

EXHIBIT 1

From: Alan Jay Rom

Re: Drafts as Per Our Conversation this Morning

Date: January 12, 2021 at 11:10 AM

To: Office of the Attorney General - Government Bureau, Trial Division



Dear Katherine,

In black and white I stated in the response about MACI that it, MACI, is not seeking damages. That is different from the issue of standing and I recognize that Defendant can again challenge MACI's standing later on when discovery is complete. The court permitted MACI's standing at this time, but not before. I don't know what language in my draft is inconsistent with that, but if you point it out, I am certainly willing to discuss it further so the language is clear. Do you dispute the statements in the draft I sent you that MACI is not seeking damages for MACI?

Similarly, regarding the issue of Section 4.02, I do not understand what language you object to. I revised my earlier version to reflect that Defendant is providing some of those forms it has located and would continue to do so as other copies are found. Is this objectionable? If so, why? I would like to understand what your objection to the language I used is. I had already told you my objection to the language you used and if your position still holds, i.e. stating or implying that its submission is discretionary, and thereby implying that Defendant's compliance with the S&P is discretionary, or hortatory, then you at least understand my objection and it will be for the court to decide.

In a separate e-mail, I will respond to your drafts on the tracking order and protective order. Stay safe, Alan

Alan Jay Rom
Rom Law P.C.
P.O. Box 585
Chelmsford, MA 01824
617/776-0575-Tel.
978/455-9589-Tel.
617/209-7714-Fax
alan@romlawoffice.com
www.romlawoffice.com

Pursuant to IRS Circular 230, to ensure compliance with Treasury Department regulations, please understand that any U.S. tax advice contained in this communication (including any attachments) was not intended or written to be used, and cannot be used, for the purpose of avoiding U.S. tax-related penalties or promoting, marketing or recommending to another party any tax-related matters addressed herein.

This message (including attachments) is privileged and confidential. If you are not the intended recipient, please delete it without further distribution and reply to the sender that you have received the message in error.

On Jan 11, 2021, at 5:42 PM, Dirks, Katherine (AGO) <katherine.dirks@state.ma.us> wrote:

Alan,

I can't agree to the draft joint stipulations. The stipulation regarding MACI does not pertain to a statement of fact and instead characterizes the relief it seeks. The Trial Court does not stipulate or agree that MACI has a right to the relief that it seeks.

The stipulation regarding the S&P makes a number of statements that do not pertain to the facts or are inaccurate. The only statement that is unobjectionable is the excerpt from the S&P itself, including: "Court interpreters are required to sign a statement agreeing to be bound by the Code for the provision of interpretation services in any court proceeding in the Trial Court. A copy of this statement shall be filed with OCIS." As discussed, we will also be producing a number of these statements for the per diem interpreters.

Katherine B. Dirks
Assistant Attorney General
Office of the Attorney General
Government Bureau – Trial Division
One Ashburton Place
Boston, MA 02108
Tel: (617) 963-2277
Fax: (617) 727-3076
katherine.dirks@mass.gov

From: Dirks, Katherine (AGO)
Subject: RE: Drafts as Per Our Conversation this Morning
Date: January 26, 2021 at 2:43 PM
To: Alan Rom



Alan,

I realize we are going to have a call soon to discuss many of these issues, but to address your email below:

Thank you for clarifying that MACI is not seeking damages. MACI is nevertheless a party to a breach of contract action seeking damages – so if MACI is not seeking damages, MACI should dismiss its claims against the Trial Court, leaving the putative class and the individual named plaintiffs to seek relief. If the claim is that MACI is seeking relief on behalf of the putative class pursuant to Rule 23, then our position is that MACI doesn't satisfy the Rule 23 requirements for class representatives. Either way, our position is that MACI should be dismissed, and unless and until it is dismissed, MACI's membership is relevant, and we maintain our position that we are entitled to discovery on MACI's membership.

As for the language about the acknowledgment forms, I described our objections in my email, but I am attaching more detailed comments here in case they are helpful. FYI, we have collected 49 acknowledgment forms from per diem files.

Katherine B. Dirks
Assistant Attorney General
Office of the Attorney General
Government Bureau – Trial Division
One Ashburton Place
Boston, MA 02108
Tel: (617) 963-2277
Fax: (617) 727-3076
katherine.dirks@mass.gov

From: Alan Rom <alan@romlawoffice.com>
Sent: Tuesday, January 12, 2021 11:10 AM
To: Dirks, Katherine (AGO) <katherine.dirks@mass.gov>
Subject: Re: Drafts as Per Our Conversation this Morning

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Dear Katherine,

In black and white I stated in the response about MACI that it, MACI, is not seeking damages. That is different from the issue of standing and I recognize that Defendant can

EXHIBIT 2



STANDARDS and PROCEDURES
of the
OFFICE of LANGUAGE ACCESS

The Committee for the Administration of Interpreters for the Trial Court

Promulgated January 20, 2021

Section 4.00 The Code of Professional Conduct for Interpreters¹ 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:

¹ 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

Section 7.00 Compensation of Per Diem Court Interpreters⁴

- 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

⁴ 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. For court interpreters of languages other than Spanish or "LOTS," email 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 Interpreters⁵

- 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

⁵ 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*,⁶ 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.

⁶ 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.

EXHIBIT 3

STANDARDS AND PROCEDURES
OF THE
OFFICE OF COURT INTERPRETER SERVICES



The Committee for the Administration of Interpreters for the Trial Court
Administrative Office of the Trial Court

2009

rights of LEP and DHH individuals engaged as parties or witnesses in legal proceedings in the Trial Court. This role requires an understanding by the court interpreter of the complexities of the tasks to be performed. In these tasks, court interpreters should be guided by the ethical principles and standards promulgated pursuant to G.L. c. 221C and c. 221, § 92A.

- (A) Court interpreters are highly skilled professionals who fulfill an essential role in the administration of justice. As officers of the court, court interpreters help to ensure that LEP and DHH individuals obtain equal access to justice and that court proceedings function effectively.
- (B) Many persons who come before the courts are partially or completely excluded from full participation in the proceedings due to their limited English proficiency or speech and hearing impairments. It is essential that the resulting communication barriers be removed, as much as possible, so that these persons are placed in the same position as similarly situated persons for whom there are no such barriers.
- (C) The Code of Professional Conduct for Court Interpreters of the Trial Court seeks to accomplish the following:
 - (1) ensure meaningful access to court proceedings for LEP and DHH individuals,
 - (2) protect the constitutional rights of LEP and DHH individuals by providing assistance of a court interpreter during court proceedings,
 - (3) ensure due process in all phases of litigation for LEP and DHH individuals,
 - (4) ensure equal protection of the law for LEP and DHH individuals,
 - (5) increase efficiency, quality, and uniformity in handling proceedings that involve court interpreters, and
 - (6) encourage the broadest use of professional court interpreters by all those in need of such services within the Trial Court.

4.02

Applicability. The Code applies to all court interpreters providing interpretation services within any court proceeding in any department or division of the Trial Court. It shall guide and be binding upon all persons, agencies, and organizations that administer, supervise, or deliver interpreting services to the Judiciary. Court interpreters shall use their professional judgment in applying the Code.

The Code defines and governs the practice of court interpretation in the Trial Court and applies to all court interpreters appearing:

- (1) in any proceeding before any Trial Court of the Commonwealth,
- (2) before any attorney 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.

Court interpreters are required to sign a statement agreeing to be bound by the Code for the provision of interpretation services in any court proceeding in the Trial Court. A copy of this statement shall be filed with OCIS.

- 4.03 Accuracy and Completeness. Court interpreters shall render a complete and accurate interpretation, sight translation, or written translation without altering, omitting, or adding to any utterances, either stated or written, to the best of their skill and ability. Court interpreters shall not explain or otherwise comment upon the utterances they interpret. The obligation to preserve accuracy includes the court interpreter's duty to correct any error of interpretation discovered by the court interpreter during the proceeding.
- (A) Court interpreters have a twofold duty: to ensure that proceedings in English reflect precisely what was said by the LEP or DHH individual, and to place the LEP or DHH individual on equal footing with those who speak or understand English. Thus, a court interpreter is obligated to preserve every element of information contained in a source language communication when it is rendered in the target language.
 - (B) Court interpreters must be able to preserve legal equivalence while interpreting. To achieve legal equivalence, court interpreters must interpret the original source material without editing, summarizing, deleting, or adding, while conserving the language level, style, tone, and intent of the speaker. The LEP or DHH individual may request an explanation or clarification, if necessary, through the court interpreter.
 - (C) Court interpreters are obligated to apply their best skills and judgment to preserve the meaning of what is said in court, including the style or register of speech. Verbatim, "word for word," or literal oral interpretations are not appropriate when they distort the meaning of the source language. Therefore, every spoken statement, even if it appears non-responsive, obscene, rambling, or incoherent, should be interpreted, including apparent misstatements.

assigned to a Mentor for a period of time that will vary according to the applicant's individual needs and level of expertise. This requirement may be waived by the Manager of Interpreter Services in extraordinary circumstances. Mentors are chosen from experienced court interpreters who express a desire to assist the applicant, and who commit to fulfilling the Mentor Program's mission which is to encourage mentoring as a two-way learning relationship that draws upon the knowledge and experience of seasoned court interpreters.

- (A) Mentors introduce applicants to the Massachusetts Trial Court system. They assist applicants in setting goals, developing learning and problem solving skills, acquiring essential information, and clarifying doubts regarding the professional and ethical standards that guide the role of the court interpreter. Mentors and applicants will follow general guidelines outlined in the Mentor Program's information packet which they will receive prior to the mentoring assignment.
 - (B) At the conclusion of the mentoring, Mentors will submit a general assessment of the applicant to OCIS. A copy of this assessment will be added to the Mentor's professional file in order to apply the Mentor's training time towards the continuing education requirements of section 5.04(E).
 - (C) OCIS 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 progress.
- 6.06 Continuing Education and Training for Court Interpreters available through OCIS. The AOTC makes available a variety of resources within the Trial Court which help professional court interpreters hone interpreting skills and advance their legal knowledge. OCIS welcomes and promotes collaboration among all court departments in sharing information and training resources. Additional sources for specialized instructors can be found among faculty from area law schools, experienced area court interpreters, and lecturers to national and regional court interpreter and translator associations. In addition, specialized workshops and training will be offered by OCIS. Individual court interpreters may be asked, as necessary, to enroll in such training opportunities.

Section 7.00 Compensation of Per Diem Court Interpreters

- 7.01 The rates of compensation for court interpreters for DHH individuals are set by

the CJAM pursuant to G.L. c.221, §92A. For all other per diem court interpreters, the rate of compensation is set by the Committee.

- 7.02 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.
- 7.03 Court 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.
- 7.04 When a court interpreter begins another assignment after completing a full day, payment will be made on an hourly basis at rates set by the Committee and the CJAM. For these purposes, the hourly rate will commence after eight (8) hours.
- 7.05 Waiting Time. If, in anticipation of a case being called, a court interpreter scheduled by OCIS is required to wait for the case to commence or to continue, and the court interpreter is available at the court facility, such waiting time shall be compensated as time actually engaged in a legal proceeding. Lunch time shall not be considered waiting time.
- 7.06 Travel Time. In the event that a court interpreter is required to travel to and from an assignment, and such travel in either direction exceeds 25 miles, such travel time in excess of 25 miles either going to or coming from an assignment shall be billed at the rate of one hour's time for each 25 miles traveled in excess of the first 25 miles in each direction. Billing shall be based on the actual odometer reading, and payment shall be at rates set by the Committee and the CJAM. In the event that court interpreters travel to more than one assignment in the day, mileage and travel time calculation shall be based on the accumulated mileage for the day and the court interpreter may bill OCIS for travel time beginning at the point of embarkment.
- 7.07 Mileage and Expenses. Court interpreters shall be reimbursed for mileage and expenses at rates set by the CJAM.

- 7.08 Telephone interpreting. Court interpreters will be compensated for providing telephone interpreting services on an hourly basis at rates set by the Committee and the CJAM, with a one hour minimum payment and payment made for each additional fifteen minute increments, provided that the court interpreter providing the telephone interpreting service is not already being compensated for the time by OCIS. Documented telephone charges will also be reimbursed.
- 7.09 Cancellation rate. Court interpreters will be entitled to payment for a half-day if OCIS cancels the assignment within 24 hours of the designated start time. However, OCIS shall have the right to reassign the court interpreter to another assignment for that time period without additional compensation.

Section 8.00 Requesting the Services of a Court Interpreter

- 8.01 Types of Proceeding for which a Court Interpreter Will be Provided.
- (A) The OCIS will schedule and provide court interpreters, upon receipt of a request pursuant to section 8.02, to appear at any and all criminal or civil judicial proceedings, including the institution of such proceedings (e.g., the filing of a complaint and affidavit seeking a restraining order pursuant to G.L. c.209A or other similar proceedings). In emergency situations where written requests are not possible, OCIS will provide court interpreters and will be responsible for compensating court interpreters for providing services upon telephone request. OCIS will be responsible for compensating court interpreters who provide these services when scheduled or assigned by OCIS under these Standards and Procedures. OCIS will give priority to scheduling the following types of proceedings: criminal proceedings; juvenile proceedings, including CHINS, care and protection proceedings, and petitions seeking to dispense with parental consent to adoption under G.L. c. 210, § 3; proceedings under G.L. c. 209A and other proceedings for protection from abuse; civil commitment hearings pursuant to G.L. c. 123; proceedings conducted in the Housing Court; housing cases conducted in the District Court; and proceedings conducted to secure child support payments. In addition, OCIS will schedule and compensate court interpreters for providing services upon request of a Court Liaison for parents, guardians, and other individuals who must understand the court proceeding. A court interpreter who has been sent to a court facility for a particular day or part of a day, and who is not actively interpreting in a court proceeding, shall, upon request, provide interpreting services for other court personnel during the period for which the court interpreter is being compensated by OCIS so long as

subsequent modification will be communicated by telephone as soon as possible, but in any event by the close of business of the preceding day. Court interpreters must notify OCIS immediately if they are unable to fulfill an assignment.

- (G) The completed Request for Interpreter Forms, Preliminary Monthly Schedules and Approved Schedules received from OCIS must be retained by the Court Liaison in a folder labeled Court-Appointed Court Interpreters.
- (H) A copy of the request form shall also be retained in the appropriate case file.
- (I) The Court Liaison must inform OCIS at least 48 hours in advance of any cancellation or rescheduling of a case requiring the previously scheduled assignment of a court interpreter.
- (J) If OCIS has scheduled a court interpreter and confirmed the assignment pursuant to section 8.02(E), the case requiring the court interpreter services should not be heard before the arrival of the court interpreter, unless OCIS has been notified by the court that the court interpreter is no longer needed.

Section 9.00 Assigning Court Interpreters

- 9.01 OCIS will schedule and assign spoken language court interpreters based upon requests from Court Liaisons. Generally, court interpreters will be assigned in the following sequence: first, Qualified Interpreters or Certified Interpreters, and second, Screened Interpreters. If there are no Qualified, Certified or Screened Interpreters available to meet the needs of the requesting court, OCIS may, in such extraordinary circumstances, schedule and assign a court interpreter to provide the needed service or contract with a private agency, including the Language Line, to provide the court interpreter service.
- 9.02 OCIS will develop and maintain lists of Qualified Interpreters, lists of Certified Interpreters, and lists of Screened Interpreters. OCIS, in its discretion, may establish such lists by court, courthouse, area, or region and shall specify whether an individual may be included on multiple lists. OCIS may also, in its discretion, establish and maintain lists according to the type of appointment to be made. For example, OCIS may establish a single list for an "Automatic Morning Coverage" court because that court needs a court interpreter assigned each morning. OCIS

shall publish and make available a listing of all such lists with any and all qualifications for each list. The lists shall be public.

- 9.03 The goal is to assure that all appointments made by OCIS are made on a fair and impartial basis with equal opportunity and access for all Qualified and Certified Interpreters for appointments. OCIS has concluded that the fairest way to accomplish this goal, and at the same time avoid favoritism or the appearance of favoritism, is to create lists of Certified and Qualified Interpreters and then generally make appointments from those lists in rotation or sequential order.
- 9.04 OCIS understands the importance of flexibility in selecting court interpreters based on the particular expertise needed in a given case. In making an appointment, OCIS will consider the experience, expertise, location, and availability of the court interpreter, and the complexity and particular need presented by the court proceeding for which a court interpreter has been requested. Every effort will be made to maintain a consistent assignment of a court interpreter to an on-going trial or proceeding. 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 and will make a brief notation of the reasons for the selection.
- 9.05 Successive Appointments. Each appointment shall be made from the appropriate list maintained pursuant to section 9.01, except as otherwise provided in section 9.04.
- 9.06 Appointment Record. OCIS shall establish and maintain records of all appointments by OCIS of court interpreters. Such records shall contain at a minimum the following: (a) the docket number and the name of the case, (b) the date of the appointment, (c) the name of the appointee, and (d) a notation if the appointment was not made successively from the court's list or if the appointee was a person not on the list.
- 9.07 Language Line and Private Interpreter Agencies. There are occasions when no Qualified, Certified or Screened Interpreter is available. In these extraordinary circumstances, to permit the court proceedings to go forward, the AOTC has entered into contracts with private interpreter agencies, which may be called upon to provide an interpreter for a court proceeding. In addition, OCIS has contracted with Language Line LLC. This company, through its Court Division, provides foreign language interpretation in more than 140 languages by telephone. A speaker phone is preferable, but not necessary to access the service. Language Line may also be used for more common languages when an

emergency arises and no interpreter is available to be sent to the court to handle the matter. OCIS staff will make the arrangements for the court to connect to Language Line and will ensure that the service is provided. Generally, an interpreter can be made available through Language Line in five minutes or less. The cost incurred in using these resources is billed to OCIS and paid from a central account in the same way in which per diem court interpreters are paid.

- 9.08 Interpreters for the Deaf and Hard of Hearing are assigned by the MCDHH in conjunction with OCIS.

Section 10.00 Duties of the Per Diem Court Interpreter

10.01 Arrival Procedures:

- (A) Upon his/her arrival at the assigned court, the per diem court interpreter must report to the Court Liaison designated to approve court interpreter assignments and attendance or to the staff court interpreter who has been authorized in writing by OCIS to perform this function. When possible, the per diem court interpreter should notify OCIS if he/she will be late for the assignment and shall notify OCIS if unable to appear. OCIS will then notify the Court Liaison.
- (B) When a time stamp is available, the interpreter's Daily Service Record (DSR) must be stamped upon arrival. If a time stamp is unavailable, the Court Liaison should handwrite and initial the per diem court interpreter's arrival time in the space provided on the DSR. Space is also provided for signing in and out of the morning session for lunch time and for signing in and out of the afternoon session.
- (C) The Court Liaison should ensure that the request for the per diem court interpreter was approved and scheduled by reviewing the Weekly Approved Schedule.
- (D) It is recognized that many courts maintain a scheduling tool such as a log book to monitor the appearances of per diem court interpreters. In such cases, upon his or her arrival, court personnel should record the name and language of the per diem court interpreter in the log book on the date he or she was assigned.

Section 11.00 Processing Bills/Interpreter Daily Service Records (DSR) for Per Diem Court Interpreter Services

- 11.01 The completed DSRs and allowed motion(s), if any, attached must be submitted by the per diem court interpreter to OCIS for final review and approval every two weeks. DSRs submitted more than 60 days after the date of service may not be processed by OCIS.
- 11.02 Separate DSRs must be completed for each court serviced. However, all travel for a given day should be recorded and submitted on the DSR for the last court where services were provided that day.
- 11.03 The DSR must include the following: (1) the name and address of per diem court interpreter, (2) his or her social security number, (3) date of service, (4) the language, (5) whether the per diem court interpreter is qualified, certified, or screened, (6) the court where the service was provided, (7) the name of the requesting judge whenever applicable, (8) the name(s) and docket number(s) of the proceeding(s), (9) the interpreting hours, waiting hours, and total hours (excluding lunch time), (10) indication of full day or half day service, (11) the travel time and mileage or transportation expenses (for tolls a receipt must be attached), (12) authorized signature for service confirmation, and (13) the per diem court interpreter's signature and date.
- 11.04 Upon receipt of the DSRs, OCIS processes them in the following manner: they are grouped by per diem court interpreter and arranged chronologically and a payment voucher is prepared and attached for each per diem court interpreter/vendor. The DSRs are reviewed for any errors or missing information. Any mathematical miscalculations are corrected. DSRs that are missing required information are not processed and may be returned to the per diem court interpreter.
- 11.05 The individual DSRs are verified by cross referencing with the schedule and assignment of the per diem court interpreters to be sure that the bills that are submitted are in fact for services ordered by OCIS. Any service billed that has not been ordered will generally not be approved for payment.
- 11.06 Because the Massachusetts Management Accounting and Reporting System (MMARS) governs the payment process for all Trial Court expenditures, a MMARS Payment Voucher must also be prepared for all per diem court interpreters.

- 11.07 The payment voucher with the accompanying DSRs must be approved for payment by the Manager of Interpreter Services.
- 11.08 A summary sheet of what OCIS has approved and processed for payment will be sent to each per diem court interpreter.

Section 12.00 Removal of a Court Interpreter from an OCIS List

- 12.01 Removal from an OCIS list of Court Interpreters upon request.
 - (A) All requests for the removal of an individual from an OCIS list shall be in writing and addressed to the Manager of Interpreter Services. The Manager of Interpreter Services may initiate such requests as well. Such requests shall specify which of the following grounds for removal are alleged:
 - (1) failing to follow the standards prescribed by law and the ethics of the interpreter profession,
 - (2) gross incompetence,
 - (3) violation of Section 4, the Code of Professional Conduct for Court Interpreters of the Trial Court,
 - (4) violation of any other judicial department policies or procedures, or
 - (5) consistent and repeated failure to be available for assignments by OCIS.
 - (B) If the request for removal raises serious concerns as to the individual's qualifications or suitability to perform the duties and/or functions of a court interpreter, OCIS shall have the discretion to temporarily suspend the court interpreter from one or more of the OCIS lists. OCIS may remove the temporary suspension at any time during the review of a request for removal.
 - (C) OCIS shall send a copy of the request to the individual whose removal is sought along with a notice indicating that the individual may file a written response, addressed to OCIS, within thirty days.
 - (D) Thereafter, OCIS shall determine if an investigation should be conducted into the facts and circumstances that form the basis for the request. If an investigation is not needed because the facts are not in dispute, OCIS shall make a recommendation in writing to the CJAM that the individual should be removed from one or more of the OCIS lists, that a lesser

sanction should be imposed, or that no action should be taken on the request for removal. Lesser sanctions shall include, but are not limited to, suspension from the list for a specific period of time, suspension until the court interpreter successfully completes prescribed training, or restrictions on the types of judicial proceedings to which the court interpreter may be assigned. If an investigation is necessary, OCIS shall appoint an individual to conduct an investigation.

- (E) The investigator so selected under paragraph (D) shall conduct a complete and full investigation into the facts and circumstances that provide the basis for the request for removal and shall report in writing the results of the investigation.
- (F) The investigator's report shall be submitted to OCIS and a copy shall be forwarded to the individual whose removal is sought. OCIS shall afford to the individual whose removal is sought an opportunity to submit a written memorandum or argument. OCIS may, in its discretion, meet with the requesting party and/or the individual whose removal is sought and such others as OCIS deems appropriate or conduct a hearing at which the interested parties may be heard. Based upon the investigator's report and such other documentation as OCIS has obtained, OCIS shall determine whether to recommend that the individual be removed from one or more of the lists, that a lesser sanction be imposed, or that no further action is required. If the decision is that removal or a lesser sanction is not necessary, a copy of the decision shall be forwarded to the individual whose removal was sought, and to the requesting party.
- (G) If OCIS decides to recommend the removal of the individual from the list or a lesser sanction, OCIS shall report in writing the recommendation and the basis for the recommendation and forward it, along with a copy of the investigator's report and such other documentation as has been submitted, to the CJAM. A copy of the recommendation shall also be forwarded to the individual whose removal is sought.
- (H) The CJAM shall consider the recommendation submitted by OCIS and shall, within sixty days, either accept or reject the recommendation. That decision shall be final. A copy of the CJAM's decision shall be sent to the requesting party and the individual whose removal is sought.
- (I) Any report prepared by an investigator under subsection (D), any written response prepared under subsection (C), any written recommendation

submitted pursuant to subsections (D), (F), or (G), any written memorandum or argument submitted under subsection (F), and any hearing conducted under subsection (F) shall be considered to be confidential and shall not be open to the requesting party or the public.

- 12.02 Minimum Hours of Service. To maintain certification, court interpreters shall commit to providing a minimum of 200 hours of services to the Trial Court per fiscal year, if requested, unless otherwise waived by the Manager of Interpreter Services. Failure to comply can result in the removal from the list of Certified Interpreters.

Section 13.00 Reports and Statistics

- 13.01 OCIS will collect and aggregate data concerning the deployment of court interpreters in court proceedings.
- 13.02 All staff court interpreters employed by OCIS or by any court department must submit Weekly Service Records which must include the following: (1) the name of the court interpreter, (2) the dates of service covered, (3) the language, (4) the court(s) where the service was provided, (5) the name(s) and docket number(s) of the proceeding(s), (6) the name of the requesting judge whenever applicable, and (7) the court interpreter's signature and date submitted. Payroll cannot be approved and processed unless such a Weekly Service Record is submitted in a timely fashion.
- 13.03 OCIS will produce statistical reports on a monthly basis that reflect the need for and the deployment of court interpreters in court proceedings. Those reports will reflect the need for court interpreters by court department, by court division, by geographic region, and by language. The reports will also reflect the cost of providing court interpreter services (both the absolute cost and the cost of providing per diem court interpreters) by court department, by court division, by geographic region, and by language. These reports will differentiate between the cost of court interpreter services and the cost for travel time and travel expenses.

Section 14.00 Interpreter Services in Judicial Proceedings

- 14.01 Interpreter's Oath. Each interpreter engaged in court proceedings shall swear or affirm that he or she will make true and impartial interpretation using his or her best skill and judgment in accordance with the standards prescribed by law and the ethics of the interpreter profession. See Section 4.03 (I). The court interpreter shall be sworn at the beginning of the proceeding or at the beginning