

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
C.A. NO. SUCV2016-00969

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.

EXECUTIVE OFFICE OF THE TRIAL
COURT,
Defendant.

STATEMENT OF UNDISPUTED MATERIAL FACTS
PURSUANT TO SUPERIOR COURT RULE 9A(b)(5)(i)

1. The Office of Court Interpreter Services (“OCIS”) is a department of the Trial Court that administers the provision of all interpreter services to the Trial Court, and that is responsible for the training, certification, assignment and supervision of spoken language court interpreters who provide interpretation services in court proceedings. Dirks Aff. Ex. 1 (Standards & Procedures of OCIS (“S&P”)) at § 2.14.

Plaintiffs: Plaintiffs agree to the statement in No. 1 and further state that the S & P speaks for itself.

2. *Per-diem* court interpreters for the Trial Court are freelance court interpreters assigned to court proceedings from the lists of court interpreters developed and maintained by OCIS. Dirks Aff. Ex. 1 (S&P) at § 2.15.

Plaintiffs: Plaintiffs agree to the statement in No. 2 and further state that the S & P speaks for itself.

3. Every month or two months, *per-diem* court interpreters submit to OCIS their dates of availability for court assignments. Dirks Aff. Ex. 2 (Dep. Tr. of Norma Rosen-Mann) at 29:4-13.

Plaintiffs: Plaintiffs agree to the statement in No. 3.

4. *Per-diem* court interpreters are assigned to Trial Court proceedings on a day-to-day, as-needed basis. Dirks Aff. Ex. 1 (S&P) at § 2.21.

Plaintiffs: Plaintiffs agree to the statement in No. 4 and further state that the S & P speaks for itself.

5. The Trial Court employs staff court interpreters, who are Certified Interpreters that work full-time for the Trial Court. Dirks Aff. Ex. 1 (S&P) at § 2.21.

Plaintiffs: Plaintiffs agree to the statement in No. 5 and further state that the S & P speaks for itself.

6. A Screened Interpreter is defined as “a court interpreter who has (1) met the minimum requirements for a court interpreter (*see* section 5.02), (2) passed the screening and interview processes (*see* sections 5.03(A) and (B)), (3) passed the screening examination, if given, (*see* section 5.03(C)), (4) completed the mandatory training course (*see* section 6.04), and (5) completed the Mentoring Program (*see* section 6.05).” Dirks Aff. Ex. 1 (S&P) at § 2.17.

Plaintiffs: Plaintiffs agree to the statement in No. 6 and further states that the S & P speaks for itself.

7. A Certified Interpreter is defined as one “certified by the Office of Court Interpreter Services pursuant to section 5.04, or one certified by the National Registry of Interpreters for the Deaf.” Dirks Aff. Ex. 1 (S&P) at § 2.03.

Plaintiffs: Plaintiffs agree to the statement in No. 7 and further states that the S & P speaks for itself.

8. A Qualified Interpreter is defined as “a Certified Interpreter who has also passed the examination and is qualified to interpret in the federal courts by the United States District Court for the District of Massachusetts.” Dirks Aff. Ex. 1 (S&P) at § 2.16.

Plaintiffs: Plaintiffs agree to the statement in No. 8 and further states that the S & P speaks for itself.

9. There are 142 individuals on OCIS’s list of per diem court interpreters. These include 80 Certified Court Interpreters and 62 Screened Interpreters. Dirks Aff. Ex. 11.

Plaintiffs: Plaintiffs state that the number of *per-diem* court interpreters has varied. It has been as high as 180, but the number of 142 may be accurate today, and it could change tomorrow.

10. Of the *per-diem* court interpreters, 40 are Certified or Screened to interpret in more than one language. Dirks Aff. Ex. 11.

Plaintiffs: Plaintiffs have no information to dispute that this may be the number of *per-diem* court interpreters who are certified or screened to interpret in more than one language today, but that this number changes over time as the number of certified and screened court interpreters changes over time.

11. Moussa Abboud, Soledad Debarros, Anahit Flanagan, Michael Lenz, and Norma Rosen-Mann are Certified Interpreters who provide or have provided services as *per-diem* court interpreters for the Trial Court. Dirks Aff. Ex. 3 (Abboud Dep. Tr.) at 10:6-16; Dirks Aff. Ex. 4 (Debarros Dep. Tr.) 22:13-19, 93:17-18; Dirks Aff. Ex. 5 (Flanagan Dep. Tr.) 59:21-22; Dirks

Aff. Ex. 2 (Rosen-Mann Dep. Tr.) at 18:8-11, 28:2-4; Dirks Aff. Ex. 6 (Lenz Dep. Tr.) at 28:7-12.

Plaintiffs: Plaintiffs agree to the statement in No. 11.

12. The Trial Court adopted and approved the S&P in 2009. Ex. 1 (S&P) at p. i.

Plaintiffs: Plaintiffs agree to the statement in No. 12 and further state that the S & P speaks for itself.

13. The Trial Court adopted and approved the S&P “[t]o provide judges, attorneys, and court personnel with essential information about the utilization of interpreter services in the Massachusetts Trial Court, and to supply interpreters with principles and protocols to follow when interpreting for the Office of Court Interpreter Services” Dirks Aff. Ex. 1 (S&P) at p. i.

Plaintiffs: Plaintiffs agree to the statement in No. 13, and further state that the S & P speaks for itself.

14. The S&P outlines the process for requesting court interpreter services and for assigning interpreters to judicial proceedings. Dirks Aff. Ex. 1 (S&P) at §§ 8.00, 9.00.

Plaintiffs: Plaintiffs agree with the statement in No. 14 and further state that the S & P speaks for itself.

15. The S&P outlines the professional code of conduct with which *per-diem* court interpreters are expected to comply. Dirks Aff. Ex. 1 (S&P) at § 4.00.

Plaintiffs: Plaintiffs agree with the statement in No. 15 and further state that the S & P speaks for itself. Plaintiffs further state that all those subject to the S & P cannot work as court interpreters without signing a statement about the S & P, an exemplar copy of which plaintiffs provided to Defendant, but their request that the signature pages they signed have not been provided in discovery, as requested.

16. *Per-diem* court interpreters are expected to arrive on time to their assignments, maintain impartiality in their interpreting, and apply their best skills and judgment to preserve the meaning of what is said in court. Dirks Aff. Ex. 1 (S&P) at §§ 4.03(C), 4.04, 4.05(F).

Plaintiffs: Plaintiffs agree with the statement in No. 16 and further state that the S & P speaks for itself. Plaintiffs further state that all those subject to the S & P cannot work as court interpreters without signing a statement about the S & P, an exemplar copy of which plaintiffs provided to Defendant, but their request that the signature pages they signed have not been provided in discovery, as requested.

17. The S&P states:

Compensable Time shall be calculated beginning at the time the court interpreter arrives at the assigned court and reports to the Court Liaison. A “half day” shall be calculated as time spent up to and including four hours of actual interpreting or the time when the court interpreter is available and waiting to perform actual interpreting. “Full day” means a period of time that is more than four hours. Lunch time shall not be considered in this calculation. If the court interpreter is present at the courthouse for the four-hour period, the court interpreter will receive payment for a half day as long as the court interpreter is available for the full four hour period or is otherwise excused from providing services during that period by OCIS.

Dirks Aff. Ex. 1 (S&P) at § 7.02.

Plaintiffs: Plaintiffs agree to the statement in No. 17 and further state that the S & P speaks for itself.

18. The S&P states that “[c]ourt interpreters who are assigned by OCIS to provide court interpreter services in more than one language on the same day shall be compensated at a rate 25% greater than the standard rate set by the Committee and the CJAM [Chief Justice of Administration and Management].” Dirks Aff. Ex. 1 (S&P) at § 7.03.

Plaintiffs: Plaintiffs agree with the statement in No. 18 and further state that the S & P speaks for itself.

19. The standard rates of compensation are set by the Committee for the Administration of Interpreters for the Trial Court and the Chief Justice of Administration and Management. Dirks Aff. Ex. 1 (S&P) at § 7.01.

Plaintiffs: Plaintiffs agree with the statement in No. 19 and further state that the S & P speaks for itself.

20. The S&P states that “[g]enerally, court interpreters will be assigned in the following sequence: first, Qualified Interpreters or Certified Interpreters, and second, Screened Interpreters.” Ex. 1 (S&P) at § 9.01.

Plaintiffs: Plaintiffs agree with the statement in No. 20 and further state that the S & P speaks for itself.

21. The S&P states that “OCIS understands the importance of flexibility in selecting court interpreters based on the particular expertise needed in a given case,” and that “OCIS may select a court interpreter who is not on the list or who is not next in order on the list in consideration of these factors” Ex. 1 (S&P) at § 9.04.

Plaintiffs: Plaintiffs agree with the statement in No. 21 and further state that the S & P speaks for itself.

22. The S&P imposes no obligation on the Trial Court to pay invoices within a certain period of time after their submission to the Trial Court. Dirks Aff. Ex. 1 (S&P) Section 11; Dirks Aff. Ex. 5 (Flanagan Dep. Tr.) at 107:1-11.

Plaintiffs: Plaintiffs agree with the statement in No. 22 and further state that the S & P speaks for itself.

23. MACI is a corporation that works to advance the interests of court interpreters in Massachusetts. Dirks Aff. Ex. 2 (Rosen-Mann Dep. Tr., as MACI's Rule 30(b)(6) Designee) at 111:24-112:21.

Plaintiffs: Plaintiffs agree to the statement in No. 23 and refer the Court to Exhibit E to the Plaintiffs' Opposition to Defendant's Motion for Partial Summary Judgment.

24. MACI is not identified in the S&P. Dirks Aff. Ex. 1 (S&P) at §§ 1.00-14.00.

Plaintiffs: Plaintiffs agree to the statement in No. 24 and point out that MACI was formed in 2014, five years after the S & P was issued. See No. 12, *supra*.

25. MACI does not have a contract or agreement with the Trial Court. Dirks Aff. Ex. 2 (Dep. Tr. of Norma Rosen-Mann as MACI's Rule 30(b)(6) Designee) at 119:2-13.

Plaintiffs: Plaintiffs agree with the statement in No. 25.

26. On February 1, 2017, Plaintiffs served their first set of document requests, which sought materials relating to *per-diem* court interpreters with the Trial Court. Dirks Aff. Ex. 7 (Pls.' First Set of Document Requests).

Plaintiffs: Plaintiffs agree with the statement in No. 26.

27. The Trial Court defendants served responses and objections to Plaintiffs' first set of document requests on or about April 3, 2017. Dirks Aff. Ex. 8 (Def.'s Resp. and Obj. to Pls.' First Set of Document Requests).

Plaintiffs: Plaintiffs agree with the statement in No. 27.

28. Plaintiffs served their second set document requests on or about October 12, 2018. Dirks Aff. Ex. 9 (Pls.' Second Set of Document Requests).

Plaintiffs: Plaintiffs agree with the statement in No. 28.

29. The Trial Court served responses and objections to Plaintiffs' second set of document requests on or about November 9, 2019. Dirks Aff. Ex. 10 (Def.'s Resp. and Obj. to Pls.' Second Set of Document Requests).

Plaintiffs: Plaintiffs agree with the statement in No. 29.

30. The requests in Plaintiffs second set of document requests were largely identical to their first set of document requests, but limited the requests to material relating only to the five Individual Plaintiffs. Dirks Aff. Ex. 7 (Pls.' First Set of Document Requests); Dirks Aff. Ex. 9 (Pls.' Second Set of Document Requests).

Plaintiffs: Plaintiffs admit that the Second Request for Production of Documents was similar to the First Request for Production of Documents, but was not "largely identical" to the First Request for Production of Documents. Certain requests in the First Request for Production of Documents were deleted from the Second Request for Production of Documents, and the Second Request was limited to the five named plaintiffs based on the hearing of July 19, 2018 and the transcript of that hearing is attached as Exhibit A to the Plaintiffs' Opposition to Defendant's Motion for Partial Summary Judgment.

31. Plaintiffs have stated that the Trial Court has breached the terms of the S&P by reducing pay for per diem court interpreters who arrived late to their assigned court proceedings. E.g., Dirks Aff. Ex. 5 (Flanagan Dep. Tr.) at 112:18 – 113:13; Dirks Aff. Ex. 3 (Abboud Dep. Tr.) at 110:3-19.

Plaintiffs: Plaintiffs agree to the statement in No. 31.

32. Plaintiff Michael Lenz has stated that the Trial Court removed him from the list of per diem court interpreters and thereby violated the S&P. Dirks Aff. 6 (Lenz Dep. Tr.) 83:13-22.

Plaintiffs: Plaintiffs agree to the statement in No. 32.

33. Anahit Flanagan, Michael Lenz and Norma Rosen-Mann have not been denied assignments that were given to Screened Interpreters for which they were available. Dirks Aff. Ex. 5 (Flanagan Dep. Tr.) at 109:22 – 110:9; Dirks Aff. Ex. 6 (Lenz Dep. Tr.) 67:20 – 68:3; Dirks Aff. Ex. 2 (Rosen-Mann Dep. Tr.) at 74:19 – 75:1.

Plaintiffs: Plaintiffs agree that they do not know whether they were denied assignments for which they were available or if those opportunities were given to Screened Interpreters because they do not have the information they requested in discovery to enable them to confirm or deny such statement.

34. Soledade Debarros, Anahit Flanagan, Michael Lenz and Norma Rosen-Mann have not been denied assignments for which they were available because the assignments were given to a Language Line interpreter. Dirks Aff. Ex. 4 (Debarros Dep. Tr.) at 76:18-21, Ex. 5 (Flanagan Dep. Tr.) at 112:10-17, Ex. 6 (Lenz Dep. Tr.) at 69:4-8, and Ex. 2 (Rosen-Mann Dep. Tr.) at 83:21 – 84:8.

Plaintiffs: Plaintiffs admit that they do not know whether they were denied assignments for which they were available because the assignments were given to a Language Line interpreter, but further state that they have requested this information in discovery, but defendant has refused to provide this information to date and that this subject, along with others, will be subject to a forthcoming motion to compel.

35. Moussa Abboud, Soledade Debarros, Michael Lenz and Norma Rosen-Mann have not been denied compensation for assignments that were canceled within 24 hours of the scheduled proceeding. Dirks Aff. Ex. 3 (Abboud Dep. Tr.) at 50:21-51:9; Ex. 4 (Debarros Dep. Tr.) at 47:15 – 48:2; Ex. 6 (Lenz Dep. Tr.) at 44:10-18; Ex. 2 (Rosen-Mann Dep. Tr.) at 48:8-12.

Plaintiffs: Plaintiffs admit that they do not know whether they were denied compensation for assignments that were canceled within 24 hours of the scheduled proceeding because they do not have the discovery they requested that would enable them to admit or deny this statement.

36. Soledade Debarros, Michael Lenz, and Norma Rosen-Mann are not Certified or Screened to interpret in more than one language. Dirks Aff. Ex. 6 (Lenz Dep. Tr.) at 57:13-19; Ex. 4 (Debarros Dep. Tr.) at 59:6-13; Ex. 2 (Rosen-Mann Dep. Tr.) at 63:23 – 64:6.

Plaintiffs: Plaintiffs admit the statement in No. 36.

Respectfully submitted,

THE TRIAL COURT

By its Attorneys,

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Date: July __, 2019

MASSACHUSETTS ASSOCIATION OF COURT
INTERPRETERS (MACI), MOUSSA ABBOUD,
SOLEDAD GOMES DEBARROS, ANAHIT
FLANAGAN, and MICHAEL R. LENZ
PLAINTIFFS

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