



U.S. Department of Justice

September 17, 2013

CERTIFIED, RETURN-RECEIPT REQUESTED

Mr. Matthew Schneider
Chief Legal Counsel
Michigan Department of Attorney General
525 W. Ottawa St.
Lansing, MI 48933

Re: Michigan Supreme Court Rule 1.111 (Foreign Language Interpreters)

Dear Mr. Schneider:

We write this letter to set forth our initial concerns regarding Rule 1.111 issued by the Michigan Supreme Court on September 11, 2013, which, among other things, allows courts to charge additional fees to certain parties who are limited English proficient (LEP) and require interpreters to understand and participate in proceedings in Michigan's state courts.¹ While Rule 1.111 appears to provide some improved interpreter coverage in the courts and, for the first time in Michigan, prohibits courts from charging the very poorest individuals for interpreters, we have grave concerns that the Rule will result in national origin discrimination. Ensuring that all who come before the court can participate in the proceedings in a language they understand is essential to achieving justice. Meaningful access to state courts in Michigan can be achieved only with additional improvements to Rule 1.111 and with actions that ensure nondiscriminatory implementation statewide.

As you noted in your press release accompanying the rules, the Department of Justice (DOJ) has been investigating complaints of national origin discrimination by the Michigan state courts, including the State Court Administrative Office's (SCAO), under Title VI of the Civil Rights Act of 1964, the Omnibus Crime Control and Safe Streets Act of 1968, and regulations implementing those statutes. This statewide investigation has included on-site visits, the review

¹ Adoption of Rule 1.111 and Rule 8.127 of the Mich. Ct. Rules (Foreign Language Interpreters), ADM File No. 2012-03 (Mich. Sept. 11, 2013) available at http://courts.mi.gov/Courts/MichiganSupremeCourt/rules/court-rules-admin-matters/Adopted/2012-03_2013-09-11_formatted.pdf (last visited Sept. 13, 2013).

of court documents and policies, interviews with judges and court staff, and interviews with community members and LEP individuals who have described policies and practices statewide that are inconsistent with Title VI language access obligations. As a result of this ongoing investigation, the Michigan Supreme Court has acknowledged publicly that LEP individuals in the state are denied access to courts, but in issuing Rule 1.111 without the concurrence of DOJ, the Court has created a new barrier to meaningful access for certain court users in the form of a surcharge, akin to a tax, based on English language ability.

Dispensing justice fairly, efficiently, and accurately is a cornerstone of the judiciary, and accurate communication is critical to its integrity. Many courts around the nation have committed to ensuring effective, nondiscriminatory communication with *all* who come to court in pursuit of justice. As you know, more than eleven years ago DOJ emphasized the obligation to provide language assistance services where “credibility and accuracy are important to protect an individual’s rights,” particularly in the courts. DOJ Guidance, 67 Fed. Reg. 41,455, 41,462 (June 18, 2002). Because the stakes can be so high in courtroom encounters, courts should undertake “every effort . . . to ensure competent interpretation for LEP individuals during all hearings, trials, and motions[.]” *Id.* at 41, 171. In an August 2010 Civil Rights Division Guidance Letter, DOJ again explained that “access to all court proceedings [are] critical.”² The Guidance Letter further stated:

Title VI and its regulations prohibit practices that have the effect of charging parties, impairing their participation in proceedings, or limiting presentation of witnesses based upon national origin. As such, the DOJ Guidance makes clear that court proceedings are among the most important activities conducted by recipients of federal funds, and emphasizes the need to provide interpretation free of cost. Courts that charge interpreter costs to the parties may be arranging for an interpreter's presence, but they are not "providing" the interpreter. DOJ expects that, when meaningful access requires interpretation, courts will provide interpreters at no cost to the persons involved.

We understand Rule 1.111 to require the appointment of an interpreter, but any court “can order the party to reimburse the court” for the costs of the interpreter after any criminal or civil proceeding if the person’s household income is greater than 125% of the poverty guidelines and it would not impede his or her ability to “defend or pursue the claims.” In all matters handled by the Michigan state courts, this Rule then allows a surcharge on individuals only because they do not speak English, so long as they make more than \$29,437.50 for a family of four and \$14,362.50 for an individual. This Rule creates a significant burden on working LEP families and individuals who have no choice but to resolve crucial issues through court proceedings such as child custody, domestic violence, juvenile justice, evictions and foreclosures, and criminal proceedings where one’s liberty is at stake. This is in stark contrast to SCAO’s rules prohibiting all state courts from charging deaf or hard of hearing individuals for interpreter costs regardless of income, or from requiring them to provide their own interpreters.³

² Letter from Asst. Att’y Gen. for Civil Rights to State Court Justices and Administrators 2 (Aug. 16, 2010) available at http://www.lep.gov/final_courts_ltr_081610.pdf (last visited Sept.13, 2013).

³ SCAO Admin. Memorandum 2010-07 from Steven D. Capps, Trial Ct. Servs. Dir., Mich. State Ct. Admin. Office on Americans with Disabilities Act (ADA) and ADA Amendments Act of 2008 to Circuit Court Judges and Family

SCAO should set a similar policy requiring compliance with Title VI to ensure that all LEP individuals are provided meaningful access to the courts.

In addition, Rule 1.111 injects great uncertainty for anyone seeking court protection or other action whose income is even slightly over 125% of the poverty level. The possibility of later receiving a bill for an interpreter may encourage LEP individuals to waive their right to interpreters, affect legal options and negotiating positions, and discourage people from coming to court in the first place. Adding to that uncertainty, SCAO counsel has explained to DOJ that implementation of the Rule will be left to judicial discretion, with each court developing a different implementation plan. The likely chilling effect of this Rule is the type of result that Title VI, the Safe Streets Act, and their implementing regulations intend to prevent.

Further, SCAO counsel has explained that Rule 1.111 applies in all criminal proceedings. It appears, then, that the rule may represent a retreat rather than progress, because we understand that interpreter costs prior to the changes to Rule 1.111 generally were not charged to criminal defendants.

You also are aware that our investigation has identified other needed reforms in SCAO's policies and procedures, including a comprehensive language access plan, training for judicial and court personnel, and the translation of vital court documents and information. We have acknowledged that it takes time to create systems that ensure competent interpretation in all court proceedings, to build a qualified interpreter corps, to ensure that vital documents are translated, and that court operations are accessible. However, because you have been aware of your civil rights obligations as articulated by the 2002 and 2010 DOJ Guidance and through our investigation for the past two years, we are disappointed that the issuance of this Rule did not reciprocate our concerted efforts to ensure that Michigan state courts meet their longstanding civil rights obligations.

Our investigation of the Michigan state courts continues. The Department has worked successfully with several other state court systems to implement compliant rules that ensure LEP individuals are provided meaningful access to all court proceedings, and we are confident that, working together, the same results can be achieved in Michigan.

Division Judges, et al 27 (October 28, 2010), *available at* <http://courts.michigan.gov/Administration/SCAO/Resources/Documents/Administrative-Memoranda/2010-07.pdf> ("If a person asks for a sign language interpreter at a court hearing, the cost may not be passed along to the person requesting that accommodation."). (last visited Sept.13, 2013).

Please note that this letter is a public document and will be posted on websites of the Civil Rights Division and United States Attorney Office in the Eastern and Western District of Michigan. We look forward to working with you to resolve this matter. If you have any questions, please contact Deeana Jang, Chief of the Federal Coordination and Compliance Section, at (202) 307-2222.

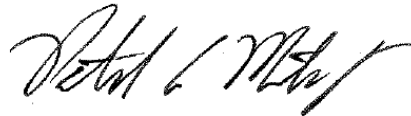
Sincerely,

A handwritten signature in black ink, appearing to read "Jocelyn Samuels".

Jocelyn Samuels
Acting Assistant Attorney General

A handwritten signature in black ink, appearing to read "Barbara L. McQuade".

Barbara L. McQuade,
United States Attorney
Eastern District of Michigan

A handwritten signature in black ink, appearing to read "Patrick Miles".

Patrick Miles
United States Attorney
Western District of Michigan