

Utilizing Court Interpreters in Child Welfare Cases

Supreme Court of Texas Children's Commission

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Utilizing Court Interpreters in Child Welfare Cases

Speakers:

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Overview

PART I

Legal Foundations: overview of federal and state laws governing language access

PART II

Court Interpreters: licensing requirements and correct protocols in the courtroom

PART III

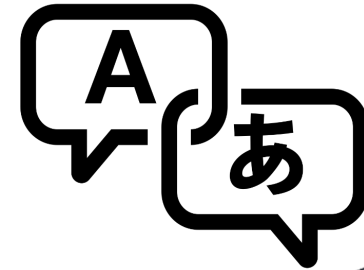
Best Practices for Judges and Attorneys: logistics, client communication, and courtroom dynamics





PART I

Legal Foundations: Overview of Federal & State Laws Governing Language Access

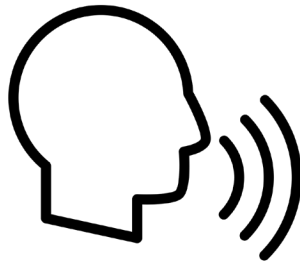


First of all, what is the difference between an Interpreter and a Translator?

Interpreter vs. Translator

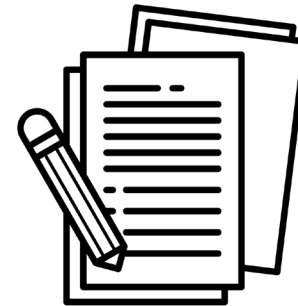
Interpreter

Spoken & signed languages



Translator

Written materials



When is a spoken or sign language interpreter appointed by the court?

Texas Government Code, Sec. 57.002 (a)

A court **shall** appoint an interpreter

1. Upon the motion of a party
2. Upon the request of a witness



in a civil or criminal proceeding in the court.

When is a spoken or sign language interpreter appointed by the court?, cont.

Texas Government Code, Sec. 57.002(b)

A court **may** appoint an interpreter

1. On its own motion

for a person with limited English proficiency (an LEP person).



When is a spoken or sign language interpreter appointed by the court?, cont.

Tex. Gov't Code, Sec. 57.002

(a) A court shall appoint a certified court interpreter or a certified CART provider [an individual who holds a certification to provide communication access real-time translation services] for an individual who has a hearing impairment or a licensed court interpreter for an individual who can hear but does not comprehend or communicate in English if a motion for the appointment of an interpreter or provider is filed by a party or requested by a witness in a civil or criminal proceeding in the court.

(b) A court may, on its own motion, appoint a certified court interpreter or a certified CART provider for an individual who has a hearing impairment or a licensed court interpreter for an individual who can hear but does not comprehend or communicate in English.

(b-1) A licensed court interpreter appointed by a court under Subsection (a) or (b) must hold a license that includes the appropriate designation under Section 157.101(d) that indicates the interpreter is permitted to interpret in that court.



Texas Government Code Section 57.002: Updates from 88th Legislative Session

Statement of Intent:

“Failing to provide competent interpreters leaves [LEPs] less capable of understanding and defending their legal rights regarding their children; and without effective communication, courts may be unable to make accurate findings....”



Texas Government Code Section 57.002: Updates from 88th Legislative Session, cont.

Costs: A party who files a statement of inability to afford payment of court costs under Rule 145, Texas Rules of Civil Procedure, is not required to provide or pay for an interpreter during the course of the action unless the statement has been contested and the court has ordered the party to pay costs pursuant to Rule 145.

Tex. Gov't. Code Sec. 57.002(g)

Scope: These rules shall govern the procedure in the justice, county, district, and business courts of the State of Texas in all actions of a civil nature, with some exceptions...

Tex. R. Civ. P. 2



How does the court qualify an interpreter?

Texas Rules of Evidence, Rule 604

The interpreter must be qualified and must give an oath or affirmation to make a true interpretation.

Sample oath: *“Do you solemnly swear or affirm 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 and Professional Responsibility; follow all official guidelines established by this court for legal interpreting; and discharge all of the duties and obligations of legal interpretation?”*

While there are no specific words set out, Rule 604 requires the interpreter to be **qualified**. It might be prudent to question the prospective interpreter about their ability to speak the language they are asked to interpret, how long they’ve spoken the language and English, what sort of education/experience they have with the language, etc. to establish their qualifications.



Does the interpreter have to be licensed?

Tex. Gov't Code, Sec. 57.002(c), (d)

Court proceedings in counties with a population $\leq 50,000$

1. Does not have to be licensed (see next slide for additional requirements)

Court proceedings in counties with a population $\geq 50,000$

1. Spanish interpreters must be licensed court interpreters.
2. For any other language, if no licensed interpreter is found within 75 miles, a court may appoint an unlicensed interpreter.



Does the interpreter have to be licensed?, con't

Tex. Gov't Code, Sec. 57.002 (e)

Whether or not they are licensed, interpreters in all counties:

1. Must be qualified as an expert under Texas Rules of Evidence.
2. Must be at least 18 years of age.
3. May not be a party to the proceeding.



Does the interpreter have to be licensed?, cont.

Exception in Certain Border Counties

Tex. Civ. Prac. Rem. Code Chapter 21, Subchapter B

Spanish Language Interpreters in Certain Border Counties

Interpreter's Qualifications: The court interpreter must be well versed in and competent to speak the Spanish and English languages. Tex. Civ. Prac. Rem. Code Section 21.023

What is the difference between “Certified” and “Licensed” court interpreters?

Certified vs. Licensed

Certified court interpreter

for an individual who has a hearing impairment

Licensed court interpreter

for an individual who can hear but does not comprehend or communicate in English

Tex. Gov’t Code 57.002



Who can act as an American Sign Language interpreter (ASL) in the courts?

Texas Government Code Section 57.021:

- (a) The department shall certify court interpreters to interpret court proceedings for a hearing-impaired individual.
- (b) The department may contract with public or private educational institutions to administer a training program and by rule may provide for suspension of training offered by an institution if the training fails to meet requirements established by the department.
- (c) The department shall maintain a list of certified court interpreters and other persons the department has determined are qualified to act as court interpreters and shall send the list to each state court and, on request, to other interested persons.

**See later slide in this presentation for a QR code with more information*



PART II

Court Interpreters: Licensing Requirements and Correct Protocols in the Courtroom



Four Steps to Becoming a Court Interpreter

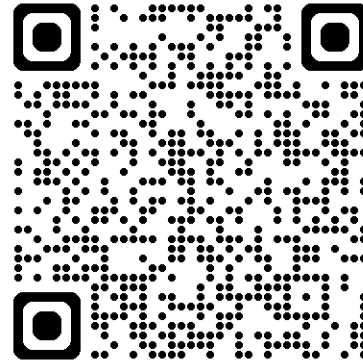
1. Complete a 6-hour Orientation course
 - Court Interpreter Ethics
 - Courtroom protocol and the Texas legal system
 - Certificate of Completion valid 2 years from completion date
2. Submit the Application for Licensure & pay fees
3. Pass a state and national criminal history background check
4. Pass all parts of the court interpreter exam
 - Written examination: court related terms and usage, ethics and professional conduct
 - Oral examination: consecutive and simultaneous interpretation



Proper Interpreter Protocols in the Courtroom

Licensed Court Interpreter

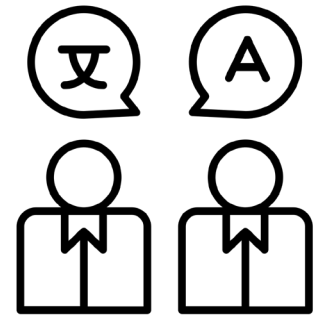
Code of Ethics



Proper Interpreter Protocols in the Courtroom

Accuracy and Completeness

1. Complete and accurate without omissions or embellishments.
2. Conserve the register, style, and tone of the source language.
3. Use the same grammatical person as the speaker.
4. Correct errors for the record as soon as possible.



Proper Interpreter Protocols in the Courtroom

x Verbatim

“It’s raining cats and dogs”

“You can say that again”

“The ball is in your court”

Proper Interpreter Protocols in the Courtroom

x Verbatim

“Hoy por ti, mañana por mi”

“Ser un cero a la izquierda”

“Por si las moscas”

Interpretation needs vary across Texas

Texas Office of Court Administration (OCA) contracts most often for Spanish language interpretation

Language Access Plan announcement in Harris County

- work in progress

Language needs vary by region

- Harris & Fort Bend Counties: Spanish, Vietnamese, Chinese
- Bexar County: Spanish, German
- Other languages: K'iche, K'ekchi (Q'eqchi), Mam



Proper Interpreter Protocols in the Courtroom

Filler Words (in Spanish: “muletillas”)

Filler words are often used to gain time to formulate what the speaker wants to say or to fill a silence. The interpreter must render into the target language all the filler words used by the speaker.

Bueno...

Pues...

Como...

¿Sabes?

¿No?

A ver...



Proper Interpreter Protocols in the Courtroom

Word Repetition

Must convey the hesitation in English by including the repetitions.

Ex. 'No, no, no, yo no lo vi'

✓ No, no, no, I didn't see [it, him]

✗ I didn't see [it, him]

Proper Interpreter Protocols in the Courtroom

Redundancies

Attorneys' questions and comments are often redundant, often intentionally so. Judges' admonishments can be lengthy. Interpreters should not omit a seemingly redundant verb or nuances.

- Example: admonishment required in Texas Family Code Section 262.201 (m) needs to be interpreted in full (not truncated)

Unless you are willing and able to provide your child with a safe environment, even with the assistance of a service plan, within the reasonable period of time specified in the plan, your parental and custodial duties and rights may be subject to restriction or to termination or your child may not be returned to you.

Tex. Fam. Code Sec. 263.202 (b)(2)



Proper Interpreter Protocols in the Courtroom

Register

Must convey the same level of language without altering the register.

Ex. What did you observe the subject to do subsequently?

✘ What did you see him do next?

Proper Interpreter Protocols in the Courtroom

Expletives (Obscenities)

Interpret exactly what is heard, conserving the original meaning.

- Word-for-word obscenities may sound awkward in the target language. Instead, the interpreter must use the closest dynamic equivalent.

Proper Interpreter Protocols in the Courtroom

Emotions Shown by a Witness or Counsel

Interpreter should strive to preserve the element of emotion through moderate voice modulation.

- ✓ In cross-examination, an attorney bears down on a witness – the tone should convey that forcefulness.
- ✓ When a witness answers questions in a timid way – the tone should convey that timidity.
- ✗ Interpreters should refrain from any kind of dramatics or from becoming the center of attention.

Proper Interpreter Protocols in the Courtroom

Gestures Made by a Witness

Interpreter should not reproduce any gestures used by the witness or attempt to replace them with target-culture equivalents.

If a witness indicates a spot where she was struck by the perpetrator.

- ✓ Interprets 'He/She hit me here' without further action.

Proper Interpreter Protocols in the Courtroom

Gestures Made by the Interpreter

- Interpreter should refrain from making any gestures or hand motions, such eye rolls in frustration when a witness gives a nonresponsive answer.
 - ✓ At all times, the role of the interpreter is to assist professionally, neutrally, and unobtrusively so that the proceedings can take place as if no language barrier existed.

Proper Interpreter Protocols in the Courtroom

Modes of Interpreting

Simultaneous Interpreting – used whenever participants are playing a passive role in court, such as listening at hearings or trials. Example: permanency hearings.

Consecutive Interpreting – used whenever the participant is playing an active role, such as on the witness stand. Example: prove – ups.



PART III

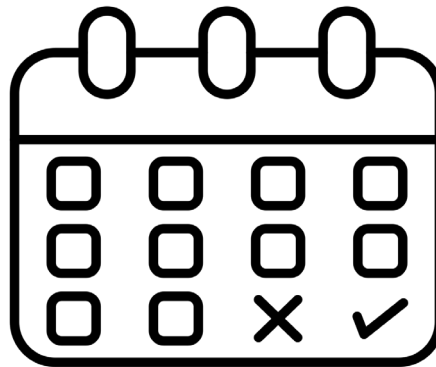
Best Practices for Judges and Attorneys: Logistics, Client Communication, and Courtroom Dynamics



Best Practices – Working with Court Interpreters

Scheduling. Interpreters are often scheduled weeks or months in advance.

Begin the procurement of the interpreter as soon as you are noticed that an interpreter will be needed for a case.



Best Practices – Working with Court Interpreters

Minimum fee. Asking about minimum fee will help you maximize the best use of the interpreter's time block.

Some interpreters charge:

- A 2-hour minimum fee
- A 3-hour minimum fee
- A half-day fee



Best Practices – Working with Court Interpreters

Agreed appearance time. Schedule the interpreter at a time that will maximize the minimum fee without wait or idle times.

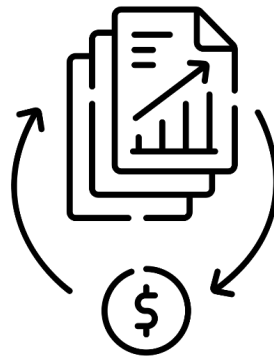
Scheduling at 9:00 am or 1:00 pm may not be the best time



Best Practices – Working with Court Interpreters

Coordinate interpreter requests with other courts. Sharing the interpreter time slot will benefit multiple courts.

If the county pays for the interpreter, the interpreter should be available for any court within the county.



Best Practices – Team Interpreting in Long Hearings or in Trials

Interpreting is a complex activity that leads to fatigue in simultaneous and consecutive interpretation situations. Fatigue has a detrimental effect on accuracy and complete recall, as well as decision-making.

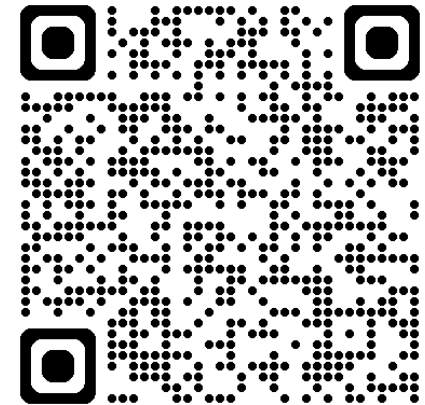
To avoid fatigue and to guarantee accuracy of interpretation, a team of two interpreters is needed for hearings that typically last more than 2 hours, or for trials, regardless of length.



Best Practices – Team Interpreting in Long Hearings or in Trials

**National Association of
Judiciary Interpreters &
Translators**

**Team Interpreting In Court-
Related Proceedings**



Best Practices at Hearings and Trials, Generally

Attorneys can provide notice ahead of time that an interpreter is needed; requesting an interpreter on the day of court makes it very hard to coordinate and can result in delay.

Prior to hearing, **courts** can schedule time with the attorneys to ensure interpretation services are ready.

- Court coordinator makes arrangements for interpreter
- Courtroom participants exchange phone numbers ahead of time
- Court provides Zoom link to attorneys who share with clients and witnesses

Judges can allocate more time for the hearing and consider more frequent breaks to prevent interpreter fatigue.

If an interpreter draws an objection, judges can consider allowing attorney to take the interpreter on voir dire.



Best Practices for Remote Hearings, cont.

Consider having the witness present in the courtroom if logistically possible for the witness

Consider using an additional Zoom link in cases where interpreters are used. This allows for services to be set up and parties to be ready while the court is engaged in other proceedings.

Another option: consider simultaneous interpretation using a secondary mobile device (note that this can be an issue when the witness doesn't have access to a secondary device).

Considerations:

- What if a witness doesn't have a secondary device?
- Is this a credibility issue?



Best Practices for Attorneys

Confer ahead of time with the interpreter to confirm client participation

Prepare client ahead of time to speak slowly, clearly, and in shorter segments

If attorney waits to object until after the interpreter has finished, remember to move to strike from the record

Consider issues that might arise when the attorney speaks the same language as the client

Attorneys representing intervenors might want to keep a list of interpreters in the area and know how much they charge for services



What if interpretation services are needed outside the courtroom?

File Motion to Appoint and for Payment of Interpreter at the outset of the case, requesting interpretation at hearings and for services out of the courtroom setting

Court can order the county to pay for out-of-court services (if client is found indigent in child welfare case, indigency applies to interpretation services)

Examples of out-of-court services: initial client meeting, mediation, trial preparation



Best Practices – Onsite Interpretation of a Sound File (Not Recommended)

The quality of in-court interpretation of a sound file will almost always fall short of the evidentiary standards that must be met.

Best practice for attorneys: request translation and transcription 45 days prior to trial. **Tex. R. Evid. 1009.**

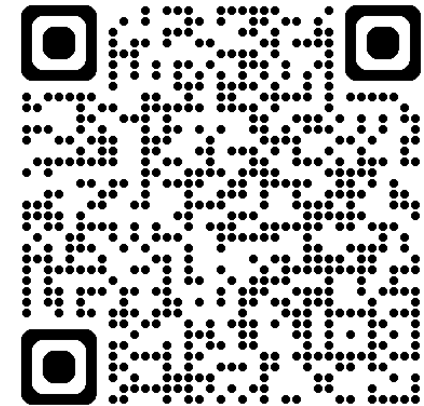
Examples of sound files: audio recording made during a visit, audio file of a caseworker call, video, etc.



Best Practices – Onsite Interpretation of a Sound File (Not Recommended)

**National Association of
Judiciary Interpreters &
Translators**

**Onsite Simultaneous
Interpretation of a Sound
File is Not Recommended**

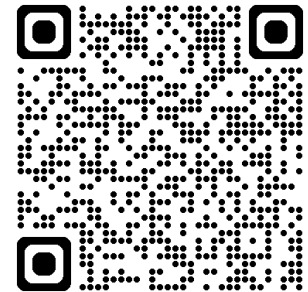


Best Practices – How and Where to Find Qualified Interpreters

www.txcourts.gov/lap

Find a Licensed Court Interpreter in Texas

Search for [licensed court interpreters](#) from JBCC's online certification and licensing system. *You may search for interpreters by county by clicking on(+) **Address information**, and results can be exported to Excel by clicking on **Generate Excel**.*

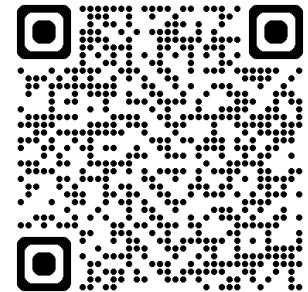


Best Practices – How and Where to Find Qualified Interpreters

www.txcourts.gov/tcris

Texas Court Remote Interpreter Service

OCA's [Texas Court Remote Interpreter Service](http://www.txcourts.gov/tcris) (TCRIS) provides licensed court interpreters in Spanish, French, Portuguese and German at no cost to Texas courts. The services are available for use in all case types for short, non-contested and non-evidentiary hearings that would typically last 30 minutes or less.



Best Practices – How and Where to Find Qualified Interpreters

Professional Interpreter Associations

www.tajit.org

Texas Association of Judiciary
Interpreters & Translators



www.najit.org

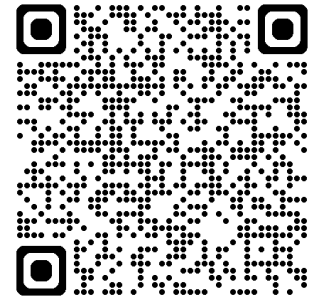
National Association of
Judiciary Interpreters &
Translators



Best Practices – How to Find Qualified Sign Language Interpreters

Board for Evaluation of Interpreters (BEI)

Registry



Sign Language Interpretation

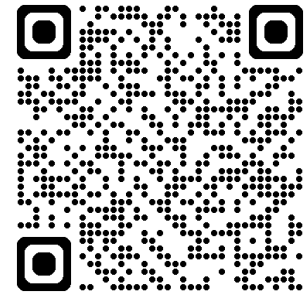
The [Board for Evaluation of Interpreters](#) (BEI) tests and certifies the skill level of individuals seeking to become certified sign language interpreters in Texas. The BEI is operated by the Office for [Deaf and Hard of Hearing Services](#) (DHHS) of the Texas [Health and Human Services Commission](#) (HHSC). The Office of Court Administration is not involved in this process.



Best Practices – How to Find Certified CART Providers

www.tcra-online.com

"**Certified CART provider**" means an individual who holds a certification to provide ***communication access real-time translation*** services at an advanced or master level issued by the Texas Court Reporters Association or another certification association selected by the department. **Tex. Gov't Code Sec. 57.001**



Best Practices – Recommended Fees of the Texas Commission for the Deaf and Hard of Hearing

FEES AND TRAVEL EXPENSES. (a) The interpreter shall be paid a reasonable fee determined by the court after considering the recommended fees of the Texas Commission for the Deaf and Hard of Hearing.

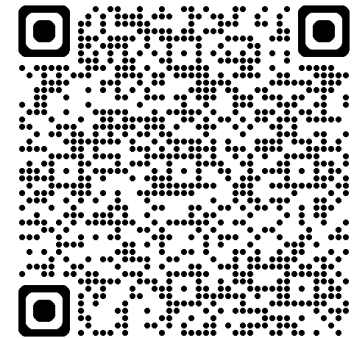
Tex. Civ. Prac. & Rem. Code Sec. 21.006



Recommended Fees of the Texas Commission for the Deaf and Hard of Hearing and Communication Services for State Agencies (CSSA)

www.hhs.Texas.gov

**Business>Contracting with
HHS>Communication Services for State
Agencies>CSSA Maximum Rates**





Questions?

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Thank You!

Questions related to MCLE self reporting may be sent to: cctraining@txcourts.gov

