

## SUPREME COURT OF COLORADO

### OFFICE OF THE CHIEF JUSTICE

#### COLORADO JUDICIAL DEPARTMENT

#### Directive Concerning Language Interpreters and Access to the Courts by Persons with Limited English Proficiency

This directive was created to establish policies regarding the utilization and payment of language interpreters provided and arranged for by the Colorado state courts through the Office of Language Access (“OLA”) and to govern access to court proceedings and court operations by persons with limited English proficiency.

#### I. DEFINITIONS

- I. A. Authorized Interpreter** – A certified, credentialed, qualified or registered language interpreter who is approved by the OLA to work as an independent contractor or as a classified employee, and is listed on an active roster maintained by the OLA and made available according to OLA guidelines.
- I. B. Bilingual Staff** – An employee of the Colorado Judicial Department other than a classified staff language interpreter who has demonstrated proficiency in English and a second language in accordance with standards set by the OLA and is authorized by the OLA to conduct court operations business directly with limited English proficient persons in a language other than English.
- I. C. Certified Interpreter** – A language interpreter who meets minimum professional competency standards, has achieved a passing score on an oral certification exam for interpreters recognized by the Colorado Judicial Department, and is listed on the active certified interpreter roster maintained by the OLA and posted on the Colorado Judicial website.
- I. D. Classified Staff Language Interpreter** – An employee whose employment is governed by the Colorado Judicial System Personnel Rules and whose job classification falls within the Department’s classification and compensation plan.
- I. E. Court Operations** – Offices of the courts, services, and programs managed or conducted by the courts and probation, not including court proceedings, which involve contact with the public or parties in interest.
- I. F. Court Proceeding** – Any hearing, trial or other appearance before any Colorado state court in an action, appeal, or other proceeding, including any matter conducted by a judicial officer.
- I. G. Credentialed Interpreter** – A language interpreter who has achieved the highest available oral proficiency testing credential in their language and has fulfilled additional requirements as defined in standards set by the OLA.

- I. H. Independent Contract Language Interpreter** – An authorized language interpreter who is an independent contractor pursuant to contract or as defined by IRS Revenue ruling 87-41.
- I. I. Interpretation** – The accurate and complete transfer of an oral message from one language to another in real time.
- I. J. Judicial Officer** – A justice, judge, magistrate, or water referee authorized to preside over a court proceeding.
- I. K. Language Services** – The facilitation of access to court services through the assistance of an interpreter, bilingual staff, or by means of translation.
- I. L. Limited English Proficient (“LEP”)** – Individuals who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English.
- I. M. Party in Interest** – A party to a case; a victim; a witness; the parent, legal guardian, or custodian of a minor party; and the legal guardian or custodian of an adult party.
- I. N. Qualified Interpreter** – A language interpreter who has not achieved certification or credentialing, but has met training and minimum oral certification exam score requirements set forth by OLA to be considered for court interpreting assignments when a certified or credentialed interpreter is not available. Qualified interpreters are listed on the active qualified interpreter roster maintained by the OLA.
- I. O. Registered Interpreter** – An authorized language interpreter who is not certified, credentialed or qualified. Certification or credentialing may or may not be available in this interpreter’s language combination(s).
- I. P. Remote Interpreting** – A process in which an interpreter assists in a court proceeding or court operation without being physically present, but rather appears through the use of telephonic or audiovisual hardware and/or software.
- I. Q. Translation** – The accurate and complete transfer of a written message from one language to another that may take place over time.
- I. R. Victim** – Any person who is a victim of an alleged criminal act; such person’s designee, legal guardian, caretaker, or surviving immediate family member if such person is deceased; and the parent, legal guardian, or caretaker if such person is a minor or incapacitated.

## II. APPOINTMENT OF LANGUAGE INTERPRETERS

- II. A. Court Proceedings** – Consistent with Title VI of the Civil Rights Act of 1964 (“Title VI”), the Omnibus Crime Control and Safe Streets Act of 1968 (“Safe Streets Act”), and Executive Order 13166, 65 Fed. Reg. 50121 (August 16, 2000), the courts shall assign and pay for language interpretation for all parties in interest during or ancillary to a court proceeding, including:
  1. Facilitation of communication outside of the judicial officer’s presence in order to allow a court proceeding to continue as scheduled, including pre-trial conferences between defendants and district attorneys in order to relay a plea offer immediately prior to a court appearance or to discuss a continuance;

2. Facilitation of communication between client and state funded counsel appointed pursuant to Chief Justice Directives 04-04 and 04-05;
3. Facilitation of communication with parties in interest in court mandated programs including without limitation family court facilitations and mediations; and
4. Completion of evaluations and investigations ordered by and performed for the purpose of aiding the court in making a determination.

**II. B. Non-Parties in Interest** - The court may, at its discretion, provide and pay for language interpretation for limited English proficient persons other than parties in interest directly impacted by a court proceeding.

**II. C. Court Operations** – Court personnel shall provide access to language services for persons with limited English proficiency who seek access to court operations as defined in this directive, through the use of bilingual staff or authorized language interpreters appearing either in person or by way of remote interpreting. Language services shall be consistent with OLA standards that account for the nature, means, importance, and duration of the communication.

**II. D. Communications beyond the Scope of Section II.A and II.B. of this Directive** – Except as provided in Sections II.A and II.B, the court shall not arrange, provide or pay for language interpretation during or ancillary to a court proceeding to facilitate communication with attorneys, prosecutors, or other parties related to a case involving LEP individuals for the purpose of gathering background information, investigation, trial preparation, witness interviews, or client representation at a future proceeding; for communications relating to probation treatment services; or for any other communication which is not part of a court proceeding or ancillary thereto as delineated in Section II.A. Prosecutors and parties' attorneys are expected to arrange for language interpretation for case preparation and general communication with parties outside of court proceedings at their own expense, except as provided in CJD 04-04 and 04-05.

**II. E. Authorized Interpreters** – The court shall only pay for the services of authorized language interpreters that have been assigned by the OLA or designees.

### III. ALLOCATION OF STAFF INTERPRETERS

The State Court Administrator's Office shall be responsible for the allocation of classified staff language interpreters to judicial districts in accordance with the OLA's *FTE Allocation Plan Corresponding to Language Interpreters*. Unless approved in advance by the State Court Administrator, effective 7/1/11 all newly hired interpreters in classified positions shall be certified. Additional non-judicial employee contract interpreters may be hired as needed on an independent contract basis utilizing the contract form *Agreement for Independent Contractor - Language Interpreter*.

### IV. QUALIFICATIONS OF LANGUAGE INTERPRETERS

**IV. A.** The court shall not permit any person other than an authorized language interpreter to function as a language interpreter in any court proceeding or operation, regardless of the

source by which the interpreter is compensated or the manner by which the interpreter appears.

- IV. B.** The OLA shall determine which interpreters are certified, credentialed, qualified, or registered. The OLA shall maintain current rosters of all authorized interpreters including their level of qualification and availability. The OLA shall ensure that current rosters are readily available to the court and the public. Interpreters shall sign an acknowledgment regarding their obligations under CJD 05-05, the Continuing Education and Professional Practice Policy for Interpreters as a condition of approval.
- IV. C.** The court shall use certified or credentialed language interpreters when available in the required language for all court proceedings. OLA may assign authorized interpreters to appear either in person or by remote interpreting as follows:
1. Courts where 5 or more certified or credentialed interpreters in the required language reside within a 25 mile radius of the courthouse shall use certified or credentialed language interpreters in all proceedings requiring interpretation in that language.
  2. All other courts shall use certified or credentialed interpreters during all class 1 felony proceedings, provided that a certified or credentialed interpreter in the required language resides or does business in Colorado.
  3. In all other proceedings, the court shall use a certified or credentialed interpreter if one is available, authorized to work in the local jurisdiction, and has not been disqualified according to Section IX of this directive.
  4. When a certified or credentialed interpreter is not available, the court may use an interpreter listed on the roster of active qualified interpreters maintained by the OLA.
  5. If no certified, credentialed or qualified language interpreter is available, the court may use a registered interpreter. Registered interpreters should only be used as a last resort.

## **V. ASSIGNMENT OF MORE THAN ONE LANGUAGE INTEPRETER**

- V. A.** Absent exigent circumstances, the court shall assign and pay for two or more interpreters during the following types of proceedings to prevent interpreter fatigue and the concomitant loss of accuracy in interpretation:
1. Proceedings scheduled to last 2 hours or longer.
  2. Proceedings with multiple LEP parties in interest requiring interpretation when attorney-client consultation during a hearing is paramount (e.g., witness testimony, motions).
  3. Proceedings in which multiple languages are involved.
- V. B.** The following guidelines and limitations apply to the utilization of more than one interpreter:
1. The use of electronic simultaneous interpreting equipment is encouraged as best practice in all cases, particularly in proceedings exceeding two hours in length with multiple LEP parties in interest. Its use is also encouraged to allow victims and parents or guardians to be present at interpreted proceedings without the need for an additional interpreter.
  2. In proceedings with multiple LEP parties in interest requiring interpretation in one language, the interpreter not actively involved in providing simultaneous interpretation may be used to facilitate attorney-client communication when needed.

3. If language interpretation is required for witness testimony in a proceeding with multiple LEP parties in interest, a third interpreter may be provided by the court for that purpose.
4. Interpreters are bound by an oath of confidentiality and impartiality, and serve as officers of the court; therefore, the use of one interpreter by more than one party in interest in a case is permitted.
5. The court is not obligated to appoint a different language interpreter when an interpreter has previously interpreted during a court proceeding for another party in a case.
6. Any party in interest may provide and arrange for interpretation services to facilitate attorney-client communication or otherwise assist the party in interest if interpretation services exceeding those provided by the court are desired.

## **VI. REMOTE INTERPRETING**

- VI. A.** Remote interpreting, including telephonic and audiovisual interpretation, may be utilized to facilitate access to the courts by persons with limited English proficiency subject to the conditions stated herein.
- VI. B.** A language interpreter that appears remotely must be authorized and subject to all other standards set forth in this Directive and shall be assigned in accordance with Section IV.C. Remote interpreters shall not be used in an evidentiary proceeding. A remote interpreter should not be assigned to a proceeding expected to last more than 30 minutes, absent exigent circumstances. OLA may otherwise assign authorized interpreters to appear in person or remotely taking into account the qualifications, location, and availability of the interpreters, the nature and expected duration of the proceeding, and other factors set forth in OLA standards, including the User Guide for the OLA's Center for Telephone Interpreting.
- VI. C.** The court shall ensure that the remote interpreting complies with this Directive and OLA standards, including standards for confidential communication, and that it allows the judicial officer, parties, attorneys and witnesses to hear each other and the interpreter clearly and is able to be clearly recorded.

## **VII. TRANSLATIONS**

The translations of forms commonly used in court proceedings, non-English written statements provided to the court, signage required in courthouses, and any other written communication required in the courts will be completed in accordance with the OLA's Translation and Bilingual Signage Policy.

## **VIII. PAYMENT OF COURT INTERPRETERS AND TRANSLATORS**

Independent contract language interpreters and translators will be paid in accordance with the OLA's Interpreter Compensation Policy. No judicial officer or court personnel shall assess costs for services rendered pursuant to this directive to a party in interest or to individuals receiving language services in the course of court operations, nor require reimbursement to the court or the state for such costs from LEP individuals.

## **IX. DISQUALIFICATION OF A LANGUAGE INTERPRETER**

- IX. A.** A judicial officer shall disqualify a language interpreter at the outset of a case or during a proceeding and the OLA shall disqualify a language interpreter from interpreting in a court operations assignment whenever the interpreter:
1. Is unable effectively to communicate with court personnel, parties in interest, or other participants, including cases in which the interpreter self-reports such inability;
  2. Has a conflict of interest due to a relationship with a person involved in the matter or an interest in the outcome;
  3. Is acting in violation of the Code of Professional Responsibility for Colorado Court Interpreters; or
  4. Is no longer qualified to interpret in the assigned proceeding or court operation as a result of a change in certification, credentialing, status or qualifications, or of action taken pursuant to the Court Interpreter Discipline Policy.
- IX. B.** The judicial officer shall promptly notify the OLA whenever a language interpreter is disqualified from a proceeding and explain the reason for the disqualification.
- IX. C.** When a judicial officer or the OLA disqualifies an interpreter, the court shall provide a replacement language interpreter.

## **X. COMPLAINT PROCESS**

Any person aggrieved by an alleged violation of this directive may file a complaint with the OLA. The complaint will be reviewed and investigated in accordance with the OLA's Procedures for Processing Language Access Complaints. Nothing herein shall be construed to bar a judicial officer from enforcing the directive during a proceeding or in any subsequent review of the proceeding in which a violation has occurred. The local Managing Interpreter shall make complaint forms available in all courthouses.

## **XI. ROLES AND RESPONSIBILITIES FOR ENSURING ACCESS**

- XI. A. All Judicial Officers** shall ensure that the requirements of this Directive are enforced in any proceeding.
- XI. B. The State Court Administrator** or designee shall, consistent with state rules and the further direction of the Chief Justice, establish and manage uniform state requirements as to language data that court personnel should gather from parties in interest and court staff when cases are filed, and as to affording notice to all parties in interest as to the availability of language services.

- XI. C. The District Administrator** or designee shall, consistent with state requirements, manage the provision of language access to the courts by LEP individuals in a district, gather language needs information from parties in interest and court personnel according to OLA standards, schedule and coordinate language interpreter services for all court proceedings, and facilitate language access to all other court operations.
- XI. D. The Chief Probation Officer** or designee shall manage the provision of language access to probation services by LEP individuals in each judicial district.
- XI. E. The OLA** shall:
1. Make available to the court, court staff, interpreters and the public the policies and procedures related to the provision of language access in the Colorado state courts. These policies and procedures include, but are not limited to, those related to language access plans, translations, remote interpreting, and the interpretation of digital files in a court proceeding;
  2. Oversee the training and testing of language interpreters and post rosters of active status authorized interpreters on the OLA's website to facilitate the use of the most qualified language interpreter available; and
  3. Provide translations of forms frequently used by the courts and probation as they become available for posting on the Colorado Judicial Department's official website to assist all judicial districts in their task of providing access to the courts and probation services by LEP individuals.
- XI. F. The Managing Interpreter** shall, consistent with state policy, ensure that signs are posted regarding availability of interpreter services in English and those languages most commonly requiring interpretation and that all LEP individuals are afforded notice of the availability of interpreter services when a case is commenced, or otherwise reasonably in advance of any appearance or pleading deadline to facilitate access to the courts and probation services by LEP individuals.

Amended effective [date], and signed this 31 day of May, 2016.

/s/

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Nancy E. Rice, Chief Justice