

Appendix B

Language Access and Remote Interpretation

Litigants and other court patrons who have limited English proficiency need language assistance services such as interpretation and translation to access the courts and resolve their legal problems. The same laws and rules about language access in Texas courts still apply when courts are partially closed and many proceedings are virtual. Below is a recap of the relevant law and some quick tips on best practices for how to provide meaningful access to justice for LEP persons in remote hearings. Many of these recommendations are also best practices under normal circumstances.

1. Important Terms

- **Limited English Proficient** – Individuals who do not speak English as their primary language and who have limited ability to read, speak, write, or understand English can be limited English proficient, or "LEP." It is important to note that someone can be English proficient in certain contexts but not in others. For example, they may know enough English to accomplish basic tasks like small talk and grocery shopping, but not enough to understand what the teacher is saying at a parent conference or participate in a court proceeding. The English proficiency needed in legal settings is much higher than what most people need in typical daily encounters, which is why legal information and court proceedings can be difficult even for many native English speakers to understand, and why people who know some English often need language assistance services in court. See below for some sample questions to help you assess whether a person would benefit from an interpreter in court.
- **Language access** – An umbrella term encompassing the idea that people with limited English proficiency (LEP) are entitled to meaningful access to programs and services. It implies the existence of laws and policies and the availability of services and supports to ensure that access is not significantly restricted, delayed, or inferior as compared to English proficient individuals.
- **Interpretation** – When a competent interpreter listens to something in one language (source language) and orally translates it into another language (target language).
- **Translation** – When a competent translator renders written text from one language (source language) into an equivalent written text in another language (target language).
- **Sight translation** - The reading of text written in one language (source language) by a competent interpreter who orally translates it into another language (target language).
- **Vital document** - A document that contains information critical for obtaining access to justice. Some examples of vital documents that courts may need to translate to ensure that LEP individuals are provided meaningful access can include information about and applications for programs, benefits, or services; intake forms; court forms; consent or complaint forms; notices of rights; letters or notices that require a response or responsive action; or orders that prohibit or compel conduct; and information about language assistance services.
- **Simultaneous interpretation** - When a competent interpreter listens to something in one language (source language) and orally translates it into another language (target language) in real-time without pauses.
- **Consecutive interpretation** – When a competent interpreter listens to something in one language (source language) and orally translates it into another language (target language) while the speaker pauses to allow for the interpretation before continuing.

2. State and Federal Law

Title VI of the Civil Rights Act of 1964

Title VI and its implementing regulations prohibit national origin discrimination in court programs and services, whether criminal, civil, or administrative.¹ The regulations prohibit discriminatory conduct such as providing a service or benefit that is different, or provided in a different manner, from what is provided to others under the program or that restricts in any way the enjoyment of any advantage or privilege enjoyed by others under the program on the basis of national origin.² The regulations also prohibit administering programs in a manner that has the effect of discriminating in those ways or “substantially impairing accomplishment of the objectives of the program” based on national origin.³ In 1974, the U.S. Supreme Court held that Title VI’s prohibition against discrimination on the basis of national origin includes discrimination against LEP individuals based on language.⁴

This means that courts must “ensure that LEP parties and witnesses receive competent language services ... At a minimum, every effort should be taken to ensure competent interpretation for LEP individuals during all hearings, trials, and motions during which the LEP individual must and/or may be present.” In situations where courts typically rely on written communication, translating documents that are vital to providing meaningful access is also required.⁵ Language assistance must be provided free of charge.⁶

Texas Government Code Chapter 57

Section 57.002 defines when a judge must appoint a licensed court interpreter⁷ and when a judge may appoint an unlicensed court interpreter. It also describes the minimum criteria an unlicensed interpreter must meet to be appointed in a court proceeding. It applies to all courts and both civil and criminal proceedings. Because the language of the statute has become somewhat convoluted over the years, we have summarized its requirements in the charts below for simplicity’s sake.

The first chart illustrates when a judge is required to appoint an interpreter and when the judge has discretion to appoint an interpreter. The second chart is for after a judge decides to appoint an interpreter either because a motion was filed, a request was made, or the judge decided *sua sponte* that an interpreter is needed to provide meaningful access to the proceeding for an LEP person. It illustrates when a judge must appoint a licensed court interpreter and when a court has discretion to appoint an unlicensed court interpreter. It also shows what minimum criteria an unlicensed court interpreter must meet to interpret in a Texas court proceeding.

¹42 U.S.C. § 2000, *et seq*

² 28 C.F.R. § 42.104(b)(1) (Aug. 26, 2003).

³ 28 C.F.R. §§ 42.104(b)(2), 42.203(e) (1966).

⁴ *Lau v. Nichols*, 414 U.S. 563, 569 (1974).

⁵ *Id.* at 41,463.

⁶ *Id.* at 41,462.

⁷ There are two types of licenses for Texas court interpreters: a basic license that authorizes you to interpret in municipal and justice courts, and a master license that authorizes you to interpret in any Texas court. When you hire a licensed interpreter, be sure they hold the appropriate license for your court.

Step One: Are you required to appoint an interpreter?

When to Appoint an Interpreter According to Tex. Gov. Code § 57.002	
Court must appoint an interpreter	Court may appoint an interpreter
When a party files a motion for an interpreter or a witness requests an interpreter in a civil or criminal proceeding. ^{8 9}	Upon its own motion for an LEP person. ¹⁰

Step Two: Does the interpreter have to be licensed? If not, what criteria must the interpreter meet?

Appointing a Licensed v. Unlicensed Court Interpreter According to Tex. Gov. Code § 57.002			
	County with population of at least 50,000 ¹¹	County with a population under 50,000	County to which Section 21.021 of Tex. Civ. Prac. Rem. Code applies ¹²
Must appoint a licensed court interpreter	When language is Spanish	No	No
May appoint an unlicensed court interpreter	1. When language is not Spanish; 2. The judge makes a finding that there is no licensed court	If the interpreter is: a. qualified by the court as an expert under the Texas Rules of Evidence;	If the interpreter is: a. qualified by the court as an expert under the Texas Rules of Evidence;

⁸ Tex. Gov. Code. Sec. 57.002(a).

⁹ Tex. Gov. Code Sec. 57.001(7) states a “court proceeding” “includes an arraignment, deposition, mediation, court-ordered arbitration, or other form of alternative dispute resolution.”

¹⁰ Tex. Gov. Code Sec. 57.002(b). Note the statute does not specify that the person must be a party or a witness. An example of a situation where a court may elect to appoint an interpreter for an LEP person who is not a party or witness is when the parent of a minor who is a party or witness has limited English proficiency and needs an interpreter to comprehend the proceeding affecting his or her child. In some cases involving minors, state law includes parents and guardians in the definition of “party” or “plaintiff,” but the court may appoint an interpreter for the parent even in cases where they are not explicitly a “party.”

¹¹ The counties with a population over 50,000 that aren’t subject to Tex. Civ. Prac. Rem. Code Sec. 21.021 are Anderson, Angelina, Bastrop, Bell, Bexar, Bowie, Brazoria, Brazos, Cherokee, Collin, Comal, Coryell, Dallas, Denton, Ector,* Ellis, Fort Bend, Grayson, Gregg, Guadalupe, Hardin,* Harris, Harrison, Hays, Henderson, Hood, Hunt, Johnson, Kaufman, Kerr,* Liberty, Lubbock, McClennan, Midland, Montgomery, Nacogdoches, Orange, Parker, Potter, Randall, Rockwall, Rusk, San Patricio, Smith, Tarrant, Taylor, Tom Green, Travis, Van Zandt, Victoria, Walker, Wichita Williamson, and Wise. Those denoted with an asterisk were added to the list based on 2017 5-year estimates from the Census Bureau. All other counties already had a population of at least 50,000 in 2010 when the last census was completed.

¹² At this time, Sec. 21.021 applies to Cameron, Culberson, El Paso, Galveston, Hidalgo, Hudspeth, Jefferson, Maverick, Nueces, Starr, Terrell, Val Verde, Webb, and Zavala counties.

	<p>interpreter available within 75 miles; and</p> <p>3. If the interpreter is:</p> <p>a. qualified by the court as an expert under the Texas Rules of Evidence;</p> <p>b. at least 18 years of age; and</p> <p>c. not a party to the proceeding.</p>	<p>b. at least 18 years of age; and</p> <p>c. not a party to the proceeding.</p>	<p>b. at least 18 years of age; and</p> <p>c. not a party to the proceeding.</p>
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Code of Criminal Procedure 38.30

Requires a court to appoint an interpreter upon a party’s motion or upon the court’s motion if the accused or a witness does not have English proficiency.¹³ Before Section 57.002 became law, “any person” could be appointed as an interpreter in criminal proceedings regardless of their qualifications. However, as of 2001, when a court appoints an interpreter in a criminal proceeding, the interpreter must fulfill the requirements of 57.002.¹⁴ The statute also requires the county to pay for the interpreter in criminal proceedings.

Texas Rule of Civil Procedure 183

A court may appoint an interpreter and may tax the interpreter fee as costs unless the law provides otherwise or the litigant has filed an uncontested Statement of Inability to Afford Costs pursuant to Tex. R. Civ. Proc. 145.

Texas Rule of Civil Procedure 145

A party who files a Statement of Inability to Afford Payment of Court Costs cannot be required to pay costs except by order of the court supported by detailed findings that the declarant can afford

¹³ Tex. Code of Crim. Proc. Art. 38.30(a).

¹⁴ *Ridge v. State*, 205 S.W.3d 591, 596-597 (Tex. App.—Waco 2006, pet. ref’d) (holding that a trial court has an independent duty to appoint a *licensed* interpreter if the court is made aware that a defendant or witness does not understand the English language, unless the defendant expressly waives the right to a *licensed* interpreter); *Franco v. State*, No. 04–16–00090–CR, 2017 WL 781033 at *1-*2 (Tex. App.—San Antonio 2017, pet. ref’d) (the appointment of an interpreter by a trial court is governed by section 57.002 of the Texas Government Code and article 38.30 of the Texas Code of Criminal Procedure). *See also* Op. Tex. Att’y Gen. No. JC-0584 (2001) (concluding that when a court appoints a spoken-language interpreter in a criminal case, chapter 57 establishes the requisite interpreter qualifications. Therefore, the interpreter must be licensed under chapter 57 unless the section 57.002(c) exception applies.).

to pay costs issued after an oral evidentiary hearing. “Costs” as defined by Rule 145 include the fees for an interpreter or translator. Therefore, LEP parties who file a Statement of Inability to Afford Payment of Court Costs must not be charged for the language assistance services they need to have meaningful access to the court.

3. Remote Hearings

Zoom

Interpretation can be provided remotely in virtual proceedings on Zoom both simultaneously and consecutively.¹⁵ Zoom allows for simultaneous interpretation by providing a separate audio channel that only the LEP person will hear. You can also use “breakout” rooms when an interpreter is needed for an attorney and client to have a private conversation during a proceeding. See *How to Use Simultaneous Interpretation in Zoom Proceedings* for detailed instructions about remote interpretation in Zoom for more information about scheduling the proceeding with an interpreter and using the interpreter controls during the proceeding.

What to do Before the Proceeding

- **Notice** – As mentioned in the *Best Practices for Court in Zoom Hearings Involving SRLs*, include with your notice Spanish (and any other languages common in your jurisdiction) instructions about how to contact the court for language assistance. Using an interpreter [icon](#) can also help LEP persons who speak languages other than Spanish or who have low literacy. Language assistance may include translation or sight translation of the notice and interpretation for the proceeding(s).
- **The LEP Person** – When you learn an LEP person will need an interpreter for a remote proceeding, confirm their preferred language to ensure you select an interpreter that will be able to communicate with them. Be sure to find out if they need any specific dialect. Some languages vary greatly between dialects. Also determine if the person has the technology they need to participate remotely. The simultaneous interpretation feature in Zoom will only work if the LEP person is able to join via the internet through a computer or other device. **It will not work if they call in over the phone.** They will need stable access to the internet and the latest version of Zoom to participate.¹⁶ If they don’t, you can still use a remote interpreter via Zoom, but the interpretation will need to be consecutive instead of simultaneous and you will need to plan for a longer proceeding.
- **The Interpreter**
 - **Selecting an Interpreter:** After confirming the preferred language of the LEP person, you will need to select an interpreter. If you already have an interpreter for your court in the language you need, this will be easy. If not, you may be able to find an interpreter through an existing contract your court or county already has, or you may need to hire an interpreter independently. If the language is Spanish and the proceeding is going to be short, you can use OCA’s [Texas Court Remote Interpreter Service \(TCRIS\)](#) to schedule a free interpreter. For remote proceedings you also have

¹⁵ Most Texas courts are using Zoom for remote proceeding so we are focusing on Zoom here. If your court is using a different platform such as WebEx and you need help developing protocols for remote interpretation, you may contact the Texas Access to Justice Commission by emailing atjmail@texasatj.org.

¹⁶ Some of the earlier versions of Zoom do not include the interpreter function.

the option of hiring licensed interpreters [from anywhere in the state](#).¹⁷ Similarly, where the law allows you to hire an unlicensed interpreter and a licensed one is not available, you can [hire an interpreter from anywhere](#) without incurring travel costs. Just remember that even unlicensed interpreters must meet the minimum requirements in Section 57.002.

- **Sample Questions to Help Assess Interpreters:** These questions can be used to assess an interpreter you are considering hiring for a proceeding or to assess an interpreter prior to appointing them and swearing them in during the proceeding.¹⁸
 - Are you a Texas licensed court interpreter?
 - What is your license level and number?
 - How long have you been an interpreter?
 - How many times have you interpreted in court?
 - What credentials or specialized training do you hold?
 - Describe the [Texas Code of Ethics and Professional Responsibility for Licensed Court Interpreters](#).
- **Best Practice Tip:** Please note that if the proceeding is expected to be long or complex, the best practice is to hire two interpreters to interpret as a team by switching off approximately every 30 minutes. This is because the cognitive load of interpreting for long stretches is very taxing and the longer an interpreter interprets, the more likely they are to make mistakes. In fact, the accuracy of most interpreters begins to show a measurable decline after 30 minutes of interpreting. The cognitive load of remote interpretation is even higher than on-site interpretation, so team interpretation may be even more useful for longer remote proceedings. Taking regular breaks is another option if you are unable to use an interpreter team for a long or complex proceeding.
- **Technology Needs for Interpreter:** In addition to ensuring that the interpreter you select meets the requirements of Section 57.002, for remote proceedings you will also want to ensure that they have what they need to minimize the chances of any problems with the technology that could cause a delay. For example, they will need a computer or other device, webcam, headset and the latest version of Zoom on their device, as well as stable internet access and a place to work with minimal background noise and distractions. If they have never used Zoom for remote interpretation before, you may wish to arrange a practice run with them prior to the proceeding to ensure everything is going to work properly.¹⁹
- **Provide Pleadings or Documents:** Provide the interpreter with the pleadings or other documents that are relevant to the proceeding to familiarize themselves with names, parties, and unique vocabulary.
- **Inform Litigant:** Once you have arranged for the interpreter, let the litigant know in their preferred language that you have done so. Knowing there will be an

¹⁷ Other options for finding competent interpreters are the [Texas Association of Judiciary Interpreters and Translators](#), [Metroplex Interpreters and Translators Association](#), [Houston Interpreters and Translators Association](#), [El Paso Interpreters and Translators Association](#), [Austin Area Translators and Interpreters Association](#), [National Association of Judiciary Interpreters and Translators](#), and [American Translators Association](#).

¹⁸ Here is an example video of assessing an interpreter prior to appointing them and swearing them in: [Example of Court Interpreter's Interview to Verify Credentials](#).

¹⁹ You may wish to share this video from the University of Arizona National Center for Interpretation with the interpreter. It is geared toward interpreters and provides a detailed explanation of using Zoom for remote interpretation: [Expanding your Toolbox: Using Zoom for Remote Simultaneous Interpreting \(RSI\)](#).

interpreter can help reduce the anxiety for the litigant and give them an opportunity to focus on other aspects of preparing for their proceeding.

During the Proceeding

- See *How to Use Simultaneous Interpretation in Zoom Proceedings* for detailed information about using the interpretation features and conducting a remote hearing in Zoom.
- Explain the role of the interpreter to the LEP person including the following:
 - The interpreter will interpret everything said in the proceeding with no additions, omissions, explanations, or personal input.
 - The interpreter cannot give advice, make suggestions, or engage in private conversation with the LEP person.
 - The LEP person should raise a hand if s/he has a question or does not understand something during the proceeding rather than asking the interpreter to explain it.
- Perform a sound check including allowing the interpreter and LEP party to assess whether they can hear and understand each other.
- Instruct participants on these best practices before you begin:
 - Speak slowly, clearly, and one at a time. Whenever possible use plain language and avoid “legalese” and unnecessary terms of art.
 - Speak directly to the participants as you normally would in court, not to the interpreter.
 - Do not ask the interpreter to explain or restate what the LEP person said.
 - During consecutive interpretation such as witness testimony, use short, complete sentences and pause after each complete thought to allow for interpretation.
 - Open any statement to the interpreter with “Mr./Ms./Mx. [Interpreter Name]” or “Mr./Ms./Mx. Interpreter” to alert the interpreter that they are being addressed.
 - Encourage the interpreter to request repetitions or clarifications as needed throughout the proceeding.
 - Attorneys representing LEP litigants may use a Zoom breakout room to consult with their client if necessary. If they need an interpreter, the interpreter will be able to join them in the breakout room.
 - Immediately alert the court if they are unable to hear or understand the participant who is speaking, or if the equipment they are using is not working properly.
 - Instruct all participants about what to do if they get disconnected due to a problem with the internet or other technology including providing contact information for a staff person who will be responsive if needed.
 - Give basic instructions about what the participants can expect and need to do to use the interpreter mode in Zoom.
- Ask the interpreter to say and spell their name for the record and what type of license they hold, if any, and to state their license number for the record.
- Administer the interpreter’s oath.²⁰
- Red Flags: During simultaneous interpretation only the LEP person will hear the interpretation, but during consecutive interpretation be aware of these red flags that may indicate poor quality interpretation:

²⁰ Tex. R. Evidence 604 requires that interpreters are qualified and take an oath. Sample interpreter’s oath: “Do you solemnly swear or affirm that you will interpret accurately, completely and impartially, using your best skill and judgment in accordance with the standards prescribed by law and the Code of Ethics and Professional Responsibility; follow all official guidelines established by this court for legal interpreting; and discharge all of the duties and obligations of legal interpretation?”

- The interpretation is much longer or much shorter than what was said in the source language.
 - The LEP person repeatedly asks for repetition or clarification.
 - The LEP person appears to be correcting or disagreeing with the interpreter.
 - The LEP person attempts to speak in English without using the interpreter.
 - The interpreter doesn't seem to have a strong command of English.
 - There are non-verbal cues on the part of the interpreter or LEP person that indicate there is some sort of problem.
 - The interpreter doesn't appear to take notes, especially for names, numbers, and long segments of speech.
 - The interpreter seems to be engaging in side conversations.
 - The interpreter has an inappropriate facial expression or tone. This could indicate the interpreter is not neutral or is biased in some way that could affect the accuracy of the interpretation.
 - The interpreter answers for the LEP person or attempts to explain or elaborate on the LEP person's answer.
 - The interpreter attempts to modify or discredit the LEP person's answer.
 - The LEP person appears unusually uncomfortable or confused or has an inappropriate facial expression or tone.
- When Party or Witness Has Difficulty Communicating: If you are in a proceeding without an interpreter and a litigant or witness is having difficulty communicating, these are some questions you can ask to assess whether an interpreter may be needed. Avoid questions that can be answered with a yes or no and try using questions that are slightly more complex to approximate the type of language that is common in court. If the person has difficulty answering these questions in a meaningful way, an interpreter is recommended.
 - Please tell the court your name.
 - How did you arrive at court today?
 - In what language do you feel most comfortable speaking and communicating?
 - Tell me about your education.
 - How comfortable are you proceeding with the matter as we are communicating now?
 - What is the purpose of your court hearing today?
 - To help me evaluate your English language proficiency, would you be willing to describe for me a scenario in which you may have found it challenging to communicate effectively in spite of familiarity with the content?

After the Proceeding

If there is a written decision or order, especially one that prohibits or compels action of any kind, enumerates rights or responsibilities, or requires a response or action to be taken, it is probably a vital document that needs to be translated for the LEP person.²¹

²¹ See *State of Vermont v. Onix Fonseca-Citron*, No. 2018-197 (Vt. June 12, 2020) (order granting Defendant's request for translation of the Supreme Court's opinion affirming his conviction pursuant to Title VI of the Civil Rights Act of 1964). See also Michael W. Finigan, Ph.D. and Theresa Herrera Allen, Ph.D., Evaluation of the Introduction of Plain Language Forms with a Spanish Translation in Two Family Court Settings (October 2016), https://richardzorza.files.wordpress.com/2016/11/plain-language-report_10-24-16.pdf (Spanish-speakers in Travis County, Texas who did not receive their protective orders in Spanish were three times more likely to violate them than those who received their order in Spanish. The reduction in enforcement proceedings saved the court over \$100,000 in a six week period.)