

An Attorney's Guide to Working with Limited English Proficient (LEP) Individuals

How to determine if you need a court interpreter for a Limited English Proficient individual

What is a Limited English Proficient individual?

“Limited English Proficient (LEP) individual” means any party or witness who cannot readily understand or communicate in spoken English or who does not speak English as his or her primary language and who consequently has a limited ability to read, speak, write or understand English and cannot equally participate in or benefit from the proceedings unless an interpreter is available to assist the individual. The fact that a person for whom English is a second language knows some English does not prohibit that individual from being allowed to have an interpreter.” Miss. Code Ann. § 9-21-71(a).

Do you have an LEP individual involved in the case? (a party, witness, or other participant)

The LEP individual does not have to be your client. Your case, your client's rights, and the record will be better protected if all LEP individuals are provided an interpreter. Determine the language and specific dialect (if any) the LEP individual speaks.

What are LEP individuals entitled to?

“[An LEP] individual is entitled to use an interpreter in any instance arising out of or pertaining to the individual's involvement in litigation.” Miss. Code Ann. § 9-21-73 (4).

Who pays for the Interpreter?

“The expenses of providing an interpreter in any court proceeding or instance arising out of litigation must be payable out of the county or municipal treasury at no cost to the litigant.” Miss. Code Ann. § 9-21-81 (2).



Interpreters in Criminal Cases

“In all criminal cases wherein the defendant is a Limited English Proficient (LEP) individual, the court shall appoint a qualified interpreter as provided in Section 9-21-80, sworn truly to interpret, and allow him a reasonable compensation, as set by the court, payable out of the county or municipal treasury at no cost to the defendant.” Miss. Code Ann. § 99-17-7.

Do you need an interpreter for your case?



“An interpreter is needed and a court interpreter shall be appointed when the judge determines, after an examination of a party or witness, that: (a) the party cannot understand and speak English well enough to participate fully in the proceedings and to assist counsel; or (b) the witness cannot speak English so as to be understood directly by counsel, court and jury.” Miss. Code Ann. § 9-21-79 (1).

Voir Dire of an LEP Individual

“The court should examine a party or witness on the record to determine whether an interpreter is needed if:

- (a) A party or counsel requests such an examination;
- (b) It appears to the court that the party or witness may not understand and speak English well enough to participate fully in the proceedings; or
- (c) The party or witness requests an interpreter. The fact that a person for whom English is a second language knows some English does not prohibit that individual from being allowed to have an interpreter.”



Miss. Code Ann. § 9-21-79 (2).

SAMPLE QUESTIONS to assess English proficiency:

1. What is your name?
2. Where are you from? Tell me a little about your country.
3. In what language(s) do you communicate daily/mostly?
4. Describe how comfortable you are speaking and understanding English.
5. Tell me about your education.
6. Describe some of the people and things you see in the courtroom.

Do you speak English?
¿Habla usted Ingles?
Ban có biêt nói tiếng
Anh không?

“After the examination, the court should state its conclusion on the record, and the file in the case shall be clearly marked and data entered electronically when appropriate by court personnel to ensure that an interpreter will be present when needed in any subsequent instance arising out of the litigation.” Miss. Code Ann. § 9-21-79 (3).

You Need a Court Interpreter – Now What?

How to request a court interpreter:

The first step is to check with the Clerk of Court or Court Administrator assigned to your case. Some courts may have local rules pertaining to court interpreters. Some judges may have a preference regarding the steps to appointing a court interpreter.

INTERPRETER ORDER OF APPOINTMENT:

The judge must appoint the most qualified interpreter that is reasonably available.

“The court shall appoint an interpreter in the following order of preference:

- (a) Certified court interpreter.
- (b) Registered court interpreter.
- (c) Non-credential interpreter.”

Miss. Code Ann. § 9-21-80 (1).

“A non-credentialed interpreter may be appointed if:

- (a) Neither a certified nor registered court interpreter reasonably is available; and
- (b) The court has evaluated the totality of the circumstances, including the gravity of the judicial proceeding and the potential penalty or consequence involved.”

Miss. Code Ann. § 9-21-80 (2).

“A summary of the efforts made to obtain a certified or registered court interpreter, as well as a summary of the efforts to determine the capabilities of the proposed non-credentialed interpreter, must be made in open court and placed on the record.” Miss. Code Ann. § 9-21-80 (4).

INTERPRETER SKILLS and QUALIFICATIONS



Can I just use a bilingual individual as the interpreter?

NO. Qualified court interpreters have specialized skills. Court interpreters must have a comprehensive vocabulary in the source language and the target language. Court interpreters must have an understanding of legal procedures and legal terminology. Court interpreters are required to adhere to the Mississippi Code of Ethics and subject themselves to the requirements of the Court Interpreter Program.

Whenever there is an interpreter providing services in a proceeding, the interpreter’s certification/qualification must be determined on the record.

“If the court appoints a non-credentialed interpreter, the court must make the following findings on the record:

- (a) The proposed interpreter appears to have:
 - (i) adequate language skills, knowledge of interpreting techniques, and familiarity with interpreting in a court setting; and
 - (ii) read and understand, and agrees to abide by, the Mississippi Code of Ethics for Court Interpreters and the Mississippi Rules on Standards for Court Interpreters.”

Miss. Code Ann. § 9-21-80 (3) (a).

If the interpreter is Certified, the judge is not required to go through the qualifications on the record.

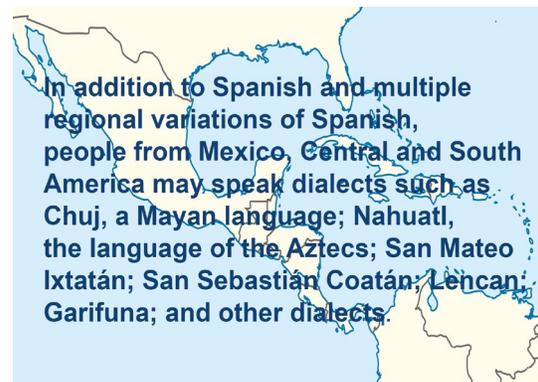
Whenever the court is presented with an interpreter that is not certified, the judge shall assess and determine the interpreter's credentials by asking some basic questions on the record, such as:

- ✓ What is your native language?
- ✓ If other than English, how did you learn English?
- ✓ If English is your native language, where or how did you learn the target language?
- ✓ Do you know the person for whom you will interpret or any of the parties involved in this proceeding? How so?
- ✓ Can you remain impartial and objective as an interpreter?
- ✓ How long have you been an interpreter?
- ✓ Have you had any formal training in court interpreting?
- ✓ Are you familiar with the modes of interpretation? (Simultaneous, consecutive and sight translation of documents.)
- ✓ Are you familiar with the Code of Professional Responsibility for Court Interpreters? Name some of the responsibilities? (Interpret accurately, completely, and impartially; give accurate representation of qualifications; confidentiality; limit the scope of work to interpreting; show professional demeanor; duty to report ethical violations; and report impediments to performance.)

Once the judge, counsel and LEP individual are satisfied with the interpreter's credentials and/or qualifications, the judge shall then determine whether there are any potential conflicts that would prohibit the interpreter's participation in the case. If there are none, then the judge shall appoint the court interpreter and administer the oath.

Does your client need an interpreter that speaks a specific dialect?

A dialect is a form of a language that people speak in a particular part of a country, containing some different words and grammar.



When possible, the interpreter should meet/speak with the LEP individual and his or her attorney prior to a court proceeding. This will allow the interpreter and LEP individual the opportunity to confirm their ability to understand each other. If there is a communication barrier, the interpreter should be able to assist in letting you know which specific dialect is needed for your client.

There can be substantial differences in the standard form of a language and its various dialects. Words that may appear similar between a language and its dialects may carry different meanings. This could lead to the LEP individual misunderstanding what is being asked of him or her, and as such providing incomplete information to the court that could damage the case or potentially lead to a wrongful conviction. The issue could also affect the interpreter's understanding of the LEP individual, and cause mistakes in the interpretation as well.

A dialect is not the same as an accent. An accent refers to the way we pronounce words and the standard dialect of a language can be spoken with different accents.

YOU HAVE AN INTERPRETER. WHAT NOW?

What does a court interpreter do for the LEP individual?

An interpreter is a neutral third-party and an arm of the court. A court interpreter enables an LEP individual to be on "equal footing" as a native English speaker.

NEUTRAL

What is the court interpreter's involvement in the case?

The court interpreter must interpret from English into the target language and the target language into English accurately, completely, and impartially using their best skill and judgment.



What should I do differently when there is an interpreter in a case?

- Slow your normal rate of speech when addressing the court, jury, or witnesses to allow the interpreter to interpret simultaneously for the LEP individual.
- Speak directly in the first person to the LEP individual, not the court interpreter. Do not say: "Ask him if he understands . . ."
- Speak in segments when addressing the LEP individual and pause to allow the interpreter to interpret during the pause.
- Use simple legal language.
- Avoid asking compound questions.
- Do not ask the interpreter to explain the proceedings to the LEP individual.
- Do not use acronyms or legal jargon that may present a challenge for the interpreter. Fully state the name for which the acronym stands.
- Do not ask the interpreter to participate in any other activities other than as the interpreter for the LEP individual.
- Be patient.

Utilizing Court Interpreters Remotely

Remote Court Interpreters*

Remote interpreting can provide LEP litigants with immediate access to a qualified interpreter in their language. The decision when to use or not use remote interpreting is one that requires a balancing test to weigh multiple factors such as the type and expected duration of the event, language, cost, and special needs of the LEP person requiring an interpreter. Courts should ensure LEP court users are able to fully and meaningfully participate in the proceedings. If it is determined that using remote interpreters would negatively impact access for any reason, an on-site interpreter should be used instead.

Events and situations presumed appropriate for Remote Interpreting According to the National Center for State Courts:

When proceedings are expected to be short and non-complex. For example, initial appearances, arraignments, scheduling conferences, or status conferences.

When proceedings will involve limited testimony by no more than one or two parties.

When interpreting assistance is needed outside the courtroom. Often LEP individuals and families will show up at the court information desk or clerk's counter to pay a fee or file a document. Remote interpreting is a good resource for these types of situations.

When no credentialed court interpreter is available in person. Remote interpreting is a good option when interpretation is needed for urgent, emergent or unexpected situations, or when an on-site interpreter is unavailable for any reason.

When there are not multiple parties who all require the services of an interpreter.

Factors to consider when determining "reasonable availability" of an on-site interpreter:

When the available on-site interpreter does not meet a state's credentialing requirements. A qualified remote interpreter may be the better option over a less qualified, on-site interpreter who has not met the state's requirements

When the person in need of an interpreter speaks a language of limited diffusion (a rarer language). Remote interpreting opens the possibilities for locating and employing qualified interpreters for rarer languages in different cities, states, or countries. In some cases, a remote interpreter may work alone or even as part of a relay team.

When a local interpreter discloses a conflict of interest. Many immigrant communities are also small linguistic communities. An interpreter's own family, social or professional relationship with an LEP individual may compromise the neutrality of the proceeding. In such case, it may be necessary to use a neutral, remote interpreter to avoid a real or perceived conflict of interest.

When it is more fiscally responsible to use a remote interpreter than an on-site interpreter. If interpreter travel costs or interpreter rates are high relative to the length or criticality of the hearing, Remote interpreting with a qualified interpreter provide a cost-effective alternative.

* https://www.ncsc.org/data/assets/pdf_file/0021/18705/remote_interpreting_guide.pdf

Introducing the Role of the Court Interpreter

How to Introduce the Role of the Court Interpreter:

It is important to provide appropriate notice as to the role of the court interpreter to all parties, witnesses, and jurors present in court proceedings in which court interpreters are providing services.

Example of appropriate notice to parties and witnesses who are testifying:

“I would like to explain the role of the court interpreter. The court interpreter is here only to interpret the questions that you are asked and to interpret your responses to them. The interpreter will interpret everything said in English into your language. The interpreter will also interpret everything you say into English and will not add to your testimony, omit anything, or summarize what you have said. If you do not understand the court interpreter, please let me know. If you need a question repeated or a clarification, please request the repetition or clarification from the person who asked the question. Please wait until you have heard the entire interpreted question or statement before answering. Please know the interpreter is not a lawyer and is prohibited from giving legal advice. Do you have any questions about the role or responsibilities of the court interpreter?”



Should there be instructions to a jury about the interpreter?

It is suggested that a jury instruction be provided. Examples:

Proceedings Interpretation: “This court seeks a fair trial for all people regardless of the language they speak and regardless of how well they understand or speak the English language. Bias against or for persons who are not proficient in English is not allowed. Therefore, do not allow the fact that the party requires an interpreter to influence you in any way.”

Witness Interpretation: “Treat the interpretation of the witness’ testimony as if the witness had spoken English and as if the interpreter were not present. Do not allow the fact that testimony is given in a language other than English to affect your perception of the witness’ credibility. Those members of the jury who may be proficient or have some understanding of the foreign language being used during these proceedings shall base all deliberations and decisions on the evidence presented in English through the interpretation.”

Helpful Tips and Hints

A good, experienced interpreter:

- will give an accurate and smooth interpretation; speak loudly and clearly while being unobtrusive;
- will use the first-person during interpretation and refer to him/herself in the third person as “the interpreter”;
- will ask the court’s permission to clarify a term, have something repeated (request a repetition), or correct the record if the interpreter knows a previous interpretation was in error;
- will not have private conversations with the LEP at any given time; will not lead the witness or influence answers through body language;
- will not perform any duty other than interpreting;
- will not substitute an “uh-huh” with a “yes” or a “no” but will repeat the sound.
- will not interject comments nor offer an opinion about the witness for the court or counsel no matter how harmless the comment may appear.

The attorney should:

- Explain to the witness the role of the interpreter as an impartial officer of the court, responsible only for accurately interpreting the proceedings and/or testimony.
- Advise the witness that the interpreter will interpret everything he/she says. Advise the witness not to say anything he/she does not want heard and repeated for the court/jury.
- Instruct the witness not to engage in “private” conversations with the interpreter.
- Instruct the witness to wait to hear the interpreted question before answering even if they understand some English. Encourage the witness to look at counsel or jury when answering, and not the interpreter.
- Place the interpreter by the witness at the stand and make sure the interpreter does not obstruct the witness’s view of the jury.
- Address all questions directly to the witness as if the interpreter were not there during testimony by a non-English-speaking witness.
- Do not ask the interpreter to explain or restate anything said by a party.
- Phrase your questions clearly and, whenever possible, avoid unnecessary ambiguities.

Terms and Definitions

Miss. Code Ann. § 9-21-71

- Limited English Proficient (LEP) individual: Any party or witness who cannot readily understand or communicate in spoken English or who does not speak English as his or her primary language and who consequently has a limited ability to read, speak, write or understand English and cannot equally participate in or benefit from the proceedings unless an interpreter is available to assist the individual. The fact that a person for whom English is a second language knows some English does not prohibit that individual from being allowed to have an interpreter.
- Court interpreter: Any person authorized by a court who is competent to translate or interpret oral or written communication in a foreign language during court proceedings.
- Certified court interpreter: An interpreter who successfully has met all requirements promulgated by the Administrative Office of Courts to be designated a registered court interpreter and has scored at least seventy percent (70%) on each of the three (3) sections of an approved criterion-referenced oral performance examination.
- Registered court interpreter: An interpreter who has:
 1. Attended an approved two-day, fourteen-hour ethics and skill building workshop;
 2. Passed an approved criterion-referenced written examination with a minimum overall score of eighty percent (80%);
 3. Submitted to a criminal background check;
 4. Provided verification of legal right to work in the United States;
 5. Executed the Interpreter Oath; and
 6. Satisfied any additional requirements that the Administrative Office of Courts may establish in order to be listed as a registered court interpreter on the roster.
- Non-credentialed interpreter: An interpreter who has not met the requirements promulgated by the Administrative Office of Courts to be classified as a registered or certified court interpreter.
- Interpretation: The accurate and complete unrehearsed transmission of an oral message from one (1) language to an oral message in another language.
- Consecutive interpretation: Providing the target-language message after the speaker has finished speaking.
- Sight translation: Oral translation of a written document.
- Simultaneous interpretation: Providing the target-language message at approximately the same time the source-language message is being produced.
- Source language: The language requiring interpretation.
- Target language: The output language into which the utterance is being interpreted.
- Translation: The process of translating text from one (1) language to another to maintain the original message and communication.

Additional Definitions

Language of Limited Diffusion: A language used by a group that is significantly smaller in number than the rest of the population. Also called a linguistic or language minority.

Languages Other Than Spanish: All non-English languages other than Spanish. Also known as “Other than Spanish” (OTS).

Relay Interpretation: This occurs when no interpreter is available to interpret a language of limited diffusion (LLD) into English, but one can interpret the needed language into another language for which there is an available, qualified interpreter. The non-English speaking interpreter “relays” the interpretation into the common language and the second interpreter relays this into English and vice versa. (Example: Mixtec to Spanish to English)

Team Interpreting: The use of two or more interpreters for trials or lengthy hearings. The interpreter who is not actively interpreting (known as the passive interpreter) researches terms, takes notes, monitors the interpretation being provided, and provides support to the active interpreter. Team interpreters alternate roles during the interpreted matter.

Dialect: Linguists and sociolinguists generally define “dialects” as versions of a single language that are mutually intelligible, but that differ in systematic ways from each other

For additional information and assistance, please contact:

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More resources available at: <https://courts.ms.gov/aoc/courtinterpreter/courtinterpreter.php>