

## Fourth Judicial Circuit Language Access Plan

### I. Legal Basis and Purpose

This document serves as the plan for the Fourth Judicial Circuit of the Unified Judicial System of the State of South Dakota, to ensure access to the courts for persons with limited English language proficiency (LEP) and hearing impaired persons. This plan is designed to respond to Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act and 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 to ensure their access to the court services of the Fourth Judicial Circuit.

Section 601 of Title VI of the Civil Rights Act of 1964, 42 USC Section 2000d et. seq. provides that "No person in the United States shall on the grounds 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 guidelines 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>. An 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 19-14 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. Demographics & Needs Assessment

Interpreter needs in the eight counties of the Fourth Judicial Circuit have been relatively limited to the more highly populated counties of Butte, Lawrence and Meade. The demographic statistics for these counties and the state of South Dakota are provided by the *US Census Bureau, 2011 Census QuickFacts*.

### South Dakota:

- White persons not Hispanic: 84.4%
- Persons of Hispanic or Latino Origin: 2.9%
- American Indian Origin: 8.9%

### Butte County:

- White persons not Hispanic: 92.0%
- Persons of Hispanic or Latino Origin: 3.3%
- American Indian Origin: 2.1%

### Lawrence County:

- White persons not Hispanic: 92.0%
- Persons of Hispanic or Latino Origin: 2.7%
- American Indian Origin: 2.3%

### Meade County:

- White persons not Hispanic: 89.4%
- Persons of Hispanic or Latino Origin: 3.5%
- American Indian Origin: 2.5%

The Fourth Judicial Circuit makes every effort to provide services to all persons with LEP. The following list shows the frequency of the foreign languages that were used during the past three years (2009-2012) in Butte, Lawrence, and Meade Counties:

- Spanish (36)
- Vietnamese (3)
- Mandarin (1)
- Turkish (1)

### 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 this 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 proceeding due to 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 is 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 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 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 Fourth Circuit relies primarily on the use of Language Line Services for interpreting services within the courtroom. This service is also used by the Lawrence County Public Defender's office in Deadwood, and is being considered for use by the Fourth Circuit Court Services and the Clerk of Courts offices to assist with interpretive needs relating to cases and/or supervision outside of the courtroom setting. A list of local interpreters is also maintained in the Fourth Circuit Court Administrator's office. Communication Services for the Deaf is generally utilized when sign language interpreters are needed. Considerations taken in determining potential interpreter's 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 the interpreter possesses in interpretation services.

While this is the current procedure, the Fourth 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 Fourth Judicial Circuit is committed to providing language access training opportunities for all judicial officers and staff members. While training currently is conducted on an informal basis throughout the circuit, additional policies, rules

and laws established will be implemented to further training and educational opportunities as they pertain to interpreter services.

The Fourth Judicial Circuit 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 will be 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:

1. Number of LEP services requested;
2. Assessment of current language needs to determine if additional services or translated materials should be provided;
3. Review of feedback from court employee training sessions; and
4. Customer satisfaction feedback.

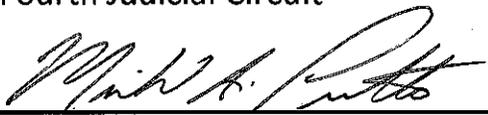
**V. LAP Effective Date:** July 1, 2012

**VI. Approval**

**Approved by:**

  
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**Warren G. Johnson**  
Presiding Judge  
Fourth Judicial Circuit

Date: August 30, 2012

  
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**Michael A. Pisciotta**  
Court Administrator  
Fourth Judicial Circuit

Date: 8/30/12