

Michigan Coalition for Immigrant and Refugee Rights
c/o Michigan Immigrant Rights Center
3030 S. 9th St. Suite 1A
Kalamazoo, MI 49009

August 21, 2012

Clerk
Michigan Supreme Court
P.O. Box 30052
Lansing, MI 48909
Email: MSC_clerk@courts.mi.gov

Re: Proposed MCR 1.111 and 8.127

To Whom It May Concern:

The Michigan Coalition for Immigrant and Refugee Rights (MCIRR) is a membership organization whose organizational members and individual supporters seek equal justice for Michigan's immigrants. A list of our organizational members is attached to this letter. Since our organization was founded in 1989, many of our members have been deeply troubled by the unequal access to justice experienced by immigrants and refugees with limited English proficiency (LEP) in our state courts, particularly in civil matters. **It is imperative in a society predicated upon the rule of law that all persons whose rights will be affected by court actions have the chance to be understood and to understand.** We are falling far short of that standard today and inadequate language access hurts not only the LEP persons whose interests we represent, but the integrity of the entire system and the rights of our whole community.

Our members include many bilingual and bicultural professionals and private citizens who are frequently called upon by members of our community with limited English proficiency to interpret in the state courts without compensation, training, or evaluation. We are not, generally, professional interpreters, and we often have grave reservations about serving in this capacity, but the doors of the courthouse would be effectively closed to many members of the communities we serve if we were to decline the often desperate requests we

receive. We serve individuals who have been harmed by lack of interpretation, poor interpretation, interpretation by interested parties, and delay.

We have long viewed the current court rule, MCR 2.507(D) and the widely varied local practices which it permits, as entirely inadequate for ensuring access to justice for LEP persons. So, we welcome the publication of proposed rules MCR 1.111 and 8.127 as an effort to address this critical issue. However, as we will discuss in detail below, we view several of the proposed alternatives as failing to meet the basic requirements of access and fairness and failing to comply with Title VI (Title VI) of the Civil Rights Act of 1964, 42 U.S.C. § 2000d to 2000d-7, and the prohibition on national origin discrimination in Michigan's Elliott-Larsen Civil Rights Act, MCL 37.2101 *et seq.* As recipients of Federal funding, the state courts are clearly obligated to comply with Title VI and, fortunately, there is a great deal of clear law and policy to guide Title VI compliance.¹ Most notably, we urge you to consider the clear guidance recently issued by the United States Department of Justice (USDOJ) to the North Carolina courts in March of this year and the August 16, 2010, USDOJ guidance to all Chief Justices and Court Administrators.²

Based on our experiences, our knowledge, and the above-referenced USDOJ guidance, our comments reflect our informed belief that equal access, basic fairness, and Title VI require that LEP persons have oral and written language services that are: **1) competent; 2) disinterested; 3) provided at no cost to the LEP person; and 4) provided to all LEP persons who must interact with the court in any way including all court-sponsored or mandated evaluations and programs.** We will now comment in detail on the specifics of the proposed rule:

MCR 1.111(A)(2)(a) through (c) “Certified foreign language interpreter”
MCR 1.111(A)(5) “Qualified foreign language interpreter”

We fully support the tiered credentialing of language interpreters and effort to ensure that those with potential conflicts of interest do not serve as interpreters. However, some alternatives within these rules contemplate that LEP persons would be charged for language services in some circumstances. So, we must note that our support for the requirement that interpreters be qualified, credentialed, and disinterested is predicated upon the assumption that all language services will be

¹ Various part of the unified court system have received and continue to receive federal funds from various sources, including at least \$1,103,856 in grant funds from the Department of Health and Human Services alone for Fiscal Year 2012. Source: <http://taggs.hhs.gov> visited August 21, 2012.

² United States Department of Justice letter to Hon. John W. Smith, March 8, 2012, available at: http://www.justice.gov/crt/about/cor/TitleVI/030812_DOJ_Letter_to_NC_AOC.pdf; United States Department of Justice letter to Chief Justices and Court Administrators, August 16, 2010, available at http://www.justice.gov/crt/lep/final_courts_ltr_081610.pdf

provided at no cost to the LEP person. We find the use of friend and family-member interpreters, in particular children and youth, to be extremely problematic, but, absent guarantees about who will compensate interpreters, we cannot advocate against the right of our low and middle income constituents to choose the only interpreters they are able to afford.

Thus, we recommend that certification requirements as well as both “Alternative B” options below be tie barred in order to avoid the possibility that an individual could be mandated to use the services of a costly professional interpreter and later face the burden of those costs. This could have a chilling effect on LEP communities’ willingness to bring disputes to court which would constitute illegal national origin discrimination and could have undesirable consequences for the entire community.

MCR 1.111 (B) Appointment of a Foreign Language Interpreter

We urge the adoption of Alternative B, which provides for the assignment of language interpreters for court operations, as well as in court proceedings, for all “parties of interest” as defined in the proposed rule. Title VI requires meaningful access both in and out of the courtroom. Further limiting who is entitled to language services and when would fail to ensure full access as well as the integrity of the process.

Alternative C’s limitation of the appointment to “indigent” persons and making all other appointments discretionary is unacceptable and not compliant with Title VI. We would analogize this to modifications made to courthouses in order to ensure compliance with the Americans with Disabilities Act (ADA). In addition to being impermissible under the ADA, requiring wealthy court patrons with disabilities to pay a fee to ride the elevator to offset the cost of the accommodation would be manifestly unfair. We do not view the inclusion of or respect for the rights of persons with disabilities as running exclusively to the benefit of those persons. We do not require disabled persons of means to bear the cost of their access because access benefits the entire community and reflects widely shared values. It also means that non-disabled persons whose rights can only be protected with the participation in the judicial process of a person with disabilities benefit as well. Similarly, because equal and universal access to justice in a system predicated on the rule of law runs to the benefit of all community members, not exclusively those with LEP, it is unreasonable to envision a system which requires any LEP person to bear the cost of access individually.

Alternative A limits the mandatory appointment of an interpreter to “a party, a participant, or a witness while testifying in a civil or criminal case or court proceeding.” This fails to ensure access by LEP persons to other critical and

necessary court functions including clerk's offices, Friend of the Court, probation and parole, or evaluation and alternative dispute resolution programs. For example, under this alternative, it would still be acceptable for a parent referred for a child-custody related psychological evaluation to use his new partner as his interpreter for the evaluation.³ Such a person has an obvious possible interest in shaping the outcome of the evaluation. Note that the new partner could choose to shape the outcome in a way that could negatively affect the interests of the LEP person *or* the opposing party in the matter who may or may not have limited English proficiency. Regardless, the judicial process is left without integrity.

MCR 1.111 (F)(4) Appointment of Foreign Language Interpreters [compensation provisions]

We recommend the adoption of Alternative B which provides for court payment of all mandated language interpretation services. However, we again urge tie-barring of Alternative B with Alternative B to MCR 1.111(B) to prevent the universally undesirable chilling effect that the possibility of high and unknowable costs of interpretation could drive LEP individuals and communities away from resolution of disputes in our courts. We note that USDOJ Title VI compliance guidance provides that language interpretation services are to be provided free of charge.⁴ Alternatives A and C are both unacceptable because they fail to meet Title VI standards and unfairly shift the burden of access to the LEP person.

MCR 1.111(g) Administration of Oath or Affirmation to Interpreters

We recommend that the phrase "so help you God" be deleted from the oath/affirmation. Reference to God in a secular proceeding could create religious or cultural conflicts for some interpreters and we do not believe that, on balance, the reference significantly increases the likelihood that interpreters will act with integrity.

Recommended addition to MCR 1.111

We urge clarification that any participant can raise an objection to an interpreter or an interpretation at any time. Many of our members have represented individuals in federal immigration proceedings or other forums where interpreters are provided and often conflicts, skill deficiencies, or errors only become evident as proceedings unfold. The rule should clarify that the court has the authority to take

³ We are aware of at least one recent instance in Michigan where this exact scenario took place although we do not have permission to provide identifying details.

⁴ United States Department of Justice letter to Chief Justices and Court Administrators, August 16, 2010, available at http://www.justice.gov/crt/lep/final_courts_ltr_081610.pdf

any appropriate action in response to the objection including instructing the interpreter, requesting clarification from the interpreter, or replacing the interpreter.

MCR 8.127 Foreign Language Board of Review

We support the creation of this board and recommend that it also be tasked with communication, planning, coordination and training of all court personnel and language services staff and contractors.

MCR 8.127(D) Interpreter Misconduct or Incompetence

We support all efforts to address and rectify interpreter misconduct and incompetence which has great potential to affect the rights of individuals, not exclusively LEP individuals, and the integrity of the courts.

Thank you for your time and attention to this important matter affecting access to justice in our state.

Sincerely,

A handwritten signature in cursive script that reads "Susan E. Reed".

Susan E. Reed
Secretary, Michigan Coalition for Immigrant and Refugee Rights Steering
Committee

Enclosures

MCIRR Member Organizations

ACCESS
ACLU of Michigan
Arbor Circle Corp.
Casa Latina
Catholic Diocese of Gaylord
Catholic Services of Macomb
Diocese of Grand Rapids Immigration Legal Services
Diocese of Kalamazoo Immigration Assistance Program
Farmworker Legal Services
Freedom House
Hispanic Center of Western Michigan
International Institute of Metropolitan Detroit
Justice for Our Neighbors, Southeastern Michigan
Justice for Our Neighbors, West Michigan
Lakeshore Legal Aid / LA VIDA
Lemkin House, Inc.
Lutheran Social Services of Michigan
Michigan Immigrant Rights Center
Michigan UU Social Justice Network
Piast Institute
Sisters of Mercy
STVCC-Immigration Law Clinic
The 313 Project
Thomas M. Cooley Law School
Unitarian Universalist Church of Greater Lansing
Michigan Migrant Legal Assistance Program
University of Detroit Mercy – Immigration Law Clinic