

## 5-122 . Court Interpreters.

A. **Scope and definitions.** This rule applies to all criminal proceedings filed in the district court. The following definitions apply to this rule:

- (1) "case participant" means a party, witness, or other person required or permitted to participate in a proceeding governed by these rules;
- (2) "interpretation" means the transmission of a spoken or signed message from one language to another;
- (3) "transcription" means the interpretation of an audio, video, or audio-video recording, which includes but is not limited to 911 calls, wire taps, and voice mail messages, that is memorialized in a written transcript for use in a court proceeding;
- (4) "translation" means the transmission of a written message from one language to another;
- (5) "court interpreter" means a person who provides interpretation or translation services for a case participant;
- (6) "certified court interpreter" means a court interpreter who is certified by and listed on the New Mexico Directory of Certified Court Interpreters maintained by the Administrative Office of the Courts or who is acknowledged in writing by the Administrative Office of the Courts as a court interpreter certified by another jurisdiction that is a member of the Consortium for Language Access in the Courts;
- (7) "justice system interpreter" means a court interpreter who is listed on the Registry of Justice System Interpreters maintained by the Administrative Office of the Courts;
- (8) "language access specialist" means a bilingual employee of the New Mexico Judiciary who is recognized in writing by the Administrative Office of the Courts as having successfully completed the New Mexico Center for Language Access Language Access Specialist Certification program and is in compliance with the related continuing education requirements;
- (9) "non-certified court interpreter" means a justice system interpreter, language access specialist, or other court interpreter who is not certified by and listed on the New Mexico Directory of Certified Court Interpreters maintained by the Administrative Office of the Courts;
- (10) "sight translation" means the spoken or signed translation of a written document; and
- (11) "written translation" means the translation of a written document from one language into a written document in another language.

### B . Identifying a need for interpretation.

(1) The need for a court interpreter exists whenever a case participant is unable to hear, speak, or otherwise communicate in the English language to the extent reasonably necessary to fully participate in the proceeding. The need for a court interpreter may be identified by the court or by a case participant. A court interpreter shall be appointed if one is requested.

(2) The court is responsible for making arrangements for a court interpreter for a juror who needs one.

(3) A party is responsible for notifying the court of the need for a court interpreter as follows:

(a) if the defendant needs a court interpreter, defense counsel shall notify the court at arraignment or within ten (10) days after waiver of arraignment; and

(b) if a court interpreter is needed for a party's witness, the party shall notify the court in writing substantially in a form approved by the Supreme Court upon service of a notice of hearing and shall indicate whether the party anticipates the proceeding will last more than two (2) hours.

(4) If a party fails to timely notify the court of a need for a court interpreter, the court may assess costs against that party for any delay caused by the need to obtain a court interpreter unless that party establishes good cause for the delay.

(5) Notwithstanding any failure of a party, juror, or other case participant to notify the court of a need for a court interpreter, the court shall appoint a court interpreter for a case participant whenever it becomes apparent from the court's own observations or from disclosures by any other person that a case participant is unable to hear, speak, or otherwise communicate in the English language to the extent reasonably necessary to fully participate in the proceeding.

### C. Appointment of court interpreters.

(1) When a need for a court interpreter is identified under Paragraph B of this rule, the court shall appoint a certified court interpreter except as otherwise provided in this paragraph.

(2) For cases exclusively involving charges under the Motor Vehicle Code except for driving while under the influence of intoxicating liquor or drugs, reckless driving, or driving while license suspended or revoked, the court may appoint a language access specialist without complying with Subparagraph (5) of this paragraph.

(3) Upon approval of the court, the parties may stipulate to the use of a non-certified court interpreter for non-plea and non-evidentiary hearings without complying with the waiver requirements in Paragraph D of this rule.

(4) To avoid the appearance of collusion, favoritism, or exclusion of English speakers from the process, the judge shall not act as a court interpreter for the proceeding or regularly speak in a language other than English during the proceeding. A party's attorney shall not act as a court interpreter for the proceeding, except that a party and the party's attorney may engage in confidential attorney-client communications in a language other than English.

(5) If the court has made diligent, good faith efforts to obtain a certified court interpreter and one is not reasonably available, after consulting with the Administrative Office of the Courts, the court may appoint a justice system interpreter subject to the restrictions in Sub-subparagraphs (d) and (e) of this subparagraph. If the court has made diligent, good faith efforts to obtain a justice system interpreter and one is not reasonably available, after consulting with the Administrative Office of the Courts, the court may appoint a language access specialist or less qualified non-certified court interpreter only after the following requirements are met:

(a) the court provides notice to the parties substantially in a form approved by the Supreme Court that the court has contacted the Administrative Office of the Courts for assistance in locating a certified court interpreter or justice system interpreter but none is reasonably available and has concluded after evaluating the totality of the circumstances including the nature of the court proceeding and the potential penalty or consequences flowing from the proceeding that an accurate and complete interpretation of the proceeding can be accomplished with a less qualified non-certified court interpreter;

(b) the court finds on the record that the proposed court interpreter has adequate language skills, knowledge of interpretation techniques, and familiarity with interpretation in a court setting to provide an accurate and complete interpretation for the proceeding;

(c) the court finds on the record that the proposed court interpreter has read, understands, and agrees to abide by the New Mexico Court Interpreters Code of Professional Responsibility set forth

in Rule [23-111](#) NMRA;

(d) with regard to a non-certified signed interpreter, in no event shall the court appoint a non-certified signed language interpreter who does not, at a minimum, possess both a community license from the New Mexico Regulations and Licensing Department and a generalist interpreting certification from the Registry of Interpreters for the Deaf; and

(e) a non-certified court interpreter shall not be used for a juror.

**D. Waiver of the right to a court interpreter.** Any case participant identified as needing a court interpreter under Paragraph **B** of this rule may at any point in the case waive the services of a court interpreter with approval of the court only if the court explains in open court through a court interpreter the nature and effect of the waiver and finds on the record that the waiver is knowingly, voluntarily, and intelligently made. If the case participant is the defendant in the criminal proceeding, the waiver shall be in writing and the court shall further determine that the defendant has consulted with counsel regarding the decision to waive the right to a court interpreter. The waiver may be limited to particular proceedings in the case or for the entire case. With the approval of the court, the case participant may retract the waiver and request a court interpreter at any point in the proceedings.

**E. Procedures for using court interpreters.** The following procedures shall apply to the use of court interpreters:

(1) **Qualifying the court interpreter.** Before appointing a court interpreter to provide interpretation services to a case participant, the court shall qualify the court interpreter in accordance with Rule [11-604](#) NMRA of the Rules of Evidence. The court may use the questions in Form [9-109](#) NMRA to assess the qualifications of the proposed court interpreter. A certified court interpreter is presumed competent, but the presumption is rebuttable. Before qualifying a justice system interpreter or other less qualified non-certified court interpreter, the court shall inquire on the record into the following matters:

(a) whether the proposed court interpreter has assessed the language skills and needs of the case participant in need of interpretation services; and

(b) whether the proposed court interpreter has any potential conflicts of interest.

(2) **Instructions regarding the role of the court interpreter during trial.** Before the court interpreter begins interpreting for a party during trial, the court shall instruct the parties and others present in the courtroom regarding the role of the court interpreter. If the court interpreter will provide interpretation services for a juror, the court also shall instruct the jury prior to deliberations in accordance with UJI [14-6022](#) NMRA.

(3) **Oath of the court interpreter.** Before a court interpreter begins interpreting, the court shall administer an oath to the court interpreter as required by Section [38-10-8](#) NMSA 1978. If a court interpreter will provide interpretation services for a juror, the court also shall administer an oath to the court interpreter prior to deliberations in accordance with UJI [14-6021](#) NMRA. All oaths required under this subparagraph shall be given on the record in open court.

(4) **Objections to the qualifications or performance of a court interpreter.** A party shall raise any objections to the qualifications of a court interpreter when the court is qualifying a court interpreter as required by Subparagraph (1) of this paragraph or as soon as the party learns of any information calling into question the qualifications of the court interpreter. A party shall raise any objections to court interpreter error at the time of the alleged interpretation error or as soon as the party has reason to believe that an interpretation error occurred that affected the outcome of the proceeding.

(5) **Record of the court interpretation.** Upon the request of a party, the court may make and

maintain an audio recording of all spoken language court interpretations or a video recording of all signed language interpretations. Unless the parties agree otherwise, the party requesting the recording shall pay for it. Any recordings permitted by this subparagraph shall be made and maintained in the same manner as other audio or video recordings of court proceedings. This subparagraph shall not apply to court interpretations during jury discussions and deliberations.

(6) **Court interpretation for multiple case participants.** When more than one case participant needs a court interpreter for the same spoken language, the court may appoint the same court interpreter to provide interpretation services for those case participants. When more than one case participant needs court interpretation for a signed language, separate court interpreters shall be appointed for each case participant. If a party needs a separate court interpreter for attorney-client communications during a court proceeding, prior to the commencement of the court proceeding, the party shall obtain a court interpreter of the party's own choosing and at the party's own expense. If the party is a criminal defendant represented by court-appointed counsel, a court interpreter for attorney-client communications may be paid as allowed under the Indigent Defense Act and Public Defender Act.

(7) **Use of team court interpreters.** To avoid court interpreter fatigue and promote an accurate and complete court interpretation, when the court anticipates that a court proceeding requiring a court interpreter for a spoken language will last more than two (2) hours the court shall appoint a team of two (2) court interpreters to provide interpretation services for each spoken language. For court proceedings lasting less than two (2) hours, the court may appoint one (1) court interpreter but the court shall allow the court interpreter to take breaks approximately every thirty (30) minutes. The court shall appoint a team of two (2) court interpreters for each case participant who needs a signed language court interpreter when the court proceeding lasts more than one (1) hour. If a team of two (2) court interpreters are required under this subparagraph, the court may nevertheless proceed with only one (1) court interpreter if the following conditions are met:

- (a) two (2) qualified court interpreters could not be obtained by the court;
- (b) the court states on the record that it contacted the Administrative Office of the Courts for assistance in locating two (2) qualified court interpreters but two (2) could not be found; and
- (c) the court allows the court interpreter to take a five (5)-minute break approximately every thirty (30) minutes.

(8) **Use of court interpreters for translations and transcriptions.** If a court interpreter is required to provide a sight translation, written translation, or transcription for use in a court proceeding, the court shall allow the court interpreter a reasonable amount of time to prepare an accurate and complete translation or transcription and, if necessary, shall continue the proceeding to allow for adequate time for a translation or transcription. Whenever possible, the court shall provide the court interpreter with advance notice of the need for a translation or transcription before the court proceeding begins and, if possible, the item to be translated or transcribed.

(9) **Modes of court interpretation.** The court shall consult with the court interpreter and case participants regarding the mode of interpretation to be used to ensure a complete and accurate interpretation.

(10) **Remote spoken language interpretation.** Court interpreters may be appointed to serve remotely by audio or audio-video means approved by the Administrative Office of the Courts for any proceeding when a court interpreter is otherwise not reasonably available for in-person attendance in the courtroom. Electronic equipment used during the hearing shall ensure that all case participants hear all statements made by all case participants in the proceeding. If electronic equipment is not available for simultaneous interpreting, the hearing shall be conducted to allow for consecutive interpreting of each

sentence. The electronic equipment that is used must permit attorney-client communications to be interpreted confidentially.

(11) **Court interpretation equipment.** The court shall consult and coordinate with the court interpreter regarding the use of any equipment needed to facilitate the interpretation.

(12) **Removal of the court interpreter.** The court may remove a court interpreter for any of the following reasons:

- (a) inability to adequately interpret the proceedings;
- (b) knowingly making a false interpretation;
- (c) knowingly disclosing confidential or privileged information obtained while serving as a court interpreter;
- (d) knowingly failing to disclose a conflict of interest that impairs the ability to provide complete and accurate interpretation;
- (e) failing to appear as scheduled without good cause;
- (f) misrepresenting the court interpreter's qualifications or credentials;
- (g) acting as an advocate; or
- (h) failing to follow other standards prescribed by law and the New Mexico Court Interpreter's Code of Professional Responsibility.

(13) **Cancellation of request for a court interpreter.** A party shall advise the court in writing substantially in a form approved by the Supreme Court as soon as it becomes apparent that a court interpreter is no longer needed for the party or a witness to be called by the party. The failure to timely notify the court that a court interpreter is no longer needed for a proceeding is grounds for the court to require the party to pay the costs incurred for securing the court interpreter.

F. **Payment of costs for the court interpreter.** Unless otherwise provided in this rule, and except for court interpretation services provided by an employee of the court as part of the employee's normal work duties, all costs for providing court interpretation services by a court interpreter shall be paid from the Jury and Witness Fee Fund in amounts consistent with guidelines issued by the Administrative Office of the Courts.

[Adopted by Supreme Court Order No. 12-8300-022, effective for all cases filed or pending on or after January 1, 2013.]

**Committee commentary.** — This rule governs the procedure for the use of court interpreters in court proceedings. In addition to this rule, the New Mexico Judiciary Court Interpreter Standards of Practice and Payment Policies issued by the Administrative Office of the Courts (the AOC Standards), also provide guidance to the courts on the certification, use, and payment of court interpreters. But in the event of any conflicts between the AOC Standards and this rule, the rule controls.

The rule requires the use of certified court interpreters whenever possible but permits the use of less qualified interpreters in some situations. For purposes of this rule, a certified court interpreter may not be reasonably available if one cannot be located or if funds are not available to pay for one. But in all instances, before a court may use a non-certified court interpreter, the court must contact the Administrative Office of the Courts (AOC) for assistance and to confirm whether funds may in fact be available to pay for a certified court interpreter.

The rule does not attempt to set forth the criteria for determining who should be a certified court interpreter. Instead, the task of certifying court interpreters is left to the AOC. When a court interpreter is certified by the AOC, the certified court interpreter is placed on the New Mexico Directory of Certified Court Interpreters, which is maintained by the AOC and can be viewed on its web site. A certified court interpreter is also issued an identification card by the AOC, which can be used to demonstrate to the court that the cardholder is a certified court interpreter.

In collaboration with the New Mexico Center for Language Access (NMCLA), the AOC is also implementing a new program for approving individuals to act as justice system interpreters and language access specialists who are specially trained to provide many interpretation services in the courts that do not require a certified court interpreter. Individuals who successfully complete the Justice System Interpreting course of study offered by the NMCLA are approved by the AOC to serve as justice system interpreters and will be placed on the AOC Registry of Justice System Interpreters. Those who are approved as justice system interpreters will also be issued identification cards that may be presented in court as proof of their qualifications to act as a justice system interpreter. Under this rule, if a certified court interpreter is not reasonably available, the court should first attempt to appoint a justice system interpreter to provide court interpretation services. If a justice system interpreter is not reasonably available, the court must contact the AOC for assistance before appointing a non-certified court interpreter for a court proceeding.

In addition to setting forth the procedures and priorities for the appointment of court interpreters, this rule also provides procedures for the use of court interpreters within the courtroom. In general, the court is responsible for determining whether a juror needs a court interpreter, and the parties are responsible for notifying the court if they or their witnesses will need a court interpreter. But in most cases, the court will be responsible for paying for the cost of court interpretation services, regardless of who needs them. However, the court is not responsible for providing court interpretation services for confidential attorney-client communications during a court proceeding, nor is the court responsible for providing court interpretation services for witness interviews or pre-trial transcriptions or translations that the party intends to use for a court proceeding. When the court is responsible for paying the cost of the court interpretation services, the AOC standards control the amounts and procedures for the payment of court interpreters.

Although this rule generally applies to all court interpreters, the court should be aware that in some instances the procedures to follow will vary depending on whether a spoken or signed language court interpreter is used. Courts should also be aware that in some instances when court interpretation services are required for a deaf or hard-of-hearing individual, special care should be taken because severe hearing loss can present a complex combination of possible language and communication barriers that traditional American Sign Language/English interpreters are not trained or expected to assess. If a deaf or hard-of-hearing individual is having trouble understanding a court interpreter and there is an indication that the person needs other kinds of support, the court should request assistance from the AOC for a language assessment to determine what barriers to communication exist and to develop recommendations for solutions that will provide such individuals with meaningful access to the court system.

While this rule seeks to provide courts with comprehensive guidance for the appointment and use of court interpreters, the courts should also be aware that the AOC provides additional assistance through a full-time program director who oversees the New Mexico Judiciary's court interpreter program and who works in tandem with the Court Interpreter Advisory Committee appointed by the Supreme Court to develop policies and address problems associated with the provision of court interpreter services in the courts. Whenever a court experiences difficulties in locating a qualified court interpreter or is unsure of the proper procedure for providing court interpretation services under this rule, the court is encouraged, and sometimes required under this rule, to seek assistance from the AOC to ensure that all case participants have full access to the New Mexico state court system.

[Adopted by Supreme Court Order No. 12-8300-022, effective for all cases filed or pending on or after January 1, 2013.]