

WHO NEEDS A FOREIGN LANGUAGE INTERPRETER?

Per **Section 476.803, RSMo**, the courts shall appoint qualified interpreters in all legal proceedings in which the non-English speaking person is a party or a witness.

OSCA prefers the courts use certified interpreters who have proven their proficiency. **Section 476.800, RSMo**. defines qualified as “an impartial and unbiased person who is readily able to render a complete and accurate interpretation or translation of spoken and written English for non-English speaking persons and of non-English oral or written statements into spoken English.”

In accordance with **Executive Order 13166** issued by former President Clinton (and still in effect), the **U.S. Dept. of Justice** issued guidance to *all recipients* of their federal assistance ensuring that limited English proficient (LEP) populations have meaningful access to programs and services in compliance with Title VI of the Civil Rights Act of 1964. Recipients risk losing federal assistance when language assistance is not provided.

If a request has not been made, but it appears a party or witness has limited English proficiency and may not be understanding, you can ask the following questions (From **IMMIGRANTS IN COURT**, by Joanne Moore, University of Washington Press) **on the record** to determine if an interpreter is needed.

1. Please describe when, where and how you learned English.
2. What is your educational history, in the US and in your original country?
3. Do you read and write English? Please tell us the last book, magazine and/or newspaper you read in English.
4. Where do you speak English, and where do you speak your other language?
5. Please define these legal terms (use terms appropriate for current litigation); bail, arrest, prosecutor, charge, evidence, plaintiff, defendant, jury, etc.)

SCHEDULING FOREIGN LANGUAGE COURT INTERPRETERS

Interpreting requires skills and knowledge beyond what the average bilingual person possesses. In fact, bilingual college professors and attorneys do not always have the skills to interpret without paraphrasing or summarizing. OSCA conducts a training and testing program modeled after the National Center for State Courts Consortium for State Court Interpreter Certification (Consortium) guidelines. Only **certified** interpreters have proven their proficiency and the names, rates, and contact information for the certified interpreters is found on **MCIC**. Schedule them when interpreter services are needed. Recommend that anyone you use to interpret in court complete the program. Names and contact information of the certified interpreters are also on the OSCA website www.courts.mo.gov and persons outside the courts may be referred there if they are looking for an interpreter.

What if I need an interpreter for a language and no one is on our certified list? When good faith efforts to obtain a certified interpreter have been made and none has been found, there are a number of alternatives:

- For short criminal or delinquency proceedings, use **telephone interpreting** through a service. All you need is a speaker phone and the OSCA account number. Done without prior planning or scheduling. (Contact the Access to Justice Program for the number if you don't have it.)
- Schedule onsite interpreting through an agency on **State contract**, stipulating that the interpreter must be able to do simultaneous & consecutive interpreting without summarizing or paraphrasing. Confirm rates and advise that they will not be paid for travel time.
- For trials, call OSCA's Access to Justice Program for assistance in trying to bring in certified interpreters from **another state**.
- Use **local qualified neutral resources** (**not** family, friends, parties to the case, other offenders, etc.) but voir dire them (questions are on back of this card) to determine qualifications and stipulate that they must do simultaneous and consecutive interpreting without summarizing or paraphrasing. Confirm fees before scheduling, and know what OSCA will be able to pay. The court is responsible for anything not covered by OSCA.

SAMPLE VOIR DIRE FOR DETERMINING INTERPRETER QUALIFICATIONS

How do I know if an interpreter is qualified? Interpreting requires specialized knowledge (legal terms in both languages, slang, idioms, dialectal variations) and skills (memory, comprehension, and multi-tasking). Some inquiry should be made on the record to assure proficiency of an interpreter to ensure qualifications and absence of bias. Fundamental questions, such as the following might be asked before administering the oath :

- Have you ever had your interpreting skills evaluated? If so, by whom and how did you score?
- What training do you have as an interpreter?
- Tell me about the Code of Professional Ethics for Court Interpreters.
- What is your native language?
- How did you learn English/foreign language?
- How many times have you interpreted in court? What types of cases?
- Describe how you learned legal terms in both languages.
- Are you a potential witness in this case? Are you related to or friends with anyone in this case?
- What is your experience with simultaneous interpreting? Consecutive interpreting?
- Have you ever been arrested, charged, or held by federal, state, or other law enforcement authorities for violation of any federal law, state law, county or municipal law, regulation, or ordinance?

After you determine the person is qualified to interpret, administer the oath.

OATH of INTERPRETATION

“Do you solemnly swear that you will interpret accurately, completely and impartially, using your best skill and judgment in accordance with the standards prescribed by law and the code of ethics for court interpreters, 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?”

HOW MUCH ARE FOREIGN LANGUAGE COURT INTERPRETERS PAID? WHO PAYS THEM?

There are no standardized rates for interpreters other than for agencies on the State contract. The person scheduling interpreters needs to determine rates at the time the assignment is offered and be aware of what OSCA can pay. Most freelance interpreters and agencies charge a two hour minimum (for example, if they are needed only 30 minutes for a proceeding they will charge for two hours), which is acceptable.

Per **Section 476.806, RSMo**, interpreters are allowed reasonable fees and travel expenses not to exceed state rates, but they shall not be compensated for travel time. That same statute authorizes OSCA to pay for interpreters' services in criminal and delinquency proceedings with an appropriation for that purpose. This statute also authorizes the courts to charge the costs to parties when not paid by OSCA; however, this section may conflict with the **Title VI** requirement (see **WHO NEEDS A FOREIGN LANGUAGE INTERPRETER?**). Courts should refer to the Dept. of Justice letter found on MCIC when determining how to handle payment for interpreters in proceedings other than criminal and delinquency.

- OSCA pays for foreign language interpreters in **criminal and delinquency proceedings**. This does not include meetings with attorneys to prepare a case for presentation or before/after a proceeding, meetings with a guardian ad litem, or court ordered programs and other funds must be used for them.
- The bill goes to the court for their review and approval. For criminal and delinquency proceedings, the court submits the original bill to OSCA with a completed **OSCA form GN65** as quickly as possible. Other funds must be used if courts agree to anything not covered by OSCA.
- When contracting with agencies/organizations to provide court ordered programs, stipulate that they will provide language assistance at no cost when needed for effective communication.

INTERESTED IN LEARNING ABOUT FOREIGN LANGUAGE COURT INTERPRETER CERTIFICATION, USING INTERPRETERS OR CULTURAL CONSIDERATIONS?

Websites

Certification explanation, event dates, and contact information is found on OSCA's website www.courts.mo.gov under About Your Courts.
National Center for State Courts Consortium for State Court Interpreter Certification www.ncsc.org
National Association of Judiciary Interpreters & Translators www.najit.org

Books & Articles

Immigrants in Court: Culture Counts, Joanne I. Moore
Court Interpretation: Model Guides for Policy & Practice in the State Courts, State Justice Institute (link to publication on www.ncsc.org)
Culturally Responsive Alternative Dispute Resolution for Latinos (SJI), State Justice Institute/Ctr. For Public Policy Studies
The Art of Legal Interpretation: A Guide for Court Interpreters, Constance Emerson Crooker, Attorney, and Portland University
Cultural Considerations in Domestic Violence Cases: A National Judges Benchbook, State Justice Institute

GUIDELINES FOR ACCOMMODATING PERSON WHO ARE DEAF OR HARD OF HEARING IN COURTS

Title II of the Americans with Disabilities Act (ADA): Prohibits discrimination based on a disability. For persons who are deaf or hard of hearing, this means that courts must ensure effective communication for parties, witnesses, jurors, and spectators.

- Include in your correspondence the procedure to request an accommodation.
- Primary consideration shall be given to the requester's preferred mode of communication -- for example, CART (realtime captioning) may be requested by a person doesn't know American Sign Language (ASL).
- Persons needing the accommodations **cannot be charged** for the service.

Sections 476.750, 476.753, 476.760, and 476.763, RSMo: Covers providing and payment of services for persons who are deaf & hard of hearing.

American Sign Language (ASL) Interpreters: Per 5 CSR 100-200.170, anyone interpreting in court must be either an "advanced" or "comprehensive" level, based on the complexity of the proceeding. See MCIC for the specific skills level requirements, the list of approved interpreters, and the state contract for ASL services that you may use to schedule services. Sign language interpreters use facial expression and gestures to communicate.

Certified Deaf Interpreters (CDI): Sometimes a CDI will be requested to act as an intermediary if a person uses non-standard signs, uses a foreign sign language, or has limited communication skills. The CDI is an individual who is deaf or hard of hearing who has specialized training and/or experience in the use of gesture, mime, props, drawings and other tools to enhance communication. The CDI works with a certified/licensed ASL interpreter who voices for the CDI and signs what was spoken in English to the CDI who then signs to the person who is deaf.

Communication Access Realtime Translation (CART): Some deaf or hard of hearing people may request this method of speech to text translation that uses stenographic machines, computer software, a laptop, and sometimes a large screen. See MCIC or contact the Missouri Commission for the Deaf & Hard of Hearing (573/526-5205) for names and contact information for recommended CART providers. Like your court reporter, the CART provider needs breaks; so, remind everyone when breaks are given that the CART provider will not be available to assist with communication.

Assistive Listening Devices: Each court has access to a system that amplifies sounds for some persons with hearing loss which was purchased and distributed by OSCA. It can be used by anyone: spectators, jurors, parties in a case, witnesses, or attorneys. See MCIC for the location of your circuit's system(s). If the system in your circuit is not available and you have at least 24 hours notice, contact this office and we will overnight a system to you to use for an upcoming proceeding.

HOW MUCH ARE ASL INTERPRETERS & CART PROVIDERS PAID? WHO PAYS THEM?

There are no standardized rates for interpreters other than for agencies on the State contract. The person scheduling interpreters needs to determine rates at the time the assignment is offered and be aware of what OSCA can pay (refer to MCIC). Most free lance interpreters and agencies charge a two hour minimum (for example, if they are needed only 30 minutes for a proceeding they will charge for two hours), which is acceptable.

Per **Section 476.760, RSMo**, reasonable fees and travel expenses are allowed for auxiliary aids and services, and OSCA pays for these services in **all proceedings**. This does not include meetings with attorneys to prepare a case for presentation or before/after a proceeding, meetings with a guardian ad litem, or court ordered programs and other funds must be used for them.

- The bill goes to the court for their review and approval. The court submits the original bill to OSCA with a completed **OSCA form GN65** as quickly as possible. Other funds must be used if courts agree to anything not covered by OSCA (such as travel time).
- When contracting with agencies/organizations to provide court ordered programs, stipulate that they will meet or exceed the requirements of the Americans with Disabilities Act (ADA) at no additional cost.

INTERESTED IN LEARNING ABOUT THE DEAF CULTURE & PROVIDING EFFECTIVE COMMUNICATION?

Websites

Missouri Commission for the Deaf & Hard of Hearing www.mcdhh.mo.gov
Registry of Interpreters for the Deaf (RID) www.rid.org
Communications Access Information Center <http://cart-info.org/>
Deaf Culture www.deafculture.com
Deaf Culture Tip Sheet www.netac.rit.edu/publication/tipsheet/deafculture.html

Books

The Right to a Full Hearing: Improving Access to the Courts for People Who are Deaf or Hard of Hearing, John Fallahay (AJS)
Access to the Courts for People Who are Deaf and Hard of Hearing, Materials from 1997 Conference sponsored by AJS

PROVIDING ACCOMMODATIONS FOR PERSONS WHO ARE BLIND OR HAVE LOW VISION?

The ADA also protects persons with visual disabilities, which includes parties in a case, witnesses, jurors, or customers at the counter requesting information normally provided in a written/graphical format. A person may request information in alternative formats: large type, electronic (CD or a floppy disk), Braille, or a reader. Primary consideration should be given to the person's preferred mode of communication.

HOW DO I FACILITATE COMMUNICATION IN AN INTERPRETED (FOREIGN OR ASL) SETTING?

1. If an interpreter has been scheduled, do that case first rather than having an interpreter be paid for time spent waiting while the court moves through a docket of cases.
2. If a proceeding will last more than two hours, require the presence of two interpreters that can switch off as needed.
3. Allow the interpreter to review court files **prior to the proceedings** to familiarize themselves with names and technical terminology.
4. Allow the interpreter to converse briefly with the non-English speaking person to ensure understanding of dialects and accents. Ask the non-English speaking person if they understand the interpreter. Instruct them to raise their hand if they do not understand something so that the court or attorney can rephrase.
5. Advise everyone in the courtroom of the presence and role of the interpreter.
6. Instruct participants to speak loudly and clearly, and allow only one person to speak at a time.
7. Instruct attorneys to speak directly to the party/witness – not to the interpreter – and to not ask the interpreter to explain or restate anything said.
8. If necessary, instruct the interpreter to interpret in the 1st person in order for the record to be correct. (A trained interpreter will only speak in the 3rd person if they need to request clarification or a repetition. This keeps the record correct as to who is speaking.)
9. The interpreter must convey all questions, answers, and courtroom dialogue without summarizing or paraphrasing. If the interpreter seems to be summarizing or not interpreting, or conversing with the non-English speaking person, remind the interpreter that they are to interpret everything and only to interpret, not to engage in conversations or to explain.

Resources Regarding the Americans With Disabilities Act (ADA)

Title II of the ADA prohibits discrimination against qualified individuals with disabilities in all programs, activities, and services of public entities, including courts. Courts must eliminate policies and practices that exclude persons with disabilities and provide notice to the public so they know how to request an accommodation. The U.S. Supreme Court decided in *Tennessee v Lane* (02-1667) that states are subject to lawsuits by private individuals and monetary damages under Title II of the ADA in cases involving courts. There are also a number of settlement agreements between the U.S. Dept. of Justice and courts. Information on these cases and general information is found on the National Center for State Courts website http://www.ncsconline.org/D_KIS/ADAResources.htm or on the U.S. Dept. of Justice website www.ada.gov

There are a number of considerations in making your court accessible and in compliance with the ADA. The Access to Justice Program is available to provide technical assistance, conduct on-site assessments and make recommendations to improve accessibility, to review new construction or remodeling plans, and to conduct training – all at no charge to the courts. We also have a Braille printer should you receive a request for Braille.