

---

# JUDICIAL MANAGEMENT COUNCIL

## COMMITTEE ON TRIAL COURT PERFORMANCE AND ACCOUNTABILITY

### Court Interpreters

### Report and Recommendations January, 2002

#### I. BACKGROUND

The Committee on Trial Court Performance and Accountability created the Court Interpreter Workgroup to advise it on recommendations of policies that address performance and accountability in the utilization of the resource of court language interpretation.

Court language interpretation is also among those court resources that are subject to transition to state funding pursuant to Revision 7 of Article V of the Florida Constitution. Traditionally, court interpreter costs have been borne by the counties. As such, policies and practices for the utilization and management of court interpretation vary across circuits and counties. Implementation of state funding will require a degree of standardization of policies and practices regarding the use of court interpreters that ensures effectiveness, accountability, and equity among courts. The report of the workgroup is intended to provide a starting point for the development of such statewide practices and policies.

#### Workgroup Charge:

The charge to the workgroup has five elements:

- To identify the legal requirements for foreign language court interpreters in court proceedings
- To develop recommendations for management practices for the designation, allocation, and utilization of court interpreters
- To define the information that should be regularly reported and recorded regarding court interpreting services
- To develop recommendations about information reporting mechanisms
- To develop recommendations for a funding allocation process that will address the circuit needs for court interpreters

## **Workgroup Meetings:**

The workgroup met three times – January 7, February 15, and March 29, 2001. At its first meeting the workgroup discussed generally the role of court interpreters and conducted a mission statement exercise. The exercise resulted in several draft mission statements. The workgroup then addressed the question of when a foreign language court interpreter is legally required. The workgroup discussed the general legal principles involved as well as existing statutes and rules. Then the workgroup systematically considered the full range of court proceedings and case types, and tentatively identified those in which a court interpreter should be provided for a person who cannot communicate in spoken English. Between the first two meetings members circulated the draft mission statements to their colleagues for comment.

At its second meeting the workgroup revisited the draft mission statements plus two composites developed by staff, and consolidated and revised them into a single draft. The workgroup then revisited the itemization of court proceedings and case types, and finalized the identification of those which require the services of a court interpreter. The workgroup then discussed possible approaches to the measurement of the service of court interpreters for purposes of accountability.

At its third meeting the workgroup considered final changes to the mission statement and changes to the itemization of court proceedings requiring a court interpreter. The workgroup continued its deliberations of how court interpretation can be measured for purposes of accountability. The workgroup considered existing management systems and delivery mechanisms for court interpretation, and discussed how an ongoing management improvement system could operate.

## **Workgroup Membership and Staff:**

The workgroup was facilitated by Judge James Dominguez, and included six judges, two trial court administrators, and two experienced court interpreters:

Judge James V. Dominguez, Hillsborough County, facilitator  
Judge Michael Weatherby, 4th Circuit  
Judge John Schaefer, 6th Circuit  
Judge Maria M. Korvick, 11th Circuit  
Judge Jack H. Cook, 15th Circuit  
Judge Phyllis D. Kotey, Alachua County  
Mark Weinberg, Trial Court Administrator, 7th Circuit  
Tom Willis, Trial Court Administrator, 19th Circuit  
Joelle Haspil<sup>1</sup>, 11th Circuit  
James Plunkett, Interpreter, 13th Circuit

---

<sup>1</sup> Director of County Court Mediation for the 11<sup>th</sup> Circuit. Haspil formerly worked as an interpreter, and now is a member of the Office of the State Courts Administrators' Court Interpreter Advisory Workgroup.

Staff: Peggy Horvath, Office of the State Courts Administrator  
Brian Lynch, Office of the State Courts Administrator  
Wanda Romberger, Office of the State Courts Administrator  
Steve Henley, Office of the State Courts Administrator

## II. DISCUSSION

The population of Florida is among the most diverse in the nation. Citizens and residents of Florida include many people who do not communicate in English, including large populations of Cubans, Puerto Ricans, Central and South Americans and others who speak various Spanish dialects, and Creole-speaking Haitians. In addition, significant populations speak other languages, including Portuguese, German, Russian, Greek and other European and eastern European languages, as well as Vietnamese, Hmong, Japanese, Chinese Korean and other Asian languages.

### **Role of Court Interpretation:**

The workgroup discussed the purpose, or mission, of court interpretation and developed the following mission statement for court interpretation:

**Court interpreters are qualified language professionals serving as conduits of communication. Court interpreters provide a complete and accurate rendition of all communications among all participants in a court proceeding. Their services are utilized when a participant is so limited in his or her ability to speak or understand English that communication is inhibited. Interpreter services are necessary to protect the rights of parties, to assist in creating an English language record, and to facilitate the fair and efficient administration of justice.**

The ability of a court participant to communicate in English can be critical to the just resolution of a matter before a court and to the efficient and effective administration of the judicial process. Effective communication is not only a factor when the individual is asked to address the court or to testify, but is also important for full participation in other aspects of the proceeding.

To be meaningfully engaged in the court process, a party must be able to understand what is said by the judge, the courtroom statements of opposing counsel, his or her own counsel, and the testimony of witnesses. While many non-native English speakers acquire sufficient fluency to communicate at a basic level, such “survival English” may not reach the level of sophistication required to effectively participate: they cannot describe persons, places and events accurately and completely, cannot provide chronological narratives, cannot fully understand what others are saying, and may not know when to request clarification of questions that are vague or unclear.

In addition, some non-native English speakers understand and speak English, but their speech is heavily accented such that it is difficult for others to understand. Interpretation allows the court, other participants and the court reporter to understand what is being said. Under these circumstances interpretation reduces misunderstanding and the need to ask the individual to repeat themselves, and facilitates a more accurate reproduction by the court reporter.

Court interpretation is similar to normal interpretation, but differs in important ways. A court interpreter provides a complete, accurate and unaltered verbal interpretation of oral communications to and from a party or witness and the court, jury and other participants in a court proceeding. The interpretation must be unaffected and as close to verbatim as possible without altering, omitting, summarizing, or adding anything to what is stated. The interpreter need not be literal, but uses appropriate equivalent terms. A qualified court interpreter is therefore a highly skilled, impartial language professional.

### **Florida and Federal Law:**

The United States Constitution provides all persons the protections of due process and equal protection under the law. The Constitution of the State of Florida provides similar protections, and further explicitly provides that “[t]he courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay.” Further, the Florida Constitution provides that “[n]o person shall be deprived of any right because of race, religion, national origin, or physical disability.” The provision of a court interpreter must be considered in light of these important rights, and whether these rights are meaningfully protected when an individual cannot communicate in English.

There is no comprehensive expression in Florida law, either in statute or caselaw, of how these and other constitutional rights are implicated when a person who does not communicate in English participates in a court proceeding. There are statutes that specifically address the appointment of interpreters for witnesses, assistance for hearing-impaired persons in any capacity,<sup>2</sup> and witnesses before a grand jury. Limited caselaw exists on the provision of interpreters, but no case broadly addresses the question of what conditions call for the appointment of an interpreter or how such a determination should be made. Several cases address the issue with respect to criminal defendants, holding that if needed an interpreter is required for due process, and placing discretion with the trial judge as to whether such need exists.

Regarding the federal constitution and federal statutes, the right to an interpreter can be derived from those constitutional provisions relevant to due process and equal protection, specifically the Fifth, Sixth and Fourteenth Amendments. Little federal caselaw exists on the

---

<sup>2</sup> This report and the charge of the workgroup do not address issues of auxiliary aids and services for hearing impaired persons, which is treated as a separate element or funding purposes.

subject with respect to state courts. The appointment of an interpreter in federal proceedings is controlled by a federal statute.<sup>3</sup> An Eleventh Circuit case suggests that the federal statute does not create or expand federal constitution rights for defendants, but “rather, the purpose of the Act is to mandate the appointment of interpreters under certain conditions and to establish statutory guidance for the use of translators in order to ensure that the quality of the translation does not fall below a constitutionally permissible threshold.” *United States v. Joshi*, 896 F.2d 1303 (11th Circ. 1990).

Regarding criminal defendants, the Second District Court of Appeal succinctly characterized the due process purpose for providing a criminal defendant with an interpreter:

The requirement of an interpreter . . . ensures that a non-English speaking defendant is truly "present" . . . and not merely physically there without the ability to understand or comment on the proceedings which will culminate in a circumscription of his liberty. Our system of justice has evolved too far for a defendant's acknowledged language problem to cause him to be placed in a position before the court which is not equal to that of an English-speaking defendant in terms of communicative opportunities.

*Monte v. State*, 443 So.2d 339 (1983)

Regarding participants in civil cases, no court has identified an express constitutional right to an interpreter. The appointment of an interpreter, however, may be necessary under principles of federal and state due process and equal protection when the following conditions exist:

- the participant’s inability to comprehend English deprives him or her of an understanding of the court proceedings;
- a fundamental issue or interest is at stake; and
- no alternative to judicial intervention exists for the resolution of the issues in dispute.

The workgroup incorporates this analysis in identifying those court proceedings and case types where an individual who needs one is entitled to an interpreter at public expense.

A recent presidential order *may* create a separate and broader obligation for the Florida State Courts System to provide language interpretation. Executive Order 13166, signed August 11, 2000, provides that federal agencies and recipients of federal funds must provide meaningful

---

<sup>3</sup> The Court Interpreters Act of 1978, 28 U.S.C. § 1827.

access to persons with limited English proficiency (LEP), without charge.<sup>4</sup> The obligation extends to document translation as well as oral language interpretation. Individual Florida courts and the State Courts System are recipients of a number of federal grants, primarily through Department of Justice programs. The requirement applies to all parts of a recipient's operations, even if only one part of the organization uses the federal assistance.

Guidelines promulgated by the Department of Justice specifically refer to courts, and provide some flexibility in applying the order. The guidelines direct funding recipients to apply a four-factor analysis to determine the extent of services that must be provided. With respect to courts, the guidelines note that "at a minimum, every effort should be taken to ensure translations for LEP individuals during all hearings, trials, and motions during which the LEP individual must and/or may be present." The federal guidelines are still subject to revision based on public comment, and the extent of the obligation of the State Courts System remains uncertain.

### **Appointment of an Interpreter:**

Discretion to appoint an interpreter has traditionally been vested in the trial judge, and appellate courts rarely second guess that decision. *Watson v. State*, 190 So2d 161 Fla. (1966.) In the absence of specific policies or guidelines, factors that traditionally guide the trial judge's determination have been: whether any party has moved to appoint an interpreter; voir dire assessment by the judge of the individual to determine whether the individual is able to communicate in spoken English; whether the non-English speaking person is a party or a party in interest; or if a witness the import of the proffered testimony and the availability of an interpreter.

The workgroup discussed this *ad hoc* approach to the appointment of an interpreter, and considered whether it could be effectively replaced by a more systematic approach that would provide better service and greater consistency and equity to court users across counties. An approach that provides more specific guidance would also facilitate staffing, budgeting, and fiscal accountability.

The workgroup considered the general conditions under which a court interpreter should be appointed, and elected to rely on those identified as relevant for civil cases: a participant is unable to communicate in English, a fundamental issue or interest is at stake, and no alternative to judicial intervention exists for the resolution of the issues in dispute. The workgroup considered a broad range of case types in all divisions, and recommends that interpretation be provided categorically where those conditions are met. Because all criminal cases implicate a fundamental interest, the workgroup understands that this formulation embraces criminal as well as civil cases.

---

<sup>4</sup> The order is intended to enforce Title VI of the Civil Rights Act of 1964 - National Origin Discrimination Against Persons With Limited English Proficiency.

The first criteria concerns the English proficiency of a court participant. Language proficiency is not a characteristic of the type of proceeding, but of the participant. The question arises whether as a matter of policy it is most effective to require a trial judge to make an *ad hoc* determination that a participant is or is not able to communicate sufficiently in English. Because many people speak a rudimentary level of “survival English,” there is a substantial risk that some who need an interpreter will not be provided with one. The National Center for State Courts has developed a model code for court interpretation that provides that an interpreter *shall* be appointed when a party in interest requests one. A middle ground approach would be to provide guidance to the court, through statute or rule, on how the determination should be made whether an individual has a limited ability to communicate in English, and thus a need for an interpreter.

The categorical application of the second and third conditions to specific court proceedings and case types presented a challenge to the workgroup. The second criteria is whether a fundamental issue or interest is at stake. It is not always clear whether an interest is fundamental and whether it is at risk. The workgroup discussed, for instance, whether the dissolution of a marriage represented a fundamental interest for a spouse, and whether a child in a custody case had a fundamental interest at stake. Similarly it was asked whether the interest of a tenant in maintaining use of a premise in an eviction action rises to such a level. The workgroup considered a range of case types, considering whether a fundamental issue or interest is presented. The workgroup does not recommend the automatic provision of a court interpreter in those case types that do not present a fundamental issue or interest.

The third criteria asks whether there exists no alternative to judicial intervention, placing the individual in a position of reliance on the court for vindication of the fundamental interest. Again, the answer is not always clear. The question to be asked is whether the state has a monopoly over the resolution of the matter being litigated. Civil litigation, for instance, generally involves the resolution of disputes that the parties have been unable to resolve privately. Eviction actions, for example, fail on this element, as a party could resolve the dispute without reliance on judicial authority. Domestic violence injunctions and matters such as Baker Act proceedings, on the other hand, implicate state powers that cannot be employed without court authority. As with the second criterion, the workgroup’s recommendations regarding categorical provision of an interpreter reflect the group’s view as to whether an alternative to judicial intervention exists in each instance. Where an alternative exists, an interpreter need not be provided.

The three-point analysis is directed to the protection of the interests and due process rights of individuals. In addition to these circumstances, the workgroup recognizes that while in some circumstances an interpretation may not be required for due process, it would facilitate the orderly and efficient administration of justice. The appointment of a court interpreter should not be strictly barred when the three conditions are not met, but should be allowed at the discretion of the court, given adequate resources, where an interpreter would help conserve judicial resources and would otherwise advance timely justice in the case.

## **Management and Performance Measurement:**

The provision of court interpretation has traditionally been a county obligation, and there is therefore little consistency in practices in Florida's courts regarding the general management, regulation and coordination of court interpreter services.<sup>5</sup> For example, some courts may require parties to use staff interpreters and charge the parties for the use of the service. Other courts allow parties in civil cases to bring their own interpreters, while still other courts may require the court interpreter's office to call a freelance interpreter from a list of approved interpreters. These practices may also vary within court by language (coordination of Spanish or Haitian Creole interpreters only), division (require coordination for circuit civil but not county civil), or by proceeding type (require coordination for trials only).

The workgroup discussed practices in the courts of workgroup members. Courts in South Florida, Orlando and Tampa, with large and diverse populations, have more elaborate systems, including full time staff interpreters and contractual arrangements with private interpreters. Duval and Pinellas Counties, on the other hand, serve large populations but because the population is not as diverse, do not have staff interpreters nor an elaborate contracting mechanism. Some smaller courts with diverse local populations have more elaborate systems. There are efficiencies of scale in the utilization of court interpreters in places with higher proportions on non-English speaking court users. A court may routinely have an interpreter available for first appearances, whether the service is actually used by many defendants or few.

There is also little reliable information available that can form a basis for comparisons. In the time available the workgroup was unable to gather useful and detailed information about the management of the service or the utilization of interpreters in the various circuits and counties. The statewide allocation and management of the resource, however, will require that essential management information be available at the local and state level. The workgroup discussed how to best measure court interpreter activity, and settled on two direct variables: interpreting events and time spent in court.

---

<sup>5</sup> The Florida State Courts System has joined several other states in developing and implementing a language interpreter testing program, but it is voluntary and currently certification is not required by the State of Florida.

### III. FINDINGS

1. There are three reasons for the appointment of an interpreter:
  - ▶ interpreter services protect the rights of parties;
  - ▶ interpreter services assist in creating an English language record; and
  - ▶ interpreter services facilitate the fair and efficient administration of justice.
2. There is no general law in Florida statutes controlling when an interpreter must or may be appointed by a court. There are statutes that are specific to the appointment of interpreters for witnesses, for hearing-impaired persons in any capacity, and for witnesses before a grand jury. No applicable caselaw squarely addresses the question.
3. The obligation to provide court interpreter services is generally limited to court appearances. The obligation to provide interpreter services for interviews, depositions and other meetings rests with the state attorneys, public defenders, and other agencies. Some exceptions apply, such as for court-ordered examinations relating to mental health petitions for incapacity.
4. Criminal defendants have a constitutional right to an interpreter as a matter of due process to ensure meaningful participation in all proceedings.
5. In general civil litigants do not have a right to an interpreter at public expense, however, due process and equal protection considerations may create a right to interpreter services for civil litigants when the following conditions exist:
  - ▶ the participant's inability to comprehend English deprives him or her of an understanding of the court proceedings;
  - ▶ a fundamental issue or interest is at stake; and
  - ▶ no alternative to judicial intervention exists for the resolution of the issues in dispute.
6. Title VI of the Civil Rights Act of 1964 may require Florida courts to provide court interpretation and translation for all limited English proficiency individuals, regardless of the second and third elements of the analysis presented in Finding 5.
7. When court interpreter services are to be provided at public expense, the court may in some circumstances charge non-indigent parties for the cost of providing the service.
8. A county may choose to fund court interpreter services even where a court interpreter is not required to be provided by the court.
9. There is no comprehensive statute in Florida that provides for standards for the qualification of court interpreters, or for guidelines for the evaluation of the English proficiency of a court participant who may need an interpreter.

## IV. RECOMMENDATIONS

1. Mission Statement: The following mission statement for court interpretation should be adopted:

**Court interpreters are qualified language professionals serving as conduits of communication. Court interpreters provide a complete and accurate rendition of all communications among all participants in a court proceeding. Their services are utilized when a participant is so limited in his or her ability to speak or understand English that communication is inhibited. Interpreter services are necessary to protect the rights of parties, to assist in creating an English language record, and to facilitate the fair and efficient administration of justice.**

2. Measurement and Reporting: The utilization of court interpreter services for purposes of accountability should be measured and reported in reference to two variables: court interpretation events and the total time involved in providing services. These elements should be fully defined and incorporated into the state reporting system.

Interpreting Event: *an occurrence of court appointed interpretation. An interpreting event occurs each time a qualified interpreter is directed by a court to provide service to a court participant. An event may be very brief or very lengthy.*

Total Time: *the time that an interpreter is required to be present in court. Court interpreters are often required to be in court, waiting those points in the proceedings when interpretation services are required. The total time should reflect time spent in such a stand-by posture, as well as time spent in actual interpretation.*

3. Management Practices: Advisory guidelines for the effective management and utilization of court interpreters should be developed at the state level and promulgated to the trial courts. The guidelines should include:
  - ▶ factors courts should consider when deciding whether to hire staff interpreters;
  - ▶ provisions that should be included in contracts with court interpreting firms;
  - ▶ budget policies, including the criteria that will be used to consider emergency requests for additional funds within a fiscal year;
  - ▶ methods of identifying cases and proceedings that will require interpreting services;

- ▶ efficient time management practices for freelance court interpreters;
- ▶ methods for efficient use of time for staff interpreters;
- ▶ information about obtaining the services of court interpreters for exotic languages; and
- ▶ assistance on how to report court interpreting activities for planning, budgeting, and accountability purposes.

4. Legislation or Rules: The Legislature and the Supreme Court should consider the creation of a comprehensive statute or rule to govern court interpretation. Such statute or rule would provide consistent guidance to courts in the utilization, management, and compensation of interpretation services. The statute or rule should include the following matters:

Policy Intent. The Legislature or the Supreme Court should express the general intent of the state with regard to the provision of qualified court interpreters.

Qualifications of Interpreters. A scheme for the testing and certification of interpreters, either under the direct supervision of the Supreme Court or consistent with national certification programs.

Provision of Service. An identification of those court proceedings in which a person who requests or needs an interpreter is entitled to one at public expense.

Notice and Waiver. Provisions for a person needing an interpreter to provide timely notice to the court and opposing party, and provisions for knowing and intelligent waiver of interpretation services.

Oath, Ethics, Conflict, Confidentiality and Privilege. Provisions controlling the professional obligations of interpreters.

5. Provision of Service: The following advisory guidelines are provided for the use of court managers for purposes of determining when court language interpreters should be provided at public expense. The guidelines carry no legal weight, do not create a right to interpretation in any court proceeding, and are not binding on the circuit courts in the provision of services. Court interpretation should be provided when:

- ▶ the participant's inability to comprehend English deprives him or her of an understanding of the court proceedings;
- ▶ a fundamental issue or interest is at stake; and
- ▶ no alternative to judicial intervention exists for the resolution of the issues in dispute.

The second and third conditions are met as indicated:

DIVISION	Court Interpretation Provided	Comments
Casetype		
<b>ALL DIVISIONS</b>		
<b>Criminal Contempt</b>	Yes	Court interpreter services required in all criminal contempt proceedings at state expense.
<b>Jurors</b>	No	Language interpreters are not allowed in jury deliberations. Therefore interpretation should not be provided in earlier stages in the trial process.
<b>CIRCUIT CIVIL</b>		
<b>All</b>	No	Court interpreter services are not required to be provided by the court. Parties may bring interpreters to court if needed.
<b>CIRCUIT CRIMINAL</b>		
<b>All</b>	Yes	Court interpreter services required in all cases, including: <ul style="list-style-type: none"> <li>▶ every person who is a party to the case</li> <li>▶ every proceeding</li> </ul>
<b>DOMESTIC RELATIONS</b>		
<b>Dissolution</b>	No	Court interpreter services are not required to be provided by the court. Parties may bring interpreters to court if needed, <p style="text-align: right;"><i>but:</i></p>

<b>Custody</b>	Yes	A court may appoint an interpreter and charge either party, but if both are indigent an interpreter should be provided.
<b>Child Support Enforcement</b>	No/Yes	A court should appoint an interpreter only in actions brought by the Department of Revenue where the respondent is indigent.
<b>Domestic Violence (Injunctions, Extension Hearings)</b>	Yes	The State Courts System should provide court interpreter services in all cases.
<b>Repeat Violence</b>	Yes	The State Courts System should provide court interpreter services in all cases.
<b>Paternity</b>	Yes/No	A court should appoint an interpreter in any action where the respondent is indigent, and in actions brought by an individual (not DOR) who is indigent.
<b>Adoption</b>	No	Court interpreter services are not required to be provided by the court.
<b>Name Change</b>	No	Court interpreter services are not required to be provided by the court.
<b>JUVENILE</b>		
<b>(Delinquency, dependency, CINS/FINS)</b>	Yes	<p>Court interpreter services required in all cases, including:</p> <ul style="list-style-type: none"> <li>▶ every person who is a party to the case (parents or caregivers)</li> <li>▶ every proceeding</li> </ul>

**PROBATE,  
GUARDIANSHIP, AND  
MENTAL HEALTH**

<b>Probate</b>	No	Court interpreter services are not required to be provided by the court. Parties may bring interpreters to court if needed.
<b>Guardianship of Property</b>	No	Court interpreter services are not required to be provided by the court. Parties may bring interpreters to court if needed.
<b>Guardianship of Person</b>	No/Yes	Court interpreter may be appointed, with costs assessed, or at public expense if ward is indigent.
<b>Mental Health</b>	Yes	A court interpreter should be appointed in any proceeding in which a person may potentially lose the ability to control the decisions about his or her life, and extends to conferences between court-appointed counsel and clients, as there is no agency to provide this service. The requirement also extends to examinations ordered by the court.
<b>Petitions for Incapacity</b>	Yes	Court interpreter services are required at public expense for conferences between court-appointed counsel and clients, at all proceedings and in all court-ordered examinations.
<b>Baker Act</b>	No/Yes	If a public defender has been appointed, then the public defender's office is required to provide court interpreter services for conferences between the public defender and the client.

<b>Marchman Act</b>	Yes/No	Court interpreter services are required at public expense for the defendant, not the family members seeking court action.
<b>COUNTY CIVIL</b>	No	Court interpreter services are not required to be provided by the court. Parties may bring interpreters to court if needed.
<b>COUNTY CIVIL TRAFFIC</b>	No	Court interpreter services not required to be provided by the court. Parties may bring interpreters to court if needed.
<b>COUNTY CRIMINAL</b>	Yes	Court interpreter services required in all cases, including: <ul style="list-style-type: none"> <li>▶ every person who is a party to the case</li> <li>▶ every proceeding</li> </ul>