

What Lawyers Should Know about Louisiana's New Language Access Plan

By Brian P. Wiggins

Like the rest of the United States, the latest U.S. Census confirms that Louisiana's population is becoming increasingly diverse. Since the 2010 Census, Louisiana's white population declined by 6%, while Asian and Hispanic communities grew by 32% and 68%, respectively.¹ The growth of the Hispanic population, in particular, has been remarkable, with Jefferson Parish leading all Louisiana parishes in both percentage of population (17%) and total population (just under 80,000).

This increased racial and ethnic diversity is also reflected in the number of Louisianans who have a limited ability to read, speak, write or understand English, also known as limited English proficient (LEP). The number of LEP individuals has increased from 120,000 in 2015 to 128,000 in 2019 (2020 American Community Survey estimates have been delayed because of the pandemic).² After English, Louisiana's most-spoken languages continue to be Spanish, Vietnamese and French, with Arabic and Chinese coming in a distant fourth and fifth.

A logical consequence of Louisiana's increasing linguistic diversity is an increasing number of LEP individuals seeking access to critical institutions such as courts. In response to a Memorandum of Agreement signed with the U.S. Department of Justice, the Louisiana Supreme Court approved its first statewide Language Access Plan for state courts.³ The Language Access Plan, developed by a coalition of community advocates, judges, administrators, court interpreters and the Louisiana State Bar Association's Access to Justice Commission, represents the Louisiana judiciary's first comprehensive effort to improve language access services to LEP individuals. The plan reiterates and

strengthens the state's obligation to provide court interpreters, free of charge, to any LEP individual when accessing state courts regardless of the type of proceeding. This includes, but is not limited to, any civil proceeding when a LEP individual is a party in interest, *i.e.*, litigant, victim, witness, parent/legal guardian/custodian or minor or adult party. The Language Access Plan also focuses on other language assistance such as increasing the availability of translated documents and signs.

The duty to provide language access and court interpreters extends to everyone in the legal profession including courts, judges, administrators and lawyers. The American Bar Association's (ABA) Standing Committee on Legal Aid and Indigent Defendants issued Standards for Language Access in Courts (Standards) in 2012.⁴ Recently, the ABA's Standing Committee on Ethics and Professional Responsibility clarified lawyers' ethical responsibilities for language access issues under Model Rule 1.1 of the ABA Model Rules of Professional Conduct, which deals with the duty of competency, and Model Rule 1.4, which details the duty of communication.⁵ Considering the Standards and this new guidance, all legal professionals in Louisiana should become familiar with the following list of issues when interacting with LEP individuals.

Determining When an Interpreter is Needed

An interpreter should be appointed when a party in interest requests an interpreter or when the court or participants have difficulty speaking or understanding each other, even when an interpreter is not requested by a party in interest or an attorney. To help determine whether to require a court interpreter, the court should ask the LEP individual open-ended questions that cannot be answered with a simple "yes" or "no." For example, "What is the purpose of

your court hearing today?" Such questions help the judge determine whether an interpreter is needed, even if the individual feels that his or her English skills are adequate.⁶

Court Interpreter Costs

The court is responsible for appointing a court interpreter to interpret court proceedings for a LEP individual and paying interpreter expenses. At the request of the Supreme Court's Language Access Stakeholder Committee, the Legislature deleted a provision of the Louisiana Code of Civil Procedure Art. 192.2 that had permitted courts to tax as costs of court interpreter expenses.⁷ Thus, state law now provides that court-interpreting expenses should not be taxed to either the LEP individual or any other party, even if the party is not LEP.⁸ On the other hand, the court is *not* responsible for providing an interpreter or interpreting services for any out-of-court communication involving counsel including interviews, investigations, and any aspect of general case preparation.

Appointment of an Interpreter

Since Louisiana is a decentralized court system, each court is responsible for appointing a court interpreter when it is determined that it is necessary. This is typically the duty of the court's language access coordinator or judicial administrator, but ultimately the responsibility falls upon the judge.⁹ Interpreters should be chosen from a list of qualified interpreters provided by the Louisiana Supreme Court's Office of Language Access (OLA), www.lasc.org/Language_Access?p=ResourcesCourts. In no case should the court allow family members, children, friends or unqualified individuals to interpret inside the courtroom. Additionally, bilingual attorneys present at the proceeding should not be allowed to interpret on behalf of the court.

Interpreter Qualifications

In Louisiana, court interpreters are qualified by the OLA utilizing standards promulgated by the National Center for State Courts. A court interpreter may be one of two levels in Louisiana — registered or certified. A registered interpreter is one who has attended a two-day interpreter orientation, passed a background check, and passed two written examinations. A certified interpreter is one who has completed all the steps required of a registered interpreter, and, in addition, has passed an extensive oral examination. Not all languages can be registered or certified. For instance, for American Sign Language (ASL), Louisiana does not currently offer a “certified” option in part because of the lack of an oral component to ASL. In other cases, there may be no qualification standards at all. For those languages, the OLA can assist courts in identifying interpreters through national lists and consortia, or through contacts with universities or embassies. In cases where a court is unable to locate a certified or registered interpreter, the judge should conduct an extensive, on the record, *voir dire* of the interpreter to ensure that he or she is qualified to interpret the proceedings.

Working with an Interpreter

Given the increases in diversity and in the LEP population, it is important that attorneys learn how to work with interpreters.¹⁰ The goal of a court interpreter is to produce a legal equivalent and linguistically true and legally appropriate interpretation. Therefore, it is critical that attorneys speak clearly and pause frequently to allow the interpreter to render an accurate interpretation. In addition, the profession of interpreting is a highly specialized skill set requiring the mastery of legal terms and procedures, idioms, colloquialisms, and a host of other linguistic skills. Because of their importance to the process, court interpreters should be treated as officers of the court and given due respect as fellow legal professionals.



Language Access Complaints

Under Louisiana’s Language Access Plan, anyone may file a written complaint with the OLA if a court fails to provide adequate language assistance services, including, but not limited to, a court interpreter, or if an individual court interpreter is inadequate or unethical. To file a complaint, go to: www.lasc.org/languageaccess (click “Language Access Complaints”).

Conclusion

In conclusion, Louisianans who are LEP, regardless of their national origin, should not be denied access to important services, including the court system. Therefore, the Supreme Court, working together with its partners at the Bar Association’s Access to Justice Commission and Language Access Committee, will continue to improve language access throughout our increasingly diverse state.

FOOTNOTES

1. See p. 19, https://redist.legis.la.gov/2020_Files/MtgFiles/PowerPoint.pdf (retrieved 9/24/21).
2. See, www.lep.gov/maps/lma2015/Final_508 (retrieved 9/24/21).
3. See, www.lasc.org/Court_Interpreter/

LAPwithAppend.pdf (retrieved 9/24/21).

4. www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/lis_sclaid_standards_for_language_access_proposal_authcheckdam.pdf (retrieved 9-24-21).

5. See, American Bar Association Standing Committee on Ethics and Professional Responsibility, Formal Op. 500 (Oct. 6, 2021), available at: www.americanbar.org/content/dam/aba/administrative/professional_responsibility/aba-formal-opinion-500.pdf.

6. Resources, such as Language Identification and I Speak Cards, court signage and the Limited English Proficiency brochure, are available at: www.lasc.org/Language_Access?p=ResourcesCourts.

7. Act 207 of the 2021 Regular Session.

8. See Louisiana Code of Civil Procedure Art. 192.2, www.legis.la.gov/legis/Law.aspx?d=506661.

9. Louisiana’s Language Access Judicial Bench Card provides guidance for the judiciary when working with LEP individuals, accessible at: www.lasc.org/court_interpreters/Language_Access_Bench_Card.pdf.

10. For example, see Do’s and Don’ts for Working with Court Interpreters, www.dccourts.gov/sites/default/files/pdf-forms/Guidelines-for-working-with-interpreters.pdf.

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