Courts should recognize that the communities they serve may have speakers of other languages who require the court’s assistance. It is important that accessibility for all LEP and DHH persons be considered, especially in rural counties where a non-Spanish speaking LEP community may be particularly small and isolated.

B. Early and Ongoing Identification of Language Needs in the Community and the Court User Population

The early identification of language needs is critical in efforts to efficiently and effectively address language access needs in the courts. Efforts should focus on all the most common points of contact between persons and the court system in order to put in place systems to identify language needs.

Similarly, strategies for early identification should include mechanisms to ensure that when an LEP or DHH person’s language need is not captured initially, or changes during his or her interaction with the court, systems are in place to allow for identification at later stages. Courts should be mindful that persons begin their interaction with the judicial system at various points of the process, not always at case initiation, and any mechanism for identification of language needs should allow and plan for that eventuality.

There are several strategies that courts may implement to address the identification of language access needs. Implementation of any number of them, and ultimately as many as are appropriate given a particular court’s needs and resources, will assist courts in better addressing the language access needs of their LEP and DHH users. The following are a number of best practices that may be useful to those courts that are not currently employing them.

5. Designated language access office or point person

The designation of a language access office or point person (such as a Language Access Coordinator or Interpreter Coordinator) at each judicial district or other appropriate judicial entity²⁹ can assist courts in addressing requests for interpreters and other language access services, including information on the court's language access policies and resources. Multi-circuit districts may also elect to have a point person at each circuit within the district who serves as a liaison to the district designee, and assists in the facilitation of securing language assistance services for cases brought within that circuit's courts.

Given the diversity amongst Georgia courts based on geography, population, size, availability of interpreters, rural versus urban environments, and numbers of LEP and DHH residents, courts should determine how to best designate a language access office or point person that can ensure the duties and responsibilities listed below are carried out effectively and efficiently. Some possible models based on this diversity include the following:

- A language access office or point person in each level of the trial courts (superior, state, magistrate, probate, or juvenile courts), municipal courts, and appellate courts. For example, this approach may be appropriate for counties with larger populations, large LEP or DHH populations in proportion to the population overall, or many separate court locations.
- A language access office or point person at the county level. This system may be appropriate for medium-sized counties, for example.
- A language access office at the judicial district court administrator level, with language access liaisons at the judicial circuit court administrator level to address (and communicate to the main language access designee) more localized needs when they arise. Courts with very small percentages of LEP and DHH users and sporadic need for language access services may find this system sufficiently addresses their populations' needs.

However a court decides to designate a language access office or person, the duties and responsibilities of that office or person within the court³⁰ should include:

²⁹ The Georgia court system is made up of a number of trial courts – superior, state, juvenile, probate, magistrate, and municipal – organized into judicial districts, judicial circuits, counties, and cities. See the *Map of Georgia Judicial Circuits and Districts*, attached as Appendix B. The intent of this MAP is that courts at every level, from judicial district to municipalities, adopt administrative protocols for the provision of language access services. However, given the diverse needs and composition of Georgia's judicial entities, this MAP allows for any judicial entity to choose how to best design, implement, and administer a protocol. Some courts may choose to establish protocols at the judicial district level, adopted in their entirety by lower level entities or modified in consideration of local needs and resources. On the other hand, unique local protocols may be necessary at the level of individual courts or municipalities.

³⁰ Court, in this context, may include several courts if the designated language access office oversees a number of courts within a judicial district, judicial circuit, or county.

1. Providing a centralized location for all LEP and DHH persons needing to access the court, as well as attorneys, justice partners, potential jurors, and other stakeholders, to request interpreters and other language assistance services and resources;
2. Providing a resource for decision makers and court staff who have questions regarding the court's available language access resources and policies;
3. Coordinating and implementing the court's community outreach and notification to the public and all stakeholders regarding the court's language access services and policies and procedures; and
4. Managing and responding to feedback from the public about the respective entity's language assistance protocol.

Once a centralized language access location is established, all relevant stakeholders should be notified of its existence and provided with contact information and availability.

2. Identification of language access needs at all points of contact with the court

Courts should identify and understand all the possible points of contact that LEP and DHH users have with the court system. Points of contact with the court include, but are not limited to the following: security screening; clerk's offices; jury department and jury summons and notices; case records; cashiers; alternative dispute resolution programs and services; courtrooms; court-managed or court-operated programs; *pro se* clinics and workshops (e.g., parenting classes, divorcing parents seminars); Family Violence Intervention Programs (FVIPs); court websites; the Georgia Judicial Council's website; and court phone systems. Identification of language needs at each of these points of contact is a key element in the provision of language access services.

a) Mechanisms for self-identification by LEP and DHH court users

Courts should establish a variety of identification mechanisms. First, courts should ensure LEP and DHH persons are able to self-identify and request specific language access services at all points of contact with the court, as early as possible in the system. Any self-identification mechanisms established must account for the fact that the need for language access services may arise at any point during a person's interaction with the court system, not just at the beginning. Similarly, these mechanisms must consider that LEP or DHH users may commence their interactions with the court at any point during the life of a case, from the beginning to the middle to the end (including post-judgment involvement).

Some possible and useful mechanisms to assist with self-identification include multilingual notices regarding the availability of language access services posted at all points of contact (including online), language identification guides,³¹ notices in outreach materials, and court forms or notices sent out to parties at the commencement of and throughout proceedings.

³¹ A language identification guide is included in this Companion as Appendix C. Also available at <http://coi.georgiacourts.gov/content/language-identification-guide>.

b) Mechanisms for identification by court staff and decision makers

Court staff and decision makers may often be the first point of contact between an LEP or DHH court user and the court system. Court staff and decision makers may determine that an interpreter is necessary for an LEP or DHH person during his or her encounter with the court, whether as part of a court proceeding or other court business.

Consequently, staff and decision makers should have tools, such as language identification guides, to assist a court user in selecting his or her preferred language and indicating the need for language access services. This allows court staff and decision makers to secure the necessary language access services, including interpreters and bilingual staff, translated materials, or remote technologies such as telephone and video-remote interpreters.

Effective language needs identification systems should also include placing an affirmative duty on court staff and decision makers to inform LEP and DHH users of the availability of free language access services and appoint an interpreter when appropriate. Therefore, when it appears that a person has difficulty communicating due to a language barrier, and can therefore not meaningfully participate in the proceeding or activity or be understood by attorneys, decision makers, staff, or other relevant participants, court staff or a decision maker should inform the LEP or DHH person of the right to have an interpreter provided by the courts. At all times, court staff, decision makers, and other relevant court participants should keep in mind that the fact that a person speaks or understands some English does not preclude the person from the right to have an interpreter appointed by the court.

c) Mechanisms for identification by justice partners

Justice partners such as law enforcement agencies, district attorneys, public defenders, social workers, legal services programs, jails, probation departments, private attorneys, and others are often the first point of contact that LEP and DHH users have with the legal system. They are in the unique position to be able to notify the court of any upcoming language access needs for a particular person. Courts should establish protocols for justice partners to notify the court of the need for language access services as early as practicable, so the court may ensure the timely and effective provision of language access services for all court users who require them.

Any developed protocol should take into account the court's resources and the language access responsibilities of these agencies, which may themselves be under legal obligations to provide language access services. As discussed above, all agencies receiving federal funds are required to comply with Title VI and provide language access services. For example, law enforcement agencies are required to provide interpreters when working with civilians requiring services, and the public defender's office is required to provide interpreters to clients during investigations, trial preparation, or other agency interactions. When that is the case, the relevant agency should be charged with providing interpreters or other language access services, as to not unfairly burden the court. However, even when justice partners are involved and have their own language access responsibilities, the court still bears the responsibility for providing language access services during an LEP or DHH person's interaction with the court system. In other words, while

the public defender's office must itself provide and pay for interpreters for its clients while preparing their defense, for example, it is the court's responsibility to provide interpreters for defendants when they appear in court.³²

3. Identification of language access needs in court records

As addressed in Appendix A, II (D) of the Rules, when a decision maker appoints an interpreter for an LEP or DHH participant, the case file "should be clearly marked and data entered electronically when appropriate by personnel to ensure that an interpreter will be present when needed in any subsequent proceeding." Since the Georgia court system does not have a statewide case management system, each court keeps case and party records in a variety of formats, from electronic case management systems to manual systems based on paper case files. Therefore, strategies for capturing data will vary given each person court's case management system capabilities.

Some courts may have more advanced case management systems that capture all relevant party and case information electronically, are reliable, and allow for tracking of language access needs and services. Other courts may have electronic case management systems that do not gather the necessary information regarding language access needs. Where possible, these systems should be modified to track relevant information. Other courts rely exclusively upon manual case management systems. These courts should consider strategies such as color-coded files and/or documentation to be included in the file.

Generally, systems developed should track interpreter needs through case and party records (i.e., interpreter or language access needs should be, where possible, noted on a particular party's record, as well as on the overall case or file record). Tracking language needs in parties' records allows for the system to track their future needs if they are involved in another case at a later time. Tracking by case or file allows for consistent provision of services in all proceedings under that case. Both language-tracking efforts (by case and by party record) ensure that information is captured by the system and can be used to anticipate language needs and requirements whenever a particular LEP or DHH person comes into contact with the court.

³² While trial courts must bear the financial and administrative responsibility of providing interpreters for LEP or DHH persons during their interaction with the court, regardless of the separate legal responsibilities of other agencies appearing before the court, the same is not true of the Georgia Office of State Administrative Hearings (OSAH), which is not part of the Georgia judicial branch. OSAH hears administrative cases where one of the parties is a state agency. In those matters, it is the responsibility of the state agency in question (and not OSAH) to provide an interpreter for the hearing. While OSAH may order the appointment of an interpreter, locating and paying for the interpreter are the responsibilities of the state agency itself. As an executive branch agency, OSAH must follow the provisions of Title VI of the Civil Rights Act and may wish to develop its own administrative protocol for provision of language access, using this guidance document and/or others for that purpose.

4. Additional tools for early identification of language access needs

There are other tools that may be developed or are already available to courts to assist in early identification of language access needs. In this regard, best practices explored in courts throughout the country as well as Georgia courts include:

- Training of court clerks and other staff at relevant points of contact with the public to inquire about the need for language access services for any party or witness, as a matter of course, and providing those staff members with auxiliary tools to complement their training, such as language access resources, interpreter roster information, translated resources, and others.
- Provision of information, outreach, and training to attorneys, parties, and justice partners to identify to the relevant court staff any anticipated need for language access services. All participants in the judicial system should understand the process of notifying the court of the need for language access providers. If attorneys, justice partners, and litigants themselves generally notify the court, as a standard practice, of any language needs in a particular matter, courts would be able to more effectively ensure language needs are addressed promptly and effectively.
- Where appropriate and possible, requiring parties to indicate in initial pleadings a need for language access services (their own, or another party's or witness's, if known). For example, any standardized case initiation state or local forms, such as complaints and petitions, and other first appearance forms, such as responses or answers, as well as motions and responses to motions, etc. may include a box or short section to be completed regarding the anticipated need for a court interpreter or other language access service.
- Informing parties on court summonses, court notices, and cover sheets of the availability of language access services and how to request them, including informing court users of the existence of a designated language access office.

IV. Provision of Qualified Interpreters in Court Proceedings and Other Court-Managed Functions

The Rules require the provision of qualified foreign-language and sign language or deaf interpreters to all parties and witnesses who may require those services, in all court proceedings, at no cost to the court user. The Rules, their appendices, and materials provided by the Commission address the various aspects of the provision of court interpreters in proceedings and court-managed functions. Courts are encouraged to use the Commission's searchable court professionals directory, available at <http://coi.georgiacourts.gov/content/locate-interpreter>, to locate qualified foreign-language and sign language or deaf interpreters in Georgia.

Court Interpreters in Georgia: Appendix B of the Rules addresses the three licensing designations of foreign-language court interpreters in the state of Georgia: Certified, Conditionally Approved, and Registered. The Commission's website further describes the licensing requirements for each of these interpreter classifications.³³

"Certified" interpreters possess the highest level of certification in the languages for which a National Center for State Courts (NCSC) oral certification exam exists.³⁴ Those who obtain the requisite minimum score on all exam sections and complete other requirements become Certified interpreters. Certified interpreters are the preferred category of foreign-language interpreting in court proceedings.

Interpreters in the languages tested by the NCSC oral certification exam who have not obtained the minimum passing scores in all sections but have met other requirements are designated as "Conditionally Approved" interpreters. In spite of not having achieved the minimum score on the oral certification exam as required for Certified status, Conditionally Approved interpreters are preferable to untrained interpreters. First, they have obtained minimum scores in all sections (albeit lower scores than those required to be awarded Certified status). Second, they have completed additional licensing requirements in order to prepare for interpretation, such as passing an English written test, completing court observation hours, and attending an interpreter orientation.

The third classification of licensed foreign-language interpreters refers to "Registered" interpreters. This designation is reserved for interpreters for languages for which no NCSC oral certification exam exists who have passed a written English exam and an Oral Proficiency Interview (OPI)³⁵ measuring their language skills and have completed additional licensing requirements.

With respect to sign language interpreters for DHH persons, to serve as a sign language interpreter or deaf interpreter in Georgia, an interpreter must be recognized in Georgia as a "qualified" or "court qualified" sign language interpreter. In order to be recognized as "qualified" or "court qualified," the interpreter must hold certification from the Registry of Interpreters for the Deaf (RID), the National Association of the Deaf (NAD), or other industry-recognized credentialing entity. For legal proceedings, the stated preference is to use certified sign language

³³ At <http://coi.georgiacourts.gov/content/licensing-requirements>.

³⁴ The languages for which an NCSC oral certification exam currently exists include Arabic, Cantonese, French, Haitian-Creole, Hmong, Korean, Laotian, Mandarin, Portuguese, Russian, Serbian, Somali, Spanish, and Vietnamese. The Georgia Commission on Interpreters currently employs the National Center for State Court's Oral Certification Exam to assess the bilingual interpreting skills of test takers.

³⁵ The OPI consists of a telephone interview during which candidates are tested in both English and the language in which they seek to become licensed. The exam is designed to evaluate the prospective interpreter's foreign language ability and levels of knowledge and education. Candidates must achieve a language scale score of "Superior" in both English and the language for which they are seeking a license to interpret.

interpreters or deaf interpreters who hold the SC:L (Specialist Certificate: Legal) credential. The SC:L credential demonstrates an interpreter's specialized knowledge of the legal system, legal terminology, and legal settings. Courts are encouraged to reference the Commission's Working with Deaf or Hard of Hearing Persons and Sign Language Interpreters in the Courtroom bench card for additional guidance. (As noted in Section I.a. above, the SC:L credential has been available since 1998, but was placed under moratorium by RID as of January 1, 2016. The SC:L credential remains fully recognized by RID, but the designation is no longer available to persons who do not already hold that credential.)

Court personnel should always verify the credentials of all interpreters, especially those who present themselves as Certified or otherwise licensed by the Commission. Verification includes requiring interpreters to present their license numbers and checking the Commission's Searchable Directory located at <http://coi.georgiacourts.gov/content/locate-interpreter>. For sign language and deaf interpreters, court personnel should contact the Registry of Interpreters for the Deaf:

Registry of Interpreters for the Deaf
333 Commerce Street
Alexandria, VA 22314
703-838-0030 (voice)
703-838-0454 (fax)
RIDinfo@rid.org

A. Appointment of Qualified Interpreters

Under the Rules (Appendix A, II (A)), a decision maker will appoint a qualified interpreter when an LEP or DHH person requests the assistance of an interpreter, or when the decision maker determines that an interpreter is needed because the LEP or DHH person cannot meaningfully participate due to language barrier or cannot be understood directly by counsel, the decision maker, or the jury. If there is a question as to whether a court participant is in fact LEP or DHH and faced with a language barrier, the decision maker may *voir dire* (examine) that person on the record to determine whether an interpreter is necessary. The decision maker may also conduct this *voir dire* of the possible LEP or DHH person if requested by an attorney or party to the case.

Under Appendix A, II (E) and (G), the Rules include how the decision maker should conduct the examination of the LEP or DHH person, and what to do after he or she concludes the examination.³⁶ The Rules also include provisions for authorizing a pre-appearance interview between the interpreter and the LEP or DHH party or witness, as well as instructions to be provided by the decision maker to counsel regarding how to conduct proceedings with an interpreter.

³⁶ See the Commission's brochure, Working With Foreign Language Interpreters in the Courtroom, and the Commission's bench card, Working with Limited English Proficient Persons and Foreign-Language Interpreters in the Courtroom, for sample questions for judges and court staff to assess the English proficiency of a party or witness.

1. Preference when appointing interpreters

When appointing a qualified foreign-language interpreter to interpret for a litigant in one of the languages for which certification exists (see Footnote 34 above), courts must, whenever possible, appoint an in-person Certified interpreter. If no Certified interpreter is available, courts may appoint a Conditionally Approved interpreter. When in need of interpreter services for a language for which no national certification exam exists, courts must appoint a Registered interpreter.

NOTE: When possible, courts should appoint an interpreter who speaks the same dialect (or is at least quite familiar with it) as the person needing interpretation, and not merely the same language. For example, Spanish is a widely spoken language, but Spanish varies greatly between continents and regions.

When no licensed interpreter is available locally, Rules commentary provides for consideration of a telephonic language service or a less qualified interpreter. In considering these options, courts must weigh the need for immediacy in conducting a particular proceeding against any possible negative consequences with regard to due process or injustice if a non-licensed interpreter, or a telephonic interpretation service, is inadequate.

In appointing interpreters for DHH persons, interpreters with an RID SC:L credential are preferred, as described above. However, when interpreters with the SC:L credential are not reasonably available, interpreters with other industry-recognized credentials may be used, with the recommendation that they have specialized training in legal interpreting.³⁷ Court personnel can easily locate qualified interpreters by visiting the Searchable Court Professional Directory located on the Commission's website at <http://coi.georgiacourts.gov/content/locate-interpreter>.

2. Safeguards when appointing non-licensed³⁸ or non-credentialed interpreters

When no Certified, Conditionally Approved, or Registered foreign-language interpreter is available and the court has to appoint a non-licensed interpreter, the Rules (Appendix A, II (F)) provides for instructions to be given to the interpreter. The model form Instructions for Use of Non-Licensed Interpreters created by the Commission provides information for the court when using a non-licensed interpreter. The Commission's brochure, Working with Foreign Language Interpreters in the Courtroom, includes, in addition to a wealth of information related to the use of interpreters in the courtroom, a sample *voir dire* for decision makers to assess a non-licensed

³⁷ See the Commission's bench card, Working with Deaf or Hard of Hearing Persons and Sign Language Interpreters in the Courtroom, with information regarding the different credentials available with a RID, NAD, or other certification for sign language and deaf interpreters and how to ensure a qualified sign language or deaf interpreter is utilized.

³⁸ As described in the introduction, "non-licensed" foreign-language interpreters include, in addition to those not licensed by the Commission, those who have not been accredited by another Council of Language Access Coordinators member state or the United States Administrative Office of the Courts.

interpreter's qualifications, in compliance with *Ramos v. Terry*.³⁹

Similar aids and informational resources have been provided for court staff and decision makers with respect to language services for DHH participants. The Commission's bench card, Working with Deaf or Hard of Hearing Persons and Sign Language Interpreters in the Courtroom, includes extensive information regarding interpreters for DHH persons, including a sample *voir dire* to help assess a sign language or deaf interpreter's qualifications.

3. Avoidance of untrained persons to interpret and limitation to exigent circumstances

When no licensed foreign-language, sign language, or deaf interpreter is available, and absent exigent circumstances, courts should not appoint as interpreters anyone with a potential conflict of interest in the case or an unqualified interpreter, including, but not limited to, minors, friends and family of the LEP or DHH person, bilingual court staff, advocates and attorneys for the LEP or DHH person, justice partner bilingual staff, or anyone else not qualified after a *voir dire* by the decision maker or his or her designated representative. Even when an LEP or DHH person prefers to use his or her own non-licensed interpreter, courts should use a licensed interpreter (or, if none is available, a qualified interpreter successfully examined through an appropriate and thorough *voir dire*). This will ensure that the interpreting services provided are appropriate, neutral, and carried out in a professional manner.

Exigent circumstances such as emergencies that cannot be resolved by continuing a matter or using other tools such as video-remote or telephonic interpreting⁴⁰ may, in the decision maker's discretion, warrant the use of non-licensed interpreters. To the extent possible, non-licensed interpreters should be used to interpret as minimally as possible to address the immediate emergency, for purposes of a continuance to obtain a qualified interpreter or, if necessary, for short non-evidentiary matters.

Whenever a remote interpreter or a non-licensed interpreter is used on a one-time basis because of exigent circumstances, courts should follow the Rules' stated preference and appoint an in-person Certified, Conditionally Approved, or Registered foreign-language interpreter or an industry-credentialed, in-person sign language or deaf interpreter for subsequent proceedings.

4. Appointment of interpreters for all relevant participants

As discussed and expressly provided for in Georgia law and the Rules, courts must appoint interpreters for LEP and DHH parties and witnesses. However, in order to ensure meaningful

³⁹ In *Ramos v. Terry*, 279 Ga. 889, 622 S.E.2d 339 (2005), the Supreme Court held that it was an abuse of discretion to appoint an interpreter without making sure that the person appointed was qualified to serve as interpreter, without informing the interpreter-to-be of his or her role, without verifying his or her understanding of his or her role as an interpreter, and without having him or her agree in writing to comply with the code of professional responsibility for interpreters.

⁴⁰ Remote technologies such as video-remote and telephonic interpreting are addressed in Section IV. D below.

access to all relevant court participants and comply with Title VI⁴¹ and the ADA, courts should also appoint interpreters for LEP and DHH persons with legal decision-making authority (such as parents or legal guardians of minors who are involved in a case but who are not parties themselves, *guardians ad litem*, and parents/guardians of minor victims of crime). Interpreters should also be appointed for LEP and DHH persons with a significant interest in the case, such as family members of a victim of crime or of the defendant on trial for serious crime, members of a class action who are not lead plaintiffs, etc.

B. Best Practices in the Appointment of Interpreters

There are extensive best practices in the appointment of interpreters in court proceedings that should be taken into consideration when working to provide comprehensive language access. Court resources may pose considerable challenges for implementation of some of the best practices provided in this Section. However, the effective administration of justice and the overarching goal of ensuring that parties participate fully and meaningfully in the judicial system must weigh heavily in decisions to provide appropriate language access services. What follows are some of the more critical best practices in the appointment of qualified court interpreters for LEP and DHH persons:

- Courts should give interpreters the opportunity for a pre-appearance interview in order to ensure language compatibility and communication between the interpreter and an LEP or DHH person. (See, Rules, Appendix A, II (E) and II (F) (12), (13).)
- Decision makers and court staff should understand the role of the interpreter, as well as interpreter ethical and professional standards, and be mindful not to ask the interpreter to perform a task outside the interpreter's role or ethical guidelines.
- Decision makers should explain the role of the court interpreter to LEP and DHH persons, as well as attorneys, jury members, and other relevant courtroom participants.
- Courts should appoint an appropriate number of interpreters for the proceeding in question. When proceedings are expected to take a significant amount of time, courts are encouraged to appoint more than one interpreter. According to the National Association of Judiciary Interpreters and Translators, "[i]t is unrealistic to expect interpreters to maintain high accuracy rates for hours, or days, at a time without relief. If interpreters work without relief in proceedings lasting more than 30-45 minutes, the ability to

⁴¹ The DOJ Guidance and Letter from Thomas E. Perez, Assistant Attorney General, to Chief Justices and State Court Administrators (Aug. 16, 2010), at 2, instructs courts to provide language services to non-party LEP persons if "their presence or participation in a court matter is necessary or appropriate, including parents and guardians of minor victims of crime or of juveniles and family members involved in delinquency proceedings." See also, ABA Standards for Language Access in Courts (February 2012) at 48-50.

continue to provide a consistently accurate translation may be compromised.”⁴²

- Depending on the number of LEP or DHH persons involved, the court may need to appoint separate interpreters for the LEP or DHH participants. For example, an LEP witness should have his or her own interpreter, separate from a party’s interpreter who may need to interpret for attorney-client communications during the proceeding; similarly, opposing parties in a family violence protective order matter may need to each have their own interpreter so as to guarantee a safe distance between the parties, the protection of the victim, and the safety of the interpreter.

NOTE: There is technology available, such as headsets, that allows an interpreter to provide simultaneous interpretation for multiple parties at the same time. Use of this technology may be a helpful alternative for rural counties who may be unable to find more than one interpreter for a relatively simple matter. Some circuits in Georgia, such as the Cherokee Judicial Circuit, have opted to purchase such technology for use by the interpreters appointed by the Circuit.

- Long hearings or trials over one hour in length can easily lead to interpreter fatigue. Studies demonstrate that fatigue and possibility of error increase after 30 minutes of sustained simultaneous interpreting. Team interpreting (appointing a team of interpreters) allows for two or more interpreters to take turns interpreting every 30 minutes, or another more appropriate length of time as dictated by the nature of the proceeding and other factors, such as interpreter input. Team interpreting, when indicated, is critical to ensuring the accuracy of the interpretation throughout the proceeding.
- When LEP or DHH persons wish to waive their right to the assistance of an interpreter, the court should ensure that the waiver is knowing, voluntary, in writing, and, where applicable, on the record. If the decision maker or designated court staff, in his or her discretion, believes that the absence of an interpreter may subvert the interests of justice, or that communication will be negatively affected and the court will not be able to adequately communicate with the LEP or DHH party or witness, the waiver of an interpreter may be rejected. If an LEP or DHH person is allowed to waive the use of an interpreter, the court should inform the LEP or DHH person that the waiver is revocable at any time and allow the LEP or DHH person to later request the use of an interpreter without negative repercussions.

⁴² See, *National Association of Judiciary Interpreters & Translators (NAJIT) Position Paper-Team Interpreting in the Courtroom* (March 2007) available at https://najit.org/wp-content/uploads/2016/09/Team-Interpreting_052007.pdf.

NOTE: Although some LEP/DHH persons may be able to communicate well enough in English to knowingly waive the assistance of an interpreter, many cannot.⁴³ In assessing whether a waiver is knowing, a court may consider inquiring of the LEP or DHH person about the following matters:⁴⁴

1. Does the LEP OR DHH person understand that he or she has a right to the assistance of a "qualified"⁴⁵ interpreter?
 - a. Can the LEP OR DHH person effectively articulate an understanding that he or she is entitled to the assistance of a qualified interpreter during the legal proceeding in question?
 - b. Can the LEP OR DHH person effectively articulate an understanding that he or she is entitled to the assistance of a qualified interpreter at no cost?
 - c. Can the LEP OR DHH person effectively articulate an understanding that, if he or she chooses to have the assistance of an interpreter, the court would be responsible for securing the services of a qualified interpreter and paying for those services?
 - d. Can the LEP OR DHH person effectively articulate an understanding that, if he or she chooses to have the assistance of an interpreter, the court or other decision maker cannot hold it against him or her?

2. Does the LEP OR DHH person understand the role of an interpreter?
 - a. Can the LEP OR DHH person effectively articulate an understanding that an interpreter is an impartial neutral appointed by the court and does not work for any particular party?
 - b. Can the LEP OR DHH person effectively articulate an understanding that an interpreter appointed by the court must be qualified?
 - c. Can the LEP OR DHH person effectively articulate an understanding that the role of an interpreter is to interpret accurately (without summarizing, paraphrasing, or omitting)?
 - d. Can the LEP OR DHH person effectively articulate an understanding that an interpreter is not permitted to explain what something means and can only interpret questions and responses as spoken by the LEP OR DHH person, another party or witness, attorney, or decision maker?
 - e. Can the LEP OR DHH person effectively articulate an understanding that, to the extent that an interpreter assists communication between a party

⁴³ As noted in the Rules, Appendix A, II (B), "[t]he fact that a person for whom English is a second language knows some English should not prohibit that individual from being allowed to have an interpreter."

⁴⁴ The guidance set forth herein is not meant to be definitive or exhaustive. In a particular case, additional or different inquiries may be appropriate. In addition, a court should tailor the inquiries to the particular role of the LEP or DHH person in the proceedings (whether the LEP or DHH person is a party, a witness, or another participant).

⁴⁵ See, *Ramos v. Terry*, 279 Ga. 889, 893; 622 S.E.2d 339, 343 (2005) ("[a] court abuses its discretion when it selects an interpreter who is not qualified, sworn, and impartial. *Gopar-Santana v. State*, 862 So.2d 54 (Fla.App.2003).").

and his or her counsel, the interpreter is required to maintain the confidentiality of those communications?

3. Does the LEP OR DHH person understand his or her decision to waive the assistance of an interpreter?
 - a. Can the LEP OR DHH person effectively articulate an understanding that, without an interpreter, his or her limited capacity to communicate may impair the ability to fully participate in the proceedings?
 - b. Can the LEP OR DHH person effectively articulate an understanding of the risks and dangers of proceeding without an interpreter?
 - c. Can the LEP OR DHH person effectively articulate an understanding that a bilingual relative, friend, or attorney is no substitute for an interpreter and that the use of family, friends, or others not licensed or credentialed as interpreters is not appropriate?
 - d. Can the LEP OR DHH person effectively articulate an understanding that his or her waiver is revocable at any time in the proceedings, but if he or she later decides to revoke the waiver, he or she must take steps to inform the court of this decision and to have the court then appoint a qualified interpreter?
 4. Does the LEP OR DHH person understand that the court has a responsibility to ensure the fairness of the proceedings and that, if the court determines that due process requires an interpreter, the court may appoint an interpreter regardless of the desire of the LEP OR DHH person to proceed without an interpreter?
- Court personnel should always verify the credentials of all interpreters, especially those who present themselves as Certified or otherwise licensed by the Commission. Verification includes requiring interpreters to present their license numbers and checking the Commission's Searchable Directory located at <http://coi.georgiacourts.gov/content/locate-interpreter>. For sign language and deaf interpreters, court personnel should contact RID:

Registry of Interpreters for the Deaf
333 Commerce Street
Alexandria, VA 22314
703-838-0030 (voice)
703-838-0454 (fax)
RIDinfo@rid.org

C. Calendaring and Scheduling of Interpreters

Courts should consider the use of scheduling, calendaring, and other strategies to maximize the use of interpreters. Efficient use of interpreters and other language access resources will not only allow courts to provide better service, but will also save the courts money. Strategies include the

following:

- Courts may decide to batch matters for which an interpreter for a specific language is needed, such as a family violence protective order calendar for cases where one or more parties are Spanish-speaking. However, any strategies to provide access must be undertaken with caution to ensure qualified interpreters provide interpreting services in the most appropriate manner and to ensure language-specific calendars do not promote practices that discriminate based on national origin or other protected class. Similarly, considerable care must be taken so that any strategies developed do not have unintended consequences such as discriminating against LEP and DHH court users or creating the appearance of a separate system for marginalized communities.
- Coordinating calendars so an interpreter may be available for several matters in the same court location on the same day, such as having a small claims calendar held on the same day but at an earlier, or later, time than a traffic calendar so an interpreter can be available for both.
- Establishing systems so that an interpreter coordinator can easily and efficiently dispatch an interpreter from one court location to another, or one courtroom to another.
- Coordinating the use of interpreters so that when interpreters are not busy in a courtroom proceeding, they may be available in person or telephonically to assist in other court-managed services, such as clerk's offices, *pro se* clinics, etc.
- Creation of an interpreter bank, under the quality control of the court, group of courts, or the Commission, with qualified interpreters who may be available by telephone or video to assist in non-critical proceedings or other court programs, including possible sharing across court locations and counties in other parts of the state, particularly those in more rural or isolated areas where there may be fewer interpreters available.
- When feasible, court staff in charge of interpreter scheduling should provide interpreters with basic information about the case, relevant court documents, and other information that can help the interpreter better prepare for the event, including technical terminology, jargon, and other complex issues that may complicate the interpretation.

In addition to administrative and operational strategies, courts should explore collaborations with community-based providers to address particularly challenging interpreting needs, such as those of indigenous language speakers or emerging languages for which qualified interpreters are not found in the area served by the court. For example, by partnering with language departments at educational institutions, courts can identify prospective interpreters and target training efforts, utilizing the resources of the educational institutions to prepare these students for the court interpreting profession and the licensing exams for "Certified," "Conditionally Approved," or "Registered" status for foreign-language interpreters. Similarly, collaborations

with community-based programs that work with certain smaller populations, such as indigenous LEP persons, newer refugees, and other speakers of less common languages, can benefit the court by providing a pool of qualified interpreters in languages of lesser diffusion, including indigenous languages.

6. Remote Interpreting

While the preference for the provision of interpreters is that interpreters be available in person to provide the most safeguards to the accuracy and quality of interpretation and effectiveness of communication, technologies such as telephonic interpreting and video-remote interpreting (VRI) can be effective in some settings. They should be considered, but used with caution. These technologies require specialized and high quality equipment to ensure effective and accurate communication. Nevertheless, as the technology improves and becomes more cost-effective and reliable, these forms of remote interpreting may increasingly present a viable alternative to in-person interpreters for a limited number of court-related proceedings.⁴⁶

Telephonic foreign-language interpreting should be a last resort for courtroom proceedings, and reserved for non-courtroom events or very brief non-evidentiary proceedings, such as continuances, given that non-verbal cues – not visible on the telephone – are critical for effective communication and interpretation. Courts are encouraged to be mindful that, according to the National Association of Judiciary Interpreters and Translators, telephonic interpreting can be problematic in some circumstances.⁴⁷ For example, if persons are hard of hearing or elderly, or struggling with mental illness, telephone interpreting can be too confusing.

VRI, when used appropriately with high quality equipment and trained interpreters, can be an efficient mechanism for providing language access services when an in-person interpreter is not available or when only a non-licensed interpreter is available in person (but a licensed one is available via video). VRI can be used for foreign-language interpretation as well as sign language and deaf interpretation. Courts must provide and require training for interpreters on the use of VRI, on appropriate ways to assess quality of interpretation, and on how to effectively stop a court event if an impediment to the interpreter's performance arises or the litigant's or witness's unique characteristics make him or her not suitable for remote interpreting.

Courts must also provide and require training for staff and decision makers on VRI and telephonic interpreting, how to use the technologies, how to work with the remote interpreter, and what appropriate events for VRI are. As other courts nationally have done, Georgia courts with an

⁴⁶ As cautioned above, courts should be careful if using commercial or third-party interpreting agencies to locate telephonic or video-remote language assistance. Some agencies may have no quality control mechanisms for their interpreters, inadequate technology or technological support, or have no experience with remote interpretation in judicial settings.

⁴⁷ See, *National Association of Judiciary Interpreters & Translators (NAJIT) Position Paper-Telephone Interpreting in Legal Settings* (February 2009) available at <http://www.najit.org/wp-content/uploads/2016/09/Telephone-Interpreting-1.pdf>.

interest in video-remote technology and with the capability of properly administering the technology may consider establishing pilot projects to assist in developing guidelines for its appropriate use in court proceedings.

E. Appointment of Interpreters for Court-Managed Functions

The Rules, in Appendix A, II, provide that, outside of criminal and civil court proceedings, Title VI also applies to all other court-managed functions, including information counters; intake or filing offices; cashiers; records rooms; sheriff's offices; probation and parole offices; ADR programs; *pro se* clinics; criminal diversion programs; anger management classes; detention facilities; and other similar offices, operations, and programs managed by the court.

In order to comply with Title VI, courts should provide the most appropriate language access service for these programs or services, including qualified interpreters, bilingual staff, and translated materials and information. Where interpreters must be appointed, courts should follow the standards described above for the appointment of interpreters as set out in the Rules.

F. Additional Courtroom Tools for Language Access

1. Bilingual courtroom staff

Courts should place bilingual staff at all points of contact with the court, including courtrooms, public information offices or counters, clerk's offices, *pro se* clinics, ADR offices, and other relevant locations. Bilingual staff must be competent in all the languages in which they communicate, and courts must test their proficiency in a neutral systematic way that does not rely on the bilingual staff person's self-assessment of language skills. Courts may establish standards for the competence required of bilingual staff at different points of contact; a staff person located at a *pro se* clinic or a high-volume clerk's office may need a higher level of language proficiency and competency than a bilingual person at a cashier's office, for example. However, courts must establish a minimum competency level that all bilingual staff must meet in order to ensure meaningful access throughout the courthouse and all court programs and services.

Absent exigent circumstances, bilingual staff should not be used to interpret in the courtroom. In addition to any possible conflict of interest created by the different roles of court staff and interpreter, there are ethical concerns given the professional responsibility and ethics requirements to which interpreters are subject. More importantly, the language skills required for accurate courtroom interpretation are significantly more extensive and complex than those needed as a bilingual staff person, and the use of a bilingual staff person to interpret cannot safeguard the LEP or DHH court user's right to meaningful language access like the use of a qualified interpreter would.⁴⁸ Should bilingual staff ever be used to interpret outside the

⁴⁸ "A bilingual person may inaccurately interpret or roughly interpret a summary of communications between the court and an LEP person, they may have a conflict of interest, or they may even be adverse. Under these

courtroom, the court should ensure bilingual staff members are trained on the role of the interpreter and basic interpreting skills, and only utilize bilingual staff for basic, noncritical communications.

NOTE: Because it can be challenging to find qualified bilingual staff, especially in more rural counties, it is recommended that courts train all staff on the use of video and telephonic interpretation services as well as a model procedure for handling a language access issue when bilingual staff is not available.

2. Technology in the courtroom

In addition to possible uses of VRI for court proceedings discussed above, there are effective uses for video-remote technologies to make the courtroom process itself more linguistically accessible for LEP and DHH users. For example, a video-remote interpreter may be used to provide interpretation for general courtroom instructions or introductory remarks given by a decision maker or court staff before a calendar call.

In addition, there are several audio/visual and assistive technologies to help facilitate communication for LEP and DHH participants in the courtroom, including, but not limited to:

- Assistive listening devices to amplify sound for hard-of-hearing persons;
- Infrared hearing systems;
- Closed-captioned videos, multilingual PowerPoint presentations, and other visual aids providing information on courtroom procedure, legal information, and other topics to improve court user education and access; and
- Multilingual videos explaining courtroom procedure and providing relevant legal information.⁴⁹

3. Signage and translation of courtroom resources

The use of translated signs as well as other translated print information may assist in the efficient management of courtrooms. Having printed translated information available in a courtroom can significantly reduce the need for oral interpretation of basic information applicable to all courtroom participants. Examples of useful translated written resources include waiver of rights and other relevant court forms or advisements; referrals to community-based organizations, treatment/counseling programs ordered by the court, or other court services or programs;

circumstances, an LEP person is denied meaningful access to court operations in a way that a fluent English speaker is not. The [U.S.] DOJ Guidance emphasizes the importance of interpreter competency and states: 'Competency requires more than self-identification as bilingual. Some bilingual staff and community volunteers, for instance, may be able to communicate effectively in a different language when communicating information directly in that language, but not be competent to interpret in and out of English.' [U.S.] DOJ Guidance, 67 Fed. Reg. at 41,461." See, *U.S. DOJ Letter to NC Administrative Office of the Courts*, p. 9 (March 8, 2012) available at https://www.justice.gov/sites/default/files/crt/legacy/2012/03/08/030812_DOJ_Letter_to_NC_AOC.pdf.

⁴⁹ The use of multimedia tools, such as videos, also has the potential of providing access to low literacy LEP populations as well as benefitting low literacy English-speaking court users.

continuance forms; and standard courtroom signs used to communicate courtroom procedure to the public.

Courts should be mindful, however, not to rely exclusively on posted signs or written notices for advising court users of language access services. Some court users, including LEP and DHH persons, have low literacy skills that may prevent them from understanding written communications. Therefore, the recommendations above for court staff to proactively inform LEP and DHH users of their language access rights should be implemented together with any signage and written notification strategies.

G. Interpreter Compensation

Interpreter compensation is currently managed at the local level (*See, Rules, Appendix A, VII*), and there is no uniform, statewide compensation system at this time (*See, Rules, Section V*). However, it is important to note that licensed foreign-language court interpreters and credentialed sign language and deaf interpreters are highly skilled professionals who possess unique cognitive abilities and undergo rigorous training, education, and testing. They perform a difficult and specialized function that plays a critical role in ensuring access to justice and due process. Courts should keep this in mind when considering compensation rates for licensed court interpreters. Further guidance to local courts regarding interpreter compensation and available funds for interpreters and language access services will be included in the forthcoming Language Access Plan.

V. Strategies for Management and Monitoring of the MAP

To ensure the appropriate and successful implementation of the Model Administrative Protocol, and, where adopted, its implementation at the local level, courts must establish systems for monitoring their administrative protocol, its effectiveness in providing language access services to its LEP and DHH users, and the ongoing need for adjustments as services expand or policies change. These systems must include an effective complaint mechanism and quality control measures.

A. Periodic Monitoring of Effectiveness of the MAP

It is critical that courts implementing the MAP or other administrative protocol for the provision of interpreter services establish systems for the protocol's periodic monitoring. As the entity providing the MAP and guidance on its use, the Commission will also develop monitoring mechanisms to track the effectiveness and need for modifications of the MAP.

Courts should, on a yearly basis, analyze the effectiveness of their administrative protocol and make needed adjustments. Information gathering on the use of qualified (licensed) foreign-language interpreters, as compared to non-licensed interpreters, and of credentialed sign language and deaf interpreters, will assist courts and the Commission to analyze whether the

implementation of an administrative protocol has resulted in an increase in the use of qualified interpreters, as intended. Increases in the provision of qualified interpreters will benefit all court users as well as the court itself, with improvements in the meaningful participation of LEP and DHH users and more accurate communication and information on which decision makers must base their determinations.

Data regarding the provision of interpreters will also provide useful information. Reports on the number of interpreter hours provided, languages served, interpreter billing (by case type and proceeding), and travel-related interpreter expenses can assist courts in determining actual interpreter needs when full language access is provided. This information will allow courts to better allocate budget expenditures for language access, and develop strategies for cost-savings as well as obtaining additional funding, if needed, to guarantee every LEP and DHH user access to the court.

Courts should also track the number of continuances requested or issued in order to obtain an interpreter, together with information regarding delays in processing of cases due to language access issues. This information will assist courts in determining whether strategies for early identification of interpreter and other language services needs have resulted in efficiencies in the utilization of limited court resources and in the processing of cases. Measuring the effect of other systems put in place to address court efficiencies, such as calendaring and scheduling practices to address interpreter cost savings, will further inform court efforts to improve delivery of language access services in a cost-effective and efficient manner.

Overall, the monitoring of language access efforts by courts will enable them to identify areas in which they are successfully meeting their needs as well as areas requiring attention, such as the need for more effective interpreter provision, addition of bilingual staff, increase or improvement of translations, better communication to stakeholders regarding language access policies, better staff training, etc. It will also permit courts to formulate informed requests for assistance from the Commission in areas where statewide guidance or resources may prove particularly effective, such as translation assistance for statewide information, areas for improved interpreter training, language access planning, etc.

Finally, any monitoring and evaluation plan should include the input of justice partners and the community regarding the implementation of the administrative protocol. District attorneys' offices, public defenders, law enforcement agencies, legal services programs, private attorneys, bar associations, community-based organizations, and the public at large are all integral to a robust judicial system that is responsive to its users. Their perspectives and experiences regarding the protocol's implementation will ensure an improved system of access to justice for LEP and DHH persons, and ultimately, every court user.

MAP Update by the Commission on Interpreters: The Commission will establish formalized mechanisms for obtaining and analyzing yearly reports from local courts using the protocol in order to enable the Commission to make ongoing adjustments and modifications to the MAP. In addition, these reports will help the Commission identify possible modifications needed to the

Rules, and other areas under the Commission's responsibility, such as interpreter licensing and discipline, interpreter training and education, judicial branch training and education, statewide translation efforts, and overall language access planning. As the Commission begins its work toward development of a statewide Language Access Plan, information gathered by the different courts making up the Georgia judicial branch will be essential to creating a responsive and comprehensive language access policy for the state.

5. Local Complaint Mechanisms

Courts using the administrative protocol should create a local complaint mechanism for registering complaints regarding the provision of (or failure to provide) qualified interpreters or other language access services. Courts may model their complaint form and process after the Commission's complaint form for interpreter complaints,⁵⁰ but should ensure that both the process and the form are broad enough to include complaints regarding all forms of language access services, including translations, bilingual staff, web information, access to services, and other related services.

Complaint forms and instructions should be in plain language and available on the court's website, if appropriate, as well as at all court points of contact with the public. In addition to English, the complaint form and instructions should be translated into at least the top five most commonly spoken foreign languages in that court's community, unless the community demographics are such that there are fewer languages with a significant number of speakers.

Any complaint process developed should allow for any member of the public to register a complaint regarding a court's language access services or policies. Court users (not just LEP and DHH users), attorneys, justice partners, community-based organizations, legal aid offices, governmental agencies, court employees, and decision makers should all have the ability to file a complaint, if necessary.

Complaints about language access services should be addressed and resolved at the local court level. However, in order to allow the Commission to monitor the effectiveness of language access policies and of the MAP, courts should send quarterly reports to the Commission regarding the number of complaints, reason for complaints, and resolution (if any) of the complaints. Complaints regarding an interpreter's performance, or unethical or unprofessional conduct, should be filed with the Commission, which will conduct a formal investigation in accordance with the Commission's disciplinary procedures.

C. Training for Judicial Branch on the MAP

To ensure the proper implementation of the MAP and effective provision of language access services throughout the court, those courts adopting the MAP as a local administrative protocol must make sure all court staff and decision makers are properly trained on its policies and

⁵⁰ Available at <http://coi.georgiacourts.gov/sites/default/files/coi/Complaint%20Form.pdf>.

procedures. Similarly, training efforts must include any language access policies promulgated at the state level as well as the local level, even if not directly addressed in the MAP or adopted administrative protocol.

Additional topics that should be in court staff and judicial training include:

- Proper appointment of qualified interpreters for all court proceedings;
- How to *voir dire* a non-licensed court interpreter;
- Role of an interpreter, modes of interpreting, and interpreter ethics and professional standards;
- Use of remote technologies for interpreting, where available and used;
- Courtroom management when interpreters are used; and
- Cultural competence.

Training should include new and existing staff and decision makers, as well as staff interpreters where relevant. Together with training efforts, court staff and decision makers should have available to them resources and information regarding the administrative protocol, language access services, policies and procedures, and tools for providing language assistance (such as bench cards, language identification guides, brochures, etc.). These tools should be easily accessible to them via the court's intranet or other method for internal distribution of court information and resources.

Training Assistance by the Commission on Interpreters: The Commission should work with local courts to develop online courses or webinars to assist in training decision makers and court staff regarding the protocol and overall language access services and planning. Having the Commission lead the effort will help standardize training and information provided, and will prevent duplication of effort by courts, by more efficiently developing statewide training curricula and tools that can later be adapted for local use. In addition, the Commission should provide training on the MAP for new interpreters as part of the Orientation Workshop, as well as for existing interpreters through online courses and other available training opportunities.

D. Outreach and Communication of the MAP

Upon implementing the MAP as their own administrative protocol, courts should develop outreach and communication strategies to ensure all relevant stakeholders, justice partners, attorneys, and the public understand the existence and provisions of the administrative protocol. Courts should be mindful that any communication and outreach efforts should be ongoing and should include mechanisms to ensure LEP and DHH populations, community-based organizations, and other interested organizations receive the information.

In order to maximize dissemination and accessibility of the information, outreach materials should be in English and up to five languages, depending on the linguistic demographics of the court's community. Partners such as local bar associations, government agencies, legal services organizations, and community-based agencies can help ensure distribution of information. In

addition, reaching the relevant populations may involve the use of ethnic print and audio/TV media to effectively communicate the court's language access policies.

Outreach Assistance by the Commission on Interpreters: The Commission is in a position to assist courts with outreach and communication strategies by taking advantage of its other language access outreach activities to inform the public about the MAP. The Commission should also assist in standardizing the information provided across the state about the administrative protocol to prevent duplication of outreach efforts from all the courts using the protocol. Standardization of outreach materials will also help minimize expenditure of scarce resources on translation, avoiding the need for several courts to spend funds on the translation of local materials when one consistent statewide information packet exists, and translation costs can be shared or possibly covered by the Commission.

VI. Language Access Administrative Protocol Management and Other Language Access Considerations

In addition to the Model Administrative Protocol just described, the Language Access Plan, which will be developed by the Georgia Commission on Interpreters in the coming months, will also address, in depth, the following:

- Language Access Services Outside the Courtroom:
 - Signage
 - Bilingual staff (in person or phone access)
 - Telephonic interpreting
 - Video/audio recordings
 - Translated informational materials
 - Translated information on webpages

- Translation Standards: A translation protocol or branch-wide guidance document, to include best practices regarding standards for translators and translations and how to identify and prioritize documents for translation, ensure consistency branch-wide, etc. The translation guidance would cover:
 - Forms
 - Informational materials (jurors, address/location, self-help/*pro se* assistance services)
 - Signage
 - Audio/visual and web content
 - Dissemination of translations to all courts/districts, partners, community, and the public

- Judicial Branch Training: Best Practices in Decision Maker and Employee Training (Court Staff and Administrators):

- How to work with/serve LEP and DHH populations (including cultural competence)
 - How to work with interpreters (bench cards and other tools)
 - How to work with available technologies
- Monitoring of the Language Access Plan and Services: Mechanism and systems for monitoring, assessing, and evaluating the plan and establishing model complaint procedures.
- Community Education and Community Outreach (including stakeholder involvement)

Appendix A: Georgia Language Access Resources Identified in the MAP⁵¹

Chapter 11: Appointing Qualified Interpreters, 2016 State Court Benchbook. Published by the Council of State Court Judges, this material has also been adopted for use by the Council of Superior Court Judges, Council of Magistrate Court Judges, and Council of Municipal Court Judges.

Court Access for Individuals Who Are Deaf and Hard of Hearing. A guide for courts published by the American Bar Association.

Georgia Supreme Court Commission on Interpreters Complaint Process. Includes the complaint process and form for registering a complaint against a court interpreter with the Commission on Interpreters.

Instructions for Use of Non-Licensed Interpreters. Model Form from the Georgia Commission on Interpreters for the use of non-licensed interpreters in the Georgia courts, setting forth minimum requirements for qualification of non-licensed interpreters.

Language Identification Guide. A tool for limited English proficient (LEP) persons to self-identify their spoken language. The guide enables court personnel to then seek the assistance of an interpreter in the specified language.

Rules on the Use of Interpreters for Non-English Speaking and Hearing Impaired Persons. Supreme Court of Georgia Rules.

- Appendix A – Uniform Rule for Interpreter Programs. Appendix to the Supreme Court of Georgia Rules on the Use of Interpreters for Non-English Speaking and Hearing Impaired Persons.
- Appendix B – Powers and Duties of the Georgia Commission on Interpreters; Requirement for Certification, Conditional Approval, Registration, and Training of Interpreters.
- Appendix C – Code of Professional Responsibility for Interpreters.

Working with Deaf or Hard of Hearing Persons and Sign Language Interpreters in the Courtroom. Bench card for working with DHH court users and sign language interpreters, developed by the Commission.

Working with Foreign Language Interpreters in the Courtroom. Provides guidance to judges and court personnel for determining the need for an interpreter, interpreter qualifications, and the

⁵¹ Listed in alphabetical order.

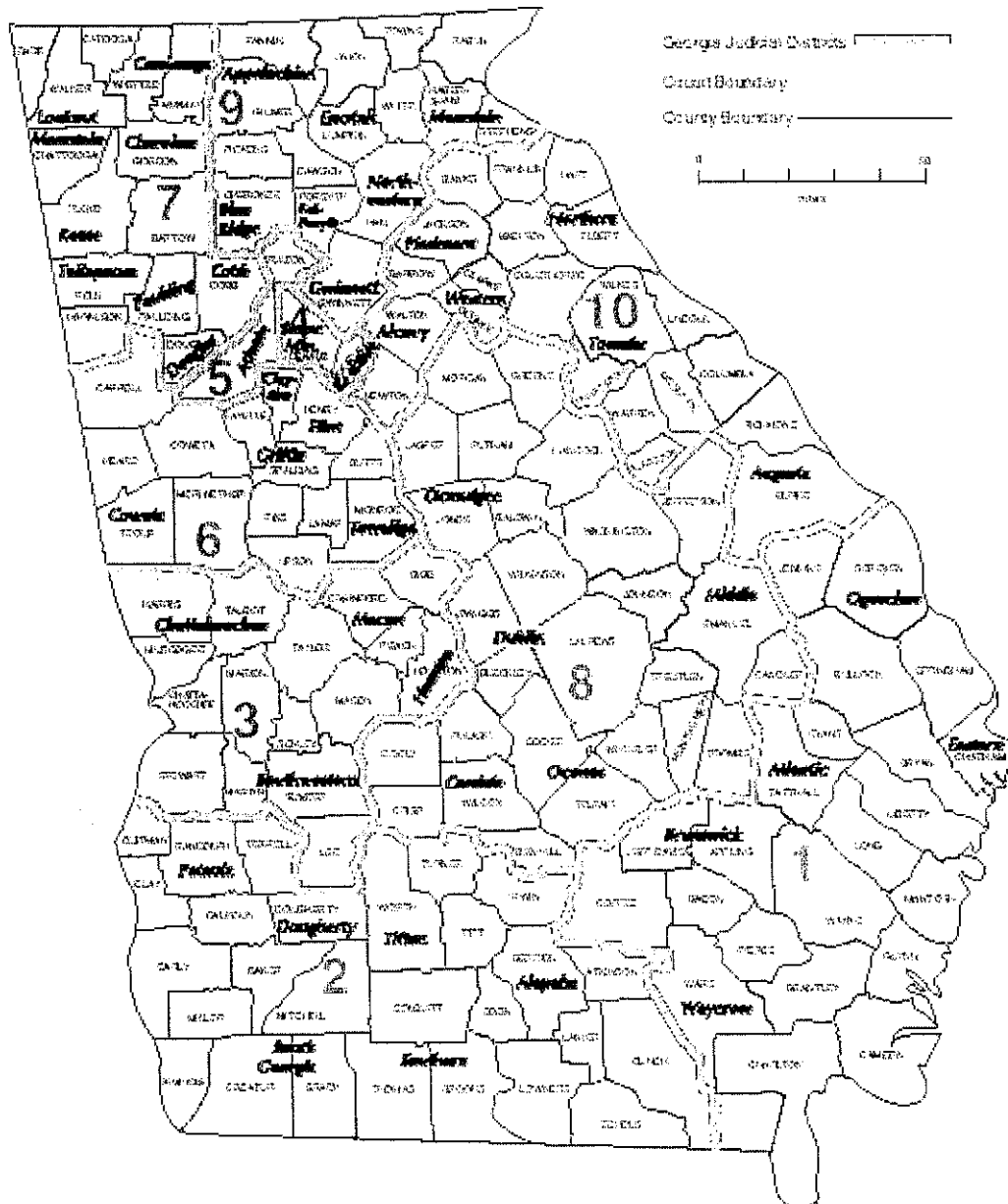
role of the interpreter. It includes sample questions for judges and court staff to assess the English proficiency of a party or witness.

Working with Limited English Proficient Persons and Foreign-Language Interpreters in the Courtroom. Bench card for working with LEP court users and foreign language interpreters, developed by the Commission.


Appendix B: Map of Georgia Judicial Circuits & Districts



Georgia Judicial Circuits & Districts



Appendix C: Language Identification Guide

<div style="display: flex; justify-content: space-between; align-items: center;"> <div style="text-align: center;"> 2004 Census Test </div> <div style="text-align: center;">  </div> </div>	
LANGUAGE IDENTIFICATION FLASHCARD	
<input type="checkbox"/> <p style="text-align: center;">ضع علامة في هذا المربع إذا كنت تقرأ أو تتحدث العربية.</p>	1. Arabic
<input type="checkbox"/> <p style="text-align: center;">Երկրպագու՞նք ենք Ձեր «Արմենի» հարցազրույցը, կամ «Հայաստան» հարցազրույցը:</p>	2. Armenian
<input type="checkbox"/> <p style="text-align: center;">যদি আপনি বাংলা পড়েন বা বলেন তা হলে এই কক্ষন মার্ক দিন।</p>	3. Bengali
<input type="checkbox"/> <p style="text-align: center;">ឈ្មោះអ្នកប្រកាសនេះ គឺជា ខ្មែរ ឬ អ្នកនិយាយភាសាខ្មែរ ។</p>	4. Cambodian
<input type="checkbox"/> <p style="text-align: center;">Motka i labhon ya y uagin umangna manaitai pat umangna kancemos Chamorro.</p>	5. Chamorro
<input type="checkbox"/> <p style="text-align: center;">如果你能读中文或讲中文，请选择此框。</p>	6. Simplified Chinese
<input type="checkbox"/> <p style="text-align: center;">如果你能讀中文或講中文，請選擇此框。</p>	7. Traditional Chinese
<input type="checkbox"/> <p style="text-align: center;">Označite ovaj kvadratić ako čitate ili govorite hrvatski jezik.</p>	8. Croatian
<input type="checkbox"/> <p style="text-align: center;">Zaškrtněte tuto kolonku, pokud čtete a hovoříte česky.</p>	9. Czech
<input type="checkbox"/> <p style="text-align: center;">Kruis dit vakje aan als u Nederlands kunt lezen of spreken.</p>	10. Dutch
<input type="checkbox"/> <p style="text-align: center;">Mark this box if you read or speak English.</p>	11. English
<input type="checkbox"/> <p style="text-align: center;">اگر خواندن و نوشتن فارسی، بلد صحبت این مربع را علامت بزنید.</p>	12. Farsi

08-3329

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- | | | |
|--------------------------|---|--------------------|
| <input type="checkbox"/> | Cocher lei si vous lizez ou parlez le français. | 13. French |
| <input type="checkbox"/> | Kreuzen Sie dieses Kästchen an, wenn Sie Deutsch lesen oder sprechen. | 14. German |
| <input type="checkbox"/> | Σημειώστε αυτό το πλαίσιο αν διαβάζετε ή μιλάτε Ελληνικά. | 15. Greek |
| <input type="checkbox"/> | Make kanyé sa a m ou li sowa ou pale kanyé ayibon. | 16. Haitian Creole |
| <input type="checkbox"/> | कारण आप हिन्दी बोलते या पढ़ सकते हैं तो इस बक्स पर चिह्न लगाईं। | 17. Hindi |
| <input type="checkbox"/> | Kes lub voj no yoy koj pao to m thrah nias lus hmoob. | 18. Hmong |
| <input type="checkbox"/> | Ielölje meg ért a közhát, ha megem vagy bevallt a magyar nyelvét. | 19. Hungarian |
| <input type="checkbox"/> | Markiam daytoy nga kahon na makabasa wenka makasaula iti Ilocano. | 20. Ilocano |
| <input type="checkbox"/> | Marchi qzesia casella se legge o parla italiana. | 21. Italian |
| <input type="checkbox"/> | 日本語を讀んだり、話せる場合はここに印を付けてください。 | 22. Japanese |
| <input type="checkbox"/> | 한국어를 읽거나 말할 수 있으면 이 칸에 표시하십시오. | 23. Korean |
| <input type="checkbox"/> | ໂຕຂາດເລີຍ ຖືກຂາດເລີຍ ຫຼື ມາດເລີຍ. | 24. Laotian |
| <input type="checkbox"/> | Proszę o zaznaczenie tego kwadrata, jeżeli posługuje się Pan/Pani językiem polskim. | 25. Polish |

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- Assimale este quadrado se voce lê ou fala português.
 26. Portuguese
- Insemnăși accasă ai tăuși dacă aiți sau vorbiți românește.
 27. Romanian
- Помните вы или квадратик, если вы читаете или говорите по-русски.
 28. Russian
- Обесемаште сегај из квадратик у квадратик читате или говорите српски језик.
 29. Serbian
- Označte tento štvorček, ak viete čítať alebo hovoriť po slovensky.
 30. Slovak
- Marque esta casilla si lee o habla español.
 31. Spanish
- Ma haban itong katawâ na kung bayô ay narinong narubasa o nagsalita ng Tagalog.
 32. Tagalog
- 33. Thai
- Māuka i he pūha ni kapau toku ke lan pe lan fakatonga.
 34. Tongan
- Відмітьте що клітинку, якщо ви читаете або говорите українською мовою.
 35. Ukrainian
- 36. Urdu
- Xin đánh dấu vào ô này nếu quý vị biết đọc và nói được Việt Ngữ.
 37. Vietnamese
- 38. Yiddish

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Appendix D: Uniform Superior Court Rule 7.3 (Revised), Effective July 13, 2017

Rule 7.3. Interpreters

(A) In all civil and criminal cases, the party or party's attorney shall inform the court in the form of a notice of the need for a qualified interpreter, if known, within a reasonable time — at least 5 days where practicable — before any hearing, trial, or other court proceeding. Such notice shall be filed and shall comply with any other service requirements established by the court. The notice shall (1) designate the participants in the proceeding who will need the services of an interpreter, (2) estimate the length of the proceeding for which the interpreter is required, (3) state whether the interpreter will be needed for all proceedings in the case, and (4) indicate the language(s), including sign language for the Deaf/Hard of Hearing, for which the interpreter is required.

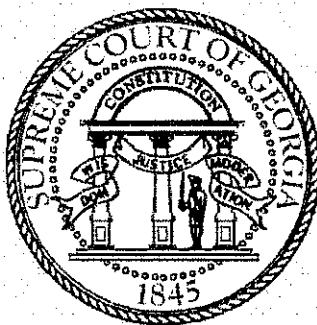
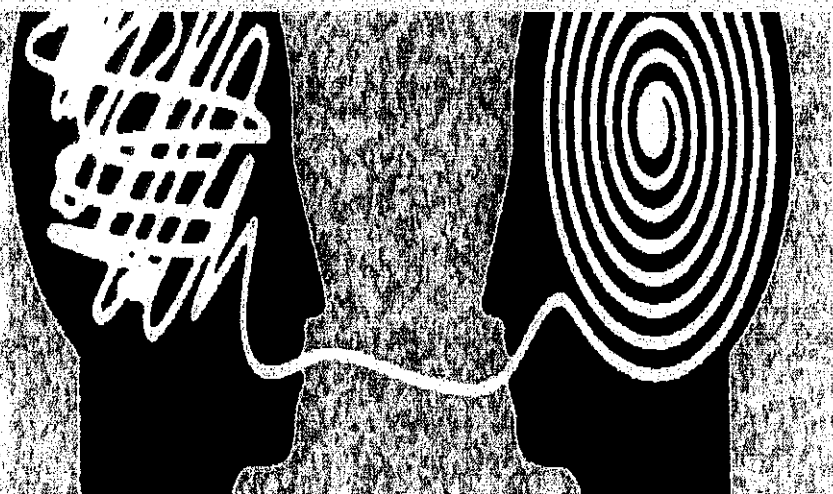
(B) Upon receipt of such notice, the court shall make a diligent effort to locate and appoint a licensed interpreter, at the court's expense, in accordance with the Supreme Court of Georgia's Rule on Use of Interpreters for Non-English Speaking and Hearing Impaired Persons. If the court determines that the nature of the case (e.g., an emergency) warrants the use of a non-licensed interpreter, then the court shall follow the procedures as outlined in the Supreme Court of Georgia's Commission on Interpreters' Instructions for Use of a Non-Licensed Interpreter. Despite its use of a non-licensed interpreter, the court shall make a diligent effort to ensure that a licensed interpreter is appointed for all subsequently scheduled proceedings, if one is available.

(C) If a party or party's attorney fails to timely notify the court of a need for a court interpreter, the court may assess costs against that party for any delay caused by the need to obtain a court interpreter unless that party establishes good cause for the delay. When timely notice is not provided or on other occasions when it may be necessary to utilize an interpreter not licensed by the Supreme Court of Georgia's Commission on Interpreters (COI), the Registry for Interpreters of the Deaf (RID), or other industry-recognized credentialing entity, such as a telephonic language service or a less qualified interpreter, the court should weigh the need for immediacy in conducting a hearing against the potential compromise of due process, or the potential of substantive injustice, if interpreting is inadequate. Unless immediacy is a primary concern, some delay might be more appropriate than the use of an interpreter not licensed by the COI, RID, or other recognized credentialing entity.

(D) Notwithstanding any failure of a party or party's attorney to notify the court of a need for a court interpreter, the court shall appoint a court interpreter whenever it becomes apparent from the court's own observations or from disclosures by any other person that a participant in a proceeding is unable to hear, speak, or otherwise communicate in the English language to the extent reasonably necessary to meaningfully participate in the proceeding.

(E) If the time or date of a proceeding is changed or canceled by the parties, and interpreter services have been arranged by the court, the party that requested the interpreter must notify

the court 24 hours in advance of the change or cancellation. Timely notice of any changes is essential in order to cancel or reschedule an interpreter, thus precluding unnecessary travel by the interpreter and a fee payment by the court. If a party fails to timely notify the court of a change or cancellation, the court may assess any reasonable interpreter expenses it may have incurred upon that party unless the party can show good cause for its failure to provide a timely notification.



Model Administrative Protocol for the Provision of Language Assistance Services to Limited English Proficient and Deaf or Hard of Hearing Persons in the Georgia Courts

Developed By:

Supreme Court of Georgia Commission on Interpreters MAP Development Committee

I. Introduction

This Model Administrative Protocol (MAP) sets forth the policy and procedures of the _____ [name of judicial entity¹] regarding the provision of court interpreters and other language assistance services for limited English proficient (LEP) and deaf or hard of hearing (DHH) persons accessing the court and its services.

This MAP and its Companion use certain common concepts as defined below (in alphabetical order):

Alternative Dispute Resolution (ADR) – alternatives to traditional litigation, including mediation, non-binding arbitration, and case evaluation.²

Bilingual (and Multilingual) Staff³ – staff proficient in English and a second (or more) language(s), and able to communicate effectively and accurately, orally and in writing, in all working languages. The language proficiency of bilingual and multilingual staff should be determined by the court through valid assessment tools,⁴ rather than reliance on a staff person's self-evaluation.

Deaf or Hard of Hearing (DHH) – any person whose hearing is totally impaired or whose hearing is so seriously impaired as to prohibit him or her from understanding oral communication when spoken in a normal conversational tone. Pursuant to guidance from the National Association of the Deaf, DHH is the preferred term over "hearing impaired," which is widely considered to be pejorative within Deaf culture.⁵

¹ Given the various possibilities in which judicial districts, judicial circuits, and person courts may employ this MAP, the term "name of judicial entity" refers to whichever judicial administrative level is adopting this MAP.

² See, Georgia Commission on Dispute Resolution (www.godr.org).

³ For purposes of this MAP and its Companion, the term "bilingual staff" includes staff who may be multilingual and fully proficient in more than two languages.

⁴ Courts may develop their own assessment tools and/or utilize tools or standards developed by other organizations such as the Oral Proficiency Interview (OPI) administered by Language Testing International (and utilized for licensing Registered interpreters in Georgia) and the Interagency Language Roundtable (ILR).

⁵ National Association of the Deaf, Frequently Asked Questions, "What is wrong with the terms "deaf-mute," "deaf-dumb," or "hearing-impaired?"

Deaf Interpreter – a specialist, who is deaf, who provides interpreting, translation, and transliteration services in American Sign Language (ASL) and other visual and tactual communication forms used by persons who are deaf, hard of hearing, and deaf-blind. Deaf interpreters most often work in tandem with hearing sign language interpreters. The National Consortium of Interpreter Education Center (NCIEC) studies indicate that in many situations, use of a deaf interpreter enables a level of linguistic and cultural bridging that is often not possible when hearing ASL-English interpreters work alone.

Decision Maker – includes judges, magistrates, special masters, commissioners, hearing officers, arbitrators, neutrals, and mediators.⁶

Interpretation – the process of rendering **verbal communications** from one language (source language) into another language (target language) effectively, accurately, and impartially. Interpreting effectively and accurately means rendering any specialized vocabulary precisely so that the meaning of the communication is clear and conceptually correct in the target language. Additionally, interpreting effectively, accurately, and impartially means correctly expressing the voice, tone, emotion, and non-spoken message of the communication audibly and/or visually. The person who performs this task is an *interpreter*.

Licensed Interpreter – any person on the Certified foreign-language interpreter registry of the Supreme Court of Georgia Commission on Interpreters (Commission); any person on the Commission's Conditionally Approved foreign-language interpreter registry;⁷ any person on the Commission's Registered foreign-language interpreter registry; or any person certified through the Registry of Interpreters for the Deaf (RID), National Association of the Deaf (NAD), or other industry-recognized credentialing entity. The Commission extends reciprocity to foreign-language interpreters licensed by any active member state of the Council of Language Access Coordinators (CLAC),⁸ or by the Administrative Office of the United States Courts through its Federal Court Interpreter Certification Examination (FCICE).

Limited English Proficient (LEP) – any person who speaks English "less than very well," cannot readily understand or communicate in spoken English, and who consequently cannot equally participate in or benefit from the proceedings without an interpreter to assist him or her. The fact that a person for whom English is not a primary language knows some English does not mean that person does not need an interpreter or should not be allowed to have an interpreter.

Non-Licensed Interpreter – any person not licensed by the Commission through its established licensing requirements or through licensing reciprocity considerations as mentioned above in the

⁶ See, *Supreme Court of Georgia Rules: Use of Interpreters for Non-English Speaking and Hearing Impaired Persons (Rules)*, Appendix A, II (A).

⁷ The interpreter registry maintained by the Commission may be found at <https://gcr.onegovcloud.com/public/directory/#/>.

⁸ Formerly known as the Consortium for Language Access in the Courts.

definition of "Licensed Interpreter." Any person not certified through RID, NAD, or other industry-recognized credentialing entity mentioned in the definition of "Licensed Interpreter."

Qualified Interpreter – a person who is able to orally interpret effectively, accurately, and impartially. Interpreting effectively and accurately means rendering any specialized vocabulary precisely so that the meaning of the communication is clear and conceptually correct in the language to which it is interpreted. Interpreting effectively, accurately, and impartially also means correctly expressing the voice, tone, emotion, and non-spoken message of the communication audibly and/or visually. A qualified interpreter will also be knowledgeable of and abide by industry-recognized ethical and professional standards of conduct for interpreters.

NOTE: Per O.C.G.A. § 24-6-651 (6), a *qualified* sign language interpreter means "any person certified as an interpreter for hearing impaired persons by the Registry of Interpreters for the Deaf or a court qualified interpreter."

NOTE: Per O.C.G.A. § 24-6-651 (2), a *court qualified* sign language interpreter means "any person licensed as an interpreter for the hearing impaired pursuant to Code Section 15-1-14."

Qualified Translator – a person who can translate written text effectively, accurately, and impartially. A qualified translator preserves the tone and level of language used in both languages, renders specialized vocabulary precisely so that the meaning of the written communication is clear and conceptually correct, and abides by industry-recognized ethical and professional standards of conduct for translators.

Registry of Interpreters for the Deaf (RID) – a national membership organization that plays a leading role in advocating for excellence in the delivery of interpretation and transliteration services between people who are deaf or hard of hearing and people who use spoken language. In collaboration with the Deaf community, RID supports members and encourages the growth of the profession through the establishment of a national standard for qualified sign language and deaf interpreters and transliterators, ongoing professional development and adherence to a code of professional conduct.

Source Language – the native or primary language of the individual initiating the verbal communication. For written documents, the language of the original document that requires translation. *Example:* Attorney (English speaking), through an interpreter, asks the witness (Spanish speaking) a question. English is the source language. Birth record (in Spanish) needs translation into English. Spanish is the source language for the translation.

Specialist Certificate: Legal (SC:L) – holders of this specialist RID certification have demonstrated specialized knowledge of legal settings and greater familiarity with language used in the legal system. These persons are recommended for a broad range of assignments in the legal setting. (This credential has been available since 1998, but was placed under moratorium by RID

as of January 1, 2016. The SC:L credential remains fully recognized by RID, but the designation is not currently available to persons who do not already have it.)⁹

Target Language – the language into which the verbal communication needs to be interpreted. For written documents, the language into which the original document needs translating. *Example:* Attorney (English speaking), through an interpreter, asks the witness (Spanish speaking) a question. Spanish is the target language. Birth record (in Spanish) needs translation into English. English is the target language for the translation.

Translation – the process of rendering a written communication from the source language to the target language effectively, accurately, and impartially. Translating effectively and accurately means rendering any specialized vocabulary precisely so that the meaning of the communication is clear and conceptually correct in the target language. Additionally, translating effectively and accurately requires preserving the tone and level of language used in both languages. The person who performs this task is a *translator*.

Transliteration – in American Sign Language (ASL), transliteration means English signing that incorporates grammatical features of ASL, and is often used for making auditory information accessible in a visual way. Transliteration is performed by a *transliterator*.¹⁰

Vital Document – a document, paper or electronic, that contains information that is critical for executing a federal-funding recipient's mission, including pleadings and letters or notices that require a response from party, witness, or other intended individual; also documents that inform parties or witnesses of their right to, and the availability of, free language assistance.

II. Legal Basis for Interpreter Provision and Language Access

Under Georgia law,¹¹ Title VI of the Civil Rights Act of 1964,¹² Department of Justice regulations and accompanying guidance documents,¹³ the Americans with Disabilities Act of 1990 (ADA),¹⁴ and Georgia Supreme Court Rules on Use of Interpreters for Non-English Speaking and Hearing Impaired Persons (Rules),¹⁵ Georgia courts are under an obligation to provide interpreters to all LEP and DHH persons in civil and criminal court proceedings, as well as language access services in all court-managed services and programs.

⁹ See, RID website "Certifications Under Moratorium" (<http://www.rid.org/rid-certification-overview/certifications-under-moratorium/>).

¹⁰ See, <https://en.wikipedia.org/wiki/Transliteration>.

¹¹ See, O.C.C.A. § 24-6-650 *et seq.*, See also, O.C.G.A. § 15-6-77(e)(4).

¹² 42 U.S.C. § 2000d.

¹³ 67 F.R. 41455 (June 2002).

¹⁴ 42 U.S.C. § 12101.

¹⁵ Available at <http://coi.georgiacourts.gov/content/supreme-court-rules>.

III. Needs Assessment and Early Identification

Courts have an affirmative duty to actively determine language access needs of court users, to notify users of the services available to meet those needs, and to offer those services to users.

A. Data Collection and Needs Assessment

The _____ [*name of judicial entity*] will, on an annual basis, compile demographic data regarding the language needs of its community. The court will initially look at the most recent and relevant U.S. Census and American Community Survey (ACS) data, and conduct additional gathering from the _____ [*local*] school district(s), the county department of public health, the public defender's office, the district attorney's office, Atlanta Legal Aid Society,¹⁶ or Georgia Legal Services Program.¹⁷ In addition, the court will communicate with local legal services providers and community based organizations, _____, namely, _____, that focus their service provision on immigrant and refugee populations as well as access to justice for indigent persons in this geographic area, to identify possible immigration and new language trends. This data will be analyzed annually to determine whether the court's allocation of language access resources is appropriate.

The _____ [*name of judicial entity*] will track every request by an LEP or DHH person for language access services, including but not limited to interpreters, bilingual staff, and translated materials (both written and audio visual). The court will track requests by language, case type (e.g., family law, criminal, housing, etc.), and proceeding and/or location of service request (e.g., court hearing, ADR, clerk's office, etc.). The court will also track whether the language access service requested was granted or denied and (where applicable) the reason for the denial.

In addition to mechanisms discussed under the identification of language needs section below, the _____ [*name of judicial entity*] will track this internal data in the case management system where available, and/or case files if case management is not automated. On a yearly basis, the court will analyze the data collected to identify whether services requested are in fact provided, assist in the allocation of language access resources, and identify gaps in the provision of services to address future needs.

The _____ [*name of judicial entity*] will send the final data compilation, in the form of an annual report, to the Commission, to assist the Commission in monitoring the statewide Language Access Plan, identifying interpreter training and certification strategies, and assessing the need for other tools to assist the Judicial Council's Administrative Office of the Courts and local courts in the provision of language access services.

¹⁶ For courts located in the counties of Clayton, Cobb, DeKalb, Fulton and Gwinnett.

¹⁷ For courts located in the remaining 154 of Georgia's 159 counties.

8. Early and Ongoing Identification of Language Needs in the Community and the Court User Population

1. Designated language access office or point person

The _____ [name of judicial entity] has designated _____ [include name of designated local Language Access Coordinator or Interpreter Coordinator] as the court's Coordinator of Language Access Services, to whom requests for interpreters and other language access services may be addressed. The _____ [name of designated office/position] is available to:

- Assist LEP and DHH persons to secure an interpreter or other language access services;
- Assist attorneys, justice partners, and other relevant persons to secure interpreters and related language access services for their clients and constituents;
- Assist court staff and decision makers to secure interpreters and other language access services;
- Answer questions from LEP and DHH persons, and the public at large, regarding the court's available language access services;
- Manage and respond to feedback from the public about the court's language assistance protocol;
- Serve as a clearinghouse for the court's language access resources, including translated materials, interpreter roster, language identification cards, and other resources identified in this MAP; and
- Answer requests from decision makers and court staff regarding the court's language access policies and procedures.

LEP and DHH persons, attorneys, justice partners, government agencies, and any other entities in need of language access assistance or information for themselves or their clients, may contact:

_____ [Name of person/office designated]
_____ [Address]
_____ [Phone number]
_____ [Fax/Email]

2. Identification of language access needs at all points of contact with the court

a) Mechanisms for self-identification by LEP and DHH court users

There are several points of contact between LEP and DHH court users and the _____ [name of judicial entity]. Among them are:

[Check all that apply]:

- Security screening at courthouse entrances at the following courthouse(s):
- _____ [Insert court location(s) where security screening exists].
- Clerks' offices at the following location(s):
- _____ [Insert court location(s) where there are clerks' offices, even if within same courthouse building, e.g., for different case types].
- Jury offices and jury summons. Jury offices located at:
- _____ [Insert court location(s) where there are jury offices].
- Records offices at the following location(s):
- _____ [Insert court location(s) where there are records offices].
- Cashiers at the following location(s):
- _____ [Insert court location(s) where there is a cashier, if different from above departments].
- Alternative dispute resolution programs, including mediation, at the following location(s):
- _____ [Insert court location(s) where there are ADR offices and/or mediation services].
- Courtrooms at the following courthouse(s):
- _____ [Insert court location(s) where courtrooms are located].
- Pro se clinics and related services, including but not limited to parenting classes or other required classes for divorcing parents, at the following location(s):
- _____ [Insert court location(s) where court-managed pro se services are provided].
- Family Violence Intervention Programs (FVIPs).
- Website for the _____ [name of judicial entity], available at _____ [URL for court website].
- Judicial Council of Georgia, Administrative Office of the Courts website, available at www.georgiacourts.gov.
- The _____ [name of judicial entity] phone system, accessible at _____ [main phone number].

In order to facilitate the ability of LEP and DHH persons to identify and request their need for language access services, the _____ [name of judicial entity] has the following tools available at all points of contact listed above:
[Check all that apply]

- Language identification cards at all points of contact in 38 languages.¹⁸
- Multilingual notices at all appropriate points of contact notifying members of the public of their right to request an interpreter or other language assistance at any point during their contact with the court.
- A _____ multilingual notice on the court's website at _____ [insert URL] informing persons of their right to language access services at any point during their contact with the court.
- Video message [with closed captioning and ASL] posted to the court's website at _____ [insert URL].
- Other [add any additional mechanism for self-identification for LEP and DHH persons]:

b) *Mechanisms for identification by court staff and decision makers*

When it appears that a person has difficulty communicating due to a language barrier, it is the policy of the _____ [name of judicial entity] for the court staff person, language access designated person or office, or decision maker attempting to communicate with the LEP or DHH person to inform the LEP or DHH person of his or her right to have an interpreter provided by the courts, even absent a request for language access services by the LEP or DHH person. It is also important to note that "reasonable accommodations" for persons with disabilities, per the ADA, include auxiliary aids and services and not just the provision of interpreters.

c) *Mechanism for identification by justice partners*

To ensure the earliest possible identification of the need for court interpreters and other language access services, the _____ [name of judicial entity] has established internal protocols with the various justice partners which routinely interact with this court in order for these partners to communicate to the appropriate court staff the needs of LEP or DHH participants who will be coming into contact with the court. While justice

¹⁸ See, <http://coi.georgiacourts.gov/content/language-identification-guide>.

partners themselves may be under the legal obligation to provide language access services to their clients, the court will be notified of any services that fall under the responsibility of the court as early as possible so services may be provided in a timely and efficient manner.

3. Identification of language access needs in court records

The _____ [name of judicial entity] maintains case and party related records in the following manner:
[Check all that apply or add your own method of tracking language need]

- An electronic court-wide case management system that includes party and case information and records, and allows tracking of a party's language needs. Therefore, the _____ [name of judicial entity] is able to use the case management system to track a person's language needs if he or she is involved in another case in the future, as well as track by case number and/or case name to ensure the consistent provision of services in all proceedings under that case.
- Electronic case files and records, not in a court-wide system, that allow for tracking language access needs by case number and/or case name as the information is input by court staff, but do not automatically cross-reference the system to track language needs by party name, in case that same LEP or DHH person is involved in another case.
 - Because of the inability to track language needs by party name, the _____ [name of judicial entity] will institute procedures for court staff to manually search the system by party name when a new case filing occurs to obtain any relevant language identification information.
 - As resources permit, _____ [name of judicial entity] will develop policies and procedures for modifying or updating the existing electronic record system to allow for tracking of language needs by case number and party name.
- Paper case files and records. Because of the inability to cross-reference party information, this current system only allows the court to ensure that case records clearly identify the involvement of an LEP or DHH person in that case, so that an interpreter or other language access service is provided at every stage of the proceeding in the case, as appropriate.
 - In order to facilitate identification of cases with a language access need, the _____ [name of judicial entity] will color code, or otherwise flag, files where there is a language access need.
 - Documentation will be inserted in the case file to ensure language access needs are identified appropriately, and a written copy of that documentation will be provided

to the court's language access point person, as well as to the judge presiding over the case.

4. Additional tools for early identification of language access needs
[Include or check all that apply and add any others]

The _____ [name of judicial entity] has instituted the following additional mechanisms for the early and accurate identification of the need for language access services:

[Check all that apply]

- LEP and DHH litigants and their attorneys, as well as other entities aware of the involvement of LEP and DHH person in a case (as parties, witnesses, or other significant roles in a case), must indicate, when known, the need (or possible need) for interpreters or other language access services with the filing of all initial pleadings with the court. This requirement applies to plaintiffs, petitioners, defendants, and respondents. Failure to comply with this provision does not result in a denial of language access services but may delay the provision of services if the court does not receive adequate notice in time to provide the necessary services.
- The _____'s [name of judicial entity] notices, as well as any relevant cover sheets sent out by court staff, inform parties of the availability of language access services and how to request those services.
- It is the policy of the _____ [name of judicial entity] for all court clerks and other staff at relevant points of contact to inquire about the need for language access services for any party or witness.

In assessing the need for language services, _____ [name of judicial entity] recognizes that language services, including but not limited to interpretation, translation, signage, brochures, and other information provided by the court, should not automatically be limited to English and Spanish. _____ [name of judicial entity] recognizes that the LEP communities it serves may include non-Spanish speaking communities that may be particularly small and isolated that require the court's assistance. Accessibility for all LEP and DHH persons will be considered.

IV. Provision of Qualified Interpreters in Court Proceedings and Other Court-Managed Functions

It is the policy of the _____ [name of judicial entity], in accordance with the Rules, to provide qualified foreign-language and sign language and deaf interpreters to all LEP and DHH court participants who may require those services, in all court

proceedings, at no cost to the court user. Court participants include parties, witnesses, persons with legal decision-making authority (such as parents or legal guardians of minors who are involved in a case but who are not parties themselves, *guardians ad litem*, and parents/guardians of minor victims of crime), and persons with a significant interest in the case (such as family members of a victim of crime or of the defendant on trial for serious crime, members of a class action who are not lead plaintiffs, etc.).

When a party, witness, or other court participant, as defined above, requests the assistance of an interpreter, or when the decision maker determines an interpreter is needed because the LEP or DHH person cannot meaningfully participate due to a language barrier or cannot be understood directly by counsel, the decision maker, the jury, or other relevant courtroom participants, the decision maker will appoint a qualified interpreter for that LEP or DHH person.

A. Appointment of Qualified Interpreters

Court staff, decision makers, and any other person responsible for securing the assistance of an interpreter at the _____ [name of judicial entity] will follow the following order of preference in appointing an interpreter, as stated in the Rules:

1. An in-person Certified,¹⁹ Conditionally Approved,²⁰ or Registered²¹ foreign-language interpreter, or an in-person sign language or deaf interpreter with a RID SC:L credential, is appointed, whenever possible, pursuant to the Rules.
2. If no Certified foreign-language interpreter is available, a Conditionally Approved foreign-language interpreter is appointed, if available.
3. When no Certified, Conditionally Approved, or Registered foreign-language interpreter, or credentialed sign language or deaf interpreter, is available locally in a timely manner, the decision maker or designated court staff will weigh the following: the need for moving forward with the proceeding against any possible negative consequences to the LEP or DHH person's ability to meaningfully participate in the proceedings, as well as the court's inability to communicate effectively with the participant if a non-licensed or non-credentialed interpreter is used.

In exercising their discretion – including the determination of whether a licensed foreign-language interpreter or credentialed sign language or deaf interpreter appearing remotely may be, given the circumstances, more or less effective than a non-licensed or non-credentialed in-person interpreter – decision makers and designated court staff will:
[Check all that apply]

¹⁹ In foreign languages for which a National Center for State Courts (NCSC) oral certification examination exists, namely, Arabic, Cantonese, French, Haitian-Creole, Hmong, Korean, Laotian, Mandarin, Portuguese, Russian, Serbian, Somali, Spanish, and Vietnamese.

²⁰ See, Rules, Appendix B, II (B).

²¹ In foreign languages for which an NCSC oral certification examination does NOT exist.

- Appoint a licensed²² foreign-language interpreter or credentialed sign language or deaf interpreter appearing remotely via video, as the first preference;
- Appoint a licensed foreign-language interpreter appearing remotely via telephone, as the second preference; or
- Consider the use of a non-licensed foreign-language interpreter or non-credentialed sign language or deaf interpreter, as a last resort.

In any instance, absent exigent circumstances, these interpreters are used only for short, non-evidentiary hearings, or for actions aimed at obtaining emergency relief followed by a continuance for time to secure an in-person licensed foreign-language interpreter or credentialed sign language or deaf interpreter, if needed.

At all times, decision makers and designated court staff exercise their discretion to ensure that the use of the remote interpreter or an in-person non-licensed foreign-language interpreter or non-credentialed sign language or deaf interpreter is consistent with the administration of justice and meaningful and equal access by all the participants.

4. When no licensed foreign-language interpreter or credentialed sign language or deaf interpreter is available, absent exigent circumstances, it is the policy of the _____ [name of judicial entity] **NOT** to appoint as an interpreter anyone who is unqualified or who has a potential conflict of interest in the case, including but not limited to the following: minors, friends and family of the LEP or DHH person, bilingual court staff, advocates and attorneys for the LEP or DHH person, justice partner bilingual staff, or anyone else deemed unqualified after *voir dire* by the decision maker.
 - Even when an LEP or DHH party prefers to use his or her own non-licensed or non-credentialed interpreter, decision makers and designated court staff will appoint an available licensed interpreter, or an interpreter provisionally qualified under the *voir dire* instructions provided by the Commission.
5. When a non-licensed foreign-language interpreter or non-credentialed sign language or deaf interpreter is used, decision makers or designated court staff shall follow the guidelines provided by the Rules, and the Commission's guidance and bench cards by:
 - Conducting a *voir dire*²³ with the prospective non-licensed foreign-language interpreter or non-credentialed sign language or deaf interpreter in order to assess

²² Certified, Conditionally Approved, or Registered.

²³ Samples provided in bench cards: Working with Foreign Language Interpreters in the Courtroom and Working with Deaf or Hard of Hearing Persons and Sign Language Interpreters in the Courtroom.

that interpreter's qualifications; and

- Following the Commission's Instructions for Use of Non-Licensed Interpreters, which includes admonitions to the non-licensed or non-credentialed interpreter on the basic tenets of the code of professional responsibility addressing interpreter ethics and standards.
6. In any situation where a remote interpreter, a non-licensed foreign-language interpreter, or a non-credentialed sign language or deaf interpreter was used on a one-time basis because of exigent circumstances, the court will follow the Rules' stated preference and will appoint an in-person Certified, Conditionally Approved, or Registered foreign-language interpreter or a credentialed sign language or deaf interpreter for subsequent proceedings.
 7. Court personnel will verify the credentials of all interpreters, especially those who present themselves as foreign-language interpreters who are Certified or otherwise licensed by the Commission. Verification includes requiring foreign-language interpreters to present their license numbers and checking the Commission's Searchable Directory located on the Commission's site at <http://coi.georgiacourts.gov/content/locate-interpreter>. For sign language and deaf interpreters, court personnel should contact RID:

Registry of Interpreters for the Deaf
333 Commerce Street
Alexandria, VA 22314
703-838-0030 (voice)
703-838-0454 (fax)
RIDinfo@rid.org

B. Best Practices in the Appointment of Interpreters

In appointing interpreters, decision makers and designated court staff at the _____ [name of judicial entity] will:

- Whenever possible, in accordance with the Rules Appendix A, II (E) and A, II (F) (12), (13), authorize a pre-appearance interview between the interpreter and the LEP or DHH person in order to ensure language compatibility and communication between the interpreter and the LEP or DHH person.
- Provide instructions to all attorneys, LEP and DHH participants, jury members, and other relevant persons regarding the role of the interpreter and how to work with an interpreter during courtroom proceedings.
- Make a determination of the appropriate number of interpreters that may be required for the proceeding in question. Depending on the number of LEP or DHH persons involved,

and the availability of interpreters, the _____ [name of judicial entity] shall appoint separate interpreters when the proper administration of justice so dictates. For example, the court will strive, as a best practice, to appoint an interpreter for an LEP witness separate from a party's interpreter, who may need to interpret for attorney-client communications during the proceeding. Similarly, the court will, when possible, appoint separate interpreters for opposing parties in a family violence protective order.

- Appoint, if resources allow, team interpreting (two or more interpreters) for long hearings or trials over one hour, in order to ensure accuracy by diminishing the potential of interpreting fatigue and subsequent errors.

Only allow an LEP or DHH person to waive his or her right to the assistance of an interpreter if the waiver is knowing, voluntary, in writing, and on the record, if appropriate. If the decision maker or designated court staff, in his or her discretion, believes that the absence of an interpreter may subvert the interests of justice, that communication will be impeded, and that the court will not be able to adequately communicate with the LEP or DHH party or witness, the waiver of an interpreter may be rejected. If an LEP or DHH person is allowed to waive the use of an interpreter, the LEP or DHH person may, at a later stage, revoke the waiver and request the use of an interpreter without negative repercussions.

NOTE: The _____ [name of judicial entity] recognizes that a person who is LEP or DHH will likely be unable to make a "knowing" waiver due to his or her inability to communicate effectively in English. However, the court also recognizes that it is possible that a person's ability to communicate in English may be advanced enough for him or her to inform the court that they do not wish to have an interpreter's assistance, but not advanced enough to be able to meaningfully participate in the more substantive portions of the legal proceeding down the line. This court further recognizes, as noted in the Rules, "The fact that a person for whom English is a second language knows some English should not prohibit that individual from being allowed to have an interpreter."²⁴ A decision maker with no proficiency in the LEP/DHH person's native language or preferred language of communication may consider asking the *voir dire* questions to help the decision maker assess whether or not the LEP or DHH person's waiver is knowing.²⁵

C. Calendaring and Scheduling of Interpreters

The _____ [name of judicial entity] understands that efficiencies in the scheduling of interpreters and calendaring of matters where an interpreter

²⁴ See, Rules, Appendix A, II (B).

²⁵ Sample questions are provided in the *Companion to the Model Administrative Protocol for the Provision of Court Interpreters to Limited English Proficient and Deaf or Hard of Hearing Persons (MAP Companion)*, pp. 20-22.

may be required may enable the court to more effectively provide high-quality language access services where resources are limited.

To this end, in scheduling and calendaring interpreters, the _____
[name of judicial entity] employs the following:
[Check all that apply]

- Batching matters appropriately for which an interpreter for a specific language is needed and a qualified interpreter is provided, such as a _____ [list any calendars for which batching by case type and language need exists].²⁶
- Coordinating calendars so a qualified interpreter may be available for several matters in the same court location on the same day.
- Establishing systems so that an interpreter coordinator can easily and efficiently dispatch a qualified interpreter from one court location to another, or one courtroom to another, such as:

[list any systems].
- Coordinating the use of interpreters so that when an interpreter is not busy in a courtroom proceeding, he or she may be available in person or telephonically to assist in other court-managed services, such as clerks' offices, *pro se* clinics, etc.
- Establishing a pool of qualified interpreters who are available by telephone or video to assist in non-critical proceedings or other court programs.
- The _____ [name of judicial entity] shares this interpreter pool with the following courts: _____
[check and list courts, if your court shares the pool of interpreters with other courts].
- Providing interpreters, when feasible, with basic information about the case, relevant court documents, and other information that can help the interpreter better prepare for the event, including technical terminology, jargon, and other complex issues that may complicate the interpretation.
- The _____ [name of judicial entity] employs the additional strategies to maximize the use of interpreters:

²⁶ See, *MAP Companion*, p. 22.

D. Remote Interpreting

The _____ [name of judicial entity] uses the following remote interpreting technologies for the provision of language access:
[Check all that apply]

- Video-remote interpreting (VRI) with high-quality video and audio equipment that permits interpreting in the consecutive and simultaneous modes, as well as confidential communications between parties and their attorneys.
- Telephonic interpretation, which occurs through the use of _____ [name of service provider, e.g., telephonic interpreter service if any, or other method of provision].
- Other: _____ [Describe]

The policy of the _____ [name of judicial entity] with regard to VRI is as follows:

- VRI and telephonic interpreting are effective in some settings, but not all. They will be considered but used with caution. Generally, in-person interpreters are preferred.
- Remote technologies require specialized and high-quality equipment to ensure effective and accurate communication.
- Telephonic interpreting will be a last resort for courtroom proceedings and reserved for non-courtroom events or very brief non-evidentiary proceedings, such as continuances, given that non-verbal cues – not visible when on the telephone – are critical for communication. Telephonic interpreting can be particularly problematic in some circumstances such as for persons who are deaf or hard of hearing, the elderly, those struggling with mental illness, quiet or nonverbally communicative persons, and others.
- VRI must be used appropriately, with high-quality equipment and trained interpreters, in order to be an efficient and effective mechanism for providing language access services when an in-person interpreter is not available, or when only a non-licensed foreign-language interpreter or non-credentialed sign language or deaf interpreter is available in person (but a licensed or credentialed one is available via video).

The _____ [name of judicial entity] provides and requires training for staff and decision makers on VRI and telephonic interpreting, how to use the technologies, how to work with the remote interpreter, and what appropriate events for VRI and telephonic interpreting are.

E. Appointment of Interpreters for Court-Managed Functions

The policy of the _____ [name of judicial entity] regarding the provision of interpreters for court-managed services, programs, and operations is consistent with the Rules.²⁷ The Rules provide that, outside of criminal and civil court proceedings, Title VI also applies to all other court-managed functions, including:

- information counters;
- intake or filing offices;
- cashiers;
- records rooms;
- sheriffs' offices;
- probation and parole offices;
- ADR programs;
- *pro se* clinics;
- criminal diversion programs;
- anger management classes;
- detention facilities; and
- other similar offices, operations, and programs managed by the court.

The _____ [name of judicial entity], therefore, in compliance with Title VI, provides the most appropriate language access service for these programs and services, including qualified interpreters, bilingual and multilingual staff, and translated materials and information. When the most appropriate language access service is the appointment of a qualified interpreter, the _____ [name of judicial entity] will follow the standards described above for the appointment of interpreters.

F. Additional Courtroom Tools for Language Access

In addition to the provision of qualified court interpreters in all proceedings where required, the _____ [name of judicial entity] provides the following language access services in the courtroom to assist LEP and DHH persons:

[Check all that apply]

- Bilingual courtroom staff are located, whenever feasible, in the courtroom to assist LEP and DHH persons.
- The court ensures bilingual staff are proficient in English and a second (or more) language(s), and able to communicate effectively and accurately, orally and in writing, in all the languages in which they communicate. The court tests the proficiency of bilingual staff in a neutral, systematic way. It does not rely on the bilingual staff

²⁷ See, Rules, Appendix A, II.

person's self-assessment of language skills.

- Absent exigent circumstances, bilingual staff are not used to interpret in the courtroom because of possible conflicts between the role of interpreter and role of court staff and related ethical concerns.
- At those times when bilingual staff are used to interpret outside a courtroom proceeding, bilingual staff understand the role of the interpreter and basic interpreting skills, and are only used for basic, noncritical communications.

- Signage and translation of courtroom resources, such as [list any available translated courtroom materials or signage; see MAP Companion for examples]:

- Use of multilingual video recordings, PowerPoint presentations, or VRI for general courtroom instructions, judge's introductory remarks, courtroom orientation, or other general processes.

G. Interpreter Compensation

As stated above, the _____ [name of judicial entity] provides interpreters at no cost to the LEP or DHH person. The _____ [name of judicial entity] directly compensates the interpreters it employs. As specified under the Rules,²⁸ interpreter compensation is currently the responsibility of the local courts, and there is no uniform, statewide compensation system at this time.²⁹ Therefore, interpreter fees and costs will be paid by the _____ [name of judicial entity] in accordance with the agreement in place between the interpreter and the court.

V. Strategies for Management and Monitoring of the MAP

The _____ [name of judicial entity] has established the following systems for monitoring the court's effectiveness in providing language access services to its LEP and DHH users, and for identifying the need for adjustments and improvements:

A. Periodic Monitoring of Effectiveness of the MAP

On an annual basis, the _____ [name of judicial entity] will monitor the MAP's implementation by:
[Check all that apply]

²⁸ See, Rules, Appendix A, VII.

²⁹ See, Rules, Section V.

- Gathering data regarding provision of interpreters, interpreter hours, and interpreter billing, by case type and proceeding, and comparing to prior usage.
- Gathering data regarding the use of licensed interpreters as compared to non-licensed interpreters to ensure increases in the use of licensed interpreters.
- Collecting information on the number of continuances to obtain an interpreter, and delays in processing of cases, to determine efficiencies in early identification of interpreter need.
- Analyzing the impact of any established mechanisms, such as calendaring or scheduling efficiencies, in interpreter cost-savings and delays in case processing.
- Soliciting feedback from justice partners, legal services programs, attorneys and bar associations, community-based organizations, and the public regarding the implementation of the administrative protocol.
- Identifying areas for improvement (e.g., provision of interpreters, translations, the addition of bilingual staff, better communication to stakeholders regarding policies, better staff training, etc.) and assistance from the Commission (such as translation assistance for statewide information, areas where interpreter orientations or licensing requirements may be improved, language access planning, etc.).
- Other:

B. Local Complaint Mechanisms

1. The _____ [*name of judicial entity*] has a complaint form and a complaint mechanism to enable LEP or DHH persons, their attorneys, justice partners, or any interested person to file a complaint for the failure to provide interpreter services and/or the quality of interpreter services provided. Complaints may also be filed regarding the provision (or the failure to provide) language access services, as well as the quality of those services, including translations, bilingual staff, web information, access to services, and other related services.
 - The complaint form and instructions are available at:
[*Check all that apply or fill in local information*]
 - The clerk's office, located at _____.
 - The Language Access Coordinator/Interpreter Coordinator's Office, located at _____.

The court's website at _____ [insert URL].

By calling _____ or mailing a request to _____.

Other: _____.

• The complaint form and instructions are currently translated into _____ language(s), namely, _____ [fill in as appropriate].

2. Any complaints filed about language access services provided at the _____ [name of judicial entity] will be investigated and resolved at the local court level. Complaints about interpreter performance or ethical violations by licensed interpreters will be referred to the Commission as the entity responsible for interpreter qualifications and ethical compliance. The Commission will then conduct a formal investigation in accordance with its disciplinary procedures. Complaints regarding non-licensed interpreters or those not licensed by the Commission will be investigated and resolved at the local court level.

3. On a quarterly basis, the _____ [name of judicial entity] will forward a report to the Commission regarding the complaints filed, whether resolved or not, at the local level. The intent of this report is merely to allow the Commission to monitor the effectiveness of language access policies and of the administrative protocol. The quarterly report will include the number of complaints, reason for complaints, and resolution (if any) of the complaint.

C. Training for Judicial Branch on the MAP

The _____ [name of judicial entity] understands that, in order for the successful implementation of this administrative protocol and the effective provision of interpreter and other language access services, all court staff and decision makers must be properly trained on the policies and procedures in the protocol, as well as language access policies generally.

The _____ [name of judicial entity] will provide training for its court staff and decision makers on the following topics:
[Check all that apply]

Proper appointment of qualified interpreters for all court proceedings.

- How to *voir dire* a non-licensed court interpreter.
- Role of an interpreter, modes of interpreting, and interpreter ethics and professional standards.
- Courtroom management when interpreters are used.
- Use of remote technologies for interpreting.
- Cultural competence.
- Other:

Training efforts will include new and existing staff and decision makers, as well as any staff interpreters, if applicable.

Resources and information regarding the protocol, language access services, policies and procedures, and tools for providing language assistance (such as bench cards, language identification guides, brochures, etc.) are available to all court staff and decision makers at:
[Check all that apply]

- The court's intranet.
- The court's Language Access Coordinator/Interpreter Coordinator's office [or other designated office].
- Other:

D. Outreach and Communication of the MAP

The _____ *[name of judicial entity]* has provided notice of this administrative protocol to all relevant stakeholders, justice partners, attorneys, and the public in the following manner: *[Fill in the method for notifying stakeholders of protocol]*

The _____ *[name of judicial entity]* will continue to communicate on an ongoing basis with stakeholders, including LEP and DHH persons, attorneys, justice

partners, community-based organizations, and other interested organizations about its provision of language access services.

To this end, the court will:

[Check all that apply]

- Collaborate with local bar associations, justice partners, and other relevant organizations to ensure distribution of information.

- Translate outreach materials to _____
[insert languages with high diffusion in the court's area into which materials will be translated].

- Use ethnic print and audio/TV media to communicate regarding its language access policies and administrative policies. The court has identified the following ethnic print and audio/TV media outlets with whom it will collaborate:

[insert local, regional and or statewide media outlets].

- Establish mechanisms for obtaining feedback from the public, attorneys, and justice partners regarding the implementation and effectiveness of the administrative protocol, and take this feedback into account at the yearly evaluation of the protocol.

- Other:

VI. Language Access Administrative Protocol Management and Other Language Access Considerations

The following is/are the person(s) responsible for management of this MAP for the appointment of interpreters and other language access services for the _____ [name of judicial entity]:

_____ [Name of person]
_____ [Address]
_____ [Phone number]
_____ [Fax/Email]

Executed: _____
[Date]

Signature

[Print name/title]