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## It's time to take care of court interpreters

By: admin August 19, 2022

The recently concluded budget season on Beacon Hill was cause for celebration in some quarters of the legal community.

For example, Anthony J. Benedetti, chief counsel of the Committee for Public Counsel Services, says that recruiting efforts to replenish the ranks of bar advocates — private attorneys who accept appointments to represent indigent criminal defendants — should get a boost, now that the Legislature has accelerated an increase to pay rates that had been expected to be phased in over three fiscal years.

Drawing on a surplus of revenue, lawmakers decided to skip over year 2 of the increases and jump right to year 3. That should go a long way toward taking CPCs out of the bind it increasingly found itself in, with older attorneys removing themselves from the bar advocate roster but younger lawyers, emerging from law school saddled with debt, feeling financially unable to take on the work, Benedetti says.

The flurry of legislative action in the session's 11th hour also included a bond bill earmarking \$95 million to accelerate the digital transformation of the state's courthouses and another \$35 million to modernize court administrative operations.

But even with all these funds flowing freely around the system, one subset of professionals in our courthouses might rightfully be wondering: "When will it be our turn?"

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As noted in a recent letter to the editor in Lawyers Weekly, per-diem interpreters last saw a pay increase in 2006, when the value of a dollar was nearly twice what it is today, according to the Bureau of Labor Statistics.

What the letter writer did not mention — perhaps because there have been so many twists and turns — is that a lawsuit the Massachusetts Association of Court Interpreters brought against the Trial Court in October 2015 is still languishing in Suffolk Superior Court.

Early on, the Trial Court was able to get several of the interpreters' claims dismissed based on sovereign immunity. But a breach-of-contract claim, grounded in the Trial Court's alleged failure to abide by the compensation rates outlined in the Standards and Procedures of the Office of Court Interpreter Services, lives on.

The interpreters also now have a live First Amendment retaliation claim, alleging that the Trial Court amended the Standards and Procedures in 2021 to strip the interpreters of the very rights they were suing under. Because the interpreters are seeking only declaratory and injunctive relief, sovereign immunity does not apply to the retaliation claim, a Superior Court judge ruled in March.

The plaintiffs are now awaiting a ruling on a contested motion to amend their complaint, which was argued on Aug. 10.

MACI members tell Lawyers Weekly that, not long ago, they were ready to settle the lawsuit with per-diem interpreters receiving long overdue, prospective raises.

But in settlement talks, the Trial Court insisted on bumping the pay rate for working half-days (up to four hours) only marginally (from \$200 to \$227), while applying a more substantial increase (\$300 to \$400) to the full-day rate. Per-diem interpreters work half-days far more frequently, the interpreters note.

While the new half-day rate might appear to compare favorably to the federal court rate, the devil is in the details, the interpreters add. Specifically, in federal court, interpreters are paid for their travel time, while in state court they are not, they say.

Per-diem interpreters are rough analogs to bar advocates. They might be private independent contractors, but they are deployed as supplements to staff in service of an important public function, one that, in the context of criminal cases, implicates constitutional concerns.



Moreover, part of the rationale for investing in making courts more virtually accessible applies with similar force when limited English proficiency, rather than mobility, is the barrier to accessing court services.

Make no mistake: This issue matters for civil lawyers, as well. An attorney with a non-English-speaking client at a settlement hearing is hamstrung if no interpreter is available. Or maybe it's a restraining order hearing, and there's no interpreter available; or the lawyer is on trial, and the client needs an interpreter.

The Trial Court may believe that it can out-argue — or simply outlast — the interpreters in Superior Court. But whether that would represent a "victory" for the judicial system is debatable at best.

To a large degree, this issue could be solved by money. As the recent investments in the justice system show, that's not in short supply for a change.

Rather than prolonging an already protracted legal war, the Trial Court should return to the negotiating table, this time with a more generous offer for the per-diem interpreters.

After 16 years, they have waited long enough for a raise.

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