

ARKANSAS STATE COURTS LIMITED ENGLISH PROFICIENCY PLAN



**ADMINISTRATIVE OFFICE
OF THE COURTS**

**625 MARSHALL STREET
LITTLE ROCK, AR 72201**

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This document serves as the plan for the Administrative Office of the Courts to ensure access to court services for persons with limited English proficiency (LEP) and deaf and hearing impaired persons.

Adopted by the AOC effective January 1st, 2013.

Overview

Each year, more than one and a half million cases pass through the state courts of Arkansas. The parties in these cases rely on the justice system to protect their rights and resolve their disputes. Yet, when those parties are unable to speak the language of the court, they face possible exclusion from court proceedings, and the administration of justice is put at risk. Therefore, the Arkansas Judiciary is committed to providing meaningful access to the courts for persons with limited English proficiency (“LEP”). An LEP individual is defined as anyone who does not speak English as his or her primary language and who has a limited ability to read, write, speak, or understand English. This definition encompasses the deaf and hearing impaired who, without the help of an interpreter, face similar communication problems in the courts.

Legal Background

The Arkansas General Assembly initially required the provision of an interpreter in state court proceedings in 1973, asserting that “Every person who cannot speak or understand the English language or who because of hearing, speaking, or other impairment has difficulty in communicating with other persons, and who is a defendant in any criminal action or a witness therein, shall be entitled to an interpreter to assist such person throughout the proceeding.” Ark. Code Ann. § 16-89-104. In the same act, legislators extended the rule to all parties and witnesses involved in civil proceedings. Ark. Code Ann. § 16-64-111. In 1981, the General Assembly clarified that the responsibility for appointing an interpreter should rest with the courts, establishing that “In all state court bilingual proceedings and proceedings involving the hearing impaired, whether or not also speech impaired, the presiding judicial officer, with the assistance of the director [of the Administrative Office of the Courts] shall utilize the services of a certified interpreter or transliterator.” Ark. Code Ann. § 16-10-127.

At the federal level, the legal impetus for the provision of services to the LEP community arises from various sources. The U.S. Constitution’s requirements for equal protection and due process of law, as well as the Confrontation Clause of the Sixth Amendment, have been interpreted in some jurisdictions to create a constitutional right to an interpreter in some proceedings. Additionally, both Title VI of the Civil Rights Act of 1964 and the Omnibus Crime Control and Safe Streets Act of 1968 prohibit any agency receiving Federal funds from discriminating on the basis of race, color, or national origin. In 2000, the President signed Executive Order 13166, directing every Federal agency that provides financial assistance to recipients to publish guidance about how those recipients can ensure meaningful access to their programs and activities by individuals who, as a result of their national origin, are LEP. All public entities are required to provide services to the deaf and hearing impaired under the Americans with Disabilities Act of 1990.

In 2002, pursuant to Executive Order 13166, the Department of Justice published the *Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons* (“Guidance”). As a recipient of Federal financial assistance, Arkansas courts are covered by the Guidance’s provisions that recipients should take the “reasonable and necessary steps” to ensure meaningful access to their programs and activities by LEP persons. The Guidance establishes a four factor test to be used in determining what those steps should be:

- 1) the number or proportion of LEP persons served or encountered in the eligible service population;
- 2) the frequency with which LEP individuals come in contact with the program;
- 3) the nature and importance of the program, activity, or service provided by the program; and
- 4) the resources available to the recipient and costs.

The DOJ Guidance further notes that recipients should develop a written plan to address the identified needs of the LEP populations they serve. As such, the AOC has taken the lead in the adoption of this LEP plan for the Arkansas state courts, encouraging the implementation of policies that ensure language access.

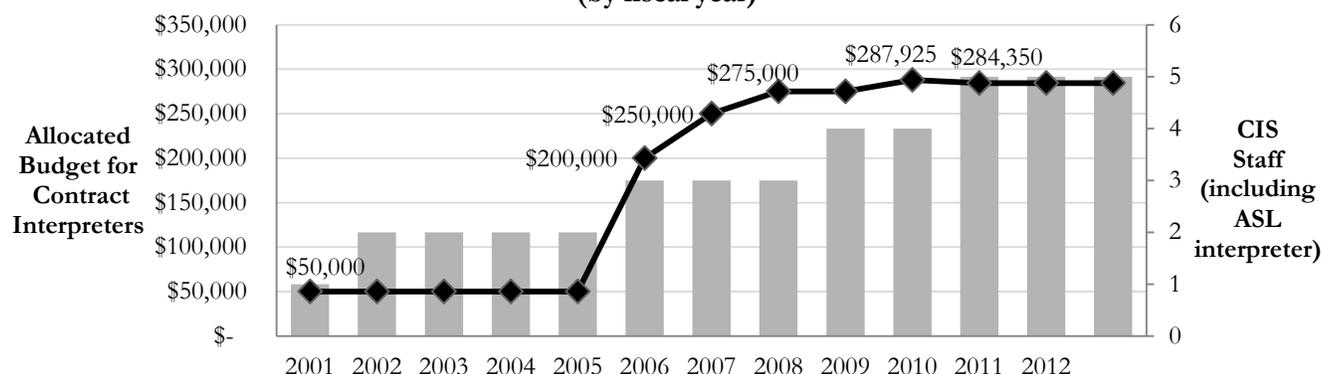
Court Interpreter Services

Beginning in 1973, the Arkansas Judicial Department, now the Administrative Office of the Courts (AOC), maintained a list of persons who were willing to act as foreign language interpreters in courts, but no training was provided and no system existed to evaluate the ability and competence of the interpreters. The AOC has also employed a certified staff interpreter for American Sign Language (ASL) since 1981. In 1999, seeing the need to improve the provision of qualified interpretation in the state courts, the Arkansas Supreme Court issued an order authorizing the AOC “to prescribe requirements for the recruitment, testing, certification, evaluation, duties, professional conduct, continuing education, certification renewal, and other matters relating to interpreters.” *In re Certification for Foreign Language Interpreters in Arkansas Courts* 338 Ark. App’x 827 (1999). The Court had already promulgated Administrative Order 11, the Arkansas Code of Professional Responsibility for Interpreters in the Judiciary, in the previous year.

As a result of the Supreme Court orders, the AOC established Court Interpreter Services (then the Foreign Language Interpreters Program) and joined the National Center for State Courts Consortium for Interpreter Certification. The Consortium is a multi-state partnership that was founded in 1995. By the year 2012, the partnership had grown to 44 states, and consequently, it is being consolidated under the authority of the National Center for State Courts Language Access Division. The primary function of the Consortium and the Language Access Division is the development of court interpreting proficiency exams, as well as the regulation of the use of these exams and the implementation of standards and guidelines for court interpreting, and language access in the courts.

Since its inception in 2001, Court Interpreter Services (CIS) has seen considerable expansion. In 2004, the number of interpretation requests was up to 1,065, but expanded by almost 400% to 5,153 by 2006. This expansion was due in large part to increased funding for the payment of contract interpreters. For the first five years of its existence, Court Interpreter Services was allocated \$50,000 for contract interpreters but saw that number jump to \$200,000 in 2006. The following four years saw a steady increase to a high of \$287,925 in 2010. After a slight decrease to \$284,350, the funding appropriated for contract interpreters has stalled in recent years due to larger state and judicial budget constraints. Given the still rising number of LEP residents, these budget constraints place severe limitations on interpreter services and for the last two years, led to funds being exhausted well before the end of the fiscal year. The AOC has continued to request additional funding for court interpreters from the Arkansas General Assembly.

Court Interpreter Services (by fiscal year)



CIS has significantly expanded its number of staff positions. Originally, as the Foreign Language Interpreter Program, the AOC’s lone staff Spanish interpreter also served as the program director. As the case load increased, the AOC requested funding for a second staff Spanish interpreter and received it for the 2006 fiscal year. In 2008, the Foreign Language Interpreter Program was reorganized to include the existing AOC services for the deaf and hearing impaired, becoming Court Interpreter Services. In 2009, the AOC assigned a full-time administrative assistant to CIS in order to manage the rapidly expanding caseload. Two years later, a third staff Spanish interpreter position was created in order to meet the pressing need for interpreters in Northwest Arkansas. In the 2011 calendar year, the four staff interpreters fulfilled over 950 requests for interpreting in Arkansas courts. In addition to the staff interpreters, the AOC contracts the service of 22 certified interpreters listed on the AOC Registry and 33 candidates for certification (details in Table 1). Arkansas is home to the only certified Marshallese interpreter in the nation. Through these contract interpreters, CIS responded to over 6,000 requests in 2011.

Table 1: Foreign Language Interpreters on 2012 AOC Registry

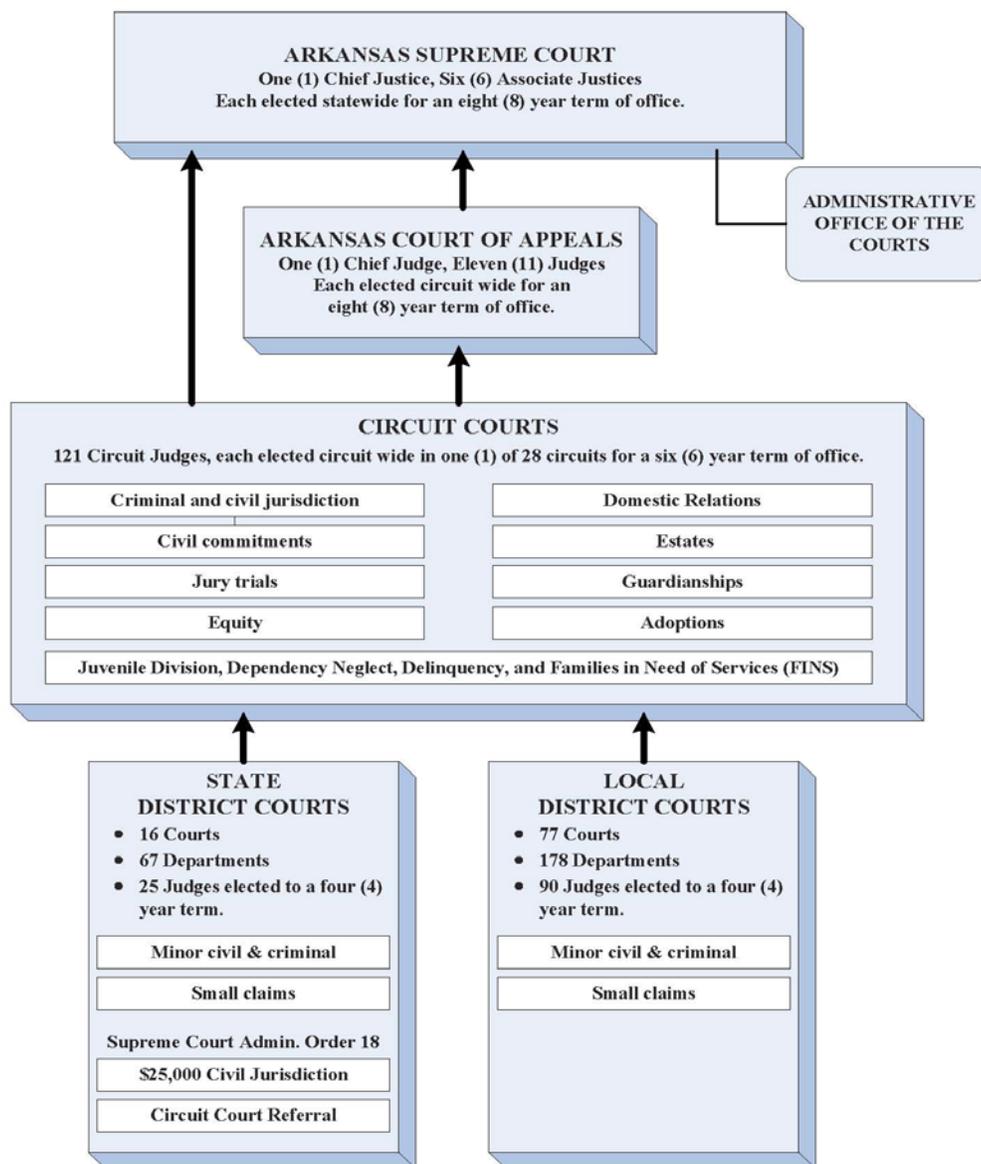
Language	Number of Certified Interpreters	Number of Candidates (Non-Certified)
Spanish	18 (Including 3 staff)	21
Hmong	2	1
Arabic	1	
Marshallese	1	
Chinese		1
French		1
Korean		1
Laotian		2
Pohnpeian		1
Polish		1
Thai		2
Vietnamese		1

Source: AOC Court Interpreter Services

Arkansas State Courts

The Arkansas Supreme Court and the Arkansas Court of Appeals comprise the top tier of Arkansas's three-tier judicial system. Under the Arkansas Constitution, parties are entitled to one appeal, and this appeal is taken to either the Supreme Court or the Court of Appeals. The distribution of cases between the two courts is established by Supreme Court rule, with each court exercising jurisdiction over civil and criminal cases. State government is the sole source of funding for the Supreme Court and Court of Appeals.

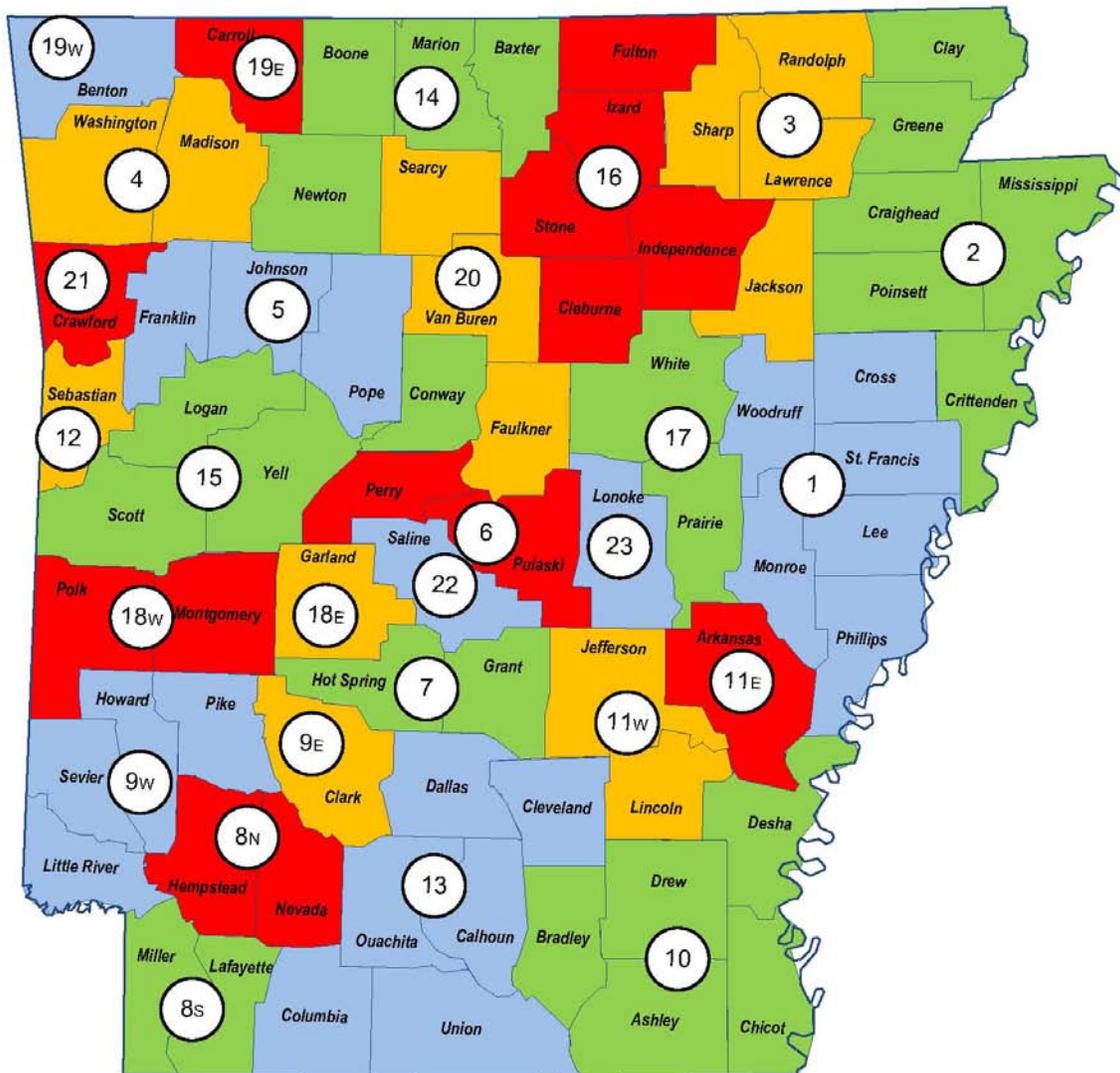
ARKANSAS COURT STRUCTURE



State District Courts and Local District Courts as of 4/4/2012

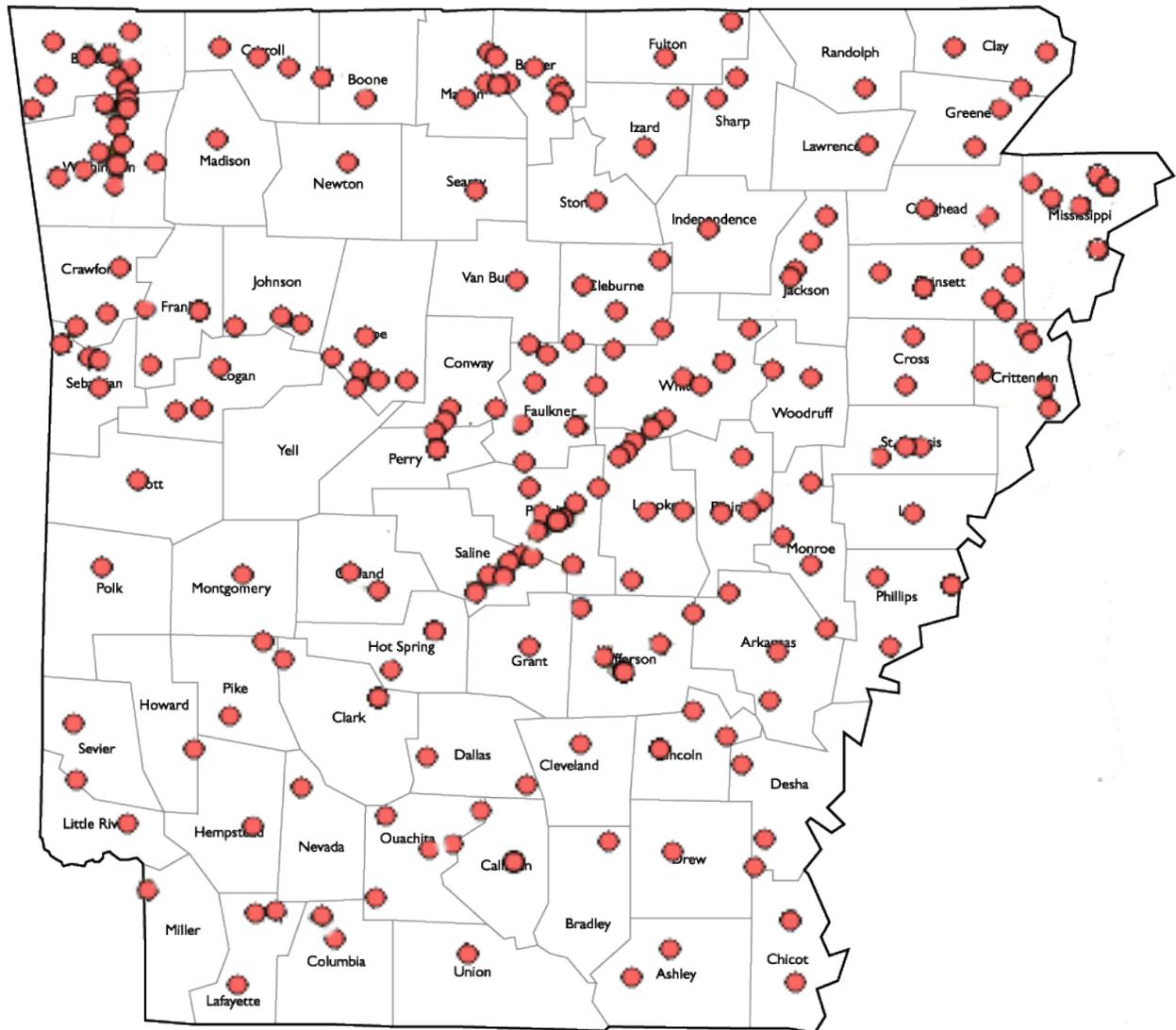
The second tier is composed of 28 circuit courts served by a total of 121 circuit judges. Circuit courts are general jurisdiction courts. Cases are assigned to five subject-matter divisions: criminal, civil, probate, domestic relations, and juvenile. All salaries and budgets of circuit judges, court reporters, and trial court assistants are paid out of state funds. The county governments are responsible for the salaries of all circuit court support and clerical staff and for all court operations, supplies, equipment, utilities, and facilities within each judicial circuit.

2012 ARKANSAS JUDICIAL CIRCUITS



The third tier of courts of limited jurisdiction is made up of a mix of state and local district courts. There are currently 16 state district courts in 67 locations served by 25 state district judges. These judges preside over civil, criminal, and small claims cases. In addition, cases pending in circuit court may be referred to state district court. The salaries and benefits of state district judges are funded by the state, while other staff and facility costs are paid by the county and city governments. There are currently 77 local district courts in 178 locations which are served by 90 local district judges. Local district courts are funded entirely by the county and city governments within their jurisdiction.

2012 ARKANSAS STATE AND LOCAL DISTRICT COURT LOCATIONS



LEP Needs Assessment

In drafting this LEP plan, the AOC undertook an extensive study of the LEP population in the state and specifically, their need for services in the court system. Full results of that study can be found in a document entitled “Language Needs in Arkansas Courts” available upon request from the AOC. While data from the AOC documents the growing caseload of LEP individuals served by the Arkansas court system, it is more difficult to ascertain the number and extent of persons who require assistance but do not request it or who requested it and their needs were not met. The AOC does not currently possess the capacity to capture this information.

Demographics

In 2011, the US Census Bureau estimated the total population of the state of Arkansas to be 2,937,979, an increase of almost ten percent since the year 2000. Table 2 shows the linguistic diversity of this population, using data from the Bureau’s American Communities Survey. Among the population older than five years, the age at which competence in at least one language may be expected, an estimated 204,666 Arkansans live in households where English is not the primary language, constituting 7.5 percent of the total population. This segment of the population saw a massive increase over the past decade, rising 65% over 2000 levels, and accounting for nearly one third (31%) of the total population increase in the state during the same period.

Table 2: Primary Language Spoken in Household

	2000	2011	% Change
Population 5 years and over	2,492,205	2,740,313	10.0%
English only	2,368,450	2,535,647	7.1%
Language other than English	123,755	204,666	65.4%
Spanish	82,465	149,088	80.8%
Other Indo-European languages	22,695	21,310	-6.1%
Asian and Pacific Islander languages	15,238	30,234	98.4%
Other languages	3,357	4,034	20.2%

Source: US Census Bureau American Communities Survey

While any individual whose primary language is not English may encounter difficulties in the courts leading to his or her classification as Limited English Proficient, the population with the greatest need is made up of those individuals who speak English “less than very well.” In 2011, an

Table 3: Arkansas Residents Who Speak English “Less than Very Well”

Primary Language	2011 Population	% of Primary Language Population
Spanish or Spanish Creole	70,778	47.5%
Chinese	3,819	62.1%
Other Pacific Island languages	3,679	68.3%
Vietnamese	3,157	66.9%
Laotian	1,663	55.9%

Source: US Census Bureau American Communities Survey

estimated 92,317 Arkansans, 3.4% of the total population, were placed in that category. As seen in Table 2, Spanish speakers again make up the vast majority, but the percentage of Spanish speakers who speak English “less than very well” is much lower than that of some other foreign language groups.

Frequency of Contact

In 2011, AOC Court Interpreter Services received 7,277 total requests for interpreters. Each request corresponds to an LEP individual in need of services, though some requests may involve multiple cases for the same individual. Though these requests only represent needs for in-courtroom proceedings, the data serves as a useful gauge of the level of contact of each language group with the court system. Table 4 lists these requests by language. Spanish is by far the predominant language need, but Northwest Arkansas’s considerable Marshallese population presents a unique challenge given the lack of available interpreters. A 2012 survey conducted of Arkansas court clerks found that their office encounters with LEP persons had a similar makeup. The majority listed Spanish as the primary language of those LEP individuals, with Marshallese and ASL also appearing frequently.

Table 4: Interpreter Requests by Language (2011)

Language	Number of Requests for Interpreter
Spanish	6238
Marshallese	612
American Sign Language (ASL)	236
Vietnamese	82
Laotian	49
Chinese	11
Korean	11
Hmong	9
Chuukese	5
Pohnpeian	5
Russian	5
Arabic	4
Polish	4
Hindi	2
Oromo	1
Tagalog	1
Taiwanese	1
Turkish	1

Source: AOC Court Interpreter Services

Of the surveyed district and circuit court clerks, only 11% reported that they had never dealt with an LEP person. A majority only had LEP contact a few times a year (44%) or a few times a month (22%). The remaining offices, nearly a quarter of respondents (23%), encounter LEP individuals on a weekly or daily basis. Most offices conduct LEP interactions in person (80%), but just less than half (48%) also serve LEP persons by telephone. A very small minority also used written communication, whether online or via correspondence. While in-person interaction allows for alternative modes of communication, such as translated written notices or even gestures, telephonic communication is almost rendered impossible without passable English language skills.

AOC Language Services

Interpreters for Court Proceedings

Under Ark. Code Ann. §16-10-127 and the 1999 Supreme Court per curium order, the responsibility for appointing a certified interpreter rests with the court. To assist the courts, the AOC has developed a streamlined process for the appointment of interpreters through Court Interpreter Services, including an online request system that can be checked and updated from any location. This centralized process also allows CIS to maximize the utility of each interpreter by scheduling based on location and type of proceeding.

When a state circuit or district judge becomes aware that a foreign language interpreter, or ASL interpreter, will be needed for an in-court proceeding, CIS should be notified by entering the request on the on-line IMSS system available to every court in the state, or by calling the AOC Court Interpreter Services at 1-800-950-8221. If a Spanish interpreter is required and the AOC staff interpreters are available, they will be scheduled to interpret for the proceeding. If interpretation for a language other than Spanish is required or if AOC staff interpreters are not available, the AOC will assist the local court in contracting with an available interpreter who is listed on the registry of interpreters. If an ASL interpreter is required and the AOC ASL staff interpreter is available, that interpreter will be scheduled to interpret for the proceeding. If the interpreter is not available, one will be contracted from the registry of interpreters.

At the conclusion of the interpreter's court appointed services, the interpreter will complete the appropriate portion of the interpreter payment form prescribed by the AOC and present it to the judge for approval. The judge will certify that the services were provided for the court. The interpreter will then forward the form to CIS for payment. The reimbursement form used by the interpreters for payment is designed to also provide CIS with vital data such as: language provided, county, type of case, who needed the services, and other pertinent information.

For preliminary hearings and last-minute interpreting requests, CIS also has the capability for remote interpreting. In those courtrooms equipped with simultaneous telephonic interpreting technology, CIS can provide interpreter services for a wide range of proceedings. Conference or speaker telephones can also be used in short, non-evidentiary hearings. Looking forward, CIS is working with the National Center for State Courts in the development of a new low-cost video interpreting service.

In the event that the services of an interpreter are arranged locally without the knowledge or assistance of the AOC, the responsibility for payment of the interpreter's fees and costs will rest with the local court. In such a case, judges are still bound by the 1999 per curiam order that states "The judge may appoint a non-certified interpreter only upon a finding that diligent, good faith efforts to obtain a certified interpreter have been made and none has been found to be reasonably available. Recognizing that the judge is the final arbiter of any interpreter's qualifications, a non-certified interpreter may be appointed only after the judge has evaluated the totality of the circumstances including the gravity of the judicial proceeding and the potential penalty or consequence involved" *In re Certification for Foreign Language Interpreters in Arkansas Courts* 338 Ark. App'x 827 (1999).

Translation Services

In 2004, AOC Court Interpreter Services undertook the translation of a wide range of forms for Arkansas courts, but the majority of these forms are not standardized statewide. Thus, many of the translated forms are specific to the jurisdictions with greater LEP traffic. Some more common translated forms that have been widely distributed in the district court benchbook include:

- Affidavit for Criminal Summons
- Affidavit of Indigency
- Citation to Appear
- Conditions of Release
- Notice to Nonresident of Failure to Comply
- Order Extension of Time to Pay Fine
- Petition and Affidavit for Pretrial Release
- Personal Data

Through a separate grant, the AOC was able to translate standardized order of protection forms, as well as create video guidance on their completion, both in English and in Spanish. The Court Interpreter Services Committee of the Judicial Council is currently assembling a list of the most used forms throughout the state, all of which will be prioritized in the next round of translations. These translations will be integrated with the state's electronic case management system.

With the launch of the new Arkansas Judiciary website, the AOC will for the first time include a foreign language section. This section will not only include notices of the availability of interpreters but will also provide a number of basic resources in foreign languages. Among the resources being developed now by the AOC are foreign language legal glossaries and video introductions to the court system. Furthermore, several of the previously translated forms will be uploaded as reference for court staff and potential LEP litigants alike. At first, these resources will only be available in Spanish, by far the most commonly encountered foreign language. Availability will be expanded to Marshallese and Vietnamese as time and resources allow.

Assistance to Non-Judicial Offices and Agencies

Arkansas courts work with a number of other executive branch and local government offices and agencies which interact with LEP individuals before and after they come to the court system. While the courts are not responsible for and have no authority over these agencies, the AOC attempts to offer assistance to them as they carry out their responsibilities.

Clerks of Court

Arkansas court clerks are elected constitutional officers. They are not court employees and their offices are funded by the counties and cities that comprise their jurisdiction. As a frequent first point of contact with the courts, the court clerks have a particularly important role in providing language access. The AOC will be distributing signage in the most common LEP languages, such as Spanish and Marshallese, for display in clerk's offices throughout the state. These posters will be used to alert LEP individuals of the availability of interpreter services and how to request them. For those LEP individuals seeking assistance who do not speak one of the more commonly requested languages, the AOC will also be distributing "I Speak" cards, written in 34 languages, which will help alert court staff to the language need.

Several clerk's offices either employ bilingual staff or have access to the bilingual staff of an associated office (i.e. police or municipal employees), but they remain a small minority at just under a fifth (18%) of those offices surveyed in the Language Needs Assessment. Of those bilingual staff, the vast majority speak Spanish. In certain jurisdictions, the size of the LEP population makes bilingualism a top priority in filling these positions. While the AOC does not have a role in the hiring of clerk's office staff, Court Interpreter Services can connect hiring authorities with telephonic testing services to ensure that new employees have the adequate language level to be classified as bilingual.

Prosecuting Attorneys and Public Defenders

Though Arkansas prosecutors and public defenders fall under the auspices of the Executive Branch, they play an integral role in the Arkansas courts. Alongside court clerks and law enforcement, they are one of the earliest points of contact with LEP individuals entering the court system. The Office of the Prosecutor Coordinator manages all prosecuting attorneys in the state but currently does not have a uniform process in place for interpreting services. Generally, prosecutors handle the issue at the local level on a case by case basis. Likewise, the Arkansas Public Defender Commission lacks a centralized interpreter system. The AOC will provide both organizations with access to the Registry for dissemination to the prosecutors and public defender offices of each county for use in depositions, interrogations, visits to clients in jail, and similar situations where interpreter services may be needed. Furthermore, the AOC will work alongside Executive Branch agencies to explore the possibility of contracting a telephonic interpreting service for those situations in which a certified interpreter is unavailable.

Department of Community Corrections

Drug court programs are an interdisciplinary, non-adversarial judicial process for diverting an offender (or alleged offender) who has a demonstrated dependence on alcohol or an illicit drug, into a strenuous treatment program that includes frequent drug testing, required employment, treatment and counseling and regular court appearances to monitor program compliance. In 1994, Arkansas established its first drug court as part of a pilot program in cooperation with the Department of Community Corrections (DCC) and funded by federal grants and the Arkansas Department of Health. Today, the state has 43 drug court programs that serve over 2100 participants. Some are pre-adjudication venues while others are post-adjudication. Some are a combination of both, depending on the needs of the particular community. In the years since the inception of the Arkansas drug court program, responsibility for funding has shifted almost entirely to the DCC.

Drug courts are typically staffed by a team consisting of the judge and court staff, a prosecutor, a public defender or private attorney representing the offender, a probation or parole officer and drug counselor. Treatment services are provided through community providers. For courtroom proceedings, judges may follow the aforementioned protocol for the requesting of AOC interpreters. Outside of the courtroom, the DCC has a number of resources already in place for LEP drug court participants. A number of forms have already been translated, and pay incentives are offered to bilingual staff. In order to further assist the DCC in providing qualified interpreters in other components of the drug court program, the AOC will make available the Registry of Certified Interpreters. Additionally, the DCC and drug court judges will be consulted when deciding which forms will be included in the next round of translations.

Department of Human Services

Juvenile programs represent a particular challenge for LEP access, given the number of stakeholders involved in proceedings. In the case of dependency neglect hearings, court proceedings involve the parent, parent counsel, child, attorney ad litem, Court Appointed Special Advocate (CASA), Department of Human Services (DHS) attorney, and DHS case worker. The parent counsel and attorney ad litem, unlike public defenders, are employees of the AOC. The communication between these individuals and their clients is critical to a swift and just resolution of the case. As such, the AOC will begin providing these employees with out-of-court interpreting services as resources permit. Future hiring and contracting processes for these employees will prioritize bilingual candidates and offer them salary incentives.

The Arkansas Department of Human Services is responsible for much of the out-of-court contact with the parties in a juvenile case. An executive branch agency, the DHS currently contracts with a private company that provides interpreting for a wide range of languages. These interpreters are responsible for transmitting information in meetings between the parent and DHS case worker, thus playing a key role in the ultimate compliance with court orders. Privately contracted interpreters are not required to have met the certification standards of the courts, but CIS is willing to provide assistance in developing a similar set of standards for other state agencies during their respective contracting processes.

Arkansas Legal Services Partnership

The Arkansas Legal Services Partnership (“ALSP”) is comprised of the Center for Arkansas Legal Services and Legal Aid of Arkansas, the two free legal aid organizations in Arkansas that provide civil legal assistance for low-income Arkansans. The Partnership is an independent non-governmental entity that is funded entirely by grants and donations. In 2011, the attorneys of ALSP served 15,812 clients, 471 of whom were LEP. While both organizations have bilingual attorneys on staff to handle LEP cases, many LEP individuals were among the 15,000 requests for services that had to be turned down due to budget constraints.

The Partnership is also a leading provider of legal information for pro bono attorneys and pro se litigants in the state, with over 2 million visits to its online legal resources in 2011. ALSP has established a large section of Spanish language content, including guidance on completing forms and basic fact sheets explaining a variety of proceedings, particularly those in the domestic relations division. The foreign language section of the new Arkansas Judiciary website will include links to these resources. The AOC will collaborate closely with ALSP as more resources are created, providing all translated forms and foreign language guidance videos. Tools and publications developed for the training of attorneys in LEP issues will also be provided to attorneys through the ALSP pro bono section.

Recruitment, Training, and Certification of Court Interpreters

Qualifications

Except as provided by the *per curiam* order of September 30, 1999, any person who desires to serve as an interpreter for non-English speaking parties or witnesses in a state or local court must be certified. In order to be considered a Certified Foreign Language Interpreter by the AOC, any interested individual must complete the following requirements:

A. Application to Pursue Certification

An applicant for certification (a) must be at least 18 years old and be of good moral character; (b) must have the legal right to live and work in the United States; (c) must complete in its entirety and submit to the AOC a notarized copy of the Personal Information Form for Arkansas Court Interpreters with supporting documents; (e) must complete and submit a notarized copy of the Background Check Release Form, allowing the AOC to request a background check of the candidate from the Arkansas State Police; and (f) must submit to the AOC written documentation if the applicant claims a waiver of the training requirement and/or the language examination requirement as explained herein.

Each application will be reviewed by the AOC, and the applicant will be advised in writing of the time and place the next phase of the certification process will be conducted. If the AOC waives the training requirement and/or the language examination requirement, the applicant will be notified to submit the waiver fee(s) set out herein. Any applicant whose application is denied will be promptly notified.

Applicants who have met Consortium-based certification requirements in another state and desire to work in Arkansas courts must submit to the AOC the following written information: (a) a complete notarized application; (b) a current State Court Interpreter Certification letter from the state of origin; (c) the results of a criminal background check conducted within the previous 6 months; and (d) a letter indicating “good standing” in the applicable jurisdiction.

B. Candidate Assessment Exam

An applicant must achieve a satisfactory score on the Candidate Assessment Exam which consists of four parts: English Proficiency, the Code of Professional Responsibility, the Oral Proficiency Interview (OPI), and Court Terminology. The scores on the first two written parts are combined, and a minimum passing score of at least eighty (80%) per cent must be achieved. The OPI is conducted by a private contractor and applicants must achieve a score of “Advanced High” on the proficiency scale established by the American Council for the Teaching of Foreign Languages.

Applicants who satisfy the passing score requirements for parts I, II, and III of the Candidate Assessment Exam will be eligible to attend the orientation training session. For those who may not be able to attend the orientation at the first available date offered, scores for the first three parts of the Candidate Assessment Exam will remain valid for one year from the date an

applicant's letter of passing is mailed, and an applicant must attend an orientation session within one year of that date.

C. Two-Day Orientation

Each applicant must successfully complete the orientation session at the applicant's own expense. Dates and locations will be announced well in advance of each session.

The orientation is designed to familiarize the applicant with the Arkansas court system and provide instruction on the role of the interpreter and the skills and ethics required of an interpreter in the courtroom. In addition, the signing of the Arkansas Code of Professional Responsibility and the administration of part four of the Candidate Assessment Exam, testing knowledge of court-related terms, will take place during the two-day orientation session. At the discretion of the AOC, the orientation requirement may be waived for certified interpreters transferring to Arkansas.

D. Arkansas Code of Professional Responsibility for Foreign Language Interpreters in the Judiciary

Each applicant will receive a copy of Administrative Order No. 11, *Arkansas Code of Professional Responsibility for Foreign Language Interpreters in the Judiciary*, ("the Code") when notified that his or her application has been processed. Study of the Code is an important component of the two-day orientation, and at the conclusion of the orientation, the candidate must agree *in writing* to adhere to the Code.

E. Oral Certification Exam

The Oral Certification Exam is an objective test developed under the auspices of the National Center for State Courts (NCSC) Language Access Division. The fee for taking the OCE is \$200.00, which must be submitted when the applicant registers for the examination. It tests the three modes of interpretation: (a) simultaneous interpretation from English to the applicable foreign language, (b) consecutive interpretation, English to the applicable foreign language and applicable foreign language to English; and (c) sight translation of an English document into the applicable foreign language and the applicable foreign language into English. To be eligible for certification, individuals must take all three sections of the OCE on the same day and obtain a score of at least 70% on each section. The applicant will be notified in writing whether he or she passed or failed.

The NCSC has developed more than one version of the OCE for languages that are in high demand, e.g. Spanish and Vietnamese. No person may take any single version of the Oral Certification Exam more than two times in his or her lifetime.

At the discretion of the AOC, the OCE requirement may be waived if the federal court system or a state using a Consortium-based examination certifies in writing to the AOC that the applicant obtained a passing score on an Oral Certification Exam administered by the federal court system or that state court system.

As for languages for which the NCSC has not yet developed an Oral Certification Exam, the OPI will serve as the only test of oral skills.

Registry and Interpreter Standards

The registry of interpreters is maintained by the AOC and made available to attorneys, state and local courts, law enforcement, other government agencies, and the public in general. The registry lists foreign language and sign language interpreters certified for court interpreting by the AOC. Only those foreign language interpreters that have completed all of the certification requirements and remain in good standing with the AOC will be listed in the registry. These requirements apply to all applicants regardless of the language(s) which they intend to interpret. No person shall use the title “Certified Interpreter” in conjunction with his/her name without having a valid certificate issued by the AOC.

Individuals who have completed parts A-D of the interpreter qualifications, but have not yet passed the OCE are considered Candidates for Certification and may be called upon to interpret in short, non-evidentiary hearings. Candidates can maintain their status for a period of two years after completion of the orientation. If after two years, the Candidate for Certification has not yet passed the OCE, he or she must begin the qualification process anew.

Procedures for Complaints and Discipline

Complaints against registry interpreters may be filed for reasons including but not limited to:

1. conviction of a felony or misdemeanor involving moral turpitude, dishonesty or false statements (Conviction is defined as a plea of guilty, or nolo contendere, or guilty verdict.);
2. fraud, dishonesty, or corruption that is related to the functions and duties of a court interpreter;
3. knowing misrepresentation of court certification or roster status;
4. knowing and willful disclosure of confidential or privileged information obtained while serving in an official capacity as a court interpreter;
5. gross incompetence;
6. failure to appear as scheduled without good cause or habitual neglect of duty;
7. the misrepresentation or omission of material facts in the application process or in obtaining certification;
8. being unable to interpret adequately, including where the interpreter self-reports such inability;
9. knowingly and willfully making false interpretation while serving in an official capacity;
10. failing to adhere to the requirements prescribed by the AOC, including the Arkansas Code of Professional Responsibility for Foreign Language Interpreters;
11. any intentional violation of, noncompliance with or gross negligence in complying with any rule or directive of the Supreme Court of Arkansas, or any other court within this State;
12. failing to follow other standards prescribed by law.

Complainants may include, but are not limited to, defendants, litigants, court personnel, judges and judicial officers, other interpreters, and courtroom observers. These procedures are not intended to be a vehicle for complaints about interpreting errors made by interpreters during the course of a proceeding unless there is an allegation of gross incompetence or knowing

misinterpretation or misrepresentation. These procedures may be used in addition to the sanction of disqualification for good cause imposed by a judge in a proceeding as set forth in the *per curiam* order of the Arkansas Supreme Court dated September 30, 1999.

A complaint must be submitted in writing or an acceptable alternative format, signed by the complainant, and mailed or delivered to the Administrative Office of the Courts Court Interpreter Services. The complaint shall state the date, time, place and nature of the alleged improper conduct. If possible, the complaint shall include the name, title and telephone number of possible witnesses. Finally, the complaint shall state why the complainant believes the alleged improper activity should be sanctioned. If the complainant is unable to communicate in written English, the complainant may submit the complaint in his or her native language.

If the subject of the complaint is a staff interpreter employed by the AOC, then the complaint shall be governed by the policies of the AOC, including the employee handbook. Complaints against registry interpreters who are not on the staff of the AOC shall be governed by the Guidelines for Review and Dismissal of Interpreters found in Appendix D.

All complaints and investigations shall be confidential, except that when a final determination is made to impose any sanction, the final disposition, including the grounds for the sanction(s) and the facts cited in support of the disposition, shall be accessible to the public.

Removal from Registry

Any person whose name appears on the registry as a certified interpreter who has not interpreted in the Arkansas court system during any two-year period, or who has not registered and attended training offered by the AOC during any two-year period will be removed from the registry. He or she may re-apply and begin the process again. Any contract interpreter charged with a felony or misdemeanor, other than minor traffic violations, shall be removed from the registry until such time as the matter is resolved.

Continuing Education

As the Arkansas Judiciary is not a centralized court system, education will play a key role in the success of this LEP plan. It is vital that judges, clerks, and other court staff are all made aware of the growing LEP needs in the state and the policies that the AOC is undertaking to meet those needs. To this end, the Arkansas Judicial Council has already created the Court Interpreter Services Committee, which was consulted and updated by the AOC during the drafting of the LEP plan. The Director of CIS will also work closely with the state organizations of circuit clerks, district judges, and district clerks to publicize the LEP plan.

AOC Court Interpreter Services is currently developing a curriculum for a workshop at future meeting of the Judicial Council that will instruct judges on the proper protocol for procuring interpreter services from the AOC and the steps that should be taken to ensure the qualifications of any non-certified interpreter, as well as providing general cultural sensitivity training. While most of the rules regarding interpreters are included both in the district and circuit court benchbooks, these instructions will also be compiled in the form of a reference bench card that will include, among

other items, the interpreter code of ethics and an example voir dire for outside interpreters. This curriculum will also be adapted for use in the training of clerks and other court personnel to teach best practices in dealing with the LEP community and reinforce the availability of existing AOC resources.

The AOC will also develop a curriculum in cooperation with the Arkansas Bar Association to ensure that attorneys in the state are aware of LEP issues and the best practices for addressing them. For example, by contacting the courts upon first realization of a client's possible need for an interpreter, attorneys will assist in expediting the judicial process and are also more likely to secure the service of a certified interpreter. Education for attorneys will also include a summary of the foreign language resources available both through the AOC and affiliated organizations.

LEP Outreach and Awareness

The AOC will work through CIS to increase awareness of LEP resources in the Arkansas Judiciary among the populations these resources aim to serve. CIS will utilize existing relationships with Hispanic organizations throughout the state and Marshallese community leaders in Northwest Arkansas, distributing translated pamphlets describing court services, publicizing pending website resources, and in some cases, giving presentations. As time and resources allow, CIS will also attempt to bolster relationships with other major LEP populations such as the Vietnamese and Laotian communities. Increased awareness of Court Interpreter Services will also aid in the identification and recruitment of potential new interpreters.

Revisions

The AOC will review its LEP Plan biennially to meet the most current needs of the Arkansas Courts and the LEP population they serve. Other reviews may occur as necessary at the behest of the AOC Director or the Director of CIS.

Appendices

Appendix A: **Arkansas Statutes**

Ark. Code Ann. §16-10-127 Court Interpreters

(a) The Director of the Administrative Office of the Courts shall establish a program to facilitate the use of interpreters and transliterators in all courts of the State of Arkansas.

(b)(1) The director shall prescribe the qualifications of and certify persons who may serve as certified interpreters and transliterators in all courts of the State of Arkansas in bilingual proceedings and proceedings involving the hearing impaired, whether or not also speech impaired.

(2) The director shall maintain a current registry of all interpreters and transliterators certified by the director and shall report annually to the Arkansas Supreme Court on the frequency of requests for and the use and effectiveness of the interpreters and transliterators.

(c) In all state court bilingual proceedings and proceedings involving the hearing impaired, whether or not also speech impaired, the presiding judicial officer, with the assistance of the director, shall utilize the services of a certified interpreter or transliterator to communicate verbatim all spoken words or signs, illustrating alphabetical letters or words, in American Sign Language, signed English, or spoken English.

(d) All state courts shall maintain on file in the office of the clerk of the court a list of all persons who have been certified as interpreters or transliterators by the director in accordance with the certification program established pursuant to this section.

(e)(1) Whenever a judicial officer appoints a certified foreign language interpreter or transliterator from the registry to a criminal or civil case, upon the conclusion of the interpreter's or transliterator's services in the case, the judicial officer may certify those services to the director upon a form prescribed by the Administrative Office of the Courts.

(2) The director is authorized to pay, from funds specifically appropriated for this purpose, the certified foreign language interpreter or transliterator for the interpreting services furnished to the court.

(f) As used in this section, unless the context otherwise requires:

(1) "Deaf person" means a person with a hearing loss so great as to prevent his or her understanding language spoken in a normal tone; and

(2) "Director" means the Director of the Administrative Office of the Courts.

History. Acts 1981, No. 477, §§ 1-3; A.S.A. 1947, §§ 22-151 - 22-153. Acts 2001, No. 424, § 1.

Ark. Code Ann. §16-64-111 Interpreters for Persons with Communication Problems Generally

(a) Every person who cannot speak or understand the English language or who because of hearing, speaking, or other impairment has difficulty in communicating with other persons and who is a party to any civil proceeding or a witness therein shall be entitled to an interpreter to assist such person throughout the proceeding.

(b) (1) The interpreter may be retained by the party or witness or, if the person is unable to pay for an interpreter, may be appointed by the court before which the action is pending.

(2) If an interpreter is appointed by the court, the fee for the services of the interpreter shall be set by the court and shall be paid in such manner as the court may determine.

(3) If a certified foreign language interpreter from the roster is appointed by the court in a civil matter, the judge may certify the appointment to the Director of the Administrative Office of the Courts as provided in § 16-10-127(e)(1).

(c) Any court may inquire into the qualifications and integrity of any interpreter and may disqualify any person from serving for cause as an interpreter.

(d) Every interpreter for another person who is either a party or a witness in a court proceeding as referred to in this section shall take the following oath:

"Do you solemnly swear (or affirm) that you will justly, truly, and impartially interpret to ... the oath about to be administered to him (her), and the questions which may be asked him (her), and the answers that he (she) shall give to such questions, relative to the cause now under consideration before this court, so help you God (or under the pains and penalties of perjury)?"

HISTORY: Acts 1973, No. 555, § 2; A.S.A. 1947, § 27-835; Acts 2001, No. 424, § 2.

Ark. Code Ann. §16-89-104 Interpreters in Criminal Actions Generally

(a) Every person who cannot speak or understand the English language or who because of hearing, speaking, or other impairment has difficulty in communicating with other persons and who is a defendant in any criminal action or a witness therein shall be entitled to an interpreter to aid the person throughout the proceeding.

(b) (1) An interpreter may be retained by the party or witness or, if the person is unable to pay for an interpreter, may be appointed by the court before which the action is pending and shall be appointed by the court before which the action is pending if the person is a defendant in the criminal action.

(2) If an interpreter is appointed by the court, the fee for the services of the interpreter shall be set by the court and shall be paid in the manner as the court may determine, except that an acquitted defendant shall not be required to pay any fee for the services of a court-appointed interpreter.

(3) If a certified foreign language interpreter from the roster is appointed by the court in a criminal matter, the judge may certify the appointment to the Director of the Administrative Office of the Courts as provided in § 16-10-127(e)(1).

(c) Any court may inquire into the qualifications and integrity of any interpreter, and may disqualify any person from serving as an interpreter.

(d) Every interpreter for another person who is either a party or a witness in a court proceeding as referred to in this section shall take the following oath:

"Do you solemnly swear (or affirm) that you will justly, truly and impartially interpret to the oath about to be administered to him (her), and the questions which may be asked him (her), and the answers that he (she) shall give to such questions, relative to the cause now under consideration before this court, so help you God (or under the pains and penalties of perjury)?"

HISTORY: Acts 1973, No. 555, § 3; A.S.A. 1947, § 43-2101.1; Acts 2001, No. 424, § 3.

Appendix B: *In re Certification for Foreign Language Interpreters in Arkansas Courts* 338 Ark. App'x 827 (1999)

Supreme Court of Arkansas
Delivered September 30, 1999

PER CURIAM.

All persons, whether or not able to understand or communicate adequately in the English language, must be afforded rights when they appear in court. *See* Ark. Code Ann. § 16-64-111, § 16-89-104, § 16-10-102 and § 25-15-101. It is the intent of this Per Curiam Order to provide for the certification, appointment and use of interpreters for non-English speaking parties or witnesses in all state and local court proceedings.

Ark. Code Ann. § 16-10-102 established the Administrative Office of the Courts (AOC) subject to the supervision of the Supreme Court of Arkansas to be responsible for the administration of the nonjudicial business of the judicial branch. Ark. Code Ann. § 16-10-127 authorizes and directs the AOC to establish a program to facilitate the use of interpreters and transliterators in all state and local courts in Arkansas and to prescribe the qualifications of and certify persons who may serve as certified interpreters in all courts in the state.

Therefore, pursuant to our superintending powers, we hereby authorize the AOC, with advice of the Arkansas Judicial Council Ad Hoc Foreign Language Interpreter Certification Committee, and in compliance with Administrative Order No. 11 and the rules of the Consortium for State Court Interpreter Certification, to prescribe requirements for the recruitment, testing, certification, evaluation, duties, professional conduct, continuing education, certification renewal, and other matters relating to interpreters.

When an interpreter is requested or when the judge determines that a party or witness has a limited ability to understand and communicate in English, a certified interpreter shall be appointed, using the most current roster of certified interpreters maintained by the AOC. Where possible, but particularly for more complex cases, an interpreter with Advanced Certification as denoted on the roster should be used.

The judge may appoint a non-certified interpreter only upon a finding that diligent, good faith efforts to obtain a certified interpreter have been made and none has been found to be reasonably available. Recognizing that the judge is the final arbiter of any interpreter's qualifications, a non-certified interpreter may be appointed only after the judge has evaluated the totality of the circumstances including the gravity of the judicial proceeding and the potential penalty or consequence involved. Before appointing a non-certified interpreter, the judge shall make a finding that the proposed non-certified interpreter appears to have adequate language skills, knowledge of interpreting techniques, familiarity with interpreting in a court setting, and that the proposed non-certified interpreter has read, understands, and will abide by Administrative Order No. 11, the Arkansas Code of Professional Responsibility for Interpreters in the Judiciary. A summary of the efforts made to obtain a certified interpreter and to determine the capabilities of the proposed non-certified interpreter shall be made on the record or as a docket entry of the legal proceeding.

A non-English speaking party or witness may at any point in the proceeding waive the right to the services of an interpreter, but only when (1) the waiver is approved by the judge on the record or by docket entry after explaining to the non-English speaking party or witness through an interpreter the nature and effect of the waiver; (2) the judge makes a finding on the record or by docket entry that the waiver has been made knowingly, intelligently, and voluntarily; and (3) in cases where the non-English speaking party or witness has retained/appointed counsel or has the right to counsel, that party or witness has been afforded the opportunity to consult with his or her attorney. At any point in any proceeding, for good cause shown, a non-English speaking party or witness may retract his or her waiver and request an interpreter.

All interpreters, before commencing their duties, shall take an oath that they will make a true and impartial interpretation using their best skills and judgment in accordance with the standards and ethics of the interpreter profession.

Any of the following actions shall constitute good cause for the judge to remove an interpreter:

- (1) being unable to interpret adequately, including where the interpreter self-reports such inability;
- (2) knowingly and willfully making false interpretation while serving in an official capacity;
- (3) knowingly and willfully disclosing confidential or privileged information obtained while serving in an official capacity;
- (4) failing to adhere to the requirements prescribed by the AOC, including the Arkansas Code of Professional Responsibility for foreign language interpreters;
- (5) failing to follow other standards prescribed by law. The judge shall notify the AOC in writing whenever he or she removes an interpreter, setting forth the reason(s) for that action.

In all legal proceedings, the cost of providing interpreter services shall be assessed by the judge according to law. Provided, no non-English speaking party or witness shall be denied the services of an interpreter because he or she is unable to pay for those services.

Appendix C: Administrative Order Number 11

ARKANSAS CODE OF PROFESSIONAL RESPONSIBILITY FOR INTERPRETERS IN THE JUDICIARY

PREAMBLE

Many persons who come before the courts are partially or completely excluded from full participation in the proceedings due to limited English proficiency or a speech or hearing impairment. It is essential that the resulting communication barrier be removed, as far as possible, so that these persons are placed in the same position as similarly situated persons for whom there is no such barrier.¹ As officers of the court, interpreters help assure that such persons may enjoy equal access to justice and that court proceedings and court support services function efficiently and effectively. Interpreters are highly skilled professionals who fulfill an essential role in the administration of justice.

APPLICABILITY

This code shall guide and be binding upon all persons, agencies and organizations who administer, supervise use, or deliver interpreting services to the judiciary.

Commentary:

The black letter principles of this model code are principles of general application that are unlikely to conflict with specific requirements of rule or law in the states, in the opinion of the code's drafters. Therefore, the use of the term "shall" is reserved to the black letter principles. Statements in the commentary use the term "should" to describe behavior that illustrates or elaborates the principles. The commentaries are intended to convey what the drafters of this model code believe are *probable* and *expected* behaviors. Wherever a court policy or routine practice appears to conflict with the commentary in this code, it is recommended that the reasons for the policy as it applies to court interpreters be examined.

CANON 1: ACCURACY AND COMPLETENESS

Interpreters shall render a complete and accurate interpretation or sight translation, without altering, omitting, or adding anything to what is stated or written, and without explanation.

1. Non-English speaker should be able to understand just as much as an English speaker with the same level of education and intelligence

Commentary:

The interpreter has a twofold duty: 1) to ensure that the proceedings in English reflect precisely what was said by a non-English speaking person, and 2) to place the non-English speaking person on an equal footing with those who understand English. This creates an obligation to

conserve every element of information contained in a source language communication when it is rendered in the target language.

Therefore, interpreters are obligated to apply their best skills and judgment to preserve faithfully the meaning of what is said in court, including the style or register of speech. Verbatim, “word for word,” or literal oral interpretations are not appropriate when they distort the meaning of the source language, but *every spoken statement, even if it appears non-responsive, obscene, rambling, or incoherent should be interpreted*. This includes apparent misstatements.

Interpreters should never interject their own words, phrases, or expressions. If the need arises to explain an interpreting problem (e.g., a term or phrase with no direct equivalent in the target language or a misunderstanding that only the interpreter can clarify), the interpreter should ask the court’s permission to provide an explanation. Interpreters should convey the emotional emphasis of the speaker without reenacting or mimicking the speaker’s emotions, or dramatic gestures.

Sign language interpreters, however, *must* employ all of the visual cues that the language they are interpreting for requires -including facial expressions, body language, and hand gestures. Sign language interpreters, therefore, should ensure that court participants do not confuse these essential elements of the interpreted language with inappropriate interpreter conduct.

The obligation to preserve accuracy includes the interpreter’s duty to correct any error of interpretation discovered by the interpreter during the proceeding. Interpreters should demonstrate their professionalism by objectively analyzing any challenge to their performance.

CANON 2: REPRESENTATION OF QUALIFICATIONS

Interpreters shall accurately and completely represent their certifications, training and pertinent experience.

Commentary:

Acceptance of a case by an interpreter conveys linguistic competency in legal settings. Withdrawing or being asked to withdraw from a case after it begins causes a disruption of court proceedings and is wasteful of scarce public resources. It is therefore essential that interpreters present a complete and truthful account of their training, certification and experience prior to appointment so the officers of the court can fairly evaluate their qualifications for delivering interpreting services.

CANON 3: IMPARTIALITY AND AVOIDANCE OF CONFLICT OF INTEREST

Interpreters shall be impartial and unbiased and shall refrain from conduct that may give an appearance of bias. Interpreters shall disclose any real or perceived conflict of interest.

Commentary:

The interpreter serves as an officer of the court and the interpreter's duty in a court proceeding is to serve the court and the public to which the court is a servant. This is true regardless of whether the interpreter is publicly retained at government expense or retained privately at the expense of one of the parties.

The interpreter should avoid any conduct or behavior that presents the appearance of favoritism toward any of the parties. Interpreters should maintain professional relationships with their clients, and should not take an active part in any of the proceedings. The interpreter should discourage a non-English speaking party's personal dependence.

During the course of the proceedings, interpreters should not converse with parties, witnesses, jurors, attorneys, or with friends or relatives of any party, except in the discharge of their official functions. It is especially important that interpreters, who are often familiar with attorneys or other members of the courtroom work group, including law enforcement officials, refrain from casual and personal conversations with anyone in court that may convey an appearance of a special relationship or partiality to any of the court participants.

The interpreter should strive for professional detachment. Verbal and non-verbal displays of personal attitudes, prejudices, emotions, or opinions should be avoided at all times.

Should an interpreter become aware that a proceeding participant views the interpreter as having a bias or being biased, the interpreter should disclose that knowledge to the appropriate judicial authority and counsel.

Any condition that interferes with the objectivity of an interpreter constitutes a conflict of interest. Before providing services in a matter, court interpreters must disclose to all parties and presiding officials any prior involvement, whether personal or professional, that could be reasonably construed as a conflict of interest. This disclosure should not include privileged or confidential information.

The following are circumstances that are presumed to create actual or apparent conflicts of interest for interpreters where interpreters should not serve:

1. The interpreter is a friend, associate, or relative of a party or counsel for a party involved in the proceeding;
2. The interpreter has served in an investigative capacity for any party involved in the case;
3. The interpreter has previously been retained by a law enforcement agency to assist in the preparation of the criminal case at issue;
4. The interpreter or the interpreter's spouse or child has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that would be affected by the outcome of the case;
5. The interpreter has been involved in the choice of counsel or law firm for that case.

Interpreters should not serve in any matter in which payment for their services is contingent upon the outcome of the case.

An interpreter who is also an attorney should not serve in both capacities in the same matter.

CANON 4: PROFESSIONAL DEMEANOR

Interpreters shall conduct themselves in a matter consistent with the dignity of the court and shall be as unobtrusive as possible.

Commentary:

Interpreters should know and observe the established protocol, rules, and procedures for delivering interpreting services. When speaking in English, interpreters should speak at a rate and volume that enable them to be heard and understood throughout the courtroom, but the interpreters' presence should otherwise be as unobtrusive as possible. Interpreters should work without drawing undue or inappropriate attention to themselves. Interpreters should dress in a manner that is consistent with the dignity of the proceedings of the court.

Interpreters should avoid obstructing the view of any of the individuals involved in the proceedings. However, interpreters who use sign language or other visual modes of communication must be positioned so that hand gestures, facial expressions, and whole body movement are visible to the person for whom they are interpreting.

Interpreters are encouraged to avoid personal or professional conduct that could discredit the court.

CANON 5: CONFIDENTIALITY

Interpreters shall protect the confidentiality of all privileged and other confidential information.

Commentary:

The interpreter must protect and uphold the confidentiality of all privileged information obtained during the course of this or her duties. It is especially important that the interpreter understand and uphold the attorney-client privilege, which requires confidentiality with respect to any communication between attorney and client. This rule also applies to other types of privileged communication.

Interpreters must also refrain from repeating or disclosing information obtained by them in the course of their employment that may be relevant to the legal proceeding.

In the event that an interpreter becomes aware of information that suggests imminent harm to someone or relates to a crime being committed during the course of the proceedings, the interpreter should immediately disclose the information to an appropriate authority within the

judiciary who is not involved in the proceeding and seek advice in regard to the potential conflict in professional responsibility.

CANON 6: RESTRICTION OF PUBLIC COMMENT

Interpreters shall not publicly discuss, report, or offer an opinion concerning a matter in which they are or have been engaged, even when that information is not privileged or required by law to be confidential.

CANON 7: SCOPE OF PRACTICE

Interpreters shall limit themselves to interpreting or translating, and shall not give legal advice, express personal opinions to individuals for whom they are interpreting, or engage in any other activities which may be construed to constitute a service other than interpreting or translating while serving as an interpreter.

Commentary:

Since interpreters are responsible only for enabling others to communicate, they should limit themselves to the activity of interpreting or translating only. Interpreters should refrain from initiating communications while interpreting unless it is necessary for assuring an accurate and faithful interpretation.

Interpreters may be required to initiate communications during a proceeding when they find it necessary to seek assistance in performing their duties. Examples of such circumstances include seeking direction when unable to understand or express a word or thought, requesting speakers to moderate their rate of communication or repeat or rephrase something, correcting their own interpreting errors, or notifying the court of reservations about their ability to satisfy an assignment competently. In such instances they should make it clear that they are speaking for themselves.

An interpreter may convey legal advice from an attorney to a person only while that attorney is giving it. An interpreter should not explain the purpose of forms, services, or otherwise act as counselors or advisors unless they are interpreting for someone who is acting in that official capacity. The interpreter may translate language on a form for a person who is filling out the form, but may not explain the form or its purpose for such a person.

The interpreter should not personally serve to perform official acts that are the official responsibility of other court officials including, but not limited to, court clerks, pretrial release investigators or interviewers, or probation counselors.

CANON 8: ASSESSING AND REPORTING IMPEDIMENTS TO PERFORMANCE

Interpreters shall assess at all times their ability to deliver their services. When interpreters have any reservation about their ability to satisfy an assignment competently, they shall immediately convey that reservation to the appropriate judicial authority.

Commentary:

If the communication mode or language of the non-English-speaking person cannot be readily interpreted, the interpreter should notify the appropriate judicial authority.

Interpreters should notify the appropriate judicial authority of any environmental or physical limitation that impedes or hinders their ability to deliver interpreting services adequately (e.g., the court room is not quiet enough for the interpret to hear or be heard by the non-English speaker, more than one person at a time is speaking, or principals or witnesses of the court are speaking at a rate of speed that is too rapid for the interpreter to adequately interpret). Sign language interpreters must ensure that they can both see and convey the full range of visual language elements that are necessary for communication, including facial expressions and body movement, as well as hand gestures.

Interpreters should notify the presiding officer of the need to take periodic breaks to maintain mental and physical alertness and prevent interpreter fatigue. Interpreters should recommend and encourage the use of team interpreting whenever necessary.

Interpreters are encouraged to make inquiries as to the nature of a case whenever possible before accepting an assignment. This enables interpreters to match more closely their professional qualifications, skills, and experience to potential assignments and more accurately assess their ability to satisfy those assignments competently.

Even competent and experienced interpreters may encounter cases where routine proceedings suddenly involve technical or specialized terminology unfamiliar to the interpreter (e.g., the unscheduled testimony of an expert witness). When such instances occur, interpreters should request a brief recess to familiarize themselves with the subject matter. If familiarity with the terminology requires extensive time or more intensive research, interpreters should inform the presiding officer.

Interpreters should refrain from accepting a case if they feel the language and subject matter of that case is likely to exceed their skills or capacities. Interpreters should feel no compunction about notifying the presiding officer if they feel unable to perform competently, due to lack of familiarity with terminology, preparation, or difficulty in understanding a witness or defendant.

Interpreters should notify the presiding officer of any personal bias they may have involving any aspect of the proceedings. For example, an interpreter who has been the victim of assault may wish to be excused from interpreting in cases involving similar offenses.

CANON 9: DUTY TO REPORT ETHICAL VIOLATIONS

Interpreters shall report to the proper judicial authority any effort to impede their compliance with any law, any provision of this code, or any other official policy governing court interpreting and legal translating.

Commentary:

Because the users of interpreting services frequently misunderstand the proper role of the interpreter, they may ask or expect the interpreter to perform duties or engage in activities that run

counter to the provisions of this code or other laws, regulations, or policies governing court interpreters. It is incumbent upon the interpreter to inform such persons of his or her professional obligations. If, having been apprised of these obligations, the person persists in demanding that the interpreter violate them, the interpreter should turn to a supervisory interpreter, a judge, or another official with jurisdiction over interpreter matters to resolve the situation.

CANON 10: PROFESSIONAL DEVELOPMENT

Interpreters shall continually improve their skills and knowledge and advance the profession through activities such as professional training and education, and interaction with colleagues and specialists in related fields.

Commentary:

Interpreters must continually strive to increase their knowledge of the languages they work in professionally, including past and current trends in technical, vernacular, and regional terminology as well as their application within the court proceedings.

Interpreters should keep informed of all statutes, rules of courts and policies of the judiciary that relate to the performance of their professional duties.

An interpreter should seek to elevate the standards of the profession through participation in workshops, professional meetings, interaction with colleagues, and reading current literature in the field.