

Supreme Court of Kentucky

2017-15

ORDER

IN RE: AMENDMENTS TO THE ADMINISTRATIVE PROCEDURES OF THE COURT OF JUSTICE, PART IX. KENTUCKY COURT OF JUSTICE LANGUAGE ACCESS PLAN AND PROCEDURES.

Pursuant to Sections 110(5)(b) and 116 of the Constitution of Kentucky and KRS 26A.200, it is HEREBY ORDERED that Part IX of the Rules of Administrative Procedure is deleted in its entirety and replaced by the following:

Section 1. Authority, Purpose, and Scope

- (1) These rules are adopted pursuant to the authority granted the Kentucky Supreme Court by:
 - (a) Section 116 of the Kentucky Constitution to prescribe rules for the appointment of court personnel and to promulgate rules of practice and procedure for the Kentucky Court of Justice; and,
 - (b) KRS 30A.405(2) to prescribe standards for the appointment, qualifications, duties, and other matters relating to language access.
- (2) These rules are intended to fulfill the Kentucky Court of Justice's responsibility for ensuring that individuals eligible to receive language access services under state and federal law, as identified in Section 4 herein, are afforded:
 - (a) Meaningful access to, and an equal opportunity to participate fully in, all court proceedings and direct services provided by the Court of Justice; and
 - (b) Effective communication with those Court of Justice officials, personnel, and programs presiding over, conducting, or involved in all court proceedings and direct services.
- (3) No local rules, practices, procedures, orders, or other policies of any district or circuit may conflict with or controvert these rules; further, to the extent that any such local rules, practices, procedures, orders, or other policies are inconsistent or otherwise conflict with these rules, these rules shall prevail.

Section 2. Definitions

As used throughout these rules, the following definitions will apply:

- (1) “AOC” means the Administrative Office of the Courts.
- (2) “Appointing/Requesting authority” means the Judge, Chief Judge, Circuit Court Clerk, Supreme Court Clerk, Clerk of the Court of Appeals, AOC Director, or designee, who determines the need for and authorizes or requests language access services for use in court proceedings or during direct services provided by a Court of Justice entity.
- (3) “AOC Interpreter Directory” means a directory maintained by the Office of Language Access which lists licensed freelance interpreters and staff interpreters for the deaf and hard of hearing and certified and registered spoken language freelance interpreters and staff interpreters whose qualifications to act as sworn proceedings interpreters or interpreters for deaf or hard of hearing attorneys in court proceedings have been verified by the AOC consistent with the standards set forth in Sections 9 and 10 of these rules.
- (4) “Assistive technology” means an item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities. The provision and use of assistive technology is included in language access services as set out in Section 12 of these rules.
- (5) “Certified Deaf Interpreter (CDI)” means an interpreter who holds CDI certification through the Registry of Interpreters for the Deaf. Holders of this certification: are deaf or hard of hearing; have demonstrated knowledge and understanding of interpreting, deafness, the Deaf community, and Deaf culture; have specialized training and/or experience in the use of gesture, mime, props, drawings, and other tools to enhance communication; possess native or near-native fluency in American Sign Language; are recommended for a broad range of assignments where an interpreter who is deaf or hard of hearing would be beneficial; and, always work in conjunction with a hearing sign language interpreter.
- (6) “Certified spoken language interpreter” means an interpreter who has met all the requirements set forth in the Kentucky AOC Certification Policy for Spoken Language Interpreters and who has

no restrictions regarding the type of services that he or she may provide to the Court of Justice.

- (7) “Code of Professional Responsibility for Sworn Proceedings Interpreters” means the Code of Professional Responsibility adopted by Order of the Kentucky Supreme Court, containing canons of professional conduct which are binding upon all sworn proceedings interpreters as defined in these rules.
- (8) “Consecutive interpretation” means the process by which the interpreter waits until the speaker has finished the original message before rendering it into another language.
- (9) “Contact person(s)” means the individual(s) designated in each county by the Chief Circuit Judge or Chief District Judge of the county who is responsible for submitting all requests for language access services to the Office of Language Access. The “contact person(s)” may be a judge's secretary, a court administrator, or any other Court of Justice employee designated by the Chief Circuit Judge or Chief District Judge of the county.
- (10) “Court proceeding” means a civil, criminal, domestic relations, juvenile, traffic or other in-court proceeding, whether before a judge, trial commissioner, master commissioner, or domestic relations commissioner; or, a court-ordered proceeding in which court officials or Court of Justice personnel are directly involved. “Court proceeding” shall not be construed to include confidential, privileged, or otherwise private communication between non-Court of Justice entities and individuals with limited English proficiency or who are deaf or hard of hearing or otherwise disabled, even when such communication occurs during a court proceeding.
- (11) “Court of Justice” means the Kentucky Court of Justice.
- (12) “Court of Justice entity” means any office, operation, or program under the purview of the Judicial Branch.
- (13) “Criminal background check” means the KYCourtNet disposition report provided by the AOC.
- (14) “Direct services” means out-of-court services provided by a Court of Justice entity which enable the entity to carry out its duties and responsibilities as directed by statute and/or rule of court.
- (15) “Freelance interpreter” means an individual who is contracted by the AOC to serve as a sworn proceedings interpreter or an interpreter for a deaf or hard of hearing attorney in court proceedings or during direct services. A freelance interpreter must meet the qualification criteria as required by these rules.

Freelance interpreters are independent contractors and are not employees of the Court of Justice or the AOC.

- (16) “Interpretation” means the process by which oral or visual communication is rendered from one language into another. The original message is either spoken or signed language, and the rendition is delivered either in another spoken language or in a signed language. The three most common forms of interpretation used in court proceedings or during direct services are sight translation, consecutive interpretation, and simultaneous interpretation.
- (17) “Interpreter for the deaf and hard of hearing” means a sworn proceedings interpreter who is licensed pursuant to KRS 309.300 to 309.319 and other applicable Kentucky law and who has met additional requirements set forth in the Kentucky AOC Qualification Policy for Interpreters for the Deaf and Hard of Hearing (Visual Language Interpreters).
- (18) “Interpreter for a deaf or hard of hearing attorney” means an interpreter appointed to assist a deaf or hard of hearing attorney in communicating effectively with the court and other Court of Justice entities in court proceedings and during direct services. Interpreters for deaf or hard of hearing attorneys are not officers of the court and may participate in the facilitation of confidential, privileged, or otherwise private communication between deaf or hard of hearing attorneys and their clients. Interpreters for deaf or hard of hearing attorneys must be licensed pursuant to KRS 309.300 to 309.319 and other applicable Kentucky law and must have met additional requirements set forth in the Kentucky AOC Qualification Policy for Interpreters for the Deaf and Hard of Hearing (Visual Language Interpreters).
- (19) “Language access services” means interpreting services, translation services, and assistive technology needed to facilitate effective communication between Court of Justice officials or personnel and individuals with limited English proficiency or who are deaf or hard of hearing or otherwise disabled, and to provide such individuals with meaningful access to, and an equal opportunity to participate fully in, the services, activities, and other programs administered by the Court of Justice.
- (20) “Limited English Proficiency” means that an individual does not speak English as his or her primary language and has a limited ability to read, speak, write, or understand English. “Limited

English Proficiency” and “Limited English Proficient” are sometimes referred to using the acronym “LEP.”

- (21) “Linguist” means a language professional who provides bilingual services, such as translation, editing, review, quality assurance, and other similar or related services.
- (22) “Non-party” means a person:
 - (a) Whose presence or participation in a court matter is necessary or appropriate, including but not limited to a parent or guardian of a juvenile and any of his or her family members involved in a juvenile proceeding, or a victim of crime or parent or guardian of a minor victim of crime; or
 - (b) Who is a family member, friend, or associate of a party or person participating in a court proceeding, who, along with the party or person, is an appropriate individual with whom the court should communicate.
- (23) “Office of Language Access” means the AOC Office of Language Access.
- (24) “Office of Translation Services” means the AOC Office of Translation Services.
- (25) “Officer of the court” means a person who has an obligation to promote justice and effective operation of the judicial system.
- (26) “Private linguistic expert” means an interpreter or other language professional hired by a non-Court of Justice entity to facilitate confidential, privileged, or otherwise private communication between a non-Court of Justice individual, agency, or entity and a party with limited English proficiency or who is deaf or hard of hearing or otherwise disabled. The work of the private linguistic expert may also include monitoring the accuracy of the sworn proceedings interpreter. Private linguistic experts are not officers of the court and may participate in the facilitation of confidential, privileged, or otherwise private communication. Other terms commonly used to refer to the private linguistic expert include “table interpreter,” “check interpreter,” “monitor interpreter,” “party interpreter,” “defense interpreter,” and “prosecution interpreter.”
- (27) “Provisional spoken language interpreter” means an interpreter who has met certain minimum requirements set forth in the Kentucky AOC Certification Policy for Spoken Language Interpreters and who may be contracted to provide certain limited services to the Court of Justice as directed by the Office of Language Access. Provisional spoken language interpreters are not

listed in the AOC Interpreter Directory.

- (28) “Qualified interpreter” means an interpreter who has met the licensing, certification, and/or other requirements set out in the Kentucky AOC Certification Policy for Spoken Language Interpreters and the Kentucky AOC Qualification Policy for Interpreters for the Deaf and Hard of Hearing (Visual Language Interpreters).
- (29) “Registered spoken language interpreter” means an interpreter who has met certain minimum requirements set forth in the Kentucky AOC Certification Policy for Spoken Language Interpreters and who may provide services to the Court of Justice as directed by the Office of Language Access consistent with Section 6 of these rules.
- (30) “Remote interpreting services” means the provision of telephone, videoconference, web-based, or other available remote interpreting equipment as approved by the AOC.
- (31) “Reverse Skills Certified Interpreter (RSC)” means an interpreter who holds RSC certification through the Registry of Interpreters for the Deaf. Holders of this certification: have demonstrated the ability to interpret between American Sign Language (ASL) and English-based sign language or transliterate between spoken English and a signed code for English; are deaf or hard of hearing; are recommended for a broad range of interpreting assignments where the use of an interpreter who is deaf or hard of hearing would be beneficial; and, always work in conjunction with a hearing sign language interpreter. This credential was offered from 1972 to 1988.
- (32) “Sight translation” means the process by which a document written in one language is read and rendered orally into another language, usually in the moment.
- (33) “Simultaneous interpretation” means the process by which the interpreter renders information into another language at the same time that the speaker is actually speaking.
- (34) "Staff interpreter" means a sworn proceedings interpreter who is employed by the Court of Justice to provide interpreting services in court proceedings and during direct services. A staff interpreter must meet the qualification criteria required by these rules.
- (35) “Sworn proceedings interpreter” means a qualified staff or freelance interpreter who has taken an oath to provide complete, unbiased, and accurate interpretation between English speakers and parties, jurors, witnesses, or non-parties as defined in these rules with

limited English proficiency or who are deaf or hard of hearing or otherwise disabled in court proceedings or during direct services. Sworn proceedings interpreters are impartial officers of the court and may not participate in the facilitation of confidential, privileged, or otherwise private communication between non-Court of Justice individuals, agencies, or entities and individuals with limited English proficiency or who are deaf or hard of hearing or otherwise disabled.

- (36) “Translation” means the process by which written text is rendered from one language into another. Both the original document and its translation are in a written or visual format.
- (37) “Translator” means a credentialed or otherwise qualified language professional who is employed or contracted by the AOC to perform translation as defined in these rules.
- (38) “Uniform Payment Rate” means the Office of Language Access Uniform Payment Rate for Freelance Interpreters, the document outlining terms of payment, including rates of compensation for services rendered by freelance interpreters to the Court of Justice. These terms will be established by the AOC Director.
- (39) “Vital documents” means court documents that are required to be identified and translated into commonly encountered languages by the Court of Justice pursuant to the United States Department of Justice Guidance.

Section 3. Oath

- (1) Before accepting any assignment as a sworn proceedings interpreter in a court proceeding or during a direct service, an individual must have read the Code of Professional Responsibility for Sworn Proceedings Interpreters and KRE 604, and taken the oath as set forth in subsection (2) of this section. A copy of the oath must be signed by all sworn proceedings interpreters and kept on file at the Office of Language Access.
- (2) The following oath must be administered to all sworn proceedings interpreters in accordance with the provisions of this section:
Do you solemnly swear or affirm that you have the knowledge, skills, experience, and/or education to interpret this proceeding, and that you will interpret accurately, completely and impartially, using your best skill and judgment in accordance with the standards prescribed by law, any Code of Ethics under which you have been certified, and the Code of Professional Responsibility for

Sworn Proceedings Interpreters, and that you will make a true translation pursuant to KRE 604 to the best of your abilities?

Section 4. Individuals Eligible for Language Access Services

- (1) Party, Juror, Witness, or Non-Party. Pursuant to KRS 30A.410 to 30A.435 and other applicable state and federal law and regulations, the Court of Justice will provide language access services, pursuant to the procedure set out in Section 6 of these rules, to a party, juror, witness, or non-party (as defined in these rules) in a court proceeding and to an individual receiving direct services who:
 - (a) Is deaf or hard of hearing, and
 - (i) Uses sign language such as pidgin, signed English, American Sign Language, or gestures; or
 - (ii) Is oral/aural and uses interpreters and assistive technology as his or her primary mode of communication;
 - (b) Has limited English proficiency as defined in these rules; or
 - (c) Has, in the opinion of the court or other appointing/requesting authority, another type of disability which will prevent said person from properly understanding the nature of the proceedings or will substantially prejudice his or her rights, and for whom the provision of language access services will effectively assist in facilitating communication.
- (2) Deaf or Hard of Hearing Attorney. Pursuant to KRS 30A.410 to 30A.435 and other applicable state and federal law and regulations, the Court of Justice will provide language access services, pursuant to the procedure set out in Section 6 of these rules, to an attorney who is deaf or hard of hearing as described above in subsection (1)(a) of this section and who is participating in a court proceeding or direct service.

Section 5. Determination of Eligibility

- (1) Individuals with Limited English Proficiency
 - (a) Upon request by an individual identified in Section 4(1)(b) of these rules, the Court of Justice will provide language access services pursuant to the procedure set out in Section 6 of these rules.
 - (b) When an individual does not request language access

services but appears to have limited English proficiency, the court will conduct a brief voir dire in order to evaluate the extent to which the individual reads, speaks, writes, and/or understands English and determine whether or not language access services are needed.

(c) Pursuant to KRS 30A.400(3) and (4), if the eligibility of the individual to receive language access services is challenged, the judge may, for good cause shown, hold a hearing to determine the bona fide need for language access services. If it is determined that the individual is not eligible for language access services, then no portion of these rules will apply.

(2) Individuals Who are Deaf or Hard of Hearing or Otherwise Disabled

(a) Upon request by an individual identified above in Section 4(1)(a) or (c) of these rules, or by an attorney who is deaf or hard of hearing pursuant to Section 4(2) of these rules, the Court of Justice will provide language access services pursuant to the procedure set out in Section 6 of these rules. This process will also apply, where indicated, to requests to use assistive technology in lieu of or in addition to the services of an interpreter, pursuant to Section 12(3) of these rules.

(b) When an individual does not request language access services but appears to be deaf or hard of hearing or otherwise disabled, the court will conduct a brief voir dire in order to evaluate the individual's needs and determine whether or not language access services are needed.

(c) The judge may require that the individual submit supporting documentation, such as written documentation from a licensed health care provider, establishing that the individual is eligible under applicable state and federal law to receive the requested language access services. Any medical documentation submitted must be sealed by order of the court and filed in the record.

(d) If it is determined that the individual is eligible to receive language access services, the judge or his or her designee may interact with the individual to evaluate the individual's needs and assess whether the requested language access services can be reasonably provided. The judge must give "primary consideration" to the specific request made.

- (i) “Primary consideration” means that the court will honor the individual’s preferred type of language access services unless another means exists of ensuring effective communication, or unless doing so would result in a fundamental alteration in the nature of the proceeding or in undue financial or administrative burden, or unless the request is for a personal device such as a hearing aid.
- (ii) The type of language access services necessary to ensure effective communication will vary in accordance with the method of communication used by the individual; the nature, length, and complexity of the communication involved; and the context in which the communication is taking place.
- (e) If the appropriate language access service cannot reasonably be provided, the Office of Language Access will work with the judge or his or her designee(s) to identify another appropriate language access service that will, to the maximum extent reasonably possible, ensure effective communication.
- (f) Pursuant to KRS 30A.400(3) and (4), if the eligibility of the individual to receive language access services is challenged, the judge may, for good cause shown, hold a hearing to determine the bona fide need for language access services. If it is determined that the individual is not eligible for language access services, then no portion of these rules will apply.
- (g) Once a deaf or hard of hearing attorney has been determined to be eligible to receive language access services, he or she will not be required to re-establish his or her eligibility in future court proceedings before the same presiding judge.

Section 6. Procedure for Requesting and Obtaining Language Access Services for Court Proceedings and Direct Services

- (1) To request and obtain language access services for court proceedings and direct services, the appointing/requesting authority or his or her designee shall follow the appropriate protocol, which can be found by accessing the Office of Language Access’s webpage at: <http://courts.ky.gov/courtprograms/CIS/Pages/default.aspx>. The following procedure applies to requesting and obtaining language

access services for court proceedings and direct services:

- (a) The appointing/requesting authority or his or her designee(s) shall submit all requests for language access services to the Office of Language Access.
 - (b) The Office of Language Access has the responsibility of arranging for and providing language access services. The appointing/requesting authority or his or her designee(s) shall not assign interpreters directly or otherwise make arrangements for the provision of language access services.
 - (c) The AOC shall not issue payment for language access services which were not arranged directly by the Office of Language Access or were not provided by an interpreter contracted by the AOC at the time of service.
 - (d) When feasible, all language access requests must be submitted to the Office of Language Access at least two weeks in advance in order to ensure adequate time for arrangements to be made. Language access services vary based on availability and cannot be fully controlled by the Court of Justice. In the event the appropriate language access service is not available, the Office of Language Access will work with the appointing/requesting authority or his or her designee(s) to identify another appropriate language access service that will, to the maximum extent reasonably possible, ensure effective communication. The court shall grant a continuance as may be appropriate or necessary.
 - (e) Absent a showing of extraordinary circumstances, no person who is a family member or friend of the person needing language access services will be authorized to provide said services.
- (2) Court Proceedings. At least one contact person must be designated in each county to be responsible for submitting all requests for language access services to the Office of Language Access. The contact person(s) may be a judge's secretary, a court administrator, or any other Court of Justice employee designated by the Chief Circuit Judge or Chief District Judge of the county. Each county is responsible for providing the Office of Language Access with a complete list of all designated contact persons and for informing the Office of Language Access of any changes to said list.

- (3) Requesting Language Access Services for a Deaf or Hard of Hearing Attorney. In addition to the procedure outlined above in subsection (1) of this section, eligible deaf or hard of hearing attorneys may request language access services directly by submitting an appropriate request to the Office of Language Access. Details regarding the appropriate protocol for requesting language access services for attorneys who are deaf or hard of hearing for use in court proceedings or during direct services can be found by accessing the Office of Language Access's webpage at: <http://courts.ky.gov/courtprograms/CIS/Pages/default.aspx>.
- (4) Interpreter Wait Time and Fiscal Efficiency. All cases requiring interpreters should be called at the beginning of the court docket or at another appropriate time during the docket when they can be called as a group in an effort to reduce language access costs and ensure interpreters do not become unduly fatigued. Interpreters should not wait more than thirty minutes to interpret.
- (5) Creation of a Local Language Access Protocol. In an effort to promote judicial economy and enhance the judicial process for requesting and obtaining language access services, each county or judicial district or circuit shall generate, in partnership with the Office of Language Access, a local or regional language access protocol on a template prescribed by the AOC.
 - (a) Said language access protocol may include such considerations as designation of the local contact person(s), development of a location-specific protocol for the efficient use of language access resources, and the creation of a special "interpreter docket" in which all cases requiring the services of an interpreter are heard on a recurring basis on a given date and time.
 - (b) The language access protocol shall include instructions for use by self-represented parties to notify the local appointing/requesting authority of their specific language access needs.
- (6) Priority Given to Certified Interpreters. Upon assigning interpreters, the Office of Language Access shall give priority to the most certified/credentialed interpreter reasonably available based upon the specific location and nature of each request for language access services. All efforts will be made to schedule a certified staff interpreter for court proceedings and direct services. If a certified staff interpreter is not available, then a certified freelance

interpreter may be scheduled. If no certified freelance interpreter is available, then a registered freelance interpreter may be scheduled. If no registered freelance interpreter is available, then a provisional freelance interpreter may be scheduled.

Section 7. Responsibility for Payment for Language Access Services

- (1) Pursuant to KRS 30A.415, the AOC will be responsible for payment, including ordinary and reasonable expenses as authorized by the Uniform Payment Rate, for language access services provided by sworn proceedings interpreters and interpreters for deaf or hard of hearing attorneys in court proceedings and during direct services. The AOC will establish payment rates and procedures, including procedures for reimbursement of ordinary and reasonable expenses, in the Uniform Payment Rate.
 - (a) Ordinary and reasonable expenses do not include facilitation by sworn proceedings interpreters of confidential, privileged, or otherwise private communication between non-Court of Justice entities (e.g., attorneys) and individuals with limited English proficiency or who are deaf or hard of hearing or otherwise disabled, even when such communication occurs in a court proceeding or during the provision of a direct service.
 - (b) With the exception of the use of an interpreter for a deaf or hard of hearing attorney as defined in these rules, all confidential, privileged, or otherwise private communication between non-Court of Justice entities and individuals with limited English proficiency or who are deaf or hard of hearing should take place through the use of a private linguistic expert as defined in these rules.
- (2) If a sworn proceedings interpreter or interpreter for a deaf or hard of hearing attorney provides services beyond the scope of his or her role, even though that service relates to a pending court case, the person or agency requiring the services of the interpreter will be responsible for payment.
- (3) The AOC will not pay for interpreting services provided to or for a non-Court of Justice entity, even when a party is ordered by the Court, or referred by a Court of Justice entity, to obtain services or assistance from the non-Court of Justice entity.

- (4) The AOC may seek reimbursement from the “employer,” as that term is defined in Title I of the Americans With Disabilities Act, 42 U.S.C. § 12111 et seq., of a deaf or hard of hearing attorney for whom the court has appointed an interpreter pursuant to Sections 4(2) and 6(3) for the costs of providing interpreting services.
- (5) Cancellation by a Party or his or her Attorney.
 - (a) A party or his or her attorney shall notify the designated contact person in the county as soon as it becomes apparent that language access services are no longer needed for the party or a witness to be called by the party. The name and contact information for the designated contact person in each county can be found by accessing the Office of Language Access’s webpage at:
<http://courts.ky.gov/courtprograms/CIS/Pages/default.aspx>.
 - (b) The failure to timely notify the contact person that language access services are no longer needed for a court proceeding or direct service may be grounds for the court to require the party or his or her attorney to reimburse all or part of the actual expenses incurred by the AOC for securing unused or cancelled language access services.
 - (c) Circumstances under which the court may order reimbursement include, but are not limited to:
 - (i) The matter was settled before language access services were needed and the party requesting the services, or his or her attorney, had reasonable advance notice of settlement but failed to timely notify the court; or
 - (ii) The party requesting language access services, or his or her attorney, failed to appear for the court proceeding or direct service and had no reasonable grounds for the failure to appear.
 - (d) Matters involving self-represented parties will be considered on a case by case basis taking into account the facts and circumstances of each case, including whether the party has the ability to pay.
 - (e) If the court orders reimbursement, payment should be made by the responsible party to the Circuit Court Clerk. The Circuit Court Clerk will remit payment to the Office of Language Access in the amount of the reimbursement with a copy of the court order. The Circuit Court Clerk’s check

should be made payable to the Kentucky State Treasurer.

Section 8. Team Interpreting Requirements

- (1) A team of two interpreters is required and shall be authorized for trials and grand jury proceedings and when interpreting services are needed for jurors. Otherwise, when interpretation for two or more hours is required without breaks, a team of two interpreters should be appointed. Additional interpreters may be required if more than one person requires services at the same time.
- (2) Team members should rotate every thirty minutes to enhance accuracy and prevent fatigue.

Section 9. Qualifications of Interpreters for the Deaf and Hard of Hearing

- (1) Pursuant to KRS 30A.405, any person providing language access services as a sworn proceedings interpreter for the deaf and hard of hearing or as an interpreter for a deaf or hard of hearing attorney must be qualified in accordance with these rules to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary.
- (2) Before contracting with a freelance interpreter or hiring a staff interpreter, the Office of Language Access will verify that each interpreter for the deaf and hard of hearing is qualified. To be considered qualified, each interpreter for the deaf and hard of hearing must meet all of the following requirements, which are further set forth in the Kentucky AOC Qualification Policy for Interpreters for the Deaf and Hard of Hearing (Visual Language Interpreters):
 - (a) Be licensed in accordance with KRS 309.300 to 309.319 and 201 KAR 39:030 and possess all certifications required therein;
 - (b) Attend the AOC orientation workshop; and
 - (c) Obtain the hours of court observation or work as required by the AOC.
- (3) The AOC may issue contracts to qualified freelance interpreters for the deaf and hard of hearing for a one-year term. Contracts may be renewed by the AOC annually. Contracts will only be issued to qualified freelance interpreters who:
 - (a) Have no felony conviction nor a conviction of any misdemeanor involving moral turpitude, dishonesty, false statements, or fraud; and

- (b) Read the Code of Professional Responsibility for Sworn Proceedings Interpreters and KRE 604, and take the oath in accordance with Section 3 of these rules.
- (4) The Office of Language Access will verify the qualifications of interpreters for the deaf and hard of hearing annually. For freelance interpreters, the annual verification must be completed prior to renewal of the contract for language access services. In order to maintain his or her qualified status, each interpreter for the deaf and hard of hearing must meet all of the following requirements, which are further set forth in the Kentucky AOC Qualification Policy for Interpreters for the Deaf and Hard of Hearing (Visual Language Interpreters):
 - (a) Provide documentation to the Office of Language Access of a current, valid license in accordance with the requirements of KRS 309.300 to 309.319 and 201 KAR 39:030;
 - (b) Comply with the continuing education requirements established by the AOC; and
 - (c) Obtain the hours of court observation or work as required by the AOC.
- (5) Proof of licensure and compliance with the continuing education requirements and the required court observation hours must be submitted to the Office of Language Access annually on or before December 1.
- (6) Contract renewals will only be issued to qualified freelance interpreters who:
 - (a) Comply with the Code of Professional Responsibility for Sworn Proceedings Interpreters;
 - (b) Comply with the rates and procedures set forth in the Uniform Payment Rate;
 - (c) Maintain a satisfactory record of appearing as scheduled; and
 - (d) Update their personal information on file with the Office of Language Access and remit a completed W-9 to the Office of Language Access annually on or before December 1.
- (7) Forms to demonstrate current licensure, compliance with continuing education requirements and court observation hours, as well as to update personal information, may be obtained through the office of Language Access.
- (8) Failure by a freelance interpreter to comply with the requirements listed in subsection (4) or subsection (6) of this section, including

- those relevant to state licensing law, may result in expiration or termination of the freelance interpreter's contract.
- (9) The AOC will conduct annually a criminal background check on all interpreters contracted or hired by the AOC.
- (a) Duty to notify:
- (i) A freelance interpreter charged with a criminal offense must notify the Office of Language Access within 24 hours of being charged.
 - (ii) A freelance interpreter convicted of a criminal offense must notify the Office of Language Access within 24 hours of being convicted.
 - (iii) For purposes of this subsection, "criminal offense" means conduct for which a term of incarceration or a fine is provided by law.
- (b) Any felony conviction or misdemeanor conviction involving moral turpitude, dishonesty, false statements, or fraud may result in expiration or termination of a freelance interpreter's contract.
- (10) Interpreters for the deaf and hard of hearing who meet the qualifications set forth in subsection (2) of this section will be listed in the AOC Interpreter Directory subject to annual verification of the qualification requirements set forth in subsection (4) of this section. Failure to comply with the requirements listed in subsection (4) of this section may result in temporary or permanent removal from the AOC Interpreter Directory.
- (11) If the person who is deaf or hard of hearing also has minimal language competency, a secondary disability, and/or extensive use of his or her own gestural system such that a qualified interpreter is unfamiliar with the uniqueness of the communication, the court will appoint a certified relay interpreter, e.g., a Certified Deaf Interpreter (CDI) or a Reverse Skills Certified Interpreter (RSC), to assist the qualified interpreter in providing interpretation.
- (12) When the interpreter and the person receiving language access services appear to have difficulties communicating with one another, the appointing/requesting authority should make reasonable efforts on the record to determine that there is sufficient communication between the interpreter and the person receiving interpreting services.

Section 10. Qualifications of Spoken Language Interpreters

- (1) Pursuant to KRS 30A.405, any person providing language access services as a spoken language sworn proceedings interpreter must be qualified in accordance with these rules to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary.
- (2) The Office of Language Access has the authority to establish policies and procedures for time limits and scoring standards for the qualification process for spoken language interpreters.
- (3) Before contracting with a freelance interpreter or hiring a staff interpreter, the Office of Language Access will verify that each spoken language interpreter is qualified. The Office of Language Access will designate each spoken language interpreter as certified, registered, or provisional consistent with his or her demonstrated qualifications. In order to be designated as a certified or registered spoken language interpreter for the Court of Justice, each spoken language interpreter must meet all of the following requirements, which are further set forth in the Kentucky AOC Certification Policy for Spoken Language Interpreters:
 - (a) Pass the requisite examinations administered by the AOC (the interpreter will be designated as either certified or registered based upon the interpreter's test scores);
 - (b) Attend the AOC orientation workshop; and
 - (c) Obtain the hours of court observation or work as required by the AOC.
- (4) The AOC may issue contracts to qualified freelance spoken language interpreters for a one-year term. Contracts may be renewed by the AOC annually. Contracts will only be issued to qualified freelance interpreters who:
 - (a) Have no felony conviction nor a conviction of any misdemeanor involving moral turpitude, dishonesty, false statements, or fraud; and
 - (b) Read the Code of Professional Responsibility for Sworn Proceedings Interpreters and KRE 604, and take the oath in accordance with Section 3 of these rules.
- (5) The Office of Language Access will verify the qualifications of spoken language interpreters annually. For freelance interpreters, the annual verification must be completed prior to renewal of the contract for language access services. In order to maintain his or her designated status as a certified or registered spoken language

interpreter, each spoken language interpreter must:

- (a) Comply with the continuing education requirements established by the AOC; and
 - (b) Obtain the hours of court observation or work as required by the AOC.
- (6) Proof of compliance with the continuing education units and the required court observation hours must be submitted to the Office of Language Access annually on or before December 1.
- (7) Contract renewals will only be issued to qualified freelance interpreters who:
- (a) Comply with the Code of Professional Responsibility for Sworn Proceedings Interpreters;
 - (b) Comply with the rates and procedures set forth in the Uniform Payment Rate;
 - (c) Maintain a satisfactory record of appearing as scheduled; and
 - (d) Update their personal information on file with the Office of Language Access and remit a completed W-9 to the Office of Language Access annually on or before December 1.
- (8) Forms to demonstrate compliance with continuing education requirements and court observation hours, as well as to update personal information, may be obtained through the Office of Language Access.
- (9) Failure by a freelance interpreter to comply with the requirements listed in subsection (5) or subsection (7) of this section may result in expiration or termination of the freelance interpreter's contract.
- (10) The AOC will conduct annually a criminal background check on all interpreters contracted or hired by the AOC.
- (a) Duty to notify:
 - (i) A freelance interpreter charged with a criminal offense must notify the Office of Language Access within 24 hours of being charged.
 - (ii) A freelance interpreter convicted of a criminal offense must notify the Office of Language Access within 24 hours of being convicted.
 - (iii) For purposes of this subsection, "criminal offense" means conduct for which a term of incarceration or a fine is provided by law.

- (b) Any felony conviction or misdemeanor conviction involving moral turpitude, dishonesty, false statements, or fraud may result in expiration or termination of a freelance interpreter's contract.
- (11) Spoken language interpreters who meet the qualifications set forth in subsection (3) of this section will be listed in the AOC Interpreter Directory subject to annual verification of the qualification requirements set forth in subsection (5) of this section. Failure to comply with the requirements listed in subsection (5) of this section may result in temporary or permanent removal from the AOC Interpreter Directory.
- (12) When the interpreter and the person receiving interpreting services appear to have difficulties communicating with one another, the appointing/requesting authority should make reasonable efforts on the record to determine that there is sufficient communication between the interpreter and the person receiving interpreting services.

Section 11. AOC Interpreter Directory

- (1) The Office of Language Access will maintain a directory of qualified interpreters who have satisfied the requirements set out in Sections 9(2) and 10(3) of these rules, including the requirements for maintaining certification/qualification status.
- (2) The Office of Language Access may publish the AOC Interpreter Directory as a resource for executive branch agencies or others seeking language access services.
- (3) To remain listed in the AOC Interpreter Directory, a qualified interpreter must meet the requirements set out in Sections 9(4) and 10(5) of these rules.

Section 12. Use of Electronic Equipment, Remote Interpreting Services, and Assistive Technology

- (1) Pursuant to KRS 30A.435, in the performance of his or her duties for the Court of Justice, the interpreter may utilize electronic recording, foreign language translation, remote videoconference equipment, web-based remote interpreting service equipment, and any other appropriate equipment.
- (2) Although remote interpreting services may be used for all court proceedings when necessary, the Office of Language Access will strive to limit their use to brief non-evidentiary proceedings, such

- as pretrial interviews, initial appearances, arraignments, and direct services provided by a Court of Justice entity when necessary.
- (3) A person who is deaf, hard of hearing, or otherwise disabled may elect to use assistive technology in lieu of or in addition to the services of an interpreter. Any request to use assistive technology in a court proceeding must be made in accordance with Section 5(2) of these rules.
 - (4) Remote interpreting services may be obtained for persons with Limited English Proficiency when there is a time-sensitive matter that requires interpretation and no other resources are available.
 - (5) Remote interpretation may also be appropriate for non-immediate matters that are scheduled in advance, when the interpretation of these matters cannot be handled in-person by staff or freelance interpreters in a fiscally responsible or timely manner, and the quality of interpretation is not in question.
 - (6) If the equipment sought to be used is of the type approved by the AOC, or a judicial official, no further approval is required.
 - (7) If the equipment is of a type for which no approval has been issued by the AOC, the use of the equipment must be approved in writing and in advance by the Director of the AOC or his or her designee or by the judge making the appointment.
 - (8) If the equipment is of a type which has been disapproved by the AOC, it will not be used.
 - (9) All equipment utilized must be in proper mechanical and working order and must be fit for its intended use.
 - (a) The appointing/requesting authority must ensure the non-English speaking party hears all statements made by the participants if utilizing remote interpreting equipment. If telephone equipment is unavailable for simultaneous interpreting, the appointing/requesting authority must allow consecutive interpretation of each sentence.
 - (b) When remote interpreting equipment is utilized to translate a written document, the document must be read aloud to allow full oral translation of the material by the remote interpreter.
 - (c) The appointing/requesting authority must ensure that the remote interpreting equipment used for the person who is deaf, hard of hearing, or otherwise disabled is in proper mechanical and working order, and fit for its intended use.
 - (d) The AOC must provide the Court of Justice with instructions necessary for obtaining and using remote interpreting

equipment and services. Only remote interpreting services contracted by the AOC will be used.

Section 13. Removal of Interpreter from Case

- (1) Pursuant to KRS 30A.410(2), upon request of the person for whom the interpreter is providing services or on the court's own motion, an interpreter may be removed for inability to communicate with the person, or if for reasonable cause another interpreter is desired by the person for whom the interpreter is providing services, or because the services of an interpreter are not desired by the person.
- (2) Removal for Good Cause. Additionally, a judge may remove an interpreter from his or her interpreting duties for good cause, which may include, but is not limited to:
 - (a) Inability to interpret adequately, including where the interpreter or person for whom the interpreter is providing services reports such inability;
 - (b) Knowingly and willfully making false interpretation while serving in an official capacity;
 - (c) Knowingly and willfully disclosing confidential or privileged information obtained while serving in an official capacity;
 - (d) Failing to follow other standards prescribed by law and the Code of Professional Responsibility for Sworn Proceedings Interpreters; and
 - (e) Failing to appear as scheduled without good cause.

Section 14. Staff Interpreters

- (1) The Office of Language Access may employ qualified interpreters to serve as staff interpreters for the Court of Justice.
- (2) Staff interpreters will receive salaries and benefits according to AP Part III, Personnel Policies for the Kentucky Court of Justice, and travel will be compensated according to AP Part VII, Reimbursement for Official Travel.
- (3) The Personnel Policies for the Court of Justice will apply to all staff interpreters. Staff interpreters may be disciplined for misconduct which may include, but is not limited to, the following:
 - (a) Knowingly and willfully making false interpretation while serving in an official capacity;
 - (b) Knowingly and willfully disclosing confidential or privileged information obtained while serving in an official capacity;

- (c) Failing to follow other standards prescribed by law and the Code of Professional Responsibility for Sworn Proceedings Interpreters;
- (d) Failing to accept and adhere to the Kentucky AOC Certification Policy for Spoken Language Interpreters or the Kentucky AOC Qualification Policy for Interpreters for the Deaf and Hard of Hearing (Visual Language Interpreters);
- (e) Failing to appear as scheduled without good cause; and
- (f) Requesting payment for services to the Court of Justice from the person for whom the interpreter is appointed.

Section 15. Contracts for Language Access Services

- (1) The AOC may, but is not required to, contract with any certified interpreter for the deaf and hard of hearing or certified or registered spoken language interpreter listed on the AOC Interpreter Directory to provide language access services for the Court of Justice.
- (2) The AOC may contract with any provisional spoken language interpreter meeting the qualifications set forth in the Kentucky AOC Certification Policy for Spoken Language Interpreters as may be necessary in accordance with Section 6(6) of these rules.
- (3) Terms of payment, including rates of compensation for freelance interpreters' services and invoicing procedures, will be established by the Director of the AOC as a statewide Uniform Payment Rate and will be incorporated in the contracts.
- (4) The AOC will not schedule the services of a freelance interpreter or issue payment to a freelance interpreter unless he or she has been contracted by the AOC to provide language access services for the Court of Justice.
- (5) Freelance interpreters are not employees of the Court of Justice or the AOC, and are not guaranteed a specific number of assignments or a specific amount of income.

Section 16. Translation of Court of Justice Documents

- (1) The Office of Language Access shall create and maintain an Office of Translation Services for the purpose of assisting Court of Justice officials, personnel, and programs to effectively communicate in writing with individuals with limited English proficiency.
- (2) The responsibilities of the Office of Translation Services are:
 - (a) Identify, prioritize, and translate Court of Justice vital

documents from English into the foreign languages most commonly encountered in Kentucky courts, as determined by the Director of the AOC and the Manager of the Office of Language Access;

- (b) Receive and process requests from appointing/requesting authorities for the translation of vital documents, including paper or electronic written material directed toward individuals with limited English proficiency with whom the Court of Justice must communicate in writing in order to ensure meaningful access to, and an equal opportunity to participate fully in, court proceedings and direct services;
- (c) Establish processes for translation, editing, translation review, quality assurance, and related tasks, and maintain a version history of translated documents to enable timely revision of translations as Court of Justice vital documents are updated;
- (d) Establish minimum qualifications and credentials for translators and other linguists employed or contracted by the AOC to translate, edit, review, perform quality assurance, and carry out other tasks as related to Court of Justice vital documents;
- (e) Employ or contract with qualified translators and other linguists to provide translation services; and
- (f) Develop, maintain, and ensure the implementation of official Court of Justice multilingual glossaries.

Section 17. Procedure for Requesting Translation of a Court of Justice Document or Publication

- (1) To request and obtain translation of a Court of Justice document or publication, the appointing/requesting authority or his or her designee shall follow the appropriate protocol, which can be found at: <http://courts.ky.gov/courtprograms/CIS/Pages/default.aspx>. The following procedure applies to requesting translation services.
- (2) The appointing/requesting authority or his or her designee shall submit all requests for translation services to the Office of Translation Services.
- (3) Upon receipt of a request for translation services, the Office of Translation Services will take the following actions:
 - (a) The Office of Translation Services will consult with the Manager of the Office of Language Access and/or appropriate

designee of the AOC Office of Legal Services to determine whether the document submitted for translation is a vital document.

- (b) If the document submitted for translation is determined to be a vital document, the Office of Translation Services will consult with the AOC Forms Administrator and/or appropriate designee of the AOC Office of Legal Services to determine whether or not a translation of the submitted document already exists in the requested foreign language.
 - (c) If the document submitted for translation is determined to be a vital document and no translation currently exists in the requested foreign language, the Office of Translation Services will proceed to coordinate the translation of the document while keeping the appointing/requesting authority apprised of the progress of the translation.
 - (d) If it is determined that the document submitted for translation is not a vital document or that a translation of the submitted document or substantially similar document already exists, the Office of Translation Services will deny the request, inform the appointing/requesting authority of the reason(s) for denial, and, when applicable, provide the existing translation of the submitted document or substantially similar document to the appointing/requesting authority.
- (4) When feasible, all requests for translation services must be submitted to the Office of Translation Services at least two weeks in advance in order to ensure adequate time for arrangements to be made. The number and availability of qualified translators varies and cannot be fully controlled by the Court of Justice. In the event a qualified translator is not available, the Office of Translation Services will work with the original appointing/requesting authority to identify alternative language access services. If applicable, the court will grant a continuance as may be appropriate or necessary.

**Section 18. Foreign Language Documents and Audio/Visual Materials
Used in or for Court Proceedings**

- (1) The Office of Language Access and the Office of Translation Services shall not be responsible for translating or sight translating foreign language documents and audio/visual materials used,

submitted, or tendered in or for a court proceeding by a party, attorney, or witness regardless of whether admitted into evidence or not.

- (a) Sworn proceedings interpreters shall not under any circumstance sight translate foreign language documents, simultaneously interpret foreign language audio/visual materials, or prepare written transcription or translation of foreign language audio/visual materials used, submitted, or tendered in or for court proceedings by a party, attorney, or witness regardless of whether admitted into evidence or not.
 - (b) Sworn proceedings interpreters shall not be called upon to evaluate the accuracy of translations or transcriptions of foreign language documents or audio/visual materials used, submitted, or tendered in or for court proceedings by a party, attorney, or witness regardless of whether admitted into evidence or not.
- (2) Parties, attorneys, and witnesses are responsible for ensuring that documents and audio/visual materials are in a form and format acceptable to and admissible by the court and, therefore, must provide English translations of foreign language documents and audio/visual materials.

Section 19. AOC Authority to Implement the Office of Language Access

The AOC has the authority to establish additional internal policies or procedures relating to the administration of the Office of Language Access as authorized and established by the AOC Director. The AOC has the authority to implement these Administrative Procedures.

This Order shall be effective January 1, 2018, and until further Order of this Court.

Entered this 6th day of November 2017.


CHIEF JUSTICE