

EXECUTIVE ORDER
(Language Services in the Courts)

Pursuant to the authority granted to the Chief Justice of the Rhode Island Supreme Court by § 8-15-2 of the Rhode Island General Laws (1997 Reenactment), it is hereby ordered as follows:

In an effort to promote the accuracy and integrity of judicial proceedings and to preserve fundamental principles of fairness and access to justice, the Rhode Island unified judicial system is committed to continuing to provide language access services to limited English proficient (LEP) persons who come in contact with the Rhode Island state court system. LEP persons should have meaningful access to the courts in a language that they are able to understand, and in which they are able to be understood by the Court. This Executive Order governs the appointment and use of oral interpreters and bilingual staff in court proceedings and operations conducted by the Rhode Island Judiciary and shall be applicable as described herein.

A. Definitions

1. *Authorized interpreter.* A certified interpreter, and a qualified interpreter, person or entity authorized by the Administrative Office of State Courts (AOSC) to interpret in specified court operations.
2. *Bilingual staff.* An employee of the Court other than an interpreter who has demonstrated proficiency in English and a second language in accordance with standards set by the AOSC and is authorized by the AOSC to engage in court operations in a language other than English.
3. *Certified interpreter.* An interpreter who appears on the roster maintained by the Office of Court Interpreters (OCI) as certified in accordance with the standards set forth in Executive Order No. 2009-05, and in compliance with the requirements of the AOSC.
4. *Court operation.* Offices, services and functions of the court, other than court proceedings, that may have contact with the public or any party, including:
 - a. The Clerk's Offices and Judicial Records Center;
 - b. Programs or services operated, managed or contracted by the court for mandatory use by parties or the court;
 - c. Court appointed professionals, and other individuals, employed, contracted or supervised by the court to assist the court or mandated by the court for a party in connection with a court proceeding;
5. *Court proceeding.* Any hearing, trial or other appearance before any court in this state in an action, appeal or other proceeding, including any matter conducted by a judicial officer.
6. *Filing party.*
 - a. The plaintiff or petitioner in a civil action.
 - b. The Attorney General or police department submitting an arrest warrant, information or indictment in a criminal case.

7. *Interpret.* The oral rendering of spoken communication from one language to another without change in meaning.
8. *Judicial officer.*
 - a. A justice, judge or magistrate of the court who presides over a court proceeding; or
 - b. Any other person presiding over a court proceeding, including an arbitrator, master, hearing officer, review officer or other like officer of the court.
9. *Language services.* Court services provided by an interpreter, bilingual staff, or by means of translation.
10. *Limited English proficient.* With respect to persons whose primary language is not English, and who are not Deaf or hard of hearing, the inability to adequately understand or communicate effectively in English in a court proceeding or contact with a court operation.
11. *Party.*
 - a. In a civil action, a plaintiff, defendant (or petitioner and respondent), including a person who brings or defends an action on behalf of a minor or incompetent, the parent or legal guardian of a minor party, and a legal guardian of a plaintiff or defendant;
 - b. In a criminal case, the defendant, the alleged victim, and the parent or guardian of a minor alleged victim or of a juvenile in a juvenile proceeding.
12. *Qualified interpreter.* An interpreter other than a certified interpreter who appears on the roster of qualified interpreters maintained by the AOSC and administered by the Office of Court Interpreters; or is found by the judicial officer on the record to have met the requirements of § 8-19-3(b)(2) and (c) of the Rhode Island General Laws (1997 Reenactment) and the requirements set by the AOSC in the Judiciary's Language Access Plan.
13. *Remote interpreting.* A process utilizing remote technology by which an interpreter assists in a court proceeding or operation without being physically present.
14. *Remote technology.* A system comprised of various equipment, software, and audio and visual communication linkage components to facilitate remote interpreting.
15. *Translation.* The rendering of a writing from one language to another without change in meaning.
16. *Witness.* A person who testifies in a proceeding.

B. General Rules

1. The judicial officer in any court proceeding shall appoint an interpreter for a limited English proficient person upon request of a party or whenever a party or testifying witness in the proceeding is limited English proficient, subject to the provisions of Section C(4) below.
2. Court staff members shall upon request or in any oral communication between a court staff member and a limited English proficient person provide service through bilingual staff or contact the Office of Court Interpreters to obtain the assistance of an authorized interpreter.
3. The judicial officer in any court proceeding may appoint an interpreter for a non-party individual with a "significant interest" based on an evaluation of the following four factors:
 - a. The relationship of the individual to the matter;

- b. the seriousness of the matter;
 - c. the impact of the outcome on the individual;
 - d. and whether interpretation is already being provided to another party in the proceeding and could be easily transmitted with the use of available technology.
4. The Court should provide the most competent interpreter services in a manner that is best suited to the nature of the proceeding.

C. Procedure – Proceedings

1. Notice to court.
 - a. As shall be set forth in the Judiciary’s Language Access Plan, the Office of Court Interpreters shall establish procedures to gather available information from all filing parties as to the identity of any limited English proficient party or witness and the primary language of such persons at the time of the initial filing.
 - b. Any party to a pending proceeding may at any time provide or amend available information to the Office of Court Interpreters (OCI) as to the identity of any limited English proficient party or witness and the primary language of such persons.
 - c. Any court employee who becomes aware that a party or witness in a pending proceeding is limited English proficient shall inform the Office of Court Interpreters.
2. Notice to parties.
 - a. As shall be established in the Judiciary’s Language Access Plan, the OCI shall create a written notice in English, Spanish, Portuguese, and such other languages for which a significant demand exists as determined by the AOSC, stating that the court will provide a competent interpreter for any limited English proficient party or witness at no charge, explaining the procedure to request an interpreter and to request a translation of the notice into other languages. The AOSC shall provide or require the filing party to provide such notice to each defendant in a proceeding.
 - (1) In civil matters, the notice shall be incorporated in or attached to the initial pleading to be served upon the defendant.
 - (2) In criminal matters, the notice shall be incorporated in or attached to the initial charging documents provided to the defendant, or provided by the court to the defendant at his or her initial court appearance.
 - b. At any proceeding for which an interpreter has not been assigned or appointed, the judicial officer or court staff shall inform the parties to a case that may involve a limited English proficient party or witness of the availability of a court interpreter.
3. The Office of Court Interpreters shall assign a certified interpreter to each court proceeding for which an interpreter appointment may be required under Section B(1) provided that if a certified interpreter is not available, the Office of Court Interpreters shall:
 - a. Assign a qualified interpreter; and
 - b. Report to the judicial officer the efforts made to obtain a certified interpreter in the event a qualified staff interpreter is not available.
4. Appointment of interpreter.
 - a. A judicial officer shall appoint a certified interpreter for a person who is limited English proficient when required by Section B(1); provided, however, that:
 - b. A judicial officer may appoint a qualified interpreter if the officer finds:

- (1) In any civil or criminal proceeding that a certified interpreter is unavailable and the abilities of an available qualified interpreter meet the requirements set forth in § 8-19-3(b)(1) and (2) of the Rhode Island General Laws (1997 Reenactment); and
 - (2) In a civil proceeding after consideration of the nature and duration of the proceeding, the potential cost and delay to appoint a certified interpreter, and the abilities of the available qualified interpreter, that use of a qualified interpreter is in the interests of justice; or
 - (3) In a criminal proceeding, that the nature and duration of the proceeding permit the use of a qualified interpreter pursuant to § 8-19-3(b)(3) of the Rhode Island General Laws (1997 Reenactment).
- c. A judicial officer may appoint more than one interpreter after consideration of the nature and duration of the proceeding; the number of parties in interest and witnesses requiring an interpreter; the primary languages of those persons; and the quality of the remote technology that may be utilized.
5. Oath. The judicial officer or court clerk shall administer an oath or affirmation to a non-staff court interpreter in the proceeding as set forth in the Judiciary's Language Access Plan.
 6. Remote Technology.
 - a. A judicial officer may allow an interpreter appointed pursuant to this section to interpret remotely only if remote technology is available and:
 - b. The proceeding is conducted such that:
 - (1) The officer, a party in interest or attorney is also appearing remotely in addition to the interpreter;
 - (2) The interpreter, if practicable, is in the same location as the limited English proficient party in interest or witness; or
 - (3) The proceeding is non-evidentiary, less than thirty minutes in duration, and does not utilize more than one interpreter; and
 - c. The remote technology meets the standards set by the AOSC and allows the officer, parties, attorneys and witnesses to hear each other and the interpreter clearly.
 7. The judicial officer shall dismiss an interpreter and appoint a replacement if the interpreter:
 - a. Is unable effectively to communicate with the judicial officer, the parties, or a limited English proficient person, including cases in which the interpreter self-reports such inability;
 - b. Has a conflict of interest due to a relationship with a person involved in the proceeding or an interest in the outcome; or
 - c. Is acting in violation of the Code of Ethics and Professional Responsibility for Court Interpreters in the Rhode Island Judiciary, the Rhode Island Code of Ethics, or the Judiciary's Code of Ethics.

The judicial officer shall notify the Office of Court Interpreters of the dismissal of any interpreter and the grounds therefor.
 8. Audio Recording.
 - a. The court shall create an audio recording of any interpreted proceeding in a courtroom with audio recording equipment that shall include anything said by a limited English proficient witness or party while testifying or responding to a

colloquy, together with the rendition of the interpreter during those portions of the proceeding. The court shall maintain such recordings in accordance with the requirements applicable to other records of proceedings.

- b. Transcriptions of such proceedings shall be made available at a rate established by the Office of Court Interpreters.
9. Absent a finding of good cause, nothing herein shall be construed to prevent a party from procuring the assistance of an interpreter in addition to one appointed by the judicial officer to assist that party or to monitor the performance of the appointed interpreter.

D. Language Services in Court Operations.

1. A court entity, employee or judicial officer that appoints, contracts, or authorizes non-court entities and persons not employed by the court to engage in court operations as set forth in Section A(4), shall ensure that language services are provided to limited English proficient persons at no charge utilizing standards equivalent to those defined in the Judiciary's Language Access Plan for other court operations.
2. As set forth in the Judiciary's Language Access Plan, the AOSC may establish and utilize tiered standards for bilingual staff or authorized interpreters that take into account the nature and purpose of communications engaged in by different operations or job positions.
3. Nothing in this Order is intended to require language services for:
 - a. Supreme Court Appellate Mediation Program cases in which all parties are represented by counsel; and
 - b. Supervised child custody visitations not occurring on court premises;
 - c. Any function operated, managed, contracted or supervised by another state department, agency or division.

E. Interpreter costs

1. The AOSC shall be responsible for paying the reasonable fees of court interpreters, other than court employees, for an interpreter assigned to or appointed in a proceeding or for interpreting work ordered or directed by the Court in a court operation.
2. The court shall not charge, assess, or obtain reimbursement for interpreter costs or fees from any party to a proceeding in which an interpreter is utilized or from any person utilizing the assistance of an interpreter in a court operation.

F. Privilege

It is the intent of this Executive Order that:

1. No communication deemed privileged under applicable law shall be rendered unprivileged on account of an interpreter's presence provided that the interpreter is engaged in interpreting authorized by this Order; and
2. No interpreter shall be permitted or compelled to testify in any proceeding as to statements made or interpreted during a communication privileged under applicable law.

G. Implementation

1. Language Access Plan

The AOSC shall establish and implement a Language Access Plan (LAP) by December 31, 2012 which shall set forth the management actions needed to implement this Executive Order, including the tasks to be undertaken, assignment of responsibility, deadlines and processes, and shall include provisions which require the AOSC to make good faith efforts to expand the Courts' capacity to generate audio recordings of interpreted proceedings, and when proceedings are recorded, to make the audio recordings of interpreted proceedings available to interested persons.

2. Language Access Stakeholders

The Office of Court Interpreters (OCI) shall work in conjunction with any newly established language access stakeholder committees, or any such other committees as determined by the Chief Justice to implement this Executive Order by providing input to the LAP, considering the need for conforming changes to court rules, suggesting ongoing improvements to language access, assisting in outreach and training efforts, evaluating the implementation of this Executive Order and the Language Access Plan, and assisting in other activities to improve language access in the courts. Such committee(s) shall include relevant stakeholders including court staff and non-court staff persons with expertise in court language access issues, lawyers or advocates for limited English proficient clients, and at least one representative from the Attorney General's office, the Public Defender, and Rhode Island Legal Services.

H. Monitoring

Within six (6) months after the effective date of this Order and annually thereafter, the Office of Court Interpreters shall submit detailed reports to the Chief Justice and the State Court Administrator, a copy of which shall be available on the Judiciary's website, documenting the efforts made to comply with this Executive Order and shall include the following categories of information:

- a. The actions the OCI has taken or intends to take to implement this Executive Order, and execute the completed LAP including any further policies or procedures drafted or issued for these purposes; and any language-related notices, forms, and signs drafted, translated, or issued;
- b. Data on services provided pursuant to this Executive Order and the LAP, by court or court program, location, language, and form and mode of language assistance, including any data indicating:
 - i. Any delays resulting from unavailable language assistance; and
 - ii. Instances in which language assistance is not provided and the reasons therefor.
- c. Data on the utilization of interpreters and bilingual staff broken down by:
 - i. Language;
 - ii. Qualification level (certified or qualified) of interpreters;
 - iii. Interpreter employment status as staff interpreter or contractor;
 - iv. Interpreters' state of residence/business;
 - v. Court or court program, including location; and
 - vi. Type of proceeding and case type.

- d. Information regarding any problems encountered in implementing this Executive Order and the LAP, including feedback gathered from the stakeholders committee, bench, bar, staff, and public; and
 - i. The process established to receive and respond to language access complaints; and
 - ii. The number, nature, and disposition of any language access complaints;
- e. The steps taken to notify the bench, bar, litigants, and public, including LEP communities, of any policies or procedures to implement this Executive Order and the LAP, and any response thereto;
- f. The trainings provided to judges, staff, and others regarding this Executive Order and any related language access matters, including the content of the trainings, training materials, dates held, trainers, and names and positions of attendees;
- g. Steps taken to recruit, train, set standards for, qualify, and certify interpreters, translators, and bilingual staff;
- h. Lists of authorized interpreters, translators, and bilingual staff specifying language, test results, and type of authorization;
- i. Lists of documents, signage, forms, web content, and audio or video content that have been or will be translated, the languages completed or intended for each, and the means by which the items will be distributed internally and made available to litigants;
- j. Figures on budget requests and spending for language services.

I. Administrative complaints

- 1. Any person aggrieved by an alleged violation of this Order in a court proceeding or operation may file an administrative complaint with the Office of Court Interpreters.
- 2. The State Court Administrator or his or her designee shall review and respond to an administrative complaint within thirty (30) days of its receipt.
- 3. The AOSC shall make complaint forms readily available in court houses, court offices and on the website of the Rhode Island Judiciary, and shall also provide complaint forms translated into Spanish, Portuguese, and such other languages for which a significant demand exists as determined by the AOSC. Such complaint shall include a notice that no court personnel may retaliate against any person filing a complaint or assisting in the investigation or resolution of a complaint.
- 4. Nothing herein shall be construed to:
 - a. restrict an aggrieved person from seeking to enforce this Order in a proceeding, including an appeal; or
 - b. provide any authority to alter, satisfy or vacate any judgment or order.

J. Effective Date

This Executive Order shall be effective on July 1, 2012 and shall be implemented in accordance with the Language Access Plan.

Entered as an Order of this Court this **13th** day of **June, 2012**.

ENTER:

By Order,

_____/s/
Paul A. Suttell
Chief Justice

_____/s/
Clerk