



NORTH CAROLINA
ADMINISTRATIVE OFFICE
of the COURTS

Court Programs Division

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North Carolina Administrative Office of the Courts' Interpreting Services Program

During the 2006 legislative session, the General Assembly authorized the North Carolina Administrative Office of the Courts (AOC) to adopt mandatory policies and procedures for the appointment and payment of foreign language interpreters (G.S. 7A-314 (f) and G. S. 7A-343 (9c)). These policies and procedures are to be applied uniformly throughout the General Court of Justice. Accordingly, the previous guidelines for the use of foreign language interpreters were revised to reflect the new policies and procedures. The purpose of these policies and best practices is to facilitate the efficient use of competent and ethical foreign language interpreters and translators in court proceedings. The document in its entirety can be found online at www.nccourts.org.

This information is being provided to the District Attorneys to provide guidance and information on what resources are available to them for their non-English speaking victims and witnesses, as well as how to handle the requests from defense attorneys for non-English speaking defendants.

Frequently Asked Questions

Q: For what cases does the AOC bear the cost of interpreters?

A: The Judicial Branch is authorized to provide foreign language interpreters at state expense in those instances where the state is bearing the costs of representation. For example, the court system bears the cost of a foreign language interpreter in indigent criminal cases where the defendant, or a witness for the indigent defendant, cannot speak or understand English. The court system also bears the cost of an interpreter for the victim or witness for the prosecution who cannot speak or understand English. Other examples for whom the court system will provide a foreign language interpreter are parties to juvenile proceedings, parents ordered to child custody mediation, indigent respondents in involuntary commitment proceedings, and 50B domestic violence proceedings (ALWAYS for the petitioner, but only for the indigent respondent).

There may be situations where a person has retained his or her own attorney, but is still entitled to other services, such as the assistance of an interpreter, at State expense. See State v. Boyd, 332 N.C. 101, 107-09, 418 S.E.2d 471, 474-76 (1992) (explaining that "whenever a defendant's personal resources are depleted and he can demonstrate indigency, he is eligible for state funding of the remaining necessary expenses of representation"; accordingly, the fact that a defendant has "sufficient resources to hire counsel does not in itself foreclose [the] defendant access to state funds for other necessary expenses of representation"). In these cases, an AOC-G-107 must be filed by the defense attorney, and an Affidavit of Indigency MUST be completed and the defendant found indigent in writing by the court for the state to bear the costs of the services of an AOC court interpreter.

There may also be situations where a party appears before a judicial official before any determination of indigency or right to counsel at State expense has been made, such as first appearances. If the defendant is subsequently convicted, the court can assign the interpreter fee to the defendant as costs. There is a telephone interpreting service available to all of the district courts for purposes of foreign language interpreting services for first appearances. If your clerk's office has not yet obtained the access code and

users guide for this service, please contact Brooke Bogue at 919-890-1213.

Defendants charged with infractions and other charges for which the state does not bear the cost of representation are not entitled to an interpreter at state expense and an interpreter should not be scheduled or asked to cover such matters. For court efficiency and convenience, however, in high-volume district courts through which a high number of NES defendants come for traffic matters (and other criminal/traffic cases for which indigency is not determined), an interpreter who is already present on AOC-authorized matters may be utilized to facilitate communication

between the court and the NES defendants in matters that will be resolved quickly. Otherwise, the defendant, or his/her counsel, is responsible for hiring a qualified interpreter. Court interpreters scheduled for AOC-authorized matters are NOT to be used for trials of non-indigent non-English speaking defendants.

Note: These policies apply to **foreign language interpreters only**. As a general rule, Chapter 8B of the General Statutes and the Americans with Disabilities Act requires the court system to provide sign language interpreters at State expense regardless of the financial status of the person needing the interpreter and regardless of the type of case.

Q: Are costs recouped from non-English speaking defendants?

A: YES. The AOC believes that the court is authorized to assess a reasonable fee for the costs of a foreign language interpreter against any party who is required to reimburse the State for the costs of representation. Therefore, the court shall assess a \$10 fee, or the cost of the actual services provided, whichever is greater, for the interpreting services provided for a non-English speaking indigent defendant who is convicted. As a guideline, if the matter takes longer than fifteen minutes and the defendant is convicted, then the defendant MUST be charged the interpreter's AOC hourly contract rate as part of the defendant's court costs. This applies to indigent defendants as well as those defendants who fall under the 'court convenience and efficiency' exception.

PLEASE ASSIST WITH REMINDING THE COURT OF ASSESSING THIS COURT COST. We have observed in site visits that the ADA takes the lead in moving these cases along in court - to facilitate this policy PLEASE make sure you advise the court that the court costs need to include this fee for the services of the interpreter. The new Criminal Bill of Costs includes a District Court and Superior Court entry for Interpreter Fees.

Q: Are costs recouped from non-English speaking victims/witnesses for the State?

A: NO. Since the state bears the costs of representation for the prosecution, AOC is authorized to provide interpreting services to the district attorneys in court during court proceedings, as well as for conferences outside of court between the district attorney and the non-English speaking victim/witness in preparation for court. No costs are assessed against the victim/witness for the prosecution.

Q: What types of cases are NOT covered?

A: For purposes of information provided to district attorneys, the Judicial Branch is not authorized to provide interpreters at state expense to parties who are required to bear their own costs of representation - for example, non-indigent defendants. The legislature has not authorized or appropriated funds for coverage for non-indigent defendants. If your office receives a call from a defense attorney requesting an interpreter for his/her client, do not call for an AOC court interpreter UNLESS the defendant has been found to be indigent and entitled to such services at state expense. Please advise privately retained counsel for non-indigent defendants that they must privately retain the services of a qualified court interpreter for their non-English speaking client. Privately retained counsel should retain the services of a foreign language interpreter PRIOR to court. They cannot be allowed to walk in on the day of court and use the services of AOC court interpreters simply because they are there. If the court interpreter has been scheduled to interpret for the court

(interpreter is providing service for communication between the court and witness or defendant during testimony or instruction) - the defendant should be ordered to pay the cost of the services of the interpreter. If the interpreter is needed to facilitate communication between private counsel and defendant, or to interpret the proceedings for the defendant while they are occurring via simultaneous interpretation - he/she MUST be privately retained - this service is NOT chargeable to AOC. PLEASE do not ask court interpreters to interpret between private counsel and non-indigent defendants, or to sit at counsel table with a non-indigent defendant to interpret the proceedings for the defendant – the AOC court interpreters are instructed to conduct privately retained business apart and separate from AOC time. It is a violation of the interpreter's contract with AOC to do otherwise.

Q: What about interpreting services for law enforcement functions and investigations?

A: The Judicial Branch is not authorized to provide interpreters for law enforcement functions. Similarly, the Judicial Branch is not authorized to provide interpreters for use by juvenile court counselors or for probation matters. In these instances, the law enforcement agency or the Department of Juvenile Justice and Delinquency Prevention or the Department of Corrections must bear the cost of the interpreter. Rule of thumb: The entity under whose responsibility the activity falls is responsible for the cost of the interpreting services required to perform that entity's function. AOC does recommend the use of an AOC-registered interpreter to ensure proper interpreter training and a proficiency level that will result in obtaining quality interpreting services from the early stages of an investigation. By virtue of the fact that the interpreter has been retained by the law enforcement agency in the investigation of the case, the interpreter used in this capacity will have a conflict of interest and should not be called upon to interpret in court.

Q: The judge ordered an AOC registered interpreter to interpret in a case for which the AOC does not bear the cost of the interpreter - i.e., a civil matters (except DV or court-ordered child custody mediation), or non-indigent criminal defendant cases - Will AOC pay the interpreter?

A: NO. If the judge appoints an interpreter to provide services in a non-AOC-authorized case, AOC cannot pay the interpreter. The judge has the authority to require the parties to bear the cost of the interpreter, pursuant to Rules of Evidence 604 and 706(b). In non-indigent criminal cases, the court has the authority, under Rules of Evidence 604 and 706(b) to order the defendant to pay the interpreter whether or not the defendant is convicted. The interpreter cannot bill this time to AOC. SEE SECTION 7.5 of the Policies and Best Practices. A copy of The Policies and Best Practices for the Use of Foreign Language Interpreting and Translating Services in the North Carolina Court System can be found on the web site at <http://www.nccourts.org/Citizens/CPrograms/Foreign/Documents/guidelines.pdf>.

Q: How do we choose a Spanish language court interpreter?

A: STAFF COURT INTERPRETER DISTRICTS: Staff Court Interpreters have been assigned to the following counties/districts: Buncombe, Chatham/Orange, Durham, Forsyth, Guilford, Johnston, Mecklenburg and Wake. In these districts, the staff court interpreter MUST be used for ALL court proceedings authorized to be covered at state expense. To avoid conflict of interest issues which could potentially preclude the staff court interpreter from providing interpreting services during the court proceeding, ALL OUT OF COURT interpreting services needs (counsel/client communication, trial preparation, etc.) must be performed by an AOC contract interpreter. Contract interpreters should be contacted directly to arrange for all of your out of court interpreting needs for your non-English speaking victims/witnesses. **FOR ALL OTHER DISTRICTS:** All Spanish language interpreters used in court and out of court for AOC-authorized matters MUST be chosen from the AOC's Spanish Foreign Language Registry (direct link: <http://www.nccourts.org/Citizens/CPrograms/Foreign/Documents/spanishforeignlanguageregistry.pdf>). The Spanish Foreign Language Registry is organized by district, and then alphabetically by interpreter with the highest proficiency levels listed first under their designated classification level. Please note the county of residence and choose the interpreter with the highest proficiency level within the closest proximity to your courthouse to minimize travel expenses.

If a non-AOC person is used to interpret in court for AOC-authorized matters, that person will NOT be paid for services rendered. Do NOT use bilingual staff and do NOT use volunteers for court proceedings. Other than the apparent conflict of interest issues that exist, using an untrained person as an interpreter will often result in the non-English speaking person linguistically attending a completely different proceeding than the English speakers. Proper court interpreting requires the engagement of multiple cognitive motor skills to properly perform this complex task.

Q: What level court interpreter should be used?

A: Preference should be given to Level A – Certified Court Interpreters. Level A court interpreters should be used for ALL trials. Spanish foreign language interpreters are classified as A – Certified, B - Qualified, and C - Minimally Qualified. Please visit our registry for a more detailed explanation of the classification levels. The interpreters are classified and available to your offices to ensure the highest quality level of interpreting services, which is extremely important in ensuring equal access to justice for non-English speaking defendants as well as your non-English speaking victims/witnesses. Properly trained court interpreters are trained in court interpreter ethics, professionalism and have tested and proven language and interpreting skills (if Level A or B). The Level C interpreters have only proven their language skills and should not be used for trials. The registry is updated once a month.

Q: What if we need something translated or transcribed?

A: You MUST submit a request for translation services to Courtney Lyman at Courtney.J.Lyman@nccourts.org. Interpreters will not be paid for translation or transcription services unless they have been assigned by this office. Translation requires a completely different skill set than interpreting, and we have a list of approved translators. Only federally certified court interpreters are used for the transcription of audio and video sources. This is an extremely difficult and time-consuming task, so please submit your request as early as possible.

Q: How should we schedule a Spanish court interpreter?

A: AOC has trained, tested, vetted, and contracted with qualified court interpreters for use by the NC court system. The scheduling of Spanish court interpreters is a local decision and one that should be based upon **proficiency** of the interpreter and the **efficient use of that interpreter**.

Tips for Scheduling Interpreters Efficiently:

1. Do not schedule an interpreter for full days of court unless you have a Superior Court trial scheduled for a full day. The court interpreters are contracted for minimums (one hour for a single case, three hours for a session, and five hours for a full day. If you find you are able to release the interpreter after between 1 – 3 hours, then **ONLY** schedule the interpreter for a session.
2. Do not schedule an interpreter just in case one might be needed. To the extent possible, check your dockets ahead of time to determine your need each week.
3. Try to call all of the AOC-authorized cases requiring the interpreter close in time to one another. AOC Court Interpreters are expected to cover numerous districts, so please work with them to release them so they can travel to the next county or district to provide services.
4. Only schedule one interpreter to cover the needs of your courts on any given day, unless a trial is scheduled. Interpreters are expected to move throughout the courthouse and cover all of the interpreting needs. Know how to contact him/her and ask for the assistance of your bailiffs to maintain contact with the interpreter and let him/her where he/she is needed next.
5. Sign off on the interpreter's daily log to verify the number of hours he/she has documented.
6. Contact an interpreter **IMMEDIATELY** if the case for which the interpreter was scheduled is canceled or continued to avoid unnecessary cancellation charges.

Q: What if an interpreter is needed for a language other than Spanish?

A: For AOC-authorized cases, to obtain the services of an interpreter for foreign languages other than Spanish, a request must be made to the Interpreting Services Program. Please fill out the form located under the Interpreters section of the www.nccourts.org website. The direct link is: http://www.nccourts.org/Citizens/CPrograms/Foreign/Documents/requestfor_nonspanishinterpreter.pdf. It is PDF fillable and can be e-mailed or faxed. An appropriate interpreter will be assigned. If known, please provide the type of hearing in the section at the bottom of the form for comments (i.e., trial, plea, etc.).

Q: How do we schedule interpreters for individuals who are deaf or hard of hearing?

A: The applicable AOC form for the use with cases requiring the services of an interpreter for individuals who are deaf and hard of hearing is the AOC-G-116. This form is an all-inclusive motion, appointment, certification and order for payment of an interpreter for someone who is deaf or hard of hearing. This form is to be completed and the original filed with the Clerk. The Clerk shall send a certified copy to AOC Financial Services Division for payment. A list of licensed interpreters for deaf and hard of hearing individuals can be accessed via the NC Courts web site, or directly at <http://dshh.dhhs.state.nc.us/division/interpreter/interpreter.html>. Unlike foreign language interpreters, interpreters for deaf or hard of hearing parties used for court interpreting are provided at state expense for all cases requiring such services, pursuant to the ADA (Americans with Disabilities Act). The only time a party should be charged for these services is if an interpreter is scheduled and appears, but the person needing services willfully fails to appear, causing the state to incur an unnecessary expense. Otherwise, no recoupment of costs for such services shall be charged to any party or person requiring ADA accommodation. The requirement of the state to bear the cost of reasonable ADA accommodation is not limited to parties or witnesses to cases, but extends to any person requiring such services who, upon request, wishes to observe court proceedings that are otherwise open to the public.

Other things to keep in mind:

1. When using a court interpreter, use direct speech. In other words, address the non-English speaker exactly as you would an English speaker. The interpreter will interpret what is being said exactly as it is being said. For example: If inquiring about someone's name, ask, "What is your name?" – not, "Ask him what his name is" or "What is his name?"
2. If a case is continued prior to the court date, PLEASE MAKE SURE YOU NOTIFY THE INTERPRETER! Their time is taxpayer's money, so please do not waste it – cancellation policies are in effect and they charge AOC for scheduled time that is not canceled in time.
3. Do NOT schedule interpreters for days or sessions of court if YOU DO NOT HAVE ANY CASES REQUIRING THE SERVICES OF AN INTERPRETER ON THE DOCKET. Many interpreters have opportunities for private non-court interpreting work and would like to take advantage of those more lucrative opportunities, or you may have a neighboring county that needs their assistance AND many interpreters want to use and improve their skills to provide us all with better services – they cannot do any of these beneficial things if they are sitting in court 'just in case'. Please use them efficiently.
4. PLEASE try to move the cases in which you need the interpreters along early, or schedule them for a specific time on your docket - OR do not ask the interpreter to come to court until you know you are going to call the case if the interpreter is scheduled for a single case. I recognize this is oftentimes difficult to do, but many interpreters call this office advising they show up as ordered at 9:00 A.M. for court and their case(s) is/are not called until after the lunch break, or last on the docket in the afternoon. Please try to work with them and be cognizant of the fact that they would really rather be actively working, AND that they are paid for their wait time as well as their active time, so it is everyone's best interest to utilize their services efficiently.
5. Interpreters are professionals that are bound by a code of ethics, just as attorneys are. Please do not inadvertently ask them to commit ethics violations. They are to be used as language conduits ONLY! Do not

ask Interpreters to approach non-English speakers on their own. Court interpreters are NOT to have conversations with, interview or meet with defendants, victims, or witnesses alone. They facilitate communication between two or more parties. It is not their job to explain anything or gather information on their own for attorneys. To do so is a violation of court interpreter ethics and a violation of their contract with AOC. It also opens them up in some circumstances to possibly being charged with the unauthorized practice of law. Please do not place our interpreters in that situation.

6. Efficiency is very important, however, quality of services is first priority. Interpreter fatigue is a very real issue and should be kept in mind when scheduling interpreting services for a Superior Court trial or other lengthy proceeding where the interpreter will be interpreting continuously for over 30 minutes. Schedule two interpreters who will act as a team and spell one another. This preserves the quality of the interpreting services provided throughout the duration of the proceeding.

7. Encourage the establishment of local court rules requiring all privately retained court interpreters be listed on the Spanish Foreign Language Registry for Spanish, or be listed on the LOTS Registry for non-Spanish. We encourage such local rules and would even go so far as to suggest that all privately retained court interpreters be required to be Level A (Certified) for trials. We support any court that develops such local rules. AOC has provided the court system with highly qualified, ethical and proficient court interpreters. To require such interpreters be hired for all matters for which AOC cannot cover at state expense maintains the quality of interpreting services in the court system, eliminates *voir dire* of unknown interpreters and the concern over questionable practices and interpretations, and provides peace of mind to all players that all non-English speaking parties are ensured a more equal access to justice, and given true linguistic presence in the North Carolina Court System.

QUESTIONS?

Please contact the Interpreting Services Program:

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