

IN THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR THE STATE OF FLORIDA

IN RE: COURT INTERPRETERS FOR COURT
OR COURT-ORDERED PROCEEDINGS

ADMINISTRATIVE
ORDER
NO. 2.36

WHEREAS, the entitlement to a Court Interpreter at public expense for court or court-ordered proceedings is governed by applicable laws, statutes, and court rules; and

WHEREAS, the responsibility for determining the entitlement to a Court Interpreter for non-English-speaking or limited-English-proficient persons at public expense for court or court-ordered proceedings rests upon the trial judge; and

WHEREAS, it is in the best interest of justice and due process that a determination as to the need for a Court Interpreter for non-English-speaking or limited-English-proficient defendants or litigants be made at the earliest stages of a case; and

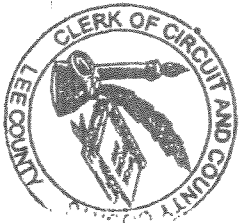
WHEREAS, the Florida Supreme Court has recently enacted more stringent requirements for Court Interpreters providing services for court, court-ordered, and court-related proceedings, resulting in the decreased availability of qualified Court Interpreters; and

WHEREAS, the resources of the Administrative Office of the Courts (AOC) in providing staff Court Interpreters or contract Court Interpreters at public expense are not infinite or unlimited and necessarily require management so as to ensure that all constitutional and due process rights are met;

It is **ORDERED**, pursuant to this Court's inherent authority to administer and regulate the courts of the Twentieth Judicial Circuit and to manage court resources, and by the authority vested in the Chief Judge pursuant to Fla. R. Jud. Admin. 2.215, that policies and procedures for the use of Court Interpreters for court and court-ordered proceedings be delineated and set forth as follows:

00000001

I certify this document to be a true and correct copy of the record on file in my office.
Linda Doggett, Clerk Circuit/County Court, Lee County, FL
Dated: 1/29/16
3x
Deputy Clerk



STATE OF FLORIDA, COUNTY OF LEE
FILED FOR RECORD
This 29 Day of Jan 2016 Recorded in Circuit
Book 100 Page 1-12 and Record Verified.
LINDA DOGGETT By [Signature] Deputy Clerk
Clerk Circuit Court

A. Entitlement to a Court Interpreter

1. Pursuant to the rules of the Florida Supreme Court, Fla. R. Jud. Admin. 2.560, spoken language Court Interpreters are to be provided in the state courts of Florida at public expense for court or court-ordered proceedings to the following persons:

- non-English-speaking or limited-English-proficient defendants accused in criminal cases;
- non-English-speaking or limited-English-proficient juveniles accused in delinquency cases; and
- non-English-speaking or limited-English-proficient litigants in all other case types if the trial judge determines (1) that the litigant's inability to comprehend English deprives the litigant of an understanding of the court proceedings, (2) that a fundamental interest is at stake (such as in a civil commitment, termination of parental rights, paternity, or dependency proceeding), and (3) that no alternative to the appointment of an interpreter exists. At this time, in the state courts of Florida, non-English-speaking or limited-English-proficient litigants in ordinary civil or family law cases in which a fundamental interest is not at stake are not automatically entitled to a spoken-language Court Interpreter at public expense.

The Administrative Office of the Courts interprets the due process intent of providing spoken language Court Interpreters at public expense in the above-identified proceedings to defendants, accused juveniles and other litigants to also include providing Court Interpreters at public expense during those same above-identified proceedings, as may be appropriate or ordered by the Court, for necessary witnesses, parents or guardians of juveniles, children in dependency cases, and victims who may be non-English-speaking or limited-English-proficient.

2. Pursuant to the rules of the Florida Supreme Court, Fla. R. Jud. Admin. 2.560, and the Florida Evidence Code, Fla. Stat. § 90.606, Court Interpreters are to be provided in the state courts of Florida at public expense *for a witness* for court or court-ordered proceedings if the trial judge determines that the witness cannot hear or understand the English language, or cannot express himself or herself in English sufficiently to be understood. This is not limited to witnesses who speak a language other than English, but applies also to the language and

00000002

descriptions of any person, such as a child or a person who is mentally or developmentally disabled, who cannot be reasonably understood, or who cannot understand questioning, without the aid of an interpreter.

3. Pursuant to the Florida Evidence Code, Fla. Stat. § 90.6063, as well as the Americans with Disabilities Act (ADA), Court Interpreters or alternative auxiliary aids, as may be appropriate, are to be provided at public expense for all court or court-ordered proceedings in which a deaf person is a complainant, defendant, witness, or otherwise a party. The Courts of the Twentieth Judicial Circuit fully comply with all provisions of the Americans with Disabilities Act (ADA) so as to ensure full access to the courts and court services to qualified persons with disabilities as defined by the ADA.

B. Determination of Entitlement to a Court Interpreter

1. Upon the initiation of an action in the Courts of the Twentieth Judicial Circuit, it shall be the responsibility of the party or the party's counsel requesting a Court Interpreter for a non-English-speaking or limited-English-proficient defendant, juvenile (parent or guardian), litigant, child, witness, or victim to bring this matter to a trial judge's attention for the purpose of ensuring that a preliminary inquiry and determination as to the entitlement to a Court Interpreter is made at the earliest practicable court event, for example, at arraignment or the first scheduled Case Management Conference. If a Court Interpreter is being requested for a non-English-speaking or limited-English-proficient child, witness, or victim, it shall be the responsibility of the party or the party's counsel to bring this matter to a trial judge's attention immediately upon learning of the child's, witness', or victim's need for a Court Interpreter and sufficiently in advance of the court proceeding at which the child, witness, or victim will testify or be present.

2. The determination as to whether a person is, in fact, non-English-speaking or limited-English-proficient is within the discretion of a trial judge. The Florida Supreme Court has

00000003

40000000

defined a “limited-English-proficient” person as “[a] person who is unable to communicate effectively in English because the individual’s primary language is not English and he or she has not developed fluency in the English language” and who “may have difficulty speaking, reading, writing, or understanding English.” Fla. R. Jud. Admin. 2.560. It should be noted that a person is not necessarily non-English-speaking or limited-English-proficient simply because that person may not speak grammatically correct English, or may speak too softly or too swiftly. See Suarez v. United States of America, 309 F.2d 709 (5th Cir. 1962); See also Pietrzak v. U.S., 188 F.2d 418 (5th Cir. 1951); Bolender v. State, 422 So. 2d 833 (Fla. 1982), *reversed on unrelated grounds*; Larias v. State, 528 So. 2d 944 (Fla. 3d DCA 1988).

3. If a trial judge determines that a non-English-speaking or limited-English-proficient defendant, juvenile (parent or guardian), or litigant is entitled to a spoken language Court Interpreter at public expense for all future court or court-ordered proceedings at which that person is to be present, or for a child, witness or victim at trial or an evidentiary hearing, the trial judge shall make this finding on the record or enter a written order.

4. After having determined that a person is entitled to a spoken language Court Interpreter, a trial judge may re-visit this determination at any time upon motion of any party or on the Court’s own motion.

5. If a person is deaf, or has any disability as defined by the ADA, and is in need of a Court Interpreter or other accommodation for the purpose of participating in a court or court-ordered proceeding, the person, or counsel representing the party or person, is to contact the appropriate ADA Coordinator for the AOC at least seven (7) days before the scheduled court appearance, or immediately upon receipt of notice if less than seven (7) days notice of the proceeding was provided, in accordance with Rule 2.540, Fla. R. Jud. Admin., and local Administrative Order 2.15. The appropriate ADA Coordinator for the AOC may be reached as

follows:

Lee County: 239-533-1771

Collier County: 239-252-8800

Charlotte County: 941-637-2110

Hendry and Glades Counties: 863-675-5374

If hearing or voice impaired, call 711

6. ADA accommodation requests submitted to the appropriate AOC ADA Coordinator need not be reviewed or approved by a trial judge, unless the AOC ADA Coordinator determines that the requested accommodation impacts court procedures within a specific case, or otherwise determines that deference to a trial judge is appropriate. All ADA accommodation requests will be reviewed and addressed in accordance with Title II of the Americans with Disabilities Act.

C. Procedures for Notification of Need of Court Interpreter

1. After a determination has been made by a trial judge that a non-English-speaking or limited-English-proficient person is entitled to a Court Interpreter at public expense, the person, or counsel representing the person, shall notify the AOC's Court Interpreter Services of the need for a Court Interpreter for court proceedings, and court-ordered mediations, arbitrations and competency examinations, by submitting written notifications to the AOC's Court Interpreter Services utilizing the AOC's "Notification of Need of Court Interpreter" form. The "Notification of Need of Court Interpreter" form and instructions for submission shall be posted on the AOC's website at www.ca.cjis20.org. Assistance is also available by calling the AOC's Court Interpreter Services for the Twentieth Judicial Circuit at 239-533-1580 or by visiting the AOC's Court Interpreter Services for the Twentieth Judicial Circuit located at the Lee County Justice Center Complex, 1700 Monroe Street, Fort Myers, Florida 33901.

2. For court proceedings held during the initial stages of a case prior to a non-English-

speaking or limited-English-proficient defendant, juvenile (parent or guardian), or litigant, or counsel for the defendant, juvenile, or litigant, having had a reasonable opportunity to bring the issue as to the entitlement to a Court Interpreter at public expense before a trial judge for determination (for example, First Appearance, arraignment, or other preliminary hearings), a “Notification of Need of Court Interpreter” form may be submitted to the AOC’s Court Interpreter Services in the absence of a trial court order or record finding of entitlement. If said notification is submitted by or on behalf of a non-English-speaking or limited-English-proficient defendant, juvenile (parent or guardian), or litigant who would otherwise be entitled to a Court Interpreter at public expense under Rule 2.560, Fla. R. Jud. Admin., a Court Interpreter will be provided by the AOC’s Court Interpreter Services, even in the absence of a trial court order or record finding of entitlement. However, beyond the initial stage of a case (i.e. motion hearing, subsequent or ongoing status or case management conference, plea hearing, trial, sentencing hearing, mediation, arbitration, competency examination), the AOC’s Court Interpreter Services will be unable to provide a spoken language Court Interpreter in the absence of a finding by a trial judge of entitlement to a spoken language Court Interpreter at public expense.

3. If a person is deaf, or has any disability as defined by the ADA, and is in need of a Court Interpreter or other accommodation for the purpose of participating in a court proceeding, the person, or counsel representing the party or person, may contact the appropriate ADA Coordinator as identified above and in local Administrative Order 2.15, and may submit an “ADA Title II Accommodation Request Form.” The “ADA Title II Accommodation Request Form” and instructions for submission shall be posted on the AOC’s website at www.ca.cjis20.org.

4. Advance notification of the need for a Court Interpreter for a court or court-ordered proceeding must be provided to the AOC’s Court Interpreter Services, or to the ADA

90000006

Coordinator as may be appropriate, as follows:

For Spanish language Court Interpreters: At least **2 business days** advance notice (excluding weekends and holidays).

For all other spoken language Court Interpreters: At least **7 business days** advance notice (excluding weekends and holidays).

For American Sign Language or other Court Interpreters or accommodations under the ADA: At least **7 days** advance notice, or immediately upon receipt of notice of less than 7 days notice of the proceeding was provided.

5. An exception to the minimum time for advance notification of the need for a Court Interpreter shall be made for First Appearance and any other court proceeding that, by its nature, involves limited notice, such as proceedings under the Baker Act or the Marchman Act. However, the defendant, juvenile (parent or guardian), litigant or other person, or counsel for the defendant, juvenile, litigant or other person, remains responsible for providing advance notification of the need for a Court Interpreter immediately upon receiving short notice of such proceedings. Under such circumstances, the AOC's Court Interpreter Services, or ADA Coordinators, will make all diligent and reasonable efforts to provide a Court Interpreter requested upon short notice, and if unable to do so will notify the person or counsel who submitted the request, as well as the presiding trial judge or quasi-judicial officer.

6. At this time, neither the AOC's Court Interpreter Services nor ADA Coordinators have the ability or means to accurately predict or automatically receive knowledge as to when a Court Interpreter may be needed without advance notification being submitted by the defendant, juvenile (parent or guardian), litigant or other person, or by counsel for the defendant, juvenile, litigant or other person. Likewise, the AOC may not necessarily have the resources to always and automatically provide "stand-by" Court Interpreters for events such as First Appearance, arraignments, or other court dockets in anticipation of a Court Interpreter potentially being needed. The goal is to utilize technology working in coordination with Case Management

00000007

Systems in all five (5) counties of the Twentieth Judicial Circuit to facilitate the automatic identification of court proceedings in which a Court Interpreter is needed, so as to minimize or eliminate the need for speculation or manual identification requiring ongoing notification. However, until an automated system is developed, it is incumbent upon the defendant, juvenile (parent or guardian), litigant or other person, or counsel for the defendant, juvenile, litigant or other person, to ensure that advance notification of the need for a Court Interpreter is submitted to the AOC's Court Interpreter Services for any and all court or court-ordered proceeding in accordance with the minimum time frames established herein or, when impossible due to short notice of certain proceedings, with as much advance notice as possible. Automation through the use of technology, in whole or in part, may be available as early as March 1, 2016, and may be utilized as it becomes available and as appropriate to minimize or eliminate the need for ongoing notification upon approval by the Chief Judge.

7. Due process provisions require that the Court provide and incur the budgetary expense of Court Interpreters for court and court-ordered proceedings (including mediation, arbitration, and competency examinations), as may be appropriate, but do not require that the Court incur the budgetary expense or provide interpreter scheduling services to other publicly funded agencies (i.e. State Attorney, Public Defender, Regional Counsel), court-appointed counsel (funded by the Justice Administrative Commission), privately-retained attorneys, or self-represented parties, for events occurring outside of the context of a court or court-ordered proceeding. Examples of non-court-ordered proceedings or events are depositions, in-custody conferences and visits (jail or holding cells), and office conferences and visits, which may or may not require the retention of an interpreter meeting the more stringent Florida Supreme Court requirements for Court

00000008

60000009

Interpreters.¹ For these types of non-court-ordered events taking place between other publicly funded agencies, court-appointed counsel, privately-retained attorneys, clients, parties, family members, witnesses, or victims, the scheduling and retaining of interpreters shall be the responsibility of those agencies, attorneys, or parties. A list of all interpreters/translators who have entered into contracts with the State of Florida through the Justice Administrative Commission and have agreed to offer services at standard rates established by the legislature is available on the Justice Administrative Commission's website at www.justiceadmin.org under the "Due Process Vendor Search." Upon request, the AOC's Court Interpreter Services will provide names of vendors or a copy of the AOC's list of Court Interpreters with whom the AOC contracts or has contracted. However, it should be noted that the judiciary is not bound by the rates established by the legislature, and the rates of Court Interpreters with whom the AOC contracts or has contracted may exceed those rates by which other agencies, attorneys, or parties are bound. In addition, the AOC cannot guarantee that the rates offered by contract Court Interpreters to the AOC will be the same offered to other agencies, attorneys, or parties.

D. Rules and Procedures Applicable to Court Interpreters

1. All Court Interpreters providing spoken language interpretation services for court or court-ordered proceedings must be qualified in accordance with the Florida Rules for Certification and Regulation of Spoken Language Court Interpreters, but for the limited exceptions provided by the Florida Supreme Court as memorialized within this Administrative Order. All Court Interpreters providing interpreter services for deaf persons for court or court-ordered proceedings must be qualified and certified by the National Registry of Interpreters for

¹ Though a deposition is considered a "court-related proceeding" requiring that a Court Interpreter meeting the qualifications of the Florida Supreme Court be utilized (Rule 14.100, Fla. Rules for Certif. & Regul. of Court Interpreters), a deposition does not qualify under the definition of a "proceeding" under Rule 2.560, Fla. R. Jud. Admin., which is limited to "[a]ny hearing or trial, excluding an administrative hearing or trial, presided over by a judge, general magistrate, special magistrate, or hearing officer within the state courts."

the Deaf or the Florida Registry of Interpreters for the Deaf.

2. All Court Interpreters entering into a contract with the Administrative Office of the Courts (AOC) for the provision of services to the Courts of the Twentieth Judicial Circuit are bound by all contract terms. In addition, for the purpose of providing verification and accountability for the use of public funds, contract Court Interpreters are required to submit with all invoices the "Contract Interpreter Sign-in/Sign-out Sheet" provided by the AOC's Court Interpreter Services. It is the responsibility of the contract Court Interpreter to ensure that the sheet is signed by the trial judge, quasi-judicial officer, or other designee, and that completed sheets are submitted with all invoices.

E. Unavailability of a Certified or Language-Skilled Court Interpreter

1. Pursuant to Florida Supreme Court rule amendments, Court Interpreters must meet minimum requirements and must be *registered* with the Office of State Courts Administrator. Registered Court Interpreters must also be *designated* by the State of Florida as *certified* (having passed full oral performance state-certifying examination available for specific language) or *language-skilled* (no full oral performance state-certifying examination currently available for specific language, but having passing an approved oral proficiency interview), or must be actively and diligently pursuing designation as *certified* or *language-skilled* or, alternatively, as *provisionally-approved* (attaining a minimum score on the full oral performance state-certifying examination, but at a level below that required for full certification). The Court is to give preference to certified and language-skilled Court Interpreters, then to Court Interpreters holding a provisionally-approved designation. Fla. R. Jud. Admin. 2.560.

2. If, after a diligent search by the AOC's Court Interpreter Services, a certified, language-skilled, or provisionally-approved Court Interpreter is not available for a court proceeding, the presiding judge, magistrate, or hearing officer, may approve the use of an

00000010

interpreter for a specific proceeding *who is otherwise registered with the Office of State Courts Administrator* upon making the following findings on the record:

- a. good cause exists for appointment of the proposed interpreter; and
- b. the proposed interpreter is competent to interpret the proceedings.

These findings shall apply only to the specific proceeding and shall not extend to subsequent proceedings without additional findings of good cause and qualification for each subsequent proceeding. Fla. R. Jud. Admin. 2.560.

3. Exceptional Circumstances – If, after a diligent search by the AOC’s Court Interpreter Services, a certified, language-skilled, provisionally-approved or otherwise registered Court Interpreter is not available for a court proceeding, the presiding judge, magistrate, or hearing officer may approve the use of an interpreter for a specific proceeding *who is not designated and is not otherwise registered with the Office of State Courts Administrator*, upon making the following findings on the record:

- a. an interpreter designated or registered with the Office of the State Courts Administrator is unavailable; and
- b. good cause exists for appointment of the proposed interpreter, such as the prevention of burdensome delay, the request or consent of the non-English-speaking or limited-English-proficient person, or other unusual or specific exigent circumstances given the demands of the case; and
- c. the proposed interpreter is competent to interpret the proceedings and asserts under oath that he or she is able, either in direct or relay/intermediary interpretation, to communicate effectively in the languages in which interpreter services are required.

These findings shall apply only to the specific proceeding and shall not extend to subsequent proceedings without additional findings of good cause and qualification for each subsequent proceeding. Fla. R. Jud. Admin. 2.560

4. In any criminal or juvenile delinquency proceeding in which the interpreter is not certified, language-skilled, or provisionally-approved, the presiding judge, magistrate, or hearing

0000011

officer shall advise the accused on the record of the fact that the proposed interpreter is not certified, language-skilled, or provisionally-approved, and the accused's objection or waiver of objection shall be on the record. The accused's objection or waiver of objection shall apply only to the specific proceeding and shall not extend to subsequent proceedings without giving the accused the opportunity to object or waive any objection on the record for each subsequent proceeding. Fla. R. Jud. Admin. 2.560.

F. General Provisions

1. This Administrative Order shall be effective March 1, 2016, and supercedes any prior administrative orders relating to court interpreters, including the "Order Establishing Protocol for the Employment and Attendance of Interpreters for Criminal Court Proceedings in Lee County," entered March 28, 2000.

2. To the extent that any provision of this Administrative Order may conflict with any rule, law, or statute, the rule, law, or statute will prevail.

DONE AND ORDERED in chambers in Fort Myers, Lee County, Florida, this 29th
day of Jan., 2016.



Michael T. McHugh
Chief Judge

History. - "Order Establishing Protocol for the Employment and Attendance of Interpreters for Criminal Court Proceedings in Lee County" (March 28, 2000).

00000012