

## Appointment of Interpreters

### Mandatory / Discretionary

If a person requests a foreign language interpreter in any criminal, civil, probate, or family division case or if the court determines such service are necessary for meaningful participation, the court **shall** appoint an interpreter if the person is a party or witness in the case.

If they are an interested party or someone other than a witness who has a substantial interest in the case, the court **may** appoint.

### Waiver

A person **can** waive the right to a foreign language interpreter, unless the court determines there is a necessity for one. A waiver of the right must be made on the record and state the waiver is made knowingly and voluntarily.

### Denial

**Any denial** of appointment of a foreign language interpreter:

1. Must be made in a written order.
2. An LEP person may immediately request a review of
  - a. a denial of appointment, or
  - b. an order assessing costs for the provision of an appointed foreign language interpreter.
  - c. No motion fee is required.
3. The request must be within 56 days of the issuance of the written order.
4. The chief judge shall decide the request for review de novo.
5. Denial made by the Chief Judge (such as in a one judge court) shall be referred to the State Court Administrator for assignment to another judge. A pending review stays litigation and must be decided in an expedited fashion.

## Interpreter Credentials

MCR 1.111(A)(4) and MCR 1.111(A)(6)(a)-(c) reflect the hierarchy of foreign language interpreters based on skill and qualification. The court should strive to appoint interpreters in this order, per court rule

1. Certified Interpreters
  - Passed both written English and the 3-part oral examination;
  - Registered with the SCAO (proof of approved registration by providing a copy of their certification card, with their unique C-number (e.g. C00001))

#### Provisional Interpreters

- Passed both written English and 2 parts of the 3-part oral examination;
- Registered with the SCAO (proof of approved registration by providing a copy of their provisional certification card, with their unique P-number (e.g. P00001))

2. Qualified Interpreters

- Passed both the written English and the consecutive portion of the 3-part oral examination;
- The interpreter having been determined by the court after voir dire to be competent in providing interpreter services for the proceeding;
- Registered with the SCAO (proof of approved registration by providing a copy of qualification card, with their unique Q-number (e.g. Q00001)).

3. Interpreter Firms (providing in-person interpreters)
  - Registration of both the firm and the person with the SCAO (see SCAO list for firm confirmation; appropriate card with C, P or Q-number for the person);
  - The interpreter having been determined by the court after voir dire to be competent in providing interpreter services for the proceeding.
4. Remote Interpreter Firms have:
  - Registration of the firm with the SCAO (see SCAO list for firm confirmation);
  - The interpreter having been determined by the court after voir dire to be competent to provide interpretation services for the proceeding

## Interpreter Oath

When appointed, an interpreter must be put under oath with language substantially complying with language found in MCR 1.111(G).

## Interpreters in the Courtroom

The court should make every reasonable effort to monitor court proceedings proactively, assuring against interpreter fatigue. The court should intervene and provide instruction, if the court:

- Perceives the interpreter is having difficulty hearing a speaker, the court should ask the person to speak more loudly or more clearly or allow the interpreter to move to a different location to facilitate better hearing.
- Is informed that audio equipment is malfunctioning, the court should replace the equipment or make alternate arrangements for the hearing.
- Perceives attorneys or witnesses speak too rapidly, the court should instruct the participants to speak more slowly.
- Perceives the interpreter has a problem interpreting a concept or idea, the court should instruct counsel to rephrase the question using plain English, where possible, or make it more specific.
- Sees more than one person is speaking at the same time, the court should instruct the speakers to speak one at a time allowing accurate interpretation.

## Costs

If a party is "financially able to pay for interpretation costs" the court **may** order the party to reimburse the court. "A person is '**financially able to pay for interpretation costs**' if the court determines that requiring reimbursement of interpreter costs will not pose an unreasonable burden on the person's ability to have meaningful access to the court." [MCR 1.111\(A\)\(3\)](#).

Financial ability "to pay for interpreter costs" is defined as: "(a) The person's family or household income is greater than 125% of the federal poverty level; and (b) An assessment of interpreter costs at the conclusion of litigation would not unreasonably impede the person's ability to defend or pursue the claims involved in the matter." [MCR 1.111\(A\)\(4\)](#).

Under the rule, only parties who are able to pay for costs are subject to reimburse them at the conclusion of the matter. [ADM File No. 2012-03](#).

The trial courts through their local funding units are responsible for the payment of interpreters and the collection of interpreter fees, if ordered paid by a party.

## Instructions Regarding the Interpreter's Role in the Courtroom

### PROPOSED INSTRUCTION FROM THE BENCH – TO PARTIES

An interpreter will be assisting the court throughout these proceedings, and those present should know what the interpreter can and cannot do. The interpreter's only function is to assist the LEP individual to communicate effectively with the court, the attorneys, and other parties in the case. The interpreter is not a party in this case, has no interest in this case, and is neutral. The interpreter is prohibited from giving advice, legal or otherwise.

Interpreters speak in the first person to ensure the court record accurately reflects the party's statements and not the interpreter's conclusion.

The interpreter will not be asked questions and will not answer questions, but rather will only interpret them.

If a person who is using the services of the interpreter has any questions, those questions must be directed to the court, attorney, witness, or party to the case through the interpreter. If anyone cannot understand or communicate effectively with the interpreter, that person should tell the court. Does anyone have any questions about the role or responsibilities of the interpreter?

### PROPOSED INSTRUCTION FROM THE BENCH – TO WITNESSES

I want you to understand the role of the interpreter. The interpreter is here only to interpret the questions you will be asked and to interpret your answers. The interpreter will interpret only what is said and will not add, omit, or summarize anything.

The interpreter will interpret into 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, please tell me. If you need a question answered or repeated, tell me. Wait until the entire question has been interpreted before you answer. Do you have any questions? Do you understand the interpreter?

### PROPOSED INSTRUCTION FROM THE BENCH – TO JURORS

This court seeks a fair trial for all, regardless of the language they speak or how well it's spoken. Do not allow the fact that the party requires an interpreter to influence you in any way.

Some of you may know the non-English language being used. It is important that all jurors consider the same evidence and you should not rely on any knowledge that you may have of the language spoken. Your consideration of the testimony and/or transcripts should be based solely on the English interpretation of the evidence introduced at trial.