

...thiab kev ncaj ncee rau sawvdaws

# IMPROVING

...и правда за свију

# INTERPRETATION

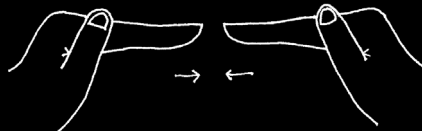
...dhe dréjtësi për të gjithë

# IN WISCONSIN'S

...i sprawiedliwosc dla wszystkich

# COURTS

...y justicia para todos



**a report** on court-related interpreting and translation with recommendations on statute and rule changes, budget items, interpreter training programs and certification tests, and judicial and professional education programs

Committee to Improve Interpreting & Translation in the Wisconsin Courts  
Report to the Director of State Courts ■ October 2000

# ...and justice for all

# Table of contents

---

## **Committee to Improve Interpreting and Translation in the Wisconsin Courts**

Report to Director of State Courts, J. Denis Moran

OCTOBER 2000

**3 Committee members**

**5 Executive summary**

**8 Chapter 1. Nature of the problem**

rising population with limited English proficiency  
need for qualified court interpreters  
current statutes and funding  
need for a systematic response  
summary of committee recommendations

**16 Chapter 2. Statutory changes recommended**

meet Americans with Disabilities Act requirements  
cover all types of cases  
eliminate the indigency requirement  
cover out-of-court proceedings  
include crime victims

**19 Chapter 3. Changes to the rules of court**

require certified interpreters whenever available  
establish a court interpreter certification program  
develop a statewide roster of trained interpreters  
implement an interpreter code of ethics

- 23 Chapter 4. Funding & staff needed**  
provide funding for expanded number of cases  
set county reimbursement rates at a realistic level  
develop a court interpreter project
- 27 Chapter 5. Interpreter certification & training**  
orientation workshops & comprehension tests  
certification tests & reciprocity  
other roster requirements  
recruiting new interpreters  
long-term effect of the training & certification program
- 31 Chapter 6. Training for judges & others**
- 33 Chapter 7. Other recommendations**  
public education & support  
telephone interpreting  
auxiliary aids  
future projects
- 37 Chapter 8. Alternatives considered**  
implement parts of the program  
hire staff interpreters  
include interpreter costs in the circuit court sum sufficient budget  
interpreter training provided by other groups  
local programs and standards
- 40 Chapter 9. Conclusion**
- 41 Appendix**  
① findings on court interpreter use  
② language & cost maps  
③ current statutes & case law  
④ proposed code of ethics  
⑤ definitions  
⑥ bibliography

# Committee Members

---

The Committee to Improve Interpreting and Translation in the Wisconsin Courts has been appointed by Director of State Courts J. Denis Moran to make recommendations for immediate and long-term improvements in court interpreting and translation practices. The Director asked the committee to identify priorities for action, recommend statute and court rule changes, propose budgetary items, suggest judicial and staff education programs, and foster general public and governmental understanding of the issues involved. The committee met 10 times between October 1999 and September 2000. This report, published in October 2000, contains the findings and recommendations from the committee's first year.

The committee is chaired by Judge Elsa C. Lamelas, Circuit Court of Milwaukee County. Judge Richard Brown, Court of Appeals District II, serves as vice-chair. Committee members are:

Francisco Araiza, State Public Defender Office  
Brenda Bartholomew, Spanish Interpreter  
Vince Biskupic, District Attorney, Outagamie County  
Representative Pedro Colon, State Assembly, Milwaukee  
James A. Drummond, Circuit Court Commissioner, Racine County  
Judge Frederic Fleishauer, Circuit Court of Portage County  
Diane Fremgen, Clerk of Circuit Court, Winnebago County  
Debra Gorra, American Sign Language Interpreter  
Ruth Janssen, Clerk of Circuit Court, Outagamie County  
Bette Mentz-Powell, Bureau for Deaf and Hard of Hearing, DHFS, Madison  
Carolyn Olson, Clerk of Circuit Court, Iowa County  
Gail Richardson, District 5 Court Administrator, Madison  
James Seidel, District 9 Court Administrator, Wausau  
Pam Vang, Intercultural Relations Coordinator, Appleton Police Department  
Mai Zong Vue, Refugee Services, Department of Workforce Development  
Judge Mark Warpinski, Green Bay Municipal Court (now a Brown County Circuit Court judge)  
Representative Scott Walker, State Assembly, Wauwatosa

The committee was staffed by Marcia Vandercook, Office of Court Operations, with the assistance of other members of the Director of State Courts Office. The committee was observed and assisted by many representatives of community groups, interpreter trainers, and interpreting agencies.

For more information about the committee or for a copy of this report, please contact the Office of Court Operations, 110 E. Main St., Suite 410, Madison, WI 53703; phone (608)266-3121; TTY (608)261-8286; e-mail [marcia.vandercook@courts.state.wi.us](mailto:marcia.vandercook@courts.state.wi.us) This report will also be placed on the court's Website at <http://www.courts.state.wi.us>.

# Executive summary

---

Language is the most basic tool of the courts. Lack of interpreting services prevents parties, victims, and witnesses from using the courts to meet their obligations and resolve their disputes. Without a skilled interpreter, a party who speaks or hears no English cannot listen to the testimony, challenge the evidence, or consult with an attorney. A person who cannot communicate with the judge faces a barrier as significant as a lock on the courthouse door.

## The Issue

**Growing linguistic diversity.** Wisconsin is becoming increasingly diverse and multicultural. Between 1990 and 1999, Wisconsin's Hispanic and Asian-Pacific Islander populations each grew by more than 50 percent. Speakers of east European and African languages are also arriving in considerable numbers, and approximately seven percent of the state's citizens are deaf or hard of hearing. People who do not speak, hear, or understand English are appearing more and more often in court as litigants and witnesses. Their need to communicate with the courts can be met through the use of qualified interpreters, but finding such interpreters is difficult. Interpreter problems are becoming an urgent management issue for many Wisconsin courts, falling into four broad groupings:

- ❶ determining the qualifications of interpreter candidates,
- ❷ expanding the pool of qualified interpreters,
- ❸ improving distribution of interpreters to make them available and affordable, and
- ❹ providing proper oversight of interpreter work in court.

**Importance of qualified interpreters.** Skillful interpreting is much harder than it looks. Being bilingual is not enough; interpreting also requires specific short-term memory skills that allow the interpreter to listen, understand, memorize, interpret, and speak all at the same time. Courtroom work is a particularly difficult kind of interpreting, since it is highly procedural, moves quickly, and employs its own specialized vocabulary. The results often turn on the nuances of a written document, an exchange of words, or a party's intent. At the same time, testimony often involves street talk and slang in two languages, and a great deal of emotion may be conveyed in a few words. Even professional interpreters who perform well in community settings may be unqualified for the rigors of legal interpreting.

When a court uses an unqualified interpreter or no interpreter at all, the result is **denial of access** to court proceedings. The Wisconsin Supreme Court has said that "the right to an interpreter is fundamentally a right which safeguards the fairness of the process," holding that interpreters must be appointed for criminal defendants in the interests of fair treatment and effective assistance of counsel.

Fairness is equally important in civil cases such as divorce and property division, child custody and support, eviction, debt collection, or loss of a driver's license. Such cases can have a profound impact on people's lives. When immigrants and deaf persons are forced to proceed with an inadequate interpreter or no interpreter at all, they are left with the impression that the government is indifferent to their participation.

There is also a serious **loss of accountability** from proceeding with an unqualified interpreter. Communication is poor, testimony is omitted or summarized, the record is incomplete, ethical issues go unnoticed, and unnecessary appeals and dismissals may follow. An incorrect interpretation can make nonsense of an otherwise conscientious court proceeding.

Too often, courts use relatives, friends, police officers, social workers, or even fellow prisoners as interpreters. These interpreters sometimes serve without inquiry into their training, skills, or understanding of their role. In these cases **conflict of interest** may become a problem. An untrained interpreter with personal connections to the party may offer incorrect advice, make unauthorized decisions for the party, summarize the proceedings, or soften the testimony so as not to offend the judge or the party. All of this may occur without the knowledge of the judge or the party.

Wisconsin courts have too few qualified interpreters, interpreters who can accurately, easily, and impartially convey a legal proceeding from English to another language and back. At the same time, there are too many unqualified interpreters assisting the courts, people who should not be used in court if the goals are accuracy, completeness, and impartiality. Some courts are mistakenly content with whichever interpreter is most easily available—the Spanish teacher from the local high school or a friend or relative of the party. Unfortunately, many of these interpreters are woefully underqualified for the job in ways that are not apparent to a person who does not speak both languages.

## The Solution

**Expanding the statute.** To improve court access to non-English speakers, the Legislature should significantly expand the court interpreter statute and provide the funding needed for interpreter appointment. The committee's proposed statute will:

- ❶ provide that interpreters must be appointed when needed for all types of court proceedings, civil and criminal, to increase the integrity and effectiveness of the courts;
- ❷ guarantee that interpreters be appointed for all parties, victims, and witnesses while testifying, without requiring that the participant be indigent, as part of a basic right to court access; and
- ❸ ensure that no services required by the federal Americans with Disabilities Act and the Wisconsin Victim's Rights Act are denied.

Finally, the overall state appropriation for interpreter services and the reimbursement rate to counties will be increased so that cost does not discourage judges from appointing qualified interpreters.

**Developing a training and testing program.** To improve the quality of court interpreters, the Supreme Court and the Director of State Courts should develop court rules and certification standards similar to ones successfully used in other states. The court's program will provide:

- ❶ interpreter training programs covering court terminology and procedure, ethics, and interpreting skills;
- ❷ certification tests in the most-needed languages, paired with a court rule requiring that judges use a certified interpreter whenever one is available;
- ❸ a statewide roster of interpreter agencies and individual interpreter names, telephone numbers, languages, and qualifications, to assist courts in locating and appointing interpreters;
- ❹ a code of ethics for interpreters adopted by court rule, describing the proper role of the interpreter and how to avoid common problems; and
- ❺ education for judges, court staff, and attorneys on best practices for appointing and using interpreters in court and communicating with persons of limited English proficiency.

For immigrants and persons with disabilities to share the rights and responsibilities of community life, they must have access to the community's way of handling business, resolving disputes, responding to crime, and attending to family matters. Access to the courts enhances integration into civic life and strengthens the fabric of the community as a whole. Court interpreter problems must be approached in a systematic way to address the misunderstandings and injustices caused by language differences. The committee's recommendations detailed in this report will ensure that language barriers do not undermine the right to full participation in court proceedings in Wisconsin.



# Chapter 1. Nature of the problem

---

Wisconsin is becoming increasingly diverse and multicultural, and people who do not speak English are appearing more and more often in court as litigants and witnesses. The need to locate and supervise interpreters in these cases is becoming an urgent management issue for many state and municipal courts. Many people attended the meetings of the court interpreters committee to express frustration with the current haphazard approach to hiring and supervising interpreters.

Trial court management problems regarding interpreters fall into four broad groupings:

- ❶ determining the qualifications of interpreter candidates,
- ❷ expanding the pool of qualified interpreters,
- ❸ improving distribution of interpreters to make them available and affordable, and
- ❹ providing proper oversight of interpreter work in court.

These interrelated problems are common to courts across the country, and many courts are currently working to improve their interpreter services through better training and funding.

## ❶ Rising population with limited English proficiency

This report uses the phrase “limited English proficiency” to mean the inability to adequately understand or communicate effectively in English in a court proceeding. This phrase applies to foreign language speakers whose primary language is a language other than English and whose ability to speak English is inadequate for participating in a court proceeding. While many people who have moved here from another country can speak some English, a high level of comprehension and expression is needed to participate effectively in court.

The population of Wisconsin with limited ability to speak English has risen rapidly over the last 10 years. In 1990, about 263,000 Wisconsin residents (5.8% of those five years and older) said they spoke a language other than English at home. When asked to characterize how well they spoke English, 37% of the Spanish speakers and 62% of the Asian language speakers said that they did not speak English “very well.”

Census data on language use is only taken every 10 years, but census data on ethnicity is updated through yearly estimates. Recent estimates show that people who identified themselves as Hispanic or as Asian-Pacific Islander are a growing segment of the Wisconsin population. The U.S. Census Bureau Population Estimates Program estimates that the state’s Hispanic population rose 50.5%, to 140,235, between July 1, 1990 and July 1, 1999. It estimates that the Asian-Pacific Islander population grew 53.6%, to 83,265.

These two groups grew far faster than the overall Wisconsin population, which increased only 7.3% during this period, to 5,250,446. The Census Bureau projects similarly rapid rates of growth for these two groups in Wisconsin for the next 25 years.

Speakers of east European and African languages are also arriving in considerable numbers. The Office of Refugee Services (part of the Division of Economic Support, Department of Workforce Development) keeps track of refugee migration to Wisconsin. In addition to refugees from Southeast Asia, it tracks several thousand refugees from the former Soviet Union, the former Yugoslavia (Bosnia, Serbia, and Croatia), Africa, and other places. (See Appendix 2, language distribution maps, for more information.) The languages needed in the Wisconsin courts vary from year to year depending on political and economic conditions in other parts of the world, but the overall number of people needing interpreters can be expected to increase every year for the foreseeable future.

Not all persons with limited English proficiency come from other countries. For purposes of this report, this term also applies to persons who are unable to hear or speak English because of hearing loss, deafness, speech impairment, or other disability. Many deaf people use American Sign Language (ASL) as their primary means of communication, although many can also read and write English. American Sign Language is a different language from English, with its own grammar and syntax, and there are also many other types of sign language in use. Although there are no firm figures for the number of deaf people in Wisconsin, the prevalence of deafness in the United States is estimated at 1% of the population.

Hard of hearing persons are also included as “limited English proficiency” for purposes of this report. Hard of hearing persons are those with sufficient hearing loss that they need interpreters, assistive listening devices, transcripts, hand-written notes, or some other means of communication to take in what is happening in court. Many hard of hearing persons have lost some or all of their hearing as adults and may have English as their first or only language, but their need for communication access is the same. Estimates of the prevalence of hard of hearing persons in the U.S. population run from 6.6% to 10%.

Wisconsin’s limited English proficiency population is not evenly distributed throughout the state. Spanish speakers have tended to settle along the eastern edge of the state from Outagamie and Brown counties in the north to Walworth and Kenosha counties in the south, with some additional populations near La Crosse. Hmong immigrants live along the eastern edge, from Outagamie and Brown counties in the north to Milwaukee in the south. Significant Hmong population centers are also found in Marathon and Portage counties and in La Crosse and Eau Claire. There is no population count of deaf residents by county, but there are known to be high deaf populations in Kenosha, Racine and Walworth counties. As might be expected, Milwaukee has the highest number of Spanish speakers, Hmong speakers, and refugees, and presumably deaf persons as well. (See Appendix 2, language distribution maps).

Because persons with limited English proficiency are spread unevenly across the state, the need for court interpreters is spread unevenly as well. Milwaukee County has a large enough Spanish-speaking population that the county has hired a full-time Spanish interpreter to work for the court. Many courts use interpreters almost on a daily basis and spend thousands of dollars every year on court interpreting. Some regions need interpreters only in the summer, when foreign visitors and migrant farm workers come to the state. On the other hand, many counties (primarily in the north and the southwest) have not hired an

interpreter in years, either because no limited English proficiency person has come to court or because the need for an interpreter went unrecognized. Not surprisingly, then, some judges and clerks of court see the need for more and better court interpreters as a vital issue, while others see no issue at all. Nonetheless, the need for an interpreter can arise at any time and, depending on the length of the proceeding and the rarity of the language required, can be a very expensive proposition for any county in the state.

## ② Need for qualified court interpreters

Wisconsin courts have too few qualified interpreters, interpreters who can accurately, easily, and impartially convey a legal proceeding from English to another language and back. Court staff often make many phone advance calls to find an experienced interpreter, or scramble to find anyone at all to interpret at the last minute. In rural areas, paid interpreters must often be brought in from a considerable distance. By insisting on a well-qualified interpreter, the court takes on a considerable burden to locate the right person or to postpone the case until the right person is available. The court also agrees to pay the interpreter's hourly rate and to pay time and/or mileage when the interpreter lives far away.

At the same time, the state has too many unqualified interpreters, people who really should not be used in court if the goals are accuracy, completeness, and impartiality. Some courts are mistakenly content with whichever interpreter is most easily available. This may be the Spanish teacher from the local high school, a friend or relative of the party, or a local resident who interprets once or twice a year just to help out. Unfortunately, many of these interpreters are woefully underqualified for the job, in ways that are not apparent to a person who does not speak both languages required. While a judge may be able to gauge if an interpreter has a professional demeanor or seems to understand the legal process, a monolingual judge has no way to know whether the substance of the court proceeding is being accurately or completely conveyed.

**Recognizing when an interpreter is needed.** There is misunderstanding of how language affects court proceedings. Many judges and clerks of court assess a party's language abilities by asking simple yes/no questions, or by asking if the person uses English at work or in social settings. These techniques seriously underestimate the level of language skill needed to cope in court. Basic conversational skills are not enough to intelligently waive the right to counsel, to understand the implications of a guilty plea, or to undergo cross-examination. In addition, the person may come from a country that has no such thing as "rights," or may speak a language where answering a question "yes" means only "yes, I acknowledge your question." Without a trained interpreter to convey the legal concepts at issue, and to pass on the accurate meaning of any response, there is potential for serious substantive misunderstanding.

**Skills needed for court interpreting.** There is widespread misunderstanding of the difficulty of court interpreting. Being bilingual is just a foundational requirement, interpreting also requires a set of very specific short-term memory skills that allow the interpreter to listen, understand, memorize, interpret, and speak all at the same time. Court interpreting also requires understanding of legal terminology and procedure, knowledge of the speaker's cultural context, ability to preserve the language level and intent of the speaker, and understanding of the ethical obligation not to shade or abbreviate testimony. This is a highly specialized skill, and cannot be done properly without training.

## Why is legal interpreting so challenging?

Courtroom work is a particularly difficult kind of interpreting. It is highly procedural, it moves quickly, and it employs its own dense specialized vocabulary, along with Latin phrases and the government acronyms. The results often turn on the nuances of a written document, an exchange of words, or a party's intent. At the same time, testimony often involves street talk and slang in two languages, and a great deal of emotion may be conveyed in a few words. Even professional interpreters who perform well in community settings may be unqualified for the rigors of legal interpreting.

It is a common misconception that anyone proficient in two languages can interpret. In fact, interpreting requires a complex set of skills, all of which must be exercised simultaneously. The interpreter must listen, understand, store words and word order, search for the right concepts and words in the second language, reconstruct the message in the second language, and speak and monitor his or her own output, all while listening for the next chunk of dialogue to process. Professional interpreters practice memory skills to break messages into chunks, and use special techniques for remembering names and the order of events. Numbers, such as addresses, are particularly prone to error.

There are several consequences of using underqualified interpreters or failing to use interpreters where needed.

- First and foremost is the **denial of access** to court proceedings for litigants of limited English proficiency. In State v. Neave, 117 Wis. 2d 359, 373, 344 NW 2d 181 (1984), the Wisconsin Supreme Court said that “the right to an interpreter is fundamentally a right which safeguards the fairness of the process.” It held that interpreters must be appointed for criminal defendants as a matter of judicial administration, to remove the defendant’s feeling of having been dealt with unfairly and to remove any doubt about the effectiveness of the defendant’s right to counsel and right to confrontation (State v. Neave, at 365). Fairness and access considerations are equally applicable in civil cases, which also affect important aspects of people’s lives. There is obvious injustice to a system that allows parties to go through divorce and property division, child custody and support, eviction, debt collection, or loss of a driver’s license without understanding what is happening. Lack of interpreting services prevents limited English proficiency persons from using the courts to meet their obligations and resolve their disputes. It also discourages victims, witnesses, and parents from coming to court.
- There is a serious **loss of accountability** when courts use unqualified interpreters or no interpreters at all. Communication is poor, testimony is omitted or summarized, the record is incomplete, and ethical issues go unnoticed. An incorrect interpretation can make nonsense of an otherwise conscientious court proceeding. There is no value to a court reporter’s verbatim transcript if it contains an erroneous account of the words of the non-English speaking person. It is also **ineffective** to work through a nonprofessional interpreter, who may interpret slowly or incompletely, need things repeated, or allow misunderstandings to continue until the line of questioning needs to be started over. Unnecessary appeals and dismissals may follow. Often misunderstandings are never recognized or resolved.

- Too often, courts use relatives, friends, police officers, social workers, or even fellow prisoners as interpreters. These interpreters usually serve without inquiry into their training, their accuracy, or their understanding of their role. **Conflict of interest** is a particular problem in these instances. An untrained interpreter with connections to the party may offer incorrect advice, make unauthorized decisions for the party, summarize the testimony, or soften the testimony so as not to offend the judge or the party. All this may occur without the knowledge of the judge or the parties.

### ③ Current statutes & funding

**Wisconsin law.** The appointment of language interpreters in court is governed by Wis. Stat. §885.37, which sets the criteria for court appointment of an interpreter at public expense. This statute was substantially revised in 1987 in response to State v. Neave, which held that an interpreter will be provided at court expense if a criminal defendant cannot afford one. Following this case, the Legislature specified that the court must provide an interpreter for indigent parties and witnesses in criminal, juvenile, mental health, and child protection cases.

While the current statute gives the court the discretion to appoint an interpreter in other cases, this power is rarely used in civil cases. Interpreters are seldom appointed for divorces, domestic violence, restraining orders, paternity, evictions, debt collections, traffic citations, and a host of other common legal problems. The statute does not provide an interpreter for the many litigants who do not meet indigency criteria but who cannot afford an interpreter. It also does not provide an interpreter for crime victims other than in their capacity as witnesses, seriously undermining their protections under the victims' rights act.

**Americans with Disabilities Act.** Wis. Stat. §885.37 is intended to apply to court appointment of both foreign language interpreters and interpreters who provide services for deaf, deaf-blind, hard of hearing, and speech-impaired court users. However,

### What does the Wisconsin statute say?

Wis. Stat. §885.37 sets the limiting criteria for court appointment at public expense:

- Interpreters are required for persons who have a language difficulty because of the inability to speak or understand English, or who have a hearing or speech impairment, sufficient to prevent the person from consulting with an attorney, reasonably understanding the testimony, or reasonably being understood in English.
- Interpreters are required in four types of cases: criminal, children in need of protective services (CHIPS) under chapter 48, juvenile offenses under chapter 938, and mental commitments under chapters 51 and 55. In other types of cases, interpreters may be appointed in the discretion of the court, but civil appointments are infrequent.
- Interpreters are appointed for four types of participants: parties, witnesses, and children and parents in CHIPS actions and juvenile offenses.
- Interpreters are appointed at public expense only when the court finds that the party, witness, child or parent is indigent.

Wis. Stat. §885.37 also provides that agencies shall pay for interpreters at administrative hearings, that the State Public Defender shall pay for an interpreter in preparing for court proceedings, and that municipal courts shall be subject to the same requirements as circuit courts. (The full text of §885.37 is found in Appendix 3, current statutes and case law).

Wis. Stat. §885.37 was passed prior to the Americans with Disabilities Act (ADA), 42 USC § 12101 et seq. (1990). Title II of the ADA provides that state and local governments must make their services, programs and activities readily accessible to and useable by people with disabilities. The ADA does not apply to foreign language speakers unless they are disabled.

The state statute does not conform to the ADA with respect to court interpreter services, a situation that causes confusion about the extent of the court's obligations. The ADA requires accommodation of disabled parties and witnesses in all types of cases, civil or criminal, regardless of indigency. The ADA also requires interpreters or other accommodations for jurors. Accommodation may take the form of interpreters, assistive listening devices, transcripts, or other means of assisting communication. For an extensive report on ADA issues in the Wisconsin courts, see *Access*, Report of the Wisconsin Supreme Court Interdisciplinary Committee on the Court-Related Needs of the Elderly and People With Disabilities (1994).

**Rate of reimbursement.** The cost of court-ordered interpreter services in Wisconsin circuit courts is paid by the individual counties. When the county provides interpreter services under the terms of Wis. Stat. §885.37, the costs are partly reimbursable by the state. Wis. Stat. §814.67 provides that the fee for interpreters in circuit court shall be \$35.00 per half day, plus mileage. This amount is reimbursed to the counties from a separate appropriation in the circuit court sum certain budget under §20.625(1)(c); in 1999-2001, the annual appropriation was \$188,800. The Director's office reimburses counties up to the amount of this appropriation; usually the money runs short in the spring and the Director's office holds reimbursement requests for several months to pay from the next year's appropriation. Wis. Stat. §814.67 provides that the fee for interpreters shall be \$10.00 per half day in municipal court, but there is no state reimbursement.

Individual counties are responsible for interpreter fees not covered by the statute. Thus, the counties are responsible for the full cost of interpreter services whenever the court appoints an interpreter for a nonindigent party. The counties are also responsible for any amount paid in excess of \$35.00 per half day. This rate was set in 1987 and does not reflect what counties must actually pay to get an interpreter to work for the court. As a result, counties currently pay about two-thirds of the cost of providing interpreter services.

**Reported 1999 costs.** Using a recent survey of the clerks of court, the committee calculated that circuit courts pay an average of \$39.70 per hour for Spanish interpreters and \$39.80 per hour for sign language interpreters. Rates can go as high as \$150.00 per hour for specialty languages, but this is rare. (See Appendix 1, committee findings on court interpreter use) For municipal courts, the statute says the rate shall be \$10.00 per half day, but in fact municipalities must pay the same market rate as the circuit courts and are not provided with any reimbursement at all.

The amount the clerks of circuit court reported for 1999 interpreter billings and staff interpreters was \$565,248, three times the amount available for reimbursement. These reported expenditures were for paid interpreters only and do not reflect the use of family members and agency staff as ad hoc interpreters. In Milwaukee County, the court employs a full time Spanish interpreter at a cost of \$48,000 per year, and contracts for most of its sign language services through another county agency at a cost of

\$32,000 per year, and spends an additional \$109,000 on contract interpreter services. The reported costs for Milwaukee alone are as much as the current annual appropriation for the entire state.

## **④ Need for a systematic response**

Across the country, state supreme courts and court administrators are grappling with the need to improve interpreter services. Some are responding to recommendations made by task forces addressing race and ethnic bias and disability access. Others are responding to the increased demand caused by rising limited English proficiency populations on day-to-day court operations.

Because all states are facing this problem in varying degrees, the National Center for State Courts (NCSC) and a consortium of states are working collaboratively on the development of certification tests and procedures for assessing and improving the language skills of court interpreters. Twenty-four states, including Wisconsin, have joined the NCSC consortium as of fall 2000. These states share training materials and a bank of interpreter tests in 10 languages. Several larger states, including Texas, New York, and California, have independently developed interpreter certification programs and tests. The federal courts have had a centralized system of testing, supervision, and payment since 1978.

This problem is not unique to the courts. The medical profession is also addressing the need to have interpreters on call who are skilled in the dynamics of doctor-patient communication and who understand medical terminology and procedure. A group of Dane County hospitals and health agencies has hired a full-time coordinator to develop an interpreter screening, training, and scheduling program. The program offers a test involving interpretation of a medical interview, translation of written discharge instructions, and an oral ethical question. All interpreters must take and pass this test within six months of beginning work at these hospitals. This program has improved patient service, reduced mistakes and enhanced staff efficiency. Without a similar program for the courts, however, nothing prevents the interpreters who fail the hospital test from interpreting for the courts instead.

Demand continues to increase in every state, but the quantity and quality of court interpreters has not automatically risen with demand. In states without interpreter programs, courts continue to use interpreters of undemonstrated skills and professional standards. Quality does not improve by itself; some authority needs to recognize the issue and take on the responsibility to oversee interpreter training and evaluation. In most states it is the state supreme court, through its superintending and administrative authority, that takes the lead on this issue, in order to provide access to justice and assure accountability for the courts statewide. The courts enter into this venture in partnership with the legislatures, since interpreter services, training, and certification, require a substantial commitment in terms of funding.

In identifying trends for the coming decade, the National Association of Court Managers has highlighted changing demographics as one of the most important issues to be faced by courts. These changes present an opportunity for the courts to develop a working relationship with new groups of constituents, adapt to the needs of the community, build support for existing court programs, and emphasize the rights and responsibilities of citizenship. Providing courtroom access for limited English proficiency persons builds trust in the system; failure to do so breeds mistrust of the government at large and the courts in particular.

Federal law has made clear that persons with disabilities are entitled to equal access to government programs and facilities, in order to enjoy the full benefits and responsibilities of civic life. In particular, deaf and hard of hearing persons are to be provided with the accommodations needed to communicate fully in the courtroom. The committee believes that the logic behind this right to access is equally applicable to limited English proficiency parties and witnesses, in both civil and criminal cases. The right to full participation in court proceedings should be the law in Wisconsin.

## **5 Summary of committee recommendations**

The committee proposes that the current court interpreter statute be significantly expanded. The statute should provide that interpreters will be appointed for all types of court proceedings, civil and criminal, to increase the integrity and efficiency of the courts. Interpreters should be appointed for all parties, victims, and witnesses while testifying, as part of a basic right to court access, without requiring that the participant be indigent. The statute should be clarified to be sure that no service required by the federal Americans with Disabilities Act or Wisconsin Victim's Right Act is denied. The overall appropriation for interpreter services and the reimbursement rate to counties should be greatly increased, so that there is no financial disincentive to appoint qualified interpreters.

The committee also proposes a program to improve the quality of the court interpreters available. This program follows a model developed by the National Center for State Courts and successfully implemented in other states. The program has five components, which this report will describe in detail:

- ❶ interpreter training programs covering court terminology and procedure, ethics, and interpreting skills;
- ❷ certification tests in the most-needed languages, paired with a requirement that judges use a certified interpreter whenever one is available;
- ❸ a statewide interpreter roster of interpreter agencies and individual interpreter names, phone numbers, languages, and qualifications, to assist courts in locating and appointing interpreters;
- ❹ a code of ethics for interpreters to provide guidance on the proper role of the interpreter and avoidance of common problems; and
- ❺ education for judges, court staff, and attorneys on best practices for appointing and using interpreters in court and communicating with non-English speakers.

The committee has not yet addressed the steps needed to improve interpreter services in the municipal courts. The program recommended here will greatly improve the pool of interpreters available to all courts and law-related agencies. The committee also proposes to provide training and materials for municipal courts through the court's judicial education program. However, the committee did not have time in its first year to study municipal courts specifically or to consult with municipal court judges and clerks on possible solutions. Because municipal courts are entirely funded by the municipalities, the committee also has not attempted to suggest any budget proposal. The committee intends to work more closely with municipal courts in its second year and to make further recommendations later. Similarly, the committee did not attempt to address the standards and procedures that might be appropriate for the many law-related hearings that take place in administrative agencies. The committee expects to consider this issue in consultation with executive branch agencies in the future.



# Chapter 2. Statutory changes recommended

---

The committee recommends significant expansion of the right to a court-appointed interpreter under Wis. Stats. §885.37. A qualified interpreter should be appointed for a broad range of cases and parties:

## ① Meet Americans with Disabilities Act requirements

The federal Americans with Disabilities Act requires that sign language interpreters, and other types of accommodations will be provided at court expense whenever they are needed by parties, witnesses, jurors, and other court users with disabilities that limit their ability to communicate with the court. These requirements apply in all types of cases, civil and criminal. The court must pay for the interpreter regardless of whether the court user is indigent. Although the Americans with Disabilities Act and its accompanying regulations require these services now, the contrary language of the state statute causes frequent misunderstanding about their necessity under the law. The statute must be clarified so that no judge or court clerk is exposed to liability under the Americans with Disabilities Act for inadvertent failure to comply, and so that no court user is mistakenly denied services.

## ② Cover all types of cases

The statute should authorize the court to appoint foreign language interpreters in all cases, including civil and family, and allow the county to be reimbursed for those services. Civil cases impact significant economic and family interests and deserve the same

### Why must court interpreters be so skilled?

Court interpreters must have enough fluency to convey the meaning, tone, and formality of a wide range of expressions. The court interpreter must be comfortable in a range of communications from legalese to profanity.

Excerpt from an insurance contract:

- Incontestability: This policy shall be incontestable except for nonpayment of premiums, after two years from its date of issue. New statements made by any person insured under this policy relating to his insurability shall be used in contesting the validity of the insurance with respect to which such statement was made after such insurance has been in force prior to the contest for period of two years during such person's lifetime nor unless it is contained in a written instrument signed by him. (Recently posted as "brain twister of the month" on the website of the National Association of Judiciary Interpreters and Translators)

Excerpt from a trial transcript:

- "The third time he goes up to him, he gives him the finger. I mean, this is not somebody who's trying to remain cool. What he did, he gets into the fray, right in the guy's face, nose to nose with him, and says "You're a punk, motherf\_\_\_\_\_!"

level of accessibility and accuracy. Family and paternity cases are very complex, requiring parties to negotiate property settlements and shared custody arrangements, and to comply with child support and restraining orders. Domestic violence restraining orders have serious safety implications and cannot be effectively enforced unless the victim is able to express the need for the order and unless the person restrained clearly understands the restrictions. Many civil cases have criminal implications if a party fails to understand and comply with a court order. Traffic cases form many people's first impression of the court system, and sometimes lead to loss of livelihood when a person's license is revoked. Finally, a growing number of parties are representing themselves in court; if they also appear without an interpreter, the misunderstandings and frustrations can be exponential. Although judges currently have the statutory authority to appoint interpreters for indigent parties and witnesses in civil cases, most courts do so only infrequently.

### **③ Eliminate the indigency requirement**

The statute should authorize judges to appoint foreign language interpreters and allow counties to be reimbursed whether or not the party, witness, or parent is indigent. Interpreters are crucial to the integrity of court proceedings, and are necessary to assure that what happens in court in English is what also happens in another language. When parties are forced to provide their own interpreters, they most often bring their children, other relatives, or community leaders and advocates. It is unlikely that these assistants have adequate interpreting skills and understanding of legal proceedings, while their potential for conflicts of interest is high.

Many Wisconsin residents, especially ones with limited English skills, live from paycheck to paycheck. Because the standards for indigency are set very low, many parties who are not technically indigent are still unable to afford the services of an interpreter in addition to all other costs. If parties are required to pay for a neutral paid interpreter, it becomes a cost that applies only to people of limited English proficiency. Equal access in communication is demanded by the Americans with Disabilities Act, in order that disabled persons may fully participate in court proceedings and obtain their rights thereby. There is no justifiable reason to deny equivalent access to speakers of foreign languages.

Even if a party can afford to hire a paid interpreter, allowing a financial relationship between interpreter and client undermines the neutrality needed by the court; the interpreter should report only to the judge. The committee considered but firmly rejected including a statute that would allow the court to assess the interpreter's fee as a court cost against a nonindigent party. Such a clause would undermine the basic premise of the statutory changes and would put pressure back on judges to cut costs at the expense of equal access to the courts. Interpreters should be provided as part of the basic package of court services, like the court reporter and the bailiff. The purpose of the interpreter is to ensure the accountability and fairness of the court proceedings, and that is a fundamental cost of government services to be borne by all.

### **④ Cover out-of-court proceedings**

Judges should be authorized to appoint interpreters, and counties should be reimbursed, for certain out-of-court proceedings ordered by the court. These include court-ordered psychological exams, mediation, and

court-ordered pretrial and settlement conferences held adjacent to the courtroom. These proceedings are held for the benefit of the court and involve the same considerations. Interpreter services used by the clerks of circuit court at the counter will also be covered. These provisions would not shift the responsibility for providing interpreters for attorney-client interviews, child support reconciliations, presentence report investigations, and other administrative proceedings. Although these are sometimes ordered by the court, they should remain the responsibility of the administrative agencies as they are now, under their own obligations to provide access and communicate with clients.

## **⑤ Include crime victims**

The Victims' Rights Act, ch. 950 of the Wisconsin statutes, provides comprehensive protection for the rights of crime victims, witnesses, and parents of minor victims. These protections include the right to attend court proceedings, to make statements at sentencing or disposition, and to provide information to the court on the effect of the crime on the victim. These rights cannot be exercised effectively by a person of limited English proficiency without the assistance of an interpreter. The ability to report and prosecute domestic violence in immigrant communities is an issue of particular concern for many district attorneys and domestic violence advocates. Wis. Stat. §885.37 should be revised to provide court-appointed interpreters for victims, to make the protections of the Victims' Rights Act available to all.

# Chapter 3. Changes to the rules of court

---

The committee recommends that the Wisconsin Supreme Court make four primary changes to the rules of court:

## ❶ Require certified interpreters whenever available

The committee will draft and recommend to the Supreme Court a rule governing the procedures for trial courts to follow when providing a court interpreter. The rule will start with the presumption that the court will use a certified interpreter if one is available in the language needed. This assures that the interpreter will have the language skills, legal knowledge, and understanding of the code of ethics necessary to provide adequate services to the court and to protect the rights of the limited English proficiency person.

The court rules will require judges to make diligent efforts to find a certified interpreter and summarize those efforts for the record. If a certified interpreter is unavailable, the court may appoint a noncertified interpreter from the court's roster, after considering the seriousness of the case, the nature of the proceeding, and the need for timeliness. If a noncertified interpreter is used, the court will be required to review that interpreter's qualifications on the record and to state why the interpreter is found to be qualified. The court will first refer to the court's roster for certified and uncertified interpreters, and will only use an interpreter from off the roster if there is no alternative and if the court finds that the person is qualified. If no certification exam is offered by the Director's office in the required language, or no interpreter has passed that exam, then it is presumed that no certified interpreter is available for the purposes of this rule.

In practice, this system of presumptions requires a court to use a certified interpreter rather than a noncertified interpreter any time one is available. If no certified interpreter is available, the court must evaluate the totality of the circumstances, including the gravity of the proceedings and the potential penalty or consequence, to determine if a noncertified interpreter may be used. For serious substantive proceedings, where a person's liberty or property interests will be affected by judicial action or where significant constitutional rights are compromised, it should be an unusual situation where the court relies on the services of a noncertified interpreter. The court must also determine whether it would be more appropriate to use a certified interpreter by telephone. The rule will be structured to require the use of the most qualified interpreter available.

## ② Establish a court interpreter certification program

The committee recommends that the Director of State Courts establish a program to test and certify language interpreters, using standardized tests developed by the National Center for State Courts for this purpose. The certification exam tests knowledge of English and the target language, ability to interpret accurately and completely between the two languages, and ability to convey legal concepts. In the consortium foreign language exams, interpreters are tested in three modes: consecutive interpretation (question and answer), simultaneous (continuous, while proceedings are ongoing), and sight (oral interpretation of a written document). Tests are graded using scoring units such as numbers and names, idioms, legal terms, changes in tone and formality, and descriptions. The tests are administered via audiotape by in-state proctors, then sent to an experienced team of raters to be graded off-site. The passing grade in most states is set at 70%. This passing level is needed to assure competence, but many persons now working as interpreters do not come even close to this score, underlining the need to improve services.

Certification will be noted on the state roster. Certified interpreters must be called first to see if they are available, and will be paid more per hour when they work. Because of the costs involved in administering the exam, Wisconsin at first will offer the certification test only in Spanish and Hmong. Foreign language interpreters will be granted reciprocity by the Director's office if they are certified by another state court belonging to the NCSC Consortium or by the federal courts. Sign language interpreters must present the legal certification offered by the National Registry of Interpreters for the Deaf. In addition, certified interpreters will be required to attend the Wisconsin orientation workshop, pass a written comprehension test, and sign an affidavit agreeing to abide by the interpreter code of ethics.

### Why is legal certification important?

In a recent criminal case, the police asked a local sign language interpreter to interpret a Miranda warning to a suspect. The interpreter had a basic sign language certification but not a legal certification. The police videotaped the warning and the interpretation, so the trial court was able to review it later.

Expert witnesses testified that for the concept "rights," the interpreter used the sign for "all right" or "okay," and the defendant's responses showed he understood the sign as "all right" or "okay." "Decide for yourself" and "the choice is yours" were rendered by the interpreter as "decide itself," which did not convey that the recipient of the message is to take an action or has a choice. The interpreter interpreted the defendant's nodding of his head to mean "yes," but in American Sign Language a head nod, by itself, may mean "I understand," "I'm waiting for clarification" or "go ahead," and does not necessarily mean "yes."

At no time, one expert testified, did the defendant express that he understood his rights. Another expert characterized the communication between defendant and interpreter as "disconnected." Under these circumstances, both the trial court and the appeals court concluded that the defendant's waiver of the right to counsel was not knowing and intelligent. *State v. Hindsley*, 2000 Wi.App. 130, ¶14-15, 614 N.W. 2d 48 (2000).

### ③ Develop a statewide roster of trained interpreters

The Director's office should also establish a program for training and screening noncertified interpreters to be used when certified interpreters are not available. The Director's office should maintain and publish a statewide roster of certified and noncertified interpreters who have been screened to work in the courts. Inclusion on the roster as a noncertified interpreter indicates that an individual has met certain minimum requirements, but does not guarantee the level of proficiency demonstrated by a certified court interpreter. If neither a certified nor a noncertified interpreter is available, the appointing authority may appoint a person not listed on the roster. This may include an interpreter who does not normally interpret in the courts but who is needed for a rare language.

### What kinds of problems are caused by unqualified interpreters?

The committee heard of many problems caused by incompetent or unethical interpreters, including the following:

- An interpreter who confused "hat" and "gloves" until corrected by a bystander in the audience.
- A defendant who spent three years in jail awaiting trial because of problems in interpretation.
- An interpreter who softened a defendant's testimony in a way that probably led the jury to convict the defendant of reckless rather than intentional homicide.
- A district attorney who asked an interpreter to read a plea agreement to a pro se defendant, explain it to him, and ask him to sign it.
- A judge who asked a woman to interpret for her husband during their divorce trial.
- An interpreter who asked the limited English proficiency party to pay for his services even though the interpreter was already being paid by the court.
- A defendant who victimized speakers of various Asian languages, but who faced trial only on those counts where an interpreter could be found for the victim's language.
- Judges who used the arresting officer or another prisoner as an interpreter.
- Children who were asked to interpret for their parents, including cases where sexual matters were discussed.

To be included on the court interpreter roster as a noncertified interpreter, an interpreter must attend the Wisconsin orientation workshop, pass a written comprehension test, submit to a background check, and sign an affidavit agreeing to abide by the interpreter code of ethics. There is no language proficiency test for noncertified foreign language interpreters. Interpreters working with deaf, deaf/blind, or hard of hearing individuals must hold a generalist certificate demonstrating a minimum level of language competence to be included on the roster.

When an interpreter from the roster is unavailable, the court must determine if it is appropriate to proceed with an interpreter not on the roster or without an interpreter at all. The committee will recommend that the court rules guide the judge in this situation by requiring that the court evaluate the totality of the circumstances, including the gravity of the judicial proceeding and the potential penalty or consequence involved. The court shall consider whether it would be appropriate to use a certified interpreter by telephone, based on guidelines from the Director's office. To determine if the particular interpreter not on

the roster is qualified to interpret for the proceeding in question, the court shall interview the proposed interpreter and make a finding that the individual appears to have language skills, knowledge of interpreting techniques, and familiarity with interpreting in court or administrative proceedings sufficient for the proceeding at hand. Again, interpreters working with deaf, deaf/blind, or hard of hearing individuals, an interpreter must at a minimum hold one of the generalist certificates.

#### **④ Implement an interpreter code of ethics**

The committee submits to the Supreme court a code of ethics for court interpreters (See attached Appendix 4). Interpreters, judges, and attorneys are often unaware of the proper role of the court interpreter and the professional responsibilities it demands. The purpose of the code of ethics is to articulate a core set of principles to guide the conduct of a court interpreter and to educate judges in the level of conduct to be expected. The code addresses accuracy and completeness, representation of interpreter qualifications, impartiality and conflict of interest, professional demeanor, confidentiality and restriction of public comment, limitations on giving legal and other advice, communicating interpreter limitations to the judge, reporting ethical violations, and professional skills development.

The code of ethics will serve as a basis for education and training and may also serve as the basis for disciplinary actions. Interpreters who appear on the state roster will be required to attend training and pass an examination on the principles of the code of ethics, and will agree to submit to discipline for any violation. Disciplinary action may include a period of suspension from service to the court or decertification and removal from the roster.

### **What happens when interpreters have a conflict of interest?**

Social service providers serving limited English proficiency clients face a difficult set of ethical dilemmas. Clients go to these agencies seeking assistance from someone of their own ethnic community in solving a range of problems, some of which are legal in nature. These bilingual social workers first advise the client, then accompany the client to an administrative proceeding or court hearing. Frequently, the hearing officer or judge asks the social service provider to act as an interpreter, and the social worker agrees to do so. Although the social worker may know that in her role as an interpreter she should stay neutral and not offer advice to the client, in her role as social worker she often offers the client advice. The blurring of the two roles creates ethical dilemmas for social workers. The agency may or may not be paid for providing interpreting services in this manner.

## Chapter 4. Funding and staff needed

---

The committee proposes that the major costs of interpreter services be shifted from the counties to the state. Following the model recommended by the National Center for State Courts, other states have moved from planning and paying for interpreter services at the county level to statewide programs and budgets. Minnesota is making this transition now, and at least seven other states have already done so. They shift to state funding for several reasons: to meet the supreme court's statewide responsibility to provide equal access to the courts, to equalize costs and services across the state, to remove any economic disincentive to use interpreters where needed, and to avoid the sense that interpreter use is just another unfunded state mandate imposed by a centralized system that doesn't understand local problems.

The committee recommends three funding changes: 1) appropriating enough money to include civil cases, nonindigent parties, and increased use of certified interpreters under existing §885.37; 2) raising the rate of reimbursement to the counties under existing §814.67 to a realistic amount per hour; and 3) providing program funding and one project position to develop and implement a statewide program for training and testing court interpreters. Based on the committee's plan, the Wisconsin Supreme Court has submitted a request for additional funds for increased interpreter reimbursement to the counties, totaling \$590,000 for budget year 2001-02 and \$1,220,000 for budget year 2002-03. The budget request also includes funding for the training and testing program and staff, totaling \$97,800 for 2001-02 and \$100,800 for 2002-03. The total request for the first biennium is \$2,008,600.

### ❶ Provide funding for expanded number of cases

Under the committee's proposal, the demand for certified interpreters is expected to increase gradually over the biennium for three reasons: (1) statutory changes will increase the number of cases where interpreters are appointed; (2) judicial and attorney training will raise awareness and demand; and (3) the state's foreign-language population will go on increasing even if the Supreme Court and the Legislature do nothing at all. The committee's projected costs are based on the following assumptions:

- Wisconsin's 72 counties currently spent an estimated \$568,646 in 1999 on freelance billings and staff interpreters for court proceedings. Current billings appear to reflect an average market rate of approximately \$40.00 per hour. The state currently appropriates \$188,800 annually to reimburse the counties for these expenses. (See Appendix 1, describing the information used to arrive at the estimated county cost.)
- Expanding the statute to cover all case types will approximately double the number of cases covered once the statutory change becomes effective. In 1999, there were 173,780 filings in the categories currently covered by statute, primarily criminal and juvenile cases. The civil cases proposed to be included are mostly general civil, family, paternity, small claims, and probate, of which 133,167 cases



were filed in 1999. Contested traffic cases should also be included, because of their effect on the defendant's driving record and ability to earn a livelihood, as well as the fact that this is the only place most citizens interact with the court system. There were 72,844 contested traffic cases filed in 1999. On the whole, expanding the statute is expected to double the number of cases covered, which will approximately double the costs.

- Expanding the statute to cover non-indigent parties is expected to have only an incremental effect. A high percentage of recent immigrants are indigent and already qualify for court-appointed interpreters. Especially in criminal cases, the increase should not be great, since most criminal defendants are indigent or are sufficiently poor that the court already exercises its discretion to appoint an interpreter. For civil cases, many parties in family, paternity, small claims, and domestic abuse TROs are indigent, while the rate of indigence is much lower in civil, probate and adoptions.
- Achieving Americans with Disabilities Act compliance should not be a major additional expense, since most judges and clerks of court understand the federal requirements and are complying already, and the number of related interpreter requests is relatively small.
- Increased awareness will have a significant impact on the rate at which courts hire interpreters. Judicial education and a strong court rule should result in many more appointments of certified and qualified interpreters and decrease the reliance on family, friends, and untrained agency staff. The committee estimates that better judicial awareness and strong court rules will approximately double the current use of paid interpreters.

Each of these effects will be felt over several years. Because of a delayed effective date for the statute changes, the cost of the changes will be lowest for budget year 2001-02. Costs will increase during 2002-03, as judicial education takes effect and the first group of certified interpreters becomes available. Because practices vary from county to county, there are limitations on the committee's ability to estimate how many cases will be added by a change to the statutes. The committee's estimates are consistent with information obtained from other states indicating that court interpreter costs can be expected to rise rapidly when the need for well-qualified interpreters is finally recognized. Once the committee's recommendations are fully implemented, it will take several years to measure the accuracy of these cost projections. After the first five years, projected costs can reasonably be estimated from projections of population growth among various ethnic groups.

Although overall costs of providing interpreter services will increase under the committee's proposals, there will be some offsets: easier scheduling, less delay, more efficient proceedings in court, better records, and fewer appeals. Clerks of court currently spend many hours scheduling interpreters; they will be greatly aided by a statewide roster showing languages, qualifications, and contact information.

## ② Set county reimbursement rates at a reasonable level

The rate of reimbursement under §814.67, currently \$35.00 per half-day for circuit courts, should be increased to a rate closer to full reimbursement for the counties. The current statutory rate does not come close to the rate that the counties must pay to find well-qualified interpreters. The committee surveyed the clerks of circuit court to determine the current market rate for court interpreters. It found that counties paid an average of \$40.00 per hour for court interpreters in the last half of 1999. This rate varied from county to county but did not follow a pattern based on regions of the state or rural/urban courts. The

average rate was the same for foreign languages as it was for sign language. The committee also studied the rates paid in other states with similar interpreter certification programs, and found that \$40.00 was in the middle of the range paid for certified interpreters.

Based on this information, the committee recommends that the statute be revised to set an hourly reimbursement rate of up to \$40.00 per hour per certified interpreter and up to \$30.00 per hour per noncertified interpreter. The differential between certified and noncertified interpreters is designed to recognize the increased skills and professionalism of certified interpreters, and provide to an incentive for noncertified interpreters to attend training and take the exam. By setting a cap on the amount of reimbursement, the statute will continue to encourage negotiation of interpreter fees and cost control at the county level. However, the hourly rate should be subject to an automatic cost of living increase to keep the rate close to the actual market rate for well-qualified interpreters, so that the rate does not become as far out of date as it is now.

In addition, the statute should be rewritten to minimize the paperwork associated with three times as many reimbursement requests. The statute should give the court Office of Management Services the authority to require that reimbursement requests be submitted within certain time limits and to send reimbursement checks on a quarterly basis.

## ⑨ Develop a court interpreter project

The committee recommends that the Director's office develop the interpreter training and certification program and judicial education program through a two-year project position located in the Director's office, with funding sufficient to conduct statewide training programs. If the program is successful and the workload continues as anticipated, a permanent position may be sought later.

**Interpreter training.** The committee recommends an extensive program of interpreter training and oversight, including orientation programs, ethics training, written comprehensive tests, certification tests, advanced language-specific training, background checks, and disciplinary powers. The details of this program are discussed in chapter 5 of this report.

The cost for the first two years of the training and testing program is \$89,000. This includes a one-time faculty development program to train Wisconsin interpreters, judges, and court staff to act as interpreter trainers; a series of seven orientation workshops around the state, creating the base for a statewide roster of interpreters; administration of the certification exam in Spanish and Hmong; advanced training in Spanish and Hmong to expand the pool of certified interpreters; and reprinting the interpreters handbook.

**Interpreter coordinator.** One project position is requested in the director of state court's office to develop the interpreter program. The first years of the program will be staff-intensive, writing curriculum, establishing a testing process, identifying and coordinating faculty, compiling mailing lists and rosters, and other start-up tasks. The interpreter coordinator will administer the written comprehension and certification test, conduct background checks, work on interpreter recruitment, maintain interpreting information on the court's Website, and provide related assistance to the circuit courts. The interpreter coordinator will work with the Office of Judicial Education to design ongoing

education programs and materials for judges, court staff, and attorneys. The coordinator will also evaluate the program to measure its effect and recommend improvements.

At least eight states have a position in the director’s office dedicated primarily to court interpreter issues. At least three other states have “access” coordinators who work on interpreter programs along with race and disability issues. In addition, many metropolitan courts have developed interpreter programs just for an individual city or county. In Wisconsin, Milwaukee County has received a one-year grant from the state Office of Justice Assistance to begin working on interpreter issues on behalf of the circuit court. The Milwaukee position will develop procedures for providing interpreter services, work with judges and court commissioners on interpreter issues, perform research and analysis, and work closely with the Director of State Courts office to coordinate efforts. The committee has requested a project position in order to demonstrate the worth of the program, but expects to request a permanent position in two years if the program works out as expected. Other states have found that a well-run interpreter program requires staff, and that the need for training, testing, and maintaining an interpreter roster is an ongoing process.

The interpreter coordinator should be hired and begin work as soon as possible. The beginning salary for the project position is estimated at \$43,700 for a person with a strong background in languages, adult education, and program development.

### What will effective interpreting cost?

Current reported annual cost paid by counties for freelance interpreters	\$488,646
Milwaukee staff interpreters	\$ 80,000
<b>Total reported costs for interpreter services</b>	<b>\$568,646</b>
<b>Current annual amount of state reimbursement</b>	<b>\$188,800</b>
<b>Estimated increased costs due to change in reimbursement rate</b>	
2001-02	\$195,000
2002-03	\$305,000
<b>Estimated additional costs of covering all cases, nonindigent parties</b>	
2001-02	\$295,000
2002-03	\$610,000
<b>Estimated effect of judicial education, increased interpreter availability</b>	
2001-02	\$100,000
2002-03	\$305,000
<b>Total new funding needed under §20.625(1)(c)</b>	
2001-02	\$590,000
2002-02	\$1,220,000
<b>New funding for interpreter services this biennium</b>	<b>\$1,810,000</b>
<b>Training and testing program</b>	<b>\$89,000</b>
<b>Interpreter coordinator</b>	<b>\$109,600</b>
<b>New program funding this biennium</b>	<b>\$198,600</b>

# Chapter 5. Interpreter certification & training

---

The first two years of the state interpreter project are designed to provide a basic level of training and comprehension testing for interpreters across the state, and to offer the first round of certification tests in Spanish and Hmong. The project will develop a statewide roster with the names, phone numbers, languages, and qualifications of the interpreters who have passed the comprehension and certification tests.

## ❶ Orientation workshops & comprehension tests

**Orientation workshops.** Before potential interpreters are placed on the court roster, they will be required to attend a two-day orientation to court interpreting. The curriculum will focus on ethical conduct, legal terminology and court procedure, and basic legal interpreting skills. The orientation will give interpreters a good introduction to court work, allow some practice time, and help the trainees decide if they are ready to pursue the certification test. Class size will be limited to promote better interaction with faculty and more experienced interpreters who attend.

The faculty for the orientation workshops will be developed using a “training the trainers” model recommended by other court interpreter programs. Nationally recognized interpreter trainers will be hired from outside the state to train Wisconsin trainers. The Wisconsin faculty will include a limited number of judges, court administrators, and Wisconsin court interpreters, those with the best interpreting skills and the best potential for becoming trainers themselves. The outside trainers will help develop the skills of the Wisconsin trainers, then guide the administration of the first orientation workshop and critique the performance of the Wisconsin trainers. This will enable Wisconsin to give the workshops at much lower cost in the future and will create a core constituency of skilled interpreters and judges who understand and support the program. These trainers will also be helpful for judicial education programs and conferences. The committee recommends that the first workshop be offered in late 2001.

**Written comprehension test.** Immediately after the end of the orientation workshop, there will be a three-part written test covering ethics, legal terminology and procedure, and general English usage. This test is currently being developed by National Center for State Courts Consortium and tested by the Oregon state courts. Interpreters will be required to pass this test in order to be placed on the roster and to advance in the program. Examinees who fail will be offered feedback on each part of the test to help them develop their knowledge as needed. It is important to note that the written comprehension test is a screening device for basic court knowledge and can be passed by any English-speaking person who studies the materials. It should not be confused with the certification test, which tests for language proficiency and the ability to translate legal concepts between English and another language.

## Why do interpreters need training and monitoring?

A victim-witness coordinator observed the following:

“A juvenile defendant was tried for battery and disorderly conduct. The juvenile and victim were both Hmong and both required interpreters. The interpreter for the juvenile had never been in a courtroom before, and you could tell she did not know when to interpret and did not understand the court proceedings. The juvenile defendant did not receive much interpretation, because the interpreter seldom spoke. The judge had to keep informing her that it was OK to talk to the juvenile during the court proceedings.”

During the first two years, the workshop and written comprehension test will be offered in seven cities on a regional basis. This will provide a basic level of training and screening for most interpreters currently working in the courts. In later years, orientation training will be offered when and where needed.

### **Advanced language-specific courses.**

The two foreign languages most used in Wisconsin courts are Spanish and Hmong. Other states have found that they can certify a sizeable number of practicing Spanish interpreters with the first test, while another group can be certified with some additional training. Asian languages often prove more difficult for many reasons, resulting in frustration with the test and the courts. The

Wisconsin program will offer advanced training in Spanish and Hmong during the first two years to make sure there is a reasonable pass rate and a larger pool of certified interpreters available to the courts.

Advanced training will also cover intercultural issues and interpreting for other legal settings such as jails, mental health hearings, and attorney conferences.

## ② Certification tests & reciprocity

**Certification test.** The certification exam tests knowledge of English and the target language, ability to interpret accurately and completely between the two languages, and ability to convey legal concepts. In the consortium foreign language exams, interpreters are tested in three modes: consecutive interpretation (question and answer), simultaneous (continuous, while proceedings are ongoing), and sight (oral interpretation of a written document). Tests are graded using scoring units such as numbers and names, idioms, legal terms, changes in tone and formality, and descriptions. The tests are administered via audiotape by in-state proctors, then sent to an experienced team of raters to be graded off-site. The passing grade in most states is set at 70%.

Certification will be noted on the state roster so that courts will know that these are the most highly qualified interpreters available. Certified interpreters must be called first to see if they are available, and will be paid more per hour when they work. Initially, Wisconsin will offer the certification test only in Spanish and Hmong, the two languages most in demand.

**Reciprocity.** Foreign language interpreters will be granted reciprocity by the Director’s office if they are certified by another state court belonging to the National Center For State Courts Consortium or by the federal courts, and if the interpreter has completed the other eligibility requirements. Sign language interpreters must have the legal certification offered by the National Registry of Interpreters for the Deaf.

**Sign language certification.** The committee recommends that the Directors office should not develop its own certification test for American Sign Language and other forms of communication with deaf and hard of hearing individuals. Certification tests for sign language interpreters are already given by a well-respected national organization, the Registry of Interpreters for the Deaf (RID), which offers several basic certificates and a specialized legal certificate. (The National Association of the Deaf also offers a basic test in some states, although it does not have a legal certification.) Basic and advanced legal training are offered locally by the Wisconsin RID chapter. There is no need to duplicate these functions.

Sign language interpreters will be eligible for the statewide roster if they have one of several basic RID or NAD certificates. They will be considered certified for purposes of the Wisconsin court program if they have received the RID legal certification (SC:L). To make sure that sign language interpreters have received the same information and screening as foreign language interpreters, they will still be required to take the Wisconsin court orientation workshop, pass the written comprehension test, submit to a background check, and sign the ethics affidavit.

### ③ Other roster requirements

**Ethics affidavit.** In order to be included on the statewide roster, all candidates who have passed the written comprehension test will be asked to sign a statement indicating that they have read, understood, and will abide by the Wisconsin Interpreter Code of Ethics. Interpreters appearing on the roster agree to submit themselves to possible disciplinary action by the Director's office, including suspension or exclusion from the roster and from future employment by the courts of Wisconsin.

**Future program ideas.** Once the interpreter training and testing program is established and it appears that there will be a core group of certified interpreters working on a regular basis, the director's office should consider whether to offer continuing professional education courses, and whether to require a certain number of continuing credit requirements for courses offered by the court, professional associations, colleges and universities, etc. At a later point in the program's development, the Director's office should also consider whether to develop a mentoring program that allows new interpreters to work closely with experience interpreters using court observations, sharing of techniques, and advice. The committee also plans to discuss whether a background check should be required before any interpreter is accepted for inclusion on the roster.

Fees will be kept low for the first two years while the program establishes its credibility and demonstrates to interpreters why they should take the training and do the work necessary for certification. Low fees will also make it possible for low-income bilingual people to attend the programs and be listed on the roster. Once the program is established, the committee will consider the optimum level for program fees. Other states have found that it is not possible to charge high enough fees to make the program self-supporting, and that forgoing fees for the first few years promotes the broadest pool of interpreters.

### ④ Recruiting new interpreters

**Interpreter recruitment.** In the first two years of the program, the director's office should keep current interpreters informed about the new training and testing requirements. Working through the

interpreter's committee and court staff, the Director's office should publicize these recommendations using a mailing list of current court interpreters developed by the committee. The Director's office should work closely with the Wisconsin Registry of Interpreters for the Deaf, the Bureau of Deaf and Hard of Hearing, and other interested agencies. Further publicity should follow when the code of ethics is passed, when court rules are put in place, and when training and testing programs become available. The Director's office should use the court's Web site or a newsletter for regular communication.

Even after the program is established, there will still be a need for ongoing interpreter recruitment efforts. The need for court interpreters should be publicized through the foreign language media, community and religious organizations, job fairs and training programs and ethnic community events. The Director's office should publish a brochure on becoming a court interpreter, add information to the court Website, and develop a list of sources for further training outside the court system. The Director's office should work with organizations interested in providing basic and advanced interpreter training such as universities, technical colleges, nonprofits, and advocacy groups. These efforts should be coordinated with ongoing judicial, clerk, and attorney education programs.

## **⑤ Long-term effect of the training & certification program**

By following these recommendations, the State of Wisconsin can expect to have a significant and respectable court interpreter program within five years. Experience in other states suggests that the courts can expect to have a small pool of certified Spanish interpreters in urban areas within the first two training and testing cycles. After five years, certified Spanish interpreters will be available for most proceedings in the counties that use Spanish interpreters regularly. Certified interpreters should also be available to travel to other counties for the more serious and lengthy proceedings.

Achieving an adequate distribution of Hmong interpreters will be more difficult. Minnesota is the only state to have offered the Hmong test, and it has only two certified Hmong interpreters so far. Given this experience, Wisconsin can expect to have only a few certified Hmong interpreters for the near future, enough to cover one or two metro areas and perhaps travel for felonies or similarly serious cases. The Minnesota court interpreter program has suggested collaboration with the Wisconsin program to increase the number of training opportunities and the size of the Hmong interpreter pool. Most states find that they never have enough certified interpreters for all proceedings in all areas of the state. Areas of the state that do not have a large Spanish-speaking or Hmong population will need to import certified interpreters when the need arises.

Wisconsin already has a pool of legally certified sign language interpreters, and a number more can be expected to take the Registry of Interpreters for the Deaf legal test once the courts require legal certification and pay more for it. For other languages, there may be a few interpreters certified by other states who apply for reciprocity in Wisconsin. For the most part, services in other languages will be provided by noncertified interpreters. The qualification of noncertified interpreters will be improved as well, since all interpreters on the roster will have received at least a minimum level of training and been tested on their understanding of English, court terminology and procedure, and the interpreter code of ethics.

## Chapter 6. Training for judges & others

---

Training and certification of court interpreters will be of limited value unless accompanied by training for judges, clerks of court, lawyers, social workers and other professionals. These professionals must be trained to recognize when an interpreter is needed, understand the qualifications required, work effectively with the interpreter in court, provide proper oversight of interpreter performance, and recognize Americans with Disabilities Act issues. With the approval of the Supreme Court and the assistance of court staff, the committee will develop a well-integrated program of professional education and resource materials during its second year. These recommendations will have the greatest effect if a staff person is added to coordinate a professional education effort and if the rules of court are amended as suggested.

The **interpreter handbook** should be revised to be a handbook for judges and clerks as well as for interpreters. Changes to the statutes and court rules should be added, the code of ethics should be incorporated, and the training and certification program should be described. The handbook should incorporate ideas from the Minnesota Best Practices Manual and the National Center for State Courts Court Interpreting Model Guides for preferred judicial practices and procedures.

The five **circuit court benchbooks** should be reviewed to identify where interpreter issues should be noted. The interpreter committee should work with the benchbook committees to add references to civil parties, victims, and witnesses, add Americans with Disabilities Act requirements on disabled jurors, and add references to the revised interpreter handbook. The committee should also review the **municipal judge benchbook** and include copies of the revised interpreter handbook for municipal judges and clerks. The committee will provide similar review for the **reserve judge manual** and the **clerk of circuit court handbook**.

The committee plans to develop curriculum, materials, and speakers for use in professional training. The committee will incorporate training materials, videos, and demonstrations from other states. Training programs will cover the new statutes and rules, how to assess a need for an interpreter, who pays for an interpreter, how to judge the skills of an interpreter, the role of the interpreter in court, the code of ethics, how to preserve a record, jury instructions, and Americans with Disabilities Act requirements. The committee plans to develop a group of trainers and speakers to work in coordination with the interpreter orientation training.

The audience for professional training should be identified broadly. The committee hopes to schedule training for circuit court judges, clerks of circuit court, court commissioners, and municipal judges and clerks. The committee will work with the Office of Judicial Education to incorporate interpreter issues into the judicial college, judicial conferences, topical programs, clerk institutes, and municipal judge and clerk conferences. The committee hopes to work with the chief judges and district court administrators to



present short training and discussion programs for district meetings throughout the state. The committee will collaborate on professional training with the State Bar of Wisconsin, Wisconsin Clerks of Circuit Court Association, the District Attorney's Association, the State Public Defender, legal services organizations, social service providers, universities, community colleges, and community agencies.

In its second year, the committee plans to review related **forms, instructions and procedures** for consistency with the rest of the program. The committee will consider developing a pattern jury instruction that inform the jury about the role of the interpreter in the courtroom and the jury room, and an instruction that cautions bilingual jurors to rely only on the official English interpretation. The committee plans to review court forms and brochures to see where interpreter information should be added, and to recommend that certain forms, brochures, and instructions be translated into other languages. The committee will consider recommendations on using tapes or video to preserve interpreted testimony in case of a challenge on appeal.

### **What if the judge does not understand the interpreter's role?**

A criminal defendant appeared in a Wisconsin circuit court accompanied by an interpreter, who was unknown to the court. The judge did not conduct any examination of the interpreter to determine his linguistic qualifications or ask about conflicts of interest. The judge asked the defendant, "How do you plead, guilty or not guilty?" The interpreter and the defendant spoke back and forth for several minutes. Finally the interpreter said, "He'd like to request an attorney." The judge then set the matter for trial and arranged to have the same interpreter available for the all of the defendant's subsequent appearances.

# Chapter 7. Other recommendations

---

## ① Public education & support

The committee plans to publicize its findings and recommendations throughout the fall of 2000. Committee members will work to publicize the report through the Wisconsin Bar Journal, Third Branch, newsletters, English-language and foreign-language media, and will develop brochures for interpreters and for the general public.

From late 2000 to early 2001, with the approval and support of the Director of State Courts and Wisconsin Supreme Court, the committee plans to work with the Department of Administration, the Governor, and the Legislature to increase understanding of the statutory and budget proposals. Court staff plan to develop a ride-along program that allows legislators and staff to visit courtrooms and see for themselves the impact that language differences have on court proceedings. Committee members will be available to attend and testify at legislative hearings and budget meetings.

The committee plans to seek support from interested groups including judges, court commissioners, clerks of court, attorneys, interpreters, social service providers, refugee services, community and religious organizations, victim assistance organizations, law enforcement, etc. The committee also plans to meet with groups interested in the proposal, such as the Wisconsin Counties Association and the Wisconsin Clerk of Court Association. Legislative efforts may be coordinated with similar legislative proposals by the Wisconsin Council on the Deaf and Hard of Hearing.

As these proposals move through the Legislature, committee members and staff will evaluate the need for public hearings. If it appears that hearings would help gather needed information or support, staff should schedule hearings at several locations around the state and invite the groups listed above to attend, then summarize the testimony and findings for the Legislature.

## ② Telephone interpreting

Allowing well-qualified interpreters to serve by telephone is appropriate for many situations and should be encouraged within certain limitations. As part of the program, the committee plans to recommend guidelines to help judges determine when telephone interpreting is appropriate, and when an interpreter should be present in person. Training for interpreters and court personnel will cover protocols for telephone interpretation.

Current statutes permit interpreting via telephone and videoconference in civil and criminal procedures other than trial. Wis. Stats. §§807.14, 967.09. The committee is aware of only a few Wisconsin judges who regularly use interpreters via telephone. Telephone interpreting has received generally favorable evaluations from the administrative office of the federal courts, New Jersey, Florida, and the National Center for State Courts. These studies found that telephone interpreting is most suitable if it can provide a certified interpreter where none is available locally. The studies have found that it is generally not appropriate for lengthy or complex proceedings, or where there are poor acoustics.

There can be several advantages of telephone interpreting:

- using a more qualified interpreter than is available locally;
- finding an interpreter for a rare language;
- having someone available immediately when the hearing should not be postponed;
- reducing travel costs and waiting time; and
- minimizing conflicts of interest in a small community.

There can also be drawbacks to telephone interpreting:

- inaudibility due to poor acoustics or equipment;
- inaudibility due to poor practices, such as speaking too quickly or too softly, passages too long or complex to interpret properly, two people speaking at once;
- more difficult for interpreter to interrupt to ask for things repeated or clarified;
- interpreter cannot see facial expressions, exhibits, or papers; and
- speakerphones do not allow attorney-client consultation or simultaneous interpreting.

Some of these drawbacks can be overcome through better training of judges, lawyers, and interpreters, and some can be overcome through equipment purchases and technological advances. However, the National Center for State Courts study stresses that telephone interpreting has one purpose only: to avoid using unqualified interpreters. Using a telephone to reach an interpreter of unknown qualifications is counterproductive; the court must continue to exercise its obligation to conduct voir dire into the interpreter's qualifications.

**Finding qualified interpreters.** In the studies conducted by the federal and New Jersey courts, the court system had its own certified interpreters available to handle the calls. Wisconsin at present has neither certified interpreters nor staff interpreters available, so calls will need to be routed to a commercial service. At present there is one primary commercial service providing telephone interpreting services, known as Language Line (formerly AT&T Language Line). Customers call the switchboard, request a language, and are routed to an interpreter, usually within a minute. In response to demand by courts and lawyers, Language Line routes court calls first to a specialized subset of interpreters who are certified by the federal courts, California courts, or any consortium state. However, there is no guarantee that a court-certified interpreter will be available, and the customer is not told whether a certified interpreter is on the line. Language Line fees (as of May 2000) are \$3.00 per minute for court-certified interpreters. Courts must also establish an account at an initial cost of \$75.00 to \$200.00 and pay for a monthly minimum usage of \$25.00 to \$50.00.

**Purchasing specialized equipment.** Teleconferencing equipment provides much better sound quality than ordinary speakerphones and should be used where it is available. Some speakerphones or teleconference phones can be outfitted with two handsets on the same telephone line to allow for easier interviews and private conversations. There is also specialized telephone interpreting equipment in successful use by the federal courts and state courts in Idaho and Florida. The Rauch VoxOlom system has improved sound quality and is designed to allow for simultaneous translation, attorney-client consultations, and interpreter requests for clarification. It requires a special console for the interpreter (at the interpreter's office or a nearby courthouse), two phone lines in the courtroom, and a headset for the limited English proficiency person. The cost for this system as of August 2000 is \$1800-\$2100 for the interpreter's equipment and \$1000-\$3000 for the court's equipment, depending on whether compatible conference equipment is already available.

**Evaluations.** The National Center for State Courts study tested Language Line interpreters and a variety of equipment. NCSC found that Language Line could usually have an interpreter available within a minute, that the average telephone hearing lasted 11 minutes, and that the service was adequate and cost-effective in most cases. Most of the problems encountered were due to poor equipment or poor judicial practices. The federal court study used specialized interpreting equipment and certified staff interpreters, and found that to be a good combination. The administrative office of the courts subsequently purchased a number of interpreter consoles for their staff interpreters. Most federal court proceedings were under one hour in duration. The New Jersey court used certified staff interpreters and ordinary speakerphones. It found that using staff interpreters was cost-effective and provided a good level of service, but that speakerphones were of limited utility and that judges needed more training. New Jersey recommended against using a telephone interpreter for proceedings longer than 15 minutes.

**Training judges and interpreters.** Apart from equipment, most of the problems that arose in these studies were due to poor judicial practices. These problems can be overcome by training of judges, lawyers, and interpreters, and through clear written guidelines for when and how telephone interpreters should be used. The federal courts have trained both judges and interpreters to use the equipment and to understand the necessary protocols for effective telephone communication; Washington and New Jersey have provided similar training for interpreters. The committee recommends that guidelines for the use of telephone interpreters and related training be developed, and will address this issue during its second year.

### ③ Auxiliary aids

The Americans with Disabilities Act is implemented through regulations written by the U.S. Department of Justice. The regulations require courts to furnish appropriate "auxiliary aids and services" where necessary to afford an individual with a disability an equal opportunity to participate in a service, program, or activity. 28 CFR 25.160(b)(1). The regulations define "auxiliary aids and services" to include qualified interpreters, transcription services, written materials, assistive listening devices, open and closed captioning, videotext displays, and other effective methods of making aurally delivered information available to individuals with hearing impairments. 28 CFR 35.104. Americans with Disabilities Act requirements will be reviewed in the training programs for judges and court staff.

People with disabilities use a wide range of languages and communication modes. Many people who are deaf from birth use American Sign Language and will only have effective communication if a qualified American Sign Language interpreter is provided. Some deaf people use signs that follow the English word order, and some use foreign sign languages. On the other hand, many people who lose their hearing as adults use little or no sign language. Late-deafened adults most commonly communicate in English using amplification devices, oral interpreters, or writing. The court needs to provide the assistance best calculated to achieve a free flow of communication, with deference to the preference of the individual.

There is a wide and growing range of technologies available to assist disabled court users who have difficulty in communicating. For those hard of hearing and deaf court users who are proficient English readers, real-time court reporting can provide an effective form of communication access. This computer technology, when used by specially trained court reporters, produces a verbatim transcript of everything said in the courtroom. Similar to closed captioning on a television or movie screen, it allows a person with hearing loss to read words on the monitor as the court reporter types the testimony. As real-time court reporting becomes more generally available in Wisconsin courts, this technology may be a significant source of assistance to hard of hearing and deaf court users who are proficient readers.

For a complete set of recommendations on communications access for court users with disabilities, see *Access*, Report of the Wisconsin Supreme Court Committee on the Court Related Needs of the Elderly and People with Disabilities, Chapter 8 (1994).

#### **④ Future projects**

In its second year, the committee will work with the Governor and the Legislature to expand the coverage of the interpreter statute and to dedicate the resources needed for court access. It will propose changes to the rules of court governing training and certification of interpreters and a code of ethics for interpreters. It will work with the Office of Judicial Education to develop education programs and written materials for judges, clerks of court, and others.

It will consider the need for translation of court forms, instructions, and brochures. Translation requires specific skills just as interpreting does; it also benefits from review by several native speakers to make sure that the terms used are understandable by people from all regions and groups, and that Wisconsin-specific terms like “extended supervision” and “challenge incarceration” are accurately defined. The committee will consider whether to establish guidelines for translation of court documents, and will identify which languages and which forms should be available.

The committee was unable to address municipal court needs during its first year due to lack of time. This is an important area, since half a million municipal citations are issued every year, and many of those people go to court to resolve them. The committee plans to seek input from municipal courts during its second year about ways to address the procedural and budgetary needs there. The committee will also discuss the issue of interpreters for law-related proceedings in executive branch agencies. Committee work on these issues will continue through the 2001-2003 biennium, until the training and certification program is fully established.

# Chapter 8. Alternatives considered

---

The committee considered and rejected a number of alternatives during its deliberations. Some were considered incompatible with the goals of the program, while others were not suitable for implementation at this time. This chapter outlines the reasoning behind the rejection of these alternatives.

## ❶ Implement parts of the program

The committee's proposal follows a well-integrated, well-tested approach recommended by the National Center for State Courts and successfully implemented in a number of similar states. While it might be tempting from a budgetary point of view to implement only part of the proposal, the committee in its discussions has found that the various pieces of the proposal are deeply intertwined with each other.

- If the training and testing program is adopted without expanding the coverage of the statute and increasing the funding, there is little incentive for interpreters to participate. There will be insufficient demand for services and no assurance that interpreters who pass the certification exam will be paid more or hired more often.
- If the coverage of the statute is expanded without training and testing, or if judicial education alone is increased, the demand for more interpreters will far exceed the supply. Courts will be unable to comply with the statutes and will still have no way to assess the quality of the interpreters that they use.
- If the coverage of the statute is expanded without added funding, the committee anticipates that counties will be strongly opposed to the change. Judges and clerks of court will find themselves caught between the need for fiscal responsibility at the county level and the need to comply with what the state law requires.
- If the project staff position is not funded, there will be inadequate resources to develop the training and testing program, to maintain the roster of certified interpreters, and to offer training for judges, clerks, and attorneys. Either the program will fail, or it will go forward only by siphoning resources away from existing programs.
- If only parts of the training program are funded, the pass rate of the test will be lower, stirring criticism of the test, decreasing the supply of certified interpreters, and provoking frustration on the part of judges, clerks, and interpreters. There is no assurance that private sector and university training programs would be developed to meet this need.

## ② Hire staff interpreters

Milwaukee County currently employs a full-time staff Spanish interpreter who handles criminal cases, as well as some paternity and civil pro se cases. Milwaukee County contracts with two other Spanish interpreters on a regular basis. There is also documented need for Spanish interpreters in much of southcentral and southeast Wisconsin, including Dane, Rock, Walworth, Racine, Kenosha, and Waukesha counties. Under a statewide system of hiring interpreters, it might be cost-effective to create several full-time court interpreter positions to serve Milwaukee and southeast Wisconsin. Without a centralized system, the scheduling and payment problems would be very difficult. For other languages and other parts of the state, the volume of work does not appear to be sufficient to make staff interpreters cost-effective. It is possible that staff interpreters in southeast Wisconsin could serve as telephone interpreters for short hearings in the rest of the state. The committee will continue to examine this issue in future years.

## ③ Include interpreters in the circuit court sum sufficient budget

The committee has recommended that the structure be retained for the way counties are reimbursed for interpreter services, with a higher hourly amount and larger overall appropriation. However, a number of committee members felt that interpreter costs should be included in the court's sum sufficient budget, in keeping with the proper role of the court interpreter. Interpreters are an integral part of the court team, necessary to assure the fairness, accuracy, and efficiency of the proceedings. Accordingly, the statutes could properly be revised to include interpreter costs in the circuit court sum sufficient budget as a necessary cost of providing basic court services and access. If interpreter costs were paid entirely by the state, interpreter rates could be negotiated through the state district court administrators, as is done with freelance court reporters, giving the state greater control over the allowable rate to be billed. A move to state funding could also provide the necessary economy of scale to make state staff interpreters cost-effective within a region or judicial district.

The most significant impediment to state payment is the shift in workload. The responsibility of negotiating with individual interpreters would be shifted from the counties to the state district court administrators, who would need to enter into state contracts with all of the interpreters in the judicial district. The time spent verifying the billings and paying the interpreters would move from the county clerks of court to the court Office of Management Services. This would be a significant shift in workload and would require at least one additional accounting position in the Director's office. For that reason, the Director recommended and the committee agreed that the scheduling, negotiating and accounting functions should remain in the counties with the clerks of court. Since it is contemplated that eventually courts will appoint three times as many interpreters as they do today, the committee will request an additional statutory requirement that counties submit their interpreter billings quarter by quarter, to eliminate duplicate bills and improve auditing capability.

## **④ Interpreter training provided by other groups**

The court could rely on universities, community colleges, nonprofits, or professional interpreter groups to provide basic and advanced interpreter training. However, the committee has concluded that this approach would limit the influence the court would have over the content, standards, frequency, and continuity of training opportunities. The committee has also concluded that the private and university sectors are not likely to provide this training on a consistent, timely basis.

There are significant differences in the programs currently available for sign language interpreters and foreign language interpreters. The Wisconsin chapter of Registry of Interpreters for the Deaf runs a legal institute to help sign language interpreters prepare for the legal certification exam. The introductory course runs four days, followed by sixteen additional days on specific topics. The sign language legal certification exam is administered by the National Registry of Interpreters for the Deaf. For that reason, the state need not offer advanced court training for sign language interpreters.

For foreign language interpreters, legal training is more embryonic. The International Institute of Wisconsin (located in Milwaukee) is beginning a training program for interpreters in legal, medical, and mental health settings. The University of Wisconsin Milwaukee is developing a training program for Hmong interpreters in domestic violence cases, and there is some interest among other groups around the state. The committee will monitor the programs available and will encourage their development, but will put its efforts toward the orientation program developed by and for the courts.

## **⑤ Local programs and standards**

In some states, individual counties or districts set their own standards for court interpreters. In Illinois, for instance, Cook County has developed its own certification program based on the consortium model. In Florida, the judicial districts set their own standards, while the Director's office provides technical assistance and advisory testing. In Wisconsin, Milwaukee County has convened a local committee to talk about many of these same issues and has obtained one-year funding from the Office of Justice Assistance to work on interpreter issues. However, this approach creates a patchwork of rules and policies, inequitable funding, loss of the economies of scale, and decreased cooperation among counties. Adult education and test development are complex fields and require a professional approach. The validity and authority of the programs will be greatly enhanced if adopted by the Supreme Court and implemented statewide.



## Chapter 9. Conclusion

---

Language is the most basic tool of the courts. Many cases depend on a precise use of language and an understanding of what the parties intended by it. The ability to assert a position or defend one's interests is tied to the ability to communicate with one's attorney, the judge, and the jury. For someone who speaks or hears no English, the language barrier can be as significant as a lock on the courthouse door.

For immigrants to be incorporated into the rights and responsibilities of community life, they must have access to the community's way of handling business, resolving disputes, responding to crime, and attending to family matters. The same is true for persons with disabilities, as Congress has already concluded. Access to the courts enhances the integration of people into civic life and strengthens the fabric of the community as a whole. Denying access to government leads to a Balkanized society, one where many language groups lead separate lives and see no reason to respond to a centralized government. The state should take advantage of the momentum being generated by this committee to address court interpreter problems in a systematic and positive way.

The committee has attempted to present a clear plan of action that will produce visible results within a short period of time. Achieving these results will require a serious and realistic commitment of resources from the Legislature, as well as a major change in the way courts view interpreters. The committee's recommendations need to be implemented as a package in order to achieve the results desired.

By following these recommendations, the State of Wisconsin can expect to have a significant and respectable court interpreter program within five years. Certified Spanish interpreters can be available for most proceedings in those counties that need interpreters regularly, several certified Hmong interpreters will be available, and the existing pool of legally certified sign language interpreters will grow. The qualifications of noncertified interpreters will be improved as well, since all interpreters on the roster will have received at least a minimum level of training and will have been tested on their understanding of English, court terminology and procedure, and the interpreter code of ethics.

By the end of five years, all circuit court judges and clerks of court will have been offered training in contracting and working with interpreters. Similar training will have been provided for municipal judges and clerks, district attorneys, public defenders, and other attorneys interested in the topic. The state will have a strong and coherent set of statutes and court rules, and a budgetary appropriation that recognizes the importance of qualified interpreters. By following the model used in other states, Wisconsin courts can expect to eliminate many of the current misunderstandings and injustices caused by language differences, and to improve fairness and accountability on behalf of all residents.

- ① Findings on court interpreter use
- ② Language & cost maps
- ③ Current statutes & case law
- ④ Proposed code of ethics
- ⑤ Definitions
- ⑥ Bibliography

# Appendix 1. Findings on court interpreter use

---

The committee undertook a data collection effort during its first year to get some basic information on current interpreter use. The committee sought information on what languages were needed, in which counties, for what types of proceedings, whether interpreter services were provided by paid interpreters or family and friends, what the services cost, and how much interpreters were paid per hour.

The committee conducted three surveys: (1) a 72-county survey of the clerks of circuit court, asking about each county's use of court interpreters from July to December 1999; (2) a 7-county intensive survey of circuit court interpreter use from March to May 2000; (3) a municipal court survey based on telephone interviews with municipal judges and clerks from 11 cities and towns from across the state. The committee had a high rate of return on its surveys and was able to establish a useful baseline for current court practices.

## ❶ 72-county survey of clerks of circuit court

The committee sent a written survey to the 72 clerks of circuit court, asking about each county's use of court interpreters from July to December 1999. Sixty-six counties reported back, and the remaining counties most likely did not use interpreters during that period. Many of the costs estimates for the committee's budget proposal are based on these reported interpreter costs.

**Costs.** During this period, the counties reported that they paid \$242,264 for freelance interpreters. In addition, Milwaukee County spent \$24,000 for a full-time Spanish staff interpreter assigned to the criminal division of the circuit court and \$16,000 for sign language services provided by a county agency. This suggests that counties currently spend at least \$565,528 each year for court interpreters, of which only \$188,800 is reimbursed by the state. Most said this was a typical time period for costs. This figure reflects billings for paid interpreters only; it does not reflect the very common use of family members, friends, or bilingual agency staff.

**Languages.** The clerks of court were asked how often they used interpreters for particular languages during this period. Most clerks reported the number of billings paid, so again the numbers do not reflect family and agency staff, nor the times that the need for an interpreter was unrecognized. Spanish was the most common language for which interpreters are needed. Milwaukee, Dane, Racine, Waukesha, Kenosha, Brown, Walworth, and Rock counties are all heavy users of Spanish interpreters. Walworth reported that Spanish was needed daily, and Waukesha estimated that Spanish was 60% of the need.

Hmong interpreters were needed in 15 counties, and most of these counties relied on them heavily. Hmong was the language most used in Dunn, LaCrosse, Marathon, and Portage counties. Milwaukee,

Sheboygan, Brown, Outagamie, Eau Claire, and Winnebago also used Hmong interpreters frequently. The heaviest use of sign language interpreters was in the southeast corner of the state, in Kenosha, Racine, and Walworth counties. Milwaukee County usage provided by a county agency and therefore unrecorded. Only one use of a real-time reporter was recorded, but other uses may have gone unrecorded if no funding was required. Other languages needed during this time were Polish, Russian, Somali, Laotian, Slavic, Arabic, Vietnamese, and Urdu. Clerks mentioned that at other times they have also needed Korean, Tagalog, German, Turkish, Cantonese, Cambodian, Serbian, and Punjabi.

No interpreters were hired in at least 18 counties, and possibly not in the six counties that failed to respond. A number of counties noted that they hadn't hired an interpreter in all the years the clerk had been there. One clerk noted that an interpreter had never been hired because parties always brought a friend or relative.

**Hourly rate.** From information provided by the clerks of court, the committee calculated that the statewide average hourly rate for foreign language interpreters was \$39.70 per hour. When paid by the half-day, the statewide average for foreign language was \$46.00 per half-day, \$77.00 per whole day. The highest recorded hourly rate for foreign language was \$150.00 per hour; the low was \$10.00 per hour.

The statewide average hourly rate for sign language interpreters was calculated to be \$39.80 per hour. When paid by the half-day, the statewide average for sign language interpreters was \$35.00 per half-day, \$70.00 per whole day. The highest recorded hourly rate for sign language was \$70.00 per hour; the low was \$25.00 per hour. There was not a great deal of regional variability to the rates paid. Rates did not vary significantly by region of the state or urban/rural location. Occasional counties were high or low, but overall the rates were close to the average.

**Guaranteed minimums.** Thirty counties reported that they had no policy providing a guaranteed minimum number of hours. Thirteen counties guaranteed a minimum of one to four hours, and six said it was negotiable with the freelance interpreter or agency.

**Travel costs.** Most counties did not provide a separate figure for travel costs. For those that did, travel was no more than 20% of the overall cost and usually less than 10%. Travel costs were higher in Washington County, which needed a Mandarin interpreter from Milwaukee, and Barron County, which needed a Somali interpreter from Minneapolis. Telephone interpreting was mentioned by one county.

**Comments.** Most clerks offered additional comments:

- It is a constant struggle to schedule interpreters, especially at the last minute. There is a general increase in the need for all interpreters.
- It is difficult to find sign language interpreters.
- It isn't hard to find Hmong interpreters because the parties always bring their own.
- The use of telephone interpreters should not be curtailed.
- In some counties, there is an increased need in the summer months for tourists and farm laborers.
- The statute should require standardized rate of pay to eliminate fee bargaining. One clerk said, "Our hands are tied, and we have to pay what they ask." One noted that nonprofessional interpreters are much cheaper than professional ones.

The survey asked clerks to send a list of interpreters and their addresses so the committee could send training announcements. Most clerks included their lists, and the committee now has a large mailing list for this purpose. A few clerks did not send their lists, expressing the fear that they would be forbidden to use their current interpreters under the committee's proposal.

Appendix 2 contains a map showing interpreter costs by county and judicial district as derived from this survey. These reported costs form much of the basis for the committee's budget recommendations.

## ② Seven-county intensive survey

In an effort to gather more specific data, seven counties agreed to track the use of interpreters in every proceeding from March to May 2000. The participating counties were chosen for their size, geographic distribution, and the fact that they had previously used interpreters on a regular basis. The participating counties were Dunn, Kenosha, Marathon, Milwaukee, Outagamie, Racine and Waushara. These counties were asked to complete a form for each hearing that came before the circuit court where an interpreter was used; they were also asked to report if interpreters were used for client contact with the clerk of court, register in probate, or a judicial assistant.

During the three months studied, the seven counties had contacts with 1,124 people who required the use of an interpreter. If an individual returned for three separate hearings during the period, the survey counted that as three separate contacts. The contacts per county were Dunn 13, Kenosha 174, Marathon 105, Milwaukee 706, Outagamie 93, Racine 117, and Waushara 16.

86% of the interpreters were used for Spanish, 9% for Hmong, 1% for sign language, and the remaining 4% for a variety of languages, including Polish, Laotian, Serbian, Mandarin, Korean, Arabic, and Portuguese. Hmong was the predominant language in Dunn and Marathon Counties; Spanish was predominant in the others.

Three-quarters of the cases were criminal cases. The case types in which an interpreter was required were felony 17%, misdemeanor 22%, criminal traffic (including drunk driving) 33%, traffic 9%, juvenile 7%, family and paternity 11%, mental commitments 1%, and other 1%. Only one civil case received an interpreter during the survey. Interpreters were used mostly at early proceedings such as criminal initial appearances and preliminary hearings (44%), and various pretrial, scheduling, and status conferences (32%). Plea hearings and sentencings constituted 18% of the hearings, jury trials were 1%, and other types of hearings were 5%.

Of the interpreters provided, 90% were provided for the litigants. Parents of juvenile defendants or minors involved in paternity matters were provided with interpreters in 8% of the cases. 9% of interpreter use occurred out of court, often at the front counter in the clerk of court's office.

For cases in which an interpreter was required, the survey asked if an interpreter was actually used and, if so, who provided the interpreting services. There were 912 responses to this question. The responses indicated that 94% of the interpreters were paid interpreters. Many of the interpretations were provided

by the Spanish staff interpreter in Milwaukee. Other paid interpreters were freelance contract interpreters, interpreter agency interpreters, or employees of social service agencies and mutual assistance organizations. Family or friends were identified as interpreters in 4% of the cases. Only 2% of the hearings were either delayed or rescheduled because an interpreter could not be found. No telephonic interpreting was reporting during the 3-month survey.

### **③ Municipal court survey**

Many Wisconsin residents come into contact with the court system through the municipal courts, usually in response to traffic citations. Over one-half million municipal citations (enough for 10% of the population) were issued during calendar year 1999. Approximately 90,000 of those defendants (16%) made a personal appearance in court. Those people needing interpreters found barriers to access similar to those at the circuit court level.

Based on the 72-county survey, the committee surveyed cities and townships within the geographic regions showing the highest interpreter use. The committee surveyed eleven municipal courts in Ashwaubenon, Delavan, DePere, Green Bay, La Crosse, Lake Geneva, City of Madison, Town of Madison, Middleton, Milwaukee, and Wausau. Committee members conducted telephone interviews with municipal judges and clerks to collect information on the use of court interpreters.

The municipal courts surveyed reported a range of interpreter usage, needing interpreters for ½% to 5% of the caseload. Spanish and Hmong were the most languages often needed in court. The strongest need for Spanish interpreters was in the southeast portion of the state and Green Bay. Large populations of southeast Asians were found in La Crosse, Wausau, and Green Bay. Other languages needed included Laotian, Vietnamese, Thai, Chinese, Russian, Polish, and American Sign Language.

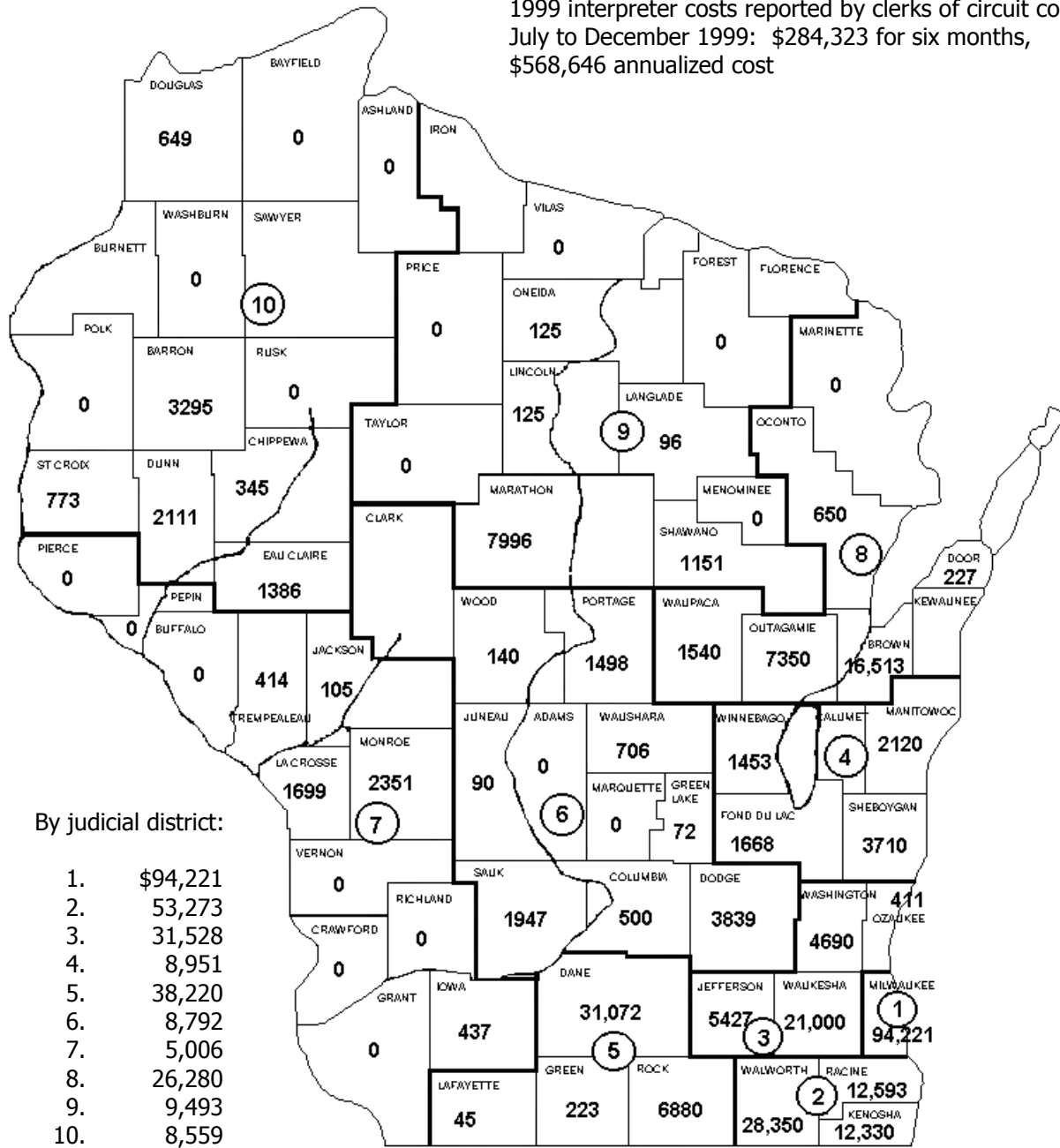
Paid interpreters in municipal courts come from a variety of resources. Milwaukee Municipal Court has in-house Spanish interpreter and the City of Green Bay has a Spanish interpreter on retainer. Cities with high Hmong populations make frequent use of the local Hmong Mutual Association. Milwaukee uses Language Line telephone interpreting services for non-Spanish languages, for proceedings other than trials. Sometimes the interpreters used are dictated by city purchase agreements with agencies or individual interpreters. No court indicated that it secured interpreters from the same lists maintained by the state district court administrators.

Friends or relatives appeared as interpreters at least 50% of the time in most municipal courts. One court used family members and friends for 98% of its interpreting needs. Several courts, including the City of Milwaukee, allowed friends or relatives for interpreters for the first appearance, but used court appointed interpreters for subsequent hearings. One court applauded the use of friends or family as a cost saving to the court. Several made comments suggesting that the cost of interpreters overshadowed considerations of quality and professionalism. Three of the courts indicated that law enforcement officers were used as interpreters, but mainly at the initial appearance stage.

# Appendix 2. Language & cost maps

## How much do Wisconsin counties spend on court interpreting?

1999 interpreter costs reported by clerks of circuit court  
 July to December 1999: \$284,323 for six months,  
 \$568,646 annualized cost



By judicial district:

1. \$94,221
2. 53,273
3. 31,528
4. 8,951
5. 38,220
6. 8,792
7. 5,006
8. 26,280
9. 9,493
10. 8,559

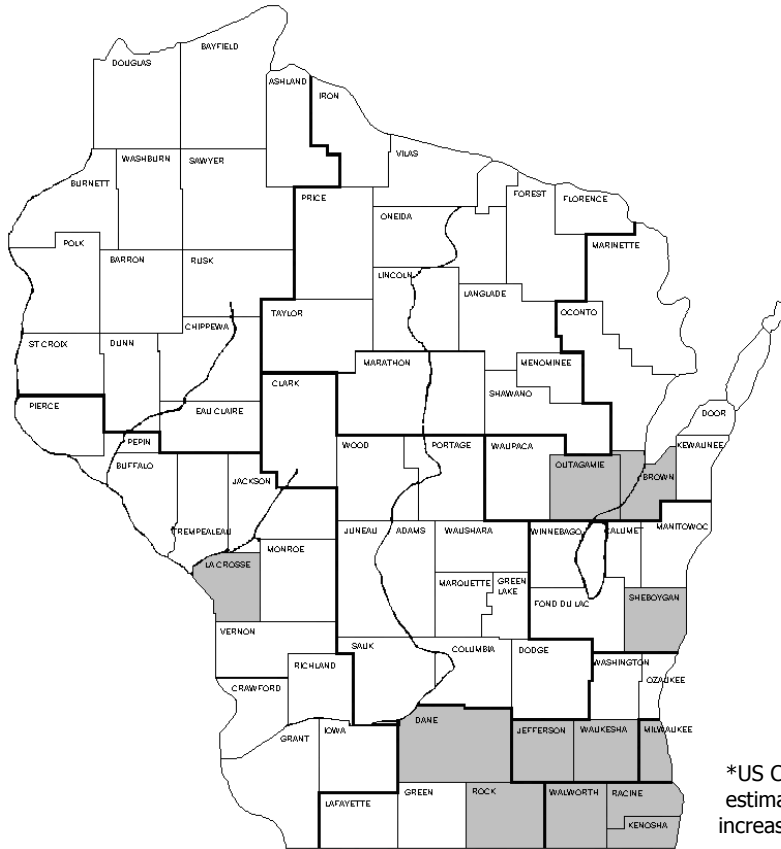
\$284,323

for six months

66 counties reporting  
 see Appendix 1 for survey description

## Which counties have the greatest need for Spanish interpreters?

Spanish spoken at home  
US Census data 1990  
Statewide total 75,931 in 1990\*



### Top counties:

Milwaukee	31,866
Dane	5,510
Racine	5,055
Waukesha	4,325
Kenosha	3,966
Brown	1,745
Walworth	1,757
Rock	1,723
Outagamie	1,246
Sheboygan	1,158
Winnebago	1,150
Jefferson	1,064
La Crosse	1,022

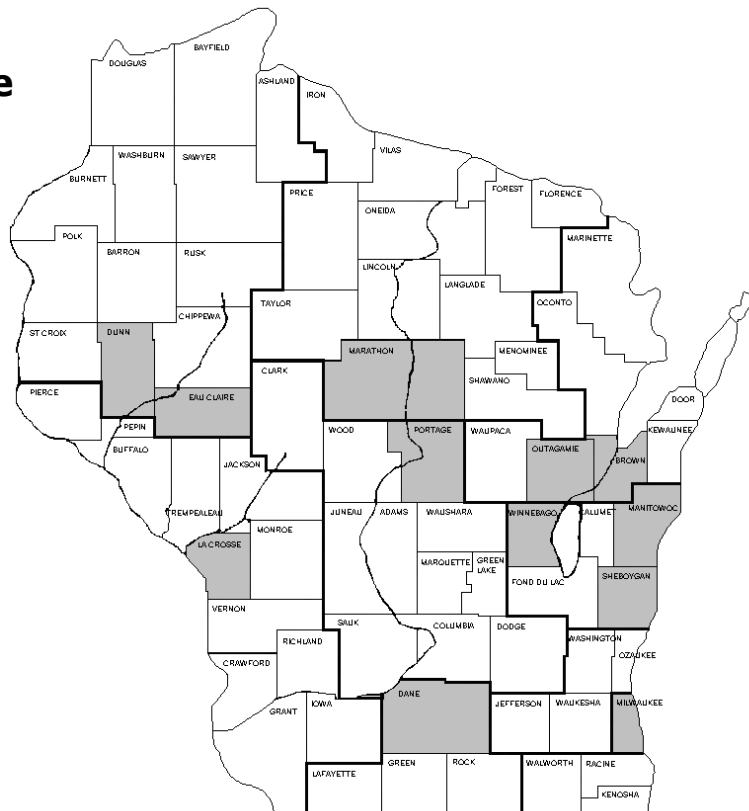
\*US Census Bureau, Population Estimates Program, estimates that the Hispanic population of Wisconsin increased 50.5% from the 1990 census until 7/1/99.

## Which counties have the greatest need for Hmong interpreters?

DWD Office of Refugee Services,  
May 2000 Statewide total 43,418

### Top counties:

Milwaukee	9,835
Marathon	4,699
Sheboygan	4,228
Brown	3,893
Outagamie	3,537
La Crosse	3,419
Eau Claire	2,959
Winnebago	2,072
Manitowoc	1,889
Dane	1,868
Portage	1,401
Dunn	1,287





**REFUGEE POPULATION OF WISCONSIN, MAY 2000**

**DWD/DES Office of Refugee Services**

<b>Ethnicity/ Language</b>	<b>Hmong</b>	<b>Lao</b>	<b>Vietnam</b>	<b>Cambodian</b>	<b>Former Soviet Union</b>	<b>Former Yugo-Slavia</b>	<b>Other Europe</b>	<b>Africa</b>	<b>Other/ Cuba</b>	<b>Total</b>
<b>COUNTIES</b>										
Ashland			1							1
Barron							2	44		46
Brown	3,893	850	73	20	145	59	64	16	27	5,147
Buffalo							1			1
Burnet			3							3
Calumet	63					23				86
Chippewa	356						20			376
Clark	32									32
Columbia							1			1
Crawford							2		4	6
Dane	1,868	458	676	400	132	178	20	129	227	4,088
Dodge	31						2		3	36
Douglas	145									145
Dunn	1,287									1,287
Eau Claire	2,959	1	70				5	3	31	3,069
Fond du Lac	406		20			7	21	12		466
Grant	36		8				2	12		58
Green			30						4	34
Green Lake	99								3	102
Iowa							4			4
Jackson	1								5	6
Jefferson	89	7	30	26	21		2			175
Juneau	7	13								20
Kenosha		25	11			76	19		4	135
Kewaunee			5			3				8
LaCrosse	3,491	47	55	25	3		32		45	3,698
Lafayette						1				1
Manitowoc	1,889	95	25			58	4		5	2,076
Marathon	4,699	513	26	35		24	8	4	3	5,312
Marinette									1	1
Marquette	30	3					4			37
Milwaukee	9,835	2,755	1,779	70	2,202	760		120	1,368	18,889
Monroe	7									7
Outagamie	3,537	4	58			30	6	8	6	3,649
Ozaukee		15	15		14				4	48
Pierce			8				1	4		13
Polk						35				35
Portage	1,401		10	4	3		1	2	3	1,424
Racine	9	103	148		5	7			16	288
Rock		153	265	222		5			8	653
Rusk	45		9						1	55
Sauk							2			2
Shawano			4							4
Sheboygan	4,228	100	20	15		195	1	1	1	4,561
St. Croix	7									7
Trempealeau									6	6
Vernon									3	3
Walworth			1			32			6	39
Washburn	6									6
Washington	100	16	30			20		1		167
Waukesha	3	302	81	25		72	3		20	506
Waupaca			37							37
Waushara			2		4					6
Winnebago	2,072	30	55			82	45			2,284
Wood	787		10							797
<b>TOTAL</b>	<b>43,418</b>	<b>5,490</b>	<b>3,565</b>	<b>842</b>	<b>2,529</b>	<b>1,667</b>	<b>272</b>	<b>356</b>	<b>1,804</b>	<b>59,943</b>

# Appendix 3. Current statutes & case law

---

## ① Federal statutes & regulations

**Americans with Disabilities Act.** The Americans with Disabilities Act (ADA), 42 USC §§12101-12213, requires that state and local government facilities, including courts, be accessible to individuals with disabilities and provide reasonable accommodations to qualified persons. The U.S. Department of Justice has published regulations implementing the ADA, found in 28 CFR Part 35. The regulations under ADA Title II require that courts and other public entities take “appropriate steps to ensure the communications with applicants, participants, and members of the public with disabilities are as effective as communications with others.” (28 CFR 35.160(a)). State and local governments are required to “furnish appropriate auxiliary aids and services where necessary to afford an individual with a disability an opportunity to participate in, and enjoy the benefits of, the service, program, or activity.” 28 CFR 35.160(b)&(1). “Auxiliary aids and services” are defined in 28 CFR 35.104 as:

qualified interpreters, note takers, transcription services, written materials, telephone handset amplifiers, assistive listening devices, assistive listening systems, written materials, telephones compatible with hearing aids, closed captioned decoders, open and closed captioning, telecommunication devices for deaf persons (TTD/TTYs), video text displays, and other effective methods of making aurally delivered information available to individuals with hearing impairments.

The ADA specifically calls for the use of “qualified” sign language interpreters. 42 USC §12102(1)(a). The regulations define “qualified” to mean “an interpreter who is able to interpret effectively, accurately and impartially, both receptively and expressively, using any necessary specialized vocabulary.” 28 CFR 36.303. The ADA focuses on the interpreter’s actual ability to make communication effective in a particular circumstance. The ADA requires that auxiliary aids and services be provided at public expense regardless of the disabled person’s ability to pay. 28 CFR 35.130(f). The court may not charge any party with the cost of the interpreter.

## ② Federal case law

The right to an interpreter is not explicit in the United States Constitution. However, the constitutional right to an interpreter may arise under the Sixth Amendment as part of the right to counsel (effective communication between attorney and client), or as part of the right to confront witnesses. United States ex rel Negron, 434 F. 2d 386, 389 (2d Cir. 1970). The right may also arise under the due process clause of the Fifth and Fourteenth Amendments requiring that a defendant be able to participate in his own

defense. When a trial court has notice of a defendant's language deficiency, it is required to communicate clearly to the defendant the right to a competent interpreter, at government expense if the defendant is unable to afford one. The right to an interpreter may be waived only through intentional relinquishment or abandonment of a known right. Id.

### ③ Wisconsin statutes & regulations

#### **20.625 Circuit courts.**

There is appropriated to the director of state courts for the following programs:

(1) COURT OPERATIONS....

(c) Court interpreter fees. The amounts in the schedule to pay interpreter fees under §885.37 (4) (a) 2.

#### **46.295 Interpreters for the hearing-impaired.**

(1) The department may, on the request of any hearing-impaired person, city, village, town or county or private agency, provide funds from the appropriation under §20.435 (6) (a) and (hs) to reimburse interpreters for hearing-impaired persons for the provision of interpreter services.

(2) The department shall grant priority to requests to pay fees charged by interpreters for the following, in the following order:

(a) Emergencies.

(b) Medical, mental health, alcohol and drug abuse, psychiatric and psychological services.

(c) Legal services and civil court proceedings.

(d) Matters concerning law enforcement personnel.

(e) Matters concerning any federal, state, county or municipal agency.

(3) The department shall maintain lists of qualified interpreters under §885.37 (5) (b).

(4) The department may use as an interpreter for hearing-impaired persons only the following:

(a) An interpreter for hearing-impaired persons who is certified by the national registry of interpreters for the deaf.

(b) If an interpreter under par. (a) is unavailable, an interpreter for hearing-impaired persons whose qualifications have been determined appropriate by the department.

(5) The department may bill any public or private agency at the rates established by the department for interpreter services for hearing-impaired persons commensurate with the certification or qualification level of the interpreter providing services if the department determines that the agency is required under state or federal law to provide interpreter services to a hearing-impaired person or if the agency agrees to pay for the services.

(6) The department shall promulgate rules to implement this section.

History: 1995 a. 27 ss. 2271, 2417; Stats. 1995 s. 46.295.

The Department of Health and Family Services has written regulations to implement §46.295. Chapter HFS 77 establishes criteria and procedures for providing reimbursement and payment for interpretation services rendered to a hearing-impaired person in cases not covered by section 885.37. HFS 77.03(1) recognizes the various types of certificates issued by the National Registry of Interpreters for the Deaf (RID). DHFS also has its own program to determine and verify the level of competence of interpreters who are not RID-certified. HSF 77.03(10). DHFS maintains a registry of certified and verified

interpreters, and establishes a rate of payment for non-court interpreters on the basis of certification and verification levels.

### **756.001 State policy on jury service; opportunity and obligation to serve as juror.**

- (1) Trial by jury is a cherished constitutional right.
- (2) Jury service is a civic duty.
- (3) No person who is qualified and able to serve as a juror may be excluded from that service in any court of this state on the basis of sex, race, color, sexual orientation as defined in s. 111.32 (13m), disability, religion, national origin, marital status, family status, lawful source of income, age or ancestry or because of a physical condition....

History: 1991 a. 271; Sup. Ct. Order No. 96-08, 207 Wis.2d xv (1997).

Judicial Council Note, 1996: .... Subsection (3) implements ABA Standard 4 by expanding the nondiscrimination clause of prior s. 756.01 (3) to all classes protected under the state equal rights statute, s. 101.22.

### **756.02 Juror qualifications.**

Every resident of the area served by a circuit court who is at least 18 years of age, a U.S. citizen and able to understand the English language is qualified to serve as a juror in that circuit unless that resident has been convicted of a felony and has not had his or her civil rights restored.

History: Sup. Ct. Order No. 96-08, 207 Wis.2d xv (1997).

### **807.14 Interpreters.**

On request of any party, the court may permit an interpreter to act in any civil proceeding other than trial by telephone or live audiovisual means.

History: Sup. Ct. Order, 141 Wis.2d xiii (1987); 1997 a. 252.

### **814.67 Fees of witnesses and interpreters.**

- (1) The fees of witnesses and interpreters shall be as follows:
  - (a) For attending before a municipal judge, an arbitrator, or any officer, board or committee:
    1. For witnesses, \$5 per day.
    2. For interpreters, \$10 per one-half day or such higher fees as the municipality or county board may establish.
  - (b) For attending before any other court:
    1. For witnesses, \$16 per day.
    2. For interpreters, \$35 per one-half day.
  - (bg) For interpreters assisting the state public defender in representing an indigent in preparing for court proceedings, \$35 per one-half day.
  - (c) For traveling, at the rate of 20 cents per mile going and returning from his or her residence if within the state; or, if without the state, from the point where he or she crosses the state boundary to the place of attendance, and returning by the usually traveled route between such points.
- (2) A witness or interpreter is entitled to fees only for the time he or she is in actual and necessary attendance as such; and is not entitled to receive pay in more than one action or proceeding for the same

attendance or travel on behalf of the same party. A person is not entitled to fees as a witness or interpreter while attending court as an officer or juror. An attorney or counsel in any cause may not be allowed any fee as a witness or interpreter therein.

History: 1981 c. 317; 1987 a. 27; 1995 a. 27.

### **885.37 Interpreters for persons with language difficulties or hearing or speaking impairments.**

(1) (a) If a court has notice that a person fits any of the following criteria, the court shall make the determinations specified under par. (b):

1. The person is charged with a crime.
2. The person is a child or parent subject to ch. 48 or 938.
3. The person is subject to ch. 51 or 55.
4. The person is a witness in an action or proceeding under subd. 1., 2. or 3.

(b) If a court has notice that a person who fits any of the criteria under par. (a) has a language difficulty because of the inability to speak or understand English, has a hearing impairment, is unable to speak or has a speech defect, the court shall make a factual determination of whether the language difficulty or the hearing or speaking impairment is sufficient to prevent the individual from communicating with his or her attorney, reasonably understanding the English testimony or reasonably being understood in English. If the court determines that an interpreter is necessary, the court shall advise the person that he or she has a right to a qualified interpreter and that, if the person cannot afford one, an interpreter will be provided for him or her at the public's expense. Any waiver of the right to an interpreter is effective only if made voluntarily in person, in open court and on the record.

(2) A court may authorize the use of an interpreter in actions or proceedings in addition to those specified in sub. (1).

(3) (a) In this subsection:

1. "Agency" includes any official, employe or person acting on behalf of an agency.
2. "Contested case" means a proceeding before an agency in which, after a hearing required by law, substantial interests of any party to the proceeding are determined or adversely affected by a decision or order in the proceeding and in which the assertion by one party of any such substantial interest is denied or controverted by another party to the proceeding.

(b) In any administrative contested case proceeding before a state, county or municipal agency, if the agency conducting the proceeding has notice that a party to the proceeding has a language difficulty because of the inability to speak or understand English, has a hearing impairment, is unable to speak or has a speech defect, the agency shall make a factual determination of whether the language difficulty or hearing or speaking impairment is sufficient to prevent the party from communicating with others, reasonably understanding the English testimony or reasonably being understood in English. If the agency determines that an interpreter is necessary, the agency shall advise the party that he or she has a right to a qualified interpreter. After considering the party's ability to pay and the other needs of the party, the agency may provide for an interpreter for the party at the public's expense. Any waiver of the right to an interpreter is effective only if made at the administrative contested case proceeding.

(3m) Any agency may authorize the use of an interpreter in a contested case proceeding for a person who is not a party but who has a substantial interest in the proceeding.

(4) (a) The necessary expense of furnishing an interpreter for an indigent person under sub. (1) or (2) shall be paid as follows:

1. In the supreme court or the court of appeals, the director of state courts shall pay the expense.
  2. In circuit court, the director of state courts shall pay the expense.
  - 2m. To assist the state public defender in representing an indigent in preparing for court proceedings, the state public defender shall pay the expense.
  3. In municipal court, the municipality shall pay the expense.
    - (b) The necessary expense of furnishing an interpreter for an indigent party under sub. (3) shall be paid by the unit of government for which the proceeding is held.
    - (c) The court or agency shall determine indigency under this section.
  - (5) (a) If a court under sub. (1) or (2) or an agency under sub. (3) decides to appoint an interpreter, the court or agency shall follow the applicable procedure under par. (b) or (c).
    - (b) The department of health and family services shall maintain a list of qualified interpreters for use with persons who have hearing impairments. The department shall distribute the list, upon request and without cost, to courts and agencies who must appoint interpreters. If an interpreter needs to be appointed for a person who has a hearing impairment, the court or agency shall appoint a qualified interpreter from the list. If no listed interpreter is available or able to interpret, the court or agency shall appoint as interpreter another person who is able to accurately communicate with and convey information to and receive information from the hearing-impaired person.
    - (c) If an interpreter needs to be appointed for a person with an impairment or difficulty not covered under par. (b), the court or agency may appoint any person the court or agency decides is qualified.
- History: Sup. Ct. Order, 67 Wis.2d 585, 760 (1975); 1975 c. 106, 199; Stats. 1975 s. 885.37; 1985 a. 266; 1987 a. 27; 1995 a. 27 ss. 7207 to 7209, 9126 (19); 1995 a. 77.

### **905.015 Interpreters for persons with language difficulties or hearing or speaking impairments.**

If an interpreter for a person with a language difficulty or a hearing or speaking impairment interprets as an aid to a communication which is privileged by statute, rules adopted by the supreme court or the U.S. or state constitution, the interpreter may be prevented from disclosing the communication by any person who has a right to claim the privilege. The interpreter may claim the privilege but only on behalf of the person who has the right. The authority of the interpreter to do so is presumed in the absence of evidence to the contrary.

History: 1979 c. 137; 1985 a. 266.

### **906.04 Interpreters.**

An interpreter is subject to the provisions of chs. 901 to 911 relating to qualification as an expert and the administration of an oath or affirmation that the interpreter will make a true translation.

History: Sup. Ct. Order, 59 Wis.2d R1, R162 (1973); 1981 c. 390; 1991 a. 32.

### **967.09 Interpreters may serve by telephone or video.**

On request of any party, the court may permit an interpreter to act in any criminal proceeding, other than trial, by telephone or live audiovisual means.

History: Sup. Ct. Order, 141 Wis.2d xiii (1987); 1987 a. 403.

## ④ Wisconsin case law

**State v. Neave**, 117 Wis. 2d 359, 344 N.W. 2d 181 (1984). The Wisconsin Supreme Court has held that the right to an interpreter exists “as a matter of judicial administration”, concluding that in the interest of fairness and justice, interpreters should assist defendants where necessary. The assistance of an interpreter promotes judicial economy by reducing the risk of appeal on grounds on inaccurate interpretation or failure to appoint an interpreter. The right to an interpreter can only be waived by the defendant personally, in open court and on the record. If the court determines that an interpreter is necessary, the court must inform the defendant of the right to an interpreter and that one will be provided at public expense if the defendant is unable to afford one. See also *State v. Besso*, 72 Wis. 2d 335, 240 N.W. 2d 895 (1976).

**State v. Yang**, 201 Wis. 2d 721, 549 N.W. 2d 769 (Ct. App. 1996). When a trial court is put on notice that a defendant has a “language difficulty,” the court must a factual determination whether the defendant needs an interpreter because such difficulty prevents the defendant from communicating with counsel, reasonably understanding English testimony, or reasonably being understood in English. The trial court’s factual determination does not require an elaborate hearing.

**State v. Tai V. Le**, 184 Wis. 2d 860, 517 N.W. 2d 144 (1994). The selection of a qualified interpreter is within the discretion of the trial court. If the defendant is indigent, the expense for an interpreter is allocated to the Director of State Courts for in-court proceedings, and to the State Public Defender for out-of-court proceedings.

**State v. Santiago**, 206 Wis.2d 3, 556 N.W.2d 687 (1996). A defendant is deprived of the ability to present his case to the circuit court and preserve it for appeal when testimony given in Spanish is not translated into English for the record. Without an English translation, the court cannot evaluate whether the substance of a Miranda warning in Spanish was sufficient that the defendant could knowingly and intelligently waive his right to an attorney. When both the accused and the witnesses require an interpreter, the better practice may be to have two interpreters, one for the accused and one for the court.

**State v. Patino**, 177 Wis.2d 348, 502 N.W.2d 601 (Ct. App. 1993). When a person relies on a translator, the statements of the translator are regarded as the speaker's for hearsay purposes.

**State v. Hindsley**, 2000 Wi.App. 130, ¶14-15, 614 N.W. 2d 48 (2000). Expert witnesses testified that for the concept “rights,” the interpreter used the sign for “all right” or “okay,” and the defendant’s responses showed he understood the sign as “all right” or “okay.” The interpreter interpreted the defendant’s nodding of his head to mean “yes,” but in American Sign Language a head nod, by itself, may mean “I understand,” “I’m waiting for clarification” or “go ahead,” and does not necessarily mean “yes.” At no time, one expert testified, did the defendant express that he understood his rights. Another expert characterized the communication between defendant and interpreter as “disconnected.” Under these circumstances, the trial court properly concluded that the defendant’s waiver of the right to counsel was not knowing and intelligent.

## Appendix 4. Proposed code of ethics

---

The committee will submit to the court this code of ethics for court interpreters. Interpreters, judges, and attorneys are often unaware of the proper role of the court interpreter and the professional responsibilities it demands. The purpose of the code of ethics is to articulate a core set of principles to guide the conduct of a court interpreter and to educate judges in the level of conduct expected. The code addresses accuracy and completeness, representation of interpreter qualifications, impartiality and conflict of interest, professional demeanor, confidentiality and restriction of public comment, limitations on giving legal and other advice, communicating interpreter limitations to the judge, reporting ethical violations, and professional skills development.

The code of ethics will serve as a basis for education and training and may also serve as the basis for disciplinary actions. Interpreters who appear on the state roster will be required to attend training and pass an examination on the principles of the code, and will agree to submit to discipline for any violation. Disciplinary action may include a period of suspension from service to the court or decertification and removal from the roster.

**PREAMBLE.** Many persons are partially or completely excluded from participation in court proceedings due to limited proficiency in the English language, being deaf, deaf/blind, hard of hearing, or having a speech disability. These communication barriers must be removed as much as is reasonably possible so that all persons may enjoy equal access to justice. Qualified interpreters are highly skilled professionals who help judges conduct hearings justly and efficiently when communication barriers exist.

**APPLICABILITY.** The Code of Professional Responsibility for Interpreters in the State of Wisconsin Courts (hereafter the “Code”) governs the delivery of services by foreign language and sign language interpreters working in the courts of the State of Wisconsin. Its purpose is to define the duties of interpreters and thereby enhance the administration of justice and promote public confidence in the courts. This Code also applies to real time reporters when functioning in the capacity of providing access to court users.

**COMMENTARY.** The word “shall” is used to define principles to which adherence is required. The Commentary expands and describes basic principles of the Code. If a court policy or routine practice appears to conflict with any provision of the Code, including the Commentary, the policy or practice should be reviewed for modification.



## **CANON 1: ACCURACY AND COMPLETENESS**

**Interpreters shall render a complete and accurate interpretation or sight translation, by reproducing in the target language the closest natural equivalent of the source language message, without altering, omitting, or adding anything to the meaning of what is stated or written, and without explanation.**

### **Commentary**

Interpreters have a twofold role:

- 1) to ensure that court proceedings reflect, in English, precisely what was said by persons who are deaf, deaf/blind, hard of hearing, or who have a speech disability, or who have no or limited proficiency in the English language.
- 2) to place persons who are deaf, deaf/blind, hard of hearing, or who have a speech disability, or who have no or limited proficiency in the English language on an equal footing with persons who understand English.

This creates an obligation to conserve every element of information contained in a source language communication when it is rendered in the target language.

Therefore, interpreters are required to apply their best skills and judgment to preserve, as faithfully as is reasonably possible and without editing, the meaning of what is said, including the style or register of speech, the ambiguities and nuances of the speaker, and the level of language that best conveys the original meaning of the source language. Verbatim, “word for word”, or literal oral interpretations are *inappropriate* when they distort the meaning of what was said in the source language. However, every spoken statement, even if it appears non-responsive, obscene, rambling, or incoherent should be interpreted. This includes apparent misstatements.

Interpreters must never interject any statement or elaboration of their own. If the need arises to explain an interpreting problem (e.g. a term or phrase with no direct equivalent in the target language or a misunderstanding that only the interpreter can clarify), the interpreter should ask the court’s permission to provide an explanation.

Spoken language interpreters should convey the emotional emphasis of the speaker without reenacting or mimicking the speaker’s emotions, or dramatic gestures. Sign language interpreters, however, must employ all of the visual cues that the language they are interpreting for requires—including facial expressions, body language, and hand gestures. Judges should ensure that court participants do not confuse these essential elements of the interpreted language with inappropriate interpreter conduct. Any challenge to the interpreter’s conduct should be directed to the judge.

The obligation to preserve accuracy includes the interpreter's duty to correct any errors of interpretation discovered during the proceeding. Interpreters should demonstrate their professionalism by objectively analyzing any challenge to their performance.

**The ethical responsibility to interpret accurately and completely includes the responsibility of being properly prepared for interpreting assignments. Interpreters are encouraged to obtain documents and other information necessary to familiarize themselves with the nature and purpose of a proceeding. Prior preparation is generally described below, and is especially important when testimony or documents include highly specialized terminology and subject matter.**

**In order to avoid any impropriety or even the appearance of impropriety, interpreters should seek leave of the court before conducting any preparation other than the review of public documents in the court file. Courts should freely grant such leave in order to assist interpreters to discharge their professional responsibilities.**

**Preparation might include but is not limited to:**

- 1) review of public documents in the court file, such as motions and supporting affidavits, witness lists and jury instructions; the criminal complaint, information, and preliminary hearing transcript in a criminal case; and the summons, complaint and answer in a civil case.
- 2) review of documents in the possession of counsel, such as police reports, witness summaries, deposition transcripts and pre-sentence investigation reports, obtaining a written copy of witness lists from the court;
- 3) contacting previous interpreters involved in the case for information on language use/style;
- 4) contacting attorneys involved in the case for additional information on anticipated testimony or exhibits;
- 5) anticipating and discussing interpreting issues related to the case with the judge, but only in the presence of counsel unless the court directs otherwise.

## **CANON 2: REPRESENTATION OF QUALIFICATIONS**

**Interpreters shall accurately and completely represent their certifications, training, and experience.**

### **Commentary**

Acceptance of a case by an interpreter conveys linguistic competency in legal settings. Withdrawing, or being asked to withdraw, after a court proceeding has begun is disruptive and wasteful of scarce public resources. It is therefore essential that interpreters present a complete and truthful account of their

training, certification and experience prior to appointment so the court can fairly evaluate their qualifications for delivering interpreting services.

### **CANON 3: IMPARTIALITY AND AVOIDANCE OF CONFLICT OF INTEREST**

**Interpreters shall be impartial and unbiased, and shall refrain from conduct that may give an appearance of bias. Interpreters shall disclose any real or perceived conflict of interest.**

#### **Commentary**

Interpreters serve as officers of the court. Their duties in a court proceeding are to serve the court and the public regardless of whether publicly or privately retained.

Interpreters of record should avoid any conduct or behavior that presents the appearance of favoritism toward anyone. Interpreters should maintain professional relationships with their clients, discourage personal dependence on the interpreter, and avoid participation in the proceedings other than as an interpreter.

During the course of the proceedings, interpreters of record should not converse with parties, witnesses, jurors, attorneys, or with friends or relatives of any party, except in the discharge of their official functions. Official functions may include an informal pre-appearance assessment to include the following:

- 1) culturally appropriate introductions;
- 2) a determination of variety, mode, or level of communication
- 3) a determination of potential conflicts of interest; and
- 4) a description of the interpreter's role and function.

Interpreters should strive for professional detachment. Verbal and non-verbal displays of personal attitudes, prejudices, emotions, or opinions must be avoided at all times.

Interpreters shall not solicit or accept any payment, gift or gratuities in addition to compensation from the court.

Any condition that interferes with the objectivity of an interpreter constitutes a conflict of interest and must be disclosed to the judge. Interpreters should only divulge necessary information when disclosing the conflict of interest. The disclosure shall not include privileged or confidential information. The following circumstances create potential conflicts of interest that must be disclosed:

- 1) the interpreter is a friend, associate, or relative of a party, counsel for a party, a witness, or a victim (in a criminal case) involved in the proceedings;

- 2) the interpreter or the interpreter's friend, associate, or relative has a financial interest in the subject matter in controversy, a shared financial interest with a party to the proceeding, or any other interest that might be affected by the outcome of the case;
- 3) the interpreter has served in an investigative capacity for any party involved in the case;
- 4) the interpreter has previously been retained by a law enforcement agency to assist in the preparation of the criminal case at issue;
- 5) the interpreter is an attorney in the case at issue;
- 6) the interpreter has previously been retained for employment by one of the parties; or
- 7) for any other reason, the interpreter's independence of judgment would be compromised in the course of providing services.

**The existence of any one of the above-mentioned circumstances must be carefully evaluated by the court, but does not alone disqualify an interpreter from providing services if the interpreter is able to render services objectively. The interpreter should disclose to the court any indication that the recipient of interpreting services views the interpreter as being biased. If an actual or apparent conflict of interest exists, the court must decide whether removal is appropriate based upon the totality of the circumstances.**

#### **CANON 4: PROFESSIONAL DEMEANOR**

**Interpreters shall conduct themselves in a manner consistent with the dignity of the court.**

#### **Commentary**

Interpreters should know and observe the established protocol, rules, and procedures for delivering interpreting services. When speaking in English, interpreters should speak at a rate and volume that enables them to be heard and understood throughout the courtroom. Interpreters should be as unobtrusive as possible and should not seek to draw inappropriate attention to themselves while performing their professional duties. This includes any time the interpreter is present, even though not actively interpreting.

Interpreters should avoid obstructing the view of anyone involved in the proceedings, but should be appropriately positioned to facilitate communication. Interpreters who use sign language or other visual modes of communication must be positioned so that signs, facial expressions, and whole body movements are visible to the person for whom they are interpreting and be repositioned to accommodate visual access to exhibits as necessary.

Interpreters are encouraged to avoid personal or professional conduct that could discredit the court.

Interpreters should support other interpreters by sharing knowledge and expertise with them to the extent practicable in the interests of the court.

## **CANON 5: CONFIDENTIALITY**

**Interpreters shall protect the confidentiality of all privileged and other confidential information.**

### **Commentary**

Interpreters must protect and uphold the confidentiality of all privileged information obtained during the course of their duties. It is especially important that interpreters understand and uphold the attorney-client privilege that requires confidentiality with respect to any communications between attorney and client. This rule also applies to other types of privileged communications. Interpreters must also refrain from repeating or disclosing information obtained by them in the course of their employment that may be relevant to the legal proceeding.

The interpreter shall accompany a juror into the jury room and interpret for jury deliberations. The role of the interpreter in jury deliberations is neutral and nonparticipatory. The interpreter shall not disclose or comment upon jury deliberations.

In the event that an interpreter becomes aware of information that indicates probable imminent harm to someone or relates to a crime being committed during the course of the proceedings, the interpreter should immediately disclose the information to the presiding judge. In an emergency, the interpreter should disclose the information to an appropriate authority.

Interpreters shall never take advantage of knowledge obtained in the performance of duties, or by their access to court records, facilities, or privileges, for their own or another's personal gain.

## **CANON 6: RESTRICTION OF PUBLIC COMMENT**

**Interpreters shall not publicly discuss, report or offer an opinion concerning a matter in which they are or have been engaged, even when that information is not privileged or required by law to be confidential, except to facilitate training and education.**

### **Commentary**

Generally, interpreters should not discuss interpreter assignments with anyone other than persons who have a formal duty associated with the case. However, interpreters may share information for training and education purposes, divulging only so much information as is required to accomplish this purpose. Unless so ordered by a court, interpreters must never reveal privileged or confidential information for any purpose, including training and education.

## **CANON 7: SCOPE OF PRACTICE**

**Interpreters shall limit themselves to interpreting or translating and shall not give legal advice, express personal opinions to individuals for whom they are interpreting, or engage in any other activities which may be construed to constitute a service other than interpreting or translating while serving as an interpreter.**

### **Commentary**

Since interpreters are responsible only for enabling others to communicate, they should limit themselves to the activity of interpreting or translating only, including official functions as described in the commentary to Canon 3. Interpreters, however, may be required to initiate communications during a proceeding when they find it necessary to seek direction from the court in performing their duties. Examples of such circumstances include seeking direction for the court when unable to understand or express a word or thought, requesting speakers to adjust their rate of speech, repeat or rephrase something, correcting their own interpreting errors, or notifying the court of reservations about their ability to satisfy an assignment competently. In such instances, they should make it clear that they are speaking for themselves.

Interpreters may convey legal advice from an attorney to a person only while that attorney is giving it. Interpreters should not explain the purpose or contents of forms, services, or otherwise act as counselors or advisors unless they are interpreting for someone who is acting in that official capacity. Interpreters may translate language on a form for a person who is filling out the form, but should not explain the form or its purpose for such a person.

While engaged in the function of interpreting, interpreters should not personally perform official acts that are the official responsibility of other court officials.

## **CANON 8: ASSESSING AND REPORTING IMPEDIMENTS TO PERFORMANCE**

**Interpreters shall assess at all times their ability to deliver their services. When interpreters have any reservation about their ability to satisfy an assignment competently, they shall immediately convey that reservation to the appropriate judicial authority.**

### **Commentary**

If the communication mode or language variety of the deaf, deaf/blind, hard of hearing, or non-English speaking person cannot be readily interpreted, the interpreter should notify the appropriate judicial authority, such as a supervisory interpreter, a judge, or another official with jurisdiction over interpreter matters.

Interpreters should notify the appropriate judicial authority of any circumstances (environmental or physical limitation) that impede the ability to deliver interpreting services adequately. These circumstances may include that the courtroom is not quiet enough for the interpreter to hear or be heard

by the non-English speaker, more than one person is speaking at the same time or too quickly for the interpreter to adequately interpret. Sign language interpreters must make sure that they can both see and convey the full range of visual language elements that are necessary for communication, including facial expressions and body movements, as well as hand gestures.

Interpreters should notify the judge of the need to take periodic breaks in order to maintain mental and physical alertness and prevent interpreter fatigue. Interpreters should inform the court when the use of team interpreting is necessary.

Even competent and experienced interpreters may encounter situations where routine proceedings suddenly involve slang, idiomatic expressions or regional dialect, technical or specialized terminology unfamiliar to the interpreter, e.g., the unscheduled testimony of an expert witness. When such situations occur, interpreters should request a brief recess in order to familiarize themselves with the subject matter. If familiarity with the terminology requires extensive time or more intensive research, interpreters should inform the judge.

Interpreters should refrain from accepting a case if they believe its language and subject matter is likely to exceed their capacities. Interpreters should also notify the judge if, during the course of a proceeding they conclude that they are unable to perform adequately for any reason.

## **CANON 9: DUTY TO REPORT ETHICAL VIOLATIONS**

**Interpreters shall report to the proper judicial authority any effort to impede their compliance with any law, any provision of this code, or any other official policy governing court interpreting and translating.**

### **Commentary**

Because the users of interpreting services frequently misunderstand the proper role of interpreters they may ask or expect the interpreters to perform duties or engage in activities that run counter to the provisions of the code or other law, rules, regulations, or policies governing court interpreters. It is incumbent upon the interpreters to explain their professional obligations to the user. If, having been apprised of these obligations, the person persists in demanding that the interpreters violate them, the interpreters should turn to a supervisory interpreter, a judge, or another official with jurisdiction over interpreter matters to resolve the situation.

## **CANON 10: PROFESSIONAL DEVELOPMENT**

**Interpreters shall improve their skills and knowledge and advance the profession through activities such as professional training and education, and interaction with colleagues, and specialists in related fields.**

## **Commentary**

Interpreters must improve their interpreting skills and increase their knowledge of the languages they work in professionally, including past and current trends in slang, idiomatic expression, changes in dialect, technical terminology and social and regional dialects as well as their applicability within court proceedings.

Interpreters should keep informed of all statutes, rules of court and policies of the judiciary that govern the performance of their professional duties.

Interpreters should seek to elevate the standards of the profession through participation in workshops, professional meetings, interaction with colleagues, and reading current literature in the field.

### **SOURCES CONSULTED:**

National Center for State Courts Model Code of Professional Responsibility for Interpreters in the Judiciary; Best Practices Manual on Interpreters In the Minnesota State Court System, Code Of Professional Responsibility For Interpreters In The Minnesota State Court System; Equal Access To The Courts For Linguistic Minorities, Final Report of the New Jersey Supreme Court Task Force on Interpreter and Translation Services; Code of Professional Responsibility of the Official Interpreters of the United States Courts; Fundamentals of Court Interpretation Theory, Policy, and Practice, (Gonzalez, Vasquez, Mikkelson); Registry of Interpreters for the Deaf, Code Of Ethics; Code of Ethics, California State Courts; Code Of Professional Responsibility For Interpreters In The Oregon Courts.



## Appendix 5. Definitions

---

Some of the technical terms used throughout this report are defined and explained below. The terms are arranged conceptually rather than alphabetically.

**Limited English proficiency:** the inability to adequately understand or communicate effectively in English in a court proceeding. This term applies to foreign language speakers whose primary language is a language other than English and whose ability to speak English is inadequate for participating in a court proceeding. This term also applies to persons who are unable to hear or speak English because of hearing loss, deafness, speech impairment, or other disability. This includes those deaf persons whose primary language is American Sign Language, as well as those hard of hearing persons whose native language is English but who are unable to hear adequately for court purposes. Sometimes referred to as “non-English speaking.”

**Interpretation:** Interpretation means the unrehearsed transmitting of a spoken or signed message from one language to another. Interpretation is distinguished from “translation,” which relates to written language. Live testimony is interpreted.

**Translation:** Translation is converting a written text from one language into written text in another language. The source of the message being converted is a written language. Translation requires different skills than those used by an interpreter. Forms and documents are translated.

**Sight interpretation:** Sight interpretation (also called sight translation) is a hybrid of interpreting and translating, where the interpreter reads a document written in one language, converting it orally into another language. A written plea agreement might be sight interpreted.

**Consecutive interpreting:** Consecutive interpreting is rendering statements made in one into statements in another language after the speaker has stopped speaking. When using this mode of interpreting, it may be necessary for the interpreter to signal a speaker to pause to permit a consecutive interpretation when the length of the utterance approaches the outer limits of the interpreter’s capacity for recall. Witness questions and answers are usually interpreted consecutively.

**Simultaneous interpreting:** Simultaneous interpreting is rendering an interpretation continuously at the same time someone is speaking. Simultaneous interpreting is intended to be heard only by the person receiving the interpretation and is usually accomplished by speaking in whispered tones or using equipment specially designed for the purpose in order to be as unobtrusive as possible. A limited English proficiency party will usually listen to most of a trial through simultaneous interpreting.

**Summary interpreting:** Summary interpreting is paraphrasing and condensing the speaker's statement. Unlike simultaneous and consecutive interpreting, this method does not provide a precise rendering of everything that is said into another language. This mode of interpreting is common among untrained interpreters, but should not be used in court settings.

**American Sign Language (ASL):** American Sign Language is a visual-gestural language created by deaf people and used by approximately one-half million deaf Americans and Canadians of all ages. It has its own syntax and grammatical structure. Interpretation in this context refers to conveying the real meaning communicated between American Sign Language and spoken English.

**Transliteration:** This term refers to the act of representing the English language in a visually accessible form of communication. This method closely follows the grammar and structure of spoken English through the use of manual coding. Manually coded English (also known as "signed English") is not a true language. Use of this system necessitates having a viewer who knows English well.

**Registry of Interpreters for the Deaf (RID):** The National Registry of Interpreters for the Deaf is a professional organization of American Sign Language/English interpreters and transliterators. The organization is dedicated to the professional development, training and certification of its members. There is also a Wisconsin chapter of this organization.

## Appendix 6. Bibliography

---

### Publications

Access, Report of the Wisconsin Supreme Court Interdisciplinary Committee on the Court-Related Needs of the Elderly and People with Disabilities (1994).

Araiza, Francisco, "Se Habla Everything: The Right to an Impartial, Qualified Interpreter," Wis. Lawyer 15 (September 1997).

Gonzalez, Vasquez and Mikkelson, *Fundamentals of Court Interpretation*, Carolina Academic Press (1991).

Hewitt, William E., *Court Interpretation: Model Guides for Policy and Practice in the State Courts*, National Center for State Courts (1995).

Minnesota Supreme Court Interpreter Advisory Committee, *Best Practices Manual on Interpreters in the Minnesota State Court System* (May 1999).

National Center for State Courts, *Overcoming the Language Barrier: Achieving Professionalism in Court Interpreting*, State Court Journal, vol. 20, no.1 (1996).

Pantoga, Heather, "Injustice in Any Language: The Need for Improved Standards Governing Courtroom Interpretation in Wisconsin," 82 Marquette L. Rev. 601 (1999).

Wisconsin Director of State Courts, *The Wisconsin Interpreters Handbook: A Guide for Judges, Court Commissioners, Attorneys, Interpreters and Citizens* (rev. ed. 1998).

### Websites

National Association of Judiciary Interpreters and Translators: <http://www.najit.org>

National Center for State Courts: <http://www.ncsc.dni.us/RESEARCH/INTERP/index.html>  
(includes links to state and federal court interpreter programs)

Registry of Interpreters for the Deaf: <http://www.rid.org>

United States Census Bureau: <http://www.census.gov>

Wisconsin Court System: <http://www.courts.state.wi.us>