

Language Access in State Courts

Delaware Summary

A. Provides interpreters free of charge to all LEP litigants and witnesses in all civil proceedings?

1. Ensures a statewide mandate is in place covering all civil proceedings? *No*

In Delaware, court rules provide courts with the authority, but do not require, the appointment of interpreters in civil cases.¹ In practice, the courts do provide interpreters to pro se litigants in certain types of cases, including those concerning domestic violence, child support, custody, dependency/neglect, and involuntary commitment.²

2. Does not charge for interpreters in civil proceedings? *No*

Pursuant to court rules and a policy directive issued by the state supreme court, in civil cases expenses for interpreters may initially be covered either by a party or by funds appropriated to the courts but, regardless, may then be taxed back as costs of litigation at the direction of the court.³ In practice, when the courts provide interpreters in civil cases, they do so free of charge for indigents, although people who are not indigent are assessed interpreter costs.⁴

3. Ensures that all LEP individuals receive interpreters in civil proceedings: Has clear guidelines for appointment, or provides an interpreter whenever one is requested? *Yes*

As previously discussed, court rules provide that a court “may” provide an interpreter.⁵ A Supreme Court policy directive recommends “that judges presume a bona fide need for a interpreter when a representation is made by an attorney or by a pro se litigant that a party or witness has limited proficiency in English and requests an interpreter.”⁶ The directive also instructs that “participation in court proceedings requires far more than a basic level of communicative ability,” provides a model voir dire courts can use to determine language ability, and instructs that “[w]hen any doubt exists about the ability of persons to comprehend

¹ Del. Super. Ct. R. Civ. Proc. 43(e); Del. Just. Peace Ct. R. Civ. Proc. 43(e); Del. Fam. Ct. R. Civ. Proc. 43(f); Del. Ct. Comm. Pls. R. Civ. Proc. 43(e).

² E-mail from Maria Perez-Chambers, Coordinator, Interpreter Program, Administrative Office of the Courts (April 8, 2009).

³ Del. Super. Ct. R. Civ. Proc. 43(e). *See also* Del. Sup. Ct., Policy Directive on Certified Court Interpreter Program (2005) (“In those civil and other proceedings for which interpreters are not required by law to be provided at the State’s expense, the expense of the court interpreter may be assessed to the parties as costs, pursuant to court rules.”).

⁴ E-mail from Maria Perez-Chambers, Coordinator, Interpreter Program, Administrative Office of the Courts (April 8, 2009).

⁵ Del. Super. Ct. R. Civ. Proc. Rule 43(e); Del. Just. Peace Ct. R. Civ. Proc. 43(e); Del. Fam. Ct. R. Civ. Proc. 43(f); Del. Ct. Com. Pls. R. Civ. Proc. 43(e).

⁶ Del. Sup. Ct., Policy Directive on Certified Court Interpreter Program (Sep. 3, 2003), available at <http://courts.delaware.gov/policy%20directives/download.aspx?ID=1758>.

proceedings fully or adequately express themselves in English interpreters should be appointed.”⁷

B. Ensures that interpreters are competent by testing before appointing an interpreter in civil proceedings? *Yes, although when an interpreter who is not on the registry is used, the interpreter’s qualifications are assessed by the individual judge.*

The interpreter program expects courts to use “certified” interpreters whenever they are available, although there do not seem to be written requirements to that effect.⁸ Among the requirements for being deemed “certified” are that the interpreter must:

- Attend a two-day ethics, judicial procedure and skills-building Orientation seminar.
- Obtain a minimum score of 80% on a written examination assessing knowledge of English, court-related terms and usage, and court interpreter ethics and professional conduct.
- Pass the Consortium’s 3-part oral performance examination in his/her particular language combination with a minimum score of 70% overall and in each of the 3 sections independently. Passing scores must be obtained within one test cycle;
- Agree to comply with the Court Interpreter Code of Professional Ethics and Court Interpreter Policies and Procedures.⁹

If no “certified” interpreter is available, the court may use a “conditionally approved interpreter,” although “conditionally approved interpreters” should only be used for trials if they are teamed with a “certified” interpreter.¹⁰ Among the requirements for being deemed “conditionally approved” are that the interpreter must comply with all of the above requirements, although on the 3-part performance exam he may receive a minimum overall score of 60% by scoring 70% in at least one section, and above 55% in the remaining two sections.¹¹

If diligent efforts to contact a “certified” or “conditionally approved” interpreter are unsuccessful, a “registered candidate” may be used. Before a “registered candidate” is used, the court or court administrator is expected to weigh the type of judicial hearing and the seriousness of the potential penalties and consequences involved.¹² Among the requirements for being deemed a “registered candidate” are that the interpreter must comply with all of the above

⁷ *Id.*

⁸ E-mail from Maria Perez-Chambers, Coordinator, Interpreter Program, Administrative Office of the Courts (April 8, 2009).

⁹ Del. Admin. Office of the Courts, Court Interpreter Program, Qualification and Registration, available at <http://courts.delaware.gov/General%20Information/?credentialing.pdf>; E-mail from Maria Perez-Chambers, Coordinator, Interpreter Program, Administrative Office of the Courts (April 8, 2009).

¹⁰ E-mail from Maria Perez-Chambers, Coordinator, Interpreter Program, Administrative Office of the Courts (April 8, 2009). Again, this appears to be the practice, but is not written down.

¹¹ Del. Admin. Office of the Courts, Court Interpreter Program, Qualification and Registration, available at <http://courts.delaware.gov/General%20Information/?credentialing.pdf>.

¹² E-mail from Maria Perez-Chambers, Coordinator, Interpreter Program, Administrative Office of the Courts (April 8, 2009). Again, this appears to be the practice, but is not written down.

requirements, although on the 3-part performance exam he need only receive an overall score of 50%.¹³

When a court uses an interpreter who is does not fall into any of those three categories, and who accordingly is not on the registry, the court is expected to voir dire the interpreter to determine whether he or she is qualified. Judges are provided with a bench card to use for that purpose.¹⁴

The Brennan Center for Justice report, Language Access in State Courts, contains guidelines for the provision of court interpreters in civil cases. It also contains aggregate information – in the form of United States maps – regarding the extent to which the 35 states with the highest proportion of limited English proficient people (as a percentage of population) comply with the guidelines regarding providing interpreters in all civil cases and providing them free of charge.

This series of “state summaries” contains additional, detailed information about the extent to which the 35 states comply with those guidelines, and with the guideline regarding ensuring that interpreters are competent.

(last updated November 2, 2009)

¹³ *Id.*

¹⁴ *Id.*