

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

MEETING MINUTES

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

**Initial Meeting
Friday, April 23, 2010
10:00 a.m. CT**

Room 414, Capitol Building, Pierre, South Dakota

Meeting Minutes

Attendance:

Committee Members: Judge Bradley Zell, Committee Chair, Circuit Judge in the 2nd Judicial Circuit; Judge Shawn Pahlke, Magistrate Judge in the 7th Judicial Circuit; Lisa Fowler, Interpreter, Director of Workforce Development; Lisa Carlson, Court Reporter in 2nd Judicial Circuit; Karl Thoennes, Circuit Administrator in the 2nd Judicial Circuit; Judd Thompson, Chief Court Services Officer in the 7th Judicial Circuit; Rosa Iverson, Interpreter; Phil Peterson, Peterson and Stuart Law Office; Bob Wilcox, Executive Director of the Association of County Commissioners; Kerry Cameron, Roberts County State's Attorney; Ken Tschetter, Tschetter and Adams Law Office.

Excused: Aaron McGowan, Minnehaha County State's Attorney; and Judge Jon Erickson, Circuit Judge in the 3rd Judicial Circuit.

Unified Judicial System (UJS): Chief Justice David Gilbertson; Greg Sattizahn, Legal and Legislative Counsel; Gloria Guericke, Administrative Assistant.

Guests: Charles McGuigan, representing Attorney General Marty Jackley

Media: Chet Brokaw, Associated Press

Call Meeting to Order – Judge Zell

Judge Zell called the meeting to order at 10:00 a.m.

Welcome - Chief Justice Gilbertson

Chief Justice David Gilbertson welcomed the committee. He discussed the history behind the formation of this committee in that the Equal Justice Commission has recommended that interpreters be a priority for the state, for individuals involved in court cases who are not fluent in English. The Commission's recommendation highlighted the fact that we needed to look at this topic. He noted that one South Dakota judge has had up to 26 languages in his courtroom through his years as a judge.

General Committee Goals - Chief Justice Gilbertson

Chief Justice Gilbertson stated that the committee's format came about from success in the makeup of the recent Cameras committee (Supreme Court's Committee for the Study of Cameras in the Trial Courts). He explained that this committee has a broad-based charge to look at the problems in South Dakota and to suggest solutions. There is no time limit on this as we do not know how broad based your committee will go. Any recommendations will go before the Supreme Court for consideration. He assured the group that the Court does not take reports and store them on the shelf.

The Committee has a number of options to explore such as considering statutes with statewide ramification or leaving it to the local circuits as one size may not fit all.

Chief Justice Gilbertson said he aimed for geographical diversity plus rural vs. urban diversity in the composition of this committee. He was pleased that no one turned him down when he asked them to participate. He noted that the Court is very pleased you are addressing this topic. The Unified Judicial System staffing for this committee is Mr. Greg Sattizahn, UJS's Legal and Legislative Counsel, and Gloria Guericke, Administrative Assistant. Other staff are available if needed. The Chief Justice explained that he is excluded from the committee as his participation would create a conflict of interest.

Chief Justice Gilbertson noted that the Interpreter/Translator standards issue is not unique to South Dakota. An individual's translator needs begin prior to the courtroom setting as other issues need addressed beforehand.

The Chief Justice asked if there were questions, but there were none.

Chair Zell felt that our ultimate goal is for anyone stepping inside the legal system to have the ability to have the same playing field as those fluent in English. He noted that some folks have limited English but not enough to understand what is going on.

Introductions - Chief Justice Gilbertson, Judge Zell, committee members, and guests

Judge Zell asked that committee members introduce themselves and share a bit of background with the rest of the group. Judge Zell started the introductions and the committee members followed suit.

Interpreter Policies in Other States – Greg Sattizahn

Mr. Sattizahn provided the group with a Power Point presentation overview of Interpreter Policies. He cautioned the committee that whatever goals or recommendations they determine will affect almost everyone in the judicial branch, from

judges to clerks of court (paperwork, etc.), to court services officers (who need to collect certain information from these individuals), to circuit administrators (need to find the interpreters), to court reporters.

In 2008, the UJS Planning and Advisory Council (which consists of individuals such as judges, circuit administrators, clerks of court, court services officers, court reporters, and a Supreme Court Justice) conducted a survey of the top issues facing the judiciary. The issue of Interpreters was in the top 5 determined by both the UJS staff and SD State Bar members. It was noted that a barrier is immediately formed if services are not available for English-deficient individuals.

Mr. Sattizahn stated that dealing with a foreign language can be intimidating for all parties. Individuals may have some English but would be intimidated in a courtroom setting.

According to the 2000 census, 93.64% of the South Dakota population speaks English. This number will be changing over time as more people from other countries settle in our state.

Mr. Sattizahn noted that State v. Selalla is the South Dakota court case that prompted the interpreter/translator concern. He explained that a person's inability to understand a proceeding against them implicates the constitutional rights of due process, effective assistance of counsel, and can result in confrontation clause issues as well. He noted that Justice Konenkamp recognized that South Dakota has no uniform standards for regulation, qualification and appointment of interpreters.

Currently, our 3rd Judicial Circuit has a formal Interpreters/Translators policy and the 2nd Judicial Circuit has a "loose" policy. The process is informally handled in a number of circuits. For example, the Rapid City courts contact Ellsworth Air Force Base when they need an interpreter or translator fluent in a certain language.

Interpreters are needed approximately 4 times a day, 1200 times per year, for Minnehaha and Lincoln counties.

Mr. Peterson said he's had cases involving people deficient in English because they come in from across the state border. Sioux City has quite a few Sudanese and Hispanic people.

Mr. Sattizahn presented statistics showing that back in 2006, the 2nd Judicial Circuit averaged on a regular basis 30% of its cases in Spanish, 20% in Persian, and 50% for everything else.

The Language Line is not useful in a court setting, but it works for a clerks office's needs.

Mr. Thoennes noted that Language Line is fairly expensive as it costs about \$3.50 to \$4.00 a minute.

Judge Pahlke said that Rapid City uses Language Line for interpreting needs almost every day.

Judge Zell noted that Language Line is used for arraignments but wouldn't work well in a courtroom.

Mr. Sattizahn stated that some circuits have gone out of state to get interpreter assistance.

The Equal Justice Commission's recommendations are for comprehensive guidelines for all people in need for training, costs, certification, and testing. Forms and documents should be translated into common languages, and policies and programs developed to orient and sensitize all court personnel. Mr. Sattizahn commented that we have done some of this through the State Court Administrators Office and the training we provide, but more work remains.

Mr. Thompson explained that many of the individuals on probation that they work with do not read or write in English. Their clientele's education level is often varied.

Ms. Iverson said that she has much empathy for the clients she assists. She can see the confusion of her clients when they look at the paperwork and their unwillingness to work with counsel. Establishing communication between clients and counsel is Ms. Iverson's #1 goal. She stresses to them that they do have rights. She pointed out that people from outside the US may have a lower education level in comparison to what is available in the States and are unfamiliar with our court system.

Mr. Sattizahn stated that he wasn't aware of any documents translated into common languages. Mr. Thoennes noted that the Visitation Guidelines are translated into Spanish. Judge Zell said that North Dakota did an extensive project like this for their Spanish population and we had planned to do the same. Judge Pahlke noted that the DUI rights are in Spanish and in English in Rapid City.

Ms. Iverson stated that she is seeing more forms available. In fact, law enforcement officers carry some of these forms. Judge Zell noted that Sioux Falls has Spanish speaking officers but he wasn't aware of any standardized translated forms.

Ms. Fowler pointed out that the preferred form for her deaf or hard-of-hearing clients would be visual, as ASL is a visual language all of its own and so Deaf/Hard of Hearing individuals do not always have a good grasp of the English language.

Mr. Peterson felt that Ms. Fowler made a good point about sign language. He told about a deaf woman who was walking down the street and a police officer arrested her for not stopping after he had called to her to stop. He couldn't understand why a

hearing impaired person wouldn't stop. He explained that situations like this are why he got involved with this committee. He didn't feel it was right that an impairment or handicap should result in an individual unintentionally getting into trouble.

Judge Zell pointed out that situations have occurred where children have had to interpret for their parents, which is not a good situation.

Judge Pahlke noted that Committee Chair Judge Zell handled a case with a deaf defendant, which was one of most challenging cases in the state. It was a murder case and he handled it well.

Mr. Sattizahn informed the committee that he had looked at state policies and pulled out the following common themes:

- Registration with the court-creation of rosters
- Qualification requirements – formal certification versus qualifying background
- Code of Conduct
- Training on courtroom process/terminology
- Oath
- Disciplinary/Complaint process

Mr. Sattizahn explained that some states have you fill out an application and take a test before becoming an interpreter. Individuals with formal certification would have a star by their name on the available listing to differentiate them from those without.

He noted that the interpreter plays a very valuable role in the courtroom, whereas with Language Line, you aren't quite sure about the background of the individual providing the interpreting.

A Disciplinary/Complaint process is important as there can be bad interpreters. When complaints are received, others speaking the same language have been brought in to determine if the interpretation is correct. He noted that a disciplinary oversight process should be considered.

Mr. Sattizahn informed the group that, on the federal side (Dept. of Justice), the Civil Rights Act of 1964 clarifies in some of the constitutional cases it is our responsibility to ensure "meaningful access" to those with limited English proficiency (LEP).

Meaningful access is based on:

- The number of LEP persons eligible to be served or likely encountered;
- Frequency of contact with LEP persons;
- Nature and importance of the program, courts are viewed as essential (as they protect your property and liberty);
- The resources available to the entity.

Mr. Thompson noted that arraignments and trials are small time periods in comparison to be out of contact if the person is placed on probation. The Court Services Officer may see these people 5 days a week for a number of years. Mr. Thompson's office sees a number of limited English proficient people and that seeing them daily often becomes a real struggle.

Mr. Thompson stated that they can handle the daily questions, but a violation of rights or something else new is what provides the challenge.

Judge Pahlke noted that many prosecutors indicate they won't do certain cases if someone comes in who will require a lot of interpreter use, as it will bring in a number of challenges. She is aware of a case that was dismissed as the language issue was too challenging.

Judge Zell felt that 2 good sources for the committee were Access in the Courts and the Consortium for Language, so that we wouldn't need to "reinvent the wheel." He felt that we need some training or a standard policy in place.

Mr. Sattizahn reminded the group that the Department of Justice has indicated they will to ensure compliance. They have taken the position that interpreters should not be charged to the parties, but the Department of Justice has not imposed blanket requirements.

Mr. Sattizahn had reviewed some Department of Justice documents and noted recommendations that the committee could look at in order to help guide our direction.

Things to consider:

- Qualifications-training, ethical standards, oath
- Types of proceedings – civil v. criminal
- Who receives interpreters – parties/witnesses/victims/audience members
- Monetary issues – who pays, how paid (do we need a state standard, or left to counties as they may be able to negotiate a better rate)
- Translation of documents – identifying vital documents
- Statewide v Local. For example, currently its mostly a local situation
- Train attorneys/Court staff on use
- Notices/signage. Example: videos to provide rights.
- Use of technology. Example: Webcams so interpreters from far away can assist without the expense of travel.

Ms. Carlson noted that sometimes a limited English proficient individual will say they don't need an interpreter. You proceed and soon realize their language is very weak. She questioned how do you decide who needs an interpreter.

Judge Zell felt that the judge would need to gauge this situation. He suggested that by posting available services in the entry to a courthouse, we can make available to individuals the services they can seek.

Judge Zell thanked Mr. Sattizahn for his overview of what states have done and what the federal government is expecting.

Committee Work Strategy (How the committee plans to accomplish its goals.)

Judge Zell felt that this process is comparable to "herding cats" as it is a broad topic and is difficult to get your arms around. He noted that sometimes it is easier to start on the outside and work your way in. The committee may need to make recommendations as to laws or statutes, or we may need to do some rule work. We may even want to adopt policies for the Circuits to adopt. We need to provide opportunity and services for people when they show up, and we could also have a resource book for the courts and others involved to reference when working with LEP/hearing impaired/deaf individuals.

Judge Zell noted that we also have blind individuals come in who need resources. He relayed the experience of an individual who had been blind since age 4 and had been selected for jury duty. Her dad always told her she could accomplish anything she attempted and she sent the court a thank-you afterward for letting her serve her county as a juror.

Mr. Sattizahn informed the group that after the committee was announced, he received numerous contacts from national organizations that want to assist us by providing information. We could consider contacting these groups, if they are reasonably priced, to come and provide their issues and perspectives. He noted that the Brennan Center seemed particularly receptive to our issue. Mr. Sattizahn explained that the Cameras Committee initially started their study by bringing in presenters, and he was open to exploring this option.

Judge Zell reported that he, too, received lots of information from these national groups. Several of the areas he sees us exploring are Language and Interpretation, Hearing/Visually Impaired, and Costs. He suggested that the committee could break into subcommittees to study the various areas.

Mr. Thoennes stated that having served on Cameras Committee, he was apprehensive about outside contributions as we'll drown in the information. He wasn't sure where we're at right now in the State's Interpreter-Translator needs and that maybe our first step should be data collection from the counties. We could collect information such as interpreter use, language frequency, etc., to find out where we are and what needs addressed.

Judge Zell felt that we should start with assumption that we have no standards.

Mr. Thompson expressed concern about collecting data on what we spend as it will give us a skewed picture since there are some services we're not providing. It doesn't show us our real need or the potential cost.

Mr. Tschetter agreed with Judge Zell and stated that the statistics from 2006 indicate that we need to implement something, but we need to know what we are looking at and what can we expect cost wise.

Judge Zell noted that Mr. Sattizahn had provided data regarding the use of services in our state and asked if this was enough information.

Mr. Sattizahn stated that the data he showed was from Mr. Thoennes from 2006. He explained that some of this information is tough to collect. For example, do we have a clerk check a box every time they feel someone needs an interpreter? He felt that we do need to collect more information as to when an interpreter is needed, how often interpreters are needed, and the costs incurred.

Ms. Fowler pointed out that there are also the logistics of getting an interpreter there, and then there is the training of how to use an interpreter. She felt this could be a sub issue.

Judge Zell noted that there are certain languages, such as Lakota, and questioned how you find an interpreter when fewer young people are learning this language.

Mr. Thompson and Judge Pahlke felt we should work as a large group. Judge Pahlke noted that by working in smaller groups, you end up missing out on valuable input from committee members not in the subgroup.

Mr. Cameron felt we should work together as a large group while determining direction.

Ms. Iverson wants to bring her experiences from being an interpreter in courtroom to this committee. She felt that we need to share our experiences in order to help determine our needs.

Judge Zell noted that what he was hearing was that the committee wanted to stay together to create the vision of where we are going. For another project, he had checked out other states with similar issues to see what they were doing, and maybe we could take this direction. He felt that we will need some laws, administrative rules, and possibly even some local policies developed. Judge Zell noted that the Daphne Wright case was a huge issues and very expensive.

Judge Zell noted that for starters, we will gather information regarding language, vision and hearing from other states, and also obtain a copy of the 3rd Circuit's interpreters policy. We may also need to take testimony as there are people lined up who want to talk to us. Many have thanked us for addressing this topic and have offered to help in any way possible.

Future Meeting Planning (How often, when and where the committee will meet.)

Judge Zell estimated that the group could meet 2-3 times a year. We would need to be conscious of the timeframe if we want to get our legislation in on time.

Mr. Peterson suggested we meet quarterly. He felt that if we met less frequently, it would take half the time to get caught up.

Mr. Wilcox noted that the Cameras committee originally planned to meet quarterly, but we ended up meeting about 2 to 3 times a year due to weather challenges, and other unexpected complications.

Mr. Sattizahn stated that he preferred meeting every couple months.

Mr. Tschetter suggested sending out a couple dates to determine the next meeting date.

Next Meeting

The group decided upon an early to mid August meeting date. *Update: The date of Friday, July 23, was selected. The meeting will be held in Sioux Falls in order to accommodate the presenters.)*

Ms. Fowler asked if there was a preferred way to disseminate information if someone wanted to share it with the committee. Judge Zell requested that any information be sent to Mr. Sattizahn and Gloria for distribution.

Adjourn

The committee adjourned at 12:00 noon.

**Supreme Court's Committee to Study the Use of
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South Dakota Court System**

Second Meeting
Friday, July 23, 2010
9:00 a.m. CT

5th Floor Multi-Purpose Room, Sioux Falls Courthouse
425 N. Dakota Avenue
Sioux Falls, South Dakota

MEETING MINUTES

Attendance

Committee: Judge Shawn Pahlke, Greg Sattizahn, Rosa Iverson, Phil Peterson, Ken Tschetter, Aaron McGowan, Lisa Carlson, Bob Wilcox, Kerry Cameron, Judge Bradley Zell, Judd Thompson and Lisa Fowler

Excused: Attorney General Marty Jackley, Judge Jon Erickson, Karl Thoennes

Unified Judicial System: Cory Bouma, Gloria Guericke

Guests: Laura Abel, Deya Thorin, Tim Jurgens, Stephanie Chase, Benjamin Dennis, Michele Ensz, Angie Iverson

Call Meeting to Order

Committee Chair Judge Zell called the meeting to order at 9:05 a.m. He requested that committee members introduce themselves and identify their career/background for the benefit of the guests.

Brief Summary of Initial Meeting. Judge Zell and Greg Sattizahn

Mr. Sattizahn explained why the committee was formed and discussed certain actions taken by the Department of Justice (DOJ) in other states that created interest for us as to how we are handling some things. After

the first meeting, Mr. Sattizahn provided samples of policies from other states. A lot of states handle the utilization of interpreters and translators in the court system differently, which provides us with a lot of options in developing a policy in South Dakota, if that's the route we decide to take. He explained that people who have daily access with this issue are our presenters today, and they will give us an overview of what they do and their suggestions and recommendations.

Judge Zell noted that rules, regulations and policies are things we can develop for the Supreme Court's consideration. Our directive is broad and we have no definite timelines. Hopefully within the year we can make recommendations to the Supreme Court.

Mr. Sattizahn introduced Stephanie Chase and Benjamin Dennis, who are law students interning with the State Court Administrator's office this summer.

Approval of Meeting Minutes

Judge Pahlke and Mr. Peterson moved and seconded approval of the minutes.

Rosa Iverson, Committee Member, Spanish Language Interpreter

Judge Zell introduced Rosa Iverson, who is a Spanish language interpreter in Pierre.

Ms. Iverson thanked the committee for the invitation to speak before them. She then spoke her first couple sentences in Spanish, introducing and telling a bit about herself, in order to set the mood and show what it would be like for a foreigner who doesn't speak English. Ms. Iverson informed the group that she's been an interpreter for over 20 years.

Ms. Iverson explained that she refers to her clients as "my people." This is her way of talking and is not meant to be disrespectful. She stated that she moved to the United States 35 years ago and she started helping out with language interpretation shortly after her arrival as she felt it was her moral obligation. Her interpretation skills have caused her to be involved in all kinds of situations such as birth and death announcements, and she has

been in court when a life sentence was given to a client. These experiences have made her very humble.

Ms. Iverson stated that she is a Qualified Interpreter, not a Certified Interpreter. She explained that her understanding of interpreter vs. translator is that the translator does written interpretation whereas an interpreter does oral interpretation.

Her ultimate goal when working with attorneys and clients is to embody each of the people she is interpreting for - you become a ghost in the room; you become a voice of the person.

Ms. Iverson informed the group that she always talks to the attorney first, as she wants them to be as successful as possible for the client. She explained how she introduces herself: first name, middle name, maiden name and married name, so the client understands her background as this is part of the Spanish culture. She noted that Spanish in Mexico and Central America is the same, although there may be some slang differences.

Before a client goes before a judge for the initial appearance, Ms. Iverson often has to explain to the client that in this country they are considered innocent until proven guilty. This sets the tone with the client and they are more receptive then to working with the attorney.

Ms. Iverson stated that our justice system is so vast and so available. Very seldom do you have the opportunity to have someone work with you. She noted that interpreter use has grown and is almost essential for someone from another country. Using phone interpreters has also made it so much more accessible for the attorneys.

There are 3 different modes of oral interpreters:

- Consultative is where the client talks and then the interpreter interprets the sentence.
- Consecutive is when both client and interpreter talk at same time. The interpreter talks into a microphone so as not to disrupt the client.
- Summary is when the client talks and the interpreter summarizes.

Ms. Iverson disagrees with the Summary method as this is too open for the interpreter to add their own spin.

She explained that some clients are fairly fluent in English but don't have the language skills needed for a legal situation. One should never assume that even though a client has been in this country for a long time and has spoken English for a long time, that they understand what is being said in a legal situation. Oftentimes, individuals have accidentally waived their legal rights. Ms. Iverson informs them that they have the right to have legal counsel with them at all times.

Judge Zell agreed that you cannot make this assumption. He then asked Ms. Iverson's opinion as to when interpreters should first come on board.

Ms. Iverson replied that services should be available right away when the client is with law enforcement. Forms should be available for the client, especially with the initial interview. They should also inform the legal system that this is a person that may need some language assistance.

Judge Zell noted that many times the court is the last to know that the person needs some language assistance. On the criminal side, we usually find out earlier than those that end up on the civil side of court. He asked if she thought it would be helpful if there were training or a policy for the State Bar so that they can "flag" a file where language assistance is needed. Ms. Iverson felt that this would be helpful.

Ms. Iverson discussed one of her clients, who appeared very poised and collected. It wasn't until she asked the client to read something back to her that Ms. Iverson found out that the woman had only made it to second grade. The client couldn't read the larger words and understand them, so asked Ms. Iverson to read the information to her. The client had developed a poise which belied her lack of education. When signing her name, the client wrote very slowly and in an elementary grade cursory script.

Judge Pahlke stated that she had a "nuts and bolts" question. She noted that when Ms. Iverson first meets a client, she tries to get part of their background. She then asked how she handles this process. Ms. Iverson explained that she introduces herself and asks them to visit about their background. She wants them to develop trust in the attorney, so explains that anything said between herself and the attorney remains strictly confidential. The attorney can then join the conversation.

Judge Pahlke explained that half the time in her courtroom she has interpreters and Language Line is used the rest of the time. From what Ms. Iverson has said, nuances are interpreted better by having a live interpreter in the room. Ms. Iverson added that it gives the individual the security that someone will be working for them. She has noticed that clients are more relaxed and participate more when an interpreter is beside them.

Mr. Wilcox noted that Ms. Iverson highlighted a lot of challenges in the courtroom, and questioned if the biggest challenge she has found is that most individuals don't understand the legal system. Ms. Iverson agreed with his observation.

Ms. Iverson explained that she has had to tell her clients not to say they are guilty because that is not the way our legal system operates. They need to be proven guilty; they are innocent until then.

Mr. McGowan felt that it would be beneficial to have more training and education competency regarding cultural awareness so that we recognize the nuances involved in the process. We currently tend to look at a rap sheet and see a lot of aliases and interpret this differently from your introduction and explanation as to how you introduced yourself.

Mr. McGowan referenced the 3 different modes of interpreting. He understood that there are some words that don't have a true interpretation from one language to another, and asked if there should be an opportunity in the courtroom so that you can note the not-totally-accurate interpretation to the court. Ms. Iverson replied that she usually does this because she feels comfortable with all the people she works with in the court system.

Ms. Iverson explained that an example of this occurs when discussing someone who is "full of debt." Unfortunately, the word "drug" is in this sentence in Spanish, so it interprets as they were full of drugs, which would provide a totally different situation to the audience.

Ms. Iverson stated that she has established boundaries with clients so that there is no communication outside of the work situation. She leaves her work at work and her family knows nothing about the cases she is involved in. She noted that she has received thank-you notes from some of the clients she has helped.

Ms. Carlson referenced the training of interpreters. She noted that some of the lesser experienced interpreters will say "he said" or "she said" when things get heated, and this messes up the court reporter's records.

Ms. Iverson replied that she tries to go into court knowing things in advance so that things go smoothly and they can avoid the kinds of situations Ms. Carlson noted.

Ms. Iverson stated that she is pleased to be part of the committee and is looking forward to the opportunity to helping improve the situation for the judicial system.

Laura Abel, Brennan Center for Justice

Judge Zell introduced Ms. Abel and noted that she had provided the *Language Access in State Courts* booklets, which had been distributed earlier to the committee.

Ms. Abel thanked Judge Zell and the committee for inviting her. She noted that she had already learned a lot through Ms. Iverson's presentation and through her research of South Dakota.

Ms. Abel explained that the Brennan Center for Justice is a "think tank" set up by Justice Brennan's clerks to honor him. One of her issues is Civil Legal Aid. This came about when she discovered that California only provides interpreters in certain cases such as criminal, so many individuals ended up having problems because interpreters were not provided in civil cases. Since Ms. Abel is from Los Angeles, she started to explore this issue. She has looked at court interpreter policies in 35 of the 50 states. She found that the ability of individuals to understand and communicate in English is not great. She's worked with advocates around the country and they share the best practices in their area. Ms. Abel also speaks at conferences and does trainings around the country.

Ms. Abel stated that her presentation will explain why language access is important. She will also address federal statutory requirements and provide a set of recommendations for South Dakota.

Ms. Abel noted that South Dakota is an unusual state in that it is so big and is sparsely populated. This provides a unique set of challenges.

She checked what the states bordering South Dakota do, and also the State of Maine, because Maine was investigated by the DOJ a couple years ago. Maine is smaller than South Dakota but is sparsely populated and does not have a large background of folks from other countries. This provides a challenge in obtaining interpreter services.

She felt that interpreter services can start right away, in situation such as when police go to a house because of a domestic violence situation. Often, plea agreements are withdrawn because the individual didn't know what was going on.

Ms. Abel referenced several cases of miscommunication. One was where an individual in Florida pleaded guilty to what he thought was stealing a toolbox; whereas, he actually pleaded guilty to stealing a dump truck. A woman from Guatemala had her parental rights terminated because she didn't follow the guidelines provided in Spanish to her over the phone. The woman didn't speak Spanish.

Ms. Iverson added that children lose their innocence when they have to interpret for their parents due to the lack of interpreters. Children should not have to reply to questions such as whether the parent uses birth control.

Ms. Abel provided a PowerPoint presentation to the group; some of the information from the slides is inserted in these minutes.

Slides:

COSCA: White paper on court interpretation: fundamental access to justice (2007). "Our promise of justice for all must be supported by a commitment to provide all individuals accessing our court systems with a means for true communication and understanding, and not through a mere babble of unintelligible voices."

Mr. Thompson stated that he runs into situations where individuals do not read or write in either language. Ms. Abel replied that they can go to a Pro Se office where they can get a written version read to them.

She told a story about a young girl from Vietnam. The young girl started working at age 8 in an American hospital and lost her innocent having to translate complicated cases to others.

Ms. Abel stated that she is a lawyer, she's from L.A., and she is not good at acquiring language skills, whereas other people have an aptitude for learning languages. English as a Second Language (ESL) programs are available, but in some places individuals can wait for up to 3 years for entry into the program.

Another California statistic found that in 2000, less than 1/3 of all Californians who had entered the country when they were older than 25 were able to speak English "very well," even after living here for 20 years.

Ms. Abel got into her career field after being inspired by her mother-in-law, who is a 3-time refugee. The woman has lived in the states for years but still needs an interpreter for intense situations such as a trip to a medical doctor.

There is a constitutional interpretation that there is a right to an interpreter in certain cases such as criminal, child welfare, domestic, landlords-tenant, trespassing, small claims, but not any other civil cases.

Judge Zell asked about interpreters under due process and Ms. Abel replied that this is usually reserved for the more important cases.

He then noted access versus complete understanding, explaining that the language may be interpreted but the individual doesn't understand the principles and concepts. The court system may be explained but it is not understood because of the individual's education or language development.

Ms. Abel agreed with Judge Zell's observation and noted that there isn't a law regarding understanding, and this may be a direction we'll need to take because of the large amount of immigration in this country.

Ms. Iverson stated that the judges in the courtrooms where she works are now asking clients if everything before them has been explained to them and do they fully understand it. She noted that preparedness of the attorneys is very crucial.

Ms. Abel stated that the individual may think they understand, but there may be a translation error. She then referenced the individual who

unintentionally pleaded guilty to stealing a “dump truck” rather than a “tool box.” She suggested that an individual could be asked if they understand possible consequences of their plea and this could be a way to determine if they really understood.

Ms. Abel noted that Title 6 of the 1964 Civil rights Act is what’s at stake here. She also referenced *Lau v. Nichols*, 414 US 563, 569 (1974). This case was in regard to schools and it was found that if schools were receiving federal funding, they need to provide education so that all students in the school understand what is being taught.

Ms. Abel felt that the Department of Justice’s interpretation of the type and extent of language access depends upon application of a 4-factor test.

- 1) *The number or proportion of LEP (Limited English Proficient) persons eligible to be served or likely to be encountered by the program or grantee.*
- 2) *The frequency with which LEP persons come in contact with the court.*
- 3) *The nature and importance of the program, activity, or service provided by the program to people’s lives. (includes actions with clerks, security folks, etc. The exception would be courthouse tours.*
- 4) *The resources available to the grantee/recipient and costs of providing language assistance.*

DOJ’s position in our economically challenged time is that these resources (interpreters, etc.) should have been in place prior to now.

Hard and Fast Rules:

- 1) *Provide interpreters for criminal and civil matters in the courtroom at which LEP individuals might be present*
- 2) *Do not charge LEP individuals for their interpreters.*

Mr. Thompson asked about “critical encounters” and Ms. Abel replied that anything that’s required for the individual that might reduce their sentence, etc., is considered a critical encounter. If something is required by the court, it needs to be language accessible.

Judge Zell noted that one critical encounter occurs outside the courtroom – the consultation – and questioned who pays. Ms. Abel replied that it

depends who is providing the defender; they are the one responsible for paying.

He then asked about an outside critical encounter, such as a deposition, in a civil action. Ms. Abel replied that she has never seen a deposition classified as critical. If it is the client's attorney, this wouldn't be a Civil Rights DOJ matter.

Mr. Thompson asked about a situation where a sex offender needs to attend treatment at an agency that receives federal funds. Ms. Abel was not sure of the answer to this one as the court cannot order them to go for this treatment if it is not language accessible. If the agency is receiving federal funds, this may put a burden on them in order to live up to the federal funds received.

Ms. Abel discussed a situation with the Indiana Supreme Court where non indigent individuals were getting charged for their interpreters. The DOJ informed them this was not allowed.

Hard and Fast Rules, cont'd.

3) *Ensure that the interpreters are competent.*

4) *Judges and other court personnel encountering LEP individuals must know how and when to use interpreters.*

Ms. Abel explained that it is the court's responsibility to know how and when interpreters are needed and to train on this to court staff.

Hard and Fast Rules, cont'd.

5) *Translate critical documents into the languages commonly spoken by court users.*

6) *In all other ways, to the extent possible, LEP individuals must be treated like everyone else.*

Ms. Abel stated that the DOJ is clear that you need to provide people with notice that interpreters are available. Written and oral notice should be made available in areas where people will immediately receive the information.

Ms. Iverson noted that when she has seen this, the information (rights, etc.) isn't always clear.

Ms. Abel replied that at the training she attended yesterday, one person said they have an interpreter do a translation of the information and they then have a couple people from the community review the information to make sure that any mistakes are caught and corrected.

Ms. Abel explained that DOJ would look to see if any part of the system receives any federal funding. Her findings showed that approximately \$393,539 is received by the South Dakota Unified Judicial System (UJS).

Judge Zell questioned if the whole system was obligated if this federal money was limited to Drug Courts only. Ms. Abel felt that since South Dakota is a unified judicial system, it may mean that everyone is bound. If there are courts not under UJS, these could be an exception.

She explained that the DOJ is stepping up enforcement of Title 6 across the board. Maine entered into a Memo of Understanding in 2008, where they agreed to provide interpreters in all civil matters, such as when working with clerks, to translate critical information in a series of languages, etc., and that these services are to be paid by the courts.

Judge Pahlke asked what prompted Maine's investigation and Ms. Abel replied that someone filed a complaint.

Ms. Abel noted that at the training she attended yesterday, a DOJ attorney said that DOJ was getting ready to set out a new set of guidelines regarding access in the courts.

What does this mean for SD?

- *Courts must provide an interpreter for witness testimony when a witness cannot communicate or understand English.*
- *Courts must provide an interpreter for deaf defendants in criminal cases.*

Recommendation: Require the appointment of interpreters for all criminal and civil matters at which a LEP person may be present.

Recommendation: Appoint an interpreter whenever the person seeking one lacks sufficient comprehension or ability to communicate and so cannot participate meaningfully in the proceeding.

Ms. Abel explained that some ability to speak English isn't enough as individuals can lose their language skills in a tense situation.

She noted that the NCSC has a set of best practices that could be followed. Ms. Abel felt that open-ended questions are best to get a sense of whether an individual understands what is being said. She stated that a number of states have decent procedures regarding this and she'd be happy to work with Mr. Sattizahn.

A number of states require an attorney to notify a court in advance if they feel someone will need an interpreter. The judge makes the final decision regarding the need for an interpreter.

Recommendation: Presume an interpreter is needed whenever one is requested.

Ms. Abel felt that it is difficult to communicate through an interpreter, so an individual probably really needs one if one is requested. Ohio and Nebraska adopted this procedure.

Ms. Sattizahn asked if there were guidelines regarding interpreter standards in the court system. For example, does every court need an interpreter for the judge and the attorney? Ms. Abel was not sure about this, but felt that it is the court's responsibility to make sure interpretation is available. She noted that NCSC and the National Association of Judicial Interpreters and Translators (NAJIT) are places to look for direction regarding Mr. Sattizahn's question.

Recommendation: Establish and publish a set of standards for court interpreter competence. Use a system that provides interpreters with a credential after they have passed objective tests. When credentialed interpreters aren't available, use trained dedicated staff to assess interpreter abilities. Judges should only do this (interpretation) as a last result.

Court interpreters need to be fluent in both languages. You need to keep/convey the meaning and style of the original source as this is essential for judges and attorneys.

Interpreters need to perform whichever interpreter skill is needed: simultaneous (difficult), consecutive, and sight translation of written materials. It is a good idea for the interpreter to have a headset so the client is not distracted by other noise in the courtroom.

Ms. Abel did not include summary interpretation as this isn't considered a type of interpretation.

Ms. Abel explained that interpreters need to be familiar with:

- The unique culture of the courtroom
- Familiar with any legal matters that will need to be interpreted
- An interpreter's ethical duties

Ms. Abel noted that the Florida interpreter who confused "dump truck" with "tool box" had interpreted over 5,000 cases, but her competency had never been questioned until this misunderstanding occurred.

She explained that you need to move forward gradually (a tiered system) in getting certified interpreters. Incentives such as salary increases should be provided so that interpreters will move up the tier to get the increased pay and certifications.

Ms. Abel pointed out that in the NCSC Consortium's *Language Access in the State Courts* booklet, they've developed exams in a number of languages so that states do not need to recreate these tests for themselves.

She noted that it's hard to attract interpreters. Interpreting is a great job. It becomes a better job if you work with the interpreters to improve things for them so they get the training they need. She felt that South Dakota could also work with other agencies (courts, Social Services, etc.) to help interpreters get the training and keep up their skills.

Technology

Ms. Abel explained that technology is important in a state with a small population. A live interpreter is better as you lose information when you can't see a person's face or hand gestures, but the use of technology is essential in rural states. She asked about the use of technology, such as ITV, for interpreting. Perhaps South Dakota could utilize interpreters this way from other states. A benefit would be the low cost, but she cautioned that we would need good audio quality, resolution of the screen, and to determine what works for this process. Phone interpreters may always be needed for initial appearances, and she pointed out that NAJIT has an excellent paper on telephone interpreting. The article discusses audio quality and how to train people in the courtroom and how to use this media. She noted that you need to ask the credentials of the person on the other end of the phone, such as do they know the ethics rules, ethnic terms, and not to summarize.

Ms. Iverson noted that she has found that meeting face-to-face with the client and attorney has alerted her to the mental state of the client. They initially thought that a client was nervous and then realized there was another problem other than nervousness.

Ms. Abel recommended that South Dakota bar the use of children, other family members, and other potentially interested people as interpreters. Many states follow this practice.

Another recommendation was to provide training and to issue judges' bench books and other guidance documents. She noted that Minnesota trains all new judicial branch employees and judges.

Ms. Abel stated that Ohio has a policy regarding working with foreign language interpreters in the courtroom, which is 2-pages long. She offered to send a copy to Mr. Sattizahn.

The State of Minnesota's District Court has an eviction notice form on their website that is written in English with Spanish underneath. It is mainly a check-the-box form, which Ms. Abel felt was a good format.

She showed the group a "you have a right to an attorney..." form, with the rights paragraph written in approximately 30 languages. This form is used by a number of states.

Ms. Abel informed the committee that the DOJ has some former interpreters who work with them, who are eager to come out to states to do training. In addition, the NCSC does a lot of technical assistance and training for states.

Mr. Sattizahn explained that the 3rd Judicial Circuit has an interpreter policy but that South Dakota does not have a statewide policy. Ms. Abel replied that it looks better if you have a statewide policy; it insulates you more. It is an education tool for courts, judges, attorneys and others. It is a practical matter.

Judge Zell noted that we have some counties with no lawyers and we have areas where you won't even find a Tier 1 interpreter. Maybe part of the recommendation is that we'll need some "wiggle room" as to cost and distance in order to provide these services. Ms. Abel replied that the use of video may be very applicable for some of your remote areas.

Lisa Fowler, Committee Member, Communication Services for the Deaf (CSD)

Judge Zell introduced Ms. Fowler and explained that he got to know Lisa during a trial a few years back where her interpreter services were needed.

Ms. Fowler informed the group that there is so much information to share and just a little bit of time in which to share it. She explained that the difference between interpreters and sign language interpreters is that sign language interpreters are covered under the American Disabilities Act (ADA). Ms. Fowler said that she created a PowerPoint presentation for today's meeting but decided not to use it. She will send it to Mr. Sattizahn for his reference.

There is a strict registry of interpreters for deaf policies at the www.rid.org website. There is a Code for Professional Conduct (CPC) and it contains 8 main tenants. The main tenant is Confidentiality. They cannot share what they know from previous workings with the client.

The sign language interpreters do not share their personal ideas; they objectively interpret for the individual.

South Dakota has Administrative Rules 46-31, which relate to Interpreters for the Deaf. The certification level is noted here as to legal and educational levels. Criminal cases require the highest levels of interpreters. There are Qualified vs. Certified Interpreters.

In South Dakota there are 84 registered interpreters. It is a Class 2 misdemeanor if you are working for the State and are not registered. Of the 84, only 5 are qualified to do the higher-level legal work. She noted that this is one of the times when video conferencing may be needed.

In sign language interpreting, the proceeding interpreters are bound by all the court rules. They also do all the witness interpreting. Many higher level cases require counsel table interpreting. The name signs for everyone also need interpreted.

The proceeding and counsel interpreters are colleagues. They are able to share information, but they are aware that they are sharing private information and cannot bring in private information from one situation to another. Everything learned pre-trial cannot be brought in to trial by the interpreter.

Consecutive interpreting takes awhile whereas simultaneous interpreting is quicker. Ms. Fowler referenced the word "run" and noted the different interpretations (to run, runny nose, run in nylons, etc.), and explained that these types of situations needed to be considered.

Dialects also need to be considered in sign language.

- **Certified Deaf Interpreters**

Ms. Fowler explained that sometimes the deaf don't understand the sign language, so a certified deaf interpreter (CDI) is needed. The CDI watches the proceedings and then breaks it down into smaller concepts so that the deaf person understands what is going on and being said. They bring in all the cultural aspects of the process.

Ms. Fowler stated that the best setup for the courtroom can be seen in the PowerPoint she will forward to Mr. Sattizahn.

Ms. Fowler explained that team interpreters see and feed information to each other to make sure everyone knows what is going on.

Judge Pahlke added that team interpreters are interpreting in addition to providing out the information of what is being said. Oftentimes, 4-5 interpreters are needed if you have a deaf complainant, deaf defendant, deaf witness, deaf juror, etc. She could see how this could require the need of a lot of interpreters, and this scenario could also occur in situations where these individuals are Spanish speaking rather than deaf.

Ms. Fowler stated that training is necessary because everyone needs to know the role(s) of an interpreter. They need to know why they are there, and that the interpreter will be speaking in the 1st rather than the 3rd person.

The deaf interpreters also have to tell their clients why it is not appropriate to do things such as a certain behavior, and to make sure the clients understand what they are being asked.

She explained that a lot of expectations need to be addressed before the trial, as was done in the trial where she worked with Judge Zell. For example, if someone in the audience is signing something, it needs to be determined beforehand if you want this made known in the case.

Ms. Fowler noted that Minnesota has a good policy in place regarding interpreters.

Mr. Sattizahn referenced the Administrative Rules of South Dakota (ARSD) and asked if we adopt a model, could the language and hearing impaired fit into one policy or do they need be kept separate.

Ms. Fowler noted that sign language interpreters have the ARSD with standards in place.

She explained that the interpreters try not to go into a courtroom any less prepared than a judge. They have had to ask people to slow down so they can interpret accurately.

Ms. Fowler pointed out that the term "dismemberment of body" was difficult to interpret because the client might think they were being asked if they cut off someone's hand from the possible interpretation. She pointed out that it is helpful if they can view the evidence beforehand so they will be comfortable with what needs to be interpreted. In the case with Judge Zell, the defense wasn't as open about their evidence and this caused a challenge for them in interpreting the information provided at court. In fact, there were phrases brought up throughout the entire trial that they were unaware of the definition, so this caused a problem for them.

Ms. Fowler said that the lack of team interpreters in pre-trial situations is a problem. Having the support of an interpreter is always valuable.

Judge Zell noted that Ms. Fowler was to be called as a witness in the referenced case, so it helps if there is a team in place to tell what was stated at earlier situations.

Ms. Fowler explained that American Sign Language (ASL) is a visual language. Certain concepts in English, such as idioms, take a long time to interpret in American Sign Language as you cannot interpret them literally. The word "weapon" is a challenge for them as there is no specific sign for this word, so the interpreter needs to finger spell it. In addition, other things such as an individual's Rights need to be spelled out slowly.

- **Training**

Ms. Fowler noted that training in South Dakota over past couple years has included:

- Front Range community college in Colorado
- Mock trials with Judge Riepel
- 5 interpreters went to Minnesota and took a week-long legal training, which was provided by an attorney who is also an interpreter.

Ms. Fowler felt that there is a huge need to work with attorneys, judges and court personnel. She stated that they are working with the USD School of Law in order to get training to law students.

Judge Pahlke noted that Sioux Falls and Rapid City do mass court appearances every day, then asked if the deaf should be included or if they should be handled separately. Ms. Fowler replied that they can participate

in the mass court appearances, but the judge needs to remember to slow down a bit so the interpreter can do their job and the deaf individuals can understand the proceedings.

Judge Zell stated that he checks with Ms. Thorin and/or the other interpreters in his courtroom to see if they've had enough time to accurately do the translation.

Judge Pahlke stated that she liked the idea of working with the State Bar regarding training, as new lawyers tend to go rather fast in proceedings.

Ms. Fowler noted that they are working with lawyers in mock trials to educate them in utilizing and working with interpreters.

She then referenced a grant received in California to provide training, and felt this might be an opportunity for us. She pointed out that just because someone knows sign language; it doesn't make them an interpreter.

Mr. Peterson asked if she was able to do simultaneous translating in the Wright case. Ms. Fowler replied affirmatively, but noted that the media criticized this as they felt consecutive translating would have been better. The federal standard is that consecutive interpreting is the best for this type of case.

Judge Zell noted that the defendant would occasionally blurt out comments. They had to instruct the defendant that any comments needed to go through the lawyer or interpreter rather than being blurting out, as this could be detrimental for them.

Judge Zell discussed the first time he met Lisa, where she was swearing in a loud voice. He quickly realized it wasn't her talking; she was just interpreting in the tone conveyed by the client.

Mr. Thompson asked about a Spanish-speaking person needing sign language. He was informed that there are tri-level interpreters for these kinds of situations, but none are in South Dakota. Video conferencing would need to be done for the kind of situation Mr. Thompson referenced. Some tri-level interpreters work with CSD out of Texas.

Deya Thorin, National Association of Judicial Interpreters and Translators (NAJIT)

Ms. Thorin thanked the committee for the opportunity to speak before them. She said that she loves doing interpreting. She is originally from the Dominican Republic and didn't speak English until she arrived in the United States.

Ms. Thorin had distributed Document A before her presentation and referenced it periodically throughout her presentation.

There were many legal terms Ms. Thorin didn't know when she first started interpreting, so she used the reference book "The Interpreter's Companion."

Ms. Thorin had 3 weeks of training last year and has also been to Minnesota several times for training. She is working on furthering her certification by passing Minnesota's simultaneous test for interpreters. In addition, NAJIT keeps her updated on many things she needs to know as an interpreter.

She explained to the committee that defendants coming into the courtroom are scared. Her training has allowed her to maintain her professionalism and to keep the necessary distance when dealing with the clients. She informs her clients that they need to visit with their attorney, not her, for advice.

Ms. Thorin noted that it is often felt that interpreters are not taken seriously enough.

She discussed various situations that she has seen or experienced during her time as an interpreter. Ms. Thorin has had clients become upset when an interpreter was not interpreting correctly, and they would tell her about the problem. She informs them that she cannot tell the judge; that is up to them.

Ms. Thorin told about a lack of communication that occurred when an individual didn't realize he was going directly to jail for 4 years, and it was her responsibility to inform the family.

Sometimes in the courtroom a family member will want to interject. The attorney needs to take it seriously that the interpreter is there to represent the client.

She stated that it is helpful when a judge knows how to work with an interpreter and proceeds at a proper rate and slows down when necessary.

Ms. Thorin referenced the Interpreter's Oath and also the first paragraph of the Notice to Defendants, both of which are in Document A.

Ms. Thorin pointed out that she differentiates when she is speaking versus when she is speaking for the client.

Judge Zell asked if she felt that the various courtroom roles such as judges, defendants, witnesses, etc., (noted in the handout) should be made available to individuals before coming into the courtroom. Ms. Thorin replied affirmatively.

Judge Pahlke referenced the initial appearance of the individual, which is also when the interpreter meets the client for the first time, and asked if the interpreter should spend a moment or two with the individual to explain who is in the courtroom. Ms. Thorin replied that this is important as it helps the person become more relaxed and better understand the proceedings.

Ms. Thorin discussed introductions, which is when she introduces herself to the client and informs them that they need to ask the attorney or judge if they have any questions.

Ms. Iverson added that it needs to be explained to the clients that they are not to volunteer information. They are to work through their attorney in order to safeguard their rights. She noted that anything written that can be given to them ahead of time is a great asset for the client as they can then come back and ask questions after they've read or had the information read to them.

Ms. Thorin informed the committee that in her home country, cash to an officer will often buy you freedom. She's had individuals ask her to help them with this in the States.

Ms. Thorin offered her assistance to the committee.

Mr. Sattizahn noted that if there is a problem with an interpreter, there is no process in place to deal with the situation. He asked how it is handled if a defendant feels they have a bad interpreter. Ms. Thorin replied that complaints usually occur after the fact. In the papers provided to the defendant, it states that the individual can complain to the judge. She stated that this process needs to be made known beforehand to the clients.

Ms. Fowler added that oftentimes clients are hesitant to complain and that they need to provide proof. There is an appeal process in place for sign language interpreters.

Ms. Iverson discussed a situation where the client became upset because of findings coming about in the case. The client stood up and started complaining to the judge. It was necessary to confirm that the findings were correctly translated so that she could come back to work.

Ms. Abel suggested that there could be a central person that people could complain to if they were uncomfortable in complaining to the judge. This way they could appeal right away instead of waiting until the end of the trial. Due process protection could be in place for the interpreters.

Judge Zell noted that they had a situation where a defendant felt an interpreter was "interpreting with an attitude." The interpreter stayed with the case but worked with another interpreter.

Judge Zell asked about fatigue and whether the quality of interpreting could fade over longer periods of time, and then asked if there were any recommendations if a case were over one to one-and-a-half hours. Ms. Thorin replied that team interpreting is helpful in this matter as you can get a "fog" in your head after an hour or so on cases. Your interpreting can slow down as you become tired.

Ms. Iverson noted that having interpreters doing shifts of 30 minutes would help alleviate the problem of fatigue. The interpreters sit side by side and the transition from one interpreter to another is almost unnoticeable to anyone watching simultaneous translating.

Ms. Fowler noted that there is a standard that anything over 2 hours requires 2 interpreters. Studies have determined that 2 hours of signing is comparable to 8 hours of hard labor.

Ms. Thorin referenced another action that may need to be taken by a judge. A judge may need to interrupt and tell a client not to touch the interpreter. One client used her as a model to show where they had been touched.

Tim Jurgens, Lutheran Social Services

Judge Zell introduced Mr. Jurgens and explained that Lutheran Social Services (LSS) is used locally for interpreter services.

Mr. Jurgens informed the group that he has been with LSS for 8 years and he oversees their interpreter program.

He explained that one of the first challenges you need to face is finding qualified interpreters. He referenced page 3 of his handout entitled "Community Interpreter Service" (Document B), which contained a listing of languages and dialects that were needed during a one-year time period. He noted that funding and logistics has kept LSS from doing legal training for interpreters. The training of court staff is also needed so they know how to utilize interpreters.

He recommended Minnesota's program for the Code of Ethics and the simultaneous interpreting test that they provide. He noted that it is difficult to pass the test.

LSS has only had five trainings with a judge during Mr. Jurgens eight years with LSS.

Mr. Sattizahn asked what should be included in a training session and Mr. Jurgens replied that it should include things such as terminology, where to stand during proceedings, a mock trial, where the interpreter needs to stand when asking for clarification, and courtroom awareness.

Mr. Thompson noted that some of his new employees are sometimes intimidated by what they encounter their first couple times in a courtroom, so he understands Mr. Jurgens' concern for the interpreters.

Mr. Jurgens referenced the earlier statement regarding how cash will get you out of your legal situation in some countries. Ms. Iverson added that cultural awareness is very important, especially in how you address these individuals. For example, you do not look Native Americans directly in the eye. Judge Zell noted that the background of some Arabic tribes won't allow their people to utilize the services of an interpreter.

Judge Pahlke asked if LLS's interpreters were available statewide. Mr. Jurgens replied that they can travel to provide services. LSS is interested in expanding, but they don't know what direction to take. Also, their expansion would depend upon funding.

Mr. Sattizahn referenced the tier levels for interpreters and asked if something like this would provide LSS with enough guidance. Mr. Jurgens replied that it would be an avenue for them to pursue. They would like for South Dakota to have a certification program.

Ms. Iverson noted that many changes have occurred and there are now many fields, such as medical, mechanical and judicial, in which to have expert interpreters.

Mr. Jurgens suggested doing 4 mock trials a year and they could be for four to eight hours or to do a two-day training. This would be a minimum for which he would advocate. Judge Zell referenced Ms. Fowler's earlier statement that they were working with the USD School of Law to develop training regarding interpreters.

Mr. McGowan commented that he hadn't realized how much certain terms could cause problems for interpreters. He felt it would be good for them to have a common understanding in advance of what might come up during the trial.

Mr. Jurgens stated that we've had interpreters take some things home and study them in advance so that they would be prepared.

Mr. Thompson noted that Sioux Falls proper has 43 languages available, and then asked how could we do interpreting in areas such as Harding County. Mr. Jurgens replied that this could be done with video conferencing or to have the interpreter go there in person.

Ms. Fowler referenced Mr. McGowan's statement and explained that the interpreters spent several days in advance going over case information to help them be prepared to do interpreting during the Wright court trial.

Judge Zell noted that in larger cases it is easier to remember to plan ahead, but many times it is situations such as protection orders, which are often pro se, and can be challenging.

He stated that interpreters are always welcome to come in and practice their skills during a trial if it is felt that it would help them, but to please make sure the judge knows in advance that this will occur.

Future Direction for Committee

Judge Zell commented that the committee heard a lot of good information today. Mr. Sattizahn and Ms. Guericke will work out possible meeting dates and then check with the committee. The next meeting will be in Pierre unless the committee wants to meet elsewhere. We're looking at a late October or early November date for the next meeting if we stay with our three to four month intervals. He noted that Ms. Abel provided us with some other contacts for additional information.

Judge Pahlke stated that it sounds like Minnesota has a lot in place and would be a good source of information for us. Ms. Fowler said she has a good contact and could supply the name to Mr. Sattizahn.

Mr. Thompson said that he would contact the court services officers in Minnesota and then forward some names or information to Mr. Sattizahn.

Judge Zell noted that Ms. Abel said this is a state expense, but it could be a county expense. We need to receive financial information, and this could be from Minnesota and Iowa. He asked Mr. Wilcox to check with his counterparts to see if they have information available and if they would be available to visit with us. Mr. Wilcox replied that he appreciated Judge Zell's sensitivity to the expense issue.

Judge Pahlke suggested that perhaps we could benefit from contracting with agencies such as LSS to get services for the whole state.

Judge Zell stated that if we go with a tiered system, as suggested by Ms. Abel, it still needs to be cost effective. He noted that the critical encounters go beyond the courtroom, so this needs considered.

Mr. Sattizahn pointed out that the trainings suggested by Mr. Jurgens aren't overly expensive but they do take a lot of time.

Judge Pahlke noted that she is on the Judicial Training Committee. She felt we had learned a lot today and should start the training as soon as possible.

Judge Zell explained that we're still charged as a committee to look at the dollars and cents issue.

Ms. Fowler announced that Communication Services for the Deaf is very interested in helping provide the training. She commented that she found it interesting that all the interpreters brought up the same areas consistently throughout all the presentations.

Adjourn

Mr. McGowan moved and Ms. Fowler seconded the motion to adjourn. The meeting adjourned at 2:17 p.m.

Next Meeting

The next meeting is scheduled for Friday, November 12, beginning at 9:00 a.m. C.T. It will be held in Room 413 in the Capitol Building in Pierre, South Dakota.

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

**Third Meeting
Friday, November 12, 2010
9:00 a.m. CT**

**Room 413, SD State Capitol Building
Pierre, South Dakota**

MEETING MINUTES

Attendance: Judge Brad Zell, Judge Shawn Pahlke, Judge Jon Erickson, Phil Peterson, Kerry Cameron, Aaron McGowan, Rosa Iverson, Lisa Fowler, Karl Thoennes, Bob Wilcox, Lisa Carlson, Greg Sattizahn

Excused: Attorney General Marty Jackley, Ken Tschetter, Judd Thompson

Presenters: Javier Callram, John Goerdt, Qadir Awaire

State Court Administrators Office: Richard Lenius, Gloria Guericke

Call Meeting to Order – Judge Zell

Chair Judge Zell called the meeting to order at 9:00 a.m. He informed the group that the meeting is being broadcast live over the Internet and was also being recorded and would be available on the Committee's webpage at <http://ujs.sd.gov/courtinfo/committee.aspx>.

He explained that part of the recording from the July 23, 2010 meeting is missing. The equipment indicated the meeting was being recorded, but sometime during the transmission of the information from Sioux Falls to Pierre a glitch occurred, causing the disappearance of a portion of the meeting.

Judge Zell asked the committee members to introduce themselves for the benefit of the presenters and the listening audience.

Brief Summary of Past Meetings - Judge Zell and Greg Sattizahn

Judge Zell noted that this is the committee's third meeting. The first meeting was mainly organizational to determine plans and direction. The second and third meetings were for taking testimony.

He provided a bit of history in that this Committee was established a year ago by the South Dakota Supreme Court and that we are charged with reviewing what is currently in place and how to make improvements. The Committee can also deal with things adjacent to the court system, such as Court Services Officers' (CSO) services.

Mr. Sattizahn discussed a Department of Justice (DOJ) letter he had forwarded to all the Presiding Judges and Circuit Administrators as he wanted them to be aware of DOJ's concern.

Approval of Meeting Minutes

Mr. Wilcox moved and Judge Pahlke seconded the motion to approve the minutes from the last meeting. The motion passed unanimously by voice vote.

Javier Callram, Interpreter Coordinator, Fifth Judicial Circuit, Minnesota

Mr. Callram introduced himself and stated that he has been an Interpreter Coordinator in the Fifth Judicial Circuit for over two years. He provided a copy of his presentation to committee members and guests (Handout A).

He explained that the Minnesota Court Interpreter program maintains a statewide roster of court interpreters. The program also evaluates applicants for inclusion on the roster; coordinates and administers court interpreter ethics and spoken language certification testing; develops and delivers court interpreter training; monitors compliance with the Code of Professional Responsibility for Court Interpreters; educates judges and attorneys about the proper use of court interpreters; and develops policy governing court interpretation.

In 1994, Minnesota was one of the first state courts in the country to establish a court interpreter program. In addition, Minnesota was one of the original 4 founding states of the Consortium for State Court Interpreter Certification (Consortium). The Consortium is administered by the National Center for State Courts (NCSC) in Virginia. The Consortium started with 4 states and now includes 40. Several benefits of the Consortium include the possibility of reciprocity with member states (some states may have different standards), and that they handle the development of certification exams and the rating of completed exams for interpreters.

Mr. Callram discussed Minnesota's statutes which establish the court interpreter program and require the state courts to pay court interpreter program costs, including the costs of hiring court interpreters.

Minnesota has two levels of Court interpreters. The Rostered Interpreters must pass an Ethics test, sign a notarized Affidavit, attend a two-day orientation, and demonstrate language proficiency.

Certified Interpreters must complete all the requirements for Rostered Interpreters plus pass a Certification exam and pass a criminal background check.

Minnesota requires that those taking the Certification exam must score at least 70% in all three parts (Simultaneous, Consecutive, and Sight Translation (reading the Order, etc.)) of the exam in the same setting. The tests are then sent to Virginia for rating. Minnesota is provided the results of the tests (pass/fail) and the score.

Mr. Callram explained that Rule 8.02 of the General Rules of Practice for Minnesota District Courts requires that the courts must make a diligent effort to appoint a certified interpreter. If none is available, the Court must appoint one from the Court Interpreter Roster. If none is available from the Roster, the court may appoint an otherwise qualified interpreter.

Mr. Callram discussed the Minnesota Court Interpreter payment policy. A two-hour minimum compensation is guaranteed to an interpreter. Payment is as follows:

- ASL – Certified (legal) interpreters receive \$70/hour;
- ASLI – Certified (generalist) receive \$55/hour,
- Foreign Language – Certified (legal) receive \$50/hour;
- Foreign Language – non-certified receive \$30-\$40/hour,
- and those not on the Minnesota Court Roster receive \$25/hour.
- Telephone interpreting is \$2.00-\$2.25/minute.

Travel time compensation is included if the individual lives more than 35 miles away. The cancellation policy is 24 to 48 hours advance notice to interpreters. If less notice is provided, they must provide 8 hours of compensation. This varies depending upon the amount of notice they provide in cancelling.

Mr. Callram stated that future plans of the Minnesota Court Interpreter program include improving the quality of rostered interpreters through the development of additional standards and training; to recruit interpreters for the languages needed in specific geographic locations; and to develop remote interpreting policies and instructional materials for interpreters, court clerks and judges. They have been doing this in their more remote areas and have interpreters available to provide services over the phone on short notice for situations such as first appearance hearings in remote areas. Interpreters could also travel to the remote site or a satellite site.

Law enforcement is instructed when writing their tickets to indicate if an individual will need interpreter services. This helps provide advance notice to the courts.

Mr. Callram pointed out that a person in jail may have conversational English but cannot understand enough to follow a court proceeding, so an interpreter is needed. Remote interpreting should not to be used in proceedings where lengthy testimony is expected. As always, the judge has the discretion to determine if remote interpreting is appropriate.

The proceedings should be about 30 minutes or less in duration when doing remote interpreting. Adequate breaks should be provided for the interpreter if the proceedings are longer than 30 minutes.

Mr. Callram discussed several things to keep in mind when working with an interpreter:

- The interpreter is a human connection between all involved. They provide services in a professional manner.
- When an interpreter is provided, it sometimes is only for the court proceeding, and they are not available for the lawyer-client interview.
- In Minnesota they try to take advantage of the two-hour minimum time for the interpreter, so will contact social services, the lawyer and anyone else who may need the interpreter's services for that time period.

Questions

Mr. Sattizahn asked what Mr. Callram does as an Interpreter Coordinator.

Mr. Callram replied that his background is in engineering and that he's worked with languages for over 20 years. He finds an interpreter for that language when he receives a request from one of the 15 counties in his area. As much as possible, he groups all the hearings needed in order to utilize the interpreter's time. Not all the counties have hearings every day or have judges available daily, but the grouping of hearings helps with budgeting issues. Minnesota has 10 Judicial Circuits and four of them have an Interpreter Coordinator.

Mr. McGowan asked about the federal certification process and Minnesota's preference for the certified interpreters.

Mr. Callram explained that the federal standards are a bit higher. The written exam is done the first year and the oral exams the next year. After an individual is federally certified they can work in any court in the United States. If an individual is only certified in one or a couple standards, they are more limited where they can work.

Mr. McGowan asked if he felt other states might share their interpreter list and noted that South Dakota cannot afford the federal rate for interpreters.

Mr. Callram noted that there are no interpreters with medical certification in their state but there are interpreters with federal certification. They have plenty of Spanish interpreters but may need to search to find someone to provide the help with some of the other languages.

Mr. Thoennes asked if the interpreters pay their own expense for certification.

Mr. Callram replied that the interpreters do pay their own expenses for certification. The Judicial Districts in Minnesota that do not have an Interpreter Coordinator have a regional or centralized interpreter coordinator.

Mr. Thoennes asked how Mr. Callram handled requests for cases requiring several interpreters.

Mr. Callram stated that this usually occurs for the lengthier trials as they need to consider the fatigue factor for the interpreters. Trials going several days get 2 interpreters who can then change off every 20 minutes, or more often if difficult technical information is being provided.

Mr. Thoennes asked how you handle it when both sides request two interpreters; for example, in a domestic case.

Mr. Callram replied that there would be two interpreters for the proceeding and one for the victim. You provide the service for whoever needs the interpreter.

Mr. John Goerdts referenced interpreter fatigue and explained that accuracy of interpretation declines after 25 minutes of continuous interpreting. Statistics regarding this can be found on the Consortium's website. After four hours you need two interpreters who can periodically change out to cover the proceeding.

Mr. Callram added that team interpreters in a trial switch out seamlessly, and the switch doesn't slow down the case.

Judge Zell asked about civil matters and if Mr. Callram has run into situations where he had to utilize an uncertified interpreter in the more obscure languages.

Mr. Callram explained that they do research to find individuals who may have the language skills they need. They check for people in hospitals or schools who have some skill in interpreting. They then evaluate this individual to see if they are best person available by checking things such as their level of English, what interpreting they've done, and other criteria that is followed when evaluating a possible interpreter for a court case.

Judge Zell asked if Mr. Callram has had problems where you find an interpreter and then get to court and folks object because the interpreter doesn't speak the same dialect.

Mr. Callram replied that he has had this occur and that the Coordinator needs to try and avoid these situations. The more that is known in advance from police officers and others who have had contact with the individual, the more these situations can be avoided.

Mr. Sattizahn asked if Interactive Television (ITV) has been used with the interpreters.

Mr. Callram stated that they have the equipment and have been doing this, especially with the sign language interpreters. Minnesota is working with other states, such as Florida, who have the equipment in place, and Minnesota is moving toward what is done in these states.

Ms. Fowler informed the group that the sign language interpreters are writing a white paper which we'll want to consider when it becomes available.

Judge Zell noted that Minnesota adopted this program in 1994, and asked Mr. Callram how active the Department of Justice has been in reviewing their program.

Mr. Callram replied that the Civil Rights Association has representatives who report to the Department of Justice about any problems. In addition, the Department of Justice has representatives that check in periodically with the Coordinators to see what they are doing to select the right interpreter for situations.

John Goerd, Iowa Deputy State Court Administrator, Coordinator of Iowa's Interpreter/Translator Program; member of Executive Committee of the Consortium for Language Access in the Courts

Mr. Goerd thanked the Committee for inviting him. He explained that in 2001, the Iowa Supreme Court appointed a committee similar to this one to improve interpreter services, and he staffed this committee. Minnesota and Wisconsin were very helpful in sharing information with Iowa, even though Iowa wasn't part of the Consortium and didn't join until several years later.

He informed the group that the Consortium does more than just develop tests. In fact, the Consortium's name changed several years ago because their role had expanded.

Mr. Goerd discussed the handouts he provided. The *10 Key Components to a Successful Language Access Program in the Courts* (Handout B) lists important things that should be considered, and the *Bench Card for Iowa Judges* (Handout C) is something that could be modified to fit South Dakota's needs and be included in a Judges Benchbook.

He explained that experienced experts developed the Consortium's exams. California developed their own exams and then had an outside evaluation company evaluate their test in comparison to the Consortium's exams. The Consortium's exams fared well in the evaluation, which is outlined in *California's Assessment of the Consortium for Language Access in the Courts' Exams* (Handout D).

Mr. Goerdt informed the group that Iowa's advisory committee was started in response to a murder case involving Vietnamese defendants. Due to poor interpreting skills, the interpreter for the Miranda rights told them they had the right to an "engineer."

Another interpreter situation had occurred earlier in a child custody "kidnapping" case where an interpreter told the defendant he was charged with "child sleeping," which resulted in the defendant pleading guilty.

Before 2004, the Iowa Supreme Court Rules required judges to appoint a "qualified interpreter." He pointed out the predicament that since there were no testing or training requirements for interpreters in the Court Rules, how do you determine what is meant by "qualified?"

Mr. Goerdt discussed the Code of Ethics for Court Interpreters, in which CANON 1 is about accuracy and completeness. He noted that there is to be no summarizing as this isn't a complete and accurate translation. A person's liberty is at stake and something as simple as dropping an adjective could make a difference.

The qualities of a competent court interpreter include the following:

- College-level vocabulary in 2 languages. Including legal and technical terms, slang, etc.
- Excellent memory skills.
- Excellent mental alacrity. Completely and accurately repeat back a passage in English from the original language. He explained that this is why interpreters get tired. The interpreters don't realize the decline is underway, but studies have determined it is occurring.
- Interpreter training and experience.
- Knowledge of a court interpreter's role and ethics. Sometimes the individual and the interpreter are the only ones who speak the language. The individual may ask the interpreter for direction or assistance and may receive it. The interpreter needs to relay questions to the court so that proper assistance is provided.

In 2004, Iowa adopted rules which paralleled Minnesota's in that they accepted interpreters who had federal, NAJIT or Consortium certification. They created a Roster of Court Interpreters using Minnesota's requirements, which includes a two-day orientation program and the passing of a multiple choice test on interpreter ethics. They require courts to appoint the highest ranked interpreter available.

Iowa joined the Consortium in 2005, which Mr. Goerdt felt was the best thing they ever did. This membership gave Iowa access to the Consortium's exams. Iowa immediately notified their interpreters that they would need to pass a written vocabulary exam in 2006 in order to get on or stay on the Roster. This was a key step in bumping-up the requirements in Iowa. Approximately 40% who took the exam failed. Some opted not to take the exam. This first step weeded out the interpreters who did not have an adequate vocabulary to be in court.

Mr. Goerdts discussed Basic Qualifications for Court Interpreters (Chapter 47) and for being listed on Iowa's Roster for Court Interpreters. He also discussed several of Iowa's levels of Interpreters and the requirements for each level, which are as follows:

- Class A – Certified (meets Iowa's standards) (70% correct on the 3 tests at one time.)
- Class B – non certified roster + one of these):
 - Certified in a state with lower standards
 - Came within 5% of passing certification exams
 - College level Court Interpreter training program (i.e., Des Moines Area Community College (DMACC)). This program takes 1.5 years to complete and most of the classes are done online. This program could be an opportunity for South Dakota's interpreters.
- Class C – non certified/on roster
- Non certified/not on roster

Mr. Goerdts reminded the group that experience does not ensure competence; that there is no substitute for testing. He referenced the first test of court interpreters which was done in New Jersey in the mid 1990s. Interpreters were given the Consortium's oral exam and needed at least a 70% in order to pass the exam. They found that individuals who had interpreted for 38 years got 44% correct, those interpreting for 22 years got 36% correct, and those interpreting for 12 years got 29% correct.

In the appointment of a Court Interpreter in Iowa, the court shall appoint an interpreter with the highest classification among those who are reasonably available. Iowa interpreters get preference over one from out of state. In addition, they must give preference within each classification to interpreters on the Roster.

Mr. Goerdts also discussed the Iowa SCA's Administrative Directive on Court Interpreter Compensation (2007), which included the following:

- Standard fees for court interpreters
- Minimum one hour per morning, one hour per afternoon
- Pay for travel time (if traveling more than one hour from residence)
- Cancellation policies – i.e., civil case settled and amount of notice needed. (See www.iowa.courts.gov and select *Interpreter Roster, Compensation for details.*)

Iowa's standard fees for Court Interpreters are as follows:

- Sign language interpreters (per hour)
 - Class A (certified): \$70
 - Class B (non certified): \$45
- Oral language interpreters (per hour)
 - Class A (certified): \$55
 - Class B (non certified): \$45
 - Class C (non certified/on Roster): \$40
 - Not on Roster: \$25

Mr. Goerdt noted that the Iowa Court Rules for Interpreters are in Chapter 47 and he recommended that we visit their website for information on the Guide, Tests, Training, Rules, Ethics, Forms, and Compensation.

Mr. Goerdt then shared the lessons Iowa learned during the development of their current interpreter program. The main recommendation was to join the Consortium, especially since it gives you access to the exams. Iowa didn't have anyone full-time to manage this program and it took up a lot of Mr. Goerdt's time. Other lessons learned included the following:

- Develop testing standards for interpreters.
- Develop clear rules on appointment and compensation.
- Educate judges, court staff and attorneys on the qualities of a competent interpreter; the appointment process (who locates, schedules interpreters); and how to handle court proceedings involving interpreters (see Handout C - Bench Card). Mr. Goerdt felt that they could use more educating, but the problem is that some judges don't see an interpreter that often, and those who utilize them often feel they don't need training since they feel they know the process.

One situation he sees when attorneys notify the clerk's office that they need an interpreter is that they often keep going back to the same interpreter because they like them even though there may be a higher-qualified person in an adjacent county. The judges need educated on this situation.

Mr. Goerdt felt that South Dakota would benefit from membership in the Consortium for Language Access in the Courts. The purpose of the Consortium is to share exams and other interpreter-related resources among states to promote the efficient use of state resources, standardize tests and testing policies, and to identify and encourage best practices. Forty states already belong to the Consortium.

Member benefits include:

- Access to oral interpretation (certification) exams in 25 languages.
- Access to a written exam for screening interpreters.
- Access to a Listserv of consortium members (help find interpreters for uncommon languages or to help identify best practices in other states).
- Access to a members-only website with valuable resources and materials.
- Access to a database of interpreters who have taken exams in member states.
- The right to attend the Consortium's annual meeting – valuable education program, networking, participate in governance of consortium.
- Access to bi-annual survey of member state program managers regarding their interpreter policies on a range of issues.

Mr. Goerdt pointed out that there are really 11 member benefits, but these seven are his favorite from the Consortium's website.

South Dakota's initial fee to join the Consortium would be \$15,000, which could be paid over 5 years. The annual fee begins after year five and would be \$5,103 for South Dakota. He explained that the fees are based on the LEP population.

Mr. Goerdt felt that it doesn't make sense for smaller states to develop and maintain their own exams. He pointed out that one criteria of membership in the Consortium is that you need to maintain tight security on exams (recordings, dictionaries, exam transcripts, etc.) in order to keep this information confidential. This is a top priority!

The next Consortium meeting is in April in Las Vegas. They have a great education program and will discuss Department of Justice requirements.

Questions

Mr. Sattizahn asked if there was a Coordinator in each Circuit.

Mr. Goerdt replied that there are no Coordinators in the Circuits or the State Administration office. He explained that the individual with the need for an interpreter goes to a clerk's office, where a roster is accessed for an interpreter. If no one on the roster is available, the district court office is contacted. They contact Mr. Goerdt if help is still needed in finding someone to interpret.

Iowa pays for indigent civil cases and charges it back to everyone. They still need to resolve problems with the compensation for the interpreters. Iowa's Supreme Court decided that the Professional Regulations office was better for handling Interpreter/Translator training, so Mr. Goerdt no longer has this duty.

Mr. Sattizahn asked what kinds of things Iowa was able to do without money before joining the Consortium.

Mr. Goerdt informed the group that he was initially directed to do what he could without any money, so they adopted the rules to require an orientation program and the ethics test. Minnesota gave them their ethics test. These initial steps were how interpreters got on the roster in Iowa. He advised that we need to start out by taking "baby steps." We need to start a list of those who pass the test as this provides some credibility. Iowa required people to pay a fee to cover the orientation costs. Iowa also got a grant from a principle group to also help defray costs. Iowa charges \$40 for the multiple choice test. He noted that you can get a good price on hiring someone to grade the Spanish oral exam because there are many people available who are fluent in this language, but it will cost you more to find someone who can grade an oral exam in a language such as Arabic.

Mr. Goerdt recommended joining the Consortium as there have been no challenges regarding interpreters' competency that have been certified through this program.

Judge Zell referenced Mr. Goerd't's earlier comment about Iowa providing the interpreters and charging it back to the litigants. Mr. Goerd't replied that amendments have been drafted to bring things into compliance with the Department of Justice as to who will pay. DOJ's legal analysis of the Civil Rights Act can be found at the following website: <http://www://LEP.gov>. He explained that depending upon the case in some states, the state or county gets charged back. Some states have a fund to pay for interpreters.

The biggest complaint regarding interpreters in Iowa is who will pay when multiple offices are involved and that this issue needs defined. He felt that \$1.2 million would be adequate for this program.

He noted that there are other areas to consider and used the example of a Parenting class for divorcing parents. If one or both of the participants do not speak English, is an interpreter needed? If so, who pays? He stated that they get questions like this all the time.

(A copy of Mr. Goerd't's presentation is on file with the official meeting minutes.)

Qadir Awaire, Former Director of the Multi-Cultural Center in Sioux Falls

Mr. Awaire came to the United States as a refugee in 1977. He distributed a handout entitled *Countries and Regions in Sioux Falls* (Handout E).

Mr. Awaire expressed concern about how the court system has been used by foreigners using the language issue as a way to avoid the issue and possibly get away with their offense. They may claim their offense is part of their culture and may get away with the situation. This reflects poorly on the ethnic communities. Others are manipulating the system and requesting an interpreter when they don't really need one, and others request one just because they don't want to learn English.

He felt that if you are moving to US and not speaking English, it's important we provide support. If you've lived here for over 10 years and requesting a translator for a speeding ticket, this isn't right.

Mr. Awaire indicated he didn't want the ethnic community to manipulate the court system, but they also should receive the services they need in the court system.

He started the Multi-Cultural Center and provided a lot of education in the Center so that foreigners would understand their new country and its laws and services. He explained that 90% of the ethnic community do not trust the law enforcement or court system because of experiences they had with law enforcement before coming to the United

States. He felt that education is very important and is a key issue for our interpreter system.

He's aware of people living in Sioux Falls for over 10 years and still requesting an interpreter for their traffic ticket. He noted that when you become a citizen, you're not allowed an interpreter in the federal system.

Mr. Awaire felt that the tests recommended by Mr. Goerdts could possibly eliminate 70-80% of interpreters in Sioux Falls. Mr. Awaire felt that ethics, health/medical terms, and understanding the system are things an interpreter needs to know.

He felt that having the litigants pay for their interpreter would cut back on a lot of manipulation of the court system regarding interpreters.

Mr. Awaire felt that more education is needed in this area.

Discussion

Judge Pahlke thanked Mr. Awaire for his candor. She explained that when someone comes into her courtroom and she is told they don't speak English, she envisions being in Mexico City and not knowing the language and how she'd feel. She understands from his talk that a stringent training across the board for interpreters is essential.

Mr. Awaire agreed. He noted that interpreting is not easy. He explained that groups from third world countries may have had little to no education, so these folks would probably need interpreter assistance. Mr. Awaire suggested that organizations bringing immigrants to our country could provide education to these folks so they understand the basics of things such as driver education, the court system, and how to obtain a drivers license.

Ms. Iverson said that it is her personal belief that it should be a concerted effort since you do not know if the individual is a foreigner or if they are here with documented papers. This issue lies with the arresting officer and the initial paperwork. She felt that, as foreigners, we have a responsibility of helping others understand the laws of this country. She has personally taught people so they would understand our processes. She was pleased that this resource is available in Sioux Falls to help educate the newcomers and she felt that dedication is needed to prevent "surprises" in the courtroom.

Mr. Awaire felt that the ethnic community leaders should be responsible as much as possible to bring these issues to their people. A lot of communities are willing to do this; but others are uncomfortable. He felt that we need to be pro-active, not reactive.

Judge Zell thanked Mr. Awaire for noting these issues and providing us with areas to consider.

Bob Wilcox, Executive Director, S.D. Association of County Commissioners

Judge Zell informed the group that Mr. Wilcox conducted a survey concerning interpreter expenditures and will share his findings with the group.

Mr. Wilcox noted that 38 South Dakota counties out of 66 responded to the survey. This does not mean that the 28 counties who didn't respond did not incur some kind of costs. The survey was completed by county auditors.

He felt that this issue is a moving target. He pointed out that the survey results on the handout (Handout F) show that an hourly fee for a court interpreter ranges from \$25 to 75/hour, but then you have exceptions such as Bon Homme and Yankton, where the interpreting service was provided free of charge by a nun, and Dewey County, who utilized a local Spanish teacher. Codington County had to use a translator for a hearing impaired person at a rate of \$90/hour. He noted that no uniformity currently exists in South Dakota. These costs aren't outrageous on an hourly rate, but we'll need to address this if we set a uniform rate as this is geographically driven.

Mr. Wilcox referenced the handout entitled *Nebraska Supreme Court Interpreter Fee Schedule and Payment Policy* (Handout G). He noted that the \$35 and \$50/hour fees are paid out of the General Fund with funds appropriated to the Supreme Court for that purpose.

Questions

Mr. Sattizahn noted that some of the people are not charging for providing interpretative services and asked if Mr. Wilcox anticipated them dropping out if we require them to sign an oath or code of ethics.

Mr. Wilcox replied that his gut feeling was that they would not drop out as most people want to help out, especially in the smaller communities. He stated that during his 16 years as a commissioner, they only needed a signer one time in the commission room. A lot of counties do not have a lot of activity of this nature.

Mr. Wilcox explained that the survey was sent out shortly after he returned from our meeting in Sioux Falls. He will forward to the Committee any updated survey number that he receives.

Mr. Sattizahn asked if these costs are assessed against the defendant or paid by the county.

Mr. Wilcox explained that our ability to lien is available, but the success of recovery on liens isn't very high.

Mr. McGowan stated that his office pays for the interpreters his office uses.

Mr. Thoennes commented that no court has assessed costs for any interpreters used.

Mr. Awaire said he was aware of several times where the judge has ordered the defendant to pay for the interpreter.

Judge Zell noted that the lien by statute is made against the person. He's never seen it assessed against the client.

Mr. McGowan stated that there are statutes clear on blood/alcohol testing costs, but no statutory authority regarding assessing the client interpreter costs in a criminal case.

Judge Zell noted that it would be easy for us to bootstrap what is being done in Minnesota or Iowa. Minnesota pays for it all whereas Iowa bills it back to client or user of service, and Nebraska has it paid by the Supreme Court. We'll need to decide what kind of funding mechanism we would want to use. He noted that a user fee was assessed in South Dakota to help fund the new Case Management System.

Future Direction for Committee

Judge Zell noted that our next meeting will be held after the legislative session. We're probably looking at March or April for the meeting. He asked if the committee felt they needed more testimony or more direction; whether we need to explore what's going on in Colorado or Montana. There are certain things that need done if we plan to do anything legislatively.

Judge Pahlke felt that this legislative session will give us a good idea of how things are going economically. If funding is available, this will provide more options than if no funding is available.

Judge Erickson pointed out that everyone raised the same issues today. He was involved in the first planning council and this time we're just looking at one aspect. He felt that the committee knows what is involved in this issue and he didn't feel it is that complex, plus we have many solutions. The funding issue is complicated and may need to be addressed in stages. He would like to have something to the Supreme Court by next fall.

Judge Zell discussed how Iowa took "baby steps" since no funding was available. They adopted Minnesota's test and put together a Roster. This could be a starting point for us. It would be something to propose to the Supreme Court and share with the legislature.

Ms. Fowler agreed with Judge Zell's comments regarding doing the baby steps to get the education started. She felt this was a huge piece of the puzzle. We could then determine the next steps.

Judge Pahlke agreed with Mr. Goerd't's comments and felt that getting something to the Fall Judicial Conference would be a realistic timeline.

Mr. Sattizahn said he sees several options coming out of this committee: legislatively – we could do funding statutes, which would be a huge issue; we could do non legislative things like ethics and education. He stated that he's already started working on a training session for judges on how to utilize interpreters. If we have a specific legislative proposal, we could do it.

Mr. McGowan added that another baby step could be a complaint block where a person or family member could report a deficiency by an interpreter. We could then start to document the interpreters/translators working for us.

Mr. Peterson felt that we also need to do background checks.

Mr. Sattizahn noted that Mr. Goerd't's committee still continues to meet. He suggested perhaps a modified version of the committee could continue since updates will be continual in this field. Perhaps we could draft a code of conduct.

Ms. Fowler discussed the USD Mock Trials and explained that they want to bring this to Sioux Falls and incorporate the various principles. This program would tie in well with the educational component.

Judge Zell proposed a possible option that six months from now we start the baby steps, then move on to the next phase, and then tackle the funding in 2 years.

Judge Erickson suggested we start outlining what we want to look at so that we can start taking action. We know the directions being taken by surrounding states. We need a "map" for the Supreme Court to consider.

Next Meeting

After the legislative session, meeting dates will be selected and then sent out to the Committee for consensus.

Mr. Sattizahn asked if the Committee would like him to start pulling something together for their review.

Judge Zell asked for committee response regarding a draft:

- Mr. Thoennes requested some elements of a draft regarding statewide standard rates.
- Judge Erickson suggested not getting into policy, just address the issue and where we're going.
- Ms. Iverson liked the idea of having a blueprint.
- Ms. Fowler, Ms. Carlson, Judge Pahlke, Mr. Wilcox, Mr. McGowan and Mr. Peterson all felt a draft would be helpful.

Adjourn

Judge Erickson moved and Mr. McGowan seconded the motion to adjourn the meeting. The meeting adjourned at 2:30 p.m.

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

**NOTE: This document contains the minutes from the 4th, 5th, and 6th
meetings so that all the Committee's changes for the Report are in
one document for easy reference.**

Fourth Meeting
Friday, April 8, 2011
8:30 a.m. CT

Room 413, SD State Capitol Building
Pierre, South Dakota

MEETING MINUTES

Call Meeting to Order – Judge Zell

Attendance: Phil Peterson, Attorney; Kerry Cameron, Roberts County State's Attorney; Phil Peterson, Attorney; Ken Tschetter, Defense Attorney; Judd Thompson, Chief Court Services Officer in 7th Circuit; Rosa Iverson, Interpreter; Karl Thoennes, Circuit Administrator; Bob Wilcox, Executive Director of the South Dakota Association of County Commissioners; Lisa Carlson, 2nd Circuit Court Reporter; Lisa Fowler, Sign Language Interpreter; Marty Jackley, Attorney General; Judge Brad Zell, Circuit Judge; Shawn Pahlke, Magistrate Judge; Jon Erickson, Circuit Judge; Greg Sattizahn, Legal Counsel for South Dakota Unified Judicial System.

Excused: Aaron McGowan

State Court Administrator's Office (SCAO): The recording secretary was Gloria Guericke. Technical assistance was provided by Richard Lenius.

Guests: Chet Brokaw, Associated Press. Charlie McGuigan, Chief Deputy Attorney General

The meeting was called to order by Judge Zell at 8:30 a.m. This is the Committee's fourth meeting. Roll call consisted of committee members stating their name and background for the benefit of guests and for those listening to the meeting via the Internet broadcast.

Approval of Meeting Minutes

Mr. Wilcox moved and Mr. Peterson seconded the motion to approve the minutes from the November 12, 2010 meeting.

Brief Summary of Past Meetings and Overview of Draft Report, Judge Zell and Greg Sattizahn

Mr. Sattizahn discussed the variety of information, suggestions and concerns provided by presenters at the earlier meetings. He explained that when preparing the draft report, he pulled policies from other states and found that they all were different. The draft he compiled for the committee's review contains broad-based policies and some detailed recommendations. He stated that he considers the draft as a starting point for us; it is never a final product until it has gone through several revisions.

The one area he didn't know what to do with was the funding area, so he laid out a lot of options. At the last meeting, Mr. Goerd, the presenter from Iowa, discussed the National Consortium group and services they could provide. Mr. Sattizahn felt that when we can afford it, we should join it for the various services available such as testing.

He referenced Mr. Callram's presentation about Minnesota's rigid certification plan regarding the different levels of interpreters and their levels of pay. We currently have a less structured program for interpreters and translators, but there are ways we can get there to be more structured. We want something in place to make sure people are qualified, and then we can compile a central registry so that these resources are available to

all the South Dakota courts. We want individuals with training, an understanding of the program, and tested for qualification. We'll also want interpreters trained so they are comfortable in the courtroom.

Mr. Sattizahn stated that he mainly used the standards from Iowa, Nebraska, Minnesota and Wyoming as guides when drafting our working report.

At past meetings we also discussed the Department of Justice and their requirements. Mr. Sattizahn felt that our report would meet their standards. He explained that the heart of the report is the rule proposal to the Supreme Court.

The proposed statewide rate for interpreters was drafted to provide some flexibility so that someone such as a local Spanish teacher could step in, if needed. He stated that we also need an out for situations where we need to bring in someone from another state for a very specialized language as the state rate probably would not be enough to get them to come to South Dakota. The dollar amount used in the report is open for discussion.

Judge Zell noted that Mr. Sattizahn contacted him in January regarding what to do for the next meeting, and he gave him carte blanche to put together a draft report for the committee's review.

He explained that the South Dakota Supreme Court authorized this committee after discussions the Chief Justice had with other Chief Justices regarding Department of Justice concerns. The committee was created in 2009, but our first meeting was postponed and rescheduled to April 2010 due to a snowstorm.

Judge Zell provided a brief overview of past meetings. Laura Abel, from the Brennan Center for Justice, pointed out recommendations for us. Lisa Fowler, American Sign Language Interpreter and Interpreters Rosa Iverson and Deya Thorin, and also Tim Jurgens from Lutheran Social Services provided recommendations for us. Javier Callram discussed Minnesota's requirements. John Goerd, Iowa's Deputy State Court Administrator, discussed budget issues to comply with Title 6, plus their interpreter-translator program, and how some things can be implemented at very little cost. Quadir Awaire, former director of the Multi-Cultural Center in Sioux

Falls, discussed unique circumstances with interpretation and how cultural differences may affect interpreter services.

Judge Zell referenced the August 16, 2010 letter from Tom Perez, Assistant Attorney General, as to what the Department of Justice is focusing on in regard to interpreter-translator services.

Judge Zell explained that there will be no testimony today as this will be a working session. He explained that even after we make our recommendations, there may still be some budget restraints regarding implementation. We have urban and rural issues in South Dakota and need to keep this in mind and craft our recommendation to provide flexibility to both.

When we have a recommendation, the plan is to run it by the State Bar and the Judiciary for input. Some of this will be a Supreme Court Rule, and part may need to go before the legislature for a funding mechanism.

Discuss Draft Report to S.D. Supreme Court

For discussion purposes, the Findings and Recommendations will be numbered consecutively for ease in updating the report.

Committee Findings. Page 6

#1 (page 6)

Judge Zell suggested deleting “an” and replacing it with “a language”.

Mr. Tschetter recommending replacing “maintain” with “maintaining”.

#2 (page 6)

No changes.

#3 (page 6)

Mr. Thoennes recommended deleting “does not encourage” and replacing it with “has no formal mechanisms established to ensure”.

#4 (page 6)

Mr. Thompson suggested the Finding be rewritten as “The current system has no independent assessment of qualifications.”

Mr. Tschetter recommended adding “interpreter” in front of “qualifications”.

Judge Zell read the final version for #4: “The current system has no assessment of interpreter qualifications.”

#5 (page 6)

No changes.

#6 (page 6)

No changes.

#7 (page 6)

Mr. Sattizahn asked if we need a uniform statewide standard.

Judge Zell asked Ms. Fowler if the services with her agency are contractual. She replied affirmatively and that the contract spells out the cancellation policy and what is expected and not expected. Mr. Sattizahn asked if they contract statewide. Ms. Fowler stated that they do not have contacts in place with every court system in South Dakota. Mr. Sattizahn asked if they would provide services in smaller courts such as Miller, and if she saw a problem contracting to provide services statewide. Ms. Fowler replied that they could go to the smaller courts and she did not see statewide services as a problem. She noted that if they went to Huron, Judge Ericson would need to pay the same rates as for Sioux Falls.

Judge Pahlke suggested limiting the court administrator to administer different rates from county to county for a 2-hour time period. She wants the administrator to have the flexibility to cancel an interpreter, if needed. For example, if an interpreter is driving to Lyman County, this appointment

can't be cancelled, but they could cancel if a local interpreter was scheduled in Rapid City but their scheduled services were not needed.

#8 (page 7)

No changes.

#9 (page 7)

Mr. Tschetter questioned what was meant by "background checks". The word "criminal" will be added after "requirement for".

#10 (page 7)

Mr. Carlson requested that the word "with" in the final sentence be replaced with "in".

#11 (page 7)

No changes.

#12 (page 7)

Mr. Thoennes expressed concern with the wording as we have no formal notification mechanism in place.

Mr. Sattizahn explained that the intent was to provide as much notice as possible.

Mr. Thoennes and Judge Zell suggested deleting "not encourage" and replacing it with "consistently require".

Delete the "an" in line 2 as cleanup.

#13 (page 7)

No changes.

#14 (page 7)

Mr. Thompson expressed concern with the last sentence. Judge Zell asked if the sentence was necessary. It was determined to delete the last sentence of "This hampers the desirability of interpreters working for the courts

Cleanup: the spelling of the word "familiarity" in line 3.

Greg noted that interpreters do more for the courts other than just appear in the courtroom. He felt that we need do more training so they are familiar with the court services. Mr. Thompson added that we need to discuss how the interpreter services continue after they've been in court.

Mr. Sattizahn suggested adding "or work with court personnel" at the end of the first sentence.

Ms. Iverson commented that just because an interpreter can speak the language, it doesn't mean they understand the proceedings. The American Judicial system is wonderful, but it can be intimidating and confusing. She felt that any training we can offer will be beneficial to everyone. She discussed how her children, who are fluent in Spanish, have shied away from translating in court because they are intimidated by the process.

Mr. Sattizahn recommended adding the word "very" in front of "limited training" in line 1.

#15 (page 7)

No changes.

#16 (page 7)

Attorney General Jackley suggested deleting this Finding as it creates confusion and it could cause problems down the road.

The Committee agreed to the removal of #16.

#17 (which will be #16 in next version of the draft since the original #16 was deleted.)

Mr. Sattizahn explained this Finding is listed because the provision of interpreters should go beyond the court. Interpreters should be available for situations such as CHINS cases. If a victim is in the courtroom audience, it may be appropriate to provide an interpreter.

No changes to #17.

#18 (page 7)

Judge Pahlke suggested striking the last sentence of "This process is strongly discouraged."

#19 (page 8)

Mr. Tschetter recommended that the word "These" in line one be replaced with "Similar".

#20 (page 8)

No changes

COMMITTEE RECOMMENDATIONS – page 8

#21 (page 8)

Attorney General Jackley suggested inserting "cost effective," after "timely". He referenced a past legislative study where the committee's recommendations were not acted on by the legislature because of the large cost to implement. He felt we need to keep costs in mind.

Judge Zell noted that the judiciary was also concerned about this, especially with our rural areas.

Ms. Fowler asked if we needed to define "as soon as possible."

Mr. Sattizahn explained that the terms used in the Implementation Priority are to provide flexibility to implement things, but also to show the

importance of these issues. The terms are open to change, but he noted that strict definitions could cause problems down the road.

Mr. Sattizahn felt that the “cost effective” language should be inserted.

Judge Zell noted that this is a work in progress and felt it was sufficient language to start with for the report.

Mr. Thoennes expressed apprehension about boundaries and obligations and suggested the removal of the word “all” from the sentence.

#22 (page 8)

No changes

#23 (page 8)

Mr. Sattizahn recommended deleting “bring South Dakota into compliance with federal law and”.

#24 (page 8)

Mr. Tschetter asked if “direct and substantial interest” would include victims of a crime. Mr. Sattizahn explained that he used this language to limit it. The judge would determine their relationship to a case and services could be determined on a case-by-case basis. In addition, individuals go into the clerk’s office with their pro se forms. Under ADA requirements there are some things we need to meet. If we’re offering services such as pro se forms and packets, we need to provide assistance. This is what motivated his draft of #24, as we need to expand beyond the courtroom experience.

Ms. Iverson felt there needed to be a language limit on any type of court proceeding.

Mr. Tschetter recommended adding “, when necessary,” after “provided” in line one.

Judge Zell questioned the 6 month implementation.

Mr. Thompson felt this time period was too quick, and Mr. Tschetter suggested it be changed to 18 months.

Committee members raised questions about the funding issue and the term “qualified” in line 1. Judge Erickson pointed out that the Supreme Court will need to determine some kind of funding issue and the legislature may become involved.

Judge Zell noted that we could also use “when funding mechanism is approved” for the Implementation Priority timeline.

Mr. Cameron asked if \$1 could be added to each civil file or criminal cost to pay for these services. Judge Zell replied that the cost could be spread across all court users. This would require legislative funding approval.

Judge Erickson cautioned that the funds we’re putting on criminals could become too high. He suggested that in our report, we could say that these are the things we would like to see and these are the things that are required.

Mr. Tschetter noted that most of these things cannot be implemented without funding, and this could be stated at the beginning of our report.

#25 (page 8)

No changes.

#26 (page 9)

Mr. Tschetter questioned how the referenced feedback would occur.

Ms. Carlson suggested adding “court personnel,” after “LEP individuals” in line three.

Ms. Fowler stated that as sign language interpreters, we already have regulations in place. This Recommendation currently focuses on LEP. She recommended adding “or hearing impaired” after “LEP members”.

Mr. Tschetter suggested adding “individuals” after “or hearing impaired”.

All these changes were agreed upon by the committee.

#27 (page 9)

No changes.

#28 (page 9)

No changes.

#29 (page 9)

Charlie McGuigan, Chief Deputy Attorney General (temporarily filling in for Attorney General Jackley until he could return to the meeting) suggested opening up participation with this group by including other groups as we need to look beyond the criminal system for funding possibilities.

Mr. Tschetter suggested including state government

Mr. McGuigan recommended deleting “the Attorney General’s office, county government and State’s Attorneys” and replacing it with “state and local government and any other interested groups”.

#30 (page 9)

Mr. Tschetter suggested inserting a comma the word “interpreters” and removing “who” from line one.

#31 (page 9)

No changes.

#32 (page 9)

No changes.

#33 (page 9)

A number of concerns were expressed by committee members.

Judge Erickson recommended deleting #33 and reworking the language on #1 on page 20. Everyone agreed.

#34 (page 10)

No changes.

#35 (page 10)

No changes.

#36 (page 10)

No changes.

#37 (page 10)

No changes.

#38 (page 10)

Mr. Tschetter recommended deleting "court approved" and replacing it with "qualified".

#39 (page 10)

Mr. Sattizahn read to the committee the email submitted by Mr. McGowan, who was not able to attend today's meeting. Mr. McGowan reminded the group that law enforcement may not have enough interaction to know the language skills of an individual whereas their defense attorney would.

Mr. Tschetter suggested deleting "The more that is known in" and replacing "advance with "Advance" in the fourth line.

#40 (page 10)

No changes.

#41 (page 11)

No changes.

#42 (page 11)

No changes.

#43 (page 11)

No changes.

#44 (page 11)

Ms. Fowler suggested that one way to cut down on interpreter services would be to include a face doing interpreting in the bottom corner of the jury selection orientation video so that interpreters wouldn't need to be on hand to interpret the video.

Mr. Sattizahn suggested adding "including American Sign Language" after "common languages".

#45 (page 11)

No changes.

#46 (page 11)

Mr. Sattizahn recommended adding "or hearing impaired" after "LEP".

#47 (page 11)

No changes.

#48 (page 11)

No changes.

#49 (page 12)

No changes.

#50 (page 12)

No changes.

#51 (page 12)

No changes.

#52 (page 12)

A number of concerns were expressed about this Recommendation.

Mr. Sattizahn recommended it be deleted.

#53 (page 12)

Judge Zell suggested adding “and hearing impaired” after “LEP”.

FUNDING (page 12)

Judge Zell explained that the Funding section is more of a recommendation.

Mr. Sattizahn added that this is his take on remedies for the funding problem. There needs to be a balance and a discussion on funding. He also set out the current law on compensation. He noted that there is not a lot of guidance in current law on how interpreters are paid.

He pointed out that the last full paragraph on page 13 does not line up, so this language may need removed.

Interpreter costs would need to be divided out. For example, the county bears the expense of court interpreters in criminal cases in the 2nd Circuit. The costs shift depending upon the circumstances. SCAO would have

costs regarding the background checks and training. There is a lot to discuss regarding funding and this is only the groundwork.

He felt that if we have an hourly rate that appears reasonable, we should have a good supply of interpreters versus having various rates via contracts. We also need to consider guaranteeing cancellation times as this may give us a better interpreter base. There was no one magic funding solution that he saw for this issue.

Judge Zell added that the Court Automation fund is used to provide services for every person appearing in the court system in South Dakota. This fee is being charged across the board. The court-appointed attorney fees are shared with the counties. We need to have a Plan A detailing where we can go if we have funding, and a Plan B if we do not have funding. He explained that the Supreme Court wants to see a relatively defined plan.

Mr. Thompson explained that one of the things he is having trouble understanding is our funding need, and he asked if we could pull current costs from SCAO and counties. He felt we needed more data.

Judge Zell felt this was an appropriate question and discussed surveying the clerks, sheriffs, administration, court services, etc, as we need to crunch the numbers.

Next Meeting;

Judge Zell suggested the next meeting be held via ITV. We'll start with "Proposed Supreme Court Rule Related to Court Interpreter Qualifications and Procedures in South Dakota State Courts" on page 18.

Adjourn

Mr. Thompson moved and Mr. Tschetter seconded the motion.

The meeting adjourned at 2:10 p.m.

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

Fifth Meeting
Friday, May 6, 2011
12 noon CT (11 a.m. MT)

Via DDN/ITV sites: Pierre: Capitol Building, Studio A; Huron:
Courthouse; Rapid City: Courthouse; Sioux Falls: Courthouse;
Sisseton: High School

Meeting Minutes

Attendees: Greg Sattizahn, Judd Thompson, Aaron McGowan, Karl Thoennes, Lisa Fowler, Bob Wilcox, Ken Tschetter, Marty Jackley, Judge Zell, Judge Jon Erickson, Judge Shawn Pahlke, Lisa Carlson

Richard Lenius provided technical assistance. Gloria Guericke was the Recording Secretary.

Excused: Phil Peterson, Rosa Iverson, and Kerry Cameron

Guests: Chet Brokaw, Associated Press

12:12 p.m. C.T. Call Meeting to Order – Judge Zell

Chairman Zell explained that our fifth meeting is a continuation of our fourth meeting - a working meeting - as we didn't finish getting through our draft at the last meeting.

Since the meeting is being conducted via ITV and streamed live over the Internet, he explained to listeners that five sites were reserved for today's meeting. The sites are in Pierre, Huron, Rapid City, Sioux Falls and Sisseton. Committee members and guest introduced themselves.

There are no minutes to review as today's minutes will be combined with the fourth meeting's minutes so we have a complete set of the recommendations in one document.

Continue Discussion Regarding Draft Report to S.D. Supreme Court. Discussion begins with "Proposed Supreme Court Rule Related to Court Interpreter Qualifications and Procedures in South Dakota State Courts" on page 18.

Judge Zell noted that our draft is the "nuts and bolts" part of how we'll go forth with this program.

SECTION 1. POLICY. (page 18)

Mr. Sattizahn suggested adding "where necessary" at the end of the second sentence.

SECTION 2. COURT INTERPRETER QUALIFICATIONS (page 18)

Paragraph A. (page 18)

Mr. Sattizahn recommended deleting "two day" as it is restrictive. Replace "a" with "an" before "orientation program".

Mr. Thompson asked about the testing and costs. Mr. Sattizahn replied that if we join the national consortium, we'll take advantage of the tests they offer. Iowa does the whole program and the cost is about \$48,000, which includes some salary for an employee's time. This includes expenses such as traveling, testing, grading, and bringing in a speaker. He noted that Iowa is larger than South Dakota, so is a higher cost.

Judge Zell recommended deleting "An interpreter who has obtained" from the first sentence and replacing it with "In providing interpreter services for a person who has limited English proficiency".

Paragraph B. (page 18)

Ms. Fowler was concerned about the wording "for a non-English speaking person" as we addressed LEPs in the paragraph above. She suggested

striking “non-English speaking person” and replacing it with “hearing impaired individual”.

Judge Zell recommended removing “non-English speaking person” totally as this recognizes a person certified in another state or federally certified. This change worked for everyone.

Mr. Thoennes requested adding “or federal” after “statewide”.

Paragraph C. (page 18)

No changes.

SECTION 3. QUALIFICATIONS EXCEPTION (page 18)

First paragraph (page 18)

No changes.

Second paragraph (page 19)

Judge Pahlke expressed concern about this paragraph as it puts another requirement on the court to make a record of this situation. Mr. Sattizahn noted that you are technically using someone who isn't a properly registered interpreter but you need to use them because of the timeframe, etc., so we need this exception to explain the record in case there is a challenge later on.

Judge Pahlke explained that she will need to hold a separate hearing on this every time as she was concerned she might use an interpreter, not knowing there is an exception, and then having the case challenged. Attorney General Jackley agreed with Judge Pahlke's concern and noted that if you have a separate hearing, it will complicate things.

Judge Zell explained that we should have a record when we're making an exception because of Civil Rights Act concerns regarding using a qualified interpreter. You need a record as to why you are deviating and you need to note why the person being used isn't an officially qualified interpreter. You may not be able to get a qualified interpreter right away. Rural areas can

note this exception and get the initial hearing done with a not-qualified interpreter.

The suggestion was made to put a period after “reasonably available”.

Judge Erickson agreed with Judge Pahlke concern, especially when you use Language Line. He’d have to do a finding every time he uses this service as the interpreters may not meet our qualifications.

Mr. Thoennes noted that the day these rules are adopted, we’ll have no certified interpreters, and four years from now we still may not have certified interpreters in South Dakota. He felt that this rule is great on its face but it can’t be applied.

Mr. Sattizahn recommended deleting “When extraordinary circumstances exist” from the first sentence and deleting the entire final sentence. This removes any litigation concerns.

Judge Pahlke explained that she was still concerned about this paragraph as it sets up challenges and puts an additional burden on the courts. She didn’t feel the language was necessary.

Ms. Fowler felt that the documentation would help if you were ever challenged that an interpreter was not qualified.

Judge Pahlke explained that if she knows a Language Line interpreter is not certified, she asks for another one. She assumes that if a Language Line interpreter says they are certified, then they are.

Attorney General Jackley was concerned regarding litigation. He asked if a defense lawyer is not comfortable with the interpreter and makes the challenge, will we need to pay to bring the Language Line person to South Dakota. He asked if we are looking at a mandatory, advisory, or a best practices program.

Judge Zell explained that the reason the Supreme Court initiated this committee was because of the Department of Justice’s mandate that the states are to comply with Title Six. We already comply with the Americans with Disabilities Act (ADA). With the demographics of our state, we want to

comply but have a tiered certification. We have to provide reasonable access. You'll never escape litigation on the interpretation. You need to give courts the opportunity to use an exception.

Attorney General Jackley commented that he saw a lot of "must" and "shall" terminology and was concerned about it boxing us in. He felt that a best practices, advisory or recommended format would be better. He noted that sometimes the defense attorney doesn't realize the need for an interpreter at the initial hearing.

Mr. Tschetter recommended removing the part about making the record by removing "but the court must explain the reasons for the waiver on the record in the proceeding" from the first sentence and keeping the rest of the wording in the paragraph. Mr. Thoennes agreed with this change.

Judge Pahlke noted that it still implies that making a finding or something is being waived, which requires a record. She does not want this paragraph as she will have to hold an extra hearing every time she does a hearing in order to make sure the interpreter is qualified. When there's a challenge, it must be shown that the interpreter is valid.

Judge Pahlke suggested holding this paragraph and coming back later after we've had time to research it.

Judge Zell pointed out that we are trying to create a record of certified interpreters, so you know they are qualified but not necessarily certified.

Judge Pahlke agreed with Mr. Tschetter's stricken language.

Mr. McGowan stated that some of this paperwork is that they are certified on a roster, and then there will need to be some canvassing by the court as to their minimum qualifications if they aren't on the roster.

Judge Erickson felt we are going to need to note the reason for the waiver anyway.

Judge Zell noted that we have several suggestions pending. We'll hold off on this one and come back later.

SECTION 4. ADDITIONAL MINIMUM REQUIREMENTS. (page 19)

Ms. Fowler noted that sign language interpreters must be registered to interpret, otherwise it is a Class 2 misdemeanor, and stated that we need to include similar language.

Mr. Sattizahn felt this could be accomplished by adding to the end of 5A: "They must be certified pursuant to the administrative rule."

Ms. Fowler added that we also need to include sign language interpreters, not just language interpreters.

Mr. Sattizahn stated that registration and administrative rules requirements will be added for the ASL interpreters. He'll then track the code and the administrative rules.

Mr. Thoennes said he didn't feel this language was at all unreasonable as he wants interpreters to be certified and at least age 19, but felt that some of these requirements make it difficult to find an interpreter if only a 17-year old is available.

Judge Zell said he understood this and explained that you would make a record and go on.

Mr. Tschetter noted that you may have situations where a family member would be the best interpreter, but they may not want to go on the roster.

SECTION 5. GENERAL PROCEDURES- REQUIRMENTS. (page 19)

A. Rebuttable Presumption. (page 19)

See second paragraph in Section 4 (above).

B. Interpreter Oath. (page 19)

No changes

C. Background Check. (page 19)

Mr. McGowan asked who vouches the background check and Mr. Sattizahn replied that this would be through the State Court Administrator's Office for the standard rostered individuals. Otherwise, the judge could waive this requirement.

Mr. Thoennes questioned why he should care about a felony if they're fluent in the language.

Mr. Thompson pointed out that they may have a record from earlier in life and years later want to be an interpreter. They would be barred because of their earlier record.

Mr. Sattizahn explained that this is borrowed from another state and he debated adding it as these convictions trigger a problem. The felony is an absolute bar but, otherwise, a decision could be made to utilize the individual.

Judge Zell pointed out that if they are up to be a juror and their civil rights have not been restored after a conviction, they are barred from being a juror.

Mr. Thompson recommended deleting the final sentence "A felony conviction is a bar to being a court interpreter."

Mr. Tschetter stated that the background check is part of the certification process, so limit background checks to individuals wanting to be added to the roster.

Judge Zell suggested changing "shall" to "may" in the first sentence. Background checks could be waived.

Mr. McGowan pointed out that if we're delineating, *rostered* is a "may" be required and *registered* is a "shall" be required.

Mr. Sattizahn explained that he can organize and pull this out into separate sections.

Mr. McGowan recommended adding "for Registered Interpreters" to the end of the Section 5 heading after "General Procedures-Requirements.

Everyone agreed to the striking of the final sentence in paragraph C.

Attorney General Jackley pointed out that if you strike this sentence, you would still qualify if you have a violent felony. We need to add "felonies" in the "may" language in sentence one. Mr. Thoennes agreed as this gives the judge the option.

Mr. Tschetter suggested adding "including those which include moral turpitude and felonies" after "criminal charge" in sentence 2. He suggested leaving the language in there so that the person reading the background check has some guidance in that it tells them to watch out for things such as felonies.

Mr. Thompson asked how it is handled when we do background checks on new employees. Mr. Thoennes replied that the judge makes the decision. Mr. Thompson noted we then don't need this language.

Mr. Thoennes stated that with the exception of hearing impaired interpreters who are credentialed, we are lucky to find language interpreters to meet our needs. 80% of our interpreters will not jump through this process and 80% of our interpreters will be exceptions.

Judge Zell explained that you still need your requirements of what you expect from these folks. He agreed with Attorney General Jackley regarding leaving out the specific things.

A vote was taken and all agreed with the changes to remove "which evidence moral turpitude, dishonesty, fraud, deceit or misrepresentation" and to delete the final sentence of the paragraph.

The new paragraph reads as follows:

C. Background Check. An interpreter shall be required to undergo a criminal background check. Past convictions or pending criminal charges may be the basis for the denial of registration or removal from the registry as an interpreter in the South Dakota courts.

D. Code of Ethics (page 19)

Mr. Sattizahn noted that making sure someone doesn't go off the list to find an interpreter is difficult to police.

Mr. Thoennes stated he wants a structure in place. He thought putting someone on the "black list" could be helpful to the courts so they don't get called.

Judge Erickson had a problem with Language Line and applying this across the board to everyone. He felt these interpreters meet Language Line's standards and should be exempt. Judge Pahlke agreed.

Judge Zell stated that he wants them to meet this minimum requirement.

Ms. Fowler said that as an interpreter who has an agency, we enter in to contracts all the time that we must abide by a code of professional conduct. She felt this language should be added to the contract.

Judge Erickson suggested having Language Line supply us with their standards and policies.

The Committee adopted the Code of Ethics paragraph with the following change: to add "or use as an interpreter" at the end of the final sentence.

E. Conflicts of Interest – Bias. (page 19)

No changes

F. Objection to Interpreter. (page 20)

No changes

G. Method of Interpretation. (page 20)

No changes

H. Telephone Interpreting. (page 20)

Ms. Fowler recommended adding “or video” after “Telephone” in the first sentence.

Mr. Thoennes felt that maybe this should be a separate paragraph due to the 30 minutes stipulation.

Judge Zell stated that a separate paragraph will be created to address video and ITV interpreting. The time limit concern would not need to be included.

Mr. Thoennes noted that they use Florida’s interpreters as they have some obscure languages available.

Mr. Sattizahn pointed out that Ms. Fowler indicated earlier that video is difficult to interpret as you do not get the nuances, etc., from the person.

Mr. Thoennes suggested removing “(less than 30 minutes)” and with the already recommended addition of “and video” after “Telephone” in the first sentence, these changes should eliminate the need for a separate paragraph for video concerns.

The Committee agreed with these two changes.

I. Recording of Proceeding. (page 20)

Judge Zell expressed concern about wording “that the official transcript be amended” in the second sentence as it is technically not correct. He explained that it is official once it is taken down.

Judge Pahlke questioned if this was a limiting rule for oversight and training and Mr. Sattizahn replied that it was added for training purposes

Judge Zell recommended deleting “direct that the official transcript be amended and the court” in sentence 2.

Mr. Thoennes suggested deleting “the testimony of the person for whom interpretation services are provided”.

Mr. Tschetter requested adding “the proceeding” where “the testimony of the person for whom interpretation services are provided” had been located.

All agreed with the above changes.

(Also see page 29 for an additional change.)

J. Additional Interpreter. (page 20)

Ms. Fowler noted that it can become “sticky” when another interpreter is brought in.

Mr. Sattizahn explained that this section was initially added to address interpreter fatigue, but noted that Ms. Fowler’s concern was a good point. He suggested creating another letter in this section to address Ms. Fowler’s conflict of interest concern.

All agreed with this change.

K. Removal of Interpreter (page 20)

No changes.

L. Reciprocal Discipline (page 20)

No changes.

M. Interpreter Register (page 21)

No changes were made.

N. Interpreter Preference (page 21)

Judge Zell pointed out that this is the area where the Iowa tiered system of Tier 1, Tier 2, etc., could be included and we don’t go into this in the draft. The current language is okay but it would be nice if we could define the tiers.

Mr. Sattizahn noted that Mr. Thoennes had mentioned earlier that we may not have many certified interpreters. This section addresses minimal qualifications. With the different levels, we'll need different testing and different oversight. It's up in the air as to how we want to structure the program.

Judge Zell asked if we need to include a tiered system.

Mr. Thompson questioned the difference in training between Level 5 and Level 4 sign language interpreters; other than Level 5 interpreters can do the courtroom.

Ms. Fowler explained that their administrative rules spell out the level of certificate needed for certain circumstances. Level 5 is for court in most instances and traffic offenses could be a level 4 interpreter. Mr. Thompson's meeting would not require the extensively trained Level 5 interpreter.

Mr. Tschetter was concerned that people may opt for the cheaper interpreter if we set out tiers.

Ms. Fowler informed the group that in Minnesota there is a national legal certification that sign language interpreters can obtain. It is a CSL certification.

Mr. Tschetter suggested leaving this paragraph as is and we can amend it later if we go to a tiered system.

The committee agreed with Mr. Tschetter's recommendation.

0. Interpreter Arrangements. (page 21)

Mr. McGowan suggested adding "prosecutors or defense attorneys" after "law enforcement" in the third sentence.

Mr. Thoennes recommended deleting "clerk of" in the third sentence.

Judge Zell suggested the deletion of "clerk" and replacing it with "court" in the last sentence.

Judge Zell read the revised version of the paragraph and the committee approved the new version.

P. Calendar Efficiency. (page 21)

No changes.

Q. Contact Information. (page 21)

No changes.

R. Inapplicability (page 21)

Mr. Sattizahn explained that the reason for this paragraph is to cover situations such as if an individual has a family member present, they may want to talk to the family member about what's going on, but this doesn't make the family member an interpreter. They are a support person for the individual.

Mr. Tschetter stated that the wording "this Rule does not apply to them" was of concern to him. He suggested deleting the last sentence.

The committee agreed to the removal of this sentence.

I. Recording of Proceeding (page 20) (readdressed)

Ms. Carlson asked to readdress I. Recording of Proceeding, on page 20, and explained her concern about the "official transcript" wording in the first sentence.

Mr. Tschetter noted that deleting "for use in verifying the official transcript of the proceeding" in the first sentence would address Ms. Carlson's concern.

Next meeting

The next meeting will be held via ITV/DDN. We'll start with Section 6 - Cost of Interpreter Services, on page 21 of the draft report.

Judge Zell thanked everyone for their hard work.

Adjourn

Mr. Thompson moved and Mr. McGowan seconded the motion to adjourn.

The meeting adjourned at 2:55 p.m. C.T.

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

Sixth Meeting
Friday, June 10, 2011
9:15 a.m. CT (8:15 a.m. MT)

This meeting was held via DDN/ITV

MEETING MINUTES

ATTENDANCE: Greg Sattizahn, Rosa Iverson, Judge Jon Erickson, Judd Thompson, Bob Wilcox, Phil Peterson, Lisa Fowler, Lisa Carlson, Ken Tschetter, Aaron McGowan, Karl Thoennes

Excused: Chair Judge Zell, Judge, Kerry Cameron, Attorney General Marty Jackley, Judge Shawn Pahlke

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

Guests: Rapid City Journal reporter Andrea Cook.

Call Meeting to Order

Acting Chair Greg Sattizahn called the meeting to order at 9:20. A roll call was taken and a quorum was determined.

Mr. Sattizahn reminded the committee that we left off at Section 6: Cost of Interpreter Services, which is where we'll start today.

He noted that we've come a long way in this report and that we'll revisit the highlighted areas in the draft report. These highlighted areas should be discussed at the next meeting, which would be a face-to-face meeting. A sub-committee could address the funding issue and provide options to address at next meeting.

The committee members felt this to be a good process.

The following members volunteered to serve on the funding sub-committee with Mr. Sattizahn: Karl Thoennes, Judge Erickson, and Bob Wilcox. Mr. Thompson offered to visit with Judge Pahlke and one of the two of them will also be on the committee.

SECTION 6 – PAGE 21

A. Hourly Rates.

Mr. Sattizahn explained that the \$55 and \$40 are numbers he came up with after doing some research. They are open to change. He felt that the non-registered rate should be a bit lower to encourage individuals to become registered.

Ms. Fowler said she understood the rationale for putting in this paragraph, but didn't feel it made sense to have this paragraph for the sign language interpreters who work through an agency. These rates are not equal to what their agency is charging as the \$40/hour is quite a bit.

Mr. Sattizahn asked if adding language such as "for those contracted through the court" or some similar language would alleviate her concern.

Ms. Fowler replied that this language would provide some clarification in her mind. She noted that this is a significant amount of money for a sign language interpreter to come into a courtroom.

Ms. Iverson had a concern about putting in an amount because it all varies. From her experience with other interpreters, she agrees with Lisa as these amounts could be a lot, but some agencies are pretty much charging \$50/hour, plus rates vary on the amount of time the interpreter is utilized.

Mr. McGowan suggested putting in a minimum and a maximum amount.

Mr. Sattizahn asked what are the common ranges across the state.

Mr. Peterson noted that in Union and Clay County it is \$50/hour.

Ms. Iverson replied that the flat rate is \$50/hour in the many areas where she's worked, and this does not include travel.

Mr. McGowan said that they pay \$55/hour for grand jury.

Mr. Thoennes stated that the average is \$55/hour in Minnehaha County, but there are variables depending upon the interpreter. For example, they have paid up to \$80/hour. He reminded the group that this is a complex area as there is also Language Line, plus there are travel expenses.

Mr. McGowan suggested we keep this on a court-by-court basis to determine rates because of the complexity of reimbursing everyone. A set rate across county lines would not be fair to everyone.

Mr. Tschetter agreed with Mr. McGowan's suggestion about adding language which provides each county flexibility in negotiating with interpreters, and adding language that certified / registered interpreters would get paid more.

Mr. McGowan asked if this was a true hourly rate and Mr. Sattizahn replied that it was, to make it the actual time.

Mr. Thoennes informed the group that they are about 50—50 for agency interpreters and freelance interpreters. He asked what was the distribution

statewide as this could make an effect. He guessed that most of the interpreters used around the state were freelance.

Ms. Iverson stated that it's usually freelance across the state. She said that she likes the idea of flexibility. Ms. Iverson has many years of experience in interpreting and does not want to step back to an entry level interpreter rate.

Mr. McGowan noted that we need to compensate experience. He felt that the committee should build in some flexibility and insert a ceiling on the rate so we do not end up with unreasonable rates.

Mr. Sattizahn stated that he will rework the paragraph to include reasonable rates and that rates can be negotiated on contracts.

B. Cancellation

Mr. Sattizahn explained the intent of the paragraph and Ms. Fowler noted that it is consistent with the business practices she's seen.

Mr. McGowan suggested putting in a provision where if a person doesn't show for a court session where an interpreter has been brought in, then they need pay the fees for the interpreter. He was not sure this could be done in a civil setting.

Mr. Tschetter noted that a person isn't responsible for the fees if they do show for court, so he wasn't sure the DOJ would agree with this process. He asked if you could consider it restitution and recoup the costs in this manner.

Mr. Thoennes stated that they tracked this awhile back and found that about \$1200 was burned during a 90-day period for no-shows.

Mr. Thompson felt that this may be able to fit the definition of restitution but was not sure it would fit the probation category.

Mr. Tschetter pointed out that in a civil case, the other side could request reimbursement, and in a criminal case options are also available to recoup the costs. He felt we do not need to address this in our report.

Mr. Sattizahn suggesting holding off on this to see if it becomes an issue. He explained that Mr. Thompson's situation is post sentencing and you do not have anything to hang over their head to recoup costs. He felt that perhaps this rule was not in the right location.

C. Volunteers

Mr. Sattizahn referred to Mr. Goerd't's suggestion to select interpreters who were the most qualified and then who is the cheapest.

Ms. Iverson had concerns about volunteer interpreters because of the privacy issue. Her concern was in regard to the sensitive matter in the case and the court environment and procedures. She noted that the court environment can be intimidating, especially for foreigners. She felt that if there is a pool of volunteers, there should be some kind of training and oath for them.

Mr. Sattizahn agreed that volunteers should be referred to the SCAO for training and the Oath. He suggested adding that volunteer interpreters should be qualified and meet the other requirements of the proposed rule.

Mr. McGowan asked if a 2-hour "shadowing" experience would be helpful for these interpreters.

Mr. Sattizahn suggested adding "Section 2" after "otherwise meet the requirements of" in the first sentence.

Mr. Tschetter pointed out that this whole section was about the cost. He stated that there is an assumption that lay people are not qualified. We do not need to build all the qualifications into this section as it has already been done. He agreed with Mr. McGowan's suggestion about shadowing for the volunteer interpreters to help them become familiar with the process and terminology.

Ms. Fowler agreed with Mr. Sattizahn's suggestion about adding language that the volunteer interpreters meet the requirements of Section 2.

The committee agreed with the addition of the wording that volunteer interpreters must meet the requirements of Section 2 of this Rule.

D. Travel Reimbursement

Mr. Sattizahn explained that this wording was mainly borrowed from Minnesota's rules and he was not sure how it would fit for South Dakota. Another reimbursement option could be similar to what is used for South Dakota's court-appointed attorneys. The attorneys get reimbursed by the mile and this amount covers their work and their travel time.

Mr. Tschetter liked a reduced travel rate, but noted that we need to clarify if it's round trip or one way. He then asked if an interpreter gets paid if they only travel 5 miles.

Mr. Sattizahn replied that the interpreter needs to travel more than 50 miles and it would be round trip.

Mr. Thoennes suggested establishing a travel rate or mileage, but not both as it makes calculations and billings complicated.

Mr. Sattizahn pointed out that the Supreme Court can change the rates every year for court-appointed attorneys, and we could have the rates for interpreters change when the rates change for the attorneys. This would simplify matters.

Mr. Thoennes noted that if they travel 60 miles, they'd make more than their hourly rate.

Ms. Carlson suggested using the state rate of \$.37/mile.

Mr. Tschetter felt that the federal rate of \$.55/mile would provide them with an incentive to travel.

Mr. Sattizahn felt it would be simpler to keep it at the state rate.

Ms. Fowler stated that for anything 20 miles or more, they charge the \$.37/mile.

Mr. Peterson didn't think this would work in the rural areas as you couldn't expect them to drive 60 miles and pay them the state rate.

Judge Erickson agreed and added that interpreters from Sioux Falls wouldn't do this for a one-hour session. He preferred the court-appointed attorney rate.

Ms. Iverson noted that when she travels, she charges the \$50/hour rate rather than the \$.37/mile as she knows her expenses and needs to take these into consideration.

Ms. Carlson pointed out that the freelance court reporter rate is \$.37/mile.

Mr. McGowan agreed with the \$1/mile rate as this is lost business time for the interpreters and we need to compensate them for this time.

Mr. Sattizahn explained that the court-appointed attorney rate covers wear and tear on the vehicle and also compensates for their time.

The group agreed that the court-appointed attorney rate of \$1/mile would work for the interpreters. A minimum mileage should be included. Mr. Sattizahn will check to see what the minimum mileage currently is for court appointed attorneys.

E. Variances

Mr. Sattizahn explained that this allows flexibility when you have a situation such as bringing in someone from California.

No changes were requested.

F. Claims for Interpreter Services

Mr. Sattizahn explained that a lot of states have this in their policies.

Ms. Fowler agreed putting in a timeframe is important. She asked if the group wanted to include verbiage there may be no compensation if they do not submit claims within the specified time period?

Mr. Tschetter recommended using “may” rather than “shall.”

Mr. Sattizahn suggested adding the sentence: The failure to comply with this requirement may result in the reduced or nonpayment of claims for interpreter services.

The group agreed with the addition of the new sentence.

Section 7. Registration Fees

Mr. Sattizahn explained that the reasons for Section 7 is to have a fee that is reasonable so as not to discourage them from applying, to professionalize the program, and to allow us to see who is out there doing the work.

A. Application Fee

Ms. Fowler stated that ASL interpreters are already required to register in South Dakota for monetary compensation. They already pay national and local dues, and this would be an additional fee for them. She felt it would be burdensome for them.

Mr. Sattizahn noted that the ASL interpreters already need to go through a specific process. He suggested modifying the paragraph to exempt the certified and registered sign language interpreters. The committee agreed with Mr. Sattizahn’s proposal.

Mr. Peterson asked if someone who volunteers regularly would need to pay these fees and Mr. Sattizahn replied affirmatively.

B. Examination Fee

Mr. Sattizahn explained that this fee would help recoup some of the exam costs.

Mr. McGowan asked about adding a discretionary option to opt out volunteers.

Mr. Peterson noted that in Yankton, one of the nuns always volunteered. He didn't feel it was right that she pay fees when volunteering her time.

Mr. Sattizahn suggested adding a new section indicating fees may be waived at discretion of the State Court Administrator's office.

The committee agreed with adding a waiver section

C. Renewal Fee

Mr. Sattizahn explained that the Renewal Fee allows us to keep fairly recent information on the person. It also provides an option if we've been hearing complaints about the individual.

No changes were requested.

D. Background Check

Mr. Sattizahn stated that he feels it is important to know about the background of these individuals as they are privy to a lot of private information.

No changes were requested.

Section 8. Examinations

A. Requirement

Mr. Sattizahn pointed out that these are fairly broad statements, which allow us flexibility.

Mr. Thoennes requested replacing "offer" with "prepare."

B. Frequency

Mr. Peterson requested changing "designed" to "designated."

Section 9. Effective Date

Mr. Sattizahn explained that the highlighted date is flexible as we want to build in a flexible lead time so that we are prepared before rolling out the program.

No changes were requested.

South Dakota Court Interpreter's Handbook.

Mr. Sattizahn explained that he borrowed wording from several states and that this section could be used as a resource document. The committee could either discuss any sections or review and follow-up with written comments that could be shared with the group. He pointed out that some areas need reworked to reflect changes we've made in other sections of the document.

Mr. Sattizahn explained that either Court or legislative change would be needed to change the Oath for Interpreters in Section J.

Mr. Thompson asked who would use this Handbook and pointed out that no CSO checklist is included. He explained that on a state case we know in advance an interpreter is needed in court, but we get no advance notice for Interstate Compact cases.

Mr. Sattizahn stated that we could put this Handbook on the UJS website so that parties know how things will work if an interpreter will be involved.

Mr. Thoennes suggested the following changes: In Section 2 D, final bullet, change "to" to "in;" and striking G. (Paying Court Interpreters) in the Handbook's Table of Contents.

Ms. Fowler recommended adding references to deaf and hard of hearing individuals as in Section H. In Section 2 (Interpreter's Checklist) #D, she requested adding language requiring access to the records in advance of the case.

Mr. Sattizahn asked if Ms. Fowler needed to contact attorneys in advance if you want to review the documents or is this handled through the judge, and Ms. Fowler replied that they've contacted the judge in the past.

Mr. McGowan pointed out that we, as attorneys, need to be more aware of this; that things such as medical records and complicated verbiage need to be made available to interpreters in advance.

Mr. Peterson suggested adding a section for an Attorney's Checklist.

The group felt this would be a good addition.

Ms. Fowler noted that there's a ton of education that needs to be done. She felt Mr. Peterson's suggestion was a good recommendation.

Mr. Sattizahn said he will add an Attorney's Checklist section.

Ms. Carlson requested the following recommendations for the "Real Time Reporting or Real Time Captioning" section:

- Add: "is provided by real time court reporters" after "that" in the first sentence.
- Add "or reporter" before "uses a steno machine" in the third sentence
- Add "English" before the word "text" in the last sentence.

Code of Conduct for Interpreters in the South Dakota Judiciary

Mr. Sattizahn explained that he felt we need a Code of Conduct.

Ms. Fowler noted that the Code of Conduct for sign language interpreters is on the website at www.rid.org. She felt this site could be another source for us.

Mr. Sattizahn asked if there was anything in this section that was inconsistent with anything for the sign language interpreters, and Ms. Fowler replied that she didn't see any problems.

No changes were requested.

Proposed Legislative/Court Rule Changes to Existing Law.

No changes requested.

Next Meeting

Mr. Sattizahn felt a face-to-face meeting should be held to discuss funding. The committee agreed with this idea and requested meeting in another location, such as Huron or Chamberlain.

Mr. Sattizahn will meet with the funding sub-committee before the committee's next meeting date.

Judge Erickson pointed out that everyone on the sub-committee, except for Mr. Thompson, will be in Sioux Falls for State Bar, so this could be an opportunity to meet

State Court Administrator's office staff will survey committee members for the next meeting date.

Adjourn:

The meeting adjourned at 11:15 a.m.

**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. Goerd. 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.

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

Eighth Meeting
Friday, September 30, 2011
1:15 p.m. CT
River Run Meeting Room
Cedar Shore Resort
Oacoma, SD

Meeting Minutes

Attendance:

Committee Members: Phil Peterson, Rosa Iverson, Greg Sattizahn, Karl Thoennes, Judge Zell, Judge Erickson, Ken Tschetter, Judge Pahlke, Bob Wilcox.

Committee Members Participating Via Speaker Phone: Aaron McGowan, Kerry Cameron, Judd Thompson, Lisa Fowler

SCAO: Richard Lenius, Gloria Guericke

Guests: Chief Justice David Gilbertson; Patricia Duggan, State Court Administrator; Rich Williams, Attorney General's Office

Excused: Lisa Carlson

Call Meeting to Order – Judge Zell

Judge Zell called the meeting to order at 1:15 pm. He introduced the guests in the conference room and those participating via speaker phone.

Chief Justice David Gilbertson thanked the Committee for their work. He explained that the Court selected people they thought would bring a lot of skills

to the Committee. He stated that the Committee's Report will not be shelved; the Court intends to study and implement a program as this is an area we need to pursue vigorously. The Supreme Court is very appreciative of the time the Committee members have put in on this study.

Minutes

Gloria read the change that Lisa Carlson requested be made to the minutes.

Judge Erickson and Mr. Tschetter moved and seconded the minutes with Ms. Carlson's change. The amended minutes were approved unanimously by voice vote.

Continue Discussion Regarding Draft Report to S.D. Supreme Court and Public Comments

Judge Zell stated that the Committee's Report (Document A) was sent out for public comment. Minimal comment was received. No comments were received from the judges at the Judicial Conference this morning.

Mr. Sattizahn informed the committee that the Report was sent out to organizations associated with the courts. Most of the comments received were corrective comments, no substantive changes were received. He also indicated others sent comments that they felt it was a very thorough report.

Mr. Sattizahn explained that the Funding Report (Document B) was only shared with this group, the State Court Administrator's Office (SCAO) and the Chief Justice. The reason for this was mainly because it was in a draft stage at that time.

Discuss Funding Report

Judge Zell explained that if the Supreme Court adopts our Report, they also have the charge of determining how to fund it. The Chief Justice informed him that they've put a line item in the budget request to proceed if the Report is adopted. This is only to get started; it does not mean this will be the only way of funding.

We do not have a complete grasp on total costs. We have a tiered system of how the program could be implemented depending upon the amount of available funds.

Mr. Thoennes requested that on page 9 of the Funding Report (Document B), that the creation of a complaint process be moved from Phase 2 (Moderate Funds) to Phase 1 (Minimal Funds), as he didn't see how this process would cost much financially.

Mr. Thoennes and Mr. Wilcox moved that the Complaint Process, listed in Phase 2, be moved to Phase 1. The motion passed unanimously by voice vote.

Mr. Sattizahn asked about the county cost numbers and Mr. Wilcox replied that it is a struggle to get these numbers. They will be available by the end of month.

Judge Zell reminded the group that public comment will be held by the Supreme Court to obtain input on the Report and Budget, so what we decide today may not be what South Dakota ends up with as a program.

Mr. Tschetter asked about the funding mechanisms identified. Judge Zell explained that Mr. Sattizahn laid out the pros and cons for the Supreme Court to consider. Although the Committee prioritized them, the Supreme Court will determine what they feel is feasible.

Judge Zell asked if there were any other amendments. The only comment received was by Mr. Williams, representing the Attorney General at today's meeting. The concerns were for flexibility for judges and funding, but it was felt these were satisfactorily addressed.

Judge Erickson and Mr. Peterson moved and seconded that the amended Report and the Funding Report be recommended to the Supreme Court. The motion passed unanimously by voice vote.

Judge Zell informed the group that when Mr. Wilcox submits his information to Mr. Sattizahn, it will be forwarded to the Committee and the Court.

Judge Zell thanked everyone for their participation and commented on the great input from everyone.

Judge Pahlke thanked Judge Zell for his guidance and chairmanship. The Committee members added their thanks.

Adjourn:

Judge Erickson and Mr. Tschetter moved to adjourn. The Committee adjourned at 1:42 p.m.