

Working with Sign Language Interpreters in Texas



A Bench Card for Judges

EQUAL ACCESS UNDER THE AMERICANS WITH DISABILITIES ACT (ADA)

The passage of the ADA was intended to ensure equal access to persons with disabilities. In such, Texas judges have a critical role in ensuring persons who are deaf or hard of hearing have communication access to the justice system. Texas courts must provide an equally effective opportunity for deaf and hard of hearing people to participate in the legal process that is offered to others citizens.

HOW TO DETERMINE IF A PERSON NEEDS A QUALIFIED INTERPRETER

A judge may presume the need for a qualified interpreter if the court is advised that a person is deaf or hard of hearing has difficulty communicating or understanding spoken language, and for whom note writing or another type of auxiliary aid and service may not be effective. In addition, spectators, litigants, witnesses, or jurors may make a request for auxiliary aids and services. According to the ADA regulations, the court must give primary consideration to the preference of the deaf or hard of hearing person as to what type of auxiliary aid or service should be used. Possible auxiliary aids and services include qualified sign language interpreters, oral interpreters, qualified deaf interpreters, written communication or CART¹ and assistive listening devices. When considering the effectiveness of communication for individuals who appear to have limited English proficiency, a judge may need to utilize the services of a qualified deaf interpreter as part of the interpreting team.

PROVISION OF QUALIFIED INTERPRETERS FOR THE DEAF OR HARD OF HEARING

Courts are required, under Gov't. Code §57.002, to appoint an interpreter holding the Court Interpreter Certification (CIC) for deaf or hard of hearing person or witnesses in criminal and civil proceedings.

- A deaf or hard of hearing person is not required to arrange for their own interpreter.
- The associated costs with providing a qualified interpreter **may not** be assessed as part of court costs on the individual.
- The court should make an effort to notify the public about the procedures of making a request for a qualified sign language interpreter or for another type of auxiliary aid or service.

HOW DO I LOCATE A QUALIFIED INTERPRETER?

Depending on your location, a court administrator, clerk or a Section 504/ADA coordinator should be responsible for scheduling and assigning qualified interpreters for the court. If your court does not have someone responsible for securing an interpreter, then check the State or National certified list: <http://hhs.texas.gov/services/disability/deaf-hard-hearing> or <http://www.rid.org/>. In state courts qualified interpreters are required hold the CIC in order to interpret during court proceedings.

Family members, personal acquaintances, or court personnel should not function as interpreters.

SAMPLE QUESTIONS TO DETERMINE ENGLISH PROFICIENCY OF A DEAF OR HARD OF HEARING PERSON AND THE NEED FOR A QUALIFIED INTERPRETER

(Avoid questions easily answered with yes or no replies.)

- Please tell the court your name.
- How did you arrive at court today?
- In what language do you feel most comfortable speaking and communicating?
- How comfortable are you in proceeding with the matter as we are communicating now?
- What is the purpose of your court hearing today?

If the person has difficulty answering these simple questions, a qualified interpreter, which may include a deaf intermediary interpreter, is recommended. An individual unable to answer these questions may be unable to communicate well in high-stress matters involving legal terminology.

HOW DO I KNOW IF THE INTERPRETER IS QUALIFIED?

In Texas courts a "qualified interpreter" means an interpreter who holds Court Interpreter Certification (CIC) from the HHSC/ODHHS/BEI² or legal certificate (SC:L) from the National Registry of Interpreters for the Deaf. (Code of Criminal Procedure Title 1, Chapter 38, Art.

38.31 (g)(2) and Civ. Prac. & Rem. Code §21.003). “A person may not interpret for a hearing impaired person at a court proceeding or advertise or represent that the person is a certified court interpreter unless the person holds an appropriate certificate under this subchapter” (Gov’t. Code §57.026).

The court clerk or other court staff are responsible for confirming an interpreter’s qualifications prior to scheduling the interpreter to appear in court.

SAMPLE VOIR DIRE QUESTIONS TO ASSESS COURT INTERPRETER QUALIFICATIONS:

- Are you court certified in the State of Texas or RID certified?
- How long have you been an interpreter?
- How many times have you interpreted in court?
- What credentials or specialized training do you hold?
- Describe your formal legal training.
- How did you learn American Sign Language?
- Describe the Code of Ethics and Professional Responsibility of Certified Court Interpreters as it applies to Texas court interpreters.³

HOW TO ASSIST COMMUNICATION DURING INTERPRETED PROCEEDINGS

Before the court proceeding begins, it is highly recommended that the judge clarify the role of the interpreter for all parties. Here are some basic points to help ensure this understanding:

- An interpreter’s role is to listen to what is said in English in the courtroom and convey the meaning in sign language.
- The interpreter cannot give advice, make suggestions, or engage in private conversation with the deaf or hard of hearing person needing the interpreter. The person should raise a hand if he or she has a question or does not understand something during the proceeding.
- Allow the interpreter to view the court file to review names, parties and unique vocabulary.
- Allow the interpreter to briefly converse with the deaf or hard of hearing person to ensure communication is established.
- Instruct all participants to speak loudly and clearly.
- Allow only one person to speak at a time.
- Speak directly to the party or witness, not to the interpreter.

- Speak and read slowly and clearly enough for the interpreter to keep up during simultaneous interpretation.
- Speak in logical, meaningful phrases, pausing to allow the interpreter to keep the pace, during consecutive interpretation (witness testimony).
- Do not ask the interpreter to explain or restate anything said by the party and do not allow attorneys to ask that of an interpreter.
- For trials and other long proceedings, court administrators should hire a team of at least two interpreters who will work together to ensure the court’s requirements of effective communication is met. Should a certified deaf interpreter be needed, please know this is an addition to the hearing interpreting team.

SAMPLE INTERPRETER’S OATH

Do you solemnly swear or affirm that you will interpret accurately, completely and impartially, follow all official guidelines established by this court for legal interpreting or translating, and discharge all of the duties and obligations of legal interpretation and translation so help you God? (*Civ. Prac. & Rem. §21.005: Criminal Procedure Art. 38.31[733A]*).

WHAT SHOULD I EXPECT FROM THE INTERPRETER?

A qualified interpreter for Court will comply with the following:

- Interpret in the first person and address the court in the third person in order to keep a clear record unless remarks are heard by the interpreter and they are intended only for officers of the court.
- Interpret everything said in the courtroom with no additions, omissions, explanations, or personal input.
- Request clarification if a phrase or word is not understood.
- Be as unobtrusive and professional as possible.
- Use appropriate interpreter tools such as a language dictionary and note-taking materials.
- The interpreter will not conduct side conversations.

¹ Communication Access Real-Time Translation

² Texas Health & Human Services, Office of Deaf and Hard of Hearing Services, Board of Evaluation of Interpreters.

³ The “Code of Ethics and Professional Responsibility” of Certified Court Interpreters of the Texas Health & Human Services, Office of Deaf and Hard of Hearing Services.