



National Association of Judiciary Interpreters & Translators  
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Office of Judicial Administration  
*C/O Office of Diversity, Equity, and Inclusion*  
251 N. Illinois Street, Suite 1600  
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Re July 3, 2023, Invitation for Public Comment  
on Proposed Amendments to the  
Interpreter Code of Conduct and Procedure

To Whom It May Concern:

We welcome the invitation from Manpreet Kaur, your Language Access Program Manager, to comment on these proposed amendments. We are pleased to collaborate in any way we can and invite you to give these comments your careful consideration.

Re Proposed New Definition in Rule II

The Indiana Supreme Court has authorized two classes of interpreters to serve the courts: those *certified* pursuant to satisfactory completion of nine steps set forth in *Guidelines for Court Interpreters & Candidates* (p. 3), including particularly the NCSC’s oral performance exam, and those deemed to be *qualified*. Interpreters may become certified only if they work in a language for which there is an NCSC oral performance exam. Interpreters who wish to work in any other language are to be designated qualified. The only qualification clearly identified for persons working in other spoken languages in the sources on your website is to “take and pass an oral proficiency interview administered by a third-party organization specializing in legal oral proficiency assessments” (*Language Access Plan*, p. 22).

Suggestions:

1. Revise your policy documents so that the requirements for becoming a qualified interpreter are laid out as clearly as the requirements for certified interpreters.
2. If taking and passing the above-referenced oral proficiency exam is the only requirement at this time, consider mandating that candidates seeking to become approved interpreters to be subject to all the requirements in place for those seeking certification, except substituting the oral proficiency exam for the NCSC’s oral performance exam.
3. Consider how the new language regarding “qualified interpreter” comports with the old language under Commentary 4 of Rule IV.1c.

### Re New Language Added to Rule IV.1.a.

We congratulate you on making the use of credentialed interpreters mandatory. We couldn't agree more that this is an indispensable policy for promoting equal access to the courts for persons with limited English proficiency and enabling the courts to conduct their business effectively and efficiently.

#### Suggestions:

1. Consider rewording the second new sentence to enhance its clarity, as follows: "The court may ~~only~~ use an interpreter not certified or qualified by the Indiana Supreme Court Office of Judicial Administration ~~if~~ [*only when*] all reasonable options for employing a certified or qualified court interpreter have been exhausted."
2. We suspect that the guidance permitting exceptions when "all reasonable options for employing a certified or qualified court interpreter have been exhausted" may be susceptible to a wide range of interpretations in practice. Perhaps the policy would be stronger if more specific guidance were provided setting forth examples of what "reasonable options" might be and what "have been exhausted" means in practice.
3. Consider designing and implementing a system for monitoring the courts to ensure that reasonable efforts are being made to find certified or qualified interpreters. This might involve periodic reviews or audits of court cases. It's really important to have some way of assessing compliance with such an important policy.

### Re New Subsection d. added to Rule IV.1.

We wholeheartedly endorse extending the appointment of interpreters in civil cases. However, perhaps due to our lack of familiarity with the structure of the court system in Indiana, it's not clear that this addition will have the effect of requiring credentialed interpreters in all services delivered by the Indiana courts. A quick review of your *Directory of Courts and Clerks in Indiana* lists quite a few services and courts that may or may not be clearly included in the "civil" and "criminal" denotations.

#### Suggestions:

1. Evaluate the current language to determine whether the following court services are clearly included:
  - a. Probation
  - b. Mediation
  - c. City/Town courts
  - d. Circuit Court
  - e. Family Law Division court
  - f. Traffic court
  - g. Small Claims court
2. In any instance where the current language does not clearly include any of those services or courts, consider developing language that will ensure comprehensive, systemwide access for your LEP customers.

Re New Subsection e. added to Rule IV.1.

We welcome the attempt to set limits on the use telephonic interpreting. As written, this new subsection is a good step forward, but raises several issues that we invite you to consider.

Suggestions:

1. Should you decide to leave this section as is without any substantive revisions in view of the comments to follow, consider the following revision of the first sentence: “The court may ~~only~~ use non-certified telephonic interpreter services [only] for brief, non-contested hearings or when time is of the essence, and the court is unable to obtain an in-person or remote court certified or qualified interpreter in advance.”
2. We suggest separating this section into two separate sections, one of which addresses when telephonic interpreting is permissible and when it is not allowed. The second section would address the separate issue of setting forth the qualifications of interpreters working remotely by telephone.
3. We were struck by the fact that this subsection addresses only telephone interpreting and not also video remote interpreting. Consider whether the new policy should address quality issues for both modalities of remote interpreting.
4. Since the policy is being amended to include attention to “qualified” interpreters and the second sentence of this subsection includes “unqualified” interpreters together with “uncertified” interpreters, perhaps the first sentence should do so as well and read as follows: “The court may only use non-certified or unqualified telephonic interpreter services....”
5. The last sentence of this new subsection assigns the task of assessing, ensuring and establishing on the record that uncertified or unqualified interpreters are qualified. We have several concerns about this provision:
  - a. We wonder what it can possibly mean that a court finds a given uncredentialed interpreter to be “qualified.” If a person is neither certified or qualified by the Indiana judiciary, how can a court discern on its own that a person possesses the necessary knowledge, skills and abilities to perform court interpreting duties?
  - b. Can some guidance be provided to the courts on how to reach such determinations? If not, then the determinations reached by the courts may be likely to vary considerably and create a false sense of security that the interpreting services being delivered are adequate.
  - c. Has any consideration been given to having an administrator (e.g., a local interpreter coordinator) make the determinations of an interpreter’s qualifications and thereby relieve judges of that possibly time-consuming task for which they may not be sufficiently prepared to execute particularly well?
  - d. Experience has shown that the only valid and reliable manner of establishing competency of court interpreters is through training and testing. The fact that somewhere between 80 and 90% of candidates who take the oral performance exams for court interpreters fail suggests that an overwhelming majority of uncredentialed interpreters are not capable of performing the duties of the profession. This suggests that the vast majority of uncredentialed interpreters should be presumed to be unqualified.

- e. How will the Indiana judiciary monitor compliance by courts with this requirement if it's left to the courts to make this determination? And when there is a pattern of non-compliance, will you implement mechanisms to enforce the policy and thereby ensure that "reasonable efforts" are genuinely being taken statewide?

#### One Last Comment re Implementation

Once your policy is ready to be promulgated and implemented, we recommend some kind of training be provided for judges, pertinent court staff, legal professionals, and anyone else who will be affected by the policy. This would include not only describing what the new policy entails, but also provide guidance on how to implement the trickier elements of the policy so that everyone involved understands and knows how to follow the rules.

Thank you again for inviting us to review and comment on your efforts to improve the administration of justice for your LEP constituents. If we can provide any further assistance on these proposals or other aspects of your language access program, do not hesitate to contact us again. We hope this feedback is helpful.

Very truly yours,

NAJIT Board of Directors