

Language Access in State Courts

New York 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*

In 2007, the New York judiciary promulgated a court rule establishing a statewide mandate that trial courts appoint an interpreter in all court proceedings when a need for interpreter services is determined.¹

A legal services attorney reports that some judges and attorneys remain unaware of the rule.² According to the Office of Court Administration, however, the rule codified a longstanding practice, all judges were advised of and provided with a copy of the rule when it was promulgated, and a benchcard and annual training programs for judges discuss the rule.³

2. Does not charge for interpreters in civil proceedings? *Yes*

Interpreting services are provided by the court system at the court's expense, and litigants do not bear the costs themselves.⁴ Funding for the New York court interpreter program comes from state appropriations allocated to the overall court system and specifically to the court interpreter program.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? *Yes*

Court rules mandate that in all civil proceedings, a court shall appoint an interpreter when it determines that a party or witness (or an interested parent or guardian of a minor party in a Family Court proceeding) "is unable to understand and communicate in English to the extent that he or she cannot meaningfully participate in the court proceedings."⁶ Judges are provided with a benchcard stating that they "may" presume eligibility for an interpreter when a party, or a party's attorney, advises the court that a party or witness has difficulty communicating in or understanding English.⁷ Also, when it appears to the court that a party or witness has limited

¹ Administrative Order of the Chief Administrative Judge of the Courts, Part 217: Access to Court Interpreter Services for Persons with Limited English Proficiency (Oct. 16, 2007), *available at* http://www.courts.state.ny.us/rules/trialcourts/217_amend.pdf.

² Interview with Dimple Abichandani, then-director of program development, Legal Services NYC (May 16, 2008).

³ E-mail from NYS Office of Court Administration, Office of Court Interpreting Services (May 29, 2009).

⁴ Interview with N.Y. State Office of Court Administration, Office of Court Interpreting Services (July 31, 2007).

⁵ Interview with N.Y. State Office of Court Administration, Office of Court Interpreting Services, *supra*.

⁶ N.Y. Unif. Trial Ct. § 217.1(a).

⁷ N.Y. State Unif. Ct. Sys., Working With Interpreters in the Courtroom: Benchcard for Judges, *in* N.Y. State Unif. Ct. Sys., Court Interpreter Manual and Code of Ethics (2008), *available at* <http://nycourts.gov/courtinterpreter/pdfs/CourtInterpreterManual.pdf>.

English proficiency, a judge “should” ask questions on the record to determine if an interpreter is necessary.⁸ Judges are provided with a list of suggested questions.⁹

B. Ensures that interpreters are competent by testing before appointing an interpreter in civil proceedings? *Yes, in the Unified Court System, although when no interpreter from the Unified Court System’s list is available individual judges assess the interpreter’s credentials. In Justice Courts, there is no competence requirement and no set procedure for determining competence.*

Courts in the Unified Court System

This section discusses the court interpreting program in place for all courts in the state except for Justice Courts. The Unified Court System’s Office of Court Interpreting Services maintains an electronic database that provides the courts with a statewide listing of both staff and per diem (freelance) interpreters. The database is sorted by language and location, and includes those individuals who have successfully completed the interpreter screening requirements.¹⁰ Procedures for credentialing interpreters vary depending on the language to be interpreted and whether the interpreters are on staff or retained on a per diem basis.

The Unified Court System relies on both staff and per diem (freelance) interpreters. Staff interpreters are used whenever they are available. However, both staff and per diem foreign language interpreters are required to complete the Unified Court System’s language skills screening process of assessment exams and a criminal background check. Court staff are responsible for confirming an interpreter’s qualifications prior to scheduling the interpreter to appear in court.¹¹

Required qualifications for both staff and per diem interpreters vary according to the language to be interpreted:

- **Interpreters for the Spanish language** must pass: 1) a written examination assessing grammar, vocabulary, word usage, sentence structure and reading comprehension in English and Spanish, and ability to translate between English and Spanish, and 2) an oral language examination assessing facility with simultaneous and consecutive modes of interpretation.¹²
- **Interpreters for one of 21 other languages** must also successfully complete a written test of English proficiency and an oral language examination.¹³
- **Interpreters for all other languages** must pass the written test of English proficiency and submit credentials, “including formal language education, prior

⁸ *Id.*

⁹ *Id.*

¹⁰ Interview with N.Y. State Office of Court Administration, Office of Court Interpreting Services, *supra*.

¹¹ E-mail from N.Y. State Office of Court Administration, Office of Court Interpreting Services (May 28, 2009).

¹² N.Y. State Unif. Ct. Sys., Court Interpreter Manual and Code of Ethics, *supra*, pp. 3, 5; N.Y. State Unif. Ct. Sys., Court Interpreting in New York: A Plan of Action (2006), p. 6, available at http://www.nycourts.gov/courtinterpreter/pdfs/action_plan_040506.pdf.

¹³ E-mail from N.Y. State Office of Court Administration, Office of Court Interpreting Services, *supra*; N.Y. State Unif. Ct. Sys., Court Interpreter Manual and Code of Ethics (2008), p. 3.

service as a court interpreter, or interpreting in a legal setting, e.g., such as for private law firms, legal aid societies, administrative tribunals, or in other situations involving the use of legal terminology or the interpreting of sworn testimony.”¹⁴ The credentials are reviewed and verified by the Office of Court Interpreting Services, in collaboration with the Unified Court System examination unit.¹⁵

The Office of Court Interpreting Services reports that interpreters from the list of staff and qualified per diem interpreters are used in the vast majority of cases.¹⁶ However, when no interpreter from the database list is available, or when critical need renders on-site interpretation impractical, the Unified Court System considers telephone, videoconference, or web-based interpreting services delivered by Unified Court System-qualified court interpreters to be suitable alternatives.¹⁷

In an emergency, if a staff or per diem interpreter from the list is not available, and if remote interpreting cannot be arranged or is not suitable for the proceeding, the court may use another interpreter.¹⁸ If the court is unsure of the interpreter’s qualifications, the judge is expected to review the interpreter’s credentials by asking a few questions about previous interpreting work and/or credentials, other related bilingual experience, education, and appropriate references.¹⁹

New York is a member of the Consortium for State Court Interpreter Certification,²⁰ which administers the New York Court System Registry Examination for interpreters.²¹ In addition, interpreters may apply for reciprocity in any language without having to take New York’s exam if they have been certified by one of the following: Consortium, Federal Court Interpreter Certification Examination Program, National Association of Judiciary Interpreters and Translators Certification, or Judicial Council of California-Master List of Certified Interpreters.²²

Justice Courts

The quality control measures described above do not apply to Justice Courts, which hear small claims and landlord-tenant cases outside of New York City and are financed and administered by their local governments. Each Justice Court is responsible for retaining its own interpreters. This is a difficult task, because the Justice Court system lacks staff interpreters and

¹⁴ Plan of Action, *supra*, pp. 5-6.

¹⁵ E-mail from N.Y. State Office of Court Administration, Office of Court Interpreting Services, *supra*.

¹⁶ Interview with N.Y. State Office of Court Administration, Office of Court Interpreting Services, *supra*.

¹⁷ E-mail from N.Y. State Office of Court Administration, Office of Court Interpreting Services, *supra*.

¹⁸ *Id.*

¹⁹ N.Y. State Unif. Ct. Sys., Working With Interpreters in the Courtroom: Benchcard for Judges, in N.Y. State Unif. Ct. Sys., Court Interpreter Manual and Code of Ethics, *supra*.

²⁰ National Center for State Courts, Consortium for State Court Interpreter Certification, Consortium Member States, available at http://www.ncsconline.org/D_Research/CourtInterp/Res_CtInte_ConsortMemberStatesMay07.pdf.

²¹ N.Y. State Unif. Ct. Sys., Court Interpreting Services, Reciprocity Provisions for the Per Diem Assignment Registry, available at <http://nycourts.gov/courtinterpreter/Reciprocityprovisions.pdf>.

²² *Id.*

guidelines for testing and training interpreters.²³ The ability of Justice Courts to retain interpreters is further hampered by an outdated statute that purports to limit the compensation of Justice Court interpreters to just \$25 per day.²⁴ A justice in Middletown Town recently testified that although he is aware of qualified interpreters in his area, they will not accept assignments at such a low rate. As a result, he is forced to “do [his] best by going to the local high schools to get a Spanish Teacher or college student who studies Spanish to translate.”²⁵

Although there has been very little coordination of the Justice Courts’ administration of court interpreting, the Office of Court Interpreting Services reports that it has taken a number of steps to try to help. The Office has worked with the Justice Courts’ Resource Center to identify interpreting needs, provide guidance and share resources. To facilitate speedy and efficient access to interpreters, the Unified Court System has made its database list of qualified per diem interpreters available to the Justice Courts. The Office of Court Interpreting Services has also made available a “working with interpreters” video, the court interpreter’s manual and code of ethics, and glossaries and dictionaries in various languages.²⁶

Finally, the Office of Court Interpreting Services recently concluded a year-long remote interpreting pilot program to assess the feasibility of telephonic interpreting for Justice Courts. During the pilot, which involved a cross-section of Justice courts from diverse geographic areas in the state, the Office provided interpreters by telephone. At the end of each telephonic appearance, the court submitted an evaluation form. The Office has deemed the pilot a “success.”²⁷

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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²³ E-mail from N.Y. State Office of Court Administration, Office of Court Interpreting Services, *supra*.

²⁴ N.Y. State Unif. Ct. Sys., Action Plan for the Justice Courts (2006), p. 29, available at <http://nycourts.gov/publications/pdfs/ActionPlan-JusticeCourts.pdf>.

²⁵ Justice Glen George, Testimony Before the Dunne Commission on the Future of the New York State Courts (June 26, 2007), p. 125, available at <http://www.nycourtreform.org/Ithaca.Hearing.Transcript.06.26.07.pdf>.

²⁶ E-mail from N.Y. State Office of Court Administration, Office of Court Interpreting Services, *supra*; Action Plan, *supra*, p. 28.

²⁷ Action Plan for the Justice Courts, *supra*, p. 28.