

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT  
C.A. NO. 1684CV00969-A

MASSACHUSETTS ASSOCIATION OF  
COURT INTERPRETERS, INC., MOUSSA  
ABBOUD, SOLEDADE GOMES  
DEBARROS, ANAHIT FLANAGAN,  
NORMA V. ROSEN-MANN, and MICHAEL  
R. LENZ, individually, and on behalf of other  
persons similarly situated,

Plaintiffs,

v.

EXECUTIVE OFFICE OF THE TRIAL  
COURT,

Defendant.

**MEMORANDUM IN SUPPORT OF THE TRIAL COURT'S  
PARTIAL MOTION TO DISMISS**

The Massachusetts Trial Court seeks the dismissal of the retaliation cause of action recently asserted in Plaintiffs' Second Substituted Amended Complaint. Plaintiffs Massachusetts Association of Court Interpreters, Inc. ("MACI"), Moussa Abboud, Soledade Gomes Debarros, Anahit Flanagan, Norma Rosen-Mann and Michael Lenz ("Plaintiffs") have amended their operative complaint to assert a cause of action for retaliation for the exercise of rights protected by the First Amendment of the U.S. Constitution and Article 16 of the Declaration of Rights of the Massachusetts Constitution.

In 2021, the Trial Court's Committee for the Administration of Interpreters for the Trial Court ("Committee")—whose members included the former Chief Justice of the Trial Court, the Hon. Paula M. Carey, as well as seven other judges and clerk magistrates—promulgated a new set of Standards & Procedures ("S&P") for staff and per diem court interpreters pursuant to the

Committee’s statutory duty under G.L. c. 221C, § 7. Plaintiffs appear to allege that the promulgation of this new S&P by the Trial Court’s Committee constituted retaliation against Plaintiffs for their filing of this litigation. They assert a claim of retaliation pursuant to 42 U.S.C. § 1983, the Massachusetts Civil Rights Act (“MCRA”), G.L. c. 12, §§ 11H, 11I, and Article 16 of the Massachusetts Declaration of Rights, and seek declaratory and injunctive relief. The amended complaint must be dismissed on several grounds:

*First*, Plaintiffs’ retaliation claims must be dismissed on sovereign immunity grounds. Both the U.S. Supreme Court and the Supreme Judicial Court have held that the Commonwealth is not a “person” under § 1983 or the MCRA, and thus Plaintiffs cannot sue the Commonwealth under either statute, *including for declaratory or injunctive relief*. *Will v. Michigan*, 491 U.S. 58, 65-66 (1989); *Poirier v. Mass. Dept. of Corr.*, 558 F.3d 92, 97 & n.6 (1st Cir. 2009); *Lopes v. Commonwealth*, 442 Mass. 170, 178-80 (2004).

*Second*, even if the Trial Court did not have sovereign immunity from Plaintiffs’ claims, the claim for retaliation under the First Amendment would nevertheless be defective for failure to state a claim. First Amendment claims must satisfy several elements, including that the plaintiff spoke as a citizen on a matter of public concern, that the plaintiff experienced an adverse action, and that the protected speech was a substantial or motivating factor in the adverse action. Plaintiffs have failed to plead these necessary elements. Plaintiffs’ speech appears to pertain to what they allege to be a contract with the Trial Court—which are not matters of public concern. They have also failed to plead that they have in fact experienced any material change in their contractual relationship with the Trial Court. And they have failed to adequately plead any facts that plausibly suggest a causal relationship between their speech about the Trial Court and the promulgation of a new S&P. Indeed, the actions of the members of the Committee are

entitled to a presumption of regularity and good faith as the acts of public servants. The amended complaint alleges no facts that would overcome that presumption—and certainly no facts suggesting that former Chief Justice Carey or any other member of the Committee acted in retaliation for this litigation. Indeed, the S&P was promulgated in 2021—*five years* after the filing of the complaint in this action. This passage of time, combined with the lack of allegations regarding retaliatory animus on the part of the Trial Court’s statutory Committee, is fatal to Plaintiffs’ First Amendment retaliation claim.

*Third*, Plaintiffs’ other retaliation cause of action, brought pursuant to the MCRA for purported violation of their rights to free speech under Article 16, would likewise fail to state a claim even were it not barred by sovereign immunity. Article 16 protections are contiguous with First Amendment protections in this context, and therefore the Article 16 claim is defective for the same reasons as the First Amendment claim. Moreover, the Article 16 claim is and must be brought pursuant to MCRA, which requires allegations of threats, intimidation or coercion—none of which are pleaded here.

Accordingly, Plaintiffs’ retaliation claims for purported violations of their rights to free speech under the First Amendment or Article 16 must be dismissed pursuant to Rule 12(b)(1) and Rule 12(b)(6).

## **PROCEDURAL BACKGROUND**

### **A. Prior Operative Complaints**

The original Superior Court complaint in this action was filed in March 2016. Plaintiffs filed a Substituted Amended Complaint on November 29, 2018. Docket #18. The only cause of action in the Substituted Amended Complaint was a breach of contract claim against the Trial Court for purported violations of the S&P for per diem court interpreters providing services to

the Trial Court. *See id.* Plaintiffs allege that the Trial Court breached the terms of the S&P by, for instance, on occasion paying per diem court interpreters on an hourly basis, rather on a half-day basis, or by not paying full-day compensation when per diem court interpreters work during their lunch break. Plaintiffs seek relief on behalf of themselves and all others similarly situated pursuant to Rule 23 of the Rules of Civil Procedure. *See id.* The parties have been engaged in discovery as to Plaintiffs' Rule 23 class action allegations.

**B. Plaintiffs' Motion to Amend the Complaint to Add a Retaliation Claim**

On September 23, 2021, Plaintiffs moved for leave to file a further amended complaint with a cause of action against the Trial Court for retaliation in violation of the First Amendment of the U.S. Constitution and Article 16 of the Declaration of Rights of the Massachusetts Constitution. Docket #36. The proposed Second Substituted Amended Complaint sought relief for damages, but did not seek injunctive relief. *See* Docket #36. The Trial Court opposed the motion to amend on sovereign immunity grounds. Docket #37. In their reply, Plaintiffs agreed to withdraw their claims for monetary damages for their proposed retaliation claims and stated that they would instead only seek declaratory and injunctive relief. Docket #38 (Pls.' Reply), at 1 ("Plaintiffs hereby withdraw its claim for damages for Retaliation."). The proposed amended complaint, however, had not requested injunctive relief. *See* Docket #36. In any event, the Trial Court had cited authorities in its opposition brief that had dismissed injunctive relief claims on sovereign immunity grounds.

In an order dated March 11, 2022, the Superior Court allowed Plaintiffs' motion to amend the complaint to add assert a retaliation cause of action against the Trial Court. Docket #40 (Mar. 11, 2022 Order), at 2-3. The Court erroneously concluded that Plaintiffs' claims for

declaratory and injunctive relief were not barred by sovereign immunity. *Id.*<sup>1</sup> On or around March 31, 2022, Plaintiffs filed the Second Substituted Amended Complaint.

### **C. The Operative Complaint (Second Substituted Amended Complaint)**

The Second Substituted Amended Complaint has been amended to assert a claim of retaliation against the Trial Court for Plaintiffs' exercise of their First Amendment and Article 16 rights to free speech. Plaintiffs, however, do not allege specifically the way in which they exercised those rights to free speech. Second Subst. Am. Compl. ¶¶ 64-70. To the extent they claim that their rights to free speech were exercised when they "complained" that the 2009 S&P had been violated, this allegation presumably refers to the filing of this litigation in March 2016. *See* Second Subst. Am. Compl. ¶ 66. Plaintiffs allege that the Trial Court issued a new S&P in January 2021, which no longer contains the provisions from the 2009 S&P that Plaintiffs have complained were violated. Second Subst. Am. Compl. ¶¶ 66-68.

The 2021 S&P, which is incorporated by reference into the amended complaint, was ordered to be adopted by the Hon. Paula M. Carey, former Chief Justice of the Trial Court, pursuant to G.L. c. 221C. *See* Ex. A attached hereto, at ii.<sup>2</sup> Former Chief Justice Carey was Chair of the Committee for the Administration of Interpreters for the Trial Court, which issued the 2021 S&P. *Id.* at iii; G.L. c. 221C, § 7(a). The other members of the Committee were, pursuant to G.L. c. 221C, § 7: "the chief justice of the district court department and 1 justice and one clerk-magistrate of said department," "a justice and a clerk or an assistant clerk of the

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<sup>1</sup> To the extent the Court considers the March 11, 2022 decision on Plaintiffs' motion to amend the pleading to add the retaliation claims, *see* Docket #40, that decision must be disregarded or reconsidered as it was erroneous as a matter of law under *Will v. Michigan*, 491 U.S. 58, 65-66 (1989) and *Lopes v. Commonwealth*, 442 Mass. 170, 178-80 (2004).

<sup>2</sup> On a motion to dismiss, a court may consider documents referred to and relied upon in a complaint without converting the motion into a motion for summary judgment. *See Harhen v. Brown*, 431 Mass. 838, 839-40 (2000).

superior court,” “a judge of the probate and family court department,” and “1 other justice, judge or clerk-magistrate.” G.L. c. 221C, § 7(a); *see* Ex. A, at iii.

Plaintiffs assert that the promulgation of the 2021 S&P was an act of retaliation against Plaintiffs for their unspecified speech. *See* Second Subst. Am. Compl. ¶¶ 64-70. Plaintiffs seek relief pursuant to 42 U.S.C. § 1983, Article 16 of the Declaration of Rights, and the MCRA. *See* Second Subst. Am. Compl. ¶ 70.

## **ARGUMENT**

### **I. THE COMMONWEALTH HAS SOVEREIGN IMMUNITY AGAINST PLAINTIFFS’ CLAIMS FOR DECLARATORY AND INJUNCTIVE RELIEF.**

Plaintiffs’ claims, brought pursuant to 42 U.S.C. § 1983 and the MCRA, are barred by sovereign immunity even where Plaintiffs seek only declaratory or injunctive relief.

#### **A. The Commonwealth Has Sovereign Immunity Against 42 U.S.C. § 1983 Claims for Declaratory and Injunctive Relief.**

Plaintiffs’ claim for retaliation in violation of the First Amendment, brought pursuant to 42 U.S.C. § 1983, must be dismissed on sovereign immunity grounds. Courts have long concluded that states have sovereign immunity under the Eleventh Amendment against § 1983 claims. *Will*, 491 U.S. at 65-66 (holding that § 1983 enables suits against “persons” and Congress’s enactment of § 1983 did not abrogate a state’s immunity) (internal citations omitted). The Commonwealth’s sovereign immunity from § 1983 claims applies to the Massachusetts Trial Court, as a division of the Commonwealth. *See Donahue v. Trial Court*, 99 Mass. App. Ct. 180, 183 (2021), *review denied*, 487 Mass. 1106 (2021) (affirming dismissal of claim against the Trial Court as barred by sovereign immunity).

The Commonwealth’s sovereign immunity from § 1983 claims applies even where the requested relief is only declaratory or injunctive, rather than monetary. As the Supreme Court

noted in *Will v. Michigan*, “[o]f course a *state official* in his or her official capacity” would be a person under § 1983 when sued for injunctive relief because “official-capacity actions for prospective relief are not treated as actions against the State.” *Will*, 491 U.S. at 71 n.10 (quoting *Kentucky v. Graham*, 473 U.S. 159, 167 n. 14 (1985)). But “the State itself” is not a person under § 1983 and cannot be sued. *Id.*

This indisputable application of sovereign immunity was made clear by the SJC in *Lopes*, 442 Mass. at 178-80. The plaintiffs in *Lopes* sought declaratory and injunctive relief to prevent the Commonwealth from recovering the costs of medical care from the estates of individuals who received Medicaid during their lifetime. The plaintiffs alleged that the decedents had died of tobacco-related illness, and claimed that the Commonwealth had already received recovery for expenses to treat such illness in its tobacco-related litigation. *Id.* at 175. The plaintiffs relied on 42 U.S.C. § 1983 as a basis for their action that the Commonwealth’s recovery was contrary to federal law. *Id.* at 178. The SJC rejected plaintiffs’ application of § 1983 to declaratory and injunctive relief: “Neither Federal statute relied on by the plaintiffs—the Medicaid Act or the civil rights statute, 42 U.S.C. § 1983—abrogates the States’ sovereign immunity.” *Id.* Similarly, in *Poirier*, the First Circuit found that the Department of Correction had sovereign immunity from a § 1983 claim for prospective injunctive relief. 558 F.3d at 97 & n.6 (“States and their agencies are entitled to sovereign immunity ‘*regardless of the relief sought.*’ [Plaintiff’s argument that she *only seeks prospective injunctive relief* against the DOC is therefore unavailing.” (quoting *Kentucky*, 473 U.S. at 167 n.14)) (emphasis added).

Plaintiffs have argued—and the Superior Court erroneously agreed—that because they seek only prospective injunctive relief, rather than monetary damages, sovereign immunity does not bar their claim. *See* Docket #40 (Mar. 11, 2022 Order), at 2. This argument, however, was

expressly addressed and rejected by the SJC in *Lopes*. The plaintiffs there had argued that sovereign immunity from § 1983 claims did not bar their claim under *Ex parte Young*, which allows certain claims for injunctive relief against state officials to compel them to comply with the law. *Lopes*, 442 Mass. at 179 (citing *Ex parte Young*, 209 U.S. 123 (1908)). The SJC rejected this application of *Ex parte Young* as the “plaintiffs here have not sued any State official, but the State itself.” *Lopes*, 442 Mass. at 180. So too here, Plaintiffs have sued the Trial Court, not a State official, and their claim is therefore barred by sovereign immunity.<sup>3</sup>

Plaintiffs have also argued that because their claims arise from a contract, sovereign immunity does not bar their claim. *See* Docket #40 (Mar. 11, 2022 Order), at 3-4. And indeed, the Trial Court does not invoke sovereign immunity against Plaintiffs’ breach of contract claim. That claim remaining pending, and the parties have been engaged in discovery on that claim on the merits. The contract claim here is in contrast with the argument asserted by the plaintiffs in *Lopes*. There, the plaintiffs tried to evade sovereign immunity by claiming that their suit sounded in contract. The SJC affirmed a Superior Court decision that the plaintiffs’ suit was not an action in contract because the Commonwealth was “only doing what the law requires.”

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<sup>3</sup> The Court’s March 11, 2022 decision, which found that the Trial Court did not have sovereign immunity from § 1983 claims for declaratory and injunctive relief, is therefore contrary to established state and federal law. The only authority cited in the Court’s March decision to support its conclusion regarding sovereign immunity was *Will v. Michigan*, 491 U.S. 58, but the Court seems to have misconstrued the holding. *See* Docket #40, at 2 (citing *Will*, 491 U.S. at 71 n.10). The Supreme Court expressly noted in *Will v. Michigan* that claims for injunctive relief against a State are barred by sovereign immunity, and hence are distinguishable from a claim for injunctive relief against “a state official in his or her official capacity.” 491 U.S. at 71 n.10. The Superior Court’s decision also referred to the lack of sovereign immunity for “municipal corporations,” *see* Docket #40, at 2 (citing *Will*, 491 U.S. at 71 n.10), but the State is not a municipality. *See Monell v. Dept. of Social Services of City of New York*, 436 U.S. 658, 690-91 (1978) (municipalities, unlike States, can be “persons” under 42 U.S.C. § 1983 under certain circumstances); *Will*, 491 U.S. at 70 (distinguishing *Monell* as to State liability under § 1983, noting that “it does not follow that if municipalities are persons then so are States,” as “States are protected by the Eleventh Amendment while municipalities are not”).



*Lopes*, 442 Mass. at 178. Here, the Trial Court’s contractual relationship with the per diem court interpreters *does not* involve “only doing what the law requires” and the suit *is* an action in contract, to which sovereign immunity does not apply. *See id.*

Because the Commonwealth’s immunity against § 1983 claims has not been waived or abrogated, the Court has no jurisdiction over the claim. The rules of construction governing statutory waivers of sovereign immunity are, after all, “stringent,” and the Commonwealth “cannot be impleaded in its own courts except with its consent.” *Woodbridge v. Worcester State Hosp.*, 384 Mass. 38, 42 (1981) (internal quotation marks and citations omitted). The § 1983 claim for retaliation must be dismissed for lack of subject matter jurisdiction. *See* Mass. R. Civ. P. 12(b)(1); *Vining v. Commonwealth*, 63 Mass. App. Ct. 690, 696 (2005) (lack of subject matter jurisdiction defense may be raised at any time).

**B. The Commonwealth Has Sovereign Immunity Against MCRA Claims for Declaratory and Injunctive Relief.**

Sovereign immunity likewise bars Plaintiffs’ claims brought against the Trial Court pursuant to the Commonwealth’s civil rights vehicle, the MCRA, G.L. c. 12, §§ 11H, 11I. General Laws c. 12, § 11H provides in pertinent part: “Whenever any person or persons, whether or not acting under color of law, interfere by threats, intimidation or coercion, or attempt to interfere by threats, intimidation or coercion, with the exercise or enjoyment by any other person or persons of rights secured by the constitution or laws of the United States, or of rights secured by the constitution or laws of the commonwealth, the attorney general may bring a civil action for injunctive or other appropriate equitable relief in order to protect the peaceable exercise or enjoyment of the right or rights secured.” General Laws c. 12, § 11I provides that persons whose rights are interfered with, as described in § 11H, may institute a civil action for injunctive and monetary relief, as well as attorney’s fees. The MCRA itself creates no substantive civil rights;

rather, it provides a mechanism for obtaining relief from the interference, or attempted interference, with rights conferred by federal or Massachusetts law. *See* G.L. c. 12, §§ 11H, 11I; *Howcroft v. City of Peabody*, 51 Mass. App. Ct. 573, 593 (2001)

Massachusetts courts have concluded that sovereign immunity bars MCRA claims against the Commonwealth. The Commonwealth is “not a ‘person’ for purposes of c. 12, §§ 11H and 11I,” and “there is no reason to believe that the Legislature intended, by the enactment of G.L. c. 12, §§ 11H and 11I, to waive sovereign immunity.” *Commonwealth v. Elm Med. Lab., Inc.*, 33 Mass. App. Ct. 71, 76-77 (1992). For instance, the Appeals Court has found that the Department of Correction “is not liable for monetary, declaratory, or injunctive relief under § 1983 or the MCRA.” *Wright v. Dept. of Corr.*, 93 Mass. App. Ct. 1112 (Table), 2018 WL 2407178, at \*3 (May 29, 2018) (Rule 1:28 Decision) (citing *Elm Med. Lab.*, 33 Mass. App. Ct. at 76-80). Similarly, in *Williams v. Dept. of Correction*, the Court found that the Commonwealth is immune from injunctive relief under the MCRA “because the Commonwealth and its agencies are not ‘persons’ under the MCRA.” 179 N.E.3d 1138 (Table), 2021 WL 6109964, at \*1 (Mass. App. Ct. Dec. 27, 2021) (Rule 23.0 Decision) (quoting *Lopes*, 442 Mass. at 180). The Appeals Court further explained that although “sovereign immunity would not bar a claim for prospective injunctive relief brought against a State official in his or her official capacity, . . . such relief is not available to the plaintiff because he has ‘not sued any State official, but the State itself.’” *Id.* (quoting *Lopes*, 442 Mass. at 180); *see also Johnson v. Ryan*, 89 Mass. App. Ct. 1121 (Table), 2016 WL 2585676, at \*3 (May 5, 2016) (Rule 1:28 Decision) (emphasis added) (allowing injunctive claim under MCRA because it was brought against a State official, citing *Ex parte Young*).<sup>4</sup>

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<sup>4</sup> The Court’s March 11, 2022 decision cited *Layne v. Superintendent, Mass. Corr. Inst.*,

Here, Plaintiffs have not sued a state officer in her official capacity—they have only sued the Commonwealth itself. The Commonwealth has not consented to such a suit, and the claim is therefore barred by sovereign immunity.

## **II. THE COMPLAINT FAILS TO STATE A CLAIM FOR RETALIATION IN VIOLATION OF THE FIRST AMENDMENT.**

Even if Plaintiffs’ retaliation claim was not barred by sovereign immunity, the claim for retaliation in violation of the First Amendment should be dismissed for failure to state a claim on which relief can be granted. The elements of a First Amendment retaliation claim brought by an independent contractor include: (1) “whether the employee spoke as a citizen on a matter of public concern”; (2) the balance between the interests of the employee, “as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees”; and (3) whether “the protected expression was a substantial or motivating factor in the adverse employment decision.” *Decotiis v. Whittemore*, 635 F.3d 22, 29 (1st Cir. 2011) (internal citations and quotation marks omitted); *see also Cristo v. Evangelidis*, 90 Mass. App. Ct. 585, 589 (2016).<sup>5</sup> A “bald assertion” that an employment-related decision was unlawful “cannot

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*Cedar Junction*, 406 Mass. 156 (1989) to support its finding on sovereign immunity under the MCRA. *See* Docket #40 (Mar. 11, 2022 Order), at 3. That case, however, did not address sovereign immunity against the Commonwealth. The claims there were asserted against a State officer in his official capacity, not against the State itself. *See Layne*, 406 Mass. at 156 n.2.

<sup>5</sup> The case law first setting out these elements applied to employees, not independent contractors. *See Decotiis v. Whittemore*, 635 F.3d 22, 29 (1st Cir. 2011). Plaintiffs are not Trial Court employees, but rather, are independent contractors who provide interpreting services to the Trial Court. Second Subst. Am. Compl. ¶ 62. The Supreme Court, however, has extended the protections for employees to independent contractors, protecting them from retaliation from the entities with which they contract for their public discourse. *See Board of County Commissioners v. Umbehr*, 518 U.S. 668, 686 (1996); *Rosaura Bldg. Corp. v. Municipality of Mayaguez*, 778 F.3d 55, 63 (1st Cir. 2015).

sustain the complaint.” *Ourfalian v. Aro Mg. Co. Inc.*, 31 Mass. App. Ct. 294, 296 (1991). Yet that is what Plaintiffs have asserted here.

**A. Plaintiffs Fail to Allege That They Engaged in Protected Activity for First Amendment Purposes.**

Plaintiffs’ claim of First Amendment retaliation fails first of all because the amended complaint does not plead any statements by the Plaintiffs whatsoever, let alone statements about matters of public concern. *See* Second Subst. Am. Compl. ¶¶ 64-70 (failing to allege any protected activity). To the extent that Plaintiffs intended to suggest that their protected speech is the filing of the original Complaint in this action in March 2016, the amended complaint fails to allege that such filing pertains to a “matter of public concern.” *Decotiis*, 635 F.3d at 29.

The very point of the “public concern” requirement is to protect against the “attempt to constitutionalize [an] employee grievance. . . .” *Connick v. Myers*, 461 U.S. 138, 154 (1983). Courts are therefore unpersuaded when a “plaintiff’s grievances, though wrapped in constitutional clothing, were based upon matters of personal concern.” *Vickowski v. Hukowicz*, 201 F. Supp. 2d 195, 201 (D. Mass. 2002) (dismissing First Amendment retaliation claim). Matters of public concern are those of interest to the community. *Joritz v. Gray-Little*, 822 F. App’x 731, 738 (10th Cir. 2020) (internal citations and quotation marks omitted) (dismissing claims for failure to state a claim of retaliation).

Where the speech concerns “internal working conditions,” the speech does not touch a matter of public concern. *Rosado-Quinones v. Toledo*, 528 F.3d 1, 5 (1st Cir. 2008) (affirming dismissal of retaliation claim). In *Tang v. State of R.I., Dept. of Elderly Affs.*, 163 F.3d 7, 12 (1st Cir. 1998), for instance, the complaints that an employee made about working conditions—including relocation of workspace and a filing cabinet—did not constitute a matter of public concern. In distinguishing between these two types of speech, a court must consider the

speaker's motivation: "Was the speech calculated to redress personal grievances or did it have some broader public purpose?" *Joritz*, 822 F. App'x at 738.

Here, the allegations in the Second Substituted Amended Complaint make clear that the initiation of this litigation pertained to matters of private concern to the Plaintiffs regarding their compensation and benefits in their alleged contract with the Trial Court. *See* Second Subst. Am. Compl. ¶ 66 (alleging that the changes to the S&P pertained specifically to the "rights Plaintiffs may have had in the 2009 version that they complained about" and that these changes "strip[ped] Plaintiffs of rights in the 2009 S&P"). Because Plaintiffs' initial complaint related to their working conditions, and not matters of public concern, they have failed to plausibly allege that they engaged in protected activity. Where there is no protected activity, the retaliation claim must be dismissed. *See, e.g., Tang*, 163 F.3d at 12 (dismissing retaliation claim as a matter of law where the plaintiff's statements were not matters of public concern, but rather, pertained to her personal employment situation).

**B. Plaintiffs Fail to Plead They They Experienced an Adverse Action.**

Plaintiffs' First Amendment claim also fails because they do not allege any adverse action in response to their alleged protected speech. Their only allegations attempting to identify an adverse action are that the Trial Court promulgated a new S&P in 2021, and that the 2021 version of the S&P does not include some of the provisions that were in the prior version and which Plaintiffs had claimed were not followed. *See* Second Subst. Am. Compl. ¶¶ 64-70.

Plaintiffs do not allege, however, any facts regarding how they have been impacted by any changes in the Trial Court's policies and practices regarding per diem court interpreters. *See* Second Subst. Am. Compl. ¶¶ 64-70. For instance, they allege that the 2021 S&P no longer refers to the provisions for the units of time for which per diems are compensated, or the

compensation for interpreting in more than one language—but they do not allege that the Trial Court’s policies for such compensation have in fact changed. *See id.* Rather, they allege that those policies are not referenced in this particular document. *See id.* Simply alleging that a provision is not located in one document of the Trial Court is not sufficient to plausibly suggest that the policy has changed. As a result, nothing in the Second Substituted Amended Complaint pleads an adverse action against the Plaintiffs.

**C. Plaintiffs Fail to Allege Retaliatory Animus or a Causal Link Between Protected Speech and an Adverse Action.**

Plaintiffs’ retaliation claim also fails because the amended complaint does not plead any causal connection between their speech and the 2021 promulgation of the S&P.

**1. The Amended Complaint Does Not Allege Any Facts Suggesting Retaliatory Animus by the Committee.**

The amended complaint fails to plead any causal connection between their speech and the promulgation of the S&P in 2021—or indeed, any facts suggesting any retaliatory animus by employees or officers of the Trial Court whatsoever. Indeed, state law required the Trial Court’s Committee to promulgate Standards & Procedures for the provision of interpreting services. *See* G.L. c. 221C, § 7(d) (requiring the Committee to develop “standards and procedures for the training, professional conduct, certification, qualification and adequate compensation of certified and qualified interpreters”); Ex. A attached hereto, at ii. Plaintiffs do not allege any facts that plausibly suggest any causal link between the fulfillment of this statutory duty and Plaintiffs’ speech regarding the Trial Court.

The decisionmakers that promulgated the S&P that is the target of Plaintiffs’ retaliation claim are the former Chief Justice of the Trial Court, the Chief Justice of the District Court, and the other judges or clerk magistrates who served on the Committee. *See* G.L. c. 221C, § 7; *see*

Ex. A attached hereto, at ii. The amended complaint does not allege that these members had or were affected by a retaliatory motive in making their decisions. *See* Second Subst. Am. Compl. ¶¶ 64-70; Ex. A attached hereto, at ii-iii. Indeed, the decisions of these public officers enjoy a presumption of regularity and good faith. *See Foster from Gloucester, Inc. v. City Council of Gloucester*, 10 Mass. App. Ct. 284, 294 (1980) (“There is every presumption in favor of the honesty and sufficiency of the motives actuating public officers in actions ostensibly taken for the general welfare.”). A party asserting vindictive action by a public officer must overcome this presumption. *United States v. Armstrong*, 517 U.S. 456, 464 (1996) (applying the presumption to prosecutors). Here, the complaint pleads no facts indicating that the public officers involved in the promulgation of the S&P had anything but honest motives in their work for the Committee. Instead, it makes conclusory assertions that the Trial Court acted in retaliation by promulgating the S&P. *See Ourfalian*, 31 Mass. App. Ct. at 296 (dismissing claims based on “bald assertions,” but allowing retaliation claim where plaintiff alleged facts that allowed a “clear inference” of retaliation); *Frederic v. Mass. Comm’n Against Discrimination*, 99 Mass. App. Ct. 1132 (Table), 2021 WL 2742589, at \*3 (July 1, 2021) (Rule 23.0 Decision) (dismissing claim for declaratory relief given plaintiff’s “bald assertion” of false pretenses by the defendant).

**2. The Five-Year Gap Between the Filing of the Complaint and the Promulgation of the S&P Is Insufficient to Suggest a Causal Relationship Between Them.**

The amended complaint also fails to allege any close temporal proximity of events that might otherwise satisfy the causation requirement at the pleading stage. In some instances, a plaintiff can plead causation in a retaliation claim by pointing to a short period of time between the protected activity and the adverse action. *See, e.g., Mole v. Univ. of Massachusetts*, 442 Mass. 582, 595 (2004). Here, however, Plaintiffs’ original complaint in this action was filed six

years ago, in March 2016. Plaintiffs allege that the Trial Court promulgated the new S&P in 2021—*five years* after the Complaint was originally filed. Second Subst. Am. Compl. ¶ 65.

Courts have consistently found that such a long period of time, without other allegations of retaliatory animus, fails to satisfy the causation element. *See Mole*, 442 Mass. at 595 (“[A]s the elapsed time between those two events becomes greater, the inference weakens and eventually collapses.”); *Mesnick v. General Electric Co.*, 950 F.2d 816, 828 (1st Cir. 1991) (finding no causal connection between events separated by a “long gestation period” of nine months); *Calero-Cerezo v. U.S. Dept. of Justice*, 355 F.3d 6, 25 (1st Cir. 2004) (noting that three and four month periods have been held insufficient); *Buntin v. City of Bos.*, 91 Mass. App. Ct. 1128, 2017 WL 2644377, at \*3 (June 20, 2017) (Rule 1:28 Decision) (affirming dismissal of retaliation claim based on an allegedly retaliatory action that occurred two years later, finding that “[s]uch an attenuated temporal connection is insufficient to plausibly suggest a causal relationship between the . . . events”). So too here, the five-year length of time between Plaintiffs’ presumed alleged protected activity and the alleged adverse action—combined with the lack of allegations that would support any inference of retaliatory animus on the part of the Trial Court, former Chief Justice Carey, or the other members of the Committee that promulgated the new S&P—is fatal to Plaintiffs’ First Amendment retaliation claim.

### **III. THE COMPLAINT FAILS TO STATE A CLAIM FOR RETALIATION UNDER THE MCRA OR ARTICLE 16.**

Plaintiffs’ claim under the MCRA, even if it were not barred by sovereign immunity, would nevertheless be subject to dismissal for failure to state a claim.

#### **A. Plaintiffs’ MCRA Claim Must Be Dismissed for Failure to Plead a Violation of Their Rights to Free Speech.**



To the extent Plaintiffs' MCRA claim is brought for purported violations of the First Amendment, it is defective for the same reasons as the § 1983 claim for such purported violations. *See* Part II, *supra*.

To the extent Plaintiffs' MCRA claim is brought for purported violations of Article 16 of the Massachusetts Declaration of Rights, it is defective for the same reasons as the First Amendment claim. *See* Part II, *supra*. Article 16 claims are evaluated using a First Amendment standard. *Hosford v. Sch. Comm. of Sandwich*, 421 Mass. 708, 712-13 (1996); *Gauthier v. Town of Dracut*, No. CIV.A. 03-2826, 2005 WL 1669121, at \*5 (Mass. Super. June 27, 2005) (citing *Smith v. Comm'r of Mental Retardation*, 409 Mass. 545, 552 (1991)). Because Plaintiffs have failed to allege protected activity, an adverse action, or causation, *see* Part II, *supra*, they have failed to plead the elements of an Article 16 violation.

**B. Plaintiffs Have No Additional Private Right of Action for Purported Violations of Article 16.**

Plaintiffs seem to also assert a claim for violation of Article 16 of the Massachusetts Declaration of Rights apart from their claim under the MCRA. *See* Second Subst. Am. Compl. ¶ 70. The Declaration of Rights, however, does not provide an independent cause of action separate from that provided by the MCRA. The MCRA was created to provide a mechanism for obtaining relief from the interference, or attempted interference, with rights conferred by federal or Massachusetts law—including rights conferred by the Massachusetts Declaration of Rights. *See* G.L. c. 12, §§ 11H, 11I; *Howcroft*, 51 Mass. App. Ct. at 593. The Commonwealth has not consented to suit for purported violations of the Declaration of Rights, apart from the consent provided through enactment of the MCRA.

A plaintiff therefore cannot bring an independent cause of action, apart from the MCRA, for purported violations of Massachusetts law. *See Lopes*, 442 Mass. at 176 (“The Legislature

has not expressly consented to a direct action against the Commonwealth” for violations of the Declaration of Rights); *Martino v. Hogan*, 37 Mass. App. Ct. 710, 720 (1994) (Declaration of Rights does not create an independent cause of action and MCRA occupies the field); *Levin v. Univ. of Mass.*, 88 Mass. App. Ct. 1115 (Table), 2015 WL 7879301, at \*3 (Dec. 2, 2015) (Rule 1:28 Decision) (dismissing claim seeking declaratory relief brought under Article 16 of the Declaration of Rights on sovereign immunity grounds); *Minich v. Spencer*, No. 2015CV00278, 2016 WL 3479000, at \*17 (Mass. Super. May 17, 2016) (finding no indication that Commonwealth has consented to suit under Article 10 or Article 12 of the Declaration of Rights with respect to claims for declaratory relief).

**C. Plaintiffs Fail to Plead Threats, Intimidation or Coercion Under the MCRA.**

Plaintiffs have also failed to plead the additional element required to bring a claim under the MCRA—that their rights were interfered with by threats, intimidation or coercion. To bring a claim under the MCRA, a plaintiff must prove that “(1) the exercise or enjoyment of some constitutional or statutory right; (2) has been interfered with, or attempted to be interfered with; and (3) such interference was by threats, intimidation, or coercion.” *Glovsky v. Roche Bros. Supermks., Inc.*, 469 Mass. 752, 762 (2014) (quoting *Currier v. National Bd. of Med. Examiners*, 462 Mass. 1, 12 (2012)). The term “threats, intimidation or coercion” is defined as follows: “a ‘threat’ consists of ‘the intentional exertion of pressure to make another fearful or apprehensive of injury or harm’; ‘intimidation’ involves ‘putting in fear for the purpose of compelling or deterring conduct’; and ‘coercion’ is ‘the application to another of such force, either physical or moral, as to constrain him to do against his will something he would not otherwise have done.’” *Glovsky*, 469 Mass. at 762-63 (quoting *Haufler v. Zotos*, 446 Mass. 489, 505 (2006)). Here, the amended complaint makes no allegations that the Trial Court has

engaged in the “intentional exertion of pressure,” the generation of “fear for the purpose of compelling or deterring conduct,” or the application of “force, either physical or moral.” *Glovsky*, 469 Mass. at 762–63 (quoting *Haufler*, 446 Mass. at 505). Plaintiffs’ only allegation is that the new S&P was promulgated in 2021, consistent with the Trial Court’s statutory obligation, and that this document did not contain some of the provisions at issue in this litigation. *See* Second Subst. Am. Compl. ¶¶ 64-70. Such sparse allegations are not sufficient to survive a motion to dismiss a claim for retaliation.

### **CONCLUSION**

For the foregoing reasons, the Trial Court requests that the Court dismiss Plaintiffs’ retaliation cause of action.

Respectfully submitted,

Defendant THE TRIAL COURT

By its Attorneys,

MAURA HEALEY,  
ATTORNEY GENERAL

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Date: April 13, 2022

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day, April 13, 2022, served the foregoing document upon all parties, by emailing a copy to:

Alan Jay Rom, Esq.  
Rom Law P.C.  
alan@romlawoffice.com.

/s/ Katherine B. Dirks  
Katherine B. Dirks

# EXHIBIT A



STANDARDS and PROCEDURES  
of the  
OFFICE of LANGUAGE ACCESS

The Committee for the Administration of Interpreters for the Trial Court

*Promulgated January 20, 2021*

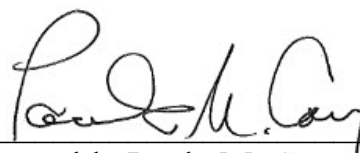
**COMMONWEALTH OF MASSACHUSETTS**

**SUFFOLK, SS.**

**TRIAL COURT**

**ORDER**

To provide judges, attorneys, and court personnel with essential information regarding the utilization of language access services for the Massachusetts Trial Court, and to provide interpreters with principles and protocols to follow when interpreting through the Office of Language Access, it is ORDERED by the Chief Justice of the Trial Court that the 2020 edition of the *Standards and Procedures of the Office of Language Access* developed by the Committee for the Administration of Interpreters for the Trial Court pursuant to G.L. c. 221C, § 7, be adopted, approved, and be effective as of January 20, 2021.



---

Honorable Paula M. Carey  
Chief Justice of the Trial Court

**Committee for the Administration of Interpreters  
for the Trial Court**

**Chair:** Chief Justice of the Trial Court Paula M. Carey

**Members:** Chief Justice Paul C. Dawley  
District Court Department

Judge Cesar A. Archilla  
District Court Department

Clerk Magistrate Donald Hart (retired)  
Nantucket District Court

Judge Elizabeth M. Fahey  
Superior Court Department

Deputy Court Administrator Elaina Quinn  
Superior Court Department

Judge Angela Ordoñez  
Probate and Family Court Department

Judge Helen A. Brown-Bryant  
Juvenile Court Department



**Advisors:**

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Narda Berrios, Senior Manager, Office of Language Access  
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Gabriela Burgess, Regional Coordinator, Office of Language  
Access Office of Court Management

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Executive Office of the Trial Court

Elizabeth Day, Deputy Labor Counsel, Legal Department  
Executive Office of the Trial Court

Mark A. Ferreira, Assistant Clerk  
Superior Court Department

Maura Kelly, Senior Manager for Access to Justice  
Executive Office of the Trial Court (retired)

Sybil Martin, Ph.D., Acting Co-Director of Support Services  
Office of Court Management

Rebecca Ramirez-Abdella, Chief Probation Officer  
Fitchburg Division of the District Court Department

Cynthia Robinson, Esq., Sr. Program Manager for  
Strategic Planning  
Executive Office of the Trial Court

Marcel Vernon, Chief Financial Officer  
Office of Court Management

Gwen Werner, Esq., Deputy General Counsel, Legal Department  
Executive Office of the Trial Court

Kim Wright, Senior Assistant for Judicial Policy (retired)  
Executive Office of the Trial Court

## **The 2021 Edition of the Standards and Procedures**

The *Standards and Procedures of the Office of Court Interpreter Services* were initially developed by the Committee for the Administration of Interpreters for the Trial Court pursuant to G.L. c. 221C, § 7 and promulgated by the Chief Justice for Administration and Management in 2003. These Standards were then revised in 2009, to include an updated Section 4.00, the *Code of Professional Conduct for Court Interpreters of the Trial Court (Code)*. The *Code* communicates a core set of principles to guide the conduct of court interpreters and to inform judges and court staff of the complex work of professional interpreters. In addition to amending Section 4.00, the 2009 Committee also made certain corrective technical changes to the *Standards and Procedures*.

The Committee reconvened in 2016 to begin the arduous process of updating the *Standards and Procedures* to align with current interpreter services best practices. These updates include adding terms relative to language access, introducing new roles, such as the regional coordinators and language access liaisons, and incorporating the screening, mentoring, and credentialing of per diem court interpreters.

The Committee issued public notification for comments on these *Standards and Procedures*, thoroughly reviewed all comments, renamed the office to the Office of Language Access (OLA), updated the way in which OLA provides court interpreters (e.g., assignments to court events, noting arrival and departure procedures, processes interpreter invoices), implemented a process to review complaints about language access, and adopted a new Language Access Complaint Form, included in Appendix A.

The *Standards and Procedures* establish guidelines that facilitate meaningful access to justice throughout the Trial Court for individuals with Limited English Proficiency (LEPs) or who are Deaf or Hard of Hearing (DHH), and protect their statutory right to interpreter services throughout a legal proceeding pursuant to G.L. c. 221C and G.L. c. 221, § 92A. This new edition of the *Standards and Procedures* maximizes the efficiency, quality, and uniformity of the Trial Court's utilization of language access services and encourages the broadest use of interpreters throughout the Trial Court.

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## **Section 1.00 Principles, Application, and Authority**

- 1.01 The purpose of these *Standards and Procedures of the Office of Language Access (Standards and Procedures)* is to provide court interpreters, judges, attorneys, and other court personnel with information about providing quality court interpreter services in the Massachusetts Trial Court and guidelines to follow when requesting or using court interpreters through the Office of Language Access (OLA).
- 1.02 The Massachusetts Trial Court is committed to providing equal access to justice for all who use the Commonwealth's courts. Within the framework of the Massachusetts Trial Court Language Access Plan and through these *Standards and Procedures*, the Trial Court provides meaningful language access for all Limited English Proficient (LEP) and Deaf and Hard of Hearing (DHH) individuals in all court proceedings and court-managed or court-related programs, as well as ensures access to communication with court-appointed or court-supervised personnel.
- 1.03 Recognizing the importance that court interpreters have in ensuring access to equal justice, the Office of Court Management, through OLA, is committed to fostering competency, professionalism, and ethical practice of all interpreters through the highest standards of screening, education, training, mentoring and evaluation.
- 1.04 These *Standards and Procedures* apply to all court interpreters, including language, American Sign Language (ASL), and DHH interpreters who provide court interpreter services to the Trial Court.
- 1.05 These *Standards and Procedures* are promulgated pursuant to G.L. c. 221C, § 7(d).
- 1.06 The rights of individuals who are deaf or hard-of-hearing are covered under the federal Americans with Disabilities Act (ADA), G.L. c. 6, §§ 191-197, G.L. c. 221, § 92A, and Title VI of the U.S. Civil Rights Act of 1964. The Massachusetts Commission for the Deaf and Hard of Hearing (MCDHH) serves as the principal agency in the Commonwealth on behalf of people of all ages who are deaf and hard of hearing. MCDHH is mandated to maintain and coordinate a statewide interpreter referral service and provide or ensure provision of court interpreter services and technology services including telecommunication and assistive listening devices for Deaf and Hard of Hearing (DHH) individuals. Requests for American Sign Language (ASL) or DHH court interpreters follow the same procedures OLA utilizes for court interpreters as set forth in Section 8 of these *Standards and Procedures*.

## **Section 2.00 Definition of Terms**

- 2.01 **Accounting Section of the Fiscal Department (Accounting)** handles encumbrance and payment status, prior year deficiency payments and vendor inquiries regarding payments for per diem court interpreters.
- 2.02 **American Sign Language (ASL)** is a visual-gesture language created for DHH individuals and used by Deaf Americans and Anglophone Canadians of all ages.
- 2.03 **Applicant** is a person who submits qualifications to OLA to be considered for inclusion as a per diem court interpreter. The term applicant is used throughout the screening, credentialing, training and mentorship processes.
- 2.04 **Appropriate Court Authority** refers to judges, clerks, registers, recorders, registers, judicial case managers, their assistants, probation officers, court officers, Language Access Liaisons and other court staff.
- 2.05 **Consecutive Interpretation** means relaying a message from one language into another in a sequential manner after the speaker has completed a statement.
- 2.06 **Court Interpreter** is a person who interprets for LEP or DHH individuals involved in a court event as assigned by OLA or by MCDHH. Court interpreters must accurately interpret for the parties without editing or summarizing, interpret simultaneously and consecutively, provide sight translation of written documents consistent with Section 4.11(B) (3) and (4), and understand and comply fully with Section 4, the Code of Professional Conduct for Court Interpreters of the Trial Court.
- 2.07 **Court Interpreter Assignments** are any court events assigned to a court interpreter to provide language access services.
- 2.08 **Court Event** means all court proceedings and court-managed or court-related operations as well as communication with court-appointed or court-supervised personnel. A court event also includes, but is not limited to: courtroom sessions; telephone calls; video conferencing; register or clerk office operations; mediations, negotiations, and settlement meetings; Court Service Center assistance, and probation services meetings.
- 2.09 **Cultural Fluency** refers to the awareness and full comprehension of cultural factors, including but not limited to, expectations, attitudes, values, roles, institutions, and linguistic differences and similarities.
- 2.10 **Daily Service Invoice (DSI)** is the electronic invoice used by per diem interpreters for billing purposes to obtain payment for their services.
- 2.11 **Emergency Line** refers to an OLA telephone number that is used only by:
- (A) Court interpreters to notify OLA they will be late for or will be

unable to complete an assignment;

- (B) Language Access Liaisons or other court personnel to notify OLA that a scheduled court interpreter did not arrive on time or did not fulfill the assignment as scheduled; and
- (C) Language Access Liaisons or other court personnel to request a court interpreter for an immediate and unexpected event. All other requests for court interpreter services shall be made through MassCourts.

- 2.12 **Extraordinary Interpreter Request (EIR)** is a written notification used in extraordinary circumstances to request approval to contract with an out-of-state interpreter for interpreting services or whenever additional expenses are needed to secure the services of an interpreter.
- 2.13 **Federally Certified Court Interpreter** is a Certified Interpreter who has passed the Federal Court Interpreter Certification Examination and is qualified to interpret in the federal courts by the United States District Court for the District of Massachusetts.
- 2.14 **Foreign Language** means a language other than English.
- 2.15 **Interpretation** is the unrehearsed transmitting of a spoken language to another language.
- 2.16 **Judge, Justice, Clerk-Magistrate or Register**, when acting in a magisterial capacity of a Trial Court department, is someone who has been sworn into that office pursuant to the laws of the Commonwealth.
- 2.17 **Language Access Coordinator** is a Trial Court employee who is designated by the Chief Justice of the Trial Court to coordinate the implementation of the Language Access Plan, to respond to language access complaints, and to serve as the point person for the Trial Court in the national Council of Language Access Coordinators (CLAC) of the National Center for State Courts.
- 2.18 **Language Access Liaison (LAL)** is a Trial Court employee who has oversight responsibilities within a court department location. The LAL knows where court interpreters are needed each day and is available to answer inquiries from the OLA scheduling department about current requests and assignments.
- 2.19 **Language Access Plan (LAP)** is a plan that was adopted by the Massachusetts Trial Court in December of 2014 to provide comprehensive services for Limited English Proficient (“LEP”) individuals. The LAP sets forth an action plan for the Trial Court to remove language barriers to the delivery of justice in compliance with Massachusetts and federal law prohibiting discrimination based on national origin, which includes language.
- 2.20 **Language Access Response System (LARS)** is the Trial Court’s response system

within OLA that provides an on-call staffing group dedicated to address unscheduled emergency interpreter needs every day for language access across the Commonwealth. The LARS group, comprised of a scheduler, support staffer, and on-call interpreters, will be available to travel to any court across the Commonwealth that has an unanticipated or emergency need for an interpreter. This response system is designed to ensure efficient access to justice in the event of the unforeseen need for Language Access.

- 2.21 **Legal Equivalence** means a linguistically true and legally accurate interpretation. Interpreters must be able to interpret with exactitude while accurately reflecting a speaker’s nuances and level of formality. The interpreter must interpret the original source material without editing, summarizing, deleting, or adding, while conserving the language level, style, tone and intent of the speaker.
- 2.22 **Limited English Proficient (LEP)** refers to individuals who do not speak English as their primary language and have a limited ability to read, speak, write, or understand English.
- 2.23 **Massachusetts Commission for the Deaf and Hard of Hearing (MCDHH)** is a statutory agency under G.L. c. 6, § 191, *et seq.*, which serves as the principal agency of the Commonwealth on behalf of DHH individuals. The agency provides services to the DHH population, including but not limited to, interpreting services under G.L. c. 6, § 194.
- 2.24 **Mentor** is an experienced OLA court interpreter who is assigned by OLA management to work with an applicant to become a per diem court interpreter. The mentor assists the applicant in developing both proficiency in court interpretation and familiarity with these *Standards and Procedures*.
- 2.25 **Office of Language Access (OLA)** administers the provision of all spoken language interpreter services to the Trial Court. This office is responsible for the training, certification, assignment and supervision of spoken language court interpreters who provide interpretation services for court events. OLA also receives requests for ASL or DHH interpreters following the procedures set forth in Section 8 of these *Standards and Procedures*.
- 2.26 **Office of Court Management (OCM)** is created by G.L. c. 211B, § 6B and is the administrative office through which the Court Administrator supports and manages the Trial Court of the Commonwealth.
- 2.27 **OLA Certified Court Interpreter** is an interpreter certified by the National Center for State Courts as reflected in Section 5:07 (C)-(E).
- 2.28 **“On Call” Interpreter Assignments** are court interpreter assignments that cover, on an as-needed, daily basis, certain unanticipated and/or emergency situations for which it was not possible to request an interpreter in advance through MassCourts.

- 2.29 **Per Diem Court Interpreter** is a court interpreter who is assigned as needed from the list of court interpreters developed and maintained by OLA pursuant to Section 9.03. Per diem interpreters are not Trial Court employees.
- 2.30 **Proficient Court Interpreter I and II** are court interpreters who have completed the requirements set forth in Sections 5.07(A) and (B), respectively, of these *Standards and Procedures*.
- 2.31 **Regional Coordinators** are experienced staff interpreters assigned and supervised by OLA management to coordinate, administrate, and supervise and provide oversight of interpreter services in their designated regions. Regional Coordinators serve as the OLA contact with the Language Access Liaisons. Regional Coordinators may also perform interpreting services.
- 2.32 **Remote Interpreting** refers to interpreting that is performed either by telephone or video equipment, which is referred to as Video Remote Interpreting (VRI).
- 2.33 **Sight Translation** is a hybrid type of interpretation/translation in which the court interpreter reads a document written in one language while translating it orally into another language.
- 2.34 **Simultaneous Interpretation** is the relaying of a message from one language into another language contemporaneously with the speaker.
- 2.35 **Source Language** is the language of the original speaker. It is a relative term, depending on who has spoken last. (This also applies to written translations.)
- 2.36 **Staff Interpreter** is a Trial Court employee who works under the supervision of the Senior Manager of OLA and provides interpretation and translation services to LEP individuals involved in court events in accordance with these *Standards and Procedures*.
- 2.37 **Target Language** is the language into which an interpretation or translation is made.
- 2.38 **Team Interpreting** is the utilization of two interpreters functioning as equal members of a team, rotating responsibilities at pre-arranged intervals, and providing support and feedback to each other.
- 2.39 **Translation** means the conversion of a written text from one language into written text in another language.



### **Section 3.00 Office of Language Access (OLA)**

301 **The Executive Office of the Trial Court (EOTC).** The Executive Office of the Trial Court is the Massachusetts court system’s administrative office that centralizes functions and standards that are fundamental in fostering effective court management and widespread benefit to the Trial Court.

- (A) The Chief Justice of the Trial Court (CJTC) and the Trial Court Administrator (CA) manage and administer the Trial Court of Massachusetts in accordance with G.L. c. 211B.
- (B) The EOTC oversees the Office of Court Management (OCM), which is made up of a number of departments. One of the departments of the OCM is Support Services that manages interpreter services.
- (C) The Support Services Department includes OLA, the OTS (Office of Transcription Services), the RMCs (Records Management Centers), the CSCs (Court Services Centers), the TCLL (Law Libraries), and the EJRS (Emergency Judicial Response System).

302 **The Office of Language Access (OLA).** The Office of Language Access, situated within the Support Services Department, is responsible for coordinating and allocating interpreters to requesting courts, maintaining an appropriate pool of interpreters, and managing the quality of their services.

- (A) The Senior Manager in the Office of Language Access provides overall supervision of the statewide interpreter services program which includes: recommending, planning, setting, and executing policy; addressing personnel matters; preparing budgets and spending analyses; overseeing the daily operations of OLA; and serving as liaison between OLA and the courts, and other agencies involved in interpreter services.

The Senior Manager in the Office of Language Access serves as the coordinator of court interpreter services as appointed by the Chief Justice of the Trial Court. The Senior Manager reports to and receives direction from the Director of Support Services or a designee in performing duties in accordance with best management practices and established guidelines.

- (B) The Program Manager for Interpreter Training (“Training Manager”) is responsible for the development and administration of training, continuing education, and evaluation and certification of court interpreters. The Training Manager is also responsible for outreach and collaboration with the court departments to share training resources for both court interpreters and court personnel and recruiting and screening court interpreters. Finally, the Training Manager ensures that court interpreters are trained, meet all language proficiency standards, and follow the Code of Professional Conduct as set forth in Section 4

of these *Standards and Procedures*.

- (C) The Regional Coordinators are responsible for overseeing that court events are covered and for supervising and providing oversight to interpreters in various court departments and divisions within a specific region. Regional Coordinators serve as interpreters and are also the point of contact for the Language Access Liaisons in that region.

3.03 **The Language Access Liaison.** The Language Access Liaison is the local point of contact between OLA and the court department for language access.

- (A) The clerk or register of each department and division shall designate the Language Access Liaison and at least one back-up. The clerk or register shall provide OLA with the names, telephone numbers, and email addresses of the Language Access Liaison and the back-up and advise OLA of any changes in designations.
- (B) Language Access Liaisons shall: (1) request court interpreters as soon as the need is known; (2) ensure all requests for court interpreters are made through MassCourts; (3) communicate cancellations or postponements to OLA on a timely basis; (4) check the weekly schedule for any inconsistencies or issues and promptly inform OLA of any updates; and (5) make a sign-in sheet available to per diem court interpreters in a location that is easily accessible, and will regularly (biweekly or monthly) scan the sheets and electronically transmit them to OLA. The Language Access Liaison or his/her designee shall oversee the required language access needs of the court location and be available to answer inquiries from OLA Regional Coordinators and OLA scheduling department about current requests and assignments. The Language Access Liaison shall share information about language access resources with colleagues and communicate with others within a courthouse facility to effectively deploy interpreter services and resources.
- (C) OLA shall establish guidelines for Language Access Liaisons and the back-up liaisons to follow when scheduling interpreters for court events.

3.04 **Committee for the Administration of Interpreters.** The Committee for the Administration of Interpreters for the Trial Court (“the Committee”) was established pursuant to G.L. c. 221C, § 7.

- (A) The Committee consists of the Chief Justice of the Trial Court, who is the statutory chair of the Committee and may designate an acting chair from time to time, as well as the Chief Justice of the District Court and/or his/her designee, one other District Court Judge and one clerk-magistrate appointed by the Chief Justice of the District Court, a Superior Court Judge and a clerk or assistant clerk of the Superior Court appointed by the Chief Justice of the Superior Court Department, a Judge of the Probate and Family Court Department appointed by

the Chief Justice of the Probate and Family Court Department and one other Judge or clerk-magistrate appointed by the Chief Justice of the Trial Court. The Chief Justice of the Trial Court may add additional members as needed.

- (B) The Committee advises the Chief Justice of the Trial Court on interpreter matters such as the statewide expansion of services using proficient, or certified interpreters, the consolidation and effective use of court interpreter resources, the schedule for compensation for court interpreters, and other related issues.

The Committee periodically reviews and revises these *Standards and Procedures* to ensure compliance with the United States Constitution, the Massachusetts Constitution, Massachusetts and federal law, to implement best practices and to ensure that LEP and DHH court users are provided with language access.

## **Section 4.00 The Code of Professional Conduct for Interpreters<sup>1</sup> in the Trial Court**

- 4.01 **Purpose.** Court interpreters are communication facilitators for LEP and DHH individuals who are engaged as parties or witnesses in court events in the Trial Court, and, as such, play a vital role in the protection of their rights. This role requires an understanding by the interpreter of the complexities of the tasks to be performed. In performing these tasks, interpreters should be guided by these ethical principles and standards promulgated pursuant to G.L. c. 221C and c. 221, § 92A.
- (A) Interpreters are highly skilled professionals who fulfill an essential role in the administration of justice by helping to ensure that LEP and DHH individuals obtain equal access to justice by ensuring that court events proceed effectively.
  - (B) LEP and DHH individuals who come before the courts are partially or completely excluded from full participation in court events due to their limited ability to speak, read, write, hear, or understand English. It is essential, to the extent possible, that any communication barriers be removed, so that LEP and DHH individuals are placed in the same position as similarly situated persons who have no such barriers.
  - (C) The Code of Professional Conduct for Interpreters in the Trial Court seeks to accomplish the following:
    - (1) Ensure meaningful access to all court events for LEP and DHH individuals by providing the assistance of interpreters during court events,
    - (2) Protect the constitutional rights of LEP and DHH individuals by providing the assistance of interpreters during court events,
    - (3) Increase efficiency, quality, and uniformity in handling events that involve interpreters, and
    - (4) Encourage the broadest use of professional interpreters by all those in need of such services within the Trial Court.
- 4.02 **Applicability.** This Code applies to all court interpreters providing interpreting services at any court event in any department or division of the Trial Court. The Code shall guide and be binding upon all persons, agencies, and organizations that administer, supervise, or deliver interpreting services to the Massachusetts Trial Court.
- (A) The Code defines and governs the practice of interpreting in the Trial Court and applies to all court interpreters providing interpreter services:

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<sup>1</sup> When used alone, the word “interpreter” refers to staff court interpreters, per diem court interpreters, ASL and DHH interpreters. As applicable, these *Standards & Procedures* specify the type of interpreter referred to in the section or subsection.

- (1) In any court event in the Trial Court of the Commonwealth,
- (2) With an attorney or other person in connection with any matter that is brought before a court, and
- (3) In any other activity ordered by the court or conducted under the supervision of a court department.

4.03 **Accuracy and Completeness.** Court interpreters must render complete and accurate interpretations, sight translations, or written translations without altering, omitting, or adding to any statements, whether oral, written, or signed.

- (A) Interpreters have a two-fold duty to ensure that:
  - (1) Court events reflect accurately what LEP and DHH individuals communicate, and
  - (2) LEP and DHH individuals are able to understand everything stated during their court events.
- (B) Interpreters must agree to be bound by the oath set forth in Section 14.03 of these *Standards and Procedures*.
- (C) Interpreters must interpret the original source material without editing, summarizing, deleting, or adding, while preserving the language level, style, tone, and intent of the speakers. LEP and DHH individuals may request explanations or clarifications, if necessary, through the interpreter.
- (D) Interpreters must apply their best skills and judgment to preserve the meaning of what is communicated in court, including the style of the communication or register of speech. Verbatim, "word for word," or literal interpretations are not appropriate when they distort the meaning of the source language. Therefore, every spoken or signed statement, even if it appears non-responsive, obscene, rambling, or incoherent, should be interpreted, including apparent misstatements.
- (E) When interpreting slang, idioms, or culturally-bound expressions that do not translate easily, interpreters must find a way to express them accurately so that the intended meaning is preserved. If that is not possible, interpreters should repeat the term to the court or appropriate court authority in the source language.
- (F) Interpreters should not interject their own words, phrases, expressions, or signs. If the need arises to explain an interpreting problem (*e.g.*, a term or phrase with no direct equivalent in the target language, a misunderstanding that the interpreter can clarify, etc.), interpreters should ask permission to provide an

explanation.

- (G) The obligation of interpreters to preserve accuracy includes the duty to correct any errors of interpretation they discover or learn about during their assignments. Interpreters should objectively analyze any challenges to their performances.
- (H) Whenever an interpreter discovers errors of interpretation in court events involving testimony from LEP or DHH individuals, the interpreter shall correct the errors on the record at once, first identifying him/herself for the record. If the errors of interpretation are discovered after testimony has been completed, the interpreter shall immediately inform the judge, clerk or register, or other appropriate court authority and follow their direction.
- (I) When an error of interpretation has been brought to the attention of the court by someone other than the interpreter, the court will confer with counsel and/or the parties and the interpreter. The court must first determine whether the alleged error is substantial enough to warrant correction. If the court finds that the error could be prejudicial, then the court will hear evidence, out of the presence of the jury, if any, as to the correct interpretation. At the hearing on the error, evidence or argument may be offered by counsel, an unrepresented litigant, and/or by the interpreter. Testimony may be taken from any other persons or experts as permitted by the court. The judge or other appropriate court authority may also bring in another interpreter to assist the court in making the determination. The court will make a final determination on the evidence as to the correct interpretation. If the correct interpretation is different from the original interpretation, then the court must amend the record accordingly and so instruct the jury, if any. The Clerk's or Register's office must ensure that all corrections are captured in the file.
- (J) All corrections to the record and a copy of the audio recording will be sent by the court or its designee to the Senior Manager of OLA within two weeks of the identification of the error. The Senior Manager will order a transcript of the audio recording and meet with the interpreter to discuss the correct interpretation, and such record will be placed in the interpreter's file and may be utilized for future interpreter trainings. If the interpreter was assigned through MCDHH, then the Senior Manager will inform MCDHH management.

4.04 **Impartiality and Avoidance of Conflict of Interest.** Court interpreters must be impartial and unbiased in their interpretations and must refrain from conduct that may give an appearance of bias. Interpreters must disclose any real or perceived conflicts of interest either at the start of the assigned events or as soon as the allegations of possible conflicts of interest become known. Central to ensuring the impartial and unbiased provision of interpreter services is the prohibition in Section 14.05 of these *Standards & Procedures* against anyone other than OLA or MCDHH assigned interpreters providing interpreter and translator services.

- (A) All OLA staff court interpreters shall be governed by the provisions of G.L. c. 268A regarding any conflict of interest.
- (B) OLA staff court interpreters may, subject to the provisions of G.L. c. 268A and any applicable collective bargaining agreements, accept court interpreter assignments during hours or times when they are not employed by the Trial Court.
- (C) Interpreters must not engage in or have any interest, direct or indirect, in any business or transaction that relates to the matter for which they are or have interpreted for. They must not incur any obligation which is in conflict with the proper discharge of official duties in the court or impairs independence of judgment in the discharge of such duties.
- (D) Interpreters must not accept money or favors from anyone for the performance of any duties they would be required or expected to perform in the regular course of their assignments. Interpreters must not accept any gifts, gratuities, or favors of any kind which might be construed as an attempt to influence their actions in the Trial Court.
- (E) Interpreters must not use, for private gain or advantage, the court's time, facilities, equipment, or supplies. They must not use or attempt to use their positions to secure unwarranted privileges or exemptions for themselves or others.
- (F) Interpreters must avoid any conduct or behavior that presents the appearance of favoritism toward any party. All interpreters must limit themselves to professional relationships with the parties they serve.
- (G) Interpreters must treat all persons equally with dignity and respect regardless of race, creed, national origin, political affiliation, gender, identity, age, disability, socio-economic class, and all protected classes as defined in G.L. c. 151B.
- (H) To maintain impartiality, interpreters must limit their communications with parties, witnesses, jurors, attorneys, or with friends or relatives of any party. This does not limit, however, those appropriate contacts necessary to prepare adequately for assignments. It is especially important that interpreters, who are often familiar with attorneys and other individuals who regularly appear in the courtroom, refrain from casual and personal communications to avoid an appearance of a special relationship or partiality to any of the court participants. Verbal and non-verbal displays of personal attitudes, prejudices, emotions, or opinions must be avoided at all times.
- (I) In the event that interpreters become aware that a participant in a court event views them as being biased, the interpreters must disclose that knowledge to the appropriate court authority and counsel, who shall inform the court.

- (J) Before providing services in a matter, interpreters must disclose to all parties and appropriate court authority any prior involvement with the parties or the matter itself, whether personal or professional, that could be reasonably construed as a conflict of interest. This disclosure must not include privileged or confidential communications.
- (K) The following are circumstances that are presumed to create actual or apparent conflicts of interest for interpreters which require disclosure and, in most cases, would require disqualification:
  - (1) The interpreter or immediate family member of the interpreter is a friend, associate, relative, employer, employee, client of a party, counsel, or advocate for a party involved in the court event;
  - (2) The interpreter has served in an investigative capacity for a party involved in the case;
  - (3) The interpreter or a member of the interpreter's immediate family has a financial interest in the subject matter in controversy or with a party in the proceeding, or any other interest that might be affected by the outcome of the case; or
  - (4) The interpreter has been involved in the choice of counsel or law firm for the case.

4.05 **Professional Demeanor.** Court interpreters shall reflect proper court decorum and conduct themselves with dignity and respect toward Trial Court personnel, litigants and other court users.

- (A) Interpreters must know and observe the established standards, rules, and procedures for delivering interpreting services.
- (B) When speaking in English, court interpreters must speak at a rate and volume that enables them to be heard and understood throughout the courtroom.
- (C) Interpreters must work without drawing undue or inappropriate attention to themselves.
- (D) When possible, interpreters should avoid obstructing the view of any individual involved in the court events.
- (E) Interpreters must avoid conduct which could discredit or reflect poorly upon the court, including, but not limited to, overly familiar behavior towards any person participating in the proceeding or court personnel.
- (F) Interpreters must support other interpreters by sharing court and legal related



knowledge.

- (G) Interpreters must dress in a manner consistent with the dignity of the court and their professional role as impartial participants. This applies also to attire or symbols that could create the perception of partiality or bias on the part of the interpreters.
- (H) Interpreters must appear on time and report to the appropriate court personnel immediately upon arrival. See Section 10.00 Arrival and Departure Procedures, these *Standards & Procedures*.
- (I) Interpreters must not make arrangements directly with the court or counsel for a substitute in cases to which they have been assigned. Rather, absent an emergency, a 24-hour cancellation notice must be given to OLA (or, if applicable, to MCDHH) which will arrange for a substitute.
- (J) Interpreters must wear any Trial Court issued identification badges in such a manner as to make their presence clear to all persons in court.

#### **4.06 Confidentiality and Restriction of Public Comment.**

- (A) Interpreters must protect and uphold the confidentiality of all privileged information obtained during the course of their duties. It is especially important that interpreters understand and uphold the attorney-client privilege, which requires confidentiality with respect to any written or oral communications between attorney and client. This rule also applies to other types of privileged communications that may have statutory protection, such as doctor-patient, social worker-client, or priest-penitent relationships.
- (B) Interpreters must also refrain from repeating or disclosing information obtained during their assignments.
- (C) Unless ordered by a court, interpreters must never reveal privileged or confidential information for any purpose.
- (D) In the event that interpreters become aware of information that suggests imminent harm to someone or relates to a crime being committed during the course of the court events, they shall immediately disclose the information to the judge or other appropriate court authority, and, if not available, a police department that can reach an emergency judge.
- (E) Interpreters must not use any knowledge obtained in the performance of their duties for their own or another's personal gain.
- (F) Generally, interpreters must not discuss their assignments with anyone other than persons who have a formal duty associated with the assignments. However, interpreters may share information for training and educational

purposes, divulging only so much information as is required to accomplish these purposes without revealing any identifying information.

- 4.07 **Scope of Practice.** Court interpreters must limit themselves to interpreting or translating and must not give legal advice, express personal opinions to individuals for whom they are interpreting, or engage in any other activities that may be construed as constituting a service other than interpreting or translating.
- (A) Except as outlined in Section (B) below, interpreters must not perform acts, such as filling out forms or paperwork, that are the official responsibility of other court officials including, but not limited to, court clerks, investigators, interviewers, or probation officers.
  - (B) Interpreters must not complete forms or written statements unless appropriate court personnel are present to answer questions. If an individual for whom an interpreter is interpreting is unable to write in his or her language, the interpreter must write the statement exactly as the individual communicated (spoken or signed). The interpreter must then read the written statement(s) back to the individual. After ensuring the accuracy with the individual, the interpreter will provide the appropriate court authority with a written English translation of the statement(s), signed, and dated by the interpreter.
  - (C) Interpreters may interpret the legal advice given by attorneys to the individual for whom they are interpreting; however, they must not explain the purpose of services or otherwise act as counselors or advisors unless they are interpreting for an individual who is acting in their official capacity.
  - (D) Interpreters may translate the language on forms, but must not explain the forms or the purpose of the forms unless they are interpreting information court staff provide about the forms.
  - (E) Interpreters shall not recommend attorneys to LEP and DHH individuals or their respective friends or family members.
- 4.08 **Assessing and Reporting Impediments to Performance.** Court interpreters shall provide professional services only in matters or areas in which they can perform accurately. At all times, interpreters shall assess their ability to provide their services. If interpreters have any reservations about their ability to fulfill assignments, they shall immediately convey their reservations to the appropriate court authority.
- (A) If the communication mode or language of the LEP or DHH individuals cannot be readily interpreted, then the interpreters must notify the appropriate court authority.
  - (B) Interpreters must notify the appropriate court authority of any environmental, linguistic, or physical limitations that impede or hinder their ability to deliver interpreting services. If interpreters, while performing their official duties, feel

harassed or intimidated by an officer of the court or by anyone present at the court events, then the interpreters must so inform the presiding judge or other appropriate court authority and OLA Management (and, where applicable, MCDHH).

- (C) When court events involve slang, idiomatic expressions, regional dialects, or technical or specialized terminology with which the interpreters are unfamiliar, they may request a brief recess to familiarize themselves with the terminology. Interpreters may request that the judge or other appropriate court authority instruct experts to speak slowly and clearly. Interpreters also may request a 10 minute break every hour. Interpreters may ask witnesses how to spell words. Interpreters may request other accommodations from the court.
- (D) Interpreters must notify the appropriate court authority and OLA Management (and, where applicable, MCDHH) if they are unable to perform competently due to:
  - (1) Their lack of familiarity with terminology;
  - (2) Insufficient preparation;
  - (3) Difficulty in understanding a witness or party;
  - (4) A serious communication problem with the LEP or DHH individuals (e.g., individuals are disruptive, do not allow the interpreters to speak/sign, etc.);
  - (5) Personal biases; or
  - (6) The language and subject matter of the court events are likely to exceed their skills or capabilities.
- (E) Prior to the commencement of an assignment, interpreters must be allowed to communicate briefly with LEP and DHH individuals to instruct them about the proper role of interpreters. When LEP or DHH parties or witnesses have counsel, interpreters must speak with counsel before communicating with their client. Counsel must be present when the interpreter communicates with their client.
- (F) Interpreters must advise the LEP or DHH individuals, as follows:
  - (1) Interpreters will interpret any and all questions and answers;
  - (2) LEP and DHH individuals must wait for the full interpretation before responding to a question;
  - (3) LEP and DHH individuals must not ask the interpreters any direct questions or initiate any independent dialogue with the interpreters, including requests for legal advice or explanations on any statement made during the proceedings; and
  - (4) LEP and DHH individuals must direct all questions to counsel or to the appropriate court authority.

- 4.09 **Duty to Report Ethical Violations.** Court interpreters who discover anything which would impede full compliance with this Code must immediately report it to the court and to OLA Management.
- (A) Interpreters must immediately report to the presiding judge or other appropriate court authority any solicitation or effort by another to induce or encourage the interpreters to violate any law or standard of this Code or any other provision governing interpretation promulgated by the Massachusetts Trial Court.
  - (B) Interpreters must report to the appropriate court authority, OLA Regional Coordinator, or OLA Manager (or to MCDHH, as applicable) any effort to influence the way in which the interpretation is being conducted. However, there is not a duty to report a one-time question or request that reflects a misunderstanding of the proper role of interpreters. If, having been apprised of the proper role of interpreters, the LEP or DHH individual persists in asking the interpreter to perform inappropriate functions, the interpreter must report the conduct.
- 4.10 **Professional Development.** Court interpreters shall continually improve their skills and knowledge.
- (A) Court interpreters shall advance their profession through activities such as professional training, education, workshops, and interaction with colleagues and specialists, and reading current literature in related fields.
  - (B) Court interpreters must continually strive to increase their knowledge of the languages in which they work, including past and current trends in technical, vernacular, and regional terminology, as well as their application within court proceedings.
  - (C) Court interpreters shall keep informed and updated about all statutes, rules of court, and policies of the Trial Court that relate to the performance of their professional duties, such as the Trial Court Personnel Policies and Procedures Manual (PPPM), which governs staff court interpreters only.
  - (D) Consistent with Sections (A) and (B) above, ASL and DHH Interpreters shall follow the standards set by MCDHH to continually improve their skills and knowledge.
- 4.11 **Interpreting Protocols for Court Interpreters.** Court interpreters shall interpret and translate during court events using the appropriate modes of interpretation and address.
- (A) Court interpreters shall use the consecutive mode for all question and answer exchanges with LEP individuals and shall use the simultaneous mode for most other court events. Court interpreters shall sight translate documents for LEP individuals as requested by the judge or other appropriate court authority.

- (B) It is common for court interpreters to shift from one mode of interpretation to another, depending on the situation and according to the following standards:
- (1) The consecutive mode of court interpretation requires court interpreters to wait for the speakers to complete their statements before rendering an interpretation. This mode shall be used when LEP individuals are giving testimony or when the judge, counsel, or officer of the court is in direct dialogue with the LEP individuals.
  - (2) The simultaneous mode of court interpretation requires court interpreters to interpret contemporaneously with the speakers. This mode shall be used when LEP individuals are a third person not in dialogue or giving testimony.
  - (3) Sight translation is when court interpreters orally translate documents on the spot at the request of a judge, lawyer, probation officer, clerk, or other appropriate court authority. The same principle of accuracy applies to sight translation as it does to all other court interpreter duties. Court interpreters shall not add to, delete, or improve a written source text. Therefore, if the text to be translated is a sworn statement by a person with limited literacy, the court interpreter's translation shall reflect the person's exact language.
  - (4) Court interpreters may request a brief recess to review any documents when asked to sight-translate. Court interpreters may agree to sight-translate on the record only if it is feasible to do so, such as if the documents are relatively short, and the interpreters are confident they can accurately and immediately sight-translate them. Otherwise, court interpreters may inform the court or other appropriate court authority that they need more time, including time to prepare formal written translations outside of court as necessary to ensure accuracy due to length, terminology, or complexity of syntax.
- (C) Court interpreters shall not summarize court events at any time unless instructed to do so by the judge or other appropriate court authority.
- (D) Court interpreters shall address the court and identify themselves as court interpreters by using the third person singular in order to avoid confusion on the record. For example, "May the interpreter address the court," and then state the issue so the court can address it, for example, to ask for a witness to slow down or to ask for clarification.
- (E) Court interpreters shall utilize the first person singular when interpreting for LEP individuals giving testimony or in dialogue with another person. Persons addressing the LEP individuals (e.g., attorneys, clerks, judges, and probation officers) shall use the second person.

- (F) Whenever possible, and particularly with respect to lengthy and complex criminal and civil trials, court interpreters shall prepare for cases by reviewing case materials. Court interpreters may ask counsel if they will be referring to any documents during their examinations, and ask for access to review those documents. Such materials may be requested from the district attorney, and the attorney for the LEP individual. Court interpreters shall use the information solely for technical preparation and may not disclose the information to any person or parties.
- (G) Whenever possible, court interpreters shall familiarize themselves with the speech pattern of the individual for whom they are interpreting.
- (H) If there are critical words, phrases, or concepts which court interpreters do not understand, they shall so inform the judge or other appropriate court authority as soon as possible. The judge or other appropriate court authority may request an explanation, rephrasing, or repetition. Court interpreters may request the spelling of a word or time to look up any unfamiliar words.
- (I) Court interpreters shall interpret the exact response of speakers even if the answers to questions are non-responsive or erroneous.
- (J) If LEP witnesses occasionally speak a few words in English, court interpreters shall repeat such words in English for the record so that people listening to the recorded court event may continue following the voices of the court interpreters. However, should an LEP individual utter full responses in English, court interpreters will stand back so that the parties are aware of the English responses.
- (K) If, during the taking of testimony, speakers use a word, phrase, or concept for which the court interpreter finds no appropriate equivalent in the LEP individual's language because there is no cultural equivalent or because it may prove ambiguous in translation, the court interpreter should so inform the appropriate court authority.
- (L) Whenever an objection is made to an LEP individual's testimony taken through a court interpreter, the court interpreter shall interpret everything that was said up to the time the objection was made and instruct the witness, by hand gesture, not to speak until the court has ruled on the objection.

#### **4.12 Judicial Removal from a Proceeding**

Judges or other appropriate court authorities shall inform OLA management when a court interpreter, ASL interpreter or DHH interpreter is removed from court events. Interpreters may be removed from court events when judges or other appropriate court authority find good cause for their removal. Good cause for removal may be, but is not limited to, situations in which an interpreter: (1) knowingly and

willfully makes false interpretations while serving in an official capacity; (2) knowingly and willfully discloses confidential or privileged information obtained while serving in an official capacity; (3) fails to follow this Code and/or the standards prescribed by law and the ethics of the court interpreter profession. *See* G.L. c. 221C, § 5; or (4) is unable to interpret the proceedings adequately, including an instance where the court interpreter self-reports such inability.

**Section 5.00 Recruitment, Application Process, Minimum Requirements, Screening, and Credentialing of Court Interpreters<sup>2</sup>**

- 5.01 **Recruitment.** OLA, through the Program Manager for Interpreter Training, recruits court interpreters and administers the pre-certification screening examination and the certification program pursuant to G.L. c. 221C, § 7.
- 5.02 **Application Process for Staff Court Interpreters.** The application process for staff court interpreters is set forth in §4.000 of the Trial Court’s Personnel Policies and Procedures Manual (PPPM).
- 5.03 **Application Process for Per Diem Court Interpreters.**
- (A) Applicants must complete and submit an Application Questionnaire. The Application Questionnaire can be found at: <http://www.mass.gov/courts/programs/interpreter-services/>. A copy of the Application Questionnaire must be submitted electronically by email to [languageaccess@jud.state.ma.us](mailto:languageaccess@jud.state.ma.us).
  - (B) OLA Management will review the Application Questionnaire to determine if an applicant meets the minimum requirements to participate in the screening and training process.
  - (C) OLA Management will notify applicants of the status of their applications by email.
- 5.04 **Minimum Requirements for Per Diem Court Interpreters.** The minimum requirements for applicants to be considered are (although exceptions may be made in extraordinary circumstances, such as with oral languages with only a recent or no history of written codification) as follows:
- (A) Bachelor’s degree earned in the United States, or an equivalent higher education degree where general instruction is conducted in the applicant’s language and/or English;
  - (B) Eligibility to work in the United States;
  - (C) Scores of “superior,” or “advanced high” or “12” from an approved Oral Proficiency Interview (OPI) in the language(s) for which the applicant is to be screened, provided it is available in such language(s); and
  - (D) Prior interpreting experience will be taken into consideration, but lack of such experience will not automatically be grounds for rejecting an application.

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<sup>2</sup> Section 5 relates solely to spoken language court interpreters, MCDHH conducts the screening, credentialing, and sets the minimum requirements for ASL Interpreters and DHH Interpreters.



- (1) Interested applicants who have not taken an OPI must initiate the process to take the OPI. When no OPI is available in an applicant's language, OLA may conduct other language proficiency assessments during the screening period.
- 5.05 **Waiver.** OLA may waive an OPI or the requirements in Section 5.07(A), (B) and (C) if applicants have been certified by the Federal Court's Interpreter Program, by another state upon completion of an exam from the National Center for State Courts, or if the applicants have an appropriate alternative credential acceptable to OLA that attests to their interpreting language skills at a certified level.
- 5.06 **Screening of Staff and Per Diem Court Interpreters.** After applicants successfully complete the steps outlined in Sections 5.02 and 5.03 above, OLA Management may invite them to participate in the screening process set forth in this section.
  - (A) The screening process includes an interview and review of the applicant's academic background, language proficiency, and prior interpreting/translating experience. In addition to the previously listed credentials, OLA Management will also evaluate the applicant's understanding of the important role court interpreters play in facilitating language access for LEP individuals.
  - (B) During the interview, OLA Management will assess the English speaking and writing skills of the applicants as well as their competency to serve as court interpreters. OLA requires that applicants provide their official academic transcripts, official certifications of language proficiency, official documentation of training program completions, and copies of two official government-issued ID cards either at or before their interview.
  - (C) Applicants must submit a completed and signed "Employment Eligibility Verification" form, which will be provided to them prior to the interview.
  - (D) As part of the screening process, applicants must submit completed and signed "Consent to Criminal Record Check" CORI forms. Criminal record checks will be conducted consistent with applicable laws. Pursuant to Trial Court policy, applicants will not be eligible to continue in the screening process to become court interpreters if they have been convicted of a felony or of a misdemeanor resulting in incarceration, and the end date of such incarceration is within the 5-year period immediately preceding the date of his/her application to OLA.
  - (E) Every two years all per diem interpreters must complete and sign a new "Consent to Criminal Record Check" CORI form to continue serving as a court interpreter.

## 5.07 Credentialing of Per Diem Court Interpreters.

### (A) OLA Proficient Court Interpreter I.

To acquire OLA Proficient Court Interpreter status, applicants must meet the following requirements:

- (1) Full and successful completion of the screening process;
- (2) Full and successful participation in the Mandatory Orientation and Training Program and successful completion of all required materials and activities;
- (3) Full and successful completion of the Mentoring Program, including a positive evaluation from his/her/their mentor(s);
- (4) Demonstrated compliance with applicable sections of these *Standards and Procedures*; and
- (5) Provide three letters of recommendation regarding the applicant's interpreting services performed within the past year.

### (B) OLA Proficient Court Interpreter II.

To acquire OLA Proficient Court Interpreter II status, the applicant must meet the following requirements:

- (1) Completion of all requirements for OLA Proficient Court Interpreter I in paragraphs (1) through (5) in paragraph (A) above;
- (2) Successful work experience as a Proficient Court Interpreter I with OLA for a minimum of one year; and
- (3) A minimum passing grade for all parts of the NCSC English Proficiency Written Examination. The Written Exam measures recognition of common court-related situations, vocabulary with a focus on the criminal courts, and tests ethical behavior and professional conduct. Written exams approved in Massachusetts include:
  - i. The Language Access Services Section of the NCSC website provides detailed information on the Written Exam for testing candidates and administrators at:  
<http://www.ncsc.org/Services-and-Experts/Areas-of-expertise/Language-access/Written-and-Oral-Exam-Resources.aspx>.

OLA will provide additional information on how to register and prepare for the Written Exam.

- ii. The Federal certification written exam (Administrative Office of the United States Courts) in whichever languages are available. For information on the Federal certification written exams, visit the Federal Court Interpreter Certification Exam website at: <http://www.ncsc.org/fcice>.

(C) OLA Certified Court Interpreter.

To acquire OLA Certified Court Interpreter status, the applicant must meet the following requirements:

- (1) Completion of all requirements for OLA Proficient Court Interpreter I and II;
- (2) Successful work experience as a Proficient Court Interpreter II with OLA for a minimum of one year; and
- (3) Pass all parts of the NCSC Oral Certification Examination, which measures language knowledge and fluency in both languages and the ability to successfully render meaning from target to source language in each of the three modes of interpreting that are required of court interpreters, simultaneous interpreting, consecutive interpreting, and sight translation.<sup>3</sup> Oral certification exams approved in Massachusetts include:
  - i. The Federal certification oral exam (Administrative Office of the United States Courts) in whichever languages are available. For information on the Federal certification oral exams, visit the Federal Court Interpreter Certification Exam website at: <http://www.ncsc.org/fcice>.
  - ii. State certification oral exams developed by the National Center for State Courts (NCSC). To obtain more information on the content and administration of NCSC oral exams, visit the NCSC's website at: <http://www.ncsc.org/Services-and-Experts/Areas-of-expertise/Language-access/Written-and-Oral-Exam-Resources.aspx>.

(D) Certification of Applicants through Alternative Oral Interpreter Examination.

Applicants may request that OLA Management consider a passing grade on an alternative oral interpretation examination. OLA Management may accept it if it determines that the alternative examination complies with the highest

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<sup>3</sup> OLA will follow NCSC guidelines when assigning interpreters to court events.

standards of the court interpreter profession and the applicant presents official documentation of their grades.

- (E) Achieving OLA Certified Interpreter Status When There Is No Approved Oral Examination. Certification of applicants who interpret in languages for which there are no approved oral certification examinations, and who have completed all requirements set forth in Section 5.06(A) and (B) above, may still apply for status as an OLA certified court interpreter.

To acquire OLA Certified Court Interpreter status in the absence of any oral exam, the candidate must meet the following requirements:

- (1) Completion of all screening requirements set forth above in Sections 5.05;
- (2) A minimum of two years of work experience in interpretation, preferably in, but not limited to, court or conference interpretation with OLA, and/or with another reputable organization;
- (3) Demonstrated full compliance with these *Standards & Procedures*; and
- (4) One or more of the following:
  - i. Proof of completion of professional development in interpretation, translation, or law;
  - ii. Professional qualification from the Federal Court Interpreter Program; or
  - iii. Legal or conference interpretation diploma or certification from a reputable national or international interpreter training institution or program.

- (F) Waiver and Additional Requirements. In certain circumstances, at OLA's discretion, any of the above requirements may be waived, or additional requirements may be added. Upon such waiver or addition, OLA shall document in writing the reasons for the determination. OLA expects interpreters to move efficiently through the above process to reach the level of Court Certified Interpreter in a reasonable period of time. The process will be governed by OLA's internal guidelines.

- (G) Continuing Education and Reassessment of Proficient and Certified Status. To maintain proficient and certified status, court interpreters must successfully complete a minimum of 22.5 hours of continuing education every year and attend one conference within the profession every two years, which would be credited to continuing education hours. Court interpreters must submit official documentation of their continuing education programs and conference attendance

to OLA in order to maintain their proficient and certified status. Such minimum requirements will be determined by OLA.

- (H) Lists of Per Diem Proficient I, Proficient II, and Certified Interpreters will be published by OLA pursuant to Section 9.03.

To remain active on the lists, OLA Per Diem interpreters must:

- (1) Be available to take assignments;
- (2) Demonstrate full compliance with these *Standards and Procedures*; and
- (3) Comply with all continuing education and/or administrative requirements.

## **Section 6.00 Training of Staff and Per Diem Court Interpreters**

### **6.01 Training and Continuing Education.**

- (A) Staff and per diem interpreters must complete 22.5 hours of continuing education each year. Interpreters should consult with OLA Management to determine which continuing education programs will satisfy this requirement. Interpreters must submit documentation of successful completion of their continuing education courses to OLA Management.
- (B) Subject to sufficient appropriations and resources, OLA Management offers yearly trainings sessions for court interpreters. Trainings offered by OLA Management count toward the required 22.5 hours of continuing education.
- (C) OLA Management may encourage interpreters to participate in trainings it makes available to them. Professional development and continuing education may also be required as corrective action.
- (D) OLA Management offers a variety of trainings for court personnel and judges about how to work with court interpreters effectively and how to maximize OLA resources. OLA Management also collaborates with other court departments and court personnel in creating and conducting workshops designed to promote better and more efficient use of court interpreter resources.
- (E) On a yearly basis, OLA Management will keep interpreters updated on resources available from professional, academic and legal organizations.

### **6.02 Training Manual.** The OLA Training Manual complements these *Standards and Procedures*.

### **6.03 Mentoring Program for Per Diem Interpreters.** After successfully completing the Mandatory Orientation and Training, applicants must participate in a Mentoring Program. The mission of the Mentoring Program is to encourage mentoring as a two-way learning relationship that draws upon the knowledge and experience of seasoned court interpreters. Mentors are selected by OLA from experienced Per Diem and Staff Court Interpreters I and II. Selected Mentors have expressed their desire to assist applicants and are committed to fulfilling the mission of the Mentoring Program. During the Mentoring Program, applicants must complete a minimum number of visits to court to perform guided observations and assignments, as set by OLA Management.

- (A) Mentors introduce applicants to the Massachusetts Trial Court system. They assist applicants in setting goals, developing learning and problem-solving skills, and acquiring essential information. They are also able to clarify concerns regarding the professional and ethical standards that guide the role of the court interpreter. Mentors and applicants will follow general guidelines outlined in the Mentoring Program's information packet which they will receive prior to the

mentoring assignments.

- (B) At the conclusion of the Mentoring Program, mentors will submit a written evaluation of their assigned applicants to OLA Management. A copy of these evaluations will be added to the mentor's professional files in order to apply the mentors training time toward their continuing education requirements.
- (C) OLA Management reserves the right to extend the length of or discontinue the participation of applicants who receive unfavorable evaluations during the Mentoring Program.
- (D) Mentors will communicate with judges and key court personnel about ongoing mentoring in their courts to provide an opportunity for applicants to be recognized and assisted through the early stages of their professional interpreting training.

## **Section 7.00 Compensation of Per Diem Court Interpreters<sup>4</sup>**

- 7.01 Per diem court interpreters will be compensated only if they satisfy the requirements and expectations of these *Standards and Procedures*.
- 7.02 The Trial Court will determine the amount of compensation for per diem court interpreter assignments based on OLA Management research of comparable interpreter compensation data and budgetary considerations. To meet required interpreter services demand, in extraordinary circumstances (*See* § 11.03), OLA Management has the discretion to compensate per diem court interpreters up to the Federal court rate and to retain out-of-state per diem court interpreters, including reimbursing them for their travel expenses. OLA Management must seek approval from the Court Administrator or the Associate Court Administrator for compensation higher than the Federal court rate.
- 7.03 The Trial Court will compensate per diem court interpreters for successfully completed and approved assignments. Compensation will be reduced for a late arrival at the discretion of OLA Management. Compensable interpreting assignments include court interpreter assignments and court events as defined in Sections 2.07 and 2.08 of these *Standards and Procedures*. OLA Management shall maintain a voluntary list to be used when off-site interpreter services are required.

Sections 10.00 and 11.00 of these *Standards and Procedures* set forth the approval procedures for completion of per diem court interpreter assignments and eligibility for compensation.

- 7.04 The Trial Court will provide the approved mileage rate to per diem court interpreters. The mileage rate and calculation methods are established by the Trial Court and may change in its discretion.
- 7.05 If a per diem court interpreter assignment is cancelled by a court department less than 24 hours before the scheduled starting time, OLA will make every effort to reassign the per diem court interpreter for the same time period and previously agreed upon compensation. If OLA is not able to reassign the per diem court interpreter, then the Trial Court will compensate the interpreter at OLA Management's discretion.

## **Section 8.00 Requesting Interpreter Services**

The Trial Court will make every effort to provide court interpreters and other meaningful language access services to LEP and DHH individuals for all court events as defined in Section 2.08 of these *Standards and Procedures*.

- 8.01 **Court Interpreter Assignments.** To the greatest extent possible, OLA will schedule and provide court interpreters to appear for all criminal and civil matters including the initiation of a case (e.g., the filing of a complaint and affidavit; emergency hearings, or

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<sup>4</sup> Section 7 does not apply in its entirety to ASL and DHH interpreters, as OLA does not set compensation rates for these interpreters.



seeking a restraining order pursuant to G.L. c.209A); upon request by a language access liaison on behalf of a judge or court personnel, for parents in juvenile matters, guardians, witnesses, and other individuals who must understand or testify in a court proceeding; for onsite Alternative Dispute Resolution (ADR), such as mediations and conciliations within a courthouse facility; and for evaluations and investigations conducted outside of a court facility when ordered by the court, and either required by statute or by the court.

8.02 **Other Language Access Services.** In addition to scheduling and providing court interpreters as stated above in Section 8.01, OLA provides other meaningful language access services consistent with best practices, for example, distributing resource materials for court staff about how to assist LEP individuals, and translating court forms, communications, and self-help materials. OLA also works with court departments to train self-identified non-interpreter bilingual court staff to assist court users at clerk, register, probation, security and other entry points, counters, and court operations.

8.03 **Procedures to Request Court Interpreters, ASL Interpreters or DHH Interpreters.**

- (A) All interpreter requests by court personnel must be made through MassCourts, whether for plaintiffs, defendants, witnesses, or other individuals who must understand, testify, or otherwise participate in a court event.
- (B) Requests or changes to existing requests for court interpreters within 48 hours of the events must first be entered into MassCourts and then followed with an email to OLA. Email requests for Spanish interpreters to [spanishaccess@jud.state.ma.us](mailto:spanishaccess@jud.state.ma.us). For court interpreters of languages other than Spanish or “LOTS,” email [lotsaccess@jud.state.ma.us](mailto:lotsaccess@jud.state.ma.us).
- (C) The Emergency Line is to be used only by Language Access Liaisons or other court personnel to request a court interpreter for an immediate and unexpected court event. All other requests for court interpreter services shall be made through MassCourts. Such emergency requests will be handled by LARS (the Language Access Response System), which will designate interpreter resources accordingly.
- (D) When a court facility or department demonstrates an ongoing and consistent need for court interpreter services, that facility or department may request that OLA Management schedule a court interpreter for a specified language to that court facility or department every day, or routinely on certain days. All such requests must be directed to the Senior Manager of OLA and must be supported by significant evidence to warrant such an assignment.
- (E) All requests for ASL interpreters and DHH interpreters must be made through MassCourts as outlined above for court interpreters. The MCDHH selects and assigns ASL and DHH interpreters to court events.

## **Section 9.00 Assigning Court Interpreters<sup>5</sup>**

- 9.01 **Assignment of Court Interpreters.** OLA will schedule and assign staff and per diem court interpreters based upon requests submitted through MassCourts. Staff and per diem court interpreters will be assigned based upon the complexity and particular need presented by a court proceeding. When scheduling an assignment, OLA will also consider the experience, expertise, location, and availability of the staff and per diem interpreters. If there are no Certified or Proficient Interpreters available to meet the needs of the requesting court department, OLA Management may, in such extraordinary circumstances, schedule and assign out of state interpreters to provide the needed services, or contract with agencies, including telephone or video interpreting, to provide the interpreter service.
- 9.02 **Equitable Assignments.** OLA Management will strive to make fair and impartial assignments of staff and per diem court interpreters. To make equitable assignments, OLA will take into account the complexity and particular need presented by a court proceeding. When scheduling an assignment, OLA will also consider the experience, expertise, location, and availability of the staff and per diem interpreters as well as opportunities for interpreter professional development.
- 9.03 **Per Diem Court Interpreter Lists.** OLA Management shall create lists of Certified, and Proficient Per Diem court interpreters, and utilize them to make equitable assignments.
- 9.04 **Team Interpreting.** One staff or per diem court interpreter shall be assigned to an event unless team interpreting has been approved by a judge or other appropriate court authority after consulting with OLA Management and the interpreter. Team interpreting may be utilized for intricate and lengthy matters. In determining whether team interpreting is needed, the complexity of the case or court event, the number of witnesses and the length of their testimony will be considered. Further considerations are whether witnesses and parties require separate interpreters and the concerns of the interpreter.
- 9.05 **Breaks.** When court events are laborious, complicated, or laden with medical/scientific terms, the judge or other appropriate court authority will consider providing a break each hour, as necessary.
- 9.06 **Maintenance of Records.** OLA shall establish and maintain records of all scheduled and emergency or unscheduled interpreter assignments. Such records shall contain the following: (a) the docket number and the name of the case; (b) if not a case, the assignment or event and the court department; (c) the date of the assignment; (d) the date of the scheduled assignment; and (e) the name of the assigned interpreter(s).
- 9.07 **Usage of Court Interpreter Time.** When court interpreters complete assignments before the end of the time periods for which they are being compensated, they shall

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<sup>5</sup> ASL and DHH interpreters are also requested through MassCourts; however, MCDHH assigns the ASL interpreters and DHH interpreters.

remain in the court facilities and seek additional assignments from OLA and court personnel. See also Section 10 (Arrival and Departure Procedures for Per Diem Court Interpreters).

- 9.08 **Cost of Interpreter Services.** The Trial Court must not assign the cost of interpreter services to LEP or DHH individuals. Consistent with federal and state laws, the Trial Court may seek cost-sharing with government agencies that are involved in court events in which interpreter services are provided.
- 9.09 **Using Private Interpreter Agencies.** When no Certified or Proficient interpreters are available, OLA Management may approve the use of an interpreter from a private interpreter agency. The Trial Court has contracted with private interpreter agencies for such circumstances in order to prevent the delay of court proceedings. Because private interpreter agencies do not necessarily conform to the testing standards of the Trial Court, OLA will first seek to obtain certified interpreters from other jurisdictions, and then search for the next best option to provide interpreter services.
- 9.10 **Remote Interpreting.** Remote interpreting, by video or telephone, may be employed for short in-court proceedings and other court events when in-person interpretation is not feasible or possible. Remote interpreting requires approval from OLA in advance. Examples of remote interpreting include:
- (A) Video remote interpreting practices, which must follow the national guidelines set forth by the National Center for State Courts Council for Language Access Coordinators, as well as the Trial Court's policies. Video remote interpreting may also be used for DHH individuals in appropriate cases in consultation with MCDHH.
  - (B) Telephonic foreign language interpretation (telephone interpretation) is available with OLA approval in advance. Telephone interpreting is not appropriate for lengthy proceedings or matters involving pleas or waivers of rights, but, in the discretion of a judge or other appropriate court authority, may be necessary for proceedings of short duration and other court events. Court personnel must request and receive approval from OLA prior to using telephone interpreting services. A speaker phone, or phone with dual headsets, is preferable, but not necessary to access the service.
  - (C) Telephone interpretation service approved by OLA may also be used for more common languages at clerks' and registers' counters and probation offices when an emergency arises and no staff or per diem court interpreter is available. Court personnel must request and receive approval from OLA in advance. Courts should enter all requests for interpreter services into MassCourts and email OLA at the respective language access email address.

**Section 10.00 Arrival and Departure Procedures for Per Diem Court Interpreters, ASL Interpreters, and DHH Interpreters**

**10.01 Arrival Procedures.**

- (A) Interpreters must arrive on time for all assignments and scheduled events. OLA will develop protocols regarding the process for recording time worked (e.g., arrivals and departures). All interpreters must notify OLA by calling the emergency line if they will be late for any reason for their assignments.
- (B) Upon arrival, interpreters must report to the Language Access Liaisons for the assigned court departments or facilities. The Language Access Liaisons will confirm the interpreters' arrival times, confirm their assignments, and direct the interpreters to the locations of the scheduled court events.
- (C) Upon arrival, in multi-departmental court facilities, interpreters must report to the Language Access Liaisons for each of the court departments to which they are assigned for court events.
- (D) Upon arrival, in multi-departmental court facilities in which staff interpreters are present, interpreters must report to those staff interpreters instead of reporting to the Language Access Liaisons. The Language Access Liaisons and the staff interpreters will communicate, as needed, regarding the assigned court events. If the staff interpreters are absent, then the interpreters must report to the Language Access Liaisons for the court departments in which they are interpreting.

**10.02 Departure Procedures.**

- (A) Per diem court interpreters must remain in the court facilities and be available to interpret for the full duration of their scheduled assignments.
- (B) When per diem court interpreters complete assignments before the end of their scheduled shifts, they must seek additional assignments from OLA and the Language Access Liaisons.
- (C) When per diem court interpreters complete their assignments earlier than the scheduled shifts and have been informed by the Language Access Liaisons and other court personnel that they are no longer needed, (as set forth in subsection (B) above), they must contact OLA to report their availability for additional events during the remainder of their scheduled shifts. Before departure, an interpreter must sign out with a Language Access Liaison.
- (D) When there are staff interpreters assigned to multi-departmental court facilities, per diem interpreters must report to and sign-out with the staff interpreters as well as with the Language Access Liaisons at the end of their assignments. In the absence of staff interpreters, per diem interpreters must report to and sign out with the Language Access Liaisons at the end of their assignments.

### 10.03 **On-Call Per Diem Court Interpreters.**

On-call per diem court interpreters will be compensated at their regular rates for the period of time they are scheduled to be on-call. OLA will assign on-call interpreters to court events at its discretion. Once assigned, the on-call interpreters will follow the procedures for arrivals and departures set forth in Sections 9.07, 10.01, and 10.02.

**Section 11.00 Processing Bills, Interpreter Invoices, and Extraordinary Requests for Per Diem Court Interpreters**

- 11.01 **Requirement to Submit Daily Service Invoices.** Per diem court interpreters are required to electronically submit complete and accurate Daily Service Invoices for all assignments, utilizing OLA approved software.
- 11.02 **Extraordinary Requests.** A court making an extraordinary request must submit a written request to OLA. For payment, per diem court interpreters assigned to extraordinary requests, shall capture these requests on their interpreter invoices and provide their associated travel expense receipts including mileage, accommodations, and meals, as applicable. Out-of-state mileage will be reimbursed at the statewide rate on a per mile basis. The Trial Court reserves the right to audit, research, and investigate any individual or corporation receiving payment for services rendered.
- 11.03 **Processing Interpreter Invoices.** OLA management and the Fiscal Accounting Office will process interpreter invoices received from per diem court interpreters. The Massachusetts Management Accounting and Reporting System (MMARS) governs the payment process for all Trial Court expenditures. Interpreter invoices with missing required information will not be processed and may be returned to the per diem court interpreter.
- 11.04 **Verification.** OLA management will verify each per diem court interpreters' invoice by utilizing all relevant information and databases to ensure the per diem court interpreter provided service to the court on the day for which the interpreter is seeking payment. OLA will not approve any service invoiced by a per diem court interpreter that was not requested by the court.
- 11.05 **Authorization.** The Payment Request Commodity Form with the accompanying interpreter invoices must be approved for payment by the Manager of Accounting or the Manager's designee.

## **Section 12.00 Complaint Procedures**

### **12.01 Complaints against Per Diem Court Interpreters.**

- (A) All complaints against per diem court interpreters shall be submitted to OLA management. Complaints may be filed by utilizing the *Language Access Complaint Form*,<sup>6</sup> attached as Appendix A and available at <https://www.mass.gov/topics/court-forms>. Complaints also may be made orally. If made orally, OLA will fill out the Language Access Complaint Form with the information provided, ask the complainant to review the form for accuracy and completeness, and request the complainant to sign and date the form. OLA management or staff may initiate such complaints as well.
- (1) The complaint should include the complainant's name and contact information; preferred language; the date and location of the underlying incident; a detailed summary of the complaint; the names and contact information of any witnesses; and any other information relative to the complaint.
- Anonymous complaints will be considered to the extent that the information provided includes sufficient facts. Because anonymous complaints may be more difficult to investigate, complainants are encouraged to identify themselves when bringing complaints.
- (2) OLA shall maintain a log of all complaints received in accordance with this section. The log shall include, at a minimum, the name of the per diem interpreter against whom the complaint was made, the date received, and the disposition of the complaint.
- (B) Upon receipt of a complaint, OLA management shall review the facts and circumstances alleged in the complaint. Following this review, OLA management may determine that the complaint should be screened out (e.g., where the incident complained about has an explanation that does not require further review). If the complaint alleges that the per diem interpreter engaged in conduct in violation of Section 5 of the Trial Court's Personnel Policies and Procedure Manual ("PPPM"), the *Policy Prohibiting Discrimination, Harassment, and Retaliation*, the complaint will be referred to the Office of Workplace Rights and Compliance. Also, at the discretion of OLA management, if it is determined that another office in the Trial Court should conduct the review because of the nature of the complaint, OLA management may refer the complaint to such other Trial Court office.

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<sup>6</sup> This complaint form is used for all language access complaints, including complaints against per diem and staff court interpreters. The complaint form is available in multiple languages and interpreter services will be provided as needed. In addition, paper copies of the *Language Access Complaint* form are available from OLA, Court Service Centers, and Trial Court law libraries.

- (C) Where appropriate, OLA management will promptly notify the per diem interpreter against whom the complaint was made of the receipt and nature of the complaint. Following such notice, the per diem interpreter shall be afforded an opportunity to be heard by discussing the allegations at a meeting with OLA management or by responding in writing. As part of its investigation, OLA management will also promptly contact the complainant and any necessary witnesses.
- (D) OLA management may determine not to provide any new assignments to the per diem interpreter during the pendency of the complaint process.
- (E) At the conclusion of its initial review and/or investigation, OLA management will determine whether to temporarily suspend or remove the per diem interpreter from the Trial Court's list of interpreters. OLA management may also determine that no action is necessary. Failing to follow these *Standards and Procedures of Language Access* as prescribed by law and the ethics of the interpreter profession as set forth in Section 4:00 (Code of Professional Conduct for Court Interpreters of the Trial Court) may be grounds for suspension or removal from the Trial Court's list of interpreters.
- (F) The actions detailed in Section (E) above shall also be grounds for a judge to remove a per diem interpreter from a judicial proceeding. OLA management must be notified of all such removals.
- (G) Upon conclusion of the investigation, OLA management will notify the complainant and the per diem interpreter whether the complaint was substantiated or unsubstantiated.

## **12.02 Complaints Against Trial Court Staff Interpreters.**

All complaints against Trial Court staff interpreters shall be submitted to OLA management for review in the same manner detailed above (§ 12.01(A)). Complaints filed against staff interpreters will be reviewed in accordance with the Trial Court's PPPM, these *Standards and Procedures*, and any applicable collective bargaining agreement. Upon conclusion of the investigation, OLA management will notify the complainant and the staff interpreter whether the complaint was substantiated or unsubstantiated.

If the complaint alleges that the staff interpreter engaged in conduct in violation of Section 5.00 of the PPPM, the complaint will be referred to the Office of Workplace Rights and Compliance for review.

## **12.03 Timeframe for Completing Investigations of Complaints**

OLA management should complete its investigation process within 45 business days of receipt of the complaint. This timeframe may be extended as circumstances require.



### **Section 13.00 Reports and Statistics**

- 13.01 OLA will collect and aggregate data concerning the deployment of court interpreters to court events.
- 13.02 All staff court interpreters shall submit monthly service records of all court events for which they interpreted that were not entered into MassCourts to OLA, including the following data fields:
- Name of the staff court interpreter,
  - Dates of service,
  - Language,
  - Court(s) where the service was provided, and
  - Name(s) and docket number(s) of the proceeding(s).
- 13.03 OLA will retain statistical reports that reflect the need for court interpreters by court department, court division, geographic region, and language.

## **Section 14.00 Interpreter Services in Court Events**

- 14.01 **The Electronic Docket.** When court events requiring interpreter services are scheduled, requests for interpreters, including court interpreters for LEP individuals and ASL and DHH interpreters for DHH individuals, must be entered into MassCourts via the Event Maintenance screen. Case files must be marked clearly on the outside to indicate that court interpreters are required for the duration of the case.
- 14.02 **The Roles and Responsibilities of Interpreters.** Prior to the commencement of interpreter assignments, interpreters must have the opportunity to explain their roles and responsibilities to the individuals for whom they will be interpreting. Additionally, interpreters will communicate briefly with the individuals to ensure understanding of differences such as accents, dialect, pronunciation, expressions and signs. Interpreters must inform the appropriate court authority of any conflict or lack of comprehension between them and the individuals for whom they will be interpreting.
- 14.03 **Interpreter’s Oath.** Pursuant to G.L. c. 221C, § 4(a), a judge or a clerk in the session must give the oath to the interpreter. This may be done at the beginning of the court event or at the beginning of the interpreter’s workday. If given at the beginning of the workday, the oath extends for the duration of the interpreter’s assignments as an officer of the court on that day.

Prior to taking the oath, court interpreters must identify themselves to the court and report whether OLA has classified them as a proficient or certified interpreter.

Prior to taking the oath, ASL and DHH interpreters must identify themselves and report whether MCDHH has classified them as qualified interpreters or intermediary interpreters. The language of the oath is as follows:

*“Do you solemnly swear or affirm that you will make true and impartial interpretation using your best skill and judgment in accordance with the standards prescribed by law and the ethics of the interpreter profession?”* See G.L. c. 221C, § 4(a).

- 14.04 **Waiver of the Right to an Interpreter.** LEP individuals and DHH individuals may waive the right to have interpreters in court events.
- (A) Only a judge may approve the request of a LEP individual to waive the right to a court interpreter. Before approving a waiver, the judge must explain the nature and effect of the waiver in open court, on the record and through a court interpreter. After this inquiry, the waiver will be granted only if the judge finds that the waiver is knowingly and voluntarily made. See G.L. c. 221C, § 3(a). If represented by counsel, LEP individuals must first consult with their counsel before judges will approve their waivers.
- (B) LEP individuals may rescind their waivers of the right to a court interpreter at any time and then may request court interpreter services. Failure to request a court interpreter does not constitute a waiver of such right. See G.L. c. 221C, § 3(b).
- (C) A DHH individual may waive the right to an interpreter only if the court finds that the waiver is made knowingly, voluntarily, and intelligently. The DHH individual must

execute the waiver in writing. When the DHH individual seeking the waiver is represented by counsel, counsel must provide written approval before the court will grant the waiver. The failure of a DHH individual to request a court interpreter does not constitute a waiver of the right to request an ASL or DHH interpreter. See G.L. c. 221, § 92A.

- 14.05 **Use Only OLA-Assigned or MCDHH-Assigned Court Interpreters.** Family members, children, friends, counsel, advocates and others who are not OLA-assigned court interpreters or MCDHH-assigned ASL or DHH interpreters must not be utilized to interpret for LEP and DHH individuals in court events or to communicate with court-appointed or court-supervised personnel. Courts must contact OLA for emergent language needs.
- 14.06 **Multiple LEP or DHH Parties.**
- (A) When there are multiple parties who need interpreter services, one interpreter, using appropriate equipment, may interpret unless it is determined that team interpreting is needed.
- (B) When witnesses and parties in the same court events require interpreter services, judges or other appropriate court authorities must consider whether separate interpreters must be assigned to allow parties to communicate with counsel as necessary in a timely manner.
- (C) If judges or other appropriate court authorities have determined that the parties have interests that are in conflict, then they must consider whether to provide separate interpreters or use best practices for such a situation.
- 14.07 **Mode of Address.** LEP and DHH individuals must always be addressed directly and never through the interpreters.
- 14.08 **Positioning of Interpreters.** Interpreters shall be positioned with the LEP and DHH individuals to ensure that they are able to clearly communicate with one another. Interpreters shall be positioned so that the interpreters, the LEP individuals, the DHH individuals, and other participants in the court events (for example, judge, jury, and counsel) are able to hear or (in the case of DHH individuals) to see each other.

# Appendix A



## MASSACHUSETTS TRIAL COURT LANGUAGE ACCESS COMPLAINT FORM

To make a complaint about language access, including interpreter services, please complete this form and return it to the Office of Language Access (“OLA”) by hitting the “Submit” button below.

You may also mail the form to the Office of Language Access, Massachusetts Trial Court, 2 Center Plaza, 9<sup>th</sup> Floor, Boston, MA 02108.

If you need assistance in completing this form, please contact the Office of Language Access by phone at 617-878-0269 or by email at [lacomplaints@jud.state.ma.us](mailto:lacomplaints@jud.state.ma.us).

### CONTACT INFORMATION

Name:

First                      Last

Language:

Email:

Telephone:

Name of person completing this form (if not you) and contact information:

First    Last

Language:

Email:

Telephone

**COMPLAINT SUMMARY**

PLEASE DESCRIBE WHAT HAPPENED, INCLUDING DATE, TIME, AND COURT LOCATION.

IDENTIFY THE INTERPRETER OR OTHER COURT EMPLOYEE AGAINST WHOM YOU ARE MAKING THIS COMPLAINT.

Please give as much information as possible.

PLEASE LIST THE NAMES AND CONTACT INFORMATION OF ANYONE WHO SAW OR HEARD WHAT HAPPENED.

Thank you for taking the time to complete this form. OLA management will review your complaint and contact you within fifteen (15) business days of receiving it.

The Trial Court will not tolerate any retaliation against you for filing this complaint or participating in the investigation. If you believe you have been retaliated against, please contact OLA at 617-878-0296 or email at [lacomplaints@jud.state.ma.us](mailto:lacomplaints@jud.state.ma.us).

**Submit Button**