

## **Administrative Office of the Illinois Courts**

### **FAQs from 2014 Regional Meetings on Language Access**

Throughout the month of January, the AOIC hosted six regional meetings across the state to engage judges, court personnel, interpreters, legal advocates, and other interested stakeholders on language access issues.

The meetings occurred in Peoria, Springfield, Champaign, Sycamore, Chicago, and Mt. Vernon. Attendees discussed challenges in addressing language access in Illinois circuit courts. The presentation provided an overview of our legal obligations to provide meaningful language access to limited English proficient persons, and reviewed implementation solutions for the Language Access Plans. Below are common questions raised by attendees at the meetings and the answers that were provided.



Language access meeting in Sycamore, IL

### **Scope of Language Access**

#### **Are courts required to provide interpreters for all cases? Are courts required to appoint interpreters for non-litigants?**

As recipients of federal financial assistance, our courts are obligated under Title VI of the Civil Rights Act of 1964 to take reasonable steps to ensure meaningful access to limited English persons. Failing to do so may constitute national origin discrimination prohibited by Title VI. This obligation extends to the courtroom for both civil and criminal cases, within the courthouse at public points of contact, and in court-annexed proceedings. Our obligations under state law require courts to provide interpreters to defendants charged with misdemeanors or felonies, and provide meaningful language access resources for child custody and mortgage foreclosure mediation participants. Interpreters must be provided for litigants, witnesses, and any other party with a critical role in the legal proceeding. Our office is working with the Supreme Court Commission on Access to Justice on creating a Language Access Policy that will clarify our obligations and provide a reasonable framework for moving forward.

#### **Will this program cover standards for interpreters for the deaf and hard of hearing?**

Not in the immediate future, since standards and certification procedures for sign language interpreters are largely covered under federal law and the Americans with Disabilities Act (ADA). State courts are required to be accessible to all members of the public, regardless of race, gender, ethnicity, and whether or not they are disabled. In the past 30-40 years, standards under the ADA have evolved and our courts have made accommodation for disabled persons a priority. There are national standards for the certification of sign language interpreters that establish minimum qualifications, and courts are required to provide certified sign language interpreters for disabled persons requiring such assistance within courtrooms and within the courthouse. Accommodation for limited English proficient persons under Title VI also addresses communication barriers to accessing the courts and must be prioritized in the same way, especially considering that our foreign-language speaking population has greatly increased in recent years. Thus, our office is currently focused on establishing statewide standards and certification procedures for foreign language interpreters, since such standards do not currently exist at the state level.

### **Certification**

#### **Why do we need a certification program?**

The presence of a qualified court interpreter meets basic due process requirements, ensures equal protection under the law, and enables a limited English proficient litigant to be meaningfully present in the proceedings, to confront witnesses, to confer with counsel, and to waive or assert any right. At present, most courts do not have the means to evaluate the services provided by a foreign language interpreter. Interpreter certification is necessary because it will guarantee that the interpreters appointed have a minimum level of skill and competency. In order to receive

certification (in Illinois, as is true across the country), an interpreter will have to pass rigorous examination that tests for skills, vocabulary, ethics and court procedural knowledge.

Illinois does not currently offer a certification program for court interpreters to ensure that they have interpreting skills and native-like proficiency in both English and the foreign language, even though 21.5% of our population speaks a language other than English at home. This is 1.4% higher than the national average, according to U.S. Census data, and significantly higher than any of our neighboring states in the Midwest.

44 states across the country have certification programs, which includes all of the states that border Illinois and all of the states that have large foreign language-speaking populations. Aside from Illinois, the only other states in the country that do not have certification programs are those with very small foreign language-speaking populations (under 9.7% of the total population, *e.g.*, North Dakota, South Dakota, Montana, Oklahoma, and Vermont). With greater numbers of limited English proficient individuals attempting to settle their rights in Illinois courts, it is essential that we establish statewide standards and requirements to ensure that bilingual individuals have the requisite skills and an understanding of ethics and court procedure to take on this great responsibility.

**Will the AOIC assess interpreter qualifications? Will there be a training component to the certification program?**

Yes, we hope to make certification and training opportunities available in the coming year. Currently, there are no statewide policies requiring that bilingual individuals possess minimum qualifications before serving as interpreters in our courts. We are in the process of designing our program by consulting other states and surveying best practices across the country. At a minimum, certification will require attending an orientation, ethics training, skills training, a criminal background check, and passing scores for the written and oral exams created by the National Center for State Courts (NCSC). The existing Foreign Language Interpreter Fund will be used to start this program, and the Fund will be sustained by certification fees. The Fund will also be used to hire professional interpreters to conduct skills and ethics trainings across the state.

**Will the courts be required to use certified interpreters?**

If approved, the forthcoming Language Access Policy will establish a multi-tiered system that will prioritize the use of certified interpreters if reasonably available. This is the approach followed by the majority of states with certification programs. If a certified interpreter is not available, the policy will require courts to use a "registered" interpreter if available. This means the interpreter has not passed the NCSC written and oral exams, but has met the requirements to be listed on the statewide registry of interpreters. We are still in the process of establishing registry requirements; however, at a minimum, "registered" interpreters will have to demonstrate proficiency in both languages, attend an orientation on court procedure, ethics, and skills training, and undergo a criminal background check. After the court has made diligent efforts to appoint a certified or registered interpreter and neither is available, the policy will allow courts to use uncertified interpreters. If using an uncertified interpreter, the policy requires that the interpreter be examined in open court to ensure minimum qualifications and proficiency, and that the interpreter does not present a conflict of interest.

For judges and court personnel that are not bilingual, there is no reliable way to assess an interpreter's qualifications without objectively testing their abilities. We hope that the certification process will be a valuable service to our courts and assist them with making our courts accessible to all members of the public, regardless of race or ethnic background.

**Will interpreters have to pay to get certified?**

Yes. All states with certification programs charge interpreters for each step of the process. The following is a breakdown of the fees from other states' program components:

- Orientation: \$175 - \$275
- Written exam: \$25 - \$75
- Oral exam (prices vary by language)
  - Common languages, such as Spanish: \$175 - \$225
  - Less common languages, such as Arabic and Chinese: \$250 - \$300
  - Rare languages, such as Portuguese and Vietnamese: \$325 - \$350

- Trainings: \$60 - \$150
- Some states also charge a recertification fee of \$50-\$100, either annually or every 2-3 years. These states often require interpreters to take continuing education courses to maintain their certified status.

**How many states have certification programs? When were they established?**

44 states have certification programs, and all of them use the NCSC written and oral exams for testing English and foreign language proficiency. The only states that do not have certification programs are states with very few numbers of limited English proficient (LEP) persons, such as North Dakota and Montana. The majority of programs were established in the 1990s and early 2000s; states with exceptionally large LEP populations have been certifying interpreters since the 1980s. In the federal courts, certification has been available for interpreters since 1980.

**Will there be reciprocity for interpreters that have gotten certified in other states or at the federal level?**

We envision offering reciprocity for interpreters that have completed similar portions of the certification process in other states, but will require them to meet all of our requirements before being considered certified in Illinois. For example, if an interpreter passed the oral and written exam in Wisconsin, but has not attended orientation or undergone a background check in Illinois, they will have to meet those remaining requirements to be considered "certified" in Illinois.

**Program components**

**Is there going to be a registry for interpreters?**

Yes. The AOIC currently maintains a registry that includes over 400 interpreters that have served in Illinois courts. Once the certification program is made available, this registry will be updated regularly and made available on the AOIC website. The registry will include interpreters' names and contact information, the level they have achieved in the certification process, and counties they are willing to travel to.

**Are courts required to administer an oath for interpreters?**

Current Illinois law requires interpreters appointed for criminal cases to be "sworn to truly interpret or translate all questions propounded or answers given as directed by the court." Criminal Proceeding Interpreter Act, 725 ILCS 140/2. Moving forward, the AOIC plans to work with the Supreme Court Commission on Access to Justice to explore applying an oath requirement in civil and court-annexed proceedings and creating a code of interpreter ethics.

**Are courts required to appoint interpreters via a written order?**

Current Illinois law requires courts to "enter an order of its appointment of the interpreter." Criminal Proceeding Interpreter Act, 725 ILCS 140/2. The AOIC will work with the Access to Justice Commission to clarify this obligation in the Language Access Policy and make additional resources available in the coming months.

**What will the AOIC be responsible for?**

In the Foreign Language Court Interpreter Act (705 ILCS 78), the AOIC was given the authority to establish and administer a certification program for interpreters. The legislature appropriated funds to cover the expenses of testing, training, and certifying interpreters. The AOIC also created a Language Access Services Specialist position for the purpose of establishing statewide policies, improving statewide coordination of language access solutions, and providing resources to assist the circuit courts reach compliance. In addition to these core tasks, the Language Access Services Specialist will explore funding options that other states have pursued, such as grants.

**Language assistance services**

**Can judges and court personnel that are bilingual serve as interpreters?**

Many individuals have some proficiency in another language, but do not possess native-like fluency and an awareness of legal terminology in the foreign language. Interpretation is a highly specialized skill that requires more than basic proficiency. This distinction is important in order to ensure meaningful communication with limited English proficient

persons within the courthouse, and fluency should be assessed before relying on bilingual court personnel for providing language services. Judges and court personnel that are fluent in two languages can conduct simple or routine communications and assist limited English proficient persons access court services. During a legal proceeding, however, interpreters should not present a conflict of interest and should not play a critical role in the proceeding, let alone be the judge. Due to the shortage of resources in many of our courts, judges and court personnel may be put in the position of providing language assistance without possessing native-like fluency or while acting as a judge. Moving forward, courts aware of such practices should make every effort to assess the language fluency of court personnel and only rely on impartial interpreters within the courtroom.

**Are interpreters through agencies qualified to do court interpretation?**

Many agencies provide interpreters for a wide variety of languages at affordable costs; however, not all agencies train their employees specifically for court interpretation. Court interpretation requires familiarity with legal terminology in both English and the foreign language, an ability to do consecutive and simultaneous interpretation, in addition to sight translation, and an awareness of court procedure and etiquette. Extreme care must be exercised while hiring interpreters and interpreter duties should be assigned according to an individual interpreter’s skill level and legal interpreting experience.

**If you have any questions or concerns, please do not hesitate to contact:**

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