

# FIFTH JUDICIAL CIRCUIT

## LANGUAGE ACCESS PLAN

### I. Legal Basis and Purpose

This document serves as the plan for the Fifth Judicial Circuit Courts of the State of South Dakota to ensure access to the court and court services for persons with limited English proficiency (LEP) and deaf/hard of hearing persons. It is designed to respond to Title VI of the Civil Rights Act of 1964, the Americans with disabilities Act and to the requirements imposed by Executive Order 13166, South Dakota state law and related guidance. This plan provides a framework for the provision of timely and effective language assistance to persons with LEP who come in contact with the courts of the Fifth Judicial Circuit.

Section 601 of Title VI of the Civil Rights Act of 1964, 42 USC Section 20000d et. seq. provides that “No person in the United States shall on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” Executive Order 13166 requires all agencies receiving federal funds to address the needs of persons who, due to LEP, cannot fully and equally participate in the agency’s programs without language assistance.

The US Department of Justice (USDOJ) has issued policy guidance on the responsibility of courts under this order to provide interpreting and translating services. The USDOJ has the right to investigate complaints against any agency that does not provide free language services when necessary to participate in the program. *See generally* <http://www.usdoj.gov/crt/cor/13166.htm>. Any agency’s federal funding may be withheld until the complaint is resolved.

South Dakota state laws addressing court interpreting are found at SDCL 19-3 and SDCL 19-4 et.al, and are reproduced in the Current South Dakota Laws Concerning Court Interpreting section of the *2011 Report to the South Dakota Supreme Court, Supreme Court’s Committee to Study the Use of Interpreters and Translators in the South Dakota Court System*.

## **II. Needs Assessment**

The Fifth Judicial Circuit Court makes and will continue to make every effort to provide services to all persons with LEP. The following list shows the foreign languages that were used in the past two years in the Fifth Judicial Circuit:

1. Spanish
2. Korean
3. Karen
4. Mandarin

Review of the two year statistics and a poll of the counties in the Fifth Circuit revealed that Spanish interpreters were by far the most frequently needed; however interpreter needs will vary based on particular needs of individuals involved in court proceedings. The Fifth Judicial Circuit Court currently determines those particular needs and provides interpreter services on a case by case basis in accordance with all applicable laws, and will continue to do so in compliance with any policies, rules, or laws established that may pertain to provision of interpreter services.

## **III. Language Assistance Resources**

### **A. Determining the Need for an Interpreter in the Courtroom**

“When a witness cannot communicate or understand the English language the court shall procure and appoint a disinterested interpreter or translator for him....” SDCL 19-3-7. It is at the Court’s discretion to make the determination when an interpreter is necessary. Among the factors taken into consideration by the court are whether a party or person whose presence is necessary or appropriate in a court proceeding:

1. Is unable to accurately describe persons, places and events related to the proceedings due to a non-English speaking background or hearing impairment;
2. Is unable to tell the court “what happened” over a period of time;
3. Is unable to request clarification when statements are vague or misleading, to defend or advocate a position, or otherwise meaningfully participate in a proceeding;
4. Is not on equal footing with an English speaking person with an equivalent education or background;
5. Is unable to speak or understand English and translation necessary to allow for effective participation in a proceeding.

*See Supreme Court's Committee to Study the Use of Interpreters and Translators in the South Dakota Court System, 2011 Report to the South Dakota Supreme Court, November 18, 2011, p. 23-24.*

The Court further determines who qualifies for an interpreter by undertaking the following analysis:

An individual who cannot speak English, or cannot otherwise understand a communication in English, qualifies for appointment of an interpreter if:

1. The individual is a party to a proceeding;
2. The individual's presence is necessary or desirable in a proceeding (i.e. the parent of a juvenile involved in a proceeding);
3. The individual is a person that would be directly affected by any action or decision in the proceeding;
4. The individual is a witness in a proceeding.

*Id.* At 24.

#### B. Providing Interpreters in the Courtroom

The Fifth Circuit Court relies primarily on the use of Language Line for interpreting services. Some counties also have local interpreters they can utilize as needed. When a local interpreter cannot be located, and or/Language Line is not appropriate for the purpose, the Court will consult with outside sources such as Lutheran Social Service in Sioux Falls, or other circuits within the state to locate the needed interpreter. In addition, a "sign" interpreter is utilized when needed, for the deaf. Qualifications of the interpreters are scrutinized by the Presiding Judge and Court Administrator to determine whether the Interpreter will fit the court's needs. Considerations taking in scrutinizing potential interpreters' qualifications include:

1. What is the interpreter's native language and if language services needed is not the native language of the interpreter, the length of time speaking the language;
2. What formal schooling relating to the language and interpretation services was completed;
3. What certifications the interpreter possesses;
4. What level of experience he/she possess in interpretation services.

While this is the current procedure, the Fifth Judicial Circuit Court is willing to implement any policies, rules, or laws to determine minimum qualifications of interpreters that may be established within the UJS or South Dakota Legislature.

#### **IV. Training and Evaluation**

The Fifth Judicial Circuit Court is committed to providing language access training opportunities for all judicial officers and staff members. While training currently is conducted in an informal manner through the circuit, additional policies, rules, and laws established will be implemented to further training and learning opportunities as they pertain to interpreter services.

The Fifth Judicial Circuit Court will routinely assess whether changes to the LAP are needed or mandated by policy, rule, or law. The plan may be changed or updated at any time but reviewed not less frequently than once a year. Each year the Court Administrator, in consultation with the Presiding Judge, will review the effectiveness of the court's LAP and update as necessary. The evaluation will include identification of any problem areas and development of corrective action strategies. Elements of the evaluation will include:

Number of LEP services requested;

Assessment of current language needs to determine if additional services or translated materials should be provided;

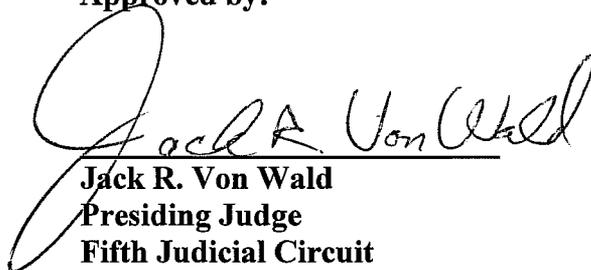
Review of feedback from court employee training sessions; and

Customer satisfaction feedback.

#### **V. LAP Effective Date: November 1, 2012**

#### **VI. Approval**

**Approved by:**

  
**Jack R. Von Wald**  
**Presiding Judge**  
**Fifth Judicial Circuit**

**Dated:** 10/31/12

  
**Susan Compaan**  
**Circuit Court Administrator**  
**Fifth Judicial Circuit**

**Dated:** 10/31/12