

# WORKING WITH INTERPRETERS IN WISCONSIN COURTS BENCHCARD FOR JUDGES

## APRIL 2024

### LIMITED ENGLISH PROFICIENCY

In Wisconsin, Limited English Proficiency or LEP means the inability to adequately understand or communicate effectively in English in a court proceeding because of where a person was born (national origin) or because of disability. See Wis. Stat. §885.38(1)(b)1&2.

### MANDATORY APPOINTMENT

If the court determines that a person has limited English proficiency and needs an interpreter to communicate with counsel, understand English testimony, or be understood in English in **any type of case (criminal or civil)**, the court must provide an interpreter. The court must provide an interpreter for a Deaf member of a jury panel in any type of case.

### EVALUATE NEED FOR AN INTERPRETER

The determination as to whether an interpreter is needed must be made by the court. Evaluate the need for an interpreter as early as possible and before any substantive hearing. A *voir dire* of the litigant can be done by asking open-ended questions in English. The questioning does not require an elaborate hearing.

#### SUGGESTED QUESTIONS TO ESTABLISH NEED FOR AN INTERPRETER AND TO DETERMINE LEP

- How did you come to court today?
- How did you learn English, and what is most difficult about communicating in English?
- Please tell me about your native country.
- Describe what you see in this courtroom.
- What is the purpose of your court hearing today?

At the end of the evaluation, make a finding as to the need for an interpreter and limited English proficiency. When in doubt, appoint an interpreter.

### WHO IS ENTITLED TO AN INTERPRETER?

The circuit court will pay for an interpreter if the person is:

1. A party in interest.
2. A witness, while testifying in a court proceeding.
3. An alleged victim, as defined in s. 950.02 (4).
4. A parent or legal guardian of a minor party in interest or the legal guardian of a party in interest.
5. Another person affected by the proceedings, if the court determines that the appointment is necessary and appropriate.

### DISCRETIONARY APPOINTMENT

If a person needs assistance at the clerks' counter regarding a legal matter or if a person needs interpreter services outside the courtroom such as for court-ordered psychiatric or medical exams, or mediations the court may provide an interpreter.

### INTERPRETER QUALIFICATIONS

Always use a certified or qualified interpreter either in-person or remotely.

Establish an interpreter's qualifications on the record with questions to assess skills and experience, to determine if any conflicts exist, and to demonstrate understanding of the Code of Ethics for Court Interpreters.

#### SUGGESTED QUESTIONS TO ESTABLISH INTERPRETER QUALIFICATIONS

Questions about certification:

##### SPOKEN LANGUAGE:

Are you certified as a court interpreter by this state or any other state or federal court?

##### SIGN LANGUAGE:

- Do you hold legal certification from the Registry of Interpreters for the Deaf (RID) or the Board for Evaluation of Interpreters (BEI)
- Do you hold an interpreter license from the State of Wisconsin's Department of Safety and Professional Services?

##### GENERAL QUESTIONS WHEN **NO** CERTIFICATION EXISTS:

- How did you learn English?
- How did you learn your other language?
- What is your experience interpreting in court?
- What types of cases?
- Do you have any formal training in interpreting, specifically legal interpreting? Please describe your formal schooling.
- Do you know any of the parties in this case? If so, how?
- Are you able to remain neutral and impartial?
- Have you interpreted in any incident related to this case?
- Do you understand you are only here to facilitate communication and should not give advice or your opinion?
- Are you able to interpret simultaneously and consecutively?
- Do you understand that you must interpret everything said on the record?
- Have you read Wisconsin's Code of Ethics for Court Interpreters and do you understand each canon?
- Have you talked with the person briefly? Are there any communication problems?

## SWEAR IN THE INTERPRETER

Before the interpreter assumes his/her duties, administer an oath on the record.

### SAMPLE OATH

*"Do you solemnly swear [or affirm] that you will interpret truly, accurately, completely, and impartially, in accordance with the standards prescribed by law, the code of ethics for court interpreters, and Wisconsin guidelines for court interpreting?"*

## OATH FOR SIGN INTERPRETERS FOR DEAF JURORS

Use this additional oath for sign language interpreters and real time reporters who are appointed for an LEP juror with a disability:

*"Do you also swear [or affirm] that you will not participate personally in the jury's deliberations, nor make any comment about your personal recollections of the evidence or your opinions about the outcome of this case and that you will not disclose or comment upon anything you hear in jury deliberations unless ordered to do so by the court?"*

## COLLOQUY BEFORE THE HEARING

At the start of the hearing, use the following introduction to explain the role of the interpreter:

*"We will have an interpreter assist us through these proceedings. The interpreter is here only to interpret the proceedings and to enable us to communicate with each other. The interpreter is not a party in this case, has no interest in this case, does not take sides and is not allowed to give legal advice or any other assistance."*

## EXPECTATIONS OF THE INTERPRETER

The interpreter is a language expert whose goal is to put the LEP litigant/witness on the same level as an English-speaking litigant/witness (not better or worse). The court can expect an interpreter to:

- Talk briefly with the LEP individual to confirm effective communication is possible
- Suggest best positioning within the courtroom
- Speak from the perspective of the original speaker (1<sup>ST</sup> person)
- Refer to himself/herself as "the interpreter"

- Ask clarifying questions
- Correct misinterpretations
- Take notes and consult a dictionary or glossary (hard copy or on an electronic device)

## HELPFUL TIPS

- Don't use friends, relatives (especially children), social workers, victim advocates, law enforcement officers or attorneys as interpreters during court proceedings.
- Use the roster to locate the most qualified interpreter.  
<http://www.wicourts.gov/services/interpreter/search.htm>
- Consider using technology to assist with interpreting when available.
- Use a team of interpreters during trials and proceedings expected to last 2 or more hours.
- Allow the interpreter to review the court file and potential exhibits prior to the hearing.
- Speak clearly, directing statements and questions to the litigant and not to the interpreter.
- Make sure only one person talks at a time.
- Monitor interpretation at all times.
- Provide rest breaks as needed, at least one for every 30 minutes of continuous interpreting. Distribute jury instructions and verdict forms to the interpreter.
- Contact the Court Interpreter Program for assistance or to report problems regarding interpreting and translation.

## CHECK LIST

### DID YOU...?

- ✓ Make a finding as to limited English proficiency and for interpreter need.
- ✓ Establish interpreter qualifications and determine whether any conflicts exist.
- ✓ Swear in the interpreter.
- ✓ Use the colloquy to explain the role of the interpreter.
- ✓ Use a certified or qualified interpreter.