



U.S. Department of Justice

Office of Justice Programs

Office for Civil Rights

Washington, D.C. 20531

CERTIFIED RETURN RECEIPT REQUESTED

December 10, 2009

Director Laurie K. Dudgeon
Kentucky Administrative Office of the Courts
Kentucky Court of Justice
100 Millcreek Park
Frankfort, KY 40601

Re: Compliance Review of the Kentucky Administrative Office of the Courts and
Lexington-Fayette Urban County Government, Community Alternative Program
(09-OCR-0213)

Dear Director Dudgeon:

I am writing to summarize the findings of the compliance review of language services at the Kentucky Court of Justice (KCOJ), Fayette County Family Court (FCFC), conducted by the Office for Civil Rights (OCR), Office of Justice Programs, U.S. Department of Justice. The OCR would like to thank you and your staff, especially Staff Attorney Carrie Slayton, for assisting OCR attorney Shelley Langguth during her July 30, 2009, onsite review.

In my letter dated March 6, 2009, I wrote to former Director of the Administrative Office of the Courts (AOC) Jason M. Nemes to inform him that the OCR had selected the AOC for a compliance review under Title VI of the Civil Rights Act of 1964 (Title VI) and the Omnibus Crime Control and Safe Streets Act of 1968 (Safe Streets Act) and their implementing regulations. As I noted at that time, the OCR limited the scope of the compliance review to the AOC's provision of services to people with limited English proficiency (LEP) who are interacting with KCOJ entities, including the FCFC. A LEP person is an individual whose primary language is not English and who has a limited ability to read, write, speak, or understand English. The OCR initiated this review in response to an administrative complaint filed with our office alleging that the FCFC discriminated against a Spanish-speaking LEP individual when it provided the LEP individual with a written Order for Drug Testing at the Community Alternative Program that was in English.

In June of 2002, the U.S. Department of Justice published guidance for its financial aid recipients on taking reasonable steps to provide meaningful access to programs and activities for

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LEP persons in accordance with Title VI and the Safe Streets Act. See Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. 41455 (2002) [hereinafter DOJ Guidance]. According to the DOJ guidance, a recipient's obligation to take reasonable steps to ensure meaningful access to its programs and activities for LEP persons requires an assessment that balances four factors: (1) the number or proportion of LEP persons that are the likely beneficiaries of a recipient's services; (2) the frequency with which LEP persons come into contact with the recipient's programs or activities; (3) the nature and importance of the program, activity, or service provided; and (4) the resources available to the recipient and the related costs. 67 Fed. Reg. 41459-61.

Using the technical assistance standards in the DOJ Guidance, the OCR gathered information from the AOC on its policies and procedures for providing language services to LEP persons interacting with KCOJ entities, in particular the FCFC. Based on the documentation that the AOC submitted and on the information that we gathered during our onsite visit, which included interviews with officials and staff from the AOC and the FCFC, the OCR sent the AOC a draft Letter of Findings on October 7, 2009, in accordance with 28 C.F.R. §§ 42.107(d)(2) and .206(e). In response to the draft Notice of Findings, the AOC provided the OCR with some clarification regarding the payment of interpretation services and the translation of documents. In accordance with the AOC's comments, the OCR slightly revised our discussion of these issues on pages 3, 7, and 12-13 of this Notice of Findings.

In regard to the limited scope of our review, the OCR finds that the AOC is taking steps to provide LEP persons with meaningful access to court services. However, the AOC should take further action to ensure that it is meeting its obligations under Title VI and the Safe Streets Act. Section I of this Letter of Findings contains a summary of the policies and procedures that the AOC currently has in place to provide language services to LEP persons interacting with KCOJ entities, including the FCFC. In Section II, the OCR provides the AOC with recommendations based on the DOJ Guidance for how the AOC can improve its services to LEP persons interacting with the FCFC. Additionally, in Section III of this Letter of Findings, the OCR discusses several complaints that have come to our attention alleging that the Domestic Violence Clerk's Office of the Fayette County Circuit Court Clerk's Office is not providing effective language assistance to LEP individuals.

I. Overview of Existing Language Access Services

This section provides a brief overview of the relevant statutes, rules, and procedures regarding the provision of language assistance within KCOJ entities, including the FCFC.

A. General Laws and Procedures Governing KCOJ Courts

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The KCOJ is a unified court system consisting of court facilities and programs throughout the State of Kentucky. The AOC is the operational arm of the KCOJ, and its duties include providing support for the regional administration of trial courts, administering personnel policies, providing interpreting services for LEP individuals interacting with KCOJ entities, and providing educational programs for judges, clerks, and support staff. The AOC's Court Interpreting Services Division is responsible for overseeing the provision of interpreter services.

According to the U.S Census Bureau, the State of Kentucky had a total population of 3,929,110 individuals age five and older in 2006; of this group, 160,013 (4%) individuals spoke languages other than English, including 70,558 (2%) who spoke English less than "very well," which the OCR considers LEP. U.S. Census Bureau, American FactFinder, 2006 American Community Survey, Kentucky, B16001 Languages Spoken at Home by Ability to Speak English for the Population 5 Years and Over at www.census.gov. This total population included 80,450 (2%) Spanish-speakers, of which more than half (43,001) spoke English less than "very well." *Id.* Other foreign languages spoken by Kentucky residents include the following: German (12,085 residents, with 2,985 speaking English less than "very well"); French (8,677 residents, with 2,847 speaking English less than "very well"); Chinese (6,259 residents, with 3,338 speaking English less than "very well"); and Serbo-Croatian (4,941 residents, with 2,087 speaking English less than "very well"). *Id.*

The AOC's provision of language assistance services for LEP individuals is mandated by Kentucky state statute, which requires the KCOJ to appoint a qualified interpreter in any criminal or civil matter for parties, jurors, or witnesses who can not communicate in English. KY. REV. STAT. ANN. § 30A.410(1)(b) (2009). According to this statute, the KCOJ is responsible for payment for interpretive services for court appearances in criminal or civil cases. KY. REV. STAT. ANN. § 30A.415(1) (2009). The statute requires that any person appointed as an interpreter shall be qualified by training or experience to interpret effectively, accurately, and impartially, and that the Supreme Court shall prescribe standards for the qualifications and duties of interpreters, to be administered by the AOC. KY. REV. STAT. ANN. § 30A.405 (2009).

The Kentucky Supreme Court's standards for interpreters are contained in the Administrative Procedures of the Court of Justice, Part IX, Procedures for Appointment of Interpreters (revised May 12, 2009) (AP Part IX). AP Part IX, Section 4 states that the KCOJ shall provide an interpreter for court proceedings and for "direct services;" according to AP Part IX, Section 1, paragraph 12, direct services appear to be out-of-court services that are a part of a KCOJ entity's duties and responsibilities. AP Part IX, Section 9, paragraph 12 states that when a person does not request an interpreter but appears to have a limited ability to communicate in English, the court shall conduct a brief voir dire to determine whether an interpreter is needed.

Pursuant to AP Part IX, Section 6, paragraph 1, a Chief Circuit Judge or Chief District Judge shall designate a contact person in each county who is responsible for scheduling a staff interpreter or a freelance interpreter when needed; the contact person may be a judge's secretary, court administrator, or other KCOJ employee. Based on AP Part IX, Section 1, and the information that the OCR obtained during our onsite visit, the OCR understands that a staff interpreter is an individual employed by the AOC to provide interpretation for the KCOJ, and that a freelance interpreter is a contract interpreter. AP Part IX, Section 6, paragraph 4 says that if a contact person has difficulty obtaining an interpreter, the contract person shall notify the AOC's Court Interpreting Services Division for assistance in obtaining an interpreter. According to AP Part IX, Section 9, paragraphs 4 and 5, an interpreter must meet the following qualifications: have an acceptable criminal background; pass the requisite examinations administered by the AOC and be designated as certified or registered, depending on the test scores; attend the AOC's orientation workshop; obtain the required hours of court observation; read and comply with the Code of Professional Responsibility; and comply with the continuing education requirements established by the AOC. In accordance with AP Part IX, Section 10, paragraph 1, the AOC shall maintain a directory of certified and registered freelance and staff interpreters who have satisfied the AOC's requirements.

During the OCR's onsite visit, the AOC provided the OCR with the AOC's Certification Policy for Spoken Language Interpreters, recently amended on March 2, 2009 (AOC Certification Policy). Based on the AOC Certification Policy and the information that AOC staff, including the manager of the Court Interpreting Services Division, provided to the OCR during our onsite visit, the OCR understands that the certification process is as follows. All candidates must take an English Proficiency Exam and score 80% or above, and then must take a preliminary Oral Proficiency Exam so that the AOC may determine whether the candidate is eligible to proceed with the certification process. The AOC uses the company Language Testing International to conduct the Oral Proficiency Exams, and if an exam is not available in a particular language then the AOC will assess a candidate's proficiency on a case-by-case basis. A candidate must complete the AOC's orientation workshop within one year after taking the oral proficiency exam, and then must take an Oral Certification Exam if available in the relevant language. Currently, an Oral Certification Exam is available in the following sixteen languages: Cantonese; Bosnian/Croatian/Serbian; French; Haitian Creole; Hmong; Hocano; Korean; Laotian; Mandarin; Polish; Portuguese; Russian; Somali; Spanish; Turkish; and Vietnamese.

If a candidate scores 70% on each of the three parts of the Oral Certification Exam, the candidate is classified as a certified interpreter and is listed as such in the AOC Interpreter Directory. If a candidate receives a cumulative score between 65% and 69.9%, the candidate is classified as a registered interpreter in the AOC Interpreter Directory and must retake the exam within one year; if the candidate scores 70% on each part of the exam the candidate is re-classified as a certified interpreter, and if the candidate again obtains a cumulative score of between 65% and

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69.9% the candidate maintains his/her registered designation. If an Oral Certification Exam does not exist in a particular language, a candidate may still be classified as a registered interpreter as long as he/she has passed the English Proficiency Exam and an Oral Proficiency Exam and completed all other requirements, including continuing education and court observation hours.

When obtaining an interpreter for court proceedings or direct services, AP IX, Section 6, paragraph 8 mandates that a contact person shall first try to schedule a staff interpreter, followed by a certified freelance interpreter, then followed by a registered freelance interpreter; if none of these individuals are available, then a provisional freelance interpreter may be used. According to the AOC Certification Policy, a provisional interpreter is an interpreter who has passed the English Proficiency Exam and the Oral Proficiency Exam and scored between 55% and 64.9% on the Oral Certification Exam. During the OCR's onsite visit, AOC staff explained that provisional interpreters are not listed in the AOC Interpreter Directory and are only used if no one else is available for minor situations such as traffic cases.

According to the AOC staff, the AOC currently employs ten staff interpreters, all of whom speak Spanish; nine of the staff interpreters are certified interpreters and the remaining interpreter is a registered interpreter. The AOC staff told the OCR that the staff interpreters are located at the courts that serve the busiest counties in the state, and that two of the staff interpreters are located at the district and circuit courts within Fayette County. In the AOC's response to the OCR's data request, the AOC provided the most current version of the AOC Interpreter Directory. In addition to the staff interpreters, the Directory also lists 52 freelance interpreters who speak Spanish and 19 freelance interpreters who speak one or more of the following languages: Dinka; Bosnian/Croatian/Serbian; German; French; Japanese; Russian; Hindi; Punjabi; Arabic; Mandarin; Chinese; Kiswahili; Portuguese; Latvian; Polish; and Vietnamese.¹ The AOC staff told the OCR that a local court's designated contact person has access to the AOC Interpreter Directory and may contact an interpreter from the Directory directly or may go through the Court Interpreting Services Division.

Pursuant to AP IX, Section 11, the AOC is also authorized to use telephonic interpreting services to communicate with LEP individuals for "brief, non-evidentiary proceedings, including pretrial interviews, initial appearances, arraignments, and direct services," and when there is a time-

¹ The staff and freelance interpreters are currently listed in the AOC Directory as being certified or "qualified," which were the designations under the prior version of the AOC Certification Policy. A certified interpreter had successfully passed an oral foreign language test, but qualified interpreters were not required to take a foreign language test. Subsequent to the OCR's onsite visit, the AOC explained that the interpreters designated as qualified interpreters under the prior version of the AOC Certification Policy are now designated as registered interpreters and will have to take an Oral Certification Exam if one is available in the relevant language. The AOC further explained that the Court Interpreting Services Division is in the process of updating the AOC Interpreter Directory to reflect the current designations.

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sensitive matter and no other resources are available. In the AOC's data response, the AOC provided the OCR with a copy of a contract that it has with Language Line Services for telephonic interpreting; during the OCR's onsite visit, AOC staff said that the AOC can also contact the vendors Browne Global Solutions and L.A. Institute of Translation for telephonic interpretation if necessary. These vendors are all listed in the AOC's Telephone Interpreting Directory that the AOC included with its data response. The AOC stated in its data response that it may use telephonic interpreting in situations such as responding to phone calls, handling complaints from members of the public, and serving individuals requesting assistance who walk into KCOJ courthouses. During the OCR's onsite visit, AOC staff said that court personnel may also use a staff or freelance interpreter in those circumstances. In its data response, the AOC also provided a Language Resources Directory listing a number of community and governmental organizations; during the onsite visit, AOC staff explained that KCOJ personnel may contact an interpreter from this list if no other interpreters are available.

According to AP IX, Section 6, paragraph 10, absent a showing of extraordinary circumstances, a court shall not use a family member or friend of a LEP person to provide interpretation. During the OCR's onsite visit, AOC staff explained that they are not aware of KCOJ personnel ever using family members or friends to interpret.

In regard to the processing of complaints, as discussed above, the AOC uses a telephonic interpreter or a staff or freelance interpreter to communicate with LEP complainants. According to the AOC's data response and the AOC staff with whom the OCR spoke, if a member of the public wishes to file a complaint against a judge, the individual must file a complaint with the KCOJ's Judicial Conduct Commission using a designated complaint form. This complaint form is only available in English. As for complaints against court clerks and other KCOJ personnel, the AOC has an informal process in place for handling such complaints; individuals do not need to complete a complaint form, and complaints may be addressed by management and are forwarded to the AOC's Office of the General Counsel as necessary.

As for training of KCOJ personnel on the AOC's policies and procedures on the provision of language services to LEP individuals, in its data response the AOC stated that all circuit court clerks receive the Kentucky Circuit Court Clerk's Manual, which contains a section on the court's duties to provide an interpreter for LEP persons and instructs the clerks how to access the AOC Interpreter Directory and the Telephone Interpreting Directory on the AOC's computer system. The AOC also provided a copy of the Kentucky District Court Benchbook that all district court judges receive; this Benchbook has a section on the judge's duties and responsibilities for providing language services to LEP individuals in the courtroom. During the OCR's onsite visit, AOC staff explained that the Circuit Court Benchbook does not currently contain a section on the provision of language assistance services. The AOC also provided copies of several memos that it has distributed to KCOJ personnel on the court's duty to provide

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language services to LEP individuals, including instructions on how to access telephonic interpreters. During the OCR's onsite visit, AOC staff told the OCR that the Court Interpreting Services Division also conducts regular onsite visits to circuit and district courts to educate judges, clerks, and other personnel on their duties to provide language assistance services, and that the training that judges and clerks attend each year at the judicial college contains a section on language assistance services.

During the OCR's onsite visit, AOC staff explained that the AOC develops some state-wide forms that all KCOJ courts may use and that circuit and district courts may also develop their own local forms. The AOC staff said that while all forms are initially available only in English, on several occasions a local court has requested that the Court Interpreting Services Division arrange for an interpreter to translate a form into a foreign language, including Spanish and German. Subsequent to the OCR's onsite visit, the AOC said that it plans to translate state-wide forms into foreign languages in accordance with the DOJ Guidance, starting with domestic violence forms. The AOC further said that it will notify local courts to perform an inventory of their local forms to determine which documents are considered vital and that the AOC will translate identified forms upon request. During the OCR's onsite visit, AOC staff explained that the AOC will use staff interpreters to translate the documents and verify the accuracy of the translation. The AOC said in its data response that currently there is no signage in a foreign language at any of the KCOJ courthouses, but that the Court Interpreting Services Division plans to submit a proposal to the AOC Director for every courthouse to post an "I Speak" sign and a sign explaining in various languages that an individual has a right to interpreter at no cost.

The KCOJ's website, which includes a section on the Court Interpreting Services Division that provides general information to the public about interpreting services, previously contained a mechanism that allowed a user to translate the website into Spanish, Dutch, Japanese, Portuguese, French, and Italian. However, subsequent to the OCR's onsite visit, the AOC explained that the AOC removed this mechanism from the KCOJ's website due to problems of inaccurate translation. Subsequent to the OCR's onsite visit, the AOC provided the OCR with a CD entitled "Your Rights to Due Process and an Interpreter" which the AOC plays at local jails. This CD contains a section where individuals explain in English and in Spanish that the AOC will provide an interpreter if an individual can not communicate in English.

B. Language Access Services at Fayette County Family Court

Fayette County, Kentucky, is served by a district court and a circuit court; the FCFC is a division of Fayette County Circuit Court and has jurisdiction over issues relating to divorce, child custody, adoption, termination of parental rights, domestic violence, child abuse, and neglect. According to the U.S. Census Bureau, Fayette County had a total population of 251,803 individuals age five and older in 2006; of this group, 25,257 (10%) individuals spoke languages

other than English, including 12,482 (5%) who spoke English less than “very well” and are LEP. U.S. Census Bureau, American FactFinder, 2006 American Community Survey, Fayette County, Kentucky, B16004 Age by Language Spoken at Home by Ability to Speak English for the Population 5 Years and Over at www.census.gov. Specifically, of the Fayette County residents age five and older, 12,725 (5%) residents spoke Spanish, with 6,725 speaking English less than very well; 4,547 (1.8%) residents spoke other Indo-European languages, with 1,492 speaking English less than very well; 5,609 (2.2%) residents spoke Asian and Pacific Island languages, with 3,047 speaking English less than very well; and 2,376 (.9%) residents spoke other languages, with 1,218 speaking English less than very well.

During the OCR’s onsite visit, AOC staff explained that freelance interpreters are required to submit an invoice to the Court Interpreting Services Division when they provide interpretation services, listing the county, the language spoken, and the number of cases in which the interpreter provided language assistance services. The AOC staff said that the Court Interpreting Services Division reviews these invoices on a weekly basis to track these cases. In the AOC’s response to the OCR’s data request, the AOC said that based on a review of these invoices, the AOC estimated that from January 1, 2007 to December 31, 2008, freelance interpreters provided language assistance services to Fayette County courts 2,828 times.² The AOC specified that 2,550 (90%) of these cases involved interpretation in Spanish, and that other languages included Korean (39 cases), Arabic (37 cases), and Mandarin and Vietnamese (34 cases each). The AOC also estimated in its data response that staff interpreters provided interpretation in Spanish for Fayette County courts 17,568 times in 2007 and 2008. During the OCR’s onsite visit, AOC staff explained that in 2007 and 2008 not all of the staff interpreters documented when they provided interpretation, and that to respond to the OCR’s data request the AOC asked staff interpreters to estimate the number of times they provided interpretation over the past six months. The AOC staff further explained that beginning in January 2009 all staff interpreters are required to track on a spreadsheet the number of times that they provide interpretation, noting the type of proceeding involved.

To understand how the FCFC implements the AOC’s policies and procedures relating to the provision of language assistance, during the OCR’s onsite visit we spoke with the FCFC Court Administrator, who is the designated contact person for obtaining language assistance for LEP individuals appearing before the FCFC. According to Court Administrator, the FCFC encounters a Spanish-speaking LEP individual approximately four times per week, and encounters LEP individuals who speak other foreign languages much less frequently, approximately once a month. The Court Administrator said that FCFC personnel, such as a judge’s clerk, contact her to arrange for an interpreter when necessary. The Court Administrator

² During the OCR’s onsite visit, AOC staff clarified that this figure reflects the number of times that a freelance interpreter provided services in any Fayette County court, and is not limited to the FCFC.

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explained that the FCFC generally has advance notice of when a LEP individual will be appearing before the FCFC, as a judge will note on the case docket if an individual is LEP and will request that the court clerk arrange for an interpreter to be present at the next court appearance. According to the Court Administrator, a LEP individual's attorney may also notify the FCFC prior to the individual's first court appearance if an interpreter is needed. The Court Administrator said that every support worker and most of the clerks at the FCFC have "I speak" cards that assist them in identifying a LEP individual's language.

The Court Administrator confirmed that two of the AOC's staff interpreters are specifically assigned to Fayette County, and told the OCR that if she is aware in advance that a LEP party or witness speaks Spanish she emails one of the staff interpreters to arrange for interpretation on the relevant date. The Court Administrator also said that clerks working on domestic violence cases or cabinet cases involving the removal of children may email the staff interpreters directly to request a Spanish-speaking interpreter in lieu of contacting the Court Administrator. The Court Administrator said that if a staff interpreter assigned to Fayette County is not available, the Court Administrator contacts the AOC so that the AOC can arrange for a staff interpreter assigned to another county to interpret for the FCFC. If a LEP individual speaks a language other than Spanish, the Court Administrator reviews the electronic AOC Interpreter Directory to find and schedule an interpreter who speaks the necessary language. The Court Administrator told the OCR that if she can not locate an interpreter she contacts the AOC for assistance. If a LEP individual walks into the FCFC or initially appears before a FCFC judge and the Court Administrator did not previously arrange for an interpreter, the Court Administrator said that she attempts to use a staff interpreter for a Spanish-speaking LEP individual, uses Language Line, or may postpone a hearing until an interpreter is available. The Court Administrator said that the FCFC uses Language Line for brief encounters with LEP individuals and for short hearings, and showed the OCR reference guides that all court personnel have which explain how to contact Language Line.

The Court Administrator told the OCR that the FCFC does not receive many phone calls from LEP individuals, but that the FCFC has received phone calls from Spanish-speaking individuals and the Court Administrator requested that a staff interpreter call the individual back to provide the necessary interpretation and information. The Court Administrator said that the FCFC never uses family members or friends of a LEP individual to provide interpretation, and that the FCFC has never used an interpreter from a community organization or local university.

As for the processing of complaints against FCFC personnel, the Court Administrator told the OCR that she has not received any complaints of discrimination, but that she would tell a complainant to contact the AOC. The Court Administrator said that the FCFC does not have any documents translated into languages other than English, and does not have any signage in any foreign languages or any signs notifying the public that free language assistance is available.

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The Court Administrator said that if a judge provides a LEP individual with a document, such as an Order for Drug Testing at the Community Alternative Program, the judge will explain the document on the record and the staff or freelance interpreter will interpret that explanation for the LEP individual. The Court Administrator further said that staff or freelance interpreters will assist a LEP individual in completing necessary paperwork.

In regard to training of FCFC personnel on the AOC's policies and procedures for the provision of language assistance, the Court Administrator told the OCR that the AOC has provided training via email and over the phone, such as providing resources on how to contact Language Line and informing the Court Administrator of the AOC Interpreter Directory.

During the OCR's onsite visit, we also spoke with a FCFC judge and the two staff interpreters assigned to the Fayette County courts. The judge with whom the OCR spoke said that she mostly encounters LEP individuals who speak Spanish, but that she has also encountered individuals who spoke other languages such as Russian, Chinese, and French. The judge said that if an individual tells the judge that he or she is LEP or appears to not understand what the court is communicating, the judge will have her clerk notify the FCFC Court Administrator that language assistance is needed and will note that the individual is LEP on the case docket. The judge said that if an interpreter is not available at that time the judge may continue the case or may use Language Line. However, the judge said that she would rather use an in-person staff or freelance interpreter if available. The judge also told the OCR that frequently a LEP individual will request to use his or her own interpreter, such as a family member or friend, but that the judge will only use an AOC-certified staff or freelance interpreter. The judge said that she has had situations where it appeared that a staff or freelance interpreter was not interpreting everything that was said or was adding the interpreter's own commentary, and that the judge informed the Court Administrator who notified the AOC.

As for written documents that are discussed in court or which the judge provides to a LEP person, including the Order for Drug Testing at the Community Alternative Program, the judge said that she will explain what the document says and that the interpreter will interpret this explanation for the LEP person. The judge stated that the FCFC provides individuals with written directions to the Community Alternative Program that are translated into Spanish.

The judge told the OCR that when she became a judge the AOC explained to her how to provide services to LEP individuals. The judge said that overall she is satisfied with the interpretation provided by staff and freelance interpreters and by Language Line, and by the assistance provided by the AOC. To improve the FCFC's services to LEP individuals, the judge recommended that additional staff interpreters be assigned to the FCFC and that documents be translated into Spanish, especially the domestic violence forms.

The OCR also spoke with the two Spanish-speaking staff interpreters who are assigned to the Fayette County courts, and who are both certified interpreters. The interpreters told the OCR that when their services are needed by the FCFC, the Court Administrator or a clerk will send them an email or may call them if the request is last-minute. The interpreters said that they provide interpretation for the FCFC in any court proceedings or activities such as hearings, mediations, and parent education clinics, and that other counties may also request their services through the AOC. The interpreters both told the OCR that they generally provide interpretation for Fayette County Courts four out of five days each week. They explained that they also provide “sight translation” of written documents that are only available in English, where they explain to a LEP individual what a document states. The interpreters said that they will assist LEP individuals in completing written forms by interpreting their verbal responses into English for a clerk, who will complete the form in English accordingly.

II. Recommendations for Improving Services to LEP Individuals Interacting with the FCFC

The AOC is clearly taking steps to ensure that LEP individuals interacting with KCOJ entities, including the FCFC, are receiving effective language assistance services and are receiving meaningful access to the KCOJ’s services. As discussed in Section I of this Letter of Findings, Kentucky state law and the Administrative Procedures of the Court of Justice require that the KCOJ provide an interpreter for LEP individuals being served by the Kentucky courts and set forth a comprehensive plan for providing language assistance to LEP individuals. The AOC has developed a comprehensive certification program to ensure that KCOJ entities, including the FCFC, are using trained staff and freelance interpreters who provide proficient and accurate interpretation. However, there are areas in which the AOC needs to improve its services to LEP individuals encountered by the FCFC, particularly in the area of making translated forms available to the public. The OCR provides the following recommendations for how the AOC can improve its services to LEP individuals interacting with the FCFC. While our recommendations are focused on the FCFC, the AOC should consider implementing these recommendations in other KCOJ courts as well.

A. Track and Monitor the Frequency of Contact with LEP Individuals

During the OCR’s onsite visit, the AOC explained that freelance interpreters are required to submit an invoice to the AOC’s Court Interpreting Services Division documenting when they provide interpreting services in any county court, including the Fayette County Circuit Court and Fayette County District Court, and that staff interpreters are now required to track on a spreadsheet the number of times that they provide interpretation. The AOC should require staff interpreters to submit these spreadsheets to the Court Interpreting Services Division on a

periodic basis so that the Court Interpreting Services Division can track the number of times that Fayette County courts are encountering LEP individuals. This will provide the AOC with reliable information on which to determine whether Fayette County courts have a sufficient number of staff interpreters. The AOC should consider having staff and freelance interpreters note the particular court where they provided interpretation, such as the FCFC, so that the AOC can track which particular courts are encountering the largest number of LEP individuals and what languages these individuals are speaking. The AOC should also require Language Line and other telephonic interpretation vendors that the AOC uses to submit periodic reports to the AOC so that the AOC can further track the Fayette County courts' contact with LEP persons.

B. Translate Vital Documents into Prevalent Foreign Languages

Currently, the FCFC does not have any documents available in any languages other than English. During the OCR's onsite visit, the AOC said that it plans to start translating some state-wide forms into foreign languages and to instruct local courts to inventory their local forms to identify vital documents, which the AOC will translate upon request. The AOC should take steps immediately to ensure that vital documents available at the FCFC are translated into frequently-encountered languages to ensure compliance with Title VI. The Department of Justice encourages recipients to satisfy the "safe harbor" provision in the DOJ Guidance when determining what documents to translate. See DOJ Guidance, 67 Fed. Reg. 41464. This provision states that recipients should translate "vital documents" for LEP groups that comprise five percent or 1,000, whichever is less, of the eligible service population. Id. Whether a document is "vital" depends on the "importance of the program, information, encounter, or service involved, and consequence to the LEP person if the information in question is not provided accurately or in a timely manner." Id. at 41463. Examples of documents that may be "vital" are consent and complaint forms; intake forms; written notices of rights; denial, loss, or decrease of benefits; notices of disciplinary actions; written tests for a license, skill, or job for which knowing English is not required; applications to participate in a program or activity; and applications to receive a benefit or service. Id.

In accordance with the DOJ Guidance, the AOC should work with the FCFC to perform an inventory of the written materials available at the FCFC and identify the documents that it considers "vital." Included in this analysis the AOC should determine whether it considers the Order for Drug Testing at the Community Alternative Program to be a vital document. The AOC should then translate these documents into the languages that meet the safe harbor threshold. Based on the 2006 Census data for Fayette County, the number of Spanish-speaking LEP individuals in Fayette County clearly meets the 1,000 person safe harbor threshold. Although the data is less clear for other language groups, their presence may also meet the safe harbor threshold. If the AOC uses staff or freelance interpreters to translate documents it should ensure that these individuals are proficient in translation and are accurately conveying the

information to LEP persons. The ability of an individual to speak a foreign language does not necessarily mean that the individual has the skills to translate a document from English into the foreign language. The accuracy of translated materials could be ensured by having a second, independent translator, such as another interpreter, a professor from a local university, or a community member who has demonstrated competency in translation, to verify the work of the primary translator. The AOC may also wish to use “back translation,” where the primary translator can translate the document, and a second, independent translator could translate it back into English to ensure that the appropriate meaning has been conveyed.

Please note that when a document is translated into Spanish, the LEP individual completing the form must be able to complete the form in Spanish so that they can accurately and effectively communicate with the FCFC. The AOC could use a staff or freelance interpreter to translate the LEP individual’s responses into English for the FCFC’s use, or could use Language Line to verbally interpret the LEP individual’s responses for the FCFC.

C. Conduct In-Person Training of FCC Personnel on the Provision of Language Assistance

To ensure that all employees of the FCFC are aware of the proper procedures for obtaining and providing language assistance services to LEP individuals, the AOC should be sure to conduct periodic training for FCFC clerks, administrators, and judges on their duties to provide language assistance services. While the AOC stated during the OCR’s onsite visit that it conducts regular onsite visits to circuit and district courts to educate employees on their duties to provide language assistance, based on the OCR’s interviews with FCFC personnel it is not clear how often this is occurring. The AOC should also expand the Kentucky Circuit Court Benchbook to ensure that it contains a section on a circuit court judge’s duties and responsibilities for providing language assistance to LEP individuals.

D. Post Signage at the FCFC Notifying LEP Individuals of the Availability of Free Language Assistance

Currently, the AOC does not have any signage in languages other than English at the FCFC or at any of the KCOJ courthouses. During the OCR’s onsite visit, the AOC said that the Court Interpreting Services Division plans to submit a proposal to the AOC Director to post in every courthouse an “I Speak” sign along with a sign in various languages stating that an individual has a right to an interpreter at no cost. The AOC should post these signs at the FCFC as soon as possible to ensure that LEP individuals are aware that free language services are available.

E. Develop Written Complaint Procedures

If a member of the public wishes to complain of alleged misconduct by a KCOJ judge the individual must file a complaint with the KCOJ's Judicial Conduct Commission in accordance with written complaint procedures; however, the AOC does not currently have any written procedures explaining how the AOC will handle complaints against court clerks and other KCOJ personnel. The OCR recommends that the AOC develop written complaint procedures addressing receiving, investigating, and resolving complaints against court clerks and other KCOJ personnel which involve LEP persons. Additionally, the OCR recommends that the AOC develop a written complaint form, which will provide better documentation of the allegations and enhance the collection of information from complainants about their concerns. The AOC should develop procedures to ensure that translated complaint forms and related information are available to the public.

III. Complaints Regarding Language Services Provided by the Domestic Violence Clerk's Office, Fayette County Circuit Court Clerk's Office

During the course of the OCR's compliance review, we became aware of several complaints filed with the AOC alleging that the Domestic Violence Clerk's Office (DVCO) in Fayette County is not providing effective language assistance services to LEP individuals. The OCR also received a complaint directly from a member of the public containing similar allegations against the DVCO. Subsequent to the OCR's onsite visit, the AOC clarified that the DVCO is part of the Fayette County Circuit Court Clerk's Office and is a separate entity from the FCFC. However, as these complaints came to the attention of the OCR during our compliance review of the AOC, we are including a discussion of these complaints in our Letter of Findings.

In the AOC's data response, it provided the OCR with copies of two email complaints originating from victim advocates alleging that the DVCO is not providing adequate language assistance to Spanish-speaking individuals who wish to complete and file a request for a domestic violence protective order. The first email alleges that on March 19, 2009, a clerk with the DVCO called the victim advocate to come interpret for a Spanish-speaking individual, but that the victim advocate was busy and could not assist. The LEP individual allegedly waited for several hours until either the clerk or an employee of the Fayette County Sheriff's Office finally called Language Line to assist. The second email alleges that on April 21, 2009, an employee of the Fayette County Sheriff's Office called a victim advocate to interpret for a Spanish-speaking individual but again the victim advocate was busy. The victim advocate states that the advocate called the DVCO clerk and asked the clerk to contact Language Line, but the clerk said she could not use Language Line because no one was available from the Sheriff's Office to actually write the petition. As a result, the LEP individual allegedly had to wait an hour and a half until the advocate was available to provide interpretation and complete the form. The OCR spoke with a victim advocate for Fayette County, who told the OCR that night clerks at the DVCO

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have turned LEP individuals away who wished to file a protective order and told them to come back with an interpreter.

Subsequent to the OCR's onsite visit of the AOC, the OCR received a complaint from a LEP individual against the DVCO alleging another situation in which timely and appropriate language assistance services was denied to a LEP person. Specifically, a Spanish-speaking LEP individual (Complainant) alleges that she went to the DVCO in January 2009 to inquire about what she needed to do to obtain a protective order, and that employees at the DVCO only asked her if she had been beaten or threatened with murder and did not provide any other assistance or information. The Complainant states that she went back to the DVCO on February 5, 2009, to complete a request for a protective order, but that the form was only in English and that she does not speak or write English. The Complainant states that she requested an interpreter but that the person who came out to help her complete the form did not speak Spanish. The Complainant filled out the form to the best of her ability but the judge denied the request for a protective order. The Complainant returned to the DVCO a third time, bringing along her own interpreter to assist her in completing the request form, and the judge ultimately granted this request

Following the OCR's onsite visit, we provided the AOC with an opportunity to respond to these complaints. The AOC explained that the request for a protective order is an AOC form and that such requests are reviewed and ruled on by a Fayette County District Court judge, and that the FCFC conducts all domestic violence hearings after a protective order has been issued. The AOC said that DVCO clerks assist LEP individuals by providing a staff interpreter when available or by using the services of a local Spanish-speaking victim advocate or a deputy sheriff from the Sheriff's Office. However, the AOC said that the two staff interpreters who are assigned to Fayette County are not always available to assist the DVCO. The AOC also said that DVCO clerks have expressed concern about being required to write on domestic violence forms because this could be perceived as practicing law, and because the clerks could be liable if the petitioner alleges that the clerk did not write what the petitioner said. The AOC said that to prevent the situations discussed in these complaints from occurring in the future, the AOC's Office of General Counsel is requesting that the DVCO clerks utilize Language Line for interpretation and complete the domestic violence forms themselves for the time being, until a long-term solution can be implemented. The AOC also said that the Court Interpreting Services Division has translated domestic violence forms into Spanish, including the request for a protective order, and is currently converting the forms into official AOC forms.

Based on the information provided by the AOC, it appears that the AOC is taking steps to ensure that the situations discussed in these complaints do not occur in the future. The AOC should continue to monitor this situation to ensure that the DVCO is providing timely and effective language assistance to LEP individuals seeking to complete a request for a protective order. The AOC should provide the DVCO with translated domestic violence forms such as a request for a

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protective order as soon as possible, and should ensure that individuals are allowed to complete the form in Spanish. Until this occurs, the AOC should ensure that clerks at the DVCO initially attempt to obtain interpreting services for a Spanish-speaking LEP individual from a staff interpreter, who can interpret the form for the LEP individual, have the LEP individual write his or her responses in Spanish, and then translate the responses for the DVCO's own use. If a staff interpreter is not available or if the LEP individual speaks a language other than Spanish, the DVCO clerks should utilize Language Line for interpretation. In doing so, the clerks could document the LEP individual's response on the form as it is interpreted by Language Line, or could have the LEP individual complete the form in his or her native language. If the LEP individual completes the form in his or her native language, the clerks could use Language Line to interpret the responses and could document the responses in English on a separate form, or the clerks could use staff interpreters to translate the responses at a later time. The AOC may also wish to contact freelance interpreters to come to the DVCO to provide interpretation, if they are able to do so in a timely manner. Additionally, as discussed in Section II of this Letter of Findings, it appears that the AOC may need to analyze whether it has a sufficient number of staff interpreters deployed at the Fayette County courts, including the DVCO, in light of the volume of encounters they have with Spanish-speaking LEP individuals.

Conclusion

This letter serves as notice that OCR has found that the AOC appears to be taking steps to provide meaningful access to its services to LEP persons interacting with the FCFC. However, the AOC should build on these steps to ensure compliance with Title VI. On request, the OCR is available to provide technical assistance to AOC in implementing our recommendations. Upon receipt of this letter, we request that a responsible AOC official contact Attorney Advisor Shelley Langguth to discuss the AOC's timeframe for implementing the OCR's recommendations.

Thank you for your cooperation and the assistance of your staff throughout the compliance review process. If you have any questions, please contact Ms. Langguth at (202) 305-2353.

Sincerely,
/s/

Michael L. Alston
Director

cc: Carrie Slayton
Staff Attorney