

**CHAPTER 10 - FREQUENTLY ASKED QUESTIONS AND ANSWERS**

Following are commonly-asked questions and answers about court interpreter services posed by judges, clerks, and magistrates to the Office of the Executive Secretary.

**I. GENERAL QUESTIONS**

1. What are the obligations of court personnel under Title VI and the Safe Streets Act in terms of ensuring that those with limited English proficiency (LEP) have meaningful access to court services?

It is a federal requirement to provide free language assistance to LEP individuals in all court proceedings, notwithstanding conflicting state or local laws. *See* the appendix “Language Access Guidance Letter to State Courts from Assistant Attorney General Thomas E. Perez (August 17, 2010).”

2. How can I better provide access to those with limited English proficiency (LEP)?

It is a best practice to prominently post the translated notice that free language access services are available upon request. There is a formatted [Language Access Notice](#) for court use. *Also see* “Foreign Language Materials” in Appendix A. The Language Access Notice may also be reproduced on a stamp or a sheet of paper to be included in a mailing with another court document. In this way, an LEP individual knows in frequently encountered languages to request assistance. This notice should not replace any vocal notification the court would make that free language access services are available. If other language translations are required for a particular court or if other communications should be transmitted, contact the Office of the Executive Secretary for a translation that can be of use to the community served by the court and the accepted local practices in place.

3. Can a minor child or other relative or friend of a LEP individual be used as an interpreter?

State courts should generally not use friends, family members, or other third parties to interpret. Such individuals should only be used in unforeseen, emergency, circumstances while awaiting a certified or qualified interpreter. First, it is highly unlikely that the qualifications of that person to perform court interpreting are adequate. Second, issues are raised whenever a friend or relative provides interpretation services, especially in the legal context where a person must reveal intimate medical, personal, social, and financial information in order to receive competent legal advice and representation. Furthermore, the untrained court interpreter may embellish testimony based on a desire to “help” the non-English speaker. A minor child of a party should never be used as an interpreter.

4. Can the court provide an interpreter for an LEP parent or guardian of a juvenile involved in a case?

Yes, courts should provide an interpreter for the juvenile's parent or guardian with LEP.

5. Can a court or magistrate use a non-certified foreign language interpreter?

Yes, but the first recommended step in selecting a foreign language court interpreter is to consult the *Certified Foreign Language Interpreter List*. The Judicial Council of Virginia encourages the use of court-certified interpreters first, where available. If no certified interpreter is available, then the court may seek to qualify a non-certified interpreter. See "Conducting Interpreted Proceedings" and "Locating Court Interpreters" for additional information.

6. Can interpreters be appointed in civil matters, as well as criminal and traffic matters?

Yes, if the court determines that an interpreter is necessary. The statutes governing appointment of interpreters for non-English speakers are [Va. Code §§ 19.2-164](#) (criminal) and [8.01-384.1:1](#) (civil).

7. Can or should a foreign language interpreter take notes while performing interpreting services?

Yes. In fact, this is a recommended best practice for foreign language interpreters when interpreting in the consecutive mode and is regarded as one sign of a professional court interpreter.

## **II. PAYMENT QUESTIONS**

1. What rate should the court pay an interpreter?

Legislation adopted by the 2003 General Assembly directed that foreign language interpreters serving the courts be paid in accordance with guidelines established by the Judicial Council of Virginia. See the chapter "Payment Of Court Interpreters" for information on payment rates.

2. Who arranges and pays for interpreters needed for non-English speakers ordered to treatment (VASAP, domestic violence counseling, anger management, etc.)?

The service provider must arrange for and compensate interpreters. However, to the extent possible, courts need to ensure that service providers are providing interpreters as necessary for non-English speaking individuals participating in court-ordered treatment or services.

3. Who arranges and pays for an interpreter at a court-ordered doctor's evaluation?

The Office of the Executive Secretary compensates interpreters for court-ordered doctors' evaluations.

4. Does the court pay for a public defender or court-appointed attorney to have an interpreter at his/her office for interviews or to translate written documents, such as a letter?

Yes, in those cases that the court has concluded that the appointment of an interpreter is appropriate. Note that the attorney must sign the form DC-44, INTERPRETER SERVICES LOG AND CERTIFICATION that will indicate and authorize payment for the time spent by the interpreter in providing the services.

5. Does the court pay for two different interpreters in one case, for example, if one interpreter provides services at the public defender's office but another interpreter is appointed in court?

Yes. There are a variety of reasons for this type of situation. An interpreter may be unavailable for the scheduled court date(s). Or the interpreter, the court, and/or a party may believe that a conflict of interest exists. The interpreter's code of ethics requires interpreters to avoid the appearance of impropriety. Because it is true that interpreters must not only *be* neutral and objective, they must also be *seen* as such, the court proceeding(s) may require a different interpreter.

6. Does the court pay for an interpreter for law enforcement during an investigation?

No. The law enforcement agency is responsible for arranging for and compensating interpreters.

7. Does the court pay for an interpreter who performs services at the jail (e.g., booking, fingerprinting)?

No. The jail is responsible for arranging for and compensating interpreters.

8. Does the court pay for an interpreter to provide services to a victim-witness coordinator?

No. The victim-witness program (Commonwealth's Attorney) is responsible for arranging for and compensating interpreters.

9. Does the court pay for an interpreter used at intake in a court services unit or magistrate office?

Yes. This is the initiation of a court case.

10. Does the court pay for interpreters for local ordinance cases?

Yes, if the court determines that the appointment of an interpreter is necessary.

11. Pursuant to [Va. Code § 8.01-384.1:1](#), in a civil case, “the amount allowed by the court to the [foreign language] interpreter may, in the discretion of the court, be assessed against either party as a part of the cost of the case and, if collected, the same shall be paid to the Commonwealth.” How should the clerk’s office process this?

It is a federal requirement to provide free language assistance to LEP individuals in all court proceedings, notwithstanding conflicting state or local laws. *See* the appendix “Language Access Guidance Letter to State Courts from Assistant Attorney General Thomas E. Perez (August 17, 2010).”

12. Will the court pay an interpreter more than one two-hour minimum a single date of service?

Only if there is at least a two-hour break between one assignment and a later one, can an invoice for the second two-hour minimum be approved.

13. Would an interpreter round up to the next quarter-hour when billing for an assignment?

Yes. Interpreters submit payment requests by quarter hours, after the first two hours.

14. If the court is closed before the start of an interpreter’s assignment, should an interpreter be paid a two-hour minimum for that date of service?

No. Contract foreign language interpreters cannot be paid for court closings as a result of weather or other emergencies.

### **III. CLERK OF COURT QUESTIONS**

1. How should a clerk assist a non-English speaker at the counter or window?

The clerk may utilize a qualified interpreter who may already be at the court or, if none is available, a telephone interpreter to facilitate communication. The clerk should provide exactly the same information, no more and no less, to the non-English speaker as he/she would to an English speaker. This is referred to as the principle of *equal footing* - putting non-English speakers on equal footing with English speakers. Documents that require sight translation can be faxed to the over-the-phone interpreting services provider so as to be read aloud into English or another language.

2. Are there foreign-language materials available to assist courts in communicating with those who possess limited English proficiency?

As a means of providing technical assistance, the Office of the Executive Secretary has provided some documents in the other languages. They are included in the “Miscellaneous” appendix. There is a list of signs/notices that may be provided as signage within a courthouse or may be printed and mailed to those who may possess limited English proficiency. Also, there is a translation of the interpreter complaint form, along with a similar court personnel complaint form and its other language translation. A court requiring additional materials or information in additional languages should contact OES to request assistance.

3. What training about communicating with those with limited English proficiency is available to court staff?

The Department of Judicial Services (DJS) within OES is available to provide clerks’ offices with technical assistance and support through direct communication and sight visits. A particular clerk’s office and DJS may also collaborate to develop training and resources for a specific location’s demographics or area of concern. In combination with these efforts, it is a best practice for clerks to advise court staff about the language access plan and to seek the support of DJS in clarifying these guidelines, if necessary.

#### **IV. MAGISTRATE QUESTIONS**

1. If a magistrate utilizes the services of an interpreter and probable cause is not found, what should be entered on the interpreter payment forms?

Indicate “probable cause not found” with the offense/code section.

2. When determined to be necessary, can interpreters be used in every type of criminal proceeding before a magistrate?

Yes. See [Va. Code §§ 19.2-164, 19.2-164.1](#).

3. Occasionally, an interpreter will request that a magistrate sign the form DC-44, INTERPRETER SERVICES LOG AND CERTIFICATION to verify services actually performed for law enforcement before the magistrate was present. Since the court system is not responsible for payment for interpreter services rendered for local law enforcement, should the magistrate sign the form to certify that portion of time?

No. The time listed on the form DC-44, INTERPRETER SERVICES LOG AND CERTIFICATION should include only the time spent before the magistrate.

4. If an interpreter is used before the magistrate, should the magistrate alert the clerk of court to the fact that an interpreter may be necessary in the court proceeding?

While not required, this type of helpful communication of information between the magistrate's office and clerk's office facilitates the efficient administration of justice. Magistrates can use the Special Needs field within the eMagistrate system to facilitate this communication.