

**INTERPRETER RESOURCES**  
**Child Welfare Law Orientation**

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# WORKING WITH INTERPRETERS IN WISCONSIN COURTS BENCHCARD FOR JUDGES

## 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 a party, a witness (while testifying), alleged victim, parent/legal guardian, legal guardian of a party in interest, or any other person affected by the proceedings, as well as a Deaf member of a jury panel.

## 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 mediation), 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 FOR SPOKEN AND SIGN LANGUAGE INTERPRETERS

*[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)? If not, do you hold an interpreter license from the State of Wisconsin's Department of Safety and Professional Services?*

*Do you have any formal training in interpreting, specifically legal interpreting? Please describe your formal schooling.*

*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?*

*Are you aware of any conflict of interest you might have in this case? Have you interpreted in any incident related to this case?*

*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 and the code of ethics for court interpreters?”*

## **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*
- *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.*

## **Interpreter Code of Ethics**

Applicable to:

- ◆ Spoken language interpreters
- ◆ Sign language interpreters
- ◆ Real-time court reporters when providing access for deaf and hard of hearing court users

Interpretation must be complete and accurate

- ◆ Must not alter, omit, or add to meaning of what is said or written
- ◆ Must not explain purpose of hearings or forms
- ◆ Will need to prepare for court by reviewing file and relevant documents

Interpreter must accurately disclose qualifications and experience

Interpreter must be impartial and unbiased

- ◆ Real or perceived appearance of conflicts of interest must be reported to court

Confidentiality and restriction on public comment

- ◆ Interpreter must protect all privileged and confidential information
- ◆ Interpreter may review confidential parts of file if relevant to proceeding (including juvenile court)
- ◆ Interpreter must not publicly discuss or offer opinion on any matter, even when matter is not privileged or confidential

Scope of Practice

- ◆ Interpreter shall not give legal advice or other advice
- ◆ Interpreter shall not express personal opinions to persons using their services
- ◆ Interpreters shall not engage in other services while serving as interpreter

Interpreters must:

- ◆ Maintain a professional demeanor
- ◆ Report to county any reservations about ability to perform as interpreter
- ◆ Report to court any ethical violations or efforts to impede interpreter's compliance with laws, code or court policies
- ◆ Improve skills through professional education and training

The Court Interpreter Code of Ethics is SCR Ch. 63. The full text of the code can be found at <http://www.wicourts.gov/services/interpreter/ethics.htm>

## **Wisconsin's Code of Ethics for Court Interpreters SCR Chapter 63**

Interpreters, judges, and attorneys are often unaware of the proper role of the court interpreter and the professional responsibilities it demands. The purpose of a code of ethics is to articulate a core set of principles to guide the conduct of a court interpreter and to educate judges in the level of conduct expected. The code addresses accuracy and completeness, representation of interpreter qualifications, impartiality and conflict of interest, professional demeanor, confidentiality and restriction of public comment, limitations on giving legal and other advice, communicating interpreter limitations to the judge, reporting ethical violations, and professional skills development.

This code of ethics has been adopted by the Wisconsin Supreme Court to guide interpreter conduct while working in the courts of Wisconsin and to serve as a basis for interpreter education. In keeping with its general practice, the court has adopted the black letter provisions; the accompanying comments are published for information purposes. This code is effective on July 1, 2002.

### **63.001 Citation of rules; definitions**

1. SCR 63.001 to 63.10 may be cited as the "Code of Ethics for Court Interpreters."
2. In this chapter "code" means the Code of Ethics for Court Interpreters.
3. "Shall" is used in the code to define principles to which adherence is required.

### **63.002 Preamble**

Many persons are partially or completely excluded from participation in court proceedings due to limited proficiency in the English language, as described in ss. 885.37 (1) (b) and 885.38 (1) (b), stats. Communication barriers must be removed as much as is reasonably possible so that these persons may enjoy equal access to justice. Qualified interpreters are highly skilled professionals who help judges conduct hearings justly and efficiently when communication barriers exist.

### **63.003 Applicability**

The code governs the delivery of services by foreign language and sign language interpreters working in the courts of the State of Wisconsin. Its purpose is to define the duties of interpreters and thereby enhance the administration of justice and promote public confidence in the courts. The code also applies to real time reporters when functioning in the capacity of providing access to court users.

### **63.004 Interpretation**

The comments accompanying this code are not adopted. The comments are intended as guides to interpretation, but the text of each rule is authoritative. If a court policy or routine practice appears to conflict with any provision of the code the policy or practice should be reviewed for modification.

### **63.01 Accuracy and completeness**

Interpreters shall render a complete and accurate interpretation or sight translation by reproducing in the target language the closest natural equivalent of the source language message, without altering, omitting, or adding anything to the meaning of what is stated or written, and without explanation.

### ***Comment***

Interpreters have a twofold role: 1. to ensure that court proceedings reflect, in English, precisely what was said by persons of limited English proficiency; and 2. to place persons of limited English proficiency on an equal footing with persons who understand English. This creates an obligation to conserve every element of information contained in a source language communication when it is rendered in the target language.

Therefore, interpreters are required to apply their best skills and judgment to preserve, as faithfully as is reasonably possible and without editing, the meaning of what is said, including the style or register of speech, the ambiguities and nuances of the speaker, and the level of language that best conveys the original meaning of the source language. Verbatim, "word for word," or literal oral interpretations are inappropriate when they distort the meaning of what was said in the source language. However, every spoken statement, even if it appears non-responsive, obscene, rambling, or incoherent should be interpreted. This includes apparent misstatements.

Interpreters should not interject any statement or elaboration of their own. If the need arises to explain an interpreting problem, such as a term or phrase with no direct equivalent in the target language or a misunderstanding that only the interpreter can clarify, the interpreter should ask the court's permission to provide an explanation.

Spoken language interpreters should convey the emotional emphasis of the speaker without reenacting or mimicking the speaker's emotions, or dramatic gestures. Sign language interpreters, however, must employ all of the visual cues that the language they are interpreting for requires—including facial expressions, body language, and hand gestures. Judges should ensure that court participants do not confuse these essential elements of the interpreted language with inappropriate interpreter conduct. Any challenge to the interpreter's conduct should be directed to the judge.

The obligation to preserve accuracy includes the interpreter's duty to correct any errors of interpretation discovered during the proceeding. Interpreters should demonstrate their professionalism by objectively analyzing any challenge to their performance.

The ethical responsibility to interpret accurately and completely includes the responsibility of being properly prepared for interpreting assignments. Interpreters are encouraged to obtain documents and other information necessary to familiarize themselves with the nature and purpose of a proceeding. Prior preparation is generally described below, and is especially important when testimony or documents include highly specialized terminology and subject matter.

In order to avoid any impropriety or appearance of impropriety, interpreters should seek leave of the court before conducting any preparation other than the review of public documents in the court file. Courts should in their discretion freely grant such leave in order to assist interpreters to discharge their professional responsibilities.

Preparation might include but is not limited to:

1. review of public documents in the court file, such as motions and supporting affidavits, witness lists and jury instructions; the criminal complaint, information, and preliminary hearing transcript in a criminal case; and the summons, complaint, and answer in a civil case
2. review of documents in the possession of counsel, such as police reports, witness summaries, deposition transcripts, and presentence investigation reports
3. contacting previous interpreters involved in the case for information on language use/style
4. contacting attorneys involved in the case for additional information on anticipated testimony or exhibits
5. anticipating and discussing interpreting issues related to the case with the judge, but only in the presence of counsel unless the court directs otherwise.

### **63.02 Representation of qualifications**

Interpreters shall accurately and completely represent their certifications, training, and experience.

### **Comment**

Acceptance of a case by an interpreter conveys linguistic competency in legal settings. Withdrawing, or being asked to withdraw, after a court proceeding has begun is disruptive and wasteful of scarce public resources. It is therefore essential that interpreters present a complete and truthful account of their training, certifications, and experience prior to appointment so the court can fairly evaluate their qualifications for delivering interpreting services.

### **63.03 Impartiality and avoidance of conflict of interest**

Interpreters shall be impartial and unbiased, and shall refrain from conduct that may give an appearance of bias. Interpreters shall disclose any real or perceived conflict of interest to the judge and the parties.

### **Comment**

Interpreters serve as officers of the court. Their duties in a court proceeding are to serve the court and the public regardless of whether publicly or privately retained.

Interpreters should avoid any conduct or behavior that presents the appearance of favoritism toward anyone. Interpreters should maintain professional relationships with persons using their services, discourage personal dependence on the interpreter, and avoid participation in the proceedings other than as an interpreter.

During the course of the proceedings, interpreters of record should not converse with parties, witnesses, jurors, attorneys, or with friends or relatives of any party, except in the discharge of their official functions. Official functions may include an informal pre-appearance assessment to include the following:

1. culturally appropriate introductions
2. a determination of variety, mode, or level of communication
3. a determination of potential conflicts of interest
4. a description of the interpreter's role and function.

Interpreters should strive for professional detachment. Verbal and non-verbal displays of personal attitudes, prejudices, emotions, or opinions must be avoided at all times.

Interpreters shall not solicit or accept any payment, gift, or gratuities in addition to compensation from the court.

Any condition that interferes with the objectivity of an interpreter constitutes a conflict of interest and must be disclosed to the judge. Interpreters should only divulge necessary information when disclosing the conflict of interest. The disclosure shall not include privileged or confidential information. The following circumstances create potential conflicts of interest that must be disclosed:

1. the interpreter is a friend, associate, or relative of a party, counsel for a party, a witness, or a victim (in a criminal case) involved in the proceedings
2. the interpreter or the interpreter's friend, associate, or relative has a financial interest in the subject matter in controversy, a shared financial interest with a party to the proceeding, or any other interest that might be affected by the outcome of the case
3. the interpreter has served in an investigative capacity for any party involved in the case
4. the interpreter has previously been retained by a law enforcement agency to assist in the preparation of the criminal case at issue
5. the interpreter is an attorney in the case at issue
6. the interpreter has previously been retained for employment by one of the parties

7. for any other reason, the interpreter's independence of judgment would be compromised in the course of providing services

The existence of any one of the above-mentioned circumstances must be carefully evaluated by the court, but does not alone disqualify an interpreter from providing services if the interpreter is able to render services objectively. The interpreter should disclose to the court any indication that the recipient of interpreting services views the interpreter as being biased. If an actual or apparent conflict of interest exists, the court must decide whether removal is appropriate based upon the totality of the circumstances.

#### **63.04 Professional demeanor**

Interpreters shall conduct themselves in a manner consistent with the dignity of the court.

##### ***Comment***

Interpreters should know and observe the established protocol, rules, and procedures for delivering interpreting services. When speaking in English, interpreters should speak at a rate and volume that enables them to be heard and understood throughout the courtroom. Interpreters should be as unobtrusive as possible and should not seek to draw inappropriate attention to themselves while performing their professional duties. This includes any time the interpreter is present, even though not actively interpreting.

Interpreters should avoid obstructing the view of anyone involved in the proceedings, but should be appropriately positioned to facilitate communication. Interpreters who use sign language or other visual modes of communication must be positioned so that signs, facial expressions, and whole body movements are visible to the person for whom they are interpreting and be repositioned to accommodate visual access to exhibits as necessary.

Interpreters are encouraged to avoid personal or professional conduct that could discredit the court.

Interpreters should support other interpreters by sharing knowledge and expertise with them to the extent practicable in the interests of the court.

#### **63.05 Confidentiality**

Interpreters shall protect the confidentiality of all privileged and other confidential information.

##### ***Comment***

Interpreters must protect and uphold the confidentiality of all privileged information obtained during the course of their duties. It is especially important that interpreters understand and uphold the attorney-client privilege that requires confidentiality with respect to any communications between attorney and client. This rule also applies to other types of privileged communications. Interpreters must also refrain from repeating or disclosing information obtained by them in the course of their employment that may be relevant to the legal proceeding.

In the event that an interpreter becomes aware of information that indicates probable imminent harm to someone or relates to a crime being committed during the course of the proceedings, the interpreter should immediately disclose the information to the presiding judge. In an emergency, the interpreter should disclose the information to an appropriate authority.

Interpreters shall never take advantage of knowledge obtained in the performance of duties, or by their access to court records, facilities, or privileges, for their own or another's personal gain.

#### **63.06 Restriction on public comment**

Interpreters shall not publicly discuss, report, or offer an opinion concerning a matter in which they are or have



been engaged, even when that information is not privileged or required by law to be confidential, except to facilitate training and education.

***Comment***

Generally, interpreters should not discuss interpreter assignments with anyone other than persons who have a formal duty associated with the case. However, interpreters may share information for training and education purposes, divulging only so much information as is required to accomplish this purpose. Unless so ordered by a court, interpreters must never reveal privileged or confidential information for any purpose,

**63.07 Scope of practice**

Interpreters shall limit themselves to interpreting or translating and shall not give legal or other advice, express personal opinions to persons using their services, or engage in any other activities that may be construed to constitute a service other than interpreting or translating while serving as an interpreter.

***Comment***

Since interpreters are responsible only for enabling others to communicate, they should limit themselves to the activity of interpreting or translating only, including official functions as described in the commentary to Rule 63.03. Interpreters, however, may be required to initiate communications during a proceeding when they find it necessary to seek direction from the court in performing their duties. Examples of such circumstances include seeking direction for the court when unable to understand or express a word or thought, requesting speakers to adjust their rate of speech, repeat or rephrase something, correcting their own interpreting errors, or notifying the court of reservations about their ability to satisfy an assignment competently. In such instances, interpreters should make it clear that they are speaking for themselves.

Interpreters may convey legal advice from an attorney to a person only while that attorney is giving it. Interpreters should not explain the purpose or contents of forms, services, or otherwise act as counselors or advisors unless they are interpreting for someone who is acting in that official capacity. Interpreters may translate language on a form for a person who is filling out the form, but should not explain the form or its purpose for such a person.

While engaged in the function of interpreting, interpreters should not personally perform official acts that are the official responsibility of other court officials.

**63.08 Assessing and reporting impediments to performance**

Interpreters shall assess at all times their ability to deliver their services. When interpreters have any reservation about their ability to satisfy an assignment competently, the interpreters shall immediately convey that reservation to the appropriate judicial authority.

***Comment***

If the communication mode, dialect, or speech of the person of limited English proficiency cannot be readily interpreted, the interpreter should notify the appropriate judicial authority, such as a supervisory interpreter, a judge, or another official with jurisdiction over interpreter matters.

Interpreters should notify the appropriate judicial authority of any circumstances (environmental or physical limitations) that impede the ability to deliver interpreting services adequately. These circumstances may include that the courtroom is not quiet enough for the interpreter to hear or be heard by the person of limited English proficiency, more than one person is speaking at the same time, or the speaker is speaking too quickly for the interpreter to adequately interpret. Sign language interpreters must make sure that they can both see and convey the full range of visual language elements that are necessary for communication, including facial expressions and body movements, as well as hand gestures.

Interpreters should notify the judge of the need to take periodic breaks in order to maintain mental and physical alertness and prevent interpreter fatigue. Interpreters should inform the court when the use of team interpreting is necessary.

Even competent and experienced interpreters may encounter situations where routine proceedings suddenly involve slang, idiomatic expressions, regional dialect, or technical or specialized terminology unfamiliar to the interpreter such as the unscheduled testimony of an expert witness. When such situations occur, interpreters should request a brief recess in order to familiarize themselves with the subject matter. If familiarity with the terminology requires extensive time or more intensive research, interpreters should inform the judge.

Interpreters should refrain from accepting a case if they believe its language and subject matter is likely to exceed their capacities. Interpreters should also notify the judge if, during the course of a proceeding they conclude that they are unable to perform adequately for any reason.

### **63.09 Duty to report ethical violations**

Interpreters shall report to the proper judicial authority any effort to impede their compliance with any law, any provision of this code, or any other official policy governing court interpreting and translating.

#### ***Comment***

Because the users of interpreting services frequently misunderstand the proper role of interpreters, they may ask or expect the interpreters to perform duties or engage in activities that run counter to the provisions of the code or other law, rules, regulations, or policies governing court interpreters. It is incumbent upon the interpreters to explain their professional obligations to the user. If, having been apprised of these obligations, the person persists in demanding that the interpreters violate them, the interpreters should turn to a supervisory interpreter, a judge, or another official with jurisdiction over interpreter matters to resolve the situation.

### **63.10 Professional development**

Interpreters shall improve their skills and knowledge and advance the profession through activities such as professional training and education and interaction with colleagues and specialists in related fields.

#### ***Comment***

Interpreters must improve their interpreting skills and increase their knowledge of the languages they work in professionally, including past and current trends in slang, idiomatic expression, changes in dialect, technical terminology, and social and regional dialects, as well as their applicability within court proceedings.

Interpreters should keep informed of all statutes, rules of court, and policies of the judiciary that govern the performance of their professional duties.

Interpreters should seek to elevate the standards of the profession through participation in workshops, professional meetings, interaction with colleagues, and reading current literature in the field.