

## Language Access in State Courts

### South Carolina 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***

The South Carolina Code requires courts to appoint foreign language interpreters “[w]henever a party or witness to a civil legal proceeding does not sufficiently speak the English language to testify,” unless the court first “make[s] a finding on the record that the waiver of a qualified interpreter is in the best interest of the party or witness and that this action is in the best interest of justice.”<sup>1</sup>

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

Pursuant to statute, fees for interpreting services may be: (1) paid out of general funds appropriated to the Judicial Department, (2) charged to individual parties, or (3) taxed as costs.<sup>2</sup> The Division of Court Administration indicates that there is no formal waiver or repayment program for court interpreter costs.<sup>3</sup>

##### **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 South Carolina, the court may appoint a qualified interpreter “whenever a party or witness to a civil legal proceeding does not sufficiently speak the English language to testify.”<sup>4</sup> However, the statute does not explicitly say that interpreters should be appointed when a party is unable to understand the proceedings, and there are no guidelines for determining when a court interpreter should be used.<sup>5</sup>

#### **B. Ensures that interpreters are competent by testing before appointing an interpreter in civil proceedings? *No: although the state’s interpreter manager instructs judges to use certified interpreters when they are available, “otherwise qualified” interpreters need not demonstrate proficiency in either the target language or in court interpreting skills; and when neither type of interpreter is used the individual need only demonstrate language proficiency.***

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<sup>1</sup> S.C. Code of Laws § 15-27-155(A). *See also* S.C. R. Civ. Proc. 43(f) (“When a witness does not speak English sufficiently to testify, the court may appoint an interpreter of its own selection . . .”). Although the governing statute says that the court “may” appoint an interpreter for people who do not speak English, the South Carolina Court of Appeals has interpreted the statute as requiring appointment unless the court makes the requisite findings on the record. *Melton v. Olenik*, 664 S.E.2d 487, 490 (S.C. Ct. App. 2008).

<sup>2</sup> S.C. Code of Laws § 15-27-155(C)(2). *See also* S.C. R. Civ. Proc. 43(f) (same).

<sup>3</sup> Interview with Desiree Allen, Interpreter Manager, S.C. Div. of Ct. Admin. (Dec. 15, 2007).

<sup>4</sup> S.C. Code of Laws § 15-27-155(A).

<sup>5</sup> Interview with Desiree Allen, *supra*.

A memo from the interpreter manager in the South Carolina Division of Court Administration tells judges to “make every effort to contact and use first certified interpreters, then otherwise qualified interpreters.”<sup>6</sup> However, there is currently no statute or court rule requiring judges to do this.<sup>7</sup>

A “certified” interpreter is one who has: 1) attended a two-day orientation covering ethics rules, court interpreting modes and skills, justice system structure and procedure, legal terminology, and self-study aids to improve skills, 2) passed a written test covering English proficiency, legal terminology and ethics, and 3) passed an oral exam covering sight translation, consecutive interpretation and simultaneous interpretation.<sup>8</sup> An “otherwise qualified” interpreter is one who has either attended the orientation or passed the written test.<sup>9</sup> There does not appear to be any no requirement that an “otherwise qualified” interpreter demonstrate proficiency in either the target language or in court interpreting skills.

If neither a “certified” nor an “otherwise qualified” interpreter is available, courts may use one who is either an “instructor in the foreign language at an institution of education,” or someone who “has educational training or experience that enables him or her to fluently speak a foreign language and interpret the language of another person.”<sup>10</sup>

South Carolina also recognizes and utilizes interpreters from out-of-state, including North Carolina and Georgia.<sup>11</sup> South Carolina is a member of the Consortium for State Court Interpreter Certification.<sup>12</sup>

*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)

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<sup>6</sup> Memo from Desiree R. Allen, Program Manager, to All County Clerks and Summary Courts (Jan. 23, 2009), available at <http://www.sccourts.org/summaryCourtBenchBook/MemosHTML/2009-01.htm>

<sup>7</sup> Interview with Desiree Allen, *supra.*; Noelle Phillips, *Classes Aim to Certify Legal Interpreters for S.C. Courts*, The State (Oct. 16, 2007).

<sup>8</sup> S.C. Jud. Dep’t, South Carolina Interpreter Certification Program, available at <http://www.sccourts.org/courtreporter/CourtInterpreterCertificationProgram.cfm>.

<sup>9</sup> Memo from Desiree R. Allen, Program Manager, to All County Clerks and Summary Courts, *supra.*; S.C. Jud. Dep’t, South Carolina Interpreter Certification Program, *supra.*

<sup>10</sup> Memo from Desiree R. Allen, Program Manager, to All County Clerks and Summary Courts, *supra.*; S.C. Code of Laws § 15-27-155(B). Additionally, interpreters must be at least 18 years old and not a family member of the LEP individual. *Id.*

<sup>11</sup> Interview with Desiree Allen, *supra.*

<sup>12</sup> *Id.*