

Request for funding for Interpreter Costs:

**1. What is Title VI and why we have to comply.**

Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, (hereinafter Title VI) as interpreted in an August 16, 2010 letter to Chief Justices and State Court Administrators by Thomas E. Perez Assistant Attorney General with the Department of Justice (DOJ), requires courts receiving federal financial assistance provide meaningful access for LEP (Limited English Proficient) individuals. Meaningful access has been defined by AG Perez as interpreters (qualified interpreters) for all court proceedings and court-related programs and activities, free of charge to the parties. AG Perez's analysis specifically states that: "Fiscal pressures, however, do not provide an exemption from civil rights requirements."

**2. What we have done regarding training and providing interpreters to the courts?**

In 1999, the Administrative Office of the Courts obtained a federal Byrne grant to commence the creation of a pilot program for training and testing court interpreters. At the end of this pilot program in 2002, the Tennessee Supreme Court created Supreme Court Rules 41 and 42 and the AOC began administering the court interpreter program. These Rules provide for interpreter use, ethics and credentialing. The rules apply to all interpreters in all courts in this state, including without limitation, municipal court, general sessions court, juvenile court, probate court, circuit court, chancery court, and criminal court. Section 3 of Rule 42 provides that appointing an interpreter is a matter of judicial discretion and it is the responsibility of the court to determine whether a participant in a legal proceeding has a limited ability to understand and communicate in English. Once an interpreter need is determined, the court must appoint a qualified interpreter – the court must use the highest credentialed interpreter first, and if the court uses lesser qualified interpreters, the court must make findings that "the proposed interpreter appears to have adequate language skills, knowledge of interpreting techniques, familiarity with interpreting in a court setting" and that the "proposed interpreter has read, understands, and will abide by the Rules of Ethics for Spoken Foreign Language Interpreters in Tennessee Courts."

Currently, Tennessee Supreme Court Rule 42 provides in Section 7 that "Generally, the costs of interpreter services in both civil and criminal cases shall be taxed as court costs pursuant to Tenn. R. Crim. P. 28 and Tenn. R. Civ. P. 54" and "Interpreter services may be assessed against the indigent defense fund pursuant to Tennessee Supreme Court Rule 13 in appropriate circumstances."

At this time there is funding from the legislature to pay for interpreters only in Supreme Court Rule 13 cases – those cases in which a person is found to be indigent and is entitled either constitutionally or legislatively, to be represented by an attorney. These cases involve criminal cases where there is a possibility of incarceration, child dependency and neglect cases, termination of parental rights cases and others as listed in the Rule (see Tennessee Supreme

Court Rule 13(1)(d)(1) and (2) ).

The AOC has not been provided funding from the legislature to pay for civil cases or cases outside the parameters of Rule 13 such as divorce, landlord/tenant, debt, custody/parenting issues, etc.

The AOC has not been provided funding from the legislature to pay for the costs of interpreters for court annexed/court ordered programs and services as required by Title VI such as anger management classes in order of protection/domestic violence cases, required parenting education and mediation in custody cases, etc.

Since there is no funding from the legislature at this time to pay for the costs of interpreters in civil cases, non-indigent Rule 13 cases or court annexed/ordered programs, the AOC has applied for and received some short term funding from Byrne grants for specific interpretation costs in certain specific cases (order of protection hearings and non-indigent Rule 13 cases). The AOC has also applied for and will be receiving funding to pay for remote interpreter equipment so as to provide qualified interpreters in areas where there is a shortage of the same. These are short term grants and funding is not consistent for payment of interpreter costs in any cases but those listed in Rule 13.

### **3. Why should the State pay for costs of interpreters in courts and court related activities?**

The U.S. Attorney General's office has been and continues to audit states across the country for Title VI compliance for interpreters in the court system. Audited states (Maine and Colorado) have recently signed memorandums of agreement with the AG's office to provide interpreters free of charge in all court hearings, court programs and court services in order to continue to receive federal funding for the state. California is currently being audited and other states have or have had contact with the Department of Justice on these issues including Indiana that received a letter regarding a recent court decision that provided that the parties must pay for the cost of the interpreter.

If the "Tennessee judicial system" does not provide meaningful access for LEP individuals, the state could lose federal funding not just for the court system but for all government agencies.

### **4. How determine the need?**

In 2007, the AOC requested assistance from the Tennessee Judicial Conference, Tennessee General Session Judges Conference, Tennessee Council of Juvenile and Family Court Judges, and the Tennessee Clerks of the Court Conference in determining foreign language interpretation services that are most requested in the Tennessee court system through a foreign language needs assessment survey. The results were what were expected – the main language need is Spanish with other languages needed but not often. There have been updated surveys and the results are consistent with the 2007 survey results.

The 2010 US Census Bureau data notes that 5.9% of the total Tennessee population speaks a language other than English at home. 4.6% of the Tennessee population is persons of Hispanic or Latino origin. According to the 2000 US Census, of the 4,292,045 population over the age of 18, 4.8% speak a language other than English in the home; of this number, 52% speak Spanish or Spanish Creole and other languages at less 8% or less.

Comparing other states with similar population and similar percentage of the population that speak languages other than English in the home, The amount for interpreter costs have totaled over \$3 million dollars. These states have close to the same rates of pay as provided in Rule 13.\*

#### 5. **How deliver services?**

At this time, the AOC is studying and reviewing use of contracted personnel, salaried personnel, development of regional offices to provide the services via video and phone, and also remote interpreting options using individual interpreters from a home/office.

\* Minnesota - Has a population of 5,303,925 and 4.7% are of Hispanic or Latino origin. Minnesota, in 2009-10 paid \$3,600,000 in interpreter claims for approximately 29,000 interpreter events. \$1,700,000 was estimated for payment of interpreters in civil cases and \$1,900,000 for criminal cases. This was for all civil and criminal cases. Minnesota pays contract interpreters from \$25-\$50 per hour and mileage and travel and two hour minimums. They also use salaried interpreters and pay \$14.87 - \$26.88 per hour.

Oregon – Has a population of 3,831,074 and 11.7% are Hispanic or Latino origin. Oregon paid \$3,248,957 in FY 2009 and \$3,229,780 in FY 2010. This was for all civil and criminal cases. Oregon pays contract interpreters \$25 - \$32.50 per hour. Salaried interpreters are also used and paid \$3,518 - \$6,959 per month.