

Language Access in State Courts

Indiana 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?

Yes

Section 34-45-1-3 of the Indiana Code, enacted in 1998, mandates that “[e]very person who cannot speak or understand the English language...and who is a party to or a witness in a civil proceeding is entitled to an interpreter to assist the person throughout the proceeding.”¹

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

The Indiana Code allows each court to decide how to cover costs for interpreters.² Some counties pay for certified interpreter services for indigent litigants,³ but a practitioner reports that others rely on telephonic “Language Line” services or bilingual court staff for interpreting, and still others expect litigants to provide their own interpreters, and will not proceed without one.⁴ The same practitioner also states that the discretion possessed by judges in deciding whether to assess interpreter fees upon litigants means that there is substantial geographic variation in the availability of interpreter services for low-income litigants, and that in many counties attorneys and litigants avoid requesting court-provided interpreters.⁵

3. Ensures that all LEP individuals receive interpreters in civil proceedings: Has clear guidelines for appointment, or provides an interpreter whenever one is requested? *No*

In civil cases, the Indiana Code allows judges to choose to appoint an interpreter,⁶ although there are no standards to guide a judge’s decision whether to appoint an interpreter.⁷ Court personnel state that either parties or attorneys may also request that an

¹ Act of Mar. 6, 1998, § 41, 1998 Ind. Acts 1 (codified at IND. CODE § 34-45-1-3 (LexisNexis 2008)).

² Ind. Code § 34-45-1-4(b) (“If an interpreter is appointed by the court, the fee for the services of the interpreter shall be: (1) set by the court; and (2) paid in a manner as the court may determine.”); Ind. R. Trial Proc. 43(C) (providing that if a court appoints an interpreter “[t]he compensation shall be paid out of funds provided by law or by one or more of the parties as the court may direct, and may be taxed ultimately as costs, in the discretion of the court”).

³ Interview with Adrienne Meiring, Staff Attorney, Division of State Court Administration, Supreme Court of Indiana (Mar. 31, 2008; June 8, 2008).

⁴ Interviews with Angelika Mueller, Managing Attorney, Indiana Legal Services (Apr. 30, 2008; June 24, 2008).

⁵ *Id.*

⁶ Ind. Code § 34-45-1-4.

⁷ In criminal cases there are standards for appointment, however. *See Arrieta v. State*, 878 N.E.2d 1238, 1243 (Ind. 2008) (providing that a court must determine whether an interpreter is needed to protect a defendant’s due process rights whenever a defendant has significant language difficulty or requests an interpreter).

interpreter be appointed.⁸ Some judges routinely appoint an interpreter whenever there appears to be a language barrier, while others will not make the appointment without a request.⁹

B. Ensures that interpreters are competent by testing before appointing an interpreter in civil proceedings? *No*

Indiana maintains a registry of “certified” interpreters,¹⁰ although it does not require that a certified interpreter be used.¹¹ The State Court Administrator’s website states that courts are “strongly encouraged to use certified interpreters, and many trial courts in Indiana only will hire certified interpreters.”¹² To encourage the use of certified interpreters, the General Assembly has appropriated funds for foreign language interpretation, and at least 60% of the funds must be used to employ certified interpreters.¹³

Spanish is the only language for which Indiana has its own certification procedure.¹⁴ To become certified through this procedure, an individual must attend a two-day orientation and a two-day skills building seminar, pass a written exam testing vocabulary, criminal procedure, and interpreters’ ethics, pass the National Center for State Courts Interpreter Consortium oral examination, submit to a criminal background check, and sign an oath to uphold the Indiana Supreme Court Interpreter Code of Conduct and Procedure.¹⁵ Certification in Spanish and other language is also available by reciprocity to those who have been certified federally or by one of the National Center for State Courts Interpreter Consortium member states, as well as on a case-by-case basis, although the background and oath requirements cannot be waived.¹⁶

Judges also have an obligation to ensure that interpreters are qualified, although in civil cases the extent of that obligation, and how it should be carried out, is unclear. As in many states, in all cases judges are required to qualify as experts interpreters used to translate the proceedings to the court.¹⁷ However, courts have noted that this obligation may not apply to interpreters used to translate the proceedings to a party.¹⁸ There is caselaw standing for the proposition that, at least in criminal cases, trial courts must “examine the interpreter on the record to insure that he possesses the necessary

⁸ Interview with Adrienne Meiring, *supra*.

⁹ E-mail from Angelika Mueller (March 29, 2009).

¹⁰ Ind. Cts., State Ct. Admin., Court Interpreter Certification Program, Registry, available at: <http://www.in.gov/judiciary/interpreter/registry.html>; Ch. J. Randall T. Shepard, *Access to Justice for People Who Do Not Speak English*, 40 Ind. L. Rev. 643, 656 (2007).

¹¹ Ind. Cts., State Ct. Admin., Court Interpreter Certification Program, Frequently Asked Questions, available at: <http://www.in.gov/judiciary/interpreter/getcertified.html>.

¹² *Id.*

¹³ *Arrieta*, 878 N.E.2d at 1242; E-mail from Adrienne Meiring, April 3, 2009.

¹⁴ Shepard, *Access to Justice for People Who Do Not Speak English*, *supra*, pp. 655-56.

¹⁵ Ind. Cts., State Ct. Admin., Court Interpreter Certification Program, Frequently Asked Questions, available at: <http://www.in.gov/judiciary/interpreter/getcertified.html>; Ind. Interpreter Code of Conduct and Procedure, available at: <http://www.in.gov/judiciary/rules/interpreter/interpreter.pdf>.

¹⁶ Ind. Cts., State Ct. Admin., Court Interpreter Certification Program, Certification by Reciprocity, available at: <http://www.in.gov/judiciary/interpreter/reciprocity.html>.

¹⁷ Ind. R. Evid. 604.

¹⁸ *Cruz Angeles v. State*, 751 N.E.2d 790, 795 n.3 (Ind. Ct. App. 2001).

qualification.”¹⁹ An Indiana Court of Appeals panel has also suggested questions that judges can use for this purpose, again in the criminal context.²⁰ Finally, the Indiana Code provides that “the court *may* inquire into the qualifications and integrity of any interpreter, and may disqualify any person from serving as an interpreter.”²¹

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.

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¹⁹ *State v. Marsical*, 687 N.E.2d 378, 382 (Ind. Ct. App. 1997).

²⁰ *Cruz Angeles*, 751 N.E.2d at 795.

²¹ Ind. Code § 34-45-1-4(c) (emphasis added).