

Effectively Communicating with Deaf Clients

Guide for Texas Attorneys

Working with deaf or hard of hearing individuals, whether in court or in your office, requires advance preparation. Not all deaf and hard of hearing individuals communicate in the same way. Deaf and hard of hearing people may communicate using different “auxiliary aids and services” such as sign language interpreters, lip reading, real-time captioning, writing notes, or a combination. Attorneys addressing the need for access to communication must take client preference into consideration. Ask the client for his or her preferred method of communication. While there are many communication options, this document focuses on the use of sign language interpreters.

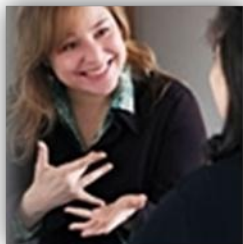
FREQUENTLY ASKED QUESTIONS INCLUDING:

Why use an interpreter?

Can I use a family member or friend?

Can I write notes back and forth?

Who is required to pay for the interpreter?



The purpose of this sheet is to provide information and resources to raise awareness, educate, and guide Texas attorneys about working with Deaf individuals.

WHY USE AN INTERPRETER?

Using a qualified interpreter makes your job easier and minimizes the chance of your case being negatively affected by ineffective communication. The Americans with Disabilities Act of 1990 (ADA), as amended, requires that certain public entities (including courts) and private businesses (including law offices) be accessible to deaf and hard of hearing individuals. Many deaf and hard of hearing individuals have Limited English Proficiency (LEP) and do not write or speak English as fluently as necessary for you to represent them effectively without the use of a qualified interpreter. An interpreter may help to bridge the cultural and communication gap, reducing confusion, misunderstandings, liability, and frustration.

HOW TO LOCATE A QUALIFIED INTERPRETER?

Under Texas law, courtroom interpreters are required to hold either the Court Interpreter Certification (CIC) from the Texas Board for Evaluation of Interpreters (BEI),¹ or a legal certificate (SC:L) from the National Registry of Interpreters for the Deaf (RID).² The court coordinator should be able to assist in locating a qualified interpreter. If your court does not have someone responsible for this service, please visit the DARS registry of BEI-certified interpreters at www.dars.state.tx.us/dhhs, or RID's certified list at www.rid.org. The court clerk or other court staff is responsible for confirming an interpreter's qualifications prior to appearing in court, but the attorney may want to verify that information.

Interpreting services outside of court must be done by a “qualified” interpreter. The attorney can help ensure that an interpreter is “qualified” by following the State's recommended interpreter certification levels by situation, online at www.dars.state.tx.us/dhhs/beilvl.shtml. (A private attorney may need to use the

Category D certification level or higher for office visits in situations that are not otherwise covered by the recommendations.)

CAN I USE A FAMILY MEMBER OR FRIEND?

The use of family or friends to interpret is not advised. Family and friends can be biased, and may be unskilled as interpreters even if they are fluent in sign language. Moreover, the law prohibits using family or friends unless (a) the deaf individuals requests it and it is appropriate, or (b) it is an emergency involving an imminent risk of harm.³ Finally, although attorney-client confidentiality clearly extends to professional interpreters, and although many courts hold that it also applies despite disclosure to third-parties who are assisting the lawyer, using a non-professional can introduce some complexity.

As a rule, the higher the risk, impact, or importance of the case, the higher the standards must be for interpreting. The use of a non-qualified interpreter may be subject to later challenge in court.

WHO IS REQUIRED TO PAY THE INTERPRETER?

In criminal cases, upon motion, the court must appoint an interpreter, not just for court proceedings but also for all in-court and out-of-court privileged communications between the lawyer and the client.⁴ The costs of this cannot be taxed against the defendant.⁵

In civil cases, upon motion, the court must appoint interpreters for court proceedings and for depositions,⁶ and the county pays for the cost.⁷ For other out-of-court communications between lawyer and client in civil cases, the lawyer is responsible for providing interpreters, and cannot shift the cost of doing so to the client.⁸ On the other hand, the Texas Bar may be able to offer financial assistance to attorneys, especially those working for organizations funded by the Texas Access to Justice Foundation. Direct questions to **Briana Stone at bstone@texasbar.com or (512)427-1857**. Tax incentives may also be

available to certain entities to help defray the cost of providing accessible services. This information can be found at www.ada.gov/archive/taxpack.htm.

CAN WE WRITE NOTES BACK & FORTH?

For lengthy and complex information exchanges with people that rely upon American Sign Language (ASL) as their primary language, writing back and forth may not be effective due to limited English proficiency. ASL is a complex visual-spatial language that relies heavily on physical and facial grammar, body movement and the use of space. These cues or other factors are not present in written English. In such situations the safest course is to use the communication mechanism that the client requests or prefers.

WHAT IS A CERTIFIED DEAF INTERPRETER & WHEN ARE THEY UTILIZED?

There may be times when the communication mode of a deaf client is so unique that a communication specialist is required. Therefore, in order for communication with that individual to be effective, the service of a certified deaf interpreter⁴ (CDI) may be required. A CDI is a deaf or hard of hearing person who possesses the necessary dialect, idiosyncratic awareness, education, training, and specialized skills. This specialist ensures the effectiveness of communication in cases that cannot be adequately achieved by the hearing interpreter alone.⁹ For more information about CDIs contact www.rid.org or bei@dars.state.tx.us in Texas.

CAN TECHNOLOGY PROVIDE EFFECTIVE COMMUNICATION?

Technology may be effective for spoken languages but may not be for ASL, a 3-D visual language. There are many forms of technology available for translation or communication access services. Current trends in technology that deaf and hard of hearing people use are video remote interpreting (VRI) and video relay services (VRS). VRS may not be used when the attorney and deaf client are in the same location.

Unless the deaf individual requests them, VRS and VRI are not recommended because of their limitations. An interpreter who is physically present is often preferable because of the environmental cues and the three-dimensional nature of ASL. Other limitations of VRS and VRI include:

- VRS interpreters cannot be sworn in, or take the oath for accuracy of the record;
- there is no way of knowing the skill or certification level of a VRS interpreter;
- the software/technology may have connection issues; and
- VRI, unlike VRS, is not regulated by the FCC.

ONLINE RESOURCE LIST

- **Disability Rights Texas:** www.disabilityrightstx.org
- **MARIE Center:** www.interpretereducation.org/specialization/legal
- **Midwest Center on Law & the Deaf:** www.mcl.d.org
- **National Association for the Deaf:** www.nad.org/issues/issues-resources
- **National Association of Judiciary Interpreters & Translators:** www.najit.org/asl/asl.php
- **Recommended Guidelines for VRI Interpreting for ASL-Interpreted Events:** www.courts.ca.gov/documents/CIP-ASL-VRI-Guidelines.pdf
- **Registry of Interpreters for the Deaf:** www.rid.org/interpreting/Standard%20Practice%20Papers/index.cfm
- **Texas Department of Assistive and Rehabilitative Services:** www.dars.state.tx.us/dhhs



ENDNOTES

¹ The Texas Board for Evaluation of Interpreters (BEI) is under the auspices of the Office for Deaf and Hard of Hearing Services (DHHS) at the Department of Assistive and Rehabilitative Services (DARS), which is the state agency authorized by statute to certify interpreters in Texas and to regulate BEI-certified interpreters and persons acting as court interpreters in court proceedings. Tex. Hum. Res. Code § 81.007; Tex. Gov't Code Ch. 57.

² 40 Tex. Admin. Code § 109.323; Tex. Gov't Code § 57.026; Tex. Code Crim. Proc. art. 38.31(g)(2).

³ 28 C.F.R. § 35.160(c) (applicable to state and local courts); 28 C.F.R. § 36.303(c) (re private attorneys).

⁴ –Tex. Code Crim. Proc. Art 38.31.

⁵ Tex. Atty. Gen. Op. DM-411 (1996) (citing DOJ guidance).

⁶ Tex. Civ. Prac. & Rem. Code § 21.002.

⁷ Tex. Civ. Prac. & Rem. Code § 21.006(c).

⁸ 28 C.F.R. §§ 36.303(c) and 36.301(c).

⁹ See

http://www.rid.org/UserFiles/File/pdfs/Standard_Practice_Papers/CDISPP.pdf.

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