

STATE OF ARIZONA

ACCESS TO THE COURTS



INTERPRETER NEED AND PRACTICE

STUDY and RECOMMENDATIONS 2001-2002

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Interpreter Issues Committee

“Since changes are going on anyway, the great thing is to learn enough about them so that we will be able to lay hold of them and turn them in the direction of our desires. Conditions and events are neither to be fled from nor passively acquiesced in; they are to be utilized and directed.” — *John Dewey, 19th-century American philosopher*

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INTERPRETER COMMITTEE**

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EXECUTIVE SUMMARY

“JUSTICE 2002 Building Trust & Confidence in Arizona Courts” was the call to action from Former Supreme Court Chief Justice Zlaket to the Arizona judiciary during his term. He defined his agenda as creating a “blueprint to increase the public’s trust in the court system, to inspire confidence that individual rights are being protected, and to ensure that all Arizona citizens are being treated fairly.” In his Strategic Agenda, he set out four goals for Arizona courts to meet: **1)** protecting children, families and communities; **2)** providing access to swift, fair justice; **3)** connecting with the community; and **4)** being accountable.”

In response to this call to action, and in view of the historical and increasing presence of the non-English speaking community, the Arizona Minority Judges Caucus, at their 2000 annual meeting, focused on addressing all four objectives from one perspective: an individual’s access to the courts through the services of judiciary interpreters. It is the Caucus’ contention that with language barriers, the court will not be able to accomplish the goals set out to increase the public trust and confidence.

The Caucus formed the Interpreter Committee to explore the language and interpreter needs and issues in the Arizona court system:

- the disparity in terms of available and qualified interpreters across jurisdictions,
- standards, competency, qualifications, testing, registration and certification of judiciary interpreters,
- interpreter rules of ethics,
- education and training of judiciary interpreters,
- funding and administrative/staff needs,
- educating the judiciary, court staff and the bar on the appropriate utilization of an interpreter.

For limited and non-English speaking groups, fundamental due process can only be assured by providing competent interpreter services. Only in this way can public trust, public confidence, and the assurance of fairness be achieved for all. In 1978, the Federal Court Interpreter’s Act established an exemplar for the provision of qualified, tested, certified interpreters to ensure uniform access to justice for limited and non-English speaking persons. Lack of action in creating a system by which to train, test and certify interpreters uniformly across jurisdictions presents a serious threat to the goals outlined by Former Chief Justice Zlaket and endorsed by Chief Justice Jones in his new administration.

The Interpreter Committee has prepared this report as a preliminary effort towards reaching workable solutions for interpreter issues that arise in the Arizona court system. In this report, the Committee presents a preliminary review of statewide needs and practices in the various courts of Arizona.

The Committee recommends that the Arizona Supreme Court establish the Arizona Judiciary Interpreter Commission. The Commission is to facilitate the creation of a new Arizona Supreme Court Office of Judiciary Interpreter Practice charged with conducting a more thorough review of Arizona courts' existing needs and practices; utilizing available programs; and implementing new initiatives. The Committee also concludes that there exists a significant need for clear law and rules of court mandating the uniform appointment, across jurisdictions, of qualified and tested interpreters. This report contains these and other pertinent recommendations.

SECTION ONE

INTRODUCTION

INTERPRETER ISSUES IN ARIZONA

Time and time again, the Supreme Court of Arizona and the Arizona judiciary in general stand out against injustice. Indeed, the constitutional mandate to the American judicial system ---to administer justice under the rule of law, equally and independently --is firmly embedded in the everyday operations of Arizona courts. Arizona judges are highly recognized for their vision and efforts championing fairness in our courts. However, today there is a barrier between the courts and those they serve. If justice is to be had in any court of law, equal access to the system is vital. In Arizona, providing equal access to the court often requires the services of a court interpreter. For a number of years, Arizona courts have struggled with securing the services of qualified court interpreters. As Arizona grows it becomes increasingly diverse, and the problem becomes more pronounced. According to the 2000 Census, Arizona's Hispanic population is about 1.3 million people, making Spanish by far the predominant foreign language spoken at home among non-English speakers. Further, Census data estimates that nearly half a million Arizonans, or about one in ten people over age 5, do not possess English proficiency. This is nearly twice the number of residents who reported a lack of English proficiency in the 1990 census. Other non-English speaking populations are growing as well.

Former Chief Justice Zlaket and the Arizona Supreme Court recognized the need to equalize access to the Arizona courts and increase the public's trust in the court system. In fact, "Building Trust and Confidence in Arizona Courts" was a constant in Chief Justice Zlaket's term of office. Chief Justice Jones described his strategic agenda, "Justice for a Better Arizona" as an expansion of existing themes and development of new initiatives.

In that effort, the Arizona Supreme Court, as one of a number of initiatives, is actively seeking ways to solve the growing interpreter services problem. The Supreme Court recognizes that Arizona courts face two distinct problems regarding interpreter services currently being provided: **1)** the immediate need for more interpreters; and **2)** the need for the development of an interpreter system or program to secure *qualified, competent interpreters* to meet the growing demand in Arizona courts.

While Arizona courts are regularly recognized across the country as being ahead of the curve in many respects, Arizona falls woefully behind when it comes to providing interpreter services. In recent months, the court has been troubled with articles in the media addressing this very problem. As the need for interpreters grows in Arizona, the need to improve services and establish a program to ensure the use of competent interpreters is becoming critical. In the absence of such a program, the problems will escalate and become worse, and solutions will become far more difficult to implement. Currently, there is no statewide uniform judiciary interpreter system or program in the

Arizona courts. While individual courts, such as Phoenix Municipal Court, Maricopa County Superior Court, and Pima County Superior Court have adopted certain procedures in recruiting, training, pay scale, and tracking interpreter use, the majority of the courts have little data available and no system in place. Consequently, inadequate language service becomes an increasingly significant barrier to equal justice for an ever-larger segment of the population. As such, the quality of justice for the state as a whole continues to be compromised.

This situation contrasts with that found in California, New Mexico, and Texas –other border states with similar demographics. These states have recognized the need to improve their language services and have established state judiciary interpreter certification. California, for example, passed legislation in 1993 to meet this need. The actions of these states can only serve to highlight the inadequacy of Arizona’s response.

According to anecdotal reports, the current methods of recruiting interpreters for use in the courtroom vary widely. Interpreter services have been provided by a child with the parent, friends or others present in the courtroom, court staff, a building custodian, or an attorney representing the client. At times, some Spanish-speaking judges have conducted inquiries in Spanish. In none of these cases can the court ensure that the proceedings were adequately communicated to the defendant or that the defendant was adequately able to speak for himself. This does not inspire public trust.

In some instances, interpreter services are denied entirely. In a worst case scenario, when not allowing for an interpreter, a judge announced that since the matter was civil in nature an interpreter was not mandated by the rules of court. While technically, the judge is correct in this statement of Arizona law, it does not instill confidence that individual rights are being protected and that all appearing in Arizona courts are being treated fairly. It does not instill “the public’s trust in the court system”; on the contrary, it erodes it.

There are several programs and organizations –instate and out of state-- that offer services in the development of a judiciary interpreter program. They are: The University of Arizona Language Institute; Maricopa County/Arizona State University Spanish Language Court Interpreter Certificate Program; Phoenix College (limited Spanish interpreter classes); and the National Center for State Courts Interpreter Certification Consortium. In addition, a few Arizona courts have developed judiciary interpreter systems in their courts. Also available are Language Line Services (the former ATT Language Line) and the Arizona Administrative Offices of the Court (AOC) pilot program of Telephonic Court Interpreter Regional (The Four Corner States) Consortium.

This Committee recognizes that the judiciary interpreter problem is one that will take concerted effort to resolve. It is necessary to increase the number of qualified interpreters currently available to the various Arizona courts. It is also necessary to establish an interpreter service program to address the anticipated increase in demand for interpreter services. Moreover, it is necessary to do this in a way that ensures competence. One viable solution is the development of a comprehensive training and

certification program for judicial interpreters to be administered by a new Supreme Court Office of Judiciary Interpreter Practice. The Committee recognizes that financial resources necessary to implement a remedy must be available. The development and operating costs are important factors that can be and should be met. We urge the Arizona Supreme Court to recognize that providing competent, qualified judiciary interpreters is not another admirable program for the courts to offer. Providing interpreter services is an essential responsibility of the courts. It is required for fundamental fairness and due process of law. It is an essential part of “Building Trust & Confidence in Arizona Courts.” It is simply the right thing to do to create a fully accessible court system for Arizona.

SECTION TWO

STATEWIDE INTERPRETER DEMAND, UTILIZATION AND LAW

At the request of the Committee the interpreter offices of the Phoenix Municipal Court and the Maricopa County Superior Court collected data of “requests for interpreter services” during the period of June through August 2001. Collectively, these two courts made 17,271 requests for interpreter services. Of these **97.5%** was for Spanish interpreting. American Sign Language (ASL) was the second most requested interpreting service, representing 1 in 5 of the non-Spanish requests. Vietnamese, Arabic, and Serbo-Croatian were the next most often requested languages.

It should be noted that these results do not address interpreter utilization by court support operations, e.g. pretrial services, probation, attorney conferences or public service counter interpreter needs, and as such do not reflect a complete picture of court requirements for a sufficient number of interpreter positions. Similarly, the results do not provide data that would enable an analysis of the ways in which interpreters are being used in Arizona courts. Related questions to be studied will include: 1.) The types of court settings that require interpreter appointments; 2.) Rules for establishing interpreter qualifications; 3.) Provisions for establishing interpreter qualifications “on the record”; 4.) Instructions to interpreters and jurors, where required; and 5.) Judicial management to assure that interpreters adhere to defined rules of ethics and professional conduct.

The level of demand, along with the extremely complex cognitive processes involved in interpreting, the shortage of court interpreters within Arizona, the varied pay rates, combine to suggest that a more structured program for interpreter services is needed. While most courts in Arizona are showing an increase in the number of interpreter services necessary on a daily basis, Arizona statutes, rules of court and case law remain static.

Only three counties in Arizona have Superior Court Local Rules of Practice addressing interpreter use. These rules do not provide significant guidance in terms of standards and qualifications but simply state that an interpreter will be appointed to serve in court proceedings.

- Apache County Superior Court Local Rule 4 provides: *“The presiding judge shall appoint qualified persons to serve as interpreters in court proceedings. It shall be the responsibility of counsel or a party in need of the services of an interpreter to notify the judge’s secretary of that need at least one week in advance of the hearing. Failure to provide timely notice of this need may result in the imposition of sanctions.”*
- Cochise County Superior Court Local Rule 7 provides: *“the presiding judge shall appoint qualified persons to serve as interpreters in court proceedings who shall be*

under the supervision of the court administrator. It shall be the responsibility of counsel or a party in need of the services of an interpreter to notify the court administrator at least twenty-four hours in advance of the hearing. Failure to provide timely notice may result in delay and the imposition of sanctions. A division of court may request the court administrator to assign an interpreter as needed”.

- Santa Cruz County Local Rule 21 provides: *“Counsel must make arrangements to provide their own interpreter in Civil Cases when they desire to have the civil proceeding translated at counsel’s table. This court will provide a translator for all witnesses testifying during a Court proceeding in both civil and criminal cases, and for a defendant at defense counsel’s table in all criminal cases where an interpreter is requested.”*

Coconino, Gila, Graham, Greenlee, La Paz, Maricopa, Mohave, Navaho, Pima, Pinal, Yavapai, and Yuma Counties have no local rules addressing court interpreters.

The only rule in Arizona relating to qualifications of the court interpreter is found in Rule 604, Arizona Rules of Evidence.

- Rule 604 Witnesses states: *“An interpreter is subject to the provisions of these rules relating to qualifications as an expert and the administration of an oath or affirmation to make a true translation.”*
- Rule 702 Testimony of Experts provides: *“If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or education, may testify thereto in the form of an opinion or otherwise.”*

There is room to augment the Arizona rules of court regarding judiciary interpreters. (Rule 28, Ariz. R.S.Ct.) In addition, the Supreme Court has the authority by Administrative Order to create a statewide committee of individuals who directly deal with the issues and problems of interpreter services. Such a committee would provide a practical first-hand approach to crafting the court rules.

Like the Arizona court rules, there is very little in state law that relates to language interpreters. In fact, there is only one reference to language interpreters. Title 12, section 12-241 of the Arizona Revised Statutes, provides that *“the court may when necessary appoint interpreters, who may be summoned in the same manner as witnesses, and shall be subject to the same penalties for disobedience.”*

However, an extremely detailed statute is provided for sign language interpreters. Title 12, section 12-242 of the Arizona Revised Statutes requires that:

- A. *The court shall in any civil or criminal case or grand jury proceeding in which a deaf person is party to such action, either as a witness,*

complainant, defendant, or attorney, appoint a qualified interpreter to interpret the proceedings to the deaf person, to interpret the deaf person's testimony or statements and to interpret preparations with the deaf person's attorney.

- B. A department, board, commission, agency or licensing authority of this state or a political subdivision of this state shall, in any proceedings before such department, board, commission, agency or licensing authority in which a deaf person is a principal party of interest or witness, appoint a qualified interpreter to interpret the proceedings to the deaf person and to interpret the deaf person's testimony or statement.*
- C. If a person known or ascertained to be deaf is arrested and taken into custody for any alleged violation of a criminal law of this state, the arresting officer, the officer's superiors or the court shall procure a qualified interpreter to properly interpret any of the following:
 - 1. Warning of the person's constitutional privilege against self-incrimination as it relates to custodial interrogation.*
 - 2. Interrogation of the deaf person.*
 - 3. The deaf person's statements.**
- D. If a juvenile whose parent or parents are deaf is brought before a court for any reason, the court shall appoint a qualified interpreter to interpret the proceedings and testimony for the deaf parent or parents and to interpret any statements or testimony the deaf parent or parents may be called upon to give to the court.*
- E. If a communication is made by a deaf person through an interpreter is privileged; the communication extends also to the interpreter.*
- F. If the interpreter or deaf person determines that effective communication is not occurring the court or appointing authority shall permit the interpreter or the deaf person to nominate a qualified intermediary interpreter to provide interpreting services between the deaf person and the appointed interpreter during the proceedings.*
- G. A deaf person entitled to the services of an interpreter under this section may knowingly and intelligently waive these services. A deaf person who has waived an interpreter under this subsection may provide an interpreter at the deaf person's own expense.*

H. *As used in this section:*

1. “*Deaf person*” means a person whose hearing impairment is so significant that the individual is impaired in processing linguistic information through hearing.
2. “*Qualified interpreter*” means a person who has a valid license of competency authorized by the commission for the deaf and the hard of hearing.

Additional guidance is given by the Federal Code, Title 28 USC, which requires that Director of the Administrative Office of the United States Courts establish an interpreter program “to facilitate the use of certified and otherwise qualified interpreters in judicial proceedings instituted by the United States.”

There is a significant amount of case law relating to interpreter use across the country. The basic right to a interpreter was established by the landmark case, *United States ex rel. Negron v. State of New York*, 434 F.2d 386 (2d Cir 1970). In *Negron*, the court found the lack of adequate interpretation was a violation of the Due Process Clause of the Fourteenth Amendment. This case is most often cited as a basis for providing court interpreters. In a related case, *United States v. Torres*, 793 F.2d 436 (1986), the court found that a defendant had the right to understand the charges against him and to confront his accusers rather than have his statements translated. The court declared that “the interpreter’s job is a computer-like function in enabling the defendant to understand and to be understood without discretion to limit translation to those statements deemed appropriate by the court or government.”

In Arizona there are three significant cases regarding language interpreters. In the first case, *State v. Natividad*, 111 Ariz. 191, 526 P.2d 730 (1974), the Arizona Supreme Court, en banc, rendered a strong decision holding that:

The inability of a defendant to understand the proceedings would be not only fundamentally unfair but particularly inappropriate in a state where a significant minority of the population is burdened with the handicap of being unable to effectively communicate in our national language. A defendant’s inability to spontaneously understand testimony being given would undoubtedly limit his attorney’s effectiveness, especially on cross-examination. It would be as though a defendant were forced to observe the proceedings from a soundproof booth or seated out of hearing at the rear of the courtroom, being able to observe but not comprehend the criminal processes whereby the state had put his

freedom in jeopardy. Such a trial comes close to being an invective against an insensible object, possibly infringing upon the accused's basic "right to be present in the courtroom at every stage of his trial", *Lewis v. United States*, 146 U.S. 370, 13 S.Ct. 136, *Negron v. New York*, 434 F.2d 386 ((2d Cir. 1970).

The court also held that the trial court was in the best position to determine whether the defendant possess the requisite degree of fluency in the English language, so that his right to confront witnesses, right to cross-examine those witnesses and the right to competent counsel will not be abridged. *Id.* at 733.

In *State v. Mendoza*, 181 Ariz. 472, 891 P.3d 939 (App. Div. 1, 1995), the court ruled that interpreter qualifications are subject to proper inquiry by parties but that the determination whether an interpreter is qualified is left to the sound discretion of the trial court. In *State v. Burris*, 131 Ariz. 563, 643 P.2d 8 (App. Div. 2, 1982), the court found that the competency of an interpreter appointed by the trial court should be determined prior to the time when the interpreter enters on charge of his duties and his qualifications are subject to proper inquiry by the party against whom the evidence is going to be used.

Two additional significant cases are *U.S. ex rel. Navarrow v. Johnson*, 34 F. Supp. 679, 682 (D.Pa., 1973), wherein the court found that the absence of an interpreter violates the right of confrontation. Secondly, in a recent New Mexico Supreme Court Opinion, *State v. Third Judicial District Court*, NMSC 26109 (2000), the court upheld the state constitution in allowing court interpreters for non-English speaking prospective jurors at every stage of the jury process, including orientation, qualification and trial.

SECTION THREE

JURISDICTIONAL INTERPRETER UTILIZATION AND STANDARDS

Given the structure of the State of Arizona judicial branch, a variety of jurisdictional issues arises when evaluating the needs, utilization and standards for each court. The Committee herein refers to the superior court juvenile court system as an example of the varied interpreter utilization and needs of the court.

The superior court includes within its subject matter jurisdiction: criminal law, probate, guardianships, mental health proceedings, civil actions, domestic relations and juvenile court. The nomenclature, procedure, and litigants are quite distinct in each setting. Though many foreign language interpreters are familiar with criminal proceedings, the unique process found at juvenile court provides a challenge for any interpreter. By design, the juvenile court uses terminology to distinguish itself from the adult criminal court. Children, for example, are not accused of committing *crimes*. Children are accused of committing *delinquent offenses*. Children do not have *trials* they have *adjudications*. If a child is adjudicated delinquent, rather than having a *sentencing* the child has a *disposition*.

The juvenile court also expends a considerable amount of its resources on child abuse and neglect cases. These are generally referred to as “dependency proceedings.” Dependency proceedings typically involve a government agency taking custody of children due to allegations of abuse or neglect. In many cases, the same government agency requests termination of parental rights. Court proceedings involved in neglect and abuse cases include a pre-hearing conference; preliminary protective hearing; initial dependency hearing; an adjudication disposition; dependency reviews; permanency planning hearings; termination/severance hearings; placement hearings and adoptions. The case subject matter can include forensic medical, psychological or psychiatric testimony. Hearings often includes medically based allegations such as “failure to thrive”, “shaken baby syndrome” and molestation. The evidence can substantially consist of mental health diagnoses such as: “Diagnostic statement: DSM IV, Axis I 300.40, rule out Cannabis Abuse, 312.8 Conduct Disorder.” This complex process within the juvenile court system presents a daunting task for even the most qualified interpreter.

Finally, many children are required to come to court for various types of hearings. Children as young as six have been called to testify about allegations pertaining to physical abuse, child molestation, sexual abuse and other matters.

In summary, the juvenile court is an example of a forum in which an interpreter is required to use wide range of expertise and interaction to effectively perform the job. There is perhaps no other more challenging forum in the court system.

As in the juvenile court, each jurisdictional level has its own requirements. An interpreter providing services in the municipal courts, justice courts, and other branches of the superior court must understand the complexities of the subject matters brought in that particular court. The varied court subject matters and jurisdictional levels must be considered when implementing a testing and certification process.

SECTION FOUR

“LESSER USE LANGUAGE” INTERPRETERS

Recruiting, training and ensuring quality control for interpreters in languages other than Spanish are also recognized equal access issues that the Arizona courts are facing. For example, during June through August, 2001, the Maricopa County Superior Court and the Phoenix Municipal Court provided 177 and 259 “lesser use language” interpreters respectively, representing 38 languages. (See, Appendix A: “Lesser use language” Interpreter Utilization Statistics)

Recruiting qualified “lesser-use language” interpreters is the principal problem in providing for services in other than Spanish. While there is an increasing need for the use of “lesser-use language” interpreters, the need is sporadic and inconsistent. Under these circumstances, few interpreters, with bilingual skills, are motivated to increase their proficiency and seek a career in “lesser-use language” interpreting. Currently in Arizona there is not a method of recruiting, training and evaluating qualifications, effectiveness, frequency of use of “lesser use language” interpreters. Arizona courts at all jurisdictional levels rely on either Maricopa County or Pima County to provide information on hiring such an interpreter when the need arises. It has at times even become necessary to hire a “lesser-use language” interpreter from other states. One exception to this is Navajo. The State of Arizona has successfully contracted with the University of Arizona for the past five years to both train and certify Navajo court interpreters for the state and the Navajo Nation.

Today in the Arizona court system, it is not always possible to obtain a qualified interpreter in certain languages when the courts request one. This happens most often when the case involves matters under time constraints, for example mental health hearings. In such cases, the court has yielded to the use of either untested or possibly unqualified interpreters or to telephonic interpreters.

Training is necessary. At a minimum interpreter education should include: information on interpreters practices, assessment of the target and source language abilities, court protocol, codes of ethics, and rules of effective interpretation and communication. Instruction should also include a grasp of the simultaneous mode. A problem in simultaneous interpretation arises in some languages due to the grammatical and syntactical structure of the language. For example, Tohono O’Odham does not lend itself to simultaneous interpretation. In these cases or if the interpreter is not proficient in the simultaneous mode, the court proceeds with consecutive interpretation. While this process is more time consuming, it does ensure that the participant is receiving an accurate translation. Interpreter training should also include cultural considerations. Since communication with the individual is essential to a proper interpretation, a “lesser-used language” interpreter should be knowledgeable in the customs and cultural differences of the individual to whom they are providing language services.

Quality assurance of “lesser-use language” interpretation is necessary. A uniform method of data collection is essential. The courts currently rely on anecdotal comments from the individual requiring assistance, and the general observations of others to measure effectiveness. Reports have come from court staff, judges, prosecutors, defense counsel, and family members.

The need for Arizona to develop and implement uniform guidelines, mandatory training, education, recruitment, standards and supervision of the “lesser-use language” interpreters is clear. There are a number of possible improvements that can be made in the Arizona courts to increase the effectiveness of “lesser-use language” interpretation. The courts should explore other states and organizations currently providing “lesser-used language” services.

SECTION FIVE

INTERPRETER QUALIFICATIONS, CERTIFICATION, EDUCATION AND TRAINING

Arizona courts are to ensure that limited and non-English speaking witnesses, victims, and defendants are afforded the right to be present in any criminal proceeding brought by the state. *State v. Natividad* established that the defendant's right to be present includes the ability to understand the proceedings. Intercultural communication in the courtroom calls for the use of a professional, competent interpreter. The interpreter must have proficiency in English and the second language, and must have the ability to employ the major modes of interpretation used in the judicial setting.

In keeping with the high standards of the Arizona judiciary and all other officers of the court, Arizona judiciary interpreters statewide should be appointed based on set criteria and standards ensuring their qualifications and competence. Certification/credentialing of interpreters is an essential step towards ensuring the equitable administration of justice. These credentials should be established with objective testing instruments, appropriate to the language of the setting or judicial register; and certified under Arizona Supreme Court mandate. It is a step that Arizona has not yet taken, but must, to seriously pursue its commitment to equal access in the courts.

Ample resources exist, in the form of seasoned professionals in the field of judiciary interpretation, leaving little room for doubt that Arizona will be able to provide its interpreters with plenty of opportunities for training, certification, and continuing education. The University of Arizona's Agnese Haury Summer Institute for Court Interpreters and The Court Interpreter Training Program at ASU Phoenix, State Justice Institute currently train new interpreters. These programs may expand in the future to provide an Arizona certification program, training and continuing education for certified interpreters. In addition, the Downtown Campus of Pima Community College (PCC) provides the Translation Certificate Program and is considering expanding the program to a full Associate Degree. Phoenix College also provides training for Spanish interpreters; Spanish Legal Terminology and Spanish for City Courts are two of the courses being offered. The National Center for State Courts has formed a Consortium of states for providing interpreter-testing services to its members. The Consortium does not include training as part of the testing program, however, training services may be provided on a fee basis when a member state requests.

As with any profession, continuing education is important in order to keep current with new trends and developments and keep skills honed. Arizona has a variety of training opportunities for training court interpreters in both Phoenix and Tucson, but opportunities for continuing education have been more limited. Of course there is no current requirement for continuing education for interpreters in Arizona and many interpreters go out of state to attend conferences given by the National Association of Judiciary Interpreters and Translators (NAJIT) and American Translator's Association (ATA). The Arizona Court Interpreter Association (ACIA) has been providing seminars

and workshops regularly for over 20 years and will almost certainly play an important role in any future continuing education program in the state. The seminars are offered approximately three to four times per year and usually include an interpreter ethics workshop.

Training is an essential component to establish a competent workforce. Adequate training provides standards of protocol and consistency in interpreters' services, improves interpreter problem-solving abilities, and establishes self-confidence in the interpreter. Only through the dual work of testing and training can Arizona hope to meet the interpreting performance standards required to ensure access to justice for non-English speakers.

The proposed Arizona Supreme Court Office of Judicial Interpreter Practice would facilitate the implementation of a training, testing and certification process.

SECTION SIX

INTERPRETER CODE OF ETHICS

Given the responsibilities of the interpreter, as with any other vital profession, the judiciary interpreter should be bound by a code of ethics and canons of professional conduct. To be effective, the interpreter must not only have adequate interpreting skills, but must understand the complexities of their task and the responsibility of following ethical principles and standards.

A judiciary interpreter should be obligated to maintain a professional skill level and attend continuing education. The interpreter plays a fundamental role in ensuring equal justice. If the interpreter does not understand the legal and ethical obligations, a number of complications may arise. At all times, an interpreter must maintain an appearance of impartiality. If an interpreter is not qualified or lacks the experience called for, he should acknowledge his limitations and refrain from undertaking the task without the risk of appearing incompetent.

The design and implementation of an Arizona Interpreter Code of Ethics and Canons of Professional Conduct is essential to ensuring quality of interpretation. This proposed code should be included in the training, testing and certification process in Arizona and enforced by the Arizona Supreme Court.

There are various codes of ethics crafted in Arizona and other jurisdictions. While there are a few variations, most encompass the same dictates.

(See Appendix B: Examples, Arizona Court Interpreters Association Code of Ethics, Interpreting of Non-English Languages in the Superior Court and Justice Courts in Maricopa County and Phoenix Municipal Court Code of Ethics,)

SECTION SEVEN

TRAINING IN THE UTILIZATION OF JUDICIARY INTERPRETERS

Training and educating all parties involved in the use of interpreters is a necessary part of any long-term program. Judicial training on the use of interpreters should be a part of the mandatory continuing education program for judges and court staff under the current supervisory control of the Supreme Court. Judge and staff training should include the proper use of interpreters in the courtroom. Training focus would include qualifying criteria, on/off record standards, procedures for determining qualifications that judges should follow, recognizing appropriate cases for interpreter services, oral interpretation requirements and sight-translation practices.

Judges and staff should also be taught the proper use of interpreters in out of courtroom settings. This would include witness interviews by attorneys, attorney/client communications, the use of translators for correspondence to the court and document preparation, and the use of interpreters by bailiffs and court staff when processing parties. Other participants in the judicial process should also be trained in the proper use of interpreters. Those would include attorneys, probation officers, victim advocates, substance abuse screeners, counselors, and financial enforcement officers.

Training of all the above should include instructions on the code of ethics of interpreters, issues regarding attorney-client confidentiality, and any standardized policies and procedures adopted by the Arizona Supreme Court for the qualification and certification of interpreters in Arizona.

SECTION EIGHT

STAFFING

The Arizona Supreme Court can no longer rely on each individual jurisdiction to provide for interpreters. As the third branch of the government of Arizona, the Supreme Court must take the lead and develop appropriate measures to address this growing concern and provide for a uniform system throughout all state courts.

During 2001, the Committee conducted a survey to provide basic information about interpreter pay. Data was reported from 41 municipal courts. This survey revealed that the rates of pay for staff interpreters varied from a low range of \$10.05 - \$14.92 per hour to a high of \$13.89 - \$19.23 per hour, with higher rates paid for “lead” interpreters and interpreter supervisor positions. Many courts use contract or free-lance interpreters. The survey also revealed that the pay rate for these interpreters varied from a flat per hour rate to a daily, or fraction of a day rate. (See, Appendix C: 2001 Arizona Court interpreter Wage Scales)

Job descriptions for the interpreters in the various courts should be uniform. Pay scales for staff interpreters and pay rates for per diem/freelancers should be consistent across the state. Certification is meant to upgrade the delivery of services and provide for consistency of services. Court jurisdiction should not be a determining factor in quality interpreting services. A transitional process from the current interpreter services to a uniform standard will be required.

SECTION NINE

CONCLUSION AND RECOMMENDATIONS

The Interpreter Committee recommends the following:

1. The formation of an Arizona Judiciary Interpreter Commission by the Arizona Supreme Court, to develop **The Office of Judiciary Interpreter Practice**. The office should include a Director and a Testing Oversight Committee. The Commission should be broadly based in representation from all jurisdictional levels including: judges, court administrators responsible for interpreter services, interpreters and translators, rural and urban representation, academic professionals, AOC personnel and other impacted parties.

The Commission should consider the following issues:

- when and under what circumstances an interpreter is required,
- minimum skill level requirements at applicable court levels,
- consider certifying different grade levels of interpreters based upon particular court function,
- initially, Spanish interpreters to be primary group certified with some alternative to qualifying non-Spanish interpreters,
- statewide registry of non-Spanish interpreters for Court access,
- continuing education requirements for certified interpreters,
- establishing standards and training for proper utilization of interpreters,
- standards for training of attorneys in proper utilization of interpreters,
- determine standards for individual courts to test further for specific needs of court regarding skill levels,
- establish a professional code of conduct for interpreters,
- establish uniform standards of practice for judiciary interpreters,
- establish standards for background checks for interpreters,
- investigate timeline issues where availability of court interpreter is critical, i.e. mental health proceedings, orders of protection

- study current electronic interpreting alternatives and establish standards and safeguards for use,
 - establish standards for instructors of interpreters,
 - establish pay standards and criteria,
 - establish grievance and complaint process regarding interpreters,
2. Collaborate with existing service providers and organizations in Arizona, such as the University of Arizona, Arizona State University, State Justice Institute (SJI) sponsored workshops, Arizona Court Interpreter Association (ACIA) workshops, Pima County Community College and Phoenix Community College.
- The University of Arizona has given its permission to use its National Center for Interpretation examinations as a basis for testing Arizona state interpreters at a minimal cost (\$10,976 for both the written and oral examinations). These funds would be used to modify said examinations for use in the state; to submit the tests for review by an expert panel of federally certified Arizona interpreters for validation in the state of Arizona and to record and publish final versions for state use. The tests would remain the property of the Arizona Board of Regents, but would be available indefinitely to the State of Arizona. The State of Arizona would contract with the University of Arizona for the administration, scoring of the written and oral examinations, and the reporting of scores to the state.
 - To employ Arizona providers and experts in all stages of development, administration, and training, thus guaranteeing that Arizona's particular needs are met. An expert panel, essential to establishing test validity, should compose of state employed and other federally certified interpreters thus saving the state money.
 - To include as part of the basic testing, a written component to assess an interpreter candidate's proficiency in the foreign language and English. Administering a written test is a much more economical way to determine whether an interpreter candidate has the proficiency required to take the oral examination. The English portion of said test would be used to determine the English proficiency of speakers of other languages testing for certification.

3. To establish a training program for interpreters in preparation for the interpreter exam. It has often been the case, especially in regards to court interpreter certification at the state level, that when competency tests are put in place without corresponding training programs, the result is a significant decrease in the available interpreter pool. An integrated and significant training effort is the most responsible and cost-effective way to ensure that the establishment of competency standards results in improved rather than diminished language service.
4. To establish a continuing interpreter education program essential for maintaining a competent workforce. Adequate training provides standards of protocol and consistency across interpreters; improves interpreters' problem solving abilities, and establishes self-confidence in the interpreter.
5. When Arizona providers are not available, to explore the programs available out of state for supplemental services.
6. To review, revise and expand the Arizona Rules of Court to provide uniform rules for interpreter use in all courts in Arizona.
7. To explore legislative and statutory changes that would improve the existing laws as they pertain to court interpreters.

APPENDIXES