*South Dakota Unified Judicial System*

# Bench Card: Courtroom Interpreting

**UJS MISSION: Justice for All**

*Providing adequate interpreters when necessary is a key to achieving our mission.*

## How Do I Determine Whether A Person Needs An Interpreter?

Persons in need of the services of an interpreter are those who cannot speak or understand the English language and who are litigants, witnesses or persons whose presence is necessary or appropriate in a court proceeding. If a request is not made for an interpreter, but it appears the person has limited English proficiency, a judge should ask questions **on the record** to assess the need for an interpreter.

**Sample questions for determining the English Proficiency of a person and the need for an interpreter:**
*(Avoid questions easily answered with yes or no replies.)*

- State your name and address.
- What is your birthday, your age and how many children are in your family?
- Are you employed? If so, describe the kind of work that you do.
- Describe your education. What language do you read and write?
- Describe the courtroom.
- Describe with whom and how frequently you speak English.
- Tell me a little about how comfortable you feel speaking English.

When responding, the court may consider, in addition to the responses, the person's mispronunciations, pauses, facial expressions, gestures, complexity of the proceedings and communication with counsel.

If the person has difficulty answering these simple questions, an interpreter is recommended since the person would, likewise, be unable to communicate well in high-stress matters involving legal terminology.

Also, **if the court cannot understand the person's spoken English**, consider using an interpreter. Request that the person speak in their native language, so that the interpreter can interpret into English.

## Qualities of a competent court interpreter

***Being bilingual is not sufficient to qualify a person to interpret in court.*** A competent court interpreter is able to completely and accurately interpret everything said in court, without adding or omitting words or summarizing statements. A competent court interpreter should have:

- **College-level vocabularies in both languages**, including legal terms & slang
- Excellent short-term memory and verbal skills
- At least some training and experience
- Knowledge of court interpreter ethics

***Remember:*** *Errors in interpretation can produce incomplete or wrong information – and lead to an unjust outcome.*

## Qualifying an Interpreter

A judge should ask questions **on the record** to qualify an interpreter. This ensures that the qualifications were canvassed in the event there is a later challenge related to the interpreter or interpretation.

**Sample Qualification Questions:**

- What is your native language? How did you learn English/the foreign language or sign language? How long have you been speaking the language or signing?
- Please describe your formal schooling. What are your accreditations?
- Do you have any formal training in interpreting? In legal or court interpreting?
- Please describe your experiences as an interpreter. Have you ever interpreted in court before? What kind of action?
- Have you ever been convicted, or are you currently charged in any court, of a felony or crime involving dishonesty, fraud, deceit or misrepresentation?
- Are you certified or registered as a court interpreter in any state or federal court?
- Have you communicated with the person who needs interpreting services? Are you familiar with his/her dialect?
- Do you need more time to speak with the interpreter?
- Do you know any of the parties, witnesses or attorneys?
- Are you aware of any conflict of interest? Do you understand that you must interpret everything said?
- Do you need time to review any documents in this case?

Text in shaded boxes are example scripts for reading into the record.

**Interpreter Oath**

According to SDCL 19-14-4.1, an interpreter should be administered an **oath** before every proceeding.

**Oath:** I, _____, do solemnly swear (or affirm) that I will justly, truly and impartially interpret, to the best of my skill and judgment, and will make a true interpretation to any party or witness, the oath or affirmation administered in all matters; the questions which may be asked and the answers that shall be given to such questions and all statements relative to any [court proceedings, probation activities, or any other proceeding] under consideration in which I am employed to interpret, so help me God (under the pains and penalties of perjury).

To assure that all participants understand the role of the interpreter, consider reading the following at the start of a court proceeding:

***Before we proceed any further, I would like to make a few comments regarding the interpreter's role in today's proceedings.***

*The interpreter can only interpret for one person at a time. Therefore, please do not speak or interrupt while someone else is testifying or speaking. The interpreter can only interpret testimony that is spoken. All responses given here must be verbal. You are reminded to speak at a slower but steady pace, and make eye contact occasionally with the interpreter to gauge whether your pace is appropriate. A slower pace is especially important when stating dates, numbers, figures or highly technical vocabulary. Do not speak directly to the interpreter but instead to the person requiring interpreter services.*

*As for the interpreter(s), you must interpret everything that is said in this courtroom, including this information. You are not allowed to engage in any conversation with the litigant/defendant/witness. You are not allowed to give any legal advice, or express personal opinions about this matter to the litigant/defendant/witness. You are expected to maintain confidentiality and not publicly discuss this case. If for some reason you need to pause the proceedings, please raise your hand and speak up. This should be in the form of "Your Honor, the Interpreter needs…." to clarify the request for the record.*

**Tips for Communicating Through Interpreters:**

- Instruct all participants to speak loudly and clearly and to speak one at a time.
- Allow the interpreter to converse briefly with the non-English speaker to ensure understanding of accents, dialect or pronunciation differences.
- Speak directly to the non-English speaking person. Do not refer to him/her in the third person.
- Don't ask the interpreter to independently explain/restate anything said by the party.
- The interpreter must convey all questions, answers and courtroom dialogue, and therefore, is constantly working.
- Allow the interpreter to review the court file prior to the hearing, to become familiar with names, dates and technical vocabulary.
- Monitor the interpreter so that side conversations aren't held with the non-English speaking person.
- If an interpreter is interpreting for a party while sitting at/near the litigant's table – and someone is speaking in the courtroom – the interpreter should be interpreting (her/his mouth should be moving). *If not, interrupt the hearing* and tell the interpreter to interpret *everything.*
- If a witness gives a long answer to a question, but the interpreter gives only a brief interpretation of the answer -- *interrupt the hearing*. Require the question to be restated, and tell the interpreter to interpret *everything* the witness says.
- There should *never* be an independent dialogue in court between an interpreter and the person needing the interpreter. The interpreter is probably explaining something or giving advice. A judge should *stop the dialogue* and require the interpreter to report what was said by the party and the interpreter during that dialogue.
- Recognize that court proceedings can be confusing and intimidating for a non-English speaker since other countries' legal systems and concepts often vary from those of the U.S.

**For jury trials,** it may be prudent to use an interpreter jury instruction, which clarifies the role of an interpreter.

**For trials and other long proceedings**, court administration should hire a team of two interpreters who will alternate interpreting approximately every twenty minutes.

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For additional assistance, please contact:
*(Insert county-specific contact info here using a mailing label)*

Additional information can be found on the intranet at http://ujs.sd.gov

Text in shaded boxes are example scripts for reading into the record.