



Bench Card 3.0

WORKING WITH FOREIGN LANGUAGE INTERPRETERS IN THE COURT

HOW DO I KNOW IF A PARTY OR WITNESS NEEDS AN INTERPRETER?

A court shall appoint a foreign language interpreter when [Sup.R. 88(A)]:

A non-English speaking party or witness requests an interpreter and the court determines the interpreter is necessary. Absent a request, the court concludes the party is limited in communication and the services of the interpreter are necessary.

DETERMINING THE ENGLISH PROFICIENCY OF THE PARTY

(The judge should ask the following on the record to determine if an interpreter is necessary. In general, avoid questions easily answered with “yes” or “no” replies.)

- Please tell the court your name.
- How long have you been in this country, and how did you learn English?
- Please tell me about your country.
- What is the highest grade you completed in school?
- Please tell us about the last magazine, book, or newspaper you read.

- Describe some of the things you see in this courtroom.
- You have the right to a court-appointed interpreter at no cost to you. Please tell the court the best way to communicate with you and to let you know what is being said.

WHAT TYPES OF INTERPRETERS ARE THERE?

INTERPRETER CREDENTIALS:

Certified Interpreters

Supreme Court Certified Foreign Language Interpreter is a foreign language interpreter who has received certification from the Supreme Court Language Services Program, pursuant to Sup.R. 81.

These interpreters have demonstrated their skills by having successfully passed a written and oral exam administered by the Language Services Program and they have also provided a background check showing no convictions of crimes involving moral turpitude.

Courts should not accept any other certification to meet the requirements of Sup.R. 88(D).

In order to comply with the prohibition against national origin discrimination in Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, et. seq., the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3789d(c), and 28 C.F.R. Part 42, Subparts C and D, recipients of federal funds must provide meaningful access to limited English proficient (LEP) individuals. *Lau v. Nichols*, 414 U.S. 563 (1974). The U.S. Department of Justice advises that practices, such as charging for interpretation and translation services or seeking recoupment for those costs, significantly impair, restrict, or preclude the participation of LEP individuals in the judicial system and are inconsistent with recipients’ Title VI obligations. For more information, please refer to Guidance from the U.S. Department of Justice to state court justices and administrators’ letter from Assistant Attorney of the Civil Rights Division to Chief Justices and State Court Administrators (Aug. 16, 2010); Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. 41455 (June 18, 2002).

THE ROLE OF THE INTERPRETER

The interpreter must interpret everything that is stated or written, without editing, summarizing, or changing the meaning of the original message. The interpreter is not there to give opinions on cultural matters, explain the law, explain terms, provide language assessments, or act as an advocate. The interpreter is trained only to interpret and is not tested in substantive areas of law, culture, linguistics, or other disciplines.

CASE OR COURT FUNCTION

“Case or court function” can include a hearing, trial, pretrial conference, settlement conference, or other appearance before a court in an action, appeal, proceeding, or other matter conducted by a judge, magistrate, or other court official.

REQUIRED JUDICIAL TASK

Add the court’s efforts to obtain a certified interpreter by the judge or magistrate to the case record. (Sup.R. 88(D) (2)-(4))

Provisionally Qualified Interpreters

Provisionally Qualified Foreign Language Interpreter is a foreign language interpreter who has received provisional certification from the Supreme Court Language Services Program, pursuant to Sup.R. 81(G)(3).

This interpreter received a score of less than 70 percent, but at least 60 percent in each section of the oral examination, as well as passed the written exam, passed a background check, and has no less than 24 hours of court interpreter training.

Registered Interpreters

Registered Foreign Language Interpreter is a foreign language interpreter who has registered with the Supreme Court Language Services Program, pursuant to Sup.R. 87.

Registered interpreters are ineligible for certification as Supreme Court-certified foreign language interpreter because no oral exam exists. Registered interpreters scored 70 percent or better on the written exam, scored superior in their foreign language assessment, passed a background check, and have attended at least 24 hours of court interpreter training.

Language-Skilled Interpreters

Language-skilled Foreign Language Interpreter is an interpreter whose qualifications, experience, knowledge, and training have been determined by the court for the given case.

A language-skilled interpreter is required to take an oath or affirmation to know, understand, and act according to the Code of Professional Conduct for Court Interpreters and Translators, as set forth in Appendix H of the Rules of Superintendence for the Courts of Ohio. It is uncertain whether language-skilled interpreters have been screened by a background check.

The process of appointment may include the following:

- For certified languages, courts appoint certified, provisionally qualified, language-skilled, or telephonic interpreters.
- For non-certified languages, courts appoint registered, language skilled or telephonic interpreters.
- In all interpreter appointments, courts must comply with all standards prescribed by law.

APPOINTMENT OF CERTIFIED INTERPRETERS IN CASE OR COURT FUNCTION [SUP.R. 88(D)]

1. The court shall appoint a Supreme Court certified interpreter.
2. If a certified interpreter does not exist or is not reasonably available and, after considering the gravity of the matter and whether it could be rescheduled to obtain a certified interpreter, the court may appoint a provisionally qualified interpreter.
3. If a certified or a provisionally qualified interpreter does not exist or is not reasonably available and, after considering the gravity of the matter and whether it could be rescheduled to obtain a certified interpreter or a provisionally qualified interpreter, the court may appoint a language-skilled interpreter.

APPOINTMENTS TO AVOID

The court should use all reasonable efforts to avoid appointing an individual as a foreign language interpreter if any of the following apply [Sup.R. 88(C)]:

1. The interpreter is compensated by a business owned or controlled by a party or a witness;
2. The interpreter is a friend or a family or household member of a party or witness;
3. The interpreter is a potential witness;
4. The interpreter is court personnel employed for a purpose other than interpreting;
5. The interpreter is a law enforcement officer or probation department personnel;
6. The interpreter has a pecuniary or other interest in the outcome of the case;
7. The appointment of the interpreter would not serve to protect a party's rights or ensure the integrity of the proceedings;
8. The interpreter does or may have a real or perceived conflict of interest or appearance of impropriety.

The court shall summarize on the record its efforts to obtain a certified or provisionally qualified interpreter and the reasons for using a language-skilled interpreter.

The language-skilled interpreter's experience, knowledge, and training should be stated on the record.

APPOINTMENT OF TELEPHONIC INTERPRETERS IN CASE OR COURT FUNCTION [SUP.R. 88(D)(4)]

If a Supreme Court-certified foreign language interpreter, provisionally qualified foreign language interpreter, or language-skilled foreign language interpreter does not exist or is not reasonably available to participate in-person and, after considering the gravity of the proceedings and whether the matter could be rescheduled to obtain a certified, provisionally qualified, or language-skilled foreign language interpreter to participate in-person at the case or court function, a court may appoint an interpreter to participate in the case or court function through telephonic interpretation.

The court should summarize on the record its efforts to obtain a Supreme Court certified foreign language interpreter, provisionally qualified foreign language interpreter, or language-skilled foreign language interpreter to participate in-person at the case or court function and the reasons for using an interpreter who will participate in the case or court function through telephonic interpretation. When appointing an interpreter, the court must follow the order of certification as outlined in divisions (D)(1) through (3) of Sup.R. 88, which requires using a certified interpreter if one exists or is reasonably available, a provisionally qualified interpreter if one exists or is reasonably available, or a language-skilled interpreter if one exists or is reasonably available.

SAMPLE VOIR DIRE TO DETERMINE INTERPRETER QUALIFICATIONS UNDER SUP.R. 88(D)(3) AND (4)

For Certified Languages

- Do you have certification or provisional qualification from the Supreme Court of Ohio?
- If so, what is your certification or provisional number?

For Non-Certified Languages

- Are you a registered interpreter with the Supreme Court of Ohio and, if so, what is your registration number?
- How much experience do you have as a court interpreter in number of years and number of cases you have provided interpreter services?
- How and where did you learn English?
- Do you have any degrees from an American university?
- How and where did you learn your other language?
- Do you have a degree from a university outside the United States?
- Are you familiar with Ohio's Code of Professional Conduct for Court Interpreters and Translators? What are its main points?
- How many times have you interpreted in court interpreting these kinds of cases?

WHEN SATISFIED WITH THE INTERPRETER'S QUALIFICATIONS, THE OATH SHALL BE GIVEN

INTERPRETER OATH:

Do you solemnly swear or affirm you will interpret accurately, completely, and impartially, using your best skill and judgment in accordance with the standards prescribed by law and follow all official guidelines established by this court for legal interpreting or translating, and discharge all of the solemn duties and obligations of legal interpretation and translation?

SAMPLE VOIR DIRE - CONTINUED

- Describe your familiarity with legal terminology.
- What types of cases have you interpreted?
- Are you related to or close friends with anyone in this case?
- Do you understand you are to be a neutral party [Sup.R. 88(C)] who is here to facilitate communication and that you should not offer advice or interject your opinion into these proceedings?

HOW CAN I FACILITATE COMMUNICATION IN AN INTERPRETED PROCEEDING?

- Advise everyone in the courtroom of the presence and role of the interpreter.
- Instruct all participants to speak loudly and clearly and allow only one person to speak at a time.
- Allow the interpreter to converse briefly with the non-English speaker to ensure understanding of accents, dialect, or pronunciation differences.
- Ask the non-English speaker if the speaker is able to understand and communicate through the interpreter. Instruct the speaker to interrupt or raise a hand if the speaker does not understand something.
- Allow the interpreter to view court files prior to the proceedings to become familiar with names, parties, and technical vocabulary.
- Speak directly to the party or witness, not to the interpreter. Do not ask the interpreter to explain or restate anything said by the party. Always direct the interpreter to interpret in the first person in order for the record to be accurate.
- The interpreter must convey all questions, answers, and courtroom dialogue. Therefore, the interpreter is constantly working. Advise the interpreter to notify the court when breaks are needed. If the proceeding will last longer than two hours, require the presence of two interpreters who can switch as needed. [Sup.R. 88(F)(1)(a)]
- Recognize that court proceedings can be confusing and intimidating for a non-English speaker since other countries' legal systems and concepts often vary from those of the United States.

CLARIFICATION LANGUAGE OF AN INTERPRETER'S ROLE

Before the start of courtroom proceedings, it is highly recommended the judge clarify the role of the interpreter for the defendant, witnesses and jury members. Judges may use the following language for this purpose.

For the Defendant/Witness

I want you to understand the role of the interpreter. The court interpreter is a neutral party who is here only to interpret the proceedings and facilitate communication. The interpreter will interpret only what is said without adding, omitting, or summarizing anything. The interpreter will say in English everything you say in your language, so do not say anything you do not want everyone to hear.

You are here to listen and/or give testimony to this court. When speaking, please speak directly to the attorney or to me. Do not ask the interpreter for advice. If you do not understand the interpreter, then tell me. If you need a question or answer repeated, please tell me. Wait until the entire statement has been interpreted before you answer. Do you have any questions?

THE SUPREME COURT OFFERS CERTIFICATION IN 20 LANGUAGES:

1. Arabic
2. Bosnian/Croatian/Serbian
3. Cantonese
4. French
5. Haitian-Creole
6. Hmong
7. Ilocano
8. Khmer
9. Korean
10. Lao
11. Mandarin
12. Marshallese
13. Polish
14. Portuguese
15. Russian
16. Somali
17. Spanish
18. Tagalog
19. Turkish
20. Vietnamese

For the Jury

Languages other than English may be used during this trial. The evidence you are to consider is only that provided through the official court interpreters. Although some of you may understand the non-English language used, it is important for all jurors to consider the same evidence. Therefore, you must base your decision on the evidence presented in the English interpretation. You must not rely in any way upon your own interpretation of the witness' words.

PROVIDING LANGUAGE SERVICES IN ANCILLARY COURT SERVICES

In providing language assistance in ancillary court services, courts should match the complexity of the service with the expertise of the language provider. For example, if a party requires general information at an information counter, a bilingual person may suffice. If the ancillary service is complex and discourse entails technical terminology, then a certified interpreter may be necessary.

RULE 89. Use of Communication Services in Ancillary Services.

(A) Limited English proficient individuals

A court must provide foreign language communication services to limited English proficient individuals in ancillary court services.

Dependent on the significance and complexity of the ancillary court service, the court may provide this service in person, telephonically, or via video. The court may select:

- (1) An employee of the court, other than a Supreme Court certified foreign language interpreter or provisionally qualified foreign language interpreter, who has demonstrated proficiency in English and the target language in accordance with standards set by Supreme Court Language Services Program and who the program has determined is qualified to conduct communication services directly with a limited English proficient individual in the target language;
- (2) A Supreme Court certified foreign language interpreter;
- (3) A provisionally qualified foreign language interpreter;
- (4) A registered foreign language interpreter.

(B) Deaf, hard-of-hearing, and deaf-blind individuals

A court must provide sign language communication services to deaf, hard-of-hearing, and deaf-blind individuals in ancillary court services. Dependent upon the significance and complexity of the ancillary court service, the following individuals may provide the communication services in person, telephonically, or via video:

- (1) A Supreme Court certified sign language interpreter;
- (2) A sign language interpreter listed in Sup.R. 88(E)(2) through (4);
- (3) A sign language interpreter employed by a community center for the deaf.



(C) Ancillary court services

“Ancillary court services” means any activity, other than a case or court function, that includes the exchange of legal or general court-related information with the public or parties in interest and is paid for or provided by the court. “Ancillary court services” includes, but is not limited to, the following:

- (1) Alternative dispute resolution programs;
- (2) Evaluations;
- (3) Information counters;
- (4) Probation or criminal diversion program functions;
- (5) Pro se clinics;
- (6) Specialized dockets and dedicated-subject-matter dockets.

For more information,
contact the Supreme Court
of Ohio’s Language
Services Program at
614.387.9403.