

Interpreter Information for West Virginia Court Personnel
(Prepared by Leslie Anderson, WV Supreme Court of Appeals Administrative Office)

July 1999

There are three different statutes (two State and one Federal) which address interpreter services in the courts for people who are deaf or hard of hearing or who are fluent only in a foreign language such that they are unable to understand and communicate readily in the English language. First, a party, a witness, or a juror with a hearing disability or a language barrier has a right to a qualified interpreter to assist at every stage of a court proceeding pursuant to W.Va. Code §57-5-7. Second, the West Virginia Interpreter for the Deaf Act [§5-14A-1 *et seq.*] requires that a qualified interpreter be appointed to interpret any court or grand jury proceeding for a complainant, defendant or witness who is deaf. Third, Title II of the ADA [Pub L No 101-336, 104 Stat 327 (1990), 42 USC §12101 *et seq.*], requires the courts to provide accommodation, as needed, to people with disabilities.

Because of federal supremacy, the ADA is controlling with respect to any conflicting provisions of the state statutes. Unless the state statutes require interpreter services over and above the services required under the ADA, the ADA provisions are to be followed.

Below are some specific issues which court personnel should be familiar with when an interpreter is needed.

NOTE: Unless otherwise indicated, the requirements and procedures applying to sign language interpreters for persons who are deaf or hard of hearing as set forth below also apply if a party, juror, or witness needs a foreign-language interpreter or needs an interpreter for any other reason [see §57-5-7(e)].

a. For Whom Will the Supreme Court Pay the Costs of an Interpreter?:

Unless a judicial officer seeks prior approval from the legal division of the Administrative Office for payment of the costs of an interpreter in circumstances not listed below, the Supreme Court will pay only for the

cost of an interpreter for a participant (such as a juror, witness or a party) and for the following courtroom spectators:

1. Any parent, guardian, conservator or guardian ad litem of a minor or incompetent person who is a party or witness in any case will be provided a reasonable communication accommodation at a court proceeding at the Supreme Court's expense.
2. Any parent, guardian, conservator or guardian ad litem of a minor or incompetent person who is a victim in a criminal case will be provided a reasonable communication accommodation at a court proceeding at the Supreme Court's expense.
3. The spouse of a victim in a criminal case will be provided a reasonable communication accommodation at a court proceeding at the Supreme Court's expense.
4. If a circuit judge concludes there is good cause for any other spectator of a court proceeding to be provided a reasonable communication accommodation at the Supreme Court's expense, then the judge in writing needs to request approval of such accommodation from a Supreme Court of Appeals Administrative Office legal division attorney. If a magistrate concludes that there is good cause for any other spectator of a court proceeding to be provided a reasonable communication accommodation at court expense, then the magistrate needs to submit a written request for approval of such accommodation from the chief circuit judge. If the chief judge agrees with the magistrate, he or she is to submit a request approval from a Supreme Court of Appeals Administrative Office legal division attorney [policy adopted by West Virginia Supreme Court of Appeals during the April 21, 1999 Administrative Conference].

- b. **Notice of Necessity of Interpreter:** It is preferable for a person needing an interpreter to inform the court of such need [form SCA-M1030NP or SCA-C800] sufficiently in advance for an interpreter to be scheduled and appointed, but no less than two business days (not including Saturday, Sunday or holidays) in advance of when such accommodation will be needed [§5-14A-6]. The request may be in writing (form SCA-M1030NP or SCA-C800), but is not required to be in writing. Court personnel should immediately inform the judicial officer before whom the case is pending of any such request or otherwise follow the established procedure in their

county for processing the request for a reasonable accommodation regardless of whether the request is made in writing.

- c. **Appointment of an Interpreter:** Appointment of a qualified interpreter in civil as well as in criminal and juvenile proceedings should follow the procedure provided in W.VA. Code §57-5-7(b)(3), i.e., appointment by order of the supervising circuit judge. (Although the statute does not expressly address appointment in **civil** cases, the practice for them should be consistent with that in criminal and juvenile cases.) Generally, court personnel following the procedure outlined below will be in compliance with W.Va. Code §57-5-7(b)(3); however, if the supervising or chief circuit judge establishes a different procedure, court personnel should follow that procedure.

Upon receiving a request for an interpreter court personnel should:

1. **Select an Interpreter.** Find out from the person making the request what kind of interpreter he or she will need (e.g., American Sign Language interpreter; oral interpreter; foreign language interpreter). If he or she needs an American Sign Language interpreter, then the appropriate court personnel should locate a potential interpreter, if one is not already known, by looking at the list of interpreters provided by the Commission for the Deaf and Hard of Hearing, which is located on pages 85-91.

NOTE: Be aware that if an interpreter is used in a legal or mental health setting, the interpreter should have a NAD Level III, IV or V certificate (**the Commission for the Deaf and Hard of Hearing strongly recommends that an interpreter with a NAD Level IV or V certificate be used in a court proceeding**) or a RID, CSC or CI/CT certificate in order to be a qualified interpreter for those setting [192 CSR 1, §3.3.16 (rule promulgated by the Commission for the Deaf and Hard of Hearing) page 71]. If such an interpreter is not available, then court personnel should consult with the Commission for the Deaf and Hard of Hearing in order to find the next best available interpreter. **Court personnel can contact the Commission for the Deaf and Hard of Hearing at (304) 558-1675.**

Thus, before contacting an interpreter on the Commission's list, court personnel should check the interpreter's level of certification to make sure he or she is qualified to interpret in a legal setting. If the person making the request needs a foreign language interpreter and court personnel do not know of someone who is able to interpret the language of the person making the request, then court personnel should consult the legal division of the Administrative Office. If the person making the request is deaf or hard of hearing, but does NOT sign American Sign Language, then court personnel should consult the Commission for the Deaf and Hard of Hearing.

Before any request for an interpreter is forwarded to the supervising circuit judge, the potential interpreter should be contacted and agree to the terms of the assignment, including the fees for interpreting (fees are discussed on page 72).

2. Forwarding the Request for an Interpreter to the Circuit Judge.

Once the court employee has the above information, he or she should send the request for an interpreter, the proposed interpreter's name and address, and an "Order for Appointment of an Interpreter" form [SCA-M1032NP or SCA-C801] to the supervising circuit judge [§5-14A-2]. If the judge finds the appointment to be appropriate, he or she will sign the "Order for Appointment of an Interpreter" form.

NOTE: If the circuit judge is not available to appoint an interpreter, W.Va. Code §57-5-7(d) allows the **circuit clerk** to do so provided the circuit judge has authorized him or her to act in his stead.

- d. **Oath:** All interpreters are required under oath or affirmation to represent that they will make a true interpretation which is understandable by the person needing assistance and by the court and that they will interpret to the best of their skill and judgment [§§5-14A-8 and 57-5-7(e)]. Form SCA-M1034NP or form SCA-C802 is the oath to be administered before

an interpreter begins to participate in a proceeding. The magistrate, magistrate clerk, magistrate assistant, circuit judge or circuit clerk may administer the oath.

- e. **Compensation of Interpreters:** Minimum fees for interpreters appointed to assist people who are deaf or hard of hearing are set by the West Virginia Commission for the Deaf and Hard of Hearing [192 CSR 1, §3; pages 70-71]. Interpreters are to be paid from court funds for interpreting court proceedings [§5-14A-9; §57-5-7(c)]. Courts are prohibited from assessing fees against a party for providing such interpreter services for in-court proceedings [28 C.F.R. §35.130(f)], regardless of whether or not the person needing an interpreter qualifies for a waiver of fees and costs.

The Administrative Office policy is that the fees for interpreters may not exceed the minimum fee chart set forth in the Commission for the Deaf and Hard of Hearing rules [192 CSR Table 1-A; page 72] without prior approval from the Administrative Office. In the event there is a unique situation which would require paying an interpreter a fee above the amount listed in the minimum fee chart, the magistrate court, before seeking an appointment order from the supervising circuit judge, or the circuit court prior to appointing an interpreter needs to seek advance approval from the legal division of the Administrative Office by writing a letter (which may be mailed or faxed) setting forth the specific terms of the interpreter's employment as well as the reason for requesting approval to pay the interpreter a fee above that set forth in the minimum fee chart.

Please be aware that the Commission for the Deaf and Hard of Hearing has rules which must be followed when appointing and compensating an interpreter. The following are some of the more important rules; however, **PLEASE READ** the Commission's rules, a copy of which is on pages 67-72, before discussing the fee with an interpreter. Interpreters are to be paid for a minimum of two hours regardless of the actual time of the assignment [192 CSR 1, §3.3.1; page 70] and are paid a fee for cancellations [192 CSR 1, §§3.3.7 – 3.3.14; page 70]. Additionally,

the rules require that two interpreters be appointed for day-long sessions so that they can take turns interpreting a proceeding [192 CSR 1, §3.3.15; page 71].

IMPORTANT NOTE: Fees for foreign language interpreters are NOT governed by W.Va. Code §5-14A-9. Reasonable fees need to be established by the circuit judge at the time of appointment.

Expense Reimbursement: Only reasonable and necessary expenses, not in excess of the prevailing rates for State employees, may be reimbursed [§57-5-7(c); 192 CSR 1 - §3.3.4; page 70]. Prevailing rates are those established for employees in the judiciary as detailed in Section 10 of the Supreme Court personnel manual and any memos updating that section. Of particular importance are two provisions: (a) for an interpreter to claim lodging reimbursement, travel of at least 80 round-trip miles must be necessary for the interpreter's appearance; (b) for an interpreter to claim meal reimbursement there must be an overnight stay.

NOTE: Advance approval must be obtained from the Supreme Court Administrative Office if **transportation** expense will involve anything other than mileage for use of a personal automobile.

- f. **Payment of Cost of Out-of-Court Interpreter Services Involving Legal Counsel:** Under the provisions of W.Va. Code §5-14A-1 *et seq.* and W.Va. Code §57-5-7, the courts appoint an interpreter to assist persons who are deaf or hard of hearing during in-court proceedings and in out-of-court preparation with counsel. While the court will appoint an out-of-court interpreter, legal counsel is responsible for the costs of those services; private attorneys, legal aid attorneys, and court-appointed or public defender attorneys are required by federal law to provide necessary interpreter services without charge to people who are deaf or hard of hearing [28 C.F.R. §104 and §§36.303(b)(1), 36.303(c), 36.301(c)].
- g. **Payment Procedures:**
 - 1. The magistrate, magistrate assistant, circuit judge or circuit clerk needs to provide the interpreter with a blank invoice form [SCA-M1036NP or SCA-C803].

2. When the proceedings are concluded, the interpreter needs to complete and sign the invoice, and present it to the presiding magistrate or circuit judge. The hourly fee for a sign, oral, or foreign language interpreter has to be at the rate set in the order of appointment.
3. The magistrate or circuit judge who presided at the proceeding(s) must examine and certify the invoice.
4. The presiding magistrate or circuit judge must complete and sign the order of payment [SCA-M1038NP or SCA-C804] and forward the invoice and payment order to the clerk.
5. The clerk must transmit to the Supreme Court Administrative Office two certified copies of the payment order along with two copies of the appointment order and two copies of the invoice.

NOTE: The forms will not be printed, so they will need to be copied locally.

Interpreter Forms Needed for Court Personnel

Following are the forms that are needed when an interpreter is requested for court proceedings.

<u>Name of Form</u>	<u>Magistrate Court Form Number</u>	<u>Circuit Court Form Number</u>
Request for Interpreter Service	SCA-M1030NP	SCA-C800
Order of Appointment: Interpreter	SCA-M1032NP	SCA-C801
Oath or Affirmation of Interpreter	SCA-M1034NP	SCA-C802
Order of Payment: Interpreter Service	SCA-M1038NP	SCA-C803
Invoice for Interpreter Service	SCA-M1036NP	SCA-C804

Should you not be able to locate an interpreter, please call the West Virginia Commission for the Deaf and Hard of Hearing at (304) 558-1675 or 1-866-461-3578.

**IN THE CIRCUIT COURT OF _____ COUNTY
WEST VIRGINIA**

V. Case No.

Defendant

OATH OR AFFIRMATION INTERPRETER

I solemnly swear or affirm that I will make a true interpretation in an understandable manner to the person for whom I am appointed and that to the best of my skill and judgment I will interpret any statements the person needing interpretation assistance desires be made in the English language.

Signature of Interpreter

Taken, subscribed, and sworn or affirmed before me this _____ day of
_____, 20 _____.