NAJIT Empowering Interpreters & Translators Worldwide™
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Re: Comments on ADM File No. 2025-03: Proposed Amendment of Rule 1.111 of the Michigan Court Rules

To the Honorable Justices of the Michigan Supreme Court:

On behalf of the National Association of Judiciary Interpreters and Translators (NAJIT), we wish to express our appreciation for the proposed amendments to Michigan Court Rule 1.111 concerning the appointment and use of foreign language interpreters in court proceedings. These proposed changes represent important progress toward enhancing access to justice for individuals with limited English proficiency (LEP). We respectfully submit the following comments and recommendations to further strengthen Michigan's commitment to language access within its judicial system.

1. Responsibility for Paying for Interpretation Services

We commend and fully support the court's proposal in subrule (F)(5) to eliminate the possibility that parties in criminal cases be required to reimburse the court for the interpretation costs in their cases. We also strongly recommend eliminating all language allowing for the assessment of interpreter costs to any LEP individual in both civil and criminal proceedings, just as neighboring states—such as Indiana,[1] Minnesota,[2] Ohio,[3] Pennsylvania,[4] Wisconsin,[5] and others—have already established.

In support of our recommendation, we draw the court's attention to the U.S. Department of Justice's August 16, 2010 letter to Chief Justices and state court administrators regarding language access for LEP individuals.[6] The letter states that courts which require parties to bear

[1] *Language Access Plan for the Indiana Judicial Branch*, Indiana Supreme Court, February 2019, p 18 https://www.in.gov/courts/files/language-access-plan.pdf
[2] Minn. Stat. § 480.182 (2024)
[3] Supreme Court of Ohio. *Notice for Appointment of Foreign Language Interpreter*. Supreme Court of Ohio, Accessed 22 July 2025 https://www.supremecourt.ohio.gov/docs/JCS/interpreterSvcs/LSResources/foreignLangInterpreterAppt.pdf
[4] 204 Pa. Code § 107
[5] Wis. Stat. § 885.38(3)(a)
[6] U.S. Department of Justice. 16 Aug. 2010, https://www.justice.gov/file/1052751/dl?inline=

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the cost of interpreter services—even if indigent parties are exempt—may be in violation of Title VI of the 1964 Civil Rights Act by creating a de facto surcharge based on national origin. Furthermore, "DOJ Guidance makes clear that court proceedings are among the most important activities conducted by recipients of federal funds, and emphasizes the need to provide interpretation free of cost." By charging parties for the services of an interpreter, the courts may be "arranging for an interpreter's presence, but they are not 'providing' the interpreter."

The fact that these cases are civil, not criminal, does not make them less important. Civil cases often have a direct impact on people's lives: child custody, landlord-tenant disputes, and personal protection orders, for example. As stated in the Department of Justice letter, "DOJ…views access to all court proceedings as critical…without distinguishing among civil, criminal, or administrative matters." Requiring individuals earning just 125% above the federal poverty level to bear the cost of interpretation in civil cases presents an undue burden for working LEP individuals, creates a cost to court access that English speakers do not have to pay, and can impede meaningful access to justice.

We respectfully recommend that all language concerning a party's financial ability to pay for interpretation costs (such as in subrules (A)(3), (F)(5), (H)(1) and (H)(2)) be stricken. In their place, we urge the court to adopt a clear, affirmative statement:

> *(F)(5) Interpreter services appointed under this rule shall be provided at no cost to the individual.*

2. Appointment of Interpreters

In the current rules, subrule (B) is titled "Appointment of a Foreign Language Interpreter" and relates to the court's determination that an interpreter is required for a case. Subrule (F) is titled "Appointment of Foreign Language Interpreters" and relates to the selection of interpreters and the provision of interpreter services. The similarity in titles of these two subrules creates unnecessary confusion, especially since subrule (F)(6) ("any doubts as to eligibility for interpreter services should be resolved in favor of appointment of an interpreter") would fit better with the rest of the rules outlined in subrule (B).

We recommend retitling subrule (B) as "Determining the Need to Appoint a Foreign Language Interpreter" and making additional revisions to bring it into alignment with established best practices for the field of court interpretation.

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First, we believe the rules could benefit from explicitly laying out the parties who have a right to interpretation services, specifically including victims[7] and the parents or guardians of minor parties, witnesses, and victims.

Secondly, as currently written, Michigan's rules require the court to appoint a separate interpreter for each party in need of language assistance. This is an expensive and inefficient use of resources when there are multiple parties requiring interpretation. It also introduces the risk of inconsistency, as each party may hear a slightly different version of the proceedings because there may be multiple ways to render any given interpretation. Given that all court interpreters in Michigan must abide by Canon 3 of the *Code of Professional Conduct for Foreign Language Court Interpreters* ("impartiality and avoidance of conflict of interest"),[8] appointing separate interpreters for each party is unnecessary. By using wireless or infrared interpretation equipment, a single interpreter (or a team of two, as discussed below) can provide simultaneous interpretation to all parties, consistent with standard practice in most state courts.[9] We recommend revising subrule (B) to state that interpreters shall be appointed to cases or hearings, rather than to individual parties.

Third, as subrule (B)(1) is written, an LEP individual's request for an interpreter is not enough to have one appointed; the court must also determine that they require one. We believe that an LEP individual's request alone should suffice to trigger the appointment of an interpreter. Determining a person's English proficiency is a complex, specialized task that requires linguistic expertise, skills that courts are not typically equipped to assess. Therefore, for efficiency's sake, courts should give deference to an individual's request for an interpreter. Even a person who is ostensibly "fluent" in English in their daily life may not possess the knowledge of English legalese that an average native English speaker would possess, and could benefit from the use of a court interpreter in order to meaningfully participate in their case or court proceeding.

We offer the following proposed language for consideration (replacing MCR 1.111(B)(1) through (B)(3), and moving (F)(6) to fall under this subrule as (B)(4)):

> *(B) Determining the Need to Appoint a Foreign Language Interpreter*
>
> *(1) The following people have the right to receive the services of a foreign language interpreter if they have limited English proficiency: defendants in criminal matters; plaintiffs and defendants in civil matters; witnesses, during their testimony; victims; and parents and guardians of minor parties, witnesses, and victims.*

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[7] *Interpreters During Court Proceedings: A Requirement for the Meaningful Exercise of Rights and Access to Justice for Victims in Need of Language Assistance*. National Crime Victim Law Institute, Spring 2024, https://ncvli.org/wp-content/uploads/2024/05/Right-to-Interpreters-for-LEP-and-DHOH-Victims-Final-5.28.24.pdf

[8] *Code of Professional Conduct for Foreign Language Court Interpreters in Michigan Courts*. Michigan Supreme Court, n.d., Michigan Judicial Branch, https://www.courts.michigan.gov/4a3ef5/siteassets/court-administration/access-temporary/foreign-language/codeofprofessionalconduct.pdf

[9] Occasionally, courts determine that an additional interpreter is required for each defendant in a co-defendant case in order to facilitate communication with their attorneys throughout a court proceeding.

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(2) If any of the LEP individuals listed in subrule (B)(1) request a foreign language interpreter, or if the court determines that foreign language interpreter services are necessary for the person to meaningfully participate in the case or court proceeding, the court shall appoint a foreign language interpreter to the case. The court may appoint a foreign language interpreter to a case for any other person the court deems to have a substantial interest in the case or court proceeding.

(3) In order to determine whether the services of a foreign language interpreter are necessary for a case, the court shall rely upon a request by an LEP individual (or a request made on behalf of an LEP individual) or prior notice in the record. If no such requests have been made and the court still considers that an interpreter may be necessary for a person to meaningfully participate in a court proceeding, the court may conduct an examination of the person on the record to determine whether such services are necessary. During the examination, the court may use a foreign language interpreter. For purposes of this examination, the court is not required to comply with the requirements of subrule (F) and the foreign language interpreter may participate remotely.

(4) Any doubts as to eligibility for interpreter services should be resolved in favor of appointment of an interpreter.

3. Team Interpretation: Appointment of More Than One Interpreter to a Case

Studies have shown that the cognitive demands of interpretation lead to fatigue and ultimately to errors. As Mirta Vidal concluded in her review of interpreter fatigue studies, "work quality—i.e., accuracy and coherence—begins to deteriorate after approximately 30 minutes of sustained simultaneous interpreting, and the only way to ensure a faithful rendition of legal proceedings is to provide interpreters with adequate relief at approximately half-hour intervals."[10]

In order to allow interpreters to rest and restore their cognitive resources, while also not bringing court proceedings to a halt, the standard best practice is that interpreters in longer hearings work in teams of two, alternating between themselves at regular intervals.[11] This practice, called "team interpreting," enables interpreters to maintain the accuracy required by Canon 1 of Michigan's *Code of Professional Conduct for Foreign Language Court Interpreters* requiring "accuracy and completeness."

[10] Vidal, Mirta. "New Study on Fatigue Confirms Need For Working in Teams." *Proteus*. Vol. 6, no. 1, Winter 1997, National Association of Judiciary Interpreters and Translators, https://najit.org/wp-content/uploads/2016/09/ProteusWinter1997.pdf

[11] Segal, Gladys and Teresa C. Salazar. *Team Interpreting In Court-Related Proceedings*. National Association of Judiciary Interpreters and Translators, rev May 2020, https://najit.org/wp-content/uploads/2016/09/Team-Interpreting-5.2020.pdf

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Subrule (F)(3) states that "the court shall appoint a single interpreter for a case or court proceeding," but allows the appointment of more than one interpreter after considering "the nature and duration of the proceeding," among other factors. This is an excellent start that allows Michigan courts to employ team interpreting. However, we believe this practice can be strengthened in Rule 1.111. Therefore, we recommend the following language to replace subrule (F)(3) to reinforce Michigan's commitment to the standards of accuracy in language access:

> *(F)(3) The court shall make all reasonable efforts to provide more than one interpreter in the same language if required under the following circumstances:*
>
> *(a) the assignment is expected to exceed 1.5 hours of consecutive interpreting;*
> *(b) the assignment does not follow a formulaic script and is expected to exceed 30 minutes of simultaneous interpreting;*
> *(c) the assignment includes complex issues and terminology or other such challenges; or,*
> *(d) the court determines that more than one interpreter is necessary to ensure due process.*
>
> *If an interpreter working alone requests a break due to fatigue, then the court should grant the request.*

4. Waiver of an Interpreter

We recommend that subrule (C) regarding the waiver of interpreter services be stricken in its entirety. Its inclusion poses significant risks to due process and equal access to justice for limited English proficient (LEP) individuals.

Allowing LEP individuals to waive their right to an interpreter assumes a level of linguistic and legal understanding they may not possess. In practice, such waivers are often made under implicit pressure, whether to avoid appearing uncooperative, to keep proceedings moving efficiently, or out of concern for costs, especially in civil cases where interpretation costs may be charged to the party. This dynamic undermines the voluntariness of the waiver and exposes individuals to undue influence or coercion.

Interpretation is not a procedural luxury. It is a constitutional necessity that ensures LEP individuals can meaningfully participate in legal proceedings. Permitting waivers under subrule (C) exposes the entire proceeding to potential errors, appeals, or violations of state and federal civil rights laws.

5. Interpreter Classifications

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The current "certified" and "qualified" interpreter classifications in (A)(4) and (A)(6), respectively, are well-constructed, especially the requirement for qualified interpreters to be actively pursuing certification. However, we recommend that qualified interpreters be required to achieve a minimum score of 55%—or preferably higher—on the simultaneous, consecutive, and sight portions of the certification exam, in keeping with guidance from the National Center for State Courts.[12] Currently qualified interpreters are only required to have passed the consecutive portion, but many court proceedings are carried out in simultaneous mode and interpreters are regularly called upon to sight translate documents, so qualified interpreters should demonstrate a minimum aptitude in those modes as well.

> *(A)(6)(b) within the last two calendar years, has achieved a minimum score of 55% on each of the simultaneous, consecutive, and sight portions of a foreign language interpreter test administered by the State Court Administrative Office or a similar state or federal test approved by the state court administrator,*

We also recommend the addition of a third classification, "registered interpreters," for languages where no certification exam exists. This would codify the court's ability to work with vetted professionals in less common languages, while maintaining transparency and accountability. According to the National Center for State Courts, these interpreters "should attain a score of 80% or more on the written exam, attend the available orientation seminar, and pass tests of oral proficiency in English and the other language."[13]

6. Staff Interpreters

Staff interpreters appear to have been excluded from the definitions of "certified" and "qualified" interpreters. Nevertheless, they are still required to fulfill the requirements for certified interpreters or be working towards certification according to subrule (E)(2)(a), so they should be included in these definitions. We recommend the following changes:

> *(A)(4)(d) provides foreign language interpreter services as a staff interpreter, independently or on behalf of a registered interpreter firm.*

> *(A)(6)(g) provides foreign language interpretation services as a staff interpreter, independently or on behalf of a registered interpreter firm.*

7. Interpreter's Oath

[12] *State Court Interpreter Testing Desk Reference Manual*. National Center for State Courts, rev. July 2023. https://nationalcenterforstatecourts.box.com/s/han8ycln3luel1das8pfd5dj4sxcwk4g

[13] *State Court Interpreter Testing Desk Reference Manual,* p 20.

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We recommend a minor revision to the interpreter's oath:

> *(G) Administration of Oath or Affirmation to Interpreters. The court shall administer an oath or affirmation to a foreign language interpreter substantially conforming to the following: "Do you solemnly swear or affirm that you will truly, accurately, and impartially interpret in the matter now before the court, to the best of your knowledge and ability, and not divulge confidential communications, so help you God?"*

This phrasing is consistent with professional interpreter ethics and reflects the reality of our work.

8. Judges' Burden to Voir Dire the Interpreter

Michigan has published a thorough list of voir dire questions to determine if an interpreter is competent to work on a court case in its *Judges' Quick Guide to Foreign Language Access*.[14] However, Rule 1.111 places the burden on the court to voir dire interpreters to an impractical degree. For example, proposed amendment (A)(6)(d) would have the court voir dire a qualified interpreter at every proceeding they are appointed to.[15]

We recognize that it is the judge's prerogative to voir dire an interpreter at any time, but for the sake of efficiency, we would encourage the court to consider delegating the day-to-day vetting of certified, qualified, and registered interpreters to the State Court Administrative Office. The proposed amendments already allow for this in subrule (A)(6)(e), which states that qualified interpreters must fulfill the requirements set forth by the state court administrator. A certified, qualified, or registered interpreter could then be presumed competent to provide interpretation for the proceedings they are hired for, especially if the hiring protocols outlined in subrule (F)(1) are followed.

We suggest that (A)(6)(d) be stricken and that a sentence be added to (F)(1) about how a judge may voir dire an interpreter at the court's discretion.

> ~~*(A)(6)(d) has been determined by the court after voir dire to be competent to provide interpretation services for the proceeding in which the interpreter is providing services,*~~
>
> *(F)(1) When the court appoints a foreign language interpreter under subrule (B)(2), the court shall appoint a certified foreign language interpreter whenever practicable. If a certified foreign language interpreter is not reasonably available,*

[14] *Judge's Quick Guide to Foreign Language Access*. Michigan Supreme Court, State Court Administrative Office, n.d., https://www.courts.michigan.gov/4ae774/siteassets/court-administration/access-temporary/foreign-language/lapjudges-bestpracticesguide.pdf

[15] "(A)(6)(d) has been determined by the court after voir dire to be competent to provide interpretation services for the proceeding in which the interpreter is providing services,"

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and after considering the gravity of the proceedings and whether the matter should be rescheduled, the court may appoint a qualified foreign language interpreter who meets the qualifications in (A)(6). If there is no certification exam for interpreters of the language required, the court may appoint a registered interpreter. In the exceptional case of an LEP person who speaks a language for which there are no certified, qualified, or registered interpreters, the court may appoint an uncredentialed interpreter. The court shall make a record of its reasons for using a qualified, registered, or uncredentialed foreign language interpreter. The court, at its discretion, may voir dire any interpreter to assess the interpreter's competence to provide interpretation services for the proceeding in which the interpreter is providing services.

9. Recording the Interpreter and LEP Individual

As written, subrule (D) allows for either the interpreter or the LEP individual to be recorded, but not both. We recommend the following minor change:

> *(D) Recordings. The court may make a recording of anything said by a foreign language interpreter and/or a limited English proficient person while testifying or responding to a colloquy during those portions of the proceedings.*

We appreciate the Court's leadership in improving language access in Michigan's courts and thank you for the opportunity to comment on this important rule. Please do not hesitate to contact us with questions or for additional input.

Respectfully submitted,

The NAJIT Board of Directors

For additional information or clarification on any recommendation, please contact NAJIT at office@najit.org.