DOCUMENT B

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

FUNDING REPORT

(DATE)

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BACKGROUND

Any analysis relating to the provision of interpreter services in South Dakota would not be complete without addressing the very significant topic of funding. Obviously, a number of the recommendations contained in the Committee's Report to the Supreme Court will require the expenditure of funds. Funding related pressures will only increase with additional training concerning the need for interpreter services, the increased qualifications required for interpreters and the provision of interpreter services where there may have been none before. However, the funding issue is also complicated by the fact that interpreter cost and demand varies widely from county to county and there is no uniform standard for paying interpreters. Some counties have reached agreements with local interpreters and are able to receive services at minimal cost, while others are required to pay whatever is necessary to find an interpreter. *See* Appendix A for interpreter cost information by county.

Interpreter costs are currently determined based on the proceeding. For criminal cases, they are borne largely by the counties for trial expenses, with the UJS responsible for expenses following the disposition of a criminal proceeding if necessary (such as court services supervision). In civil proceedings, current South Dakota law indicates that interpreter fees are taxed to the parties themselves. *See* Appendix B for a summary of current South Dakota statutes relating to interpreter costs. Yet, this division becomes quickly blurred when interpreter services are required for things such as juvenile matters, protection orders, child abuse and neglect cases, contempt proceedings, guardianship or commitment proceedings.

The Department of Justice guidelines indicate that interpreter services should be provided at no-cost to the parties involved in a judicial proceeding or those whose presence is necessary or appropriate in any civil or criminal proceeding. The Committee has also adopted this position as its recommendation in order to ensure equal and meaningful access to the judiciary for all citizens, regardless of their primary method of communication. By placing the cost of an interpreter on a party in a court proceeding, the current framework may create a barrier to access to the courts for limited English proficient or hearing-impaired individuals. As it relates to hearing-impaired individuals, the current system would contravene the requirements of the Americans with Disabilities Act.

RECOMMENDATION

In light of the Committee's recommendations to move toward a statewide interpreter program, the Committee recommends modifying the current structure that distinguishes payments based on whether the proceeding is civil or criminal in favor of treating all interpreter costs, when necessarily incurred, as a responsibility of government to provide equal access to judicial services. This would obviously carry significant funding consequences. The two most readily available options would be having either the counties or the UJS assume the costs for interpreter

services for all proceedings. Both entities would need to work together to ensure appropriate funds are made available before such an undertaking could be successful. The lack of a statewide response to the interpreter issue has largely contributed to the current state of interpretive services in South Dakota as outlined in the Committee Report. To eliminate those concerns, the Committee would ideally recommend a statewide program funded and managed through the Unified Judicial System.

POSSIBLE FUNDING MECHANISMS

In studying possible funding options, the Committee has identified four recommended funding options. These recommendations each have pros and cons which the Committee has attempted to articulate. These funding recommendations should not be viewed as mutually exclusive, but may need to be combined based on economic and political realities in order to create a fully funded and viable statewide interpreter program.

RECOMMENDATION: The Unified Judicial System should seek a general fund appropriation to provide a statewide interpreter program.

- PROS:
    - This proposal would centralize the interpreter program and its funding within the Unified Judicial System.
    - The counties would be relieved of interpreter expenses.
    - Any uncertainty over who is responsible for paying the costs for interpreter related cases would be eliminated.
    - A general fund appropriation would provide a more consistent and stable funding source than other options the Committee has considered.
    - This would reduce the need to increase court costs that may negatively impact users of the system.
- CONS:
    - The availability of a general fund appropriation may not be realistic given the current economic climate and the budget constraints imposed upon both the Unified Judicial System and state government as a whole.
    - The total cost of the program is unknown at this time.

RECOMMENDATION: The Unified Judicial System and the counties should work with the Executive Branch and the Governor's Office of Economic Development to develop a cost-sharing mechanism to fund interpreter services on a statewide basis.

- PROS:
    - This proposal is largely supported by the fact that economic development activities and incentives have significantly contributed to increased demands for interpreter services throughout the state.
    - Interpreter services would be recognized as a "cost of doing business" for the state when attracting these companies to South Dakota.
    - There is a demonstrated link between economic development activities and the increased demand for interpreter services in the state courts.
    - This option would further enhance community support for businesses that may attract limited English proficient speakers.
    - It would also recognize that meaningful access and participation in all court proceedings is essential to fostering community relationships and protecting the rights of those attracted to South Dakota for employment opportunities.
- CONS:
    - Economic Development funds are used to attract businesses and any funding mechanism that draws away from those resources may be seen as a deterrent to economic activity.
    - The relationship between the need for interpreter services and economic development may be viewed as a time-limited event as the businesses remain long-term in the community.
    - This proposal is more specifically linked to the need for services relating to language interpretation.
    - This proposal may cause concern and generate opposition by groups that have a stake in economic development funds.

RECOMMENDATION: Interpreter program management and the cost of interpreter services could be funded through a surcharge for civil case filings and criminal convictions.

- PRO:

- Those that use the system will be required to pay costs associated with providing services.

- CONS:
  - An additional surcharge would most likely need to be added to all civil and criminal case filings in order to fund a statewide program.
  - Money would need to be segregated into a separate fund.
  - Collectability of surcharges on criminal cases following conviction has proven to present challenges.
  - The funding would not be consistent on a yearly basis but would be linked to case filings and what is collected in any particular year.
  - The addition of a new surcharge may not be well-received by those groups that use the court system on a frequent basis.

RECOMMENDATION: Federal grant funding should be pursued to provide for costs of interpreter services and program management.

- PRO:
  - This proposal would provide a source of revenue for at least a limited duration.
- CONS:
  - Grant funds may not be available or awarded.
  - Significant oversight and reporting requirements would be associated with any grant award and grant funds would be of limited duration.
  - The State may not be in a position to sustain a grant-funded program.

FUNDING PHASES

Because it is highly unlikely that funding issues will be resolved quickly, the Committee recommends that steps be taken to address the concerns addressed by the Committee Report as the funding process works its way toward a conclusion. In that regard, the Committee recommends tackling the issues raised by the Committee's Report in phases based on the funds and resources that may be available. The Committee's phase proposal is attached as Appendix C.

APPENDIX A

COUNTY INTERPRETER COST INFORMATION

[Insert Updated Information Here]

APPENDIX B

CURRENT SOUTH DAKOTA LAW RELATING TO INTERPRETER FUNDING

SDCL 19-3-7. Testimony - Interpreter for witness unable to communicate in English - Compensation. When a witness cannot communicate or understand the English language the court shall procure and appoint a disinterested interpreter or translator for him who *shall be compensated for those services as the court shall certify to be reasonable and just, to be paid and collected as other costs.*

SDCL 19-3-12. All interpreters appointed under the provisions of § 19-3-10 (interpreters for deaf or mute persons) shall be appointed by the judge if the appearance is before any court or by the chairman or presiding or executive officer of any board, commission or agency by which the proceeding involving such person is being conducted. *The court or agency conducting such proceeding shall determine and fix a reasonable fee for the services of the interpreter and shall provide for the payment of such costs out of funds appropriated for the operation of such courts and agencies.*

SDCL 23A-22-11. Evidence - (Rule 28) Appointment and compensation of interpreter. A court may appoint an interpreter or translator of its own selection and *may set reasonable compensation for him.*

APPENDIX C

FUNDING PHASES

Phase 1 Minimal Funds

- Adopt and have all interpreters review a professional code of ethics and sign an acknowledgment of their responsibility to abide by it prior to interpreting in the state courts.
- Create a preference for interpreters based on qualifications.
- Provide training to court staff and judicial officers on the effective use of interpreters and working with LEP or hearing-impaired individuals.
- Establish guidelines and materials for best practices when using interpreters.
- Post signage indicating language assistance is available in all courthouses.
- Adopt and publish on the UJS website an Interpreter Use Handbook indicating best practices and tips for cases involving interpreters.
- Encourage judicial staff, law enforcement and attorneys to provide advance notice of any perceived language needs or hearing-impairment.
- Develop and distribute bench books or bench cards to assist judges in dealing with LEP or hearing-impaired individuals.
- Group proceedings to the extent possible involving interpreter services.

Phase 2- Moderate Funds

- Work with the State Bar to provide cultural competency training to attorneys, including the effective use of interpreters.
- Establish a defined complaint process within the UJS for any person to file a complaint related to language access.
- Join the Consortium for Language Access in the Courts to gain access to materials and training in anticipation of future expansion.
- Work collaboratively with community groups and professionals to develop and encourage language services through outreach efforts.
- Translate instruction sheets for UJS forms in the most commonly encountered languages.

- Begin tracking data for LEP and hearing-impaired contacts within the court system.

Phase 3- Fully Funded

- Develop statewide registry of qualified interpreters.
- Conduct background checks on interpreters.
- Develop testing standards/ orientation and training requirements.
- Administer testing and orientation program to potential interpreters.
- Provide continuing education for interpreters.
- Develop video and informative materials in the most common languages, including sign language, explaining the judicial process.
- Statewide oversight through the SCAO.