

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT  
CIVIL ACTION NO. 2016-00969

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. :

REQUEST FOR PRODUCTION  
OF DOCUMENTS

LEWIS "HARRY" SPENCE, in his capacity :  
as Administrator of the Trial Court, and his :  
successors in office, MARIA FOURNIER, :  
in her capacity as the Director of the Support :  
Services Department of the Trial Court :  
Office of Court Management and the Office :  
of Court Interpreter Services Coordinator for :  
the Administrative Office of the Trial Court, :  
and her successors in office, and BRUCE :  
SAWAYER, in his capacity as Manager of :  
Accounting of the Fiscal Affairs Department :  
of the Trial Court, and his successors in :  
office, :

Defendants :

Notice to Defendant:

Pursuant to Mass.R.Civ.P. 34, your response to this Request for Production of Documents must be received by the plaintiff's attorney not later than thirty (30) days after your receipt of this Request for Production of Documents;

For the purposes of this Request for Production of Documents, the term "document" or "record" includes relevant past, contemporary, and on-going

writings, drawings, graphs, charts, photographs, recordings, data compilations (translated, if necessary by the respondent through dictation devices into reasonably usable form), contracts, agreements, correspondence, memoranda, reports, notes, requests, bills, orders, notices, writs, declarations, complaints, answers, and other court pleadings, schedules, tabulations, checks, diary entries, telegrams, diagrams, films, newspaper clippings, and all other writings and recordings of whatever nature, whether signed or unsigned, transcribed or not, is asserted, and whether or not any privilege is asserted.

If no documents exist satisfying any numbered request, please so indicate.

For the purposes of this Request for Production, the following definitions apply:

(a) The term "defendants" includes the defendants, their agents, counsel, employees, officers, trustees, partners, or other persons acting for or on behalf of the defendants, or any of them.

(b) The term "plaintiffs" refers to the plaintiffs, agents, counsel, employees, officers, trustees, partners, or other persons acting for or on behalf of the plaintiffs or any of them.

(c) "Identify" means to state the name, title if applicable, and current address if different from address at time of the incident referred to.

(d) The term "MACI" means Plaintiff, Massachusetts Association of Court Interpreters, its members, including the individually named plaintiffs, and those who are members of the class as defined in the complaint and/or who Defendants consider *per diem* independent contractor court interpreters.

(e) The term "Trial Court" means the named defendants in the Complaint and all

those responsible to them, including, but not limited to the Office of Court Interpreter Services ("OCIS").

The plaintiff requests the defendant to produce at the office of the plaintiff's attorney, Alan Jay Rom, Esq. P.O. Box 585, Chelmsford, Massachusetts 01824, each of the following documents/records:

1. Please identify name, address, telephone number and position of the person(s) providing the information in each request;
2. For each court interpreter considered by defendants to be a *per diem* independent contractor in the span of the following years: 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, or from the first year such each per diem contractor was hired at any time after October 15, 2009, and up to and including the date of production of the documents requested, all documents including, but not limited to the Massachusetts Management Accounting Reporting System ("MMARS"), detailing or showing:
  - a) whether each said interpreter is certified or screened, the date each such interpreter was hired by OCIS, and the date each certified interpreter received his/her certification;
  - b) monthly, bi-monthly, or quarterly schedules of availability submitted to OCIS by each court interpreter considered by defendants and OCIS to be a *per diem* independent contractor;
  - c) dates each such *per diem* court interpreter was assigned to work for any and each court, for any district attorney (e.g. grand jury), for any probation department, or any other specific entity served by OCIS;



- d) number of Limited English Proficient (“LEP”) persons served in each court by each *per diem* independent contractor for each day that each *per diem* independent contractor was assigned to work in each of the above said years;
- e) total hours each *per diem* independent contractor worked in each of the above said years;
- f) total hours each Spanish and Portuguese *per diem* interpreter worked in each month, and each of the above said years;
- g) total actual interpreting hours each court *per diem* interpreter spent each half day and/or full day when multiple LEP cases, long hearings, and on-going trials were involved;
- h) records of whether such long working hours by the *per diem* interpreter was supported or not supported by a working partner that is often a standard requirement for a on-going trial including a full-day trial;
- i) records of all the instances when court had requested two or three interpreters for a case while OCIS sent only one interpreter;
- j) records of the differences, on daily basis, between the number of requests from each courthouse and the number of interpreters assigned to the said court in the above said years;
- k) records of all telephonic interpreting being assigned to Language Line instead of assign a in-person interpreter to each of the courthouse on each day when Language Line was being utilized;

- l) all records including but not limited to case name, docket number, language needed, charge(s), and the type of court procedure for which all such Language Line services were utilized;
- m) E-mails to and from each *per diem* interpreter communicating, after receiving a weekly schedule and/or a last minute assignment, as to whether he/she has a problem with it."
- n) records of those Spanish or Portuguese *per diem* interpreters who were routinely assigned either by OCIS or requested through the court to multiple cases ranging from 6 to +20 and/or records of routine "Automatic Morning Coverage" assignment to the same *per diem* court interpreter without any limitation on the number of the cases per morning;
- o) records of all "Automatic Morning Coverage" assignments which resulted in "Full Day Coverage";
- p) records of each day that each *per diem* interpreter worked between 1:00 p.m. and 2:00 p.m., and the amount of payment, if any, such *per diem* court interpreter received, with a full explanation to such amount, or non-payment, for each such *per diem* interpreter working between 1:00 p.m. and 2:00 p.m.;
- q) records reflected on all *per diem* court interpreters' Daily Service Records (hereinafter referred to as "DSRs") showing travel time spent by each *per diem* court interpreter between 1:00 p.m. and 2:00 p.m. in

an effort to arrive on time for the afternoon session at the next court location;

- r) records of each *per diem* interpreter who ended up working for a full-day per court's request but was not paid for the full-day because OCIS had assigned such *per diem* interpreter to work for half-day only;
- s) copies of all invoices, digital and hard copy, submitted by each *per diem* court interpreter and the date each such invoice was received by OCIS; and
- t) records of payments along with payment vouchers from the OCIS computer system of each such invoice submitted by court interpreters considered by defendants to be *per diem* independent contractors, including, but not limited to, the date each such payment was issued, deductions made for any reason and each such reason, if any, for each such deduction, payment for mileage, payment for travel time, payment time spent in transit from court to court, including, but not limited to, traveling from court to home and to the newly assigned court when each *per diem* interpreter was called upon, and any and all other records from the data base of the OCIS Fiscal Department.

3. Records showing a break-down list of payments based on each payment voucher for each for each and all payment vouchers that the OCIS Fiscal Department issued to each *per diem* court interpreter for each year beginning with 2009 (October 15<sup>th</sup>), such break-down of payments



showing the amount of each payment for each half-day/full-day that each *per diem* court interpreter worked.

4. For each staff court interpreter employed by OCIS for each or part of the years 2009 (beginning on October 15<sup>th</sup>), 2010, 2011, 2012, 2013, 2014, 2015, 2016, and up to and including the date of production of the documents requested, all documents detailing or showing:
  - a) the number of LEPs served during each court appearance on each date by the staff court interpreter;
  - b) the parking tickets or hotel costs submitted by and reimbursed to each staff court interpreter for each day such parking and hotel expenses incurred by each such staff court interpreter;
  - c) the amount of overtime billed by each staff court interpreter for each day when such over-time occurred;
  - d) morning and afternoon check-in time for each staff court interpreter for each day and if any monetary penalty of late arrival was imposed on the staff court interpreter;
  - e) the salary earned by each staff court interpreter in said year(s) and the most recent contracted increase amount ;
  - f) benefits received by each staff court interpreter during said year, and its value in dollars, including, but not limited to, retirement benefits, paid vacation days, sick days, personal days for any reason, time, or for any other category; and

- g) any other deductions and reasons for each deduction made to each of the staff court interpreters in said year(s).
- 5. All documents reflecting the budget allocated for staff court interpreters, the budget allocated for *per diem* independent contractors, and the budget allocated for interpreters for the deaf and hard of hearing in said years;
- 6. All documents or records regarding the annual expenditure for court interpreter services, of which how much was paid in total to *per diem* interpreters in 2009, 2010, 2011, 2012, 2013, 2014, 2015, and 2016, including but not limited to:
  - a) all records of total annual payments to all *per diem* interpreters in 2009 (beginning on October 15<sup>th</sup>), 2010, 2011, 2012, 2013, 2014, 2015, and 2016, with a breakdown payment to each individual *per diem* court interpreter;
  - b) all records of expenditure on other interpreter related services including but not limited to the installation of video remote devices in each courthouse since October 15, 2009, the cost of the system for Language Line telephonic interpreting, any office related expenses that was part of the interpreters' budget, as well as any interpretation and/or translation agencies hired to provide additional over-the-phone or on-site language services including but not limited to Baystate Interpreters, Benoit Language Services, Global Link Translations, International Translation Company, Language Bridge,



Language Connections, Language Line Services, Optimal Phone Interpreters, Transfluenci, Translations Interamerica, and other such contractors such as out-of-state interpreters directly hired by OCIS to interpret for trials, and all related expenditures which was part of the total expenditure for the Trial Court Interpreter Services in each said year since October 15, 2009; and

- c) all records for other costs of running interpreter services, including, but not limited to, legal services for the administrative staff of OCIS, extra costs, if any, for OCIS Fiscal Department that processes *per diem* interpreters' invoices, office furniture, office supplies, office warehouse storage for records of past and current DSR's, digital record system, and any other costs which was part of the total expenditure for the Trial Court Interpreter Services in each said year since October 15, 2009.

- 7. All documents reflecting the number of *per diem* court interpreters in each of the languages served leaving OCIS each year, and the number of *per diem* court interpreters in each language hired/contracted by OCIS in each year from October 15, 2009 to the present.
- 8. The total and itemized breakdown of payments paid to each interpreter from outside of Massachusetts for criminal trials, including but not limited to the murder case of at Essex Superior Court in February, April, and May 2016.

9. A list of the names of each such out-of-state interpreter, including but not limited to, Waw P. Moy, Melissa Lo, and Stephanie Liu, for any criminal trials between October 15, 2009 and 2016.
10. All documents reflecting all per diem court interpreters removed from the list of available court interpreters pursuant to Section 12.01 of the S & P, regardless of whether they were removed for cause or no cause.
11. All documents reflecting details of the types of expenses in the annual OCIS budget for things other than *per diem* court interpreter services.
12. All documents reflecting the types of expenses that are reimbursable and non-reimbursable for staff court interpreters, but not for *per diem* court interpreters, including, but not limited to, interpreting equipment, car rentals, parking, travel time, overtime rates, and hotel accommodations, while traveling to assignments in courts in Nantucket and/or Martha's Vinyard, etc., and the rate of reimbursement for each such activity.
13. All documents reflecting the total expenses paid to each *per diem* court interpreters for each of the years 2009 through the present.
14. All documents showing the total number of requests for court interpreter services, including, but not limited to, requests for interpreting services by district attorneys for grand jury proceedings and the probation department, and the total number of court events that received interpretation services for each of the years: October 15, 2009 through the present that were performed by a) staff court interpreters, and b) *per diem* court interpreters.

15. The contract, or other relevant documents, reflecting the business relationship between the Trial Court and Language Line for telephonic interpretation services, including, but not limited to, the rate per minute fee, the minimum per call fee, and:
- a) All entries/documents from the Trial Court database showing the rate and total amounts paid to Language Line for its telephonic interpretation services since the month and year of its use.
  - b) All entries/documents that show each court event using Language Line since October 15, 2009, including, but not limited to, case name, docket number, court location, language, and type of court proceeding (such as restraining order hearing, child custody hearing), case name, docket number, bench trial or jury trial.
  - c) All entries/documents that show each court event using VRI since its implementation, including, but not limited to, case name, docket number, court locations, languages, types of court proceedings, and whether such services in each said case were rendered by staff court interpreters and/or *per diem* court interpreters through OCIS, or from interpreters who performed the services from outside of Massachusetts.
16. All OCIS memos and internal emails generated by the OCIS director (including Maria Fournier), OCIS managers (including Gaye Gentes, Leonor Figueroa-Feher, and Sybil A. Martin), and the head of OCIS Accounting Department (including Bruce J. Sawyer) on any proposed or



about-to-be implemented policies, absent from the S&P, including but not limited to hourly rate, new hourly rate for travel time and over-time, two-hour minimum rate, change of travel rate and formula, lunch time compensation rate, deductions and penalties for signing "late" upon interpreters' arrival since 2008;

17. Specific memos and internal communications generated and received by Gaye Gentes on major 75% travel time reduction for *per diem* interpreters;
18. Specific memos and internal communications for the months leading to June and July 2014, generated and received by Maria Fournier on major rate change for *per diem* interpreters, namely from that of the half-day/full-day to that of the two-hour minimum;
19. Records reflect such policy being implemented, i.e. *per diem* interpreters either being paid at such rate starting in June 2014 and ending in July 2014 or being forced to hang around the courthouse till 1:00 p.m. in order to avoid being paid at two-hour minimum rate;
20. Records on whether such short-lived two-hour rate for *per diem* interpreters were productive or counter productive, i.e. if the *per diem* interpreters were travelling to the next court as posted on the White Board, rather than hanging around at the current courthouse for 1 p.m. to clock-in.
21. Specific memoranda on the source of the decisions and the decisions by either the court administration or the Security Department on stopping

renewing of interpreters' badges and not issuing badges to *per diem* interpreters, including but not limited to:

- (a) When such policy on stop renewing of badges was implemented;
- (b) When OCIS started not to issue badges to *per diem* interpreters;  
and
- (c) Specific memos or internal communications of the new policy of having *per diem* interpreters stand in line with other litigants in order to gain access to the courthouses, and all reasons for such new policy that has already been in effect.

22. All documents and internal memos reflecting changes to the S & P affecting *per diem* court interpreters including but not limited to:

- (a) two hour minimum compensation when assignment is scheduled for later than 9:00 a.m., at 1:00 p.m., or at 3:00 p.m.;
- (b) reduction in payment in the amount of \$13/\$20, \$26/\$40, or \$39/\$60 when when *per diem* interpreters sign in after 9:15 a.m. and before 11:00 a.m., when car accidents on the road cause significant delays, and ALL policy changes in penalty amounts before and after this lawsuit was filed;
- (c) when only scheduled for the afternoon session (2:00 p.m. to 4:30 p.m.), compensation being a two-hour minimum, and if not a two-hour minimum, but at an hourly rate, those documents;
- (d) non-payments for working between 1:00 p.m. and 2:00 p.m.;

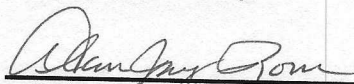
- (e) non-payment for working at second court between 1:00 p.m. and 2:00 p.m.;
  - (f) hourly rate payment when *per diem* interpreters took the assignment on short notice; and
  - (g) any non-payment to any *per diem* interpreters when any assignments was on short notice via telephone by OCIS but the cases got a continuance or were heard without waiting for the arrival of the *per diem* interpreters.
22. All documents reflecting the total of federal funds received by the Trial Court and the allocation of those funds to OCIS and other departments or divisions of the Trial Court for language services for each year beginning October 15, 2009 through the present, how much of said funds were used in each year, and the use of those funds in each said year.
23. All documents that demonstrate the information alleged by plaintiffs in their Amended Complaint for which Defendants' response was the documents or records referred to "speak for themselves," including, but not limited to Defendants' Answers to Paragraphs 28, 29, 30, 31, 32, 41, 42, 49, 52, 55, and 73.
24. All documents that reflect acceptance of the terms and conditions of the S & P by *per diem* court interpreters, including their signatures.
25. All documents that reflect any proposed revisions to the S & P from the version *per diem* court interpreters are currently bound by, including any documents that describe reasons for any proposed changes.



Respectfully submitted,

MASSACHUSETTS ASSOCIATION OF  
COURT INTERPRETERS ("MACI"), ET AL.  
PLAINTIFFS

By Their Attorney



Alan Jay Rom, BBO# 25960

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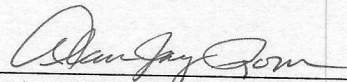
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Dated: February 1, 2017

### Certificate of Service

I, Alan Jay Rom, hereby certify that the above Request for Production of Documents was served on Defendants by mailing a copy, first class, postage prepaid to Nicholas W. Rose, Assistant Attorney General, Trial Department/Government Bureau, Office of the Attorney General, One Ashburton Place, Boston, Massachusetts 02108 this 1<sup>st</sup> day of February, 2017.



Alan Jay Rom