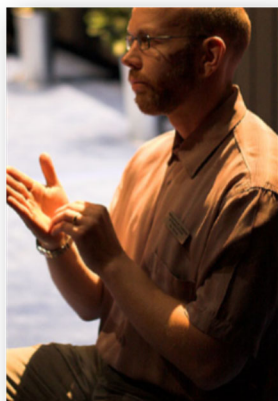


## The Texas Attorneys Guide to Working with Deaf Individuals

Working with deaf or hard of hearing individuals, whether in court or in your office, requires advance preparation. Not all individuals who are deaf or hard of hearing communicate in the same way. People who are deaf or hard of hearing may communicate using different “auxiliary aids and services” such as sign language interpreters, real-time captioning, writing notes, or a combination of strategies; lip reading is not an auxiliary aid or service. Attorneys addressing the need for access to communication must consider client preference. Discuss with the client their preferred method of communication. While there are many communication options, **this document focuses on the use of sign language interpreters.**

### WHY USE AN INTERPRETER?

Using a qualified interpreter makes your job easier and minimizes the chance of your case being negatively affected by ineffective communication.<sup>1</sup> An interpreter may help to bridge the cultural and communication gap, reducing confusion, misunderstandings, liability, and frustration. The Americans with Disabilities Act of 1990 (ADA), as amended, requires that certain public entities (including courts)<sup>2</sup> and private businesses (law offices)<sup>3</sup> be accessible to deaf and hard of hearing individuals. Many people who are deaf or hard of hearing may not write or speak English as fluently as necessary for you to represent them effectively without the use of a qualified interpreter.



### HOW TO LOCATE A QUALIFIED INTERPRETER?

Under Texas law, interpreters who interpret court proceedings are required to hold either the Court Interpreter Certification (CIC) from the Texas Board for Evaluation of Interpreters (BEI), or a legal certificate (SC:L) from the National Registry of Interpreters for the Deaf (RID).<sup>4</sup> The court coordinator should be able to assist in locating a qualified interpreter. If your court needs assistance with this service, please visit the interpreter registry of BEI-certified interpreters at <https://bei.hhsc.state.tx.us/PublicInterpreterSearch/Search> or RID’s certified legal list at [www.rid.org](http://www.rid.org). The court coordinator is responsible for confirming an interpreter’s qualifications prior to appearing in court, but the attorney should verify the interpreter’s certification.<sup>5</sup>

### CAN I USE A FAMILY MEMBER OR FRIEND TO INTERPRET?

No. The law prohibits using family or friends in a court proceedings. Family and friends can be biased and may be unskilled as interpreters even if they are fluent in sign language. Finally, attorney-client privilege extends to only professional interpreters and other third-parties who are assisting the lawyer.<sup>6</sup>

All legal interpreting services must be done by a “qualified” interpreter.<sup>7</sup> The higher the risk or impact of a case, the higher the standards must be for interpreting. The use of a non-qualified interpreter may be subject to later challenge in court.<sup>8</sup>

### WHO IS REQUIRED TO PAY FOR THE INTERPRETER?

Interpreters are most often required for effective representation of your client and for the client to assist counsel.<sup>9</sup> In criminal cases, upon motion, the court is required to appoint an interpreter, not just for court proceedings but also for all in-court and out-of-court privileged communications between the lawyer and the client.<sup>10</sup> The costs of this cannot be charged to the defendant or their attorney.

In civil cases, upon motion, the court must appoint interpreters for court proceedings, depositions, mediations, and ADR<sup>11</sup>, and the county pays for the cost.<sup>12</sup> For other out-of-court communications between lawyer and client in civil cases, the lawyer is responsible for providing interpreters, and cannot shift the cost to the client. The

<sup>1</sup> *Ex Parte Cockrell*, Court of Criminal Appeals, No. WR-78,986-01, 03-12-14

<sup>2</sup> 42 U.S.C. § 12131(1)(B); 29 C.F.R. § 35.160.

<sup>3</sup> 42 U.S.C. § 12181(7)(F); 28 C.F.R. § 36.303(c)(1).

<sup>4</sup> Tex. Crim. Proc. Code § 38.31(g)(2); Tex. Civ. Prac. & Rem. Code § 21.003.

<sup>5</sup> Tex. Admin. Code §109.311

<sup>6</sup> TRE 503, Tex. Civ. Prac. & Rem. Code §21.008, Tex. Code Crim. Proc. §38.31(b)

<sup>7</sup> Tex. Code Crim. Proc. 38.31(g)(2)

<sup>8</sup> *Garcia v. State*, 149 S.W.3d 135, 143 (Tex. Crim. App. 2004).

<sup>9</sup> U.S. Const. amend VI

<sup>10</sup> Tex. Crim. Proc. Code § 38.31(b). See also Tex. Gov’t Code § 57.002.

<sup>11</sup> Civ. Prac Rem. Code §21.002, Tex. Gov. Code §57.001(7). See also Tex. Gov’t. Code §57.002.

<sup>12</sup> Civ. Prac. Rem. Code §21.006.

Texas State Bar may be able to offer financial assistance to attorneys through the Communication Access Fund at (512) 427-1857. Tax incentives may also be available to certain entities to help defray the cost of providing accessible services.<sup>13</sup>



### **CAN WE WRITE NOTES BACK & FORTH?**

Typically no. For lengthy and complex information exchanges with people that rely upon American Sign Language (ASL) as their primary language, writing back and forth may not be effective due to limited English proficiency. ASL is a complex visual-spatial language that relies heavily on physical and facial grammar, body movement and the use of space. These cues or other factors are **not** present in written English.

### **WHAT IS A CERTIFIED DEAF INTERPRETER (CDI) & WHEN ARE THEY UTILIZED?**

Some deaf individuals are not proficient in English and also not fully proficient in any one sign language. For your client to be fully, linguistically present and aid in his/her own defense, a language specialist may be necessary. For such clients, a Certified Deaf Interpreter (CDI) may be required. A CDI is a deaf or hard of hearing person who possesses the necessary dialect, idiosyncratic awareness, education, training, and specialized skills.<sup>14</sup> These specialists, who are listed on the certification websites named above, can ensure effective communication when a hearing interpreter alone is inadequate.

### **CAN TECHNOLOGY PROVIDE EFFECTIVE COMMUNICATION?**

Technology can be a tool. Typical technologies are video remote interpreting (VRI) and video relay services (VRS). VRI uses a remote interpreter to communicate with the deaf individuals via a video connection. VRI interpreters are paid by the lawyer or the court just like live interpreters are. VRS, on the other hand, is a way for deaf individual to communicate by phone with a hearing person who cannot sign. VRS is free, but it cannot be used if the attorney and the deaf individual are in the same location.

Unless the deaf individual requests them, VRS and VRI are not recommended for important communications because of their limitations. An interpreter who is physically present is often preferable because of the environmental cues and the three-dimensional nature of ASL. Other limitations of VRS and VRI include:

- VRS interpreters cannot be sworn in, or take the oath for accuracy of the record;
- There is no way of knowing the skill or certification level of a VRS interpreter;
- There may be connectivity or screen problems with VRI.

### **ONLINE RESOURCE LIST**

- **Disability Rights Texas:** [www.disabilityrightstx.org](http://www.disabilityrightstx.org)
- **NCIEC:** [www.interpretereducation.org/specialization/legal](http://www.interpretereducation.org/specialization/legal)
- **National Association for the Deaf:** [www.nad.org/issues/issues-resources](http://www.nad.org/issues/issues-resources)
- **National Association of Judiciary Interpreters & Translators:** <https://najit.org/resources/>
- **Recommended Guidelines for VRI Interpreting for ASL Interpreted Events** <http://www.courts.ca.gov/documents/CIP-ASL-VRI-Guidelines.pdf>
- **Registry of Interpreters for the Deaf:** <https://www.rid.org/about-rid/about-interpreting/standard-practice-papers/>



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<sup>13</sup> See <https://www.ada.gov/archive/taxpack.htm>

<sup>14</sup> Deaf Interpreters in Court: An accommodation that is more than reasonable [http://www.interpretereducation.org/wp-content/uploads/2011/06/Deaf-Interpreter-in-Court\\_NCIEC2009.pdf](http://www.interpretereducation.org/wp-content/uploads/2011/06/Deaf-Interpreter-in-Court_NCIEC2009.pdf)