



Deaf Interpreters as Reasonable Accommodation

FACT SHEET

Most of the time in your court, the sign language interpreter you will encounter will be a person, just like you, who can hear. At times, however, a different kind of interpreter is needed – a Deaf interpreter who cannot hear. The term Deaf Interpreter is used to refer to an individual who is deaf and viewed as a specialist who possesses unique mastery of ASL and use of visual-gestural language features that enables her or him to be able to work effectively in settings where communication issues are complex and/or high risk. Most of the work of Deaf interpreters is done in collaboration with sign language interpreters who can hear and are engaged in assignments where a communication specialist is required to provide effective and accessible interpreting service.

The purpose of this document is to briefly describe the circumstances in which the use of a Deaf interpreter as an accommodation is necessary to ensure a fundamentally fair proceeding.

Generally, deaf people in America use American Sign Language to communicate and pose little difficulty for the courts in locating the appropriate interpreter. A significant number of deaf people, however, do not use standard American Sign Language and require additional accommodations. Social scientists have described the characteristics of individuals who can benefit from the services of the deaf interpreter and include deaf people who:

- Have secondary disabilities such as vision impairment or cognitive impairments;
- Are foreign born or recent immigrants and who may or may not have knowledge of a foreign sign language;
- Have mental/cognitive difficulties as a result of substance abuse or inappropriate diagnosis;
- Are youths who have not yet fully developed language;
- Have little or no contact with native users of American Sign Language or have never been exposed to American Sign Language.

Generally when a court interpreter encounters a deaf person who presents these characteristics or a combination of these characteristics, the court interpreter will inform the court that a Deaf interpreter is

needed. Generally, the court interpreter will have access to a network of interpreters and will be able to assist in locating the appropriate Deaf interpreter.

Many states have recognized the need for Deaf interpreters and have included definitions and standards in their court interpreting statutes. The statutory standards for providing Deaf interpreters (often termed in the statutes as an intermediary interpreter or certified deaf interpreter) suggest that when a court interpreter indicates difficulty with communication and a Deaf interpreter would assist, improve or enhance the communication, a Deaf interpreter should be appointed. Other statutes provide that a Deaf interpreter should be provided in order for the proceeding to be understandable to the deaf litigant and should be done in consultation with the deaf litigant.¹

Because many Deaf interpreters do not work full time in court and because there is no court certification currently for Deaf interpreters, it is helpful to conduct a short *voir dire* with the Deaf interpreter to ascertain the reasons they are present and to determine whether they have any familiarity with the parties. It should be noted that one reason the Deaf interpreter is present is because of their familiarity with non-standard language usage and the close knit nature of the deaf people within a community makes it likely they will have prior contact with the parties. While such contact is not fatal to the proceedings, the Deaf interpreter should be instructed as any other interpreter with prior contact is instructed to abide by their oath and the court interpreters code of ethics.

When a Deaf interpreter works with a court interpreter who can hear, the physical placement is different but logical. The Deaf interpreter will stand in the well facing the deaf person in the proceeding because the language is visual and any interpreter must be in the sight line of the deaf person needing the service. The court interpreter who can hear will stand behind the deaf person needing the service and away from their sightline so as not to be distracting. This interpreter will interpret to the Deaf interpreter in the well who will convey the information to the deaf person needing the service. Interpreters will arrive early to work out these arrangements with courtroom personnel, and it would be helpful if courtroom staff were made aware of these placement issues prior to the proceeding.

As well, because inclusion of the Deaf interpreter is typically the result of complex factors impacting communication with a deaf litigant, the amount of time needed for the interpretation process to be completed may be somewhat extended. This too is a matter that the court and interpreters should discuss in advance so that the court is prepared to instruct the attorney's regarding any accommodations that may be necessary to allow for accurate and effective interpretation.

When deaf interpreters are used in conjunction with court interpreters the court can feel confident that the interpreting team will provide equal access to those deaf individuals who are in need of these unique arrangements. Should you have more questions, further information is available from the NCIEC at www.nciec.org, under the Project tab at the Legal Interpreting Work Group link.

¹ See *Deaf Interpreters in Court: An Accommodation That is More Than Reasonable* on the NCIEC website for a full discussion of state laws and case law relating to the use of qualified deaf individuals as interpreters for some deaf litigants and the factors that impact the need for this accommodation in order to ensure effective communication.