

2012 COURT INTERPRETER'S HANDBOOK

*South Dakota Unified
Judicial System*

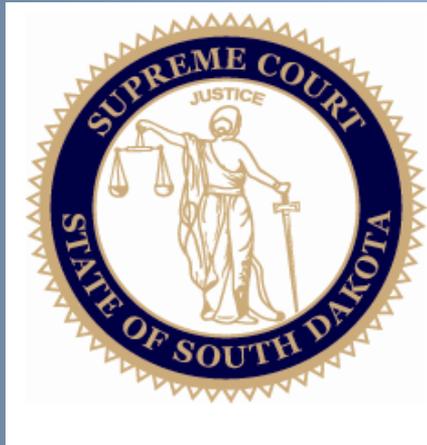


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INTRODUCTION

This handbook serves as a guide for interpretation in South Dakota state courts. It is intended to be used when the court, attorneys or others are made aware of the need for interpreter services for limited-English proficient (LEP) or hearing-impaired individuals.

WHAT IS THE ROLE OF A COURT INTERPRETER

To provide the translation of testimony, documents, instructions, rulings of the court, and arguments of counsel by an unbiased interpreter.

WHEN SHOULD AN INTERPRETER BE APPOINTED

An interpreter should be appointed when a party or person whose presence is necessary or appropriate in a court proceeding:

- (a) Is unable to accurately describe persons, places and events related to the proceeding because of a non-English speaking background or hearing-impairment;
- (b) Is not on equal footing with an English speaking person with an equivalent education or background;

- (c) Is unable to tell the court “what happened” over a period of time;
- (d) Is unable to request clarification when statements are vague or misleading, to defend or advocate a position, or otherwise meaningfully participate in a proceeding; or
- (e) Is unable to speak or understand English and translation is necessary to allow for effective participation in a proceeding.

2. In the event a non-English speaking or hearing-impaired party appears without counsel or expresses an intent to be self-represented in a criminal proceeding it is highly recommended that the court appoint counsel, even if on a standby basis, to ensure interpreter issues are adequately addressed.

WHO QUALIFIES FOR AN INTERPRETER

An individual who cannot speak English, or cannot otherwise understand a communication in English, qualifies for appointment of an interpreter if:

- a. The individual is a party to a proceeding;
- b. The individual’s presence is necessary or desirable in a proceeding (*i.e.* the parent of a juvenile involved in a proceeding);
- c. The individual is a person that would be directly affected by any action or decision in the proceeding; or
- d. The individual is a witness in a proceeding.

JUDGE, INTERPRETER AND ATTORNEY CHECKLISTS

1. Judge's Checklist. To assist judges in managing interpreter services please consider the following:
 - a. Identify the need and appoint an interpreter as early as possible in the process.
 - b. As soon as practicable inquire into the interpreter's training, credentials, skills and experience. Repeat the process if new or additional interpreters become necessary.
 - c. Conduct a preparatory meeting with the interpreter and counsel to clarify interpretive ground rules or conditions when necessary.
 - d. Advise the parties that the court may, on its own motion or the motion of a party, order that the proceeding and the interpretation be recorded. Emphasize that the record produced by the court reporter is however the official record of the proceeding.
 - e. If telephonic or interactive audio visual interpretation is being used, ensure that microphones and sound systems are functioning properly and that everyone can be heard clearly. It may also be necessary to inquire whether any relevant exhibits have been transmitted in advance, if possible, to the interpreter.
 - f. Do not refer to the person receiving interpretive services in the third person.

- g. There should be no separate communications between the interpreter and the recipient of interpretive services.
- h. Advise that the judge is responsible for responding to requests for repetition and/or rephrasing and will instruct participants accordingly.
- i. Caution participants about speed and clarity of speech.
- j. Arrange sight lines and sound systems in the courtroom to facilitate interpretation.
- k. Administer the oath to the interpreter at the beginning of any hearing.
- l. Observe the interpreter's practice and correct any deviations from proper standards of conduct.
- m. Provide rest breaks for the interpreter or appoint multiple interpreters for lengthy proceedings.
- n. Advise the jury and every witness of the role of the interpreter in the proceeding.

2. Interpreter's Checklist. Just as interpreter's expect an understanding of their role in the proceedings, the court expects interpreter's to follow certain practices as well:

- a. Arrive at the designated location early and check-in with the appropriate person (clerk of court, circuit administrator).
- b. Dress appropriately for court.
- c. Orient yourself to the nature of the case by reviewing any necessary information beforehand.

- d. Request to review all documents and exhibits that will be referenced during the hearing when practicable.
- e. Meet with attorneys and their clients. Explain to the attorneys your role and communicate with the client to confirm the ability to understand each other and explain the neutral role of an interpreter.
- f. Be prepared to interrupt a proceeding if necessary to ask for permission from the judge to have questions repeated, use a dictionary or other aid.
- g. Be familiar with the code of conduct for an interpreter.
- h. Do not make referrals for attorneys, bondsmen *etc.*
- i. Do not give legal advice, answer questions about a case or “help” in any other way except to facilitate communication.
- j. An interpreter should not perform acts that are the responsibility of other court personnel.
- k. No court interpreter shall comment or render an opinion on the propriety of any verdict or decision in any matter in which he or she has served.
- l. If possible, inexperienced interpreters should observe more experienced interpreters before beginning a case for which the interpreter is appointed.
- m. Never accept gratuities or gifts of any kind from anyone for whom you have interpreted.

3. Attorney's Checklist. Just as important to having well-trained interpreters in the court system is the attorney's ability to understand the interpreter's role and how to work with interpreters. To assist attorneys working with interpreters please consider the following:

- a. Interpreters are meant to create an even playing field for LEP individuals or the hearing-impaired. Interpreters are not advocates for a party.
- b. Speak directly to a party or witness and in the first person. The interpreter will repeat what you have said. Indirect speech creates confusion. For example, "will you please state your name for the record" should be used just as you normally would instead of "please ask him to state his name for the record."
- c. If there is a difficulty in communication between your client and the interpreter let the court know immediately.
- d. Check to make sure that all speech, by all parties, is being interpreted.
- e. Speak clearly at a moderate speed and in a volume to be clearly heard.
- f. Understand that the interpreter's only task is to interpret.
- g. Your client or witnesses should be aware of this as well. They cannot provide legal or personal advice and parties or witnesses should not have private conversations with the interpreter.

- h. The more information an interpreter has about a case in advance the better they can do their job.
- i. When possible, allow an interpreter to review exhibits or documents prior to a proceeding.
- j. Interpreters are instructed to interpret without providing additions or omissions. If your witness swears, yells, or has contradictions in their testimony that is what will be interpreted and conveyed in court.
- k. Know and understand the ethical obligations of interpreters.

QUALIFYING A COURT INTERPRETER

The following questions may be used to voir dire a potential interpreter as to their qualifications:

- j. What is your native language? How did you learn English/ the other language or sign language? How long have you been speaking the language or signing?
- k. Please describe your formal schooling?
- l. Do you have any formal training in interpreting? In legal or court interpreting?
- m. Please describe your experiences as an interpreter. Have you ever interpreted in court before? What kind of proceeding?
- n. Have you ever been convicted, or are you currently charged in any court, of a felony or crime involving dishonesty, fraud, deceit or misrepresentation?

- o. Are you certified or registered as a court interpreter in any state or federal court? Do you have any other accreditation for interpretation or translation?
- p. Have you communicated with the person who needs interpreting services? Are you familiar with the dialect he/she speaks? Do you need any more time to speak with the person? Are you able to understand him/her and communicate with him/her?
- q. Do you know any of the parties, witnesses or attorneys? Are you aware of any conflict of interest you may have in this case?
- r. Do you understand that you must interpret everything said on the record?
- s. Do you need time to review any documents in this case?

SUGGESTIONS FOR CASES INVOLVING HEARING-IMPAIRED INDIVIDUALS

Speak Directly and Naturally to the Deaf or Hearing-Impaired Person

It is important that the court and lawyers talk directly to the deaf or hearing-impaired person. The deaf or hearing-impaired person can quickly sense your indifference or your discomfort if you face only the interpreter and talk only to the interpreter. Speak naturally, without shouting or distorting your normal mouth movements.

Be Flexible- No Language Can Accommodate a Literal Word-For-Word English Translation

A deaf or hearing-impaired person may become confused by a word-for-word translation. There are both American Sign Language (ASL) and signed English commonly in use and both of these languages differ from spoken English. The interpreter should inform the deaf or hearing-impaired person's lawyer of the language and mode used by the client so that the lawyer can inform the court of any problem and the possible need to explain in more detail.

Confusion can also result when a deaf or hearing-impaired person nods "yes" to an interpreter's question but still has a quizzical look. "Yes" may not be the answer to the question, but only an indication that the person understands the question. A deaf or hearing-impaired person may even nod "yes" without completely understanding. Repeating part of a question is often the deaf or hearing-impaired person's attempt to clarify it and this does not necessarily mean confirmation or agreement. With the judge's approval there may be an occasional need to ask leading questions.

Speak As You Normally Would

Speak naturally, but not too fast. Remember that names and some other words must be finger-spelled, and this takes more time than signing. Although these proceedings may take longer they

are otherwise identical to other court proceedings; speak at a normal rate.

It must be realized that a deaf or hearing-impaired person can concentrate on only one person at a time. It is just as impossible for an interpreter to interpret for two people simultaneously as it would be for a court reporter to accurately take that testimony.

Make Sure the Deaf or Hearing-Impaired Person "Sees" The Communication

All deaf or hearing-impaired persons rely on sight information. To be effective, communication must be visible. The court should make every attempt to facilitate a good visual contact between the deaf or hearing-impaired person, the interpreter, and other participants. The court must make sure the deaf or hearing-impaired person can watch the interpreter and then look at any visual evidence.

Be Aware Of Environmental Factors

Be aware of environmental factors that may interfere with communication. While a deaf person may or may not be affected by background noises, a great deal of background movement or changes in lighting will be distracting. A hearing-impaired person who uses a hearing aid or who has residual hearing might be seriously distracted by background noises. Minimize machinery noises or other conversations.

Match the Skills of the Interpreter with the Needs of the Deaf or Hearing-Impaired Person

A sign language interpreter is necessary to achieve full and effective communication with a deaf or hearing-impaired person in many situations.

American Sign Language (ASL) is a visible language linguistically independent from English. Many deaf people use sign language rather than English as their primary mode of communication.

There are many variations and combinations of sign language. Even professional interpreters cannot achieve effective communication all the time for all deaf or hearing-impaired persons who sign.

Typically, deaf individuals with native use of ASL are more successful in communicating with persons who are highly visually oriented. Judges should consider the use of a deaf interpreter in combination with a hearing relay interpreter who is proficient in ASL.

The use of a deaf interpreter may provide the greatest opportunity for the deaf client to have accurate linguistic and cultural access to the judicial system.

Avoid using family members or friends of deaf or hearing-impaired people as interpreters. The interpreter should be a neutral professional who facilitates communication between the deaf or hearing-impaired person and other participants in the proceedings. Professional interpreters follow a code of ethics requiring confidentiality and accuracy.

The interpreter should be present until excused by the court.

Provide Rest Periods for Interpreters

Like court reporters, interpreters must hear everything said and must concentrate fully in order to do their job accurately. As a result, interpreters require rest periods for best performance. When two professional interpreters are present, usually one is actively interpreting while the other is monitoring the "on duty" interpreter. This helps to reduce fatigue and enhance accuracy.

Avoid Reliance upon Written Notes as the Means of Communication Unless Requested

At times a deaf or hearing-impaired person will use written notes to communicate or to supplement other modes of communication. Writing is not, however, always effective or appropriate. Technology is affecting this area as machine readable assistance is becoming available. Real-time court reporting may be beneficial and a number of court reporters are becoming certified in this area.

Lip-Reading

Lip-reading often supplements other modes of communication but is seldom sufficient to assure effective communication in a courtroom. Furthermore, lip-reading ability may decrease dramatically in stressful situations, like those encountered in the court environment. Persons with

cochlear implants may prefer lip-reading. Some deaf people may require the use of an oral interpreter or real-time captioning. An oral interpreter faces the deaf person and silently mouths the spoken communication along with the speaker.

Deaf Speech

Early deafness interferes with English language and speech acquisition. Nevertheless, some deaf or hearing-impaired people have normal, intelligible speech. Others, however, do not speak at all or speak with unusual voice quality, inflections or modulations.

If you have difficulty understanding a deaf or hearing-impaired person who wishes to speak, listen without interruption until you become accustomed to the voice patterns and rhythm.

Real Time Reporting or Real Time Captioning

Real Time Captioning (RTC) is an emerging accommodation choice that is provided by real time certified Court Reporters. It involves the use of individual(s) trained in real time reporting, steno-machine, real time software and laptop computer as well as materials on a situational basis (i.e., projector). A trained captioner or reporter uses a steno machine that sends steno-entries to real-time software that translates steno-entries into English text on the laptop computer instantaneously at a near verbatim rate.

Do Not Ignore the Needs of Those Individuals Who Are Hearing-Impaired but Who Are Not Deaf

One in a hundred Americans are completely deaf but one in sixteen has a significant hearing loss. Environmental noise can interfere with the performance of hearing aids. There are devices available that can reduce levels of environmental noise. The court should direct participants to speak louder. The court should consider having the deaf or hearing-impaired person repeat the question asked before answering. It may be appropriate to rearrange the courtroom to facilitate communication for all participants.

SUGGESTIONS FOR CASES INVOLVING PERSONS WHO SPEAK A FOREIGN LANGUAGE

Interpreters for foreign languages should expect to be qualified as experts. Prior to any scheduled hearing attorneys should contact the court when they represent a client who speaks a foreign language. In cases when a rare, hard to accommodate language skill is required, additional advance notice can expedite the process of locating and making arrangements for an interpreter to be present.

The court should work in conjunction with court administration to maintain a comprehensive list of foreign language interpreters in their administrative unit. Once alerted to the possible need for an interpreter, do not simply rely on an attorney's representation regarding whether or not an interpreter is needed.

Voir dire the defendant/witness - do not ask if the person speaks English. Do not ask leading questions or questions that call for yes/no answers.

Consider the following questions. Explain that you are asking these questions to evaluate the need for an interpreter.

- Please state your name and address.
- Please tell us your birthday, your age, and how many children are in your family.
- Please tell us whether you are employed, and if you are employed, describe the kind of work that you do.
- Describe your education. What language do you read and write?
- Describe the courtroom.
- Describe with whom and how frequently you speak English.
- Tell me a little about how comfortable you feel speaking English.

Evaluate the Need for an Interpreter In Light Of the Proceeding

It is entirely appropriate to evaluate the need for an interpreter, and the language skills of the interpreter, in light of the complexity of the proceedings. Rudimentary language skills may suffice when simply scheduling a hearing, while the most sophisticated skills are required for persons interpreting live testimony.

Remember, In Order For Non-English Speaking Defendants To Testify In Their Own Defense They Must Be Able To:

- accurately and completely describe persons, places, situations, events;
- tell "what happened" over time;
- request clarifications when questions are vague or misleading.

The judge and attorneys should speak directly to the person (not to the interpreter). Interpretation should be literal; or as close to verbatim as makes sense (i.e. slang or idioms).

Interpretation Should Be In the First Person

The judge should stop third person renditions and instruct the participants to use first person renditions.

OATH FOR INTERPRETERS

The following oath, as appropriate to the circumstances, may be used for an interpreter:

I, _____, do solemnly swear (or affirm) that I will justly, truly and impartially interpret, to the best of my skill and judgment, and will make a true interpretation to any party or witness, the oath or affirmation administered in all matters; the questions which may be asked and the answers that shall be given to such questions and all statements relative to any [court proceedings, probation activities, or any other proceeding] under consideration in which I am employed to interpret, so help me God (under the pains and penalties of perjury).

For More Information Contact:

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*- South Dakota Courthouses -
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