



VOLUNTEERS *of* LEGAL SERVICE

VOLS

Language Access in Pro Bono Practice

Presented by: Abja Midha, Executive Director
Stephanie Taylor, Project Director
Crystal Giron, Staff Attorney

October 18, 2022

Volunteers of Legal Service



VOLS was founded in 1984 to close the access to justice gap through partnerships with community organizations, law firms and corporations. We train and mentor pro bono attorneys from law firms and corporations to provide free legal services to our clients.



Today's Agenda



1. Limited English Proficient (LEP) Definitions and Statistics
2. Relevant Federal, State, and City laws
3. Rules of Professional Responsibility
4. Consequences of Lack of Translation and Interpretation
5. Language Equity and Justice Concepts and Definitions
6. Tips for Working with Interpreters and Translators
7. Language Access Practices in Pro Bono Context
8. Q &A

How will this enhance your practice?



- Awareness of language access laws at federal, state, and city levels.
- Enhanced understanding of New York Rules of Professional Responsibility when considering importance of communication.
- Increased confidence in serving LEP clients.
- Improved communication with LEP clients.
- Ability to navigate working with interpreters and translators.



LEP Definitions and Demographic Statistics

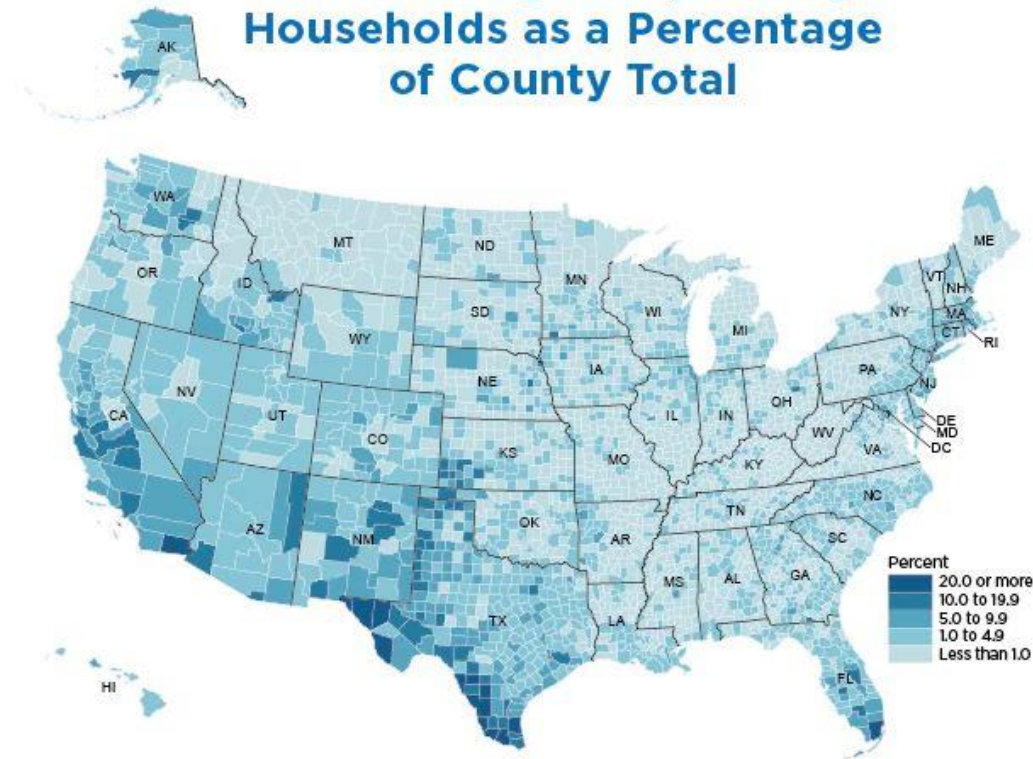


- Limited English Proficient (LEP)
- English Language Learners (ELL) or English Learners (EL)
- English as a Second Language (ESL) or English as a New Language (ENL)
- Bilingual
- Language Access

National Statistics- LEP Percentages



Limited English Speaking Households as a Percentage of County Total



Note: A "limited English-speaking household" is one in which no member 14 years and over speaks only English or speaks a non-English language and speaks English "very well." In other words, all members 14 years and over have at least some difficulty with English.

United States
Census
Bureau

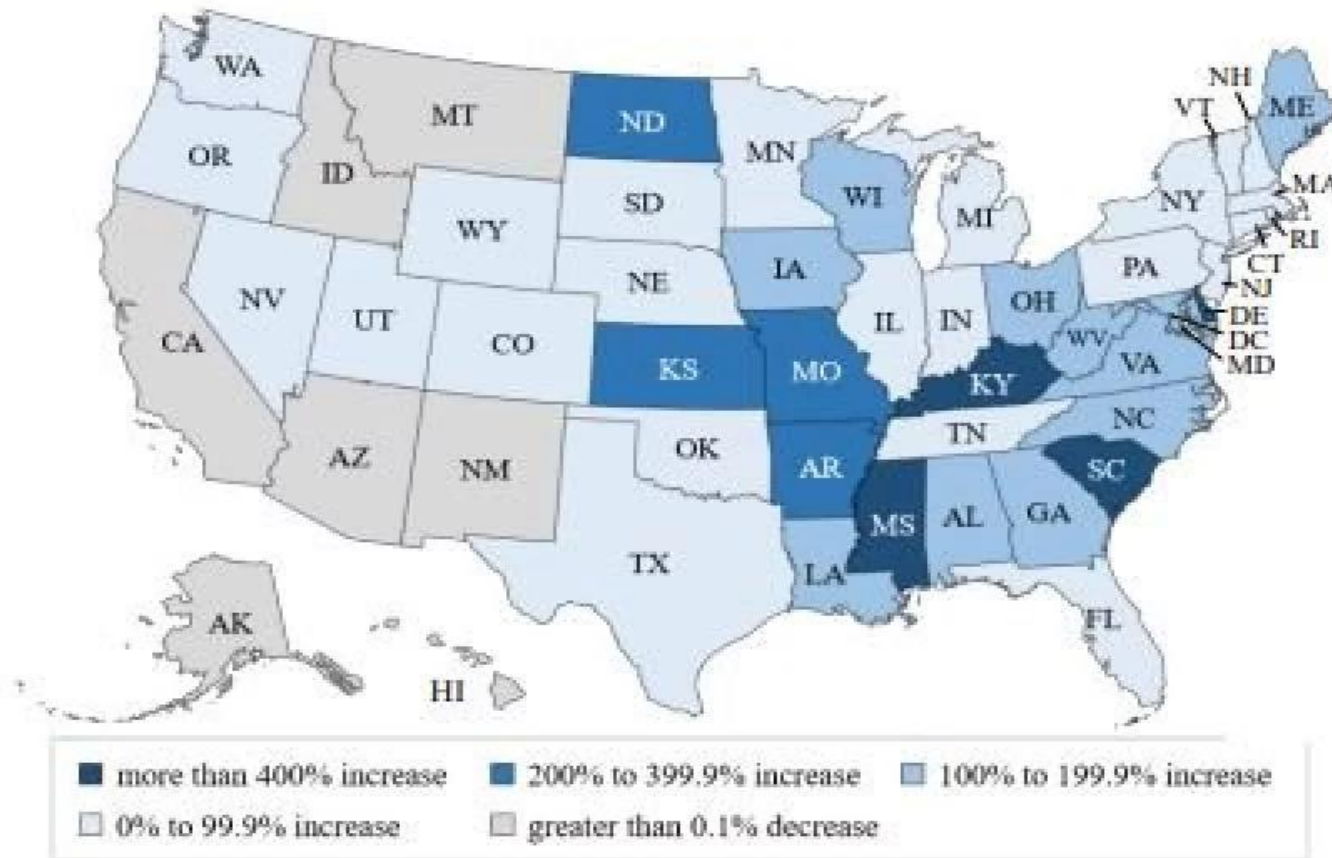
U.S. Department of Commerce
Economics and Statistics Administration
U.S. CENSUS BUREAU
census.gov

Source: 2012-2016 American Community Survey
5-year estimates
www.census.gov/programs-surveys/acs/

National Statistics- Shifting Demographics



**Percent Increase in Number of English Learners, by State:
SY 2000–01 to SY 2016–17**

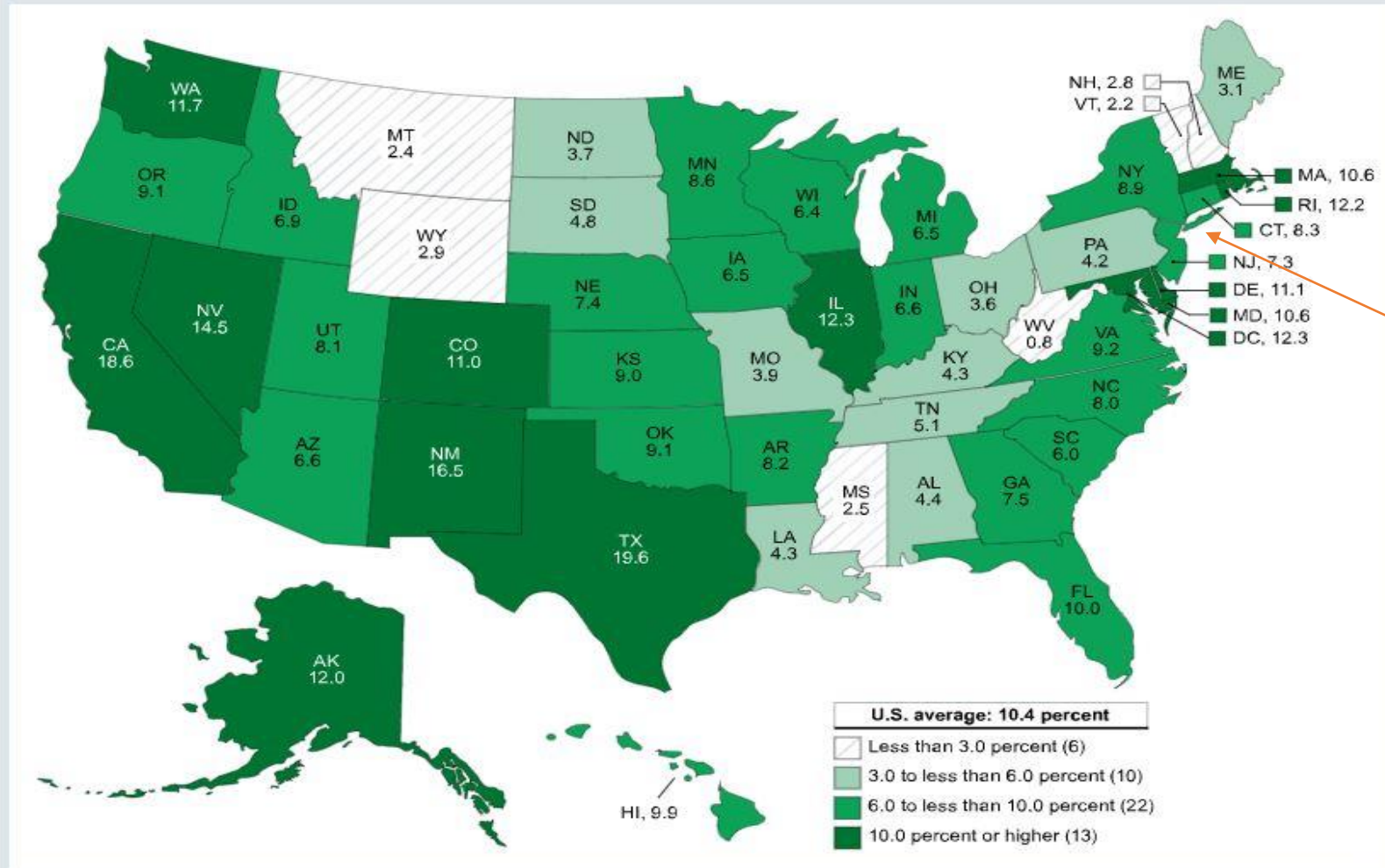


The number of ELs in the U.S. grew 28.1% between the 2000–01 school year and the 2016–17 school year. **Forty-three states saw the number of ELs increase, ranging from 315 ELs in Wyoming to 351,559 ELs in Texas.** Of these 43 states, the increases of ELs as a percentage of the total EL student population ranged from a 2.7% increase in New York to a 765.1% increase in South Carolina.

National Statistics- Public School Students



Figure 1. Percentage of public school students who were English learners (ELs), by state and categorized into specific ranges: Fall 2019



In New York State, 8.9 percent of public school students are English Learners

New York State Demographics



- Over **5.7 million** people living in New York State speak a language other than English. Of these, **2.5 million speak English less than well.**
- The 12 most common languages spoken by LEP individuals are:
 1. Spanish
 2. Chinese
 3. Russian
 4. Yiddish
 5. Bengali
 6. Korean
 7. Haitian Creole
 8. Italian
 9. Arabic
 10. Polish
 11. French
 12. Urdu

Source: U.S. Census Bureau, Table B16001, 2020 5-year estimate. American Community Survey

New York Statistics- Shifting Demographics



New York

Language & Education

	2019		2000		1990	
English Proficiency	Foreign Born	U.S. Born	Foreign Born	U.S. Born	Foreign Born	U.S. Born
English Proficiency (age 5 and older) (%)	4,336,996	13,996,740	3,834,479	13,914,631	2,802,875	13,873,544
Speak only English	23.9%	83.4%	25.1%	85.0%	28.3%	86.5%
Speak English "very well"	30.8%	13.5%	29.5%	10.9%	29.9%	9.4%
Speak English less than "very well" (LEP)	45.3%	3.1%	45.4%	4.1%	41.8%	4.2%
Limited English Proficient (LEP) Population: Change over Time						
% change: 2000-2019	12.9%	-24.5%				
% change: 1990-2000	48.7%	-2.1%				

Language access is important when working both with foreign born and U.S. born individuals.

New York City Demographics



- During the 2020-2021 school year, there were **42%** (369,000) of students enrolled in New York City public schools with a primary home language other than English.
 - Approximately **16%** (140,000) of students enrolled in NYC public schools identified as English Language Learners (ELL).
- ELLs in NYC public schools communicated in **151 languages** other than English.
 - Over 61% of ELLs are Spanish speakers, followed by students who speak Chinese, Arabic, Bengali, Russian, Urdu, Haitian Creole, Uzbek, French, and Tadzhik.

Language Access Issues



NEW YORK



Immigrant students will need more support next school year. Improved translation services are high on the wishlist.

By Reema Amin | Jun 28, 2021, 5:58pm EDT

NYC Translation Law Often Ignored, at High Human Cost in the COVID Era

BY CHRISTINE CHUNG | CCHUNG@THECITY.NYC | JUN 2, 2021, 8:47PM EDT

Language Access Issues a Barrier During COVID-19

The country's COVID-19 crisis has placed patients and interpreters alike in precarious positions, with consequences that could extend beyond the current pandemic.



Legal Landscape



Title VI of the Civil Rights Act of 1964

- requires recipients of Federal financial assistance to take reasonable steps to make their programs, services, and activities accessible by eligible persons with limited English proficiency.

Lau v. Nichols, 414 U.S. 563, 569 (1974)

- a federal fund recipient's denial of an education to a group of non-English speakers violated Title VI and its implementing regulations

Federal Law (continued)



Improving Access to Services for Persons with Limited English Proficiency, Executive Order 13166 (August 11, 2000)

- requires Federal agencies to examine the services they provide, identify any need for services to those with limited English proficiency (LEP), and develop and implement a system to provide those services so LEP persons can have meaningful access to them.
- requires Federal agencies providing federal financial assistance to draft Title VI guidance for its recipients consistent with LEP Guidance issued by the Department of Justice



NYS Executive Law Section 202-A, Language Translation Services (July 1, 2022)

- All State agencies that interact with the public must provide interpretation services in any language when providing agency services or benefits
- All State agencies must translate vital agency documents into the top 12 most commonly spoken non-English languages among LEP New Yorkers based on Census data
- All State agencies are required to establish and continually update a Language Access Plan



NYC Local Law No. 30 (LL30), 2017

- New York City's language access law which improves access to City services for all individuals.
- LL 30 requires covered agencies to:
 - appoint language access coordinators;
 - translate commonly distributed documents into 10 designated languages;
 - provide telephonic interpretation in at least 100 languages; and
 - develop and implement language access implementation plans.

New York City (continued)



New York City Commission for Human Rights Law (NYCHRL)

- Prohibits discrimination on the basis of actual or perceived “alienage and citizenship status,” and “national origin,” among other categories, by most employers, housing providers, and providers of public accommodations in New York City.
- Prohibits discriminatory harassment and bias-based profiling by law enforcement.

Rules of Professional Responsibility



Rule 1.4, Communication

- (a) A lawyer shall: (1) promptly **inform the client** of: (i) any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(j), is required by these Rules; (ii) any information required by court rule or other law to be communicated to a client; and (iii) material developments in the matter including settlement or plea offers. (2) **reasonably consult with the client** about the means by which the client's objectives are to be accomplished; (3) **keep the client reasonably informed** about the status of the matter; (4) **promptly comply with a client's reasonable requests for information**; and (5) **consult with the client** about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by these Rules or other law.
- (b) A lawyer **shall explain a matter** to the extent reasonably necessary to permit the client to make informed decisions regarding the representation

Rules of Professional Responsibility (cont'd)



Rule 1.1, Competence

(a) A lawyer should provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

(b) A lawyer shall not handle a legal matter that the lawyer knows or should know that the lawyer is not competent to handle, without associating with a lawyer who is competent to handle it.



Standard 2.3 on Promoting Language Justice

A legal aid organization must ensure language justice for all legal services clients, including language assistance that incorporates different tools and strategies (e.g., a bilingual staff, interpretation, translation, signage, and outreach). The organization's management should evaluate whether all language groups have meaningful and equitable access to critical services, programs, and civic participation, including service on the organization's governing body.



Hiring: staffing should reflect the diversity of the communities served

Responsibilities of Legal Services Organizations and Firms to Promote Language Justice

- Target outreach to underserved language populations and develop partnerships with CBOs that serve such groups.
- Institute a policy of adapting materials to plain language before translation
- Have materials available in languages beyond English and Spanish only
- Establish clear protocol for how to respond to the needs of LEP clients
 - Train staff in its proper application.



Training Staff to Promote Language Justice

- Importance of responding effectively to their communities' language needs and serving clients in their preferred language
- Appoint a language coordinator or working group to enhance language skills, and language rights advocacy
- Ensure staff communicating with clients have appropriate knowledge of legal terms
- Provide proper resources to bilingual staff

Interpreter Training and Requirements

- Ready access to qualified interpreters and translation services
- Competent interpreting and translating requires individuals with
 - Proficiency in both languages
 - Familiarity with legal terms and their meaning
 - Understanding their role as an interpreter/translator
 - Understanding the need for neutrality, accuracy, completeness, and techniques that facilitate effective communication

ABA Formal Opinion 500



Language Access in the Client-Lawyer Relationship, 10/6/2021

- A lawyer's obligations of **communication** and **competence** aren't diminished when a client and a lawyer don't share a common language or owing to a client's non-cognitive physical condition.
- A lawyer may be obligated to ensure those duties are discharged through an impartial interpreter or translator and assistive or language-translation technologies, when necessary.
- Importantly, a lawyer must ensure "the client understands the legal significance of the translated or interpreted communications." Likewise, the lawyer must understand the client, keeping in mind potential cultural differences and social assumptions that may impact meaning.



Language Equity and Justice



“Language justice is an evolving framework based on the notion of respecting every individual’s fundamental language rights—to be able to communicate, understand, and be understood in the language in which they prefer and feel most articulate and powerful.”

- American Bar Association, "Language Justice During COVID-19" by Casey Payton, Joann Lee, Ana Paula Noguez Mercado, and Alena Uliasz

Negative Impact of Lack of Language Access



- Negative legal consequences for LEP clients in the absence of language access:
 - Adverse effects of signing paperwork clients do not understand
 - Lack of English proficiency impacts access to fundamental needs and services, including housing, employment, law enforcement, and health care.
 - Being subjected to proceedings unjustly



Best Practices for Working with Translators and Interpreters

Definitions



- **Interpretation:** The process of orally rendering communication from one language into another.
- **Telephonic Interpreting Service:** An over-the-phone interpretation service in which offsite interpreters assist public and private organizations in communicating with people who are LEP
- **Translation:** Changing a written text from one language into an equivalent written text in another language.
- **Consecutive Interpretation:** A method of interpretation in which the speaker pauses after every few sentences to allow the interpreter to translate their words
- **Simultaneous Interpretation:** A method of interpretation in which an interpreter translates from one language to another in real-time.
- **Dialect:** A regional variety of language distinguished by features of vocabulary, grammar, and pronunciation from other regional varieties and constituting together with them a single language.

Working with Interpreters



- When to work with an interpreter?
 - Client's request
 - Client's language capacity or preference
 - Communication challenges
 - Attorney's professional judgment
- What gets lost without an interpreter?
 - Difficulty in building rapport and trust with client
 - Client has a hard time conveying and lawyer has difficulty understanding:
 - Details
 - Coherency
 - Emotion
 - Timelines

What Skills Does an Interpreter Need?



Effective interpretation requires:

- A deep understanding of both languages, including grammar, syntax and word choice;
- Knowledge of legal terminology and how it applies to the information being interpreted; and
- Remaining faithful to client's words and meaning. An interpreter should convey tone, register and emotion. This is a highly skilled activity that differs from informal communication outside of the client meeting.

Who is Qualified to be an Interpreter?



- Professional interpreters
- Bilingual colleagues who receive training
- Paraprofessionals
- Family members are generally not appropriate
- Children are never appropriate

Tips for Working with Interpreters



- Ensure that the interpreter can interpret into the correct language and dialect.
- Brief the interpreter prior to a conversation with the client.
- The interpreter is there to purely translate what is being said. No interjections, off comments, suggesting “better” ways to say certain things.
- Ask the interpreter not to change or alter any part of the conversation.
- Refrain from using metaphors, acronyms, slang, or idioms.
- Speak clearly and in short sentences with one question or idea at a time. Avoid compound questions.
- Ask the client to also pause between their sentences. Pausing between sentences or complete thoughts allows the interpreter to retain the message.

Tips for Working with Interpreters (cont'd)



- Speak directly to the non-English speaker, not the interpreter.
 - Example: "How can I help you today?" NOT "Ask her how I can help her today."
- Do not engage in any side conversations with the interpreter.
- Expect everything said will be interpreted.
- Schedule extra time.
- Manage the process. This is your meeting!

What Skills Does a Translator Need?



Serving as an effective translator requires:

- A deep understanding of both languages
- Cultural knowledge
- Knowledge of legal terminology
- Sufficient knowledge of legal content
- Writing skills in both languages
- Attention to detail

Tips for Working with Translators



- Ensure translator can translate into the correct dialect.
- Specify literacy level of intended audience.
- Provide translator glossaries of relevant legal terminology, when available.
- Double check the accuracy of the translation, when possible.



How to assist clients when they share translated documents:

- Review and compare the translated document with the original document.
- If there are any mistakes or inconsistencies with the translated document, ask the client to return to the agency or translator to correct it.

Certified Translation



A certified translation is a sworn statement affirming the translator's ability to accurately translate a document from the original language to the English language.

Example: An immigration application that contains documents in a language other than English and are not translated will be rejected and cause delays.

The translator must certify that they are competent to translate and that the translation is accurate. The certification format should include the certifier's name, signature, address, and date of certification.

Machine Translation



- Relying entirely on automated machine translation without a qualified human translator review leads to incorrect translations.
- Privacy and confidentiality concerns.
- Misgendering of translations.



Language Access in Pro Bono Practice



Cultural humility

“a lifelong process of self-reflection and self-critique whereby the individual not only learns about another’s culture, but one starts with an examination of her/his own beliefs and cultural identities.” Yaeger K, Bauer S, “Cultural humility: Essential foundation for clinical researchers,” Appl Nurs Res. 2013 Nov; 26(4): 10.1016/j.apnr.2013.06.008. (construing Tervalon M, Murray-García J, J Health Care Poor Underserved. 1998 May; 9(2):117-25).

Cultural knowledge

Translation and interpretation requires an understanding of the culture of the targeted audience, including cultural characteristics, history, values, beliefs, and behaviors.

Meeting the Language Access Needs of Pro Bono Clients



- **Educate colleagues** about language access
- **Build rapport** with reliable interpretation and translation service providers
- **Maintain and make available a list** of interpretation and translation service providers
- **Implement procedures** for attorneys and staff on how to access translation and interpretation services under different circumstances
- **Identify and train** bilingual staff
- **Develop** a language access plan



VOLS Contact Information



Crystal Giron

Staff Attorney,
Immigration Project
cgiron@volsprobono.org

Abja Midha

Executive Director
amidha@volsprobono.org

Stephanie Taylor

Project Director,
Unemployed Workers Project
& Incarcerated Mothers Law
Project
staylor@volsprobono.org