

**Supreme Court's Committee to Study the Use of
Interpreters and Translators in the
South Dakota Court System**

Seventh Meeting
Friday, July 22, 2011
10:00 a.m. CT
Al's Oasis Meeting Room

MEETING MINUTES

Attendance: Judge Bradley Zell, Lisa Carlson, Lisa Fowler, Kerry Cameron, Greg Sattizahn, Rosa Iverson, Phil Peterson, Judge Shawn Pahlke, Aaron McGowan, Judge Jon Erickson.

Excused: Judd Thompson, Attorney General Jackley, Karl Thoennes, Ken Tschetter, Bob Wilcox.

Guest: Rich Williams, from the Attorney General's office, representing Attorney General Jackley.

State Court Administrator's Office: Richard Lenius, Gloria Guericke

Call Meeting to Order – Judge Zell

Judge Zell called the meeting to order. He asked Mr. Sattizahn to discuss the distributed handouts.

Mr. Sattizahn explained that the document listing the most common languages spoken in South Dakota (Document A) and the Census Bureau's listing of South Dakota counties' population by race and Hispanic or Latino (Document B) show a consistency regarding the population figures and the languages spoken in South Dakota. The document outlining the three implementation phases (Document C) lists potential funding options for implementing the proposed program. The Interpreter Costs/Programs – Other States (Document D) is a compilation of responses from other states. Mr. Sattizahn surveyed these states for details such as how their interpreter program was run, how it was

structured and its costs. A lot of the information is similar between the states because they belong to the national consortium.

Judge Zell discussed the Funding sub-committee meeting held during the State Bar convention. The sub-committee consisted of Greg Sattizahn, Karl Thoennes, Bob Wilcox, Judge Erickson, Judge Pahlke and Judge Zell. Judge Zell explained that he asked Mr. Sattizahn to talk to the Chief Justice regarding what we will be championing, and the response was to put together what we would like to see initiated.

Mr. Sattizahn informed the group that he added a section for attorneys to the Resource book, per the request made at the last meeting. The book is meant to be a resource for all who work with interpreters.

Mr. Sattizahn explained that we've gone through the entire draft of the Committee's Report to the South Dakota Supreme Court (Handout E). The only part we didn't finish discussion on was Section 3, pages 18-19.

Continue Discussion Regarding Draft Report to S.D. Supreme Court

- **Section 3. Qualification Exceptions. (pages 18-19)**

Judge Zell reminded the group that they had extensive discussion earlier regarding Qualification Exceptions, and because of many concerns, it was decided to return to this section later.

Mr. Sattizahn discussed his intent when drafting this section. He explained that we want interpreters officially recognized, but Section 3 allows exceptions under certain circumstances. He used the example of bringing in someone from outside South Dakota when no one in SD is registered in the needed language. He stated that bringing in an interpreter depends upon the level of the hearing. This section allows you to move away from the registry, but the judge must still canvas the individual and determine if they are qualified to handle the hearing.

A challenge may later occur if this person is utilized. Mr. Sattizahn explained that this section allows the court to show that they realized the person wasn't registered, but steps were taken to make sure the person

was up to the job. The judge needs to explain the reason for the waiver on the record.

Judge Zell added that the Plan, as written, requires the court to explain the reason for the waiver. He discussed a recent third arraignment where they didn't find an adequate interpreter until the third try because of the uncommon language needed. This is why he feels it is important to make a record.

Judge Erickson and Judge Pahlke agreed that you need to make a record.

No other comments were received.

Mr. McGowan moved and Judge Erickson seconded the motion to adopt the language on pages 18-19 in Section 3 of the draft Report to the Supreme Court. The motion passed unanimously by voice vote.

Judge Zell referenced the corrections made and asked the Committee if they felt comfortable conditionally approving the language set forth in this packet, excepting the funding, to adopt as our report to the Supreme Court, after it was provided to other groups (defense bar, court reporters, etc) for review for input.

Judge Zell explained that our next step would be to allow groups such as the State Bar, the Judges' Association, the Defense Bar, court reporters, and other groups with interest in this area, to provide input.

Mr. Sattizahn suggested doing a press release and having our document available on the UJS website for review.

The Committee felt this was a good idea. Judge Erickson asked about a timeframe.

Mr. McGowan said that he is on his board and could email it out to members. Mr. Peterson said he'd do the same with the criminal defense association. Ms. Iverson and Ms. Fowler said they could do the same.

Mr. Cameron moved and Judge Erickson seconded the motion to conditionally approve the amended draft as the Interpreter-Translator

Report the Committee will give to the Supreme Court pending any comments received from outside groups, and minus the funding aspect. The motion passed unanimously by voice vote.

Mr. Sattizahn informed the group that he will merge the changes and give it a good proofing.

The following timeframe was determined: the draft would be sent out by August 1 and comments need to be returned by August 31.

Judge Erickson suggested that all comments be referred to Mr. Sattizahn so that he receives them as soon as possible.

Mr. McGowan stated that he plans to carbon copy Mr. Sattizahn on his email so that the recipients have his email address.

Mr. Sattizahn noted that it is important to know who this was shared with for review and input so that we can inform the Supreme Court. We want it reviewed by a large audience, not just civil and criminal groups. Judge Zell asked committee members to inform Greg as to all the groups they forward the draft Report. He suggested having it sent to the State Bar, County Commissioners, and Chambers of Commerce.

Mr. McGowan suggested putting a link in newsletters so that it goes out to everyone.

Funding Options Discussion

Judge Zell noted that this plan requires money to implement. The Funding sub-committee met during the State Bar and Judge Erickson proposed an idea they felt was very novel regarding economic development. He explained that there is a benefit and a burden from economic development. The more jobs created is a benefit to the whole society, but one of the costs of this benefit is you may end up with individuals who are not fluent in English. Our laws may be foreign to them and they may require judicial services.

Funding options discussed at the sub-committee meeting included the following:

- economic development funding
- filing fees and criminal defense costs
- funding as part of UJS's budget

Judge Erickson explained that what he's been seeing is that language barriers seem to stem from economic development. This wasn't figured in when they went out to recruit these businesses, and the cost is rising. The civil filing fee option was his least favorite.

Judge Zell asked Mr. McGowan about collecting costs, fees and fines. Mr. McGowan stated that it's a constant and frustrating process to collect the money, and noted that there are no guarantees we'll bring in more money with an additional assessment. We'll need to find additional funding as well.

Mr. Peterson asked if any inquiries have been made yet and Judge Zell explained that the economic development monies are administered by the executive branch and this would need to be approached with the local and administrative facilities. The executive branch holds a stake in our predicament because if the Department of Justice doesn't feel the UJS or State is properly providing services, any action will involve the state. This could be quite costly.

Mr. Peterson felt the economic development funding proposal could be an excellent option as the two tie together very closely.

Judge Erickson noted that the influx of people coming into his area is definitely moving there because of economic opportunity. The problems he is seeing are mainly in magistrate court and are driving related. They are not seeing a lot of serious crimes.

Judge Erickson felt that we need to look at this as a starting point. He pointed out that we're currently getting along with a lot of free services and if we go to this system (adopt these procedures), there will be some added costs for the Circuits as we may lose these free services. Judge Zell added that Ellsworth Air Force base provides interpreters free of charge as part of

a public service. Judge Pahlke noted that the numbers for this were relatively low. She felt that Judge Erickson's position is a good one regarding using this as a starting point.

Mr. Sattizahn explained that he's been checking with the judicial circuits to find out what they've been spending on interpreter costs so that we can compare these numbers with the numbers that Mr. Wilcox is compiling from the counties. He's found costs to be lower than what he expected.

Mr. Sattizahn pointed out that if the program (trainings for judges, attorneys, etc.) is run through the Unified Judicial System, this would be a fulltime job for someone (see last page of Document D), and that Mr. Goerd, who heads up the Court Interpreter program in Iowa, had informed the committee that it costs approximately \$48,000 to run this program in his state. Mr. Sattizahn needs to visit yet with Mr. Wilcox regarding his findings. It will be difficult to determine how much money we will need.

Mr. Sattizahn felt that the Implementation Phases sheet (Document C), where the various financial Phases are outlined, would be helpful for starting the program. It is easier to anticipate the hard costs such as interpreter fees and office equipment, and would need to determine the more unknown costs such as tracking a language and determining the need, as our office has not done any of this yet. He felt that joining the consortium would be beneficial as this organization will provide us with a lot of information as to the costs. He noted that if you go to economic development agencies or the legislature for money, you will not get it right away, but we can keep moving ahead with the program by doing the outlined Phases.

Judge Erickson pointed out that this isn't the "Cadillac of proposals," it's more a "Chevy or Ford," as we're trying to cover the minimum criteria to get started.

Judge Zell informed the group that if someone handed us half a million dollars today, it would still take us about 18 months to implement the program. He felt that the Phases outlined on Document C were a good recommendation to the Supreme Court in implementing the program.

Mr. Sattizahn explained that when compiling the Implementation Phases sheet (Document C), he went through all the recommendations we had laid out and then estimated the costs to implement. He then categorized them by how expensive they were and how best to implement.

Judge Zell pointed out that the committee approved the Plan as to “what we do,” and asked if the Committee felt they should recommend the Implementation Phases (Document C) process to the Supreme Court as the “how we do it” stage. For the funding mechanism, the Committee can only make recommendations to the Supreme Court.

Judge Zell pointed out that the Circuits could adopt steps in the Phases before the official plan was approved.

Committee Discussion Regarding *Implementation Phases* Document (Document C)

- **Phase 1 – Little/No Funds**

Mr. McGowan suggested that steps in Phase 1 could be as simple as posting signage indicating that language assistance was available. Perhaps a kiosk could be available at the courthouse to cover the languages we’re seeing in South Dakota. Mr. Sattizahn offered to check on this option.

Ms. Iverson noted that the Department of Social Services has a poster regarding phone numbers individuals needing language assistance could dial. Mr. Sattizahn will also check on this option.

Mr. McGowan wondered if the State Bar might have some money available to help us with this endeavor.

Ms. Fowler stated that there’s a public access video phone on the first floor of the Sioux Falls courthouse, and perhaps information could be put on it in the various languages. She noted that as part of a federal project, they’re trying to get public access video phones deployed elsewhere, so this may be an option for counties.

- **Phase 2 – Moderate Funds**

Ms. Fowler stated that they recently developed a complaint process that we could utilize, which wouldn't cost a lot of money.

- **Phase 3 – Fully Funded**

Judge Zell reminded the group that we're initially trying to provide basic services for access to the courts, not necessarily a "Cadillac" process.

Judge Pahlke moved and Judge Erickson seconded the motion to adopt the Implementation Phases (Document C) as a separate step to the Supreme Court.

Mr. Peterson questioned if the committee should recommend that it be fully funded.

Judge Erickson felt that this process is the right thing to do to provide access; it shouldn't be implemented just because of federal oversight.

Judge Pahlke asked if we should recommend to the Supreme Court that they appoint a committee similar to this one to keep the process going.

Mr. Sattizahn stated that he envisioned a certain person in charge of the program, as referenced by Mr. Goerdt. He felt it would be good to have a committee to provide oversight as things may need changed as the program progresses.

Judge Zell felt that it could possibly be an annual review committee, but not necessarily this committee as we're the implementation committee. The committee is a good idea that the Supreme Court may want to consider for reviews of the program.

Mr. Sattizahn pointed out that #30 in the Plan encompasses a review, and this may cover what Judge Pahlke was referencing.

Judge Zell called the vote (Implementation Phases motion highlighted above), which passed unanimously by voice vote.

Judge Zell asked if committee wished to recommend a preference as to how the plan be funded.

Judge Pahlke asked if we need give them our priority or just provide options and let them choose. Judge Erickson suggested providing options and listing the pros and cons of each.

The group liked the idea of listing the pros and cons for each of the options and letting the Supreme Court choose the option(s).

Judge Zell asked if everyone was comfortable with the three options we are providing the Supreme Court. They can then select an option or combination of options.

Mr. McGowan moved and Ms. Fowler seconded the motion to provide the three funding options to the Supreme Court. The motion passed unanimously by voice vote.

Judge Zell asked Mr. Sattizahn if he needed assistance with the pros and cons for the funding options. Mr. Sattizahn said he will draft a list and then share it with the committee.

Next Meeting

Mr. Sattizahn pointed out that the only thing left is to finish gathering the costs and then work off of this information to determine what the costs for the program.

Judge Zell stated that this could be handled by the sub-committee, unless the committee also wants to review the numbers.

The Committee tentatively selected the dates of September 30 or September 23, and SCAO staff will do a follow-up email survey to see which date works the best for everyone.

Adjourn:

The meeting adjourned at 1:35 p.m. C.T.