

COURT INTERPRETERS

The appointment of a court interpreter is a discretionary duty of a judge. The judge decides who is to receive the services of an interpreter and whether an interpreter is qualified. This duty is very important, as the selection of an unqualified court interpreter can have a profound effect on the rights of everyone involved in a case before the court.

A court interpreter is a language mediator or language conduit whose participation allows an individual who does not speak or understand English to participate meaningfully in a judicial proceeding. An interpreter conveys the meaning of a word or a group of words from a source language (e.g. Spanish) into the target language. There are three (3) different modes of court interpretation:

(1) Simultaneous Interpretation: The interpreter speaks contemporaneously with the speaker. This mode of interpreting is often used when the court interpreter is seated at counsel table assisting a non-English speaking party.

(2) Consecutive Interpretation: The interpreter listens and speaks in a sequential manner after the speaker has completed a thought. The speaker may pause at regular intervals to facilitate the conveyance of his or her statements through the interpreter.

(3) Sight Translation: The interpreter reads and translates a written document orally in court.

A court interpreter is an officer of the court who must comply with a code of professional responsibility which imposes ethical responsibilities relating to the interpreter's conduct.

A Certified interpreter is an individual who has passed an oral examination, such as the federal court interpreters examination or an examination administered by a state court* or a recognized international agency (e.g., the United Nations) that has been shown to be valid and reliable. There is a growing recognition among professional groups of court interpreters of the need for standardized interstate testing and certification programs.

Many factors contribute to the miscarriages of justice that are likely to occur when linguistic minorities appear in court as litigants or witnesses. The most fundamental factor is the absence of professional competence standards for court interpreters. Few states have comprehensive, statewide mechanisms for ensuring that interpreters possess the appropriate minimum skills required for interpreting in a legal setting.

*A State Court Interpreter Certification Consortium was created to pool resources for developing and administering court interpreter test and training programs. The founding states are Minnesota, New Jersey, Oregon and Washington; however several states have become members of the consortium. Tennessee is not a member, **and this is something that needs to be brought to the attention of the Administrative Office of the Courts. The National Center**

for State Courts has prepared and maintains standardized manuals for test construction, test administration and test rater training.

Interpreting for Hearing Impaired. In the United States there is a large community of deaf individuals who have their own visual language, American Sign Language (ASL). Most members of this “culturally deaf” community are pre-vocally deaf; that is, they suffered hearing loss before the end of adolescence. Interestingly, persons who are audiologically deaf do not necessarily consider themselves part of the deaf community. This group is much larger than the culturally deaf community and consists of individuals who, despite being deaf or hard of hearing, maintain a primary language and cultural affiliation with the oral-language-speaking community. These individuals almost always developed their hearing impairment or deafness later in life or were raised as children by hearing parents who did not expose them extensively to members of the culturally deaf community. Their inability to hear does not mean that they are unable to communicate through oral language. Among deaf individuals who are not members of the culturally deaf community, the phrases hearing impaired or hearing disabled may be preferred to the word deaf. What people who cannot hear have in common is that they rely on information they can see to communicate. Beyond that, it is difficult to generalize.

Judges and other court officers should at least be aware of the several recognized methods of modes of communication used by deaf and hard-of-hearing individuals. These include speech reading or lipreading; gesturing (the most rudimentary and limited form of communication); written communication, including computer-aided real-time transcription; and sign language.

American Sign Language (ASL) is the primary language of the American deaf community, therefore learning ASL is prerequisite for certification as an interpreter for the deaf.

The most common requirement that states have established for interpreters for the deaf is certification by the National Registry of Interpreters for the Deaf (NRID). NRID certification is based on a rigorous evaluation of the candidate’s interpretation skills and knowledge of the NRID Code of Ethics by a group of professional peers. The NRID certification system establishes minimum levels of achievement, representing a starting point for interpreters, varying according to certification area and level of competence. Certified interpreters are expected to improve their skills by attending workshops and training seminars and through frequent use of sign language. Current NRID certificates include the following:

Certificate of Interpretation (C): ability to interpret between ASL and spoken English in both sign-to-voice and voice-to-sign.

Certificate of Transliteration (CT): ability to transliterate between signed English and spoken English in both sign-to-voice and voice-to-sign.

Interpreters who have been certified to practice in the federal courts must possess

a mastery of both source and target languages, as well as the technical ability to interpret. Professional interpreter organizations and language experts have identified the following elements needed for effective interpretation:

- * Comprehensive knowledge of the source and target language.
- * Ability to listen, comprehend, and discern the message conveyed in the source language.
- * Ability to grasp and maintain communication logic and distinguish between primary and secondary points.
- * Technical ability for short-term memory, simultaneous listening, and note taking.
- * Extensive vocabulary, specialized terminology, and general knowledge of many subject areas.
- * Message production, good diction and pronunciation.
- * Knowledge and familiarity with various dialects, colloquialisms, regionalisms, and cultural difference.
- * Ability to preserve language register, formal to formal and informal to informal, for a variety of speakers with diverse educational backgrounds.
- * Knowledge of idiomatic expressions in both languages.
- * High standards of professionalism and ethics.

STATE TRIAL COURTS
INTERPRETER POLICIES AND PROCEDURES

I. Authority

Pursuant to the Court Interpreters Act (28 U.S.C., Section 1827 (d) (1), in any criminal action and in any civil action initiated by the United States in a district court, the judge must utilize the services of a certified interpreter when a party or witness who may present testimony speaks only or primarily a language other than the English language, or suffers from a hearing impairment (whether or not suffering also from a speech impairment), so as to inhibit such party's comprehension of the proceedings or communication with counsel or the presiding judicial officer, or so as to inhibit such witness' comprehension of questions and the presentation of such testimony. The Act does not require that an interpreter be utilized when a party or witness suffers from speech impairment which is not accompanied by a hearing impairment. A court is not prohibited, however, from providing assistance to such an individual if it will aid in the efficient administration of justice.

II. Certification

A Certified interpreter is an individual who has passed an oral examination, such as the federal court interpreters examination or an examination administered by a state court* or a recognized international agency (e.g., the United Nations) that has been shown to be valid and reliable. There is a growing recognition among professional groups of court interpreters of the need for standardized interstate testing and certification programs.

A. Requirements

An interpreter shall provide to the State Trial Courts the necessary proof of certification. Certification consists of:

1. Successful completion of Federal Court Examination; or
2. Successful completion of examination administered by a State Court*; or
3. Successful completion of examination administered by a recognized international agency (e.g. the United Nations) that has shown to be valid and reliable.

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Certification has been established by Federal Guidelines for Tennessee in the following languages:

1. Haitian Creole
2. Navajo
3. Spanish

In the event that a certified interpreter has been certified by another state in a language other than those set out above, and presents the credentials stating this certification, they may be placed on the Court Roster for Interpreters.

B. Otherwise Qualified Interpreters

When a certified interpreter is not reasonably available, the Court may use an “otherwise qualified interpreter”. Otherwise qualified interpreters consist of the following two categories: professionally qualified and language-skilled.

(1) Professionally Qualified

To be included on the list of interpreters who are professionally qualified, an interpreter must demonstrate:

(a) Prior existing employment as a conference or seminar interpreter (staff or freelance) for the Office of Language Services of the United States Department of State, or the United Nations, or related agencies for which examinations are a condition of employment; or

(b) Membership in good standing in a professional interpreters association whose by-laws and practices at a minimum require as follows:

1. An application specifying a minimum of 50 days of experience in the native language (s) of expertise; and

2. The sponsorship of three active members in good standing who have been members of the same association for at least two years, whose language (s) are the same as the applicant's, and who attest to having witnessed the performance of the applicant, as well as the accuracy of the statements on the application.

Interpreters who wish to be placed on the list of professionally qualified must submit a resume detailing education, training, experience, current telephone number and mailing address.

(2) Language Skilled Interpreters

Interpreters who do not qualify as “professionally qualified” but who can demonstrate to the satisfaction of the court their ability to interpret court proceedings from English to a designated language and from that language to English, will be placed on the list as “language skilled interpreter”.

C. Requirements for certification for hearing impaired.

1. Legal Specialist Certificate, or equivalent, from the Registry of Interpreters for the Deaf, Inc. (Every attempt should be made to locate an interpreters that holds this certificate)
2. In the event no person holding a legal specialist certificate, or equivalent, is available, an interpreter holding the certification of Comprehensive Skills Certificate can be used.
3. Certified in ASL (American Sign Language). As ASL is the primary language of the American deaf community, learning ASL is prerequisite for certification for the deaf.

III. Appointment of Interpreter

- A. A standard form (copy attached) will be submitted to the Court by the party requesting an interpreter for authorization of the Judge.
- B. Each Judge will designate a representative from their staff to be responsible for performing the duties, once the form is properly submitted and signed by the Judge, of contacting the interpreters and coordinating the dates, times, locations, cancellations, etc. with the courts, the attorneys for the state and defense, and clerks.

- C. The Trial Judges shall designate a person who will be responsible for maintaining a Court Roster of interpreters available to perform interpreting services and comply with these rules and regulations for interpreters. The roster should include as much information as possible about the qualifications of the interpreters. Copies of the certificates for certified interpreters and copies of credentials for other interpreters shall be kept on file in the Court Administrator's Office.

This roster should be divided into three classes: certified, professionally qualified and language skilled. Also a separate roster shall be maintained for the hearing impaired.

It is important that these lists be properly maintained and that telephone numbers and address be current. The roster will be provided to each Court and a roster shall also be available to the public. (The Trial Court Judges shall determine the location of the Roster for the public. Specifically, an individual who desires the assistance of an interpreter, but is not entitled to the appointment of an interpreter under the Act, may examine the roster of qualified interpreters during ordinary business hours. The roster will also be utilized by attorneys and others involved in the court system.

Selection of interpreters placed on the roster should be made available to the court on a rotation basis.

- D. Payment is made by the Clerk of the Court, after validation of a Court Official of the statement submitted by the Interpreter.

IV. Fee Schedule

- A. Compensation for fee rates shall be set by the State Trial Court Judges, and said fee rates are subject to periodic review.

- B. Compensation for language skilled interpreters should be set at a lower rate than that set for certified and professionally qualified interpreters.

- C. The fees of interpreters will be paid on an hourly basis with a two (2) hour minimum. **suggested hourly rate of \$35.00 to \$40.00 per hour for Certified, Professionally Qualified and for Interpreters for the Hearing Impaired, and amount not to exceed \$30.00 hour for all other interpreters.**

An interpreter who has contracted to interpret and does appear for the hearing and is not used will be paid for a minimum of two hours or more,

depending on the amount of time the interpreter has to wait before being told they will not be used.

If an interpreter's services are required for more than eight hours in one day, the court may pay for the period exceeding eight hours (excluding at a normal break) at a rate to be determined by the Trial Judges and agreed upon prior to contracting with the interpreter.

- D.** Only in the event an interpreter cannot be located within Davidson County or one of the contiguous counties, will travel expenses be reimbursed, and in that event, the interpreter will be reimbursed at the same rate used by the State of Tennessee.
- E.** Expense for parking will not be allowed.

V. Administration of Oath

Pursuant to Evidence Rule 604, the presiding judicial officer should ensure that each interpreter takes an oath to discharge properly the office of interpreter, including accurately interpreting for the speakers in the proceeding, and properly preparing for the assignment. In some courts, the duty of swearing the interpreter is delegated to the Clerk. In taking the oath, the interpreter becomes an officer of the court with the specific duty and responsibility of interpreting between English and the language specified.

VI. Supervision of Interpreters

A. Working Conditions.

(1) The interpreter must be provided at a suitable working environment, the most important consideration is to guard against distraction caused by fatigue and poor acoustics. Interpreting court proceedings, especially in the simultaneous mode, is an intense and tiring task. Every reasonable measure must be taken to ensure proper performance of the task.

(2) Measures to keep interpreters operating at a high level of proficiency include:

- (a) Use multiple interpreters for lengthy proceedings.

Examples of these types of proceedings for which multiple interpreters are necessary include: trials, evidentiary hearings; legal arguments on motions; sentencing hearings at which complex issues are argued; and any other proceeding that is complex.

Examples of types of proceedings that can normally be covered by a single interpreter include; initial appearance; arraignments; pretrial services interviews; status conferences; pleas; sentences; and other proceedings that are relatively simple and brief.

- (b) Interpreters should be given the opportunity to vary their positions as long as their position will not interfere with hearing by the interpreter and others.
- (c) The interpreter should be allowed every courtesy included but not limited to: providing drinking water as needed; providing a secure location to leave coats, purses, etc.

VII. Cancellation

If interpreter is not notified within 24 hours of cancellation, compensation for a trial will be made for services of up to one (1) full day; compensation for a hearing will be for two (2) hours. It will be the responsibility of the party requesting the interpreter to notify the Trial Judges' designee of the cancellation. The designee will then be responsible for notifying the interpreters of this cancellation.

VIII. Termination for Convenience

A contract with the interpreter may be terminated in part or in whole, when it is determined by the Judge that this termination is in the best interest of the Court. Payment will be made only for services rendered satisfactorily prior to the date of the termination.

IX. Trial Preparation

Trial preparation is within the scope of the court interpreter's program as it is part of the criminal case. As language is not an exact science, two different interpreters could use different - though equally accurate - terms or phrases. Also, foreign languages often have dialectal variations; that is, the use of certain words to mean different things in different regions or social groups, or different "accents" that affect the phonological structure of the language, etc.

Therefore, if at all possible, the same interpreter should be used for both the preparation of the trial and the trial itself.

X. Probation

Probation proceedings are within the scope of the court interpreter program, as they are part of the criminal case. Therefore, the same conditions as set for trial proceedings shall also apply in probation proceedings.