

**Ensuring Access to Justice
For Non-English Speaking Persons in Iowa's Courts**

Recommendations of the Court Interpreter Policies Advisory Group

**Presented to the
Supreme Court of Iowa**

October 8, 2001



Supreme Court of Iowa's Court Interpreter Policies Advisory Committee

Honorable Richard Vipond, Chief Judge, 3rd Judicial District, Denison [Committee Chair]
Kathryn Baumann-Reese, Director of Deaf Services, Dept of Human Rights, Des Moines
James Benzoni, Attorney, Des Moines
Victoria Dominguez, Assistant County Attorney, Iowa City
Carroll Edmondson, 6th District Court Administrator, Cedar Rapids
Honorable Mary Lou Freeman, State Senator, Alta
Jackie Harrison, Clerk of District Court, Waterloo
Sylvia Kreamalmyer, Court Reporter, West Burlington
Guadaloupe McCarney, Spanish Interpreter, Des Moines
Honorable Clarence Meldrum, Judicial Magistrate, Council Bluffs
John Messina, Attorney, Federal Defenders Office, Des Moines
Elizabeth Salinas Newby, Director, Commission on Latino Affairs, Des Moines
Honorable Karen Romano, District Associate Judge, Des Moines
William Snyder, Director of Human Resources, Judicial Branch, Des Moines
Honorable James Weaver, District Associate Judge, Muscatine
John Wilken, Deputy Chief, Iowa Bureau of Refugee Services, Des Moines
Ta-Yu Yang, Attorney, Des Moines

Supreme Court staff assistance provided by John Goerd, Judicial Branch Planner

Ensuring Access to Justice For Non-English Speaking Persons In Iowa's Courts

Table of Contents

	<u>Page</u>
I. Introduction	1
II. Recommendations of the Court Interpreter Policies Advisory Group	5
A. Adopt a Code of Professional Conduct for Judicial Branch Interpreters	5
B. Implement a Judicial Branch Interpreter Certification Program	5
C. Implement a Judicial Branch Interpreter Training Program	5
D. Effectively Administer Programs and Procedures That Effect Access to Justice for Non-English Speaking Persons	7
E. Educate Judges, Court Staff, Attorneys and Non-English Speaking Residents Regarding Immigration Issues and Cultural Differences	10
III. Commentary on the Recommendations of the Court Interpreter Policies Advisory Group	11
A. Adopt a Code of Professional Conduct for Judicial Branch Interpreters	11
B. Implement a Judicial Branch Interpreter Certification Program	11
C. Implement a Judicial Branch Interpreter Training Program	16
D. Effectively Administer Programs and Procedures That Effect Access to Justice for Non-English Speaking Persons	18
E. Educate Judges, Court Staff, Attorneys and Non-English Speaking Residents Regarding Immigration-Related Issues	21
IV. Estimated Costs and Funding Strategies	23
V. Conclusion	25
APPENDICES	
1 – Supreme Court's Order Establishing the Advisory Group	
2 – Figures Showing Key Results from Survey of Iowa Judges and District Court Administrators on Court Interpreter Issues	
3 – Code of Professional Conduct for Judicial Branch Interpreters	
4 – Commentary on the Code of Professional Conduct for Judicial Branch Interpreters	
5 – Rule on Appointment of Court Interpreters	
6 – Revision to Rule 1 of the Supreme Court Rules on the Qualifications and Compensation of Interpreters for Deaf or Hard-of-Hearing Persons.	
7 – Rule Establishing a Statewide Roster of Judicial Branch Interpreters	
8 -- Application to be a Judicial Branch Interpreter – Verbal Language	
9 -- Application to be a Judicial Branch Interpreter – Sign Language	
10 – In-Court Screening Questions and Written Oath for Court Interpreters	
11 – Sample In-court Oath for Court Interpreters	
12 – Standard Claim Form for Judicial Branch Interpreters	
13 -- Proposed Supreme Court Advisory Order to Inform Litigants and Others to Contact the ADA Coordinator to Arrange for a Verbal Language Interpreter	
14 -- Warnings to Criminal Defendants as to Possible Deportation	
15 -- Guidelines for Judges in Determining the Need for an Interpreter	
16 – A. Guidelines for Determining When Two or More Non-English Speaking Defendants in the Same Criminal Case Require Separate Interpreters B. Draft Rule on a Motion for Separate Interpreters for Multiple Defendants	

Ensuring Access to Justice For Non-English Speaking Persons In Iowa's Courts

“Iowa’s courts are committed to... high quality language interpretation services.”*

*From the Iowa Supreme Court’s statement of the “Core Values” of the Iowa judicial branch, adopted by the Supreme Court in November 1999.

I. Introduction

Rationale for this report

In the past two decades a new wave of immigrants has transformed the racial and ethnic landscape in many parts of the U.S. The wave has even rippled through Iowa. For example, recent census data show the number of Hispanic or Latino residents grew from 32,647 in 1990 to 82,473 in 2000 (a 153 percent increase); the Asian population rose by 46 percent;¹ and although there are no census data on Bosnian and Sudanese immigrants, there was also significant growth in their numbers in Iowa in the past decade.

The new wave of immigrants in Iowa has also brought a significant increase in the number of court cases involving non-English speaking litigants. A survey of Iowa judges and court administrators suggests that in the past five years the demand for Spanish interpreters has increased by an average of 57 percent. (See Appendix 2A.) The increase has varied from about 10 percent to more than 70 percent, depending on the district.² These observations are consistent with data from the Iowa Division of Inspections and Appeals (IDIA), which pays the costs of court interpreters in cases involving indigent criminal defendants. According to the IDIA, from 1997 through 2000 the costs for court interpreters increased by 71 percent from 1997 through 2000.³

With an increasing number of court cases that require interpreters, the judicial branch faces a challenge to ensure that non-English speaking litigants obtain high quality interpretation services. Many Americans involved in litigation find the court experience stressful and difficult to understand, even though they understand the language. For non-English speaking litigants, the court experience can be exceedingly stressful and mystifying because they face not only a language barrier, but also a cultural barrier. They cannot understand the language spoken in court, and they understand little or nothing about their rights or our adversarial system of justice. Interpreters are the communication gateway to justice for non-English speaking litigants. Interpreters provide the means by which the non-English speaking litigants understand what is said in the courtroom by the judge, attorneys, witnesses, and other litigants; and they allow others to understand what the non-English speaking litigant or witness has to say. High quality language interpretation, therefore, is absolutely critical for achieving justice in cases involving

¹ Data from the U.S. Census Bureau.

² District court administrators’ estimates of the percentage increase in the demand for language interpreters in the past five years: District 1: 1-10%; District 2: >50%; District 3: 1-10%; District 4: >70%; District 5: >50%; District 6: >25%; District 7: 11-20%; District 8: >50%.

³ An increase in the amount spent on court interpreters could be caused by a few long trials involving defendants who needed interpreters. However, there was a steady increase in expenditures each year from 1997 through 2000, rather than a dramatic increase in the last year or two: 1997: \$213,786; 1998: \$233,662; 1999: \$341,470; 2000: \$366,016. See also Appendix 2E.

non-English speaking litigants.⁴ High quality interpretation is especially important in criminal cases because immigrants will be deported if convicted of certain crimes.⁵

Currently, the Iowa judicial branch has no education or training requirements for verbal language interpreters;⁶ no systematic means for ensuring that interpreters have even a basic understanding of legal terminology or procedures; and no code of conduct to guide court interpreter behavior. Non-English speaking litigants and their attorneys typically make their own arrangements for interpreters. Judges informally try to assess the competence of the interpreters, but most judges are not qualified to make a determination of interpreter competence.

In light of these concerns, the Iowa Supreme Court established the Court Interpreter Policies Advisory Group (hereafter the Advisory Group) which includes judges, attorneys with experience in representing non-English speaking litigants, interpreters, a district court administrator, a clerk of district court, a court reporter, a state senator and representatives from the Bureau of Refugee Affairs and the Division for Latino Affairs.⁷ The Supreme Court directed the Advisory Group to document the demand for court interpreter services in Iowa and to recommend:

- Changes in practices, policies, rules of procedure, and statutes, if necessary, to improve the quality of court interpreter services in Iowa's courts.
- Ways to cooperate with other state agencies to make the most effective use of state resources in addressing the need for qualified language interpreters.
- Training programs for judges, court staff, and attorneys on issues related to conducting court proceedings and providing court-related services involving non-English-speaking people.
- A funding strategy to support any increase in costs that would be required to implement and maintain the recommended program.

In response to the Supreme Court's order, the Advisory Group reviewed and discussed the findings of a survey of Iowa judges and district court administrators regarding the demand for, and administrative issues related to, court interpreters. The findings indicated that there has been a significant increase in the need for court interpreters in the state courts, that there are concerns about the quality of court interpreters, and that there is broadly based support for basic training requirement for court interpreters.⁸

⁴ For example, according to an interpreter on the Advisory Group, a Hispanic defendant in Iowa was charged with kidnapping. (He was a divorced father who took his child away from the mother, who had been granted custody). A court interpreter translated the charge of "kidnapping" as "child sleeping." The defendant signed a written guilty plea to "child sleeping" (as he understood it from the interpreter). The court then sentenced him to up to 25 years in prison. When the error in interpretation was discovered, however, the attorney successfully moved to vacate the sentence.

⁵ See 8 U.S.C. § 1227(a)(2).

⁶ There are, however, extensive skill requirements for sign language interpreters. See, *Rule 1, Supreme Court Rules on the Qualifications and Compensation of Interpreters for Deaf or Hard-of-Hearing Persons*. According to these rules, a sign language interpreter shall be certified under the National Testing System of the Registry of Interpreters for the Deaf and shall hold (1) a valid comprehensive skills certificate (CSC), (2) both a certificate of interpretation (CI) and a certificate of transliteration (CT), (3) a master comprehensive skills certificate (MCSC), or (4) a specialist certificate: legal (SC:L), commensurate with their experience.

⁷ See a copy of the Supreme Court's Order in Appendix 1.

⁸ See Appendix 2 for tables on key issues addressed by the survey of judges and court administrators.

In addition, during the course of its deliberations the Advisory Group obtained information on what other states are doing in the areas of interpreter training and certification.⁹ The Consortium for State Court Interpreter Certification (hereafter the Consortium)¹⁰ and the State Court Administrators' offices in Minnesota¹¹ and Wisconsin¹² provided especially useful materials.

Through its research and deliberations the Advisory Group reached a consensus that, to ensure effective access to justice for non-English speaking litigants, witnesses and victims in Iowa, the judicial branch must take action to address the following critical needs:

1. a code of professional conduct to establish behavioral guidelines for judicial branch interpreters;
2. a process to certify the quality of court interpreters and to create incentives for interpreters to become certified;
3. basic and ongoing training programs for court interpreters;
4. creation and maintenance of a statewide roster of judicial branch interpreters who have completed basic court interpreter training requirements;
5. a rule of procedure requiring courts to use a certified interpreter if one is reasonably available and, if one is not available, requiring the use of a non-certified interpreter on the statewide roster if one is reasonably available;
6. adequate staff, procedures and equipment to effectively administer the proposed training and certification programs;
7. a statewide fee structure for court interpreters that provides an incentive for interpreters to obtain certification; and
8. education of immigrants, judges, attorneys, and court staff on an array of issues related to the needs and rights of non-English speaking persons, including but not limited to:
 - ◆ informing criminal defendants that, if they are not U.S. citizens, a conviction could result in adverse consequences on their immigration status;
 - ◆ educating judges and attorneys about these immigration-related issues;
 - ◆ educating judges, attorneys, and court staff about cultural differences that might affect the way immigrants perceive American laws, the justice system, and the roles of judges and attorneys in the legal process; and
 - ◆ educating immigrants about their rights and duties under federal and Iowa laws and about the state justice system.

Many of the Advisory Group's recommendations on these issues can be implemented with little or no financial cost and would improve the quality of justice for non-English speaking persons in Iowa's court system. For example the Iowa judicial branch could:

- Adopt the Code of Professional Conduct for Judicial Branch Interpreters and Commentary (Appendices 3 and 4) and require court interpreters to take an oath that they will abide by the Code of Professional Conduct (Appendix 11).

⁹ Angela Weber, of the Bureau of Refugee Services, conducted telephone interviews with people in charge of, or involved with, court interpreter programs in numerous states to obtain information and advice about best practices in the areas of interpreter training and certification.

¹⁰ Staff at the National Center for State Courts in Williamsburg, VA, coordinates the Consortium for State Court Interpreter Certification. Founded in 1995, the Consortium currently has 27 members (state judicial branches), including most of Iowa's neighboring states (Minnesota, Wisconsin, Illinois, Missouri, and Nebraska). The Consortium offers court interpreter training materials and maintains court interpreter certification tests in at least 11 languages.

¹¹ See, Minnesota Supreme Court Interpreter Advisory Committee (1999), *Best Practices on Interpreters in the Minnesota State Court System* (Minneapolis, MN: Office of State Court Administration). Helen Boddy, director of the Court Interpreter Training Program in MN, also provided valuable advice on many issues considered by the Advisory Group.

¹² See, Committee to Improve Interpreting and Translation in Wisconsin's Courts (2000), *Improving Interpretation in Wisconsin's Courts* (Madison, WI: Office of State Court Administration).

- Require completion of an Application to be a Judicial Branch Interpreter (Appendices 8 and 9) before an interpreter can be used in an Iowa court.
- Recommend that judges use the proposed “In-Court Screening Questions” (Appendix 10).
- Require interpreters to use the standard claim form (Appendix 12).
- Implement the recommended supervisory order (Appendix 13) to inform litigants and other persons who need an interpreter to inform the district ADA coordinator.
- Adopt the proposed rules to require warnings to defendants that, if they are not U.S. citizens, conviction of a crime might adversely affect their immigration status (Appendix 14).
- Adopt, distribute, and educate judges on the guidelines for determining the need for a court interpreter (Appendix 15) and the guidelines for determining when two or more non-English speaking defendants in the same case require separate interpreters (Appendix 16).
- Educate judges, attorneys, and court staff about immigration-related issues that arise in cases involving aliens.
- Educate judges, attorneys, and court staff about cultural differences among various immigrant groups and how those differences might affect the way they are likely to perceive their rights in the court process and the roles of judges, attorneys, and law enforcement agencies in the justice process.

To achieve substantial improvement in the quality and administration of justice in this area, however, the judicial branch must fully implement all the key recommendations in this report. Full implementation of the recommendations will cost approximately \$103,500. This includes a one-time fee of \$15,000 to join the Consortium for State Court Interpreter Certification and hiring a full-time person to manage the interpreter training and certification program. In the second year, the cost would be approximately \$86,600.¹³ These cost figures might pose a barrier to progress on these important improvements, especially in a period of budget reductions in state government. Nevertheless, the judicial branch is committed to ensuring that non-English speaking persons can effectively participate in court proceedings and obtain the same high quality of justice that it provides to English speaking persons. Fully implementing the Advisory Group’s recommendations is the surest path to achieving this important goal.

Report organization

Section II contains a simple statement of the Advisory Group’s recommendations. Section III provides a commentary on, and rationale for, each of the five sets of recommendations. Section IV outlines the estimated costs for implementing the Advisory Group’s recommendations and suggested strategies for funding the program. The concluding section (V) offers final thoughts on the recommendations and their implementation. Finally, the appendices contain supporting materials including a proposed Code of Professional Conduct for Judicial Branch Interpreters and other proposed rules, guidelines and forms that could be used by the Iowa courts to carry out key recommendations in this report.

¹³ See section IV, p.23, for details on these estimated costs.

II. Recommendations of the Court Interpreter Policies Advisory Group

A. Adopt a Code of Professional Conduct For Judicial Branch Interpreters

The Supreme Court of Iowa should adopt a Code of Professional Conduct for Judicial Branch Interpreters (hereafter, Code of Professional Conduct) and a Commentary on the Code of Professional Conduct (see Appendices 3 and 4).

B. Implement a Judicial Branch Interpreter Certification Program

1. The Iowa judicial branch should strive to maximize the use of certified court interpreters and, therefore, should develop a system to certify the competence of verbal language interpreters working in the courts and to encourage interpreters to obtain certification.

2. To facilitate development and management of a high quality system to certify court interpreters, the Iowa judicial branch should join the Consortium for State Court Interpreter Certification.

3. The Iowa judicial branch should develop a certification program for Spanish language interpreters as soon as possible and, thereafter, consider developing a certification process for Bosnian (Serbo-Croatian) and Vietnamese interpreters.

4. The Supreme Court of Iowa should adopt a rule requiring the use of a certified court interpreter whenever one is reasonably available. (See Appendix 5.)

5. To be classified as “certified” on the statewide roster of judicial branch interpreters (see recommendation D.2.) a verbal language interpreter must pass a court interpreter proficiency exam(s) required by the Iowa judicial branch or by the federal courts or a member state of the Consortium for State Court Interpreter Certification, provided that the other jurisdiction requires an interpreter to pass at least the same types of language proficiency exams required by the Iowa judicial branch. To be classified as “certified” on the statewide roster of judicial branch interpreters, sign language interpreters shall hold a “specialist certificate: legal” (SC:L) from the National Testing System of the Registry of Interpreters for the Deaf.

C. Implement a Judicial Branch Interpreter Training Program

1. To be listed on the statewide roster of judicial branch interpreters, all verbal and sign language interpreters must first pass a multiple choice test on the Code of Professional Conduct for Judicial Branch Interpreters and then complete an orientation program for court interpreters.

a. Application materials for the exam on the Code of Professional Conduct should clearly indicate to prospective interpreters that proficiency in English is required to pass the exam.

b. Interpreters should have the opportunity to attend a brief training program (e.g., two to three hours) on the Code of Professional Conduct prior to taking the exam; or they should be allowed to study the Code of Professional Conduct and commentary on their own to prepare for the test.

c. A sign language interpreter with a specialist certificate: legal (SC:L) will not be required to complete the basic orientation program for court interpreters.

2. The court interpreter orientation program shall include:
 - a. an overview of the skills required of competent court interpreters;
 - b. an overview of the state court system;
 - c. an introduction to steps in the criminal court process (because this is the area where courts experience the greatest demand for language interpreters); and
 - d. an extensive review of the definitions of legal terms and other terms and phrases (including slang) commonly encountered in criminal court proceedings.
3. Completion of the Code of Professional Conduct exam and the orientation program for court interpreters will qualify the interpreter to be listed on the statewide roster of court interpreters for criminal cases only.
 - a. To be listed on the statewide roster as an interpreter for juvenile cases, the interpreter must take an additional course on the juvenile court process and terminology.
 - b. To be listed on the statewide roster as an interpreter for civil and domestic cases, the interpreter must take an additional course on the civil and domestic court processes and terminology.
4. In addition to completing the two-step requirements in recommendation C.1., sign language interpreters shall be tested through the National Testing System of the Registry of Interpreters for the Deaf and shall hold (1) a valid comprehensive skills certificate (CSC), (2) both a certificate of interpretation (CI) and a certificate of transliteration (CT), (3) a master comprehensive skills certificate (MCSC), or (4) a specialist certificate: legal (SC:L) to be listed on the statewide roster of judicial branch interpreters.
5. The Iowa Supreme Court should amend Rule 1 *of the Supreme Court Rules on the Qualifications and Compensation of Interpreters for Deaf or Hard-of-Hearing Persons* to be consistent with the Advisory Committee's recommendations. (See Appendix 6.)
6. The judicial branch, in cooperation with the Bureau of Refugee Services and the Division on Latino Affairs, should develop ongoing or advanced courses for interpreters. These programs should focus on interpreter skills enhancement (e.g., memory development, simultaneous interpretation skills, etc.) consistent with the Code of Professional Conduct and should prepare non-certified interpreters to succeed in obtaining certification.
7. The judicial branch should consult with staff, and use the resources of, the Consortium for State Court Interpreter Certification and its member states to develop effective basic and advanced training programs.
8. The interpreter orientation program should be offered in multiple regions of the state, or possibly in each judicial district, every year. Judges and court administrators from the judicial districts would participate to explain the court procedures in the particular district. An advanced training program should be offered approximately every six months, alternating locations between Des Moines and Cedar Rapids.

9. All training programs should be offered at reasonable cost to participants, subsidized if necessary by the judicial branch or executive branch agencies. Scholarships or reduced fees should be available for potential interpreters who show financial need.

10. The judicial branch should use available resources (e.g., the ICN, video tapes, “train the trainers”) to facilitate the interpreter training process.

11. Trainers should encourage interpreters to carry liability insurance.

D. Effectively Administer Programs And Procedures That Effect Access To Justice For Non-English Speaking Persons

1. The State Court Administrator shall hire a full-time person to coordinate efforts to ensure access to justice for non-English speaking persons in Iowa’s court system. The responsibilities of the statewide coordinator shall include, but not be limited to:

- a. planning and coordinating the interpreter training and certification programs;
- b. maintaining the statewide roster of judicial branch interpreters;
- c. assisting the judicial districts in effectively maintaining a system for recruiting, scheduling, and paying court interpreters; and
- d. serving as a source of information for immigrants, their families, law enforcement and the public on issues related to non-English speaking persons in the courts.

2. The State Court Administrator’s office shall develop and maintain a statewide roster of judicial branch interpreters which shall include only interpreters who have passed the exam on the Code of Professional Conduct and completed the orientation program for judicial branch interpreters, or a comparable exam and training program in another jurisdiction. (See Appendix 7.)

- a. State court administration shall regularly update the statewide roster of judicial branch interpreters in cooperation with the Division of Latino Affairs, the Bureau of Refugee Services and the Division of Deaf Services.
- b. State court administration should periodically review the availability of interpreters and update the statewide roster to remove interpreters who have moved or ceased the practice of court interpreting.
- c. State court administration shall post the most current statewide roster of judicial branch interpreters on the judicial branch web site and distribute the updated roster to the district court administrators and clerks of district court via email.

3. A prospective judicial branch interpreter shall submit an “Application to be a Judicial Branch Interpreter” to the district court administrator.

- a. There should be separate applications for verbal and sign language interpreters. (See Appendices 8 and 9.)
- b. The applicant shall be required to sign the application under penalty of perjury to discourage false statements and provide a sanction when appropriate.

4. The Supreme Court of Iowa should educate and encourage judges to ask specific questions of a court interpreter to ascertain the interpreter's qualifications and determine any apparent conflicts of interest. (See Appendix 10.)

5. In all cases, a judicial branch interpreter shall take an oath consistent with the Rules of Evidence and Chapters 622A and 622B of the Iowa Code and asserting compliance with the Code of Professional Conduct. The oath may be:

- a. in a signed document which shall be filed with the case (see Appendix 10), or
- b. asserted verbally in court before a judge (see Appendix 11).

6. If an interpreter has already been appointed to a case, the court should be responsible for scheduling the interpreter for court appearances.

7. To facilitate and expedite the payment of court interpreters the state should designate a single office and a single fund to be responsible for payment of all judicial branch interpreters.

- a. Courts will tax interpreter costs to litigants (excluding deaf litigants) only in civil cases and domestic cases.
- b. Small claims litigants should be responsible for a maximum of \$50 of the interpreter's fee per day; the balance should be paid by the state agency responsible for court interpreters costs or, until this state agency is established, by Inspections and Appeals.
- c. Costs for interpreters used by juvenile court officers should be paid by the state agency responsible for court interpreters costs or, until this state agency is established, by the county where the interpreter was employed.
- d. Costs for interpreters used by clerks of district court should be paid by the state agency responsible for court interpreters costs or, until this state agency is established, by the Inspections and Appeals.
- e. Indigency should be eliminated as a criterion for payment of interpreter claims by Inspections and Appeals.
- f. The courts will pay sign language interpreters in compliance with ADA requirements.

8. Clerks' offices that experience a regular demand for court interpreters should designate specific days or hours when an interpreter (most likely a Spanish interpreter) will be available and employ an interpreter during the specified times.

9. The judicial branch should work with the office of Inspections and Appeals to develop a single standard claim form for judicial interpreters. (See Appendix 12.)

10. The judicial branch should work with the Bureau of Refugee Services, the Division on Latino Affairs, the Division of Deaf Services and the General Assembly to establish a three-level statewide fee structure for judicial branch interpreters.

- a. The highest fee (\$50 per hour) should go to "certified" interpreters (as defined in recommendation B.5.) and, if necessary, to non-certified interpreters for languages for which interpreters are scarce.

- b. Interpreters on the statewide roster but who are not “certified” interpreters should receive a mid-level fee (\$35 - \$45 per hour) that is less than the fee for certified interpreters.
 - c. Interpreters who are not on the statewide roster of court interpreters nor “certified” by the Iowa judicial branch or another jurisdiction should receive a fee that is less than the fee for interpreters on the statewide roster (\$25 - \$30 per hour).
 - d. The various levels of fees should be stated as ranges to allow for a somewhat larger fee for more experienced interpreters at the given level, but an interpreter who meets the criteria for a given level should always be paid at least the minimum for that level.
11. The judicial branch should consider hiring a full-time interpreter (probably Spanish) in jurisdictions where there are sufficient demands to warrant hiring a full-time interpreter.
12. Each courthouse should have the following equipment installed or readily available in at least one of its courtrooms:
- a. phone jack/access to phone line
 - b. adequate speaker phone
 - c. tape recorder
 - d. video recorder (needed to create a record of sign interpreters for appeals)
 - e. microphone system
 - f. power strip/electrical outlet for the various types of equipment
13. The Supreme Court of Iowa should require courts to make an audio recording of simple misdemeanor trials and indictable criminal proceedings subsequent to arraignments in which a verbal language interpreter is used, and a video recording when a sign language interpreter is used, to preserve the record for appeal.
14. Telephone “language line interpreter services” and the use of video transmission for court appearances involving court interpreters should be used only for short or preliminary matters; they should not be used for hearings or trials except under extraordinary circumstances.
15. The Americans With Disabilities Act (ADA) coordinator in each judicial district should be the primary contact person for scheduling or handling questions related to court interpreters in the district.
16. The Supreme Court of Iowa should amend its supervisory order of November 6, 1995, which required a notice about available services to people with disabilities to be included on six types of court-generated documents; the notice should inform people who need an interpreter to contact the district ADA coordinator, who will arrange for a court interpreter. (See Appendix 13.)
17. The State Court Administrator should work with the Division of Deaf Services, the Division of Latino Affairs, and the Bureau of Refugee Services to develop a long-range strategy for recruiting judicial branch interpreters.

E. Educate Judges, Court Staff, Attorneys and Non-English Speaking Residents Regarding Immigration-Related Issues

1. The Supreme Court of Iowa should adopt a rule of criminal procedure that would require judges to inform all criminal defendants that, if they are not U.S. citizens, a conviction might result in their deportation or other adverse consequences on their immigration status. (See Appendix 14.)

2. The Supreme Court of Iowa should adopt a rule of criminal procedure that requires any written guilty plea to include a statement to the effect that, for criminal defendants who are not U.S. citizens, a conviction on a criminal charge might result in the defendant's deportation from the U.S. (See Appendix 14.)

3. The Supreme Court of Iowa should adopt guidelines for judges to assist them in determining the need for a language interpreter. (See Appendix 15.)

4. The Supreme Court of Iowa should adopt guidelines for determining when two or more non-English speaking defendants in the same criminal case require separate interpreters, and amend the Rules of Criminal Procedure to include a motion for separate interpreters. (See Appendix 16.)

5. State court administration, in cooperation with the Young Lawyers Division of the Iowa State Bar Association and/or other interested organizations, should develop a videotape in Spanish and possibly in other languages to educate non-English speaking persons about their rights and the criminal justice process in Iowa.

6. State court administration, in cooperation with the Young Lawyers Division of the Iowa State Bar Association and/or other interested organizations, should develop, periodically update, and distribute brochures in Spanish (and possibly other languages) that educate non-English speaking residents about the court system, the rights of criminal defendants, the potential consequences of a criminal conviction on their immigration status, and other court or legal issues.

7. The judicial branch should educate judges, the Attorney General's office should educate prosecutors, and the Iowa State Bar Association should educate attorneys about:

- a. the potential consequences of criminal convictions for defendants who are not U.S. citizens, and
- b. cultural differences among immigrant groups and the ways these differences might affect their understanding of American laws and the justice system.

8. The judicial branch should cooperate with other state agencies (e.g., Workforce Development, Department of Economic Development, Bureau of Refugee Services, and the Division on Latino Affairs) that routinely deal with immigrant-related issues to develop a statewide "Immigration Information and Resources Center." The IIRC would serve as a statewide clearinghouse for information helpful to immigrants and provide leadership in coordinating immigrant-related programs and services throughout Iowa.

III. Commentary on the Recommendations of the Court Interpreter Policies Advisory Group¹⁴

A. Adopt a Code of Professional Conduct for Judicial Branch Interpreters

Many court interpreters may have the requisite knowledge of English and the target language, and may have other important interpreter skills (e.g., excellent memory; ability to do both simultaneous as well as consecutive interpretation). But even a knowledgeable and skilled interpreter might not understand:

- ◆ the potential for bias, or the appearance of bias, when confronted with a personal conflict of interest in a case;
- ◆ the sensitive role that interpreters play in the courts and the need to maintain confidentiality regarding information they learn about a defendant or case during the course of the proceedings;
- ◆ the importance of complete interpretation, without adding or subtracting from statements or testimony during a court proceeding; or that
- ◆ an interpreter should not provide legal advice to non-English speaking litigants.

To ensure that interpreters in the Iowa judicial branch understand these issues and others that affect the scope of -- and limits on -- the role of a court interpreter, the Advisory Group recommends that the Supreme Court of Iowa adopt a Code of Professional Conduct for Judicial Branch Interpreters (hereafter, Code of Professional Conduct) and a Commentary on the Code of Professional Conduct. (See Appendices 3 and 4.)¹⁵

B. Implement a Judicial Branch Interpreter Certification Program

According to its statement of “core values” of the Iowa judicial branch, the Iowa Supreme Court asserts: “Iowa’s courts are committed to... high quality language interpretation services.”¹⁶ Ideally, all language interpreters working in the Iowa judicial branch would have a high level of understanding of both English and the target foreign language and a significant level of skill in doing interpretation. Currently, the Iowa courts do not have any standards or procedures for determining the competency of verbal language interpreters in the courts. A traditional way to verify at least a moderate degree of competence among professionals is to require them to pass an exam that adequately tests their knowledge and skills. Very few interpreters in Iowa have taken a verbal language certification test in part because such certification is not required in Iowa. However, as the number of non-English speaking immigrants has grown in most states over the past decade, the need for interpreter training and certification has gained greater attention. In 1995 a small group of state court systems joined together, with assistance from the National Center for State Courts, to form the Consortium for

¹⁴ Section III includes an introductory paragraph before the commentary on specific recommendations. There is commentary on most, but not all, specific recommendations. Commentary on a specific recommendation (e.g., B.1.) begins with a brief summary of the recommendation in italics. For a complete statement of each specific recommendation, see section II.

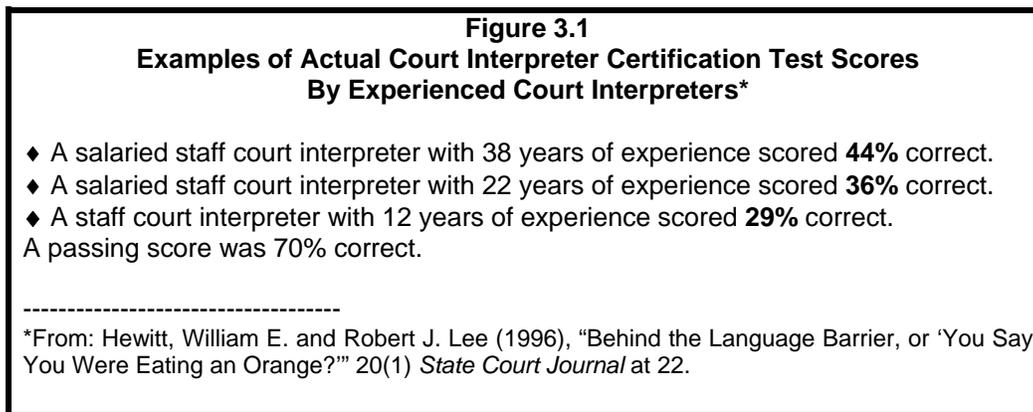
¹⁵ The Advisory Group drafted these documents based on the model Code of Professional Ethics for Court Interpreters and Commentary proposed by the Committee to Improve Interpreting and Translation in the Wisconsin Courts; this committee’s report is available through the Office of State Court Administration, Madison, WI. The Code of Professional Ethics proposed by the Wisconsin committee was based on a model Code of Ethics for Court Interpreters proposed by the Consortium for State Court Interpreter Certification. Most states that have adopted a code of professional conduct for court interpreters since the mid 1990s have based theirs on this model code of professional ethics.

¹⁶ See, Iowa Supreme Court (1999), Iowa Judicial Branch Mission Statement and Core Values; this quote is from the narrative under the core value of “Accessibility;” the other core values are: Fairness, Integrity, Independence, and Efficiency.

State Court Interpreter Certification. The Consortium advocates and facilitates development of court interpreter training and certification. It offers a model curriculum and materials for training court interpreters. Its most valuable contribution, however, is that it offers its members access to certification tests in 11 different languages. Because so many state court systems are confronting the challenge to improve the quality of their court interpreters, the Consortium's membership has grown to 27 states since its inception in 1995. The Advisory Group strongly believes the Iowa court system should join this movement.

B.1. The Iowa judicial branch should develop a certification program for verbal language interpreters.

According to the statement of "core values" of the Iowa judicial branch, the court system is committed to ensuring high quality language interpretation services. A certification test is a standard and uniform method for ensuring that court interpreters have achieved at least a moderate level of competence in the field. Currently, the Iowa court system has no guidelines or standards for court interpreters. Iowa judges and attorneys – who typically do not speak the foreign language at issue – are expected to determine the competence of interpreters. An interpreter often is deemed competent because she or he asserts competence in both English and the target language; because the interpreter has done interpreting in the local court for years; or because the interpreter is a respected member of the community. But reports on the outcomes of actual court interpreter certification exams show that even experienced, full-time court interpreters have failed standard court interpreter certification exams – in some instances by large margins. (See Figures 3.1 and 3.2.) The Iowa courts, therefore, cannot continue to rely on informal means for determining the competency of court interpreters. If the court system wants to develop a reliable group of certified interpreters in Iowa, the Iowa judicial branch must offer a certification program.



This recommendation is limited to a development of a certification program for verbal language interpreters because the National Testing System of the Registry of Interpreters for the Deaf (NTRSD) already offers certification tests for sign language interpreters. The Advisory Group recommends that, for a sign language interpreter to be listed as an interpreter "certified" for court interpreting, the interpreter must obtain a specialist certificate: legal (SC:L) from the NTRSD.¹⁷

B.2. The Iowa judicial branch should join the Consortium for State Court Interpreter Certification.

The Consortium for State Court Interpreter Certification (hereafter, the Consortium) is the most important resource for state court systems interested in developing a court interpreter certification program. Currently, 27 state court systems belong to the Consortium, including most of the states bordering Iowa (i.e., Minnesota, Wisconsin, Missouri, Nebraska, and Illinois

¹⁷ See recommendation B.5.

(Cook County)). The Consortium retains the rights to court interpreter certification exams in at least 11 different languages, which have been developed and validated by member states and consultants to the Consortium. It also offers interpreter training materials. The Advisory Group contacted the state court administrators' offices in numerous states to learn about their court interpreter training and certification programs. Everyone recommended that the Iowa judicial branch join the Consortium primarily because the value of having access to the Consortium's certification tests is worth the cost of membership. It could cost thousands of dollars for the Iowa judicial branch to develop and validate a court interpreter certification exam in just one language. Contacts in other states also emphasized the benefits of the annual meeting of Consortium members where representatives from each member state interact and share information on best practices in the field.

Iowa's membership in the Consortium would require a one-time fee of \$15,000. Members must also participate in the governance of the Consortium and agree to abide by Consortium guidelines for maintaining the security and integrity of the certification tests and testing process.

Figure 3.2
Examples of Errors By Experienced Court Interpreters
On a Court Interpreter Certification Test*

◆ A staff court interpreter with 12 years of experience:	
<u>Witness statement to be interpreted:</u>	<u>Interpreted as:</u>
(1) "... but <i>thought</i> nothing of it."	"... but <i>took</i> nothing out."
(2) "It <i>sure did!</i> "	"Yes, <i>I think so.</i> "
(3) "There were rocks thrown..."	"Rocks were <i>not</i> thrown..."
(4) "I don't intend to <i>rehash</i> the evidence."	"I don't intend to <i>hear</i> the evidence."
◆ A salaried staff court interpreter with 38 years of experience:	
<u>Witness statement to be interpreted:</u>	<u>Interpreted as:</u>
(1) "... there were no <i>injuries</i>"	"... there were no <i>insults</i>"
(2) "... it <i>had to be</i> dark."	"... it <i>was</i> dark."
◆ A salaried staff court interpreter with 22 years of experience:	
<u>Witness statement to be interpreted:</u>	<u>Interpreted as:</u>
(1) "...I was... in my <i>bedroom.</i> "	"I was.... in my <i>dormitory.</i> "

*From: Hewitt, William E. and Robert J. Lee (1996), "Behind the Language Barrier, or 'You Say You Were Eating an Orange?'" 20(1) *State Court Journal* at 22.

B.3. *The Iowa judicial branch should first develop a certification process for Spanish interpreters.*

Spanish is clearly the language for which Iowa courts are most likely to need an interpreter. Year 2000 census data show that there were over 82,000 Hispanic and Latino residents; 42,000 Asian residents; and about 24,500 residents of other race or ethnic groups¹⁸ (excluding white and African-American residents). In addition, the Language Line Services Company, which provides language interpretation services via telephone, reported that through the first six months of 2001, the Iowa courts used its services on 223 occasions. Spanish interpreters were used in 73 percent of the calls; Bosnian interpreters were second at 10 percent.

¹⁸ Many residents of Hispanic, Latino, Asian or other non-Black/ non-Caucasian descent fluently speak English. The numbers shown here are intended only to indicate that the courts are most likely to need Spanish interpreters.

It is noteworthy that few if any states offer the interpreter proficiency exams in every language. Most Midwest states offer exams in only one to three languages. Minnesota, for example, offers these proficiency exams for Spanish once each year; it also offers the exams in Russian and Hmong, but less than once per year. Missouri currently offers the certification exam in Spanish only.

B.4. The Iowa Supreme Court should adopt a rule requiring the use of a certified court interpreter when one is reasonably available.

The proposed rule, which requires the court to employ diligent efforts to obtain a certified interpreter (see Appendix 5), manifests the judicial branch's commitment to ensuring high quality language interpretation services. The rule provides some flexibility, allowing courts to appoint non-certified interpreters when diligent efforts to obtain a certified interpreter are unsuccessful. The courts would be required to look first for a certified interpreter listed on the statewide roster of court interpreters maintained by the State Court Administrator's office. (The statewide roster will include only interpreters who have at least passed an exam on the Code of Professional Conduct for Judicial Branch Interpreters and completed an orientation program for court interpreters (see recommendations C.1 and 2)). If the court fails to locate and schedule a certified interpreter, the court must then seek a non-certified interpreter on the statewide roster of court interpreters. Some cases, however, might involve a language for which there are no certified or non-certified interpreters on the statewide roster. The court may then use a non-certified interpreter who is not listed on the statewide roster of court interpreters. In these cases the courts must still employ interpreters that demonstrate indicia of competence in both English and the target language, even though they are not listed on the statewide roster of court interpreters.¹⁹

Under the proposed rule, in determining the reasonable availability of a certified interpreter, courts shall consider all relevant circumstances including the complexity of the hearing and the expense and delay involved in obtaining a certified interpreter. Many hearings (e.g., first appearances in criminal cases) are relatively short and simple and might not require a high degree of interpreter sophistication. For these types of hearings, unless a certified interpreter is available in a timely manner, it might not be sensible to impose the additional expense and delay on the litigants and the courts that would be required to obtain a certified interpreter. For trials or hearings on more complex issues, however, there should be a presumption in favor of incurring the additional expense to obtain a certified interpreter.

The proposed rule also will create a significant incentive for interpreters to obtain certification, especially if the state adopts a fee policy for court interpreters that provides a higher wage for certified interpreters. Currently, litigants sometimes avoid using a certified or highly experienced interpreter because other interpreters are available at a lower hourly rate. This creates a disincentive for interpreters to seek further training or certification.

Although the proposed rule requires courts to use certified interpreters when they are reasonably available, the rule is less strict than requirements in some states. The California court system, for example, requires its courts to use certified court interpreters in cases involving any of the eight most common foreign languages in the state.²⁰

¹⁹ Iowa courts should, for example, require non-certified interpreters who are not on the roster of state court interpreters to complete an "Application to Be a Court Interpreter" (see Appendices 7 and 8) as one step in assessing the background and experience of the interpreters.

²⁰ For information on the requirements for interpreters in the California court system at: www.courtinfo.ca.gov/programs/courtinterpreters/faq1.htm.

B.5. *To be listed as “certified” on the Iowa judicial branch’s statewide roster of court interpreters, an interpreter must pass a court interpreter certification exam.*

The Iowa judicial branch does not have to reinvent the wheel on this issue. The Consortium for State Court Interpreter Certification offers certification exams in 11 languages.²¹ The model interpreter certification process for verbal language interpreters includes four modules:²²

Module 1: Sight translation from the target language to English: The proctor gives the interpreter a legal document (200 – 225 words) in the target language (e.g., Spanish) that the interpreter interprets into English onto an audiotape. This module accounts for 12.5 percent of the total score.

Module 2: Sight translation from English to the target language: The proctor gives the interpreter a legal document (200 – 225 words) in English that the interpreter interprets into the target language (e.g., Spanish) onto an audiotape. This module also accounts for 12.5 percent of the total score.

Module 3: Consecutive interpretation: An exam proctor turns on the audio CD and plays a single statement from an attorney or witness in a simulated hearing. The proctor turns off the audio CD while the interpreter records her or his interpretation (either to or from the target language, as appropriate) onto an audiotape. The proctor then plays the next statement or “utterance” and the interpreter records her or his interpretation. The process is repeated until the simulated hearing is completed (approximately 45 to 50 utterances). This module accounts for 37.5 percent of the total score.

Module 4: Simultaneous interpretation: An exam proctor starts an audio CD that plays a simulated prerecorded hearing involving a witness who speaks the target language (e.g., Spanish). The hearing includes a total of 45 to 50 “utterances” by attorneys and a witness. The interpreter records the simultaneous interpretation (from English to the target language and vice versa) via microphone onto an audiotape. The simultaneous interpretation module is considered the most difficult. It accounts for 37.5 percent of the total score.

Test scoring: The interpreters’ audiotapes are sent to experienced test graders identified by the Consortium. Test results are sent to the interpreter and State Court Administrator within three to four weeks.

Recommendation B.5 also suggests that the Iowa judicial branch should recognize an interpreter certification received from the federal courts or from a member state of the Consortium, if the other jurisdiction requires an interpreter to pass the same or similar tests required by the Iowa judicial branch. It is possible that some states might classify interpreters as “certified” if they meet criteria that are less rigorous than the standards set by the Iowa judicial branch. The Iowa judicial branch should offer reciprocity if the standards for achieving certification are at least comparable to the standards adopted in Iowa.

Finally, sign language interpreters who hold a “specialist certificate: legal” (SCL) go through a rigorous court interpreter training program that is comparable to the certification testing program proposed for verbal language interpreters. These sign language interpreters, therefore, should receive the “certified” designation on the statewide roster of interpreters. Sign language interpreters who hold other types of sign language certificates²³ have a sufficient knowledge of sign language, but lack the training in court terminology and procedures that would be required for a verbal language interpreter to become certified under the proposed plan.

²¹ The Consortium offers court interpreter certification exams in: Arabic, Cantonese, Haitian-Creole, Hmong, Korean, Laotian, Mandarin, Polish, Russian, Spanish, and Vietnamese.

²² See, Hewitt, William (1996), “A Court Interpreting Proficiency Test at a Glance: What It Looks Like and How It Is Developed,” 20(1) *State Court Journal* 24. Additional information obtained through a phone conversation with a staff member at the National Center for State Courts.

²³ See supra note 5.

Figure 3.3
Summary of the Minnesota Court Interpreter Certification Process*

Step 1: Pass a multiple-choice exam on the Code of Professional Ethics for Court Interpreters.

Step 2: Complete an orientation program for court interpreters
(Note: Completion of the first two steps allows an interpreter to be listed on the statewide roster of court interpreters.)

Step 3: Pass the exam on simultaneous interpretation.

Step 4: Pass the exams on consecutive and sight interpretation.

Minnesota offers the simultaneous interpretation test once each year at a cost of \$75. On average about 50 people take this test each year; about 12 pass the exam. The final step toward certification includes the exams on consecutive interpretation and sight interpretation, which are taken on the same day at a cost of \$125 per person. An average of 12 people take the "step two" exams; about 6 people pass them all. Minnesota currently offers certification exams in Spanish, Russian and Hmong.

According to the director of the Minnesota program, they usually spend about \$6000 per year on the two-stage testing program, including fees for test proctors, test graders, facilities, and equipment. The fees collected from interpreters do not always cover all the costs of the testing program.

* Information obtained through a telephone conversation with the director of the Minnesota Court Interpreters Program.

C. Implement a Training Program for Judicial Branch Interpreters

A training program for court interpreters is a key ingredient to improving the quality of justice for non-English speaking persons in our state. Currently, the Iowa judicial branch lacks any training programs or requirements for court interpreters. They are not required to know about professional ethics; nor are they required to know anything about the court system, legal procedures, or legal terminology. The proposed training programs will contribute significantly to filling these gaps in the knowledge and professionalism of many or most court interpreters in the state.

C.1. To be listed on the statewide roster of judicial branch interpreters, all verbal and sign language interpreters must first pass a multiple choice test on the Code of Professional Conduct for Judicial Branch Interpreters and then complete an orientation program for court interpreters.

This two-stage program is modeled on the basic training program for court interpreters developed by the Minnesota judicial branch, one of the founding members of the Consortium. (See Figure 3.) The program addresses two fundamental concerns about the quality of court interpreters. First, it requires that all interpreters understand the Code of Professional Conduct for Judicial Branch Interpreters, which educates interpreters about key issues related to court interpreting including the importance of: complete and accurate interpretation; impartiality and avoidance of conflicts of interest; professional demeanor; confidentiality; restrictions on public comment about cases on which they work; prohibition against giving legal advice; and the duty to report ethical violations. Most interpreters working in Iowa's courts probably do not understand many of the principles set forth in the Code of Professional Conduct and, therefore, probably violate some of those principles at some point during their work in the courts. Requiring court interpreters in Iowa to pass an exam on the Code of Professional Conduct

would be an excellent first step toward improving the quality and professionalism of court interpreters in Iowa.²⁴

C.2. The court interpreter training program should include at least: an overview of the required skills of a competent interpreter; an overview of the state court system and the criminal court process; and an extensive review of the definitions of commonly-used legal terms and other terms and phrases often encountered in the criminal court process.

Again, many interpreters in Iowa probably do not understand the state court system, court procedures, or the many legal terms commonly used in the court process. Moreover, they probably do not have a sufficient understanding of many phrases or slang used by litigants and witnesses in the court process. Interpreters who lack a sufficient understanding of these terms are likely to provide inferior interpretation services. The interpreter orientation program would provide at least an entry-level understanding of the court system, procedures, and legal terminology to every interpreter in the Iowa court system.²⁵

C.3. To facilitate the development of an effective interpreter training program, the Iowa judicial branch should join the Consortium for State Court Interpreter Certification.

The Consortium is an essential resource for any state court system considering development of an interpreter training and certification program. It is also natural to consult with its member states to learn from their experiences.

C.4. To be listed on the statewide roster of judicial branch interpreters, sign language interpreters must complete the two-step requirements in recommendation C.1 and shall hold one of the following certificates awarded after testing by the National Testing System of the Registry of Interpreters for the Deaf: (1) a valid comprehensive skills certificate (CSC), (2) both a certificate of interpretation (CI) and a certificate of transliteration (CT), (3) a master comprehensive skills certificate (MCSC), or (4) a specialist certificate: legal (SC:L).

Rule 1 of the *Supreme Court Rules on the Qualifications and Compensation of Interpreters for Deaf or Hard-of-Hearing Persons* already requires sign language interpreters to hold one of these certificates (or combination of certificates). By holding one of these certificates, sign language interpreters demonstrate at least a basic level of competence in their field. But they still need to understand the Code of Professional Conduct, court procedures, and legal terminology, which they will learn through the proposed training programs.

C.6. The Iowa judicial branch should work with the Bureau of Refugee Services (BRS), the Division on Latino Affairs (DLA), and the Division for Deaf Services (DDS) to develop and operate a court interpreter training program.

The BRS and DLA have substantial experience in working with non-English speaking residents in Iowa. The DDS is the agency that oversees services for deaf residents. It makes sense for the judicial branch to work with these organizations to develop training programs that help interpreters improve their knowledge and skills.

C.8. The court interpreter orientation program and other advanced training programs should be offered in multiple regions of the state each year.

This strategy would improve accessibility to the training program and encourage more interpreters to take advantage of the training, thereby increasing the number of interpreters on the statewide roster. Holding the sessions in different districts would also allow local judges to participate and explain some of the specific procedures in the district that might differ from the way other districts handle their cases.

²⁴ In Minnesota, the State Court Administrator's office offers an exam on the Code of Professional Conduct (50 multiple choice questions) three times each year at a cost of \$25 per person.

²⁵ In Minnesota, the court interpreter orientation program is offered twice each year at a cost of \$50 per participant.

In addition, the judicial branch should help support and prepare interpreters who seek certification by offering some training programs that go beyond the basic information offered in the orientation program. This is a logical step if the judicial branch values the goal to maximize the number of certified interpreters in the state.

C.9. All training programs should be offered at a reasonable cost to participants, subsidized if necessary by the judicial branch or executive branch agencies.

To attract interpreters, the judicial branch needs to remove unnecessary barriers. While the non-English speaking population in Iowa has grown significantly in the past decade, the demand for court interpreters in most rural areas is still relatively low. For a potential interpreter who lives in a rural area, the infrequent demand for interpreters might not justify the added expense to get the necessary training and possibly certification. The quality of interpreters is so important to the fundamental fairness of a court proceeding involving non-English speaking litigants or witnesses that the state should not assume that interpreters will seek sufficient training regardless of the cost. The state, therefore, should subsidize the training and certification process for court interpreters to encourage more interpreters to take the necessary training programs.

D. Effectively Administer Programs And Procedures That Affect Access To Justice For Non-English Speaking Persons

The Advisory Group identified an array of administrative issues that need to be addressed to effectively manage the proposed court interpreter training and certification programs.

D.1. The State Court Administrator shall hire a full-time person to coordinate efforts to ensure access to justice for non-English speaking persons in Iowa's court system.

A full-time staff person will eventually be required to assume the responsibilities associated with many of the recommendations in this report. For example, the full-time coordinator would be responsible for directing and managing the recommended training and certification programs and the statewide roster of interpreters; assisting the judicial districts and counties in recruiting, locating and scheduling interpreters; developing and implementing a methodology for periodically evaluating the quality of court interpreter services; and serving as a research and information resource person on issues related to immigrants in the courts.²⁶

The Advisory Committee understands that the judicial branch's budget during current fiscal year might not support a new professional position in the State Court Administrator's office, and that the budget will be at least as tight again in the next fiscal year. Addressing the concerns about the quality of court interpreter services is so important, however, that the Supreme Court should rank this new position and the recommended programs high on its list of priorities. The integrity of the courts and quality of justice for non-English speaking litigants are too important to wait two years or more to move forward on these recommendations.

D.2. The State Court Administrator's office shall develop and maintain a statewide roster of judicial branch interpreters which shall include only interpreters who have passed the exam on the Code of Professional Conduct and completed the orientation program for judicial branch interpreters, or a comparable exam and training program in another jurisdiction.

Under the proposed plan, interpreters will have to complete at least the two-stage basic training program to be listed on the statewide roster of judicial branch interpreters. The State Court Administrator's office would oversee the two-stage training program and maintain a

²⁶ In Missouri, there is a full-time "access to justice coordinator" who coordinates the court interpreter training and certification program, plus other initiatives that are related to improving and maintaining effective access to justice for court users including, but not limited to, compliance with the Americans With Disabilities Act and programs dealing with *pro se* litigants.

current list of interpreters who meet the criteria to be on the statewide roster of court interpreters. As the judicial branch implements the interpreter training and certification programs, the State Court Administrator's office should work with the Division of Deaf Services, the Bureau of Refugee Services, and the Division of Latino Affairs to identify current interpreters and to encourage them to obtain the necessary training to qualify for the statewide roster of judicial branch interpreters.

The Supreme Court will have to establish a date in the future when the state courts will be required to select interpreters from the statewide roster.²⁷ The Advisory Group recommends that the courts be required to use interpreters on the statewide roster (with exceptions when there are no "roster" interpreters available) within 18 to 24 months after the Supreme Court adopts and initiates the proposed training requirements. This should allow existing interpreters enough time to obtain the required training.

D.5. In all cases, a judicial branch interpreter shall take an oath consistent with the Chapters 622A and 622B of the Iowa Code and the Rules of Evidence and asserting compliance with the Code of Professional Conduct.

Iowa Code sections 622A.5 and 622B.5 require every court interpreter to take an oath in each court proceeding. Some observers have noted that this requirement is sometimes ignored in Iowa's courts. The Advisory Group believes the oath is an important means for reminding interpreters about the need not only for accurate interpretation but also for compliance with the Code of Professional Conduct in general. In cases involving interpreters who have not previously appeared in a particular court, or on days when there is a particularly busy calendar, the judge might prefer that an interpreter complete and sign a written oath, which could be part of a document that would allow judges to ascertain an interpreter's ability to interpret effectively for a particular litigant and to assess whether an interpreter might have a conflict of interest in the case. (See Appendix 10.) If the written oath and screening document is not used, a judge should employ a verbal oath in court. (See Appendix 11.)

D.6. If an interpreter has already been appointed to a case, the court should be responsible for scheduling the interpreter for court appearances.

This recommendation suggests that the court should be responsible for scheduling interpreters who have already been assigned to a case. Counties and districts apparently vary in who is responsible for scheduling interpreters. Adopting a uniform scheduling procedure across the state will reduce confusion for attorneys and interpreters who practice in multiple counties or districts.

D.7. To facilitate and expedite the payment of court interpreters the state should designate a single office and a single fund to be responsible for payment of all judicial branch interpreters.

Currently, the costs for court interpreters for indigent defendants are paid by the state Division of Inspections and Appeals. Costs for an interpreter for an indigent litigant in a civil or domestic case are covered by the court (from its jury and witness funds) and then charged to the litigant as court costs. If a juvenile court officer requires an interpreter, the county is supposed to cover the costs. This means interpreters have to go to three different agencies to obtain payment for their services. This has caused some confusion and delays in paying court interpreters. Significant delays in paying interpreters create a disincentive for interpreters to work for the judicial branch. This recommendation, to have a single state agency responsible for paying all interpreter costs, would simplify administration of interpreters and improve the working environment for interpreters. The Advisory Group further recommends that the cost of an interpreter for small claims litigants be limited to a maximum of \$50 per day, otherwise the

²⁷ There will be exceptions to this requirement, especially in cases involving a language for which there are no interpreters on the statewide roster.

cost of an interpreter could prevent a non-English speaking petitioner from pursuing a legitimate claim.

Recommendation D.7.f. calls for the elimination of indigency as a requirement for payment by Inspections and Appeals. This reflects the consensus of the Advisory Group that there is little practical difference between deafness and the cultural disability of being unable to understand the language used in a courtroom. The state currently pays for sign language interpreters in all types of cases, regardless of the deaf person's financial status. If the state is committed to a culturally diverse population and to access to justice, then the state should assume the responsibility to cover the cost of language interpreters in the courts regardless of whether a litigant is indigent.

D.10. *The judicial branch should work with the Bureau of Refugee Services, the Division on Latino Affairs, the Division of Deaf Services and the General Assembly to establish a statewide three-level fee structure for judicial branch interpreters.*

A statewide fee structure for court interpreters is a key part of the overall effort to create incentives for more interpreters to attain certification. The fee structure would require a higher fee for certified court interpreters (\$50 per hour) than for non-certified interpreters on the statewide roster (\$35 - \$45 per hour). Interpreters not on the statewide roster would receive the lowest fee (\$25 - \$30 per hour). Currently, courts and counties have an incentive to retain non-certified interpreters because they typically cost less than certified interpreters. In effect this probably discourages interpreters from seeking opportunities for more training and possibly certification because they are likely to price themselves out of work opportunities. To create a positive incentive for interpreters to attain certification, however, the proposed fee structure is not enough. There should be a rule of procedure that effectively requires the courts to employ a certified interpreter if one is reasonably available in or near the jurisdiction. (See recommendation B.4.) A rule of this kind, combined with a fee structure that requires a higher wage for certified interpreters, will create an environment that is likely to encourage more interpreters to seek certification.

D.14. *Telephone "language line interpreter services" and the use of video transmission for court appearances involving court interpreters should be used only for short or preliminary matters; they should not be used for hearings or trials except under extraordinary circumstances.*

The interpreter service via long-distance telephone currently used by the state courts provides a viable alternative to an in-person interpreter for rural jurisdictions that do not have easy access to interpreters and for any jurisdiction that needs an interpreter for a language for which it is especially difficult to locate an interpreter. However, some attorneys and judges have suggested that this type of service be used only for very brief and simple hearings (e.g., first appearances in criminal cases). First, the "language line" service is expensive (as much as \$150 per hour), so it would be too costly for long hearings. Second, the interpreters are not necessarily knowledgeable about court procedures or legal terminology, so they have some significant limitations (just like many interpreters in Iowa's courtrooms today). Third, technical difficulties with the telephone connection or equipment can create problems. So in general, while this type of service provides a valuable alternative for some situations in the court, its use should be limited.

D.15. and 16. *The ADA coordinator in each district should be the primary contact for scheduling and handling questions about court interpreters. And notices sent with key pleadings and other appropriate court documents should inform non-English speaking persons to contact the ADA coordinator if they will need a court interpreter to participate in a court proceeding; the court should then be responsible for locating and scheduling a court interpreter.*

The ADA coordinator in each district is already responsible for handling requests for special equipment or accommodations to assist persons with disabilities in court proceedings. It

makes sense to have this person also handle requests from non-English speaking persons who, due to the cultural handicap of not speaking English, need a court interpreter to effectively participate in the court process. A simple amendment to the current notice on six types of pleadings and other court-generated documents will also serve to inform non-English speaking litigants that they can contact the ADA coordinator to arrange for an interpreter at the court proceeding. (See Appendix 13.)

E. Educate Judges, Court Staff, Attorneys and Non-English Speaking Residents Regarding the Rights and Needs of Non-English Speaking Persons Involved in the Legal System

The Advisory Group identified several issues, besides those involving court interpreters, that needed to be addressed to improve access to, and the quality of, justice for non-English speaking persons. In general, all the recommendations in this section address the need for information and education of non-English speaking persons, judges, court staff, and attorneys regarding the rights and needs of non-English speaking persons in the Iowa court system.

E.1 and E.2: The Supreme Court of Iowa should adopt rules of criminal procedure that the courts to inform criminal defendants, by a judge in court and in the text of a written guilty plea, that if the defendant is not U.S. a citizen a conviction might result in adverse consequences on their immigration status. (See Appendix 14.)

One of the most critical issues facing immigrants in the courts is that an immigrant can be deported after conviction of even some relatively minor crimes. Many immigrants do not understand this and will accept a guilty plea offer because they can avoid jail time, only to learn a few days later that they are going to be deported. An increasing number of state court systems are taking affirmative steps to inform immigrants that conviction of a crime could have adverse consequences on their immigration status. The Iowa Supreme Court of Iowa has a long and distinguished tradition of being a leader in the protection of the rights of women and minorities. By adopting recommendations E.1 and 2, the Supreme Court will continue this tradition by joining the growing number of state court systems (16) that take affirmative steps to inform defendants that a conviction could have an adverse impact on their immigration status.

E.3 and 4: The Supreme Court of Iowa should adopt guidelines for judges to assist them in determining the need for a language interpreter (see Appendix 15) and for determining when two or more non-English speaking defendants in the same criminal case require separate interpreters (see Appendix 16).

These recommendations provide straight-forward guidance for judges on determining the need for an interpreter and for determining when separate interpreters would be appropriate for two or more non-English speaking defendants involved in the same case. The guidelines should help improve the quality and uniformity of judges' decision-making in these areas.

E.5 and 6: Through development of videos and brochures in Spanish (and possibly other languages), state court administration, the Young Lawyers Division of the Iowa State Bar Association and/or other interested organizations should cooperate to educate non-English speaking persons about their rights in the criminal and civil justice systems in Iowa.

In its 1996 report, *Charting the Future of Iowa's Courts*, the Iowa Supreme Court's Commission on Planning for the 21st Century recommended that the Supreme Court "effectively educate the public about the judicial branch."²⁸ The non-English speaking segment of Iowa's population has a heightened need for education about law and the courts in Iowa. As indicated earlier, immigrants are particularly vulnerable in the criminal justice system because conviction

²⁸ See, Iowa Supreme Court Commission on Planning for the 21st Century (1996), *Charting the Future of Iowa's Courts*. Des Moines, IA: State Court Administrator's Office, p. 135.

of even some minor crimes could result in their deportation. But non-English speaking residents also need information about their rights and the procedures in other areas, including small claims, traffic, and domestic relations cases. The videos and brochures could be distributed to each county courthouse, each school district, area education agencies, public libraries, and interested organizations. The brochures could also be distributed through the judicial branch and Iowa State Bar Association websites.

E.7 The judicial branch should educate judges, the Attorney General's office should educate prosecutors, and the Iowa State Bar Association should educate attorneys about: the potential consequences of criminal convictions on defendants who are not U.S. citizens, and about cultural differences among immigrant groups and the ways these differences might effect their understanding of American laws and the justice system.

This recommendation calls for an initiative to educate key groups within the justice system regarding immigration-related issues that confront non-English speaking persons in our courts. It also calls for education of judges and attorneys regarding the cultural differences among immigrant groups and how those differences might effect the way the respective groups are likely to perceive the courts, American laws, the roles of judges and attorneys, and the rights of litigants. Greater understanding of these differences might lead judges and attorneys to reduce the cultural barriers that lead to misunderstandings in the legal process and, therefore, improve the quality justice.

Other states have already blazed a trail in this area. Georgia has produced a video in Spanish to assist pro se litigants in civil cases. Connecticut has produced a video in Spanish to explain the rights of defendants after arrest. So, the Iowa judicial branch and state bar association could build on work already done in this area.

E.8 The Judicial Branch should cooperate with other state agencies (e.g., Workforce Development, Department of Economic Development, Bureau of Refugee Services, and the Division on Latino Affairs) that routinely deal with immigrant-related issues to develop a statewide "Immigration Information and Resources Center." The IIRC would serve as a statewide clearinghouse for information helpful to immigrants and provide leadership in coordinating immigrant-related programs and services throughout Iowa.

Several state agencies have information that would be useful to immigrants in Iowa. Immigrants often need information about employment issues, social services, housing alternatives, health services, locating relatives, or court-related issues. Navigating the maze of state agencies to get the necessary information can surely be frustrating. The state could do a much better job in coordinating this information if there was a single office that would serve as a clearinghouse for information often needed by immigrants. The courts play a key role in the lives of many immigrants. The Iowa judicial branch, therefore, should work with other state agencies and the state legislature to develop an office, preferably within the executive branch, that would serve this clearinghouse function.

IV. Estimated Costs and Funding Strategies

A. Estimated Costs

The training and certification programs recommended by the Advisory Group are based on the model developed by the Minnesota court system. The cost estimates in Figure 4.1, therefore, are based on figures obtained from the Minnesota Court Interpreters Program.

Figure 4.1			
Estimated Costs for the Court Interpreter Training and Certification Programs			
FIRST YEAR:	# of Faculty per Event	# of Events	Total Cost
A. Training Costs			
<u>3 Code of Professional Conduct Classes/Exams</u> (1/2 day ea.)			
Faculty: Time @ \$150 per half day	1	3	\$450
Hotel (\$55/day)	1	3	\$165
Mileage (400 miles @ \$.29)	1	3	\$348
Meals (\$25/day)	1	3	\$75
Materials (\$5 ea.) X 30 people per session		3	\$450
Subtotal			\$1,488
<u>3 Interpreter Orientation Programs</u> (2 days ea.)			
Faculty: Time @ \$300 per day	5	3	\$9,000
Hotel (\$55/day; 1 night)	5	3	\$825
Mileage (400 miles @ \$.29)	5	3	\$1,740
Meals (\$25/day; 2 days)	5	3	\$750
Materials (\$20 ea.) X 30 people per session		3	\$1,800
Subtotal			\$14,115
<u>1 Advanced Spanish Interpreter Training Course</u> (2 days)			
Faculty: Time @ \$300 per day	3	1	\$1,800
Hotel (\$55/day; 1 night)	3	1	\$165
Mileage (400 miles @ \$.29)	3	1	\$348
Meals (\$25/day; 2 days)	3	1	\$150
Materials (\$20 ea.) X 20 people per session		1	\$1,200
Subtotal			\$3,663
B. Staff Costs - Full-time director of court interpreter programs (incl. benefits)			\$62,500
C. Membership in Consortium for State Court Interpreter Certification (1-time fee)			\$15,000
D. Equipment for training & testing (tape recorders; headphones)			\$1,700
E. Computer & software for Director/Staff			\$5,000
TOTAL FIRST YEAR COSTS			\$103,466
SECOND YEAR:			
A. Training Costs			
<u>3 Code of Professional Conduct Classes/Exams</u> (1/2 day ea.)			
			\$1,488
<u>3 Interpreter Orientation Programs</u> (2 days ea.)			
			\$14,115
<u>1 Advanced Spanish Interpreter Training Course</u> (2 days)			
			\$3,663
B. Spanish Certification Exam			
2 proctors (2 days)			\$1,200
2 professional interpreters to grade exams			\$1,800
C. Staff Costs			
Full-time director of court interpreter programs (including benefits)			\$64,375
TOTAL SECOND YEAR COSTS			\$86,641

If all the recommendations are implemented in the first year, the total cost will be approximately \$103,466. (See Figure 4.1.) This would include the cost of a full-time director for the court interpreter training and certification programs; three courses and exams on the Code of Professional Conduct for Judicial Branch Interpreters; three court interpreter orientation programs; and one advanced training program for Spanish interpreters. It also includes the one-time fee of \$15,000 for joining the Consortium for State Court Interpreter Certification and costs for equipment that would not be incurred in the second year.

During the second year, costs would be approximately \$86,641. This would include the cost of the full-time director, the same number of training programs, plus a Spanish language certification exam.

There may be other costs that have not been included in Figure 4.1, including the cost to fly trainers in from distant locations; the possible cost for secretarial support for the director of the program; costs for brochures and publications; travel costs for the director or other staff to attend national meetings related to interpreters; office-related costs (e.g., phones); and postage.

B. Funding Strategies

To effectively implement all the recommendations in this report, the Iowa general assembly will have to provide some additional funding. The Supreme Court of Iowa should consider the following two funding strategies:

1. The judicial branch could seek its own funding from the general assembly to implement and maintain court interpreter training programs and sufficient staff to administer them.

2. The court system is just one institution in Iowa that has a need for improving the quality and availability of interpreters. Social services agencies, health care facilities, and businesses (to name a few) also need high quality interpreters. Therefore, a second strategy might be to ask the general assembly to provide additional funding to the Bureau of Refugee Services, which would be primarily responsible for developing and funding training programs for interpreters in several areas of expertise (e.g., medical, court, social services interpreting). The judicial branch would work with the BRS to develop the curricula for training programs for court interpreters, but the BRS would cover the costs of those programs.

V. Conclusion

Through its statement of core values in 1999, the Supreme Court of Iowa clearly expressed a commitment to ensuring high quality interpretation services in the state's courts. Currently, the Iowa court system lacks any standards or requirements for court interpreter education or training and has no Code of Professional Conduct to guide the behavior of interpreters. With a growing number of immigrants in Iowa, it is imperative that the judicial branch address concerns about the quality of interpreter services in the courts. Court interpreter training curricula and materials and certification tests developed by other states and the Consortium for State Court Interpreter Certification are readily available. The Iowa judicial branch, therefore, should take advantage of these resources and move forward expeditiously with the development and implementation of a court interpreter training and certification program.

Everyone in state government is aware that revenue projections for the remainder of the current fiscal year – and even for the next fiscal year – suggest that all branches and agencies are likely to face severe budget constraints in the next year or more. Nevertheless, inferior interpretation services, which are probably common under current conditions in the Iowa court system, pose a serious threat to the quality of justice for non-English speaking persons. Given the potential gravity of this issue, the Supreme Court should find a way to overcome financial constraints and begin implementing key recommendations in this report as soon as possible.

In fact, substantial progress can be made on these recommendations while the judicial branch pursues funding for a full-time coordinator for the court interpreter training and certification programs and to support the proposed training and certification programs. For example, the following steps can be implemented with little or no cost to the judicial branch:

- Adopt the Code of Professional Conduct for Judicial Branch Interpreters -- and Commentary (Appendices 3 and 4) and require court interpreters to take an oath that they will abide by the Code of Professional Conduct (Appendix 11).
- Require completion of an Application to be a Judicial Branch Interpreter (Appendices 8 and 9) before an interpreter can be used in an Iowa court.
- Recommend that judges use the proposed “In-Court Screening Questions” (Appendix 10).
- Require interpreters to use the standard claim form (Appendix 12).
- Implement the recommended supervisory order (Appendix 13) to inform litigants and other persons who need an interpreter to inform the district ADA coordinator.
- Adopt the proposed rules to require warnings to defendants that, if they are not U.S. citizens, conviction of a crime might adversely affect their immigration status (Appendix 14).
- Adopt, distribute, and educate judges on the guidelines for determining the need for a court interpreter (Appendix 15) and the guidelines for determining when two or more non-English speaking defendants in the same case require separate interpreters (Appendix 16).
- Educate judges, attorneys, and court staff about immigration-related issues that arise in cases involving aliens.
- Educate judges, attorneys, and court staff about cultural differences among various immigrant groups and how those differences might affect the way they are likely to perceive their rights in the court process and the roles of judges, attorneys, and law enforcement agencies in the justice process.

In addition, existing staff in state court administration (e.g., the judicial branch planner) could work with staff at the Bureau of Refugee Services and the Division of Latino Affairs to develop and conduct training programs and examinations on the Code of Professional Conduct for Judicial Branch Interpreters. The judicial branch could also cooperate with these agencies to

conduct the proposed court interpreter orientation program in two or three locations during the first year. The BRS has already conducted a five-day training workshop for medical interpreters. It is possible that the BRS might have some funding to help support training in other areas, including court interpreters, in the coming fiscal year. All of these objectives could be accomplished within the next several months. Together, they would constitute a substantial improvement in the quality of justice for non-English speaking persons.

The greatest improvements in the quality of interpretation services, however, will be realized when the Iowa judicial branch:

- implements the orientation and advanced training programs for interpreters;
- requires interpreters to pass an exam on the Code of Professional Conduct for Judicial Branch Interpreters and complete a court interpreter orientation program to be listed on the statewide roster of court interpreters;
- implements a rule that requires the courts to use a certified interpreter if one is reasonably available and, if not, then to use an interpreter on the statewide roster of court interpreters (see Appendix 5);
- offers a certification exam in Spanish (and possibly others languages); and
- implements a statewide pay structure that provides a financial incentive for interpreters to become certified.

When all of these recommendations are fully implemented, the Iowa judicial branch can declare -- with a much higher degree of confidence than currently possible -- that it is doing all it can to ensure access to justice for non-English speaking people in the state.