

RULE 88. Appointment of a Foreign Language Interpreter or Sign Language Interpreter.

(A) When appointment of a foreign language interpreter is required

A court shall appoint a foreign language interpreter in a case or court function in either of the following situations:

- (1) A party or witness who is limited English proficient or non-English speaking requests a foreign language interpreter and the court determines the services of the interpreter are necessary for the meaningful participation of the party or witness;
- (2) Absent a request from a party or witness for a foreign language interpreter, the court concludes the party or witness is limited English proficient or non-English speaking and determines the services of the interpreter are necessary for the meaningful participation of the party or witness.

(B) When appointment of a sign language interpreter is required

(1) A court shall appoint a sign language interpreter in a case or court function in either of the following situations:

- (a) A party, witness, or juror who is deaf, hard of hearing, or deaf blind requests a sign language interpreter.
- (b) Absent a request from a party, witness, or juror for a sign language interpreter, the court concludes the party, witness, or juror is deaf, hard of hearing, or deaf blind and determines the services of the interpreter are necessary for the meaningful participation of the party, witness, or juror.

(2) When appointing a sign language interpreter pursuant to division (B)(1) of this rule, the court shall give primary consideration to the method of interpretation chosen by the party, witness, or juror, in accordance with division (b)(2) of part 35.160 of title 28 of the Code of Federal Regulations, as amended.

(C) Appointments to avoid

A court shall use all reasonable efforts to avoid appointing an individual as a foreign language interpreter pursuant to division (A) of this rule or sign language interpreter pursuant to division (B) of this rule if any of the following apply:

- (1) The interpreter is compensated by a business owned or controlled by a party or a witness;

- (2) The interpreter is a friend or a family or household member of a party or witness;
- (3) The interpreter is a potential witness;
- (4) The interpreter is court personnel employed for a purpose other than interpreting;
- (5) The interpreter is a law enforcement officer or probation department personnel;
- (6) The interpreter has a pecuniary or other interest in the outcome of the case;
- (7) The appointment of the interpreter would not serve to protect a party's rights or ensure the integrity of the proceedings;
- (8) The interpreter does or may have a real or perceived conflict of interest or appearance of impropriety.

(D) Certification requirement for foreign language interpreters

(1) Except as provided in divisions (D)(2) and (3) of this rule, when appointing a foreign language interpreter pursuant to division (A) of this rule, a court shall appoint a Supreme Court certified foreign language interpreter.

(2) Except as provided in division (D)(3) of this rule, if a Supreme Court certified foreign language interpreter does not exist or is not reasonably available and after considering the gravity of the proceedings and whether the matter could be rescheduled to obtain a Supreme Court certified foreign language interpreter, a court may appoint a provisionally qualified foreign language interpreter. The court shall summarize on the record its efforts to obtain a Supreme Court certified foreign language interpreter and the reasons for using a provisionally qualified foreign language interpreter.

(3) If a Supreme Court certified foreign language interpreter or provisionally qualified foreign language interpreter does not exist or is not reasonably available and after considering the gravity of the proceedings and whether the matter could be rescheduled to obtain a Supreme Court certified foreign language interpreter or provisionally qualified foreign language interpreter, a court may appoint a foreign language interpreter who demonstrates to the court proficiency in the target language and sufficient preparation to properly interpret the case proceedings. Such interpreter shall be styled a "language-skilled foreign language interpreter." The court shall summarize on the record its efforts to obtain a Supreme Court certified foreign language interpreter or provisionally qualified foreign language interpreter and the reasons for using a language-skilled foreign language interpreter. The language-skilled foreign language interpreter's experience, knowledge,

and training should be stated on the record. Each language-skilled foreign language interpreter shall take an oath or affirmation under which the interpreter affirms to know, understand, and act according to the code of professional conduct for court interpreters and translators, as set forth in Appendix H to this rule.

(E) Certification requirement for sign language interpreters

(1) Except as provided in divisions (E)(2) through (4) of this rule, when appointing a sign language interpreter pursuant to division (B) of this rule, the court shall appoint a Supreme Court certified sign language interpreter.

(2) Except as provided in divisions (E)(3) and (4) of this rule, if a Supreme Court certified sign language interpreter does not exist or is not reasonably available and after considering the gravity of the proceedings and whether the matter could be rescheduled to obtain a Supreme Court certified sign language interpreter, a court may appoint a sign language interpreter who holds one of the following certifications and in the following order of precedence:

(a) A “National Interpreter Certification Master” from the National Association of the Deaf and the Registry of Interpreters for the Deaf;

(b) A “National Interpreter Certification Advanced” from the National Association of the Deaf and the Registry of Interpreters for the Deaf;

(c) A “Certification of Interpretation” and “Certification of Transliteration” from the Registry of Interpreters for the Deaf;

(d) A “Comprehensive Skills Certificate” from the Registry of Interpreters for the Deaf;

(e) A “Master Comprehensive Skills Certificate” from the Registry of Interpreters for the Deaf;

(f) A “Level V Certification” from the National Association of the Deaf;

(g) A “National Interpreter Certification” from the National Association of the Deaf and the Registry of Interpreters for the Deaf;

(h) A “Level IV Certification” from the National Association of the Deaf.

(3) If the communication mode of the deaf, hard of hearing, or deaf blind party, witness, or juror is unique and cannot be adequately accessed by a sign language interpreter who is hearing, a court shall appoint a sign language interpreter certified as a “Certified Deaf Interpreter” by the Registry of Interpreters for the Deaf.

(4) If the communication mode of the deaf, hard of hearing, or deaf blind party, witness, or juror requires silent oral techniques, a court shall appoint a sign language interpreter who possesses an “Oral Transliteration Certificate” from the Registry of Interpreters for the Deaf.

(5) A court shall summarize on the record its efforts to obtain and reasons for not using a Supreme Court certified sign language interpreter.

(F) Appointment of multiple foreign language interpreters or sign language interpreters

(1) To ensure the accuracy and quality of interpretation, when appointing a foreign language interpreter pursuant to division (A) of this rule or sign language interpreter pursuant to division (B) of this rule, a court shall appoint two or more foreign language interpreters or sign language interpreters in either of the following situations:

(a) The case or court function will last two or more hours and require continuous, simultaneous, or consecutive interpretation;

(b) The case or court function will last less than two hours, but the complexity of the circumstances warrant the appointment of two or more interpreters;

(2) To ensure the accuracy and quality of interpretation, a court shall appoint two or more foreign language interpreters or sign language interpreters for a case or court function involving multiple parties, witnesses, or jurors requiring the services of an interpreter.

(G) Examination on record

(1) In determining whether the services of a foreign language interpreter are necessary for the meaningful participation of a party or witness pursuant to division (A) of this rule, the court shall conduct an examination of the party or witness on the record. During the examination, the court shall utilize the services of a foreign language interpreter; however, in doing so the court is not required to comply with the requirements of division (D) of this rule. The interpreter may participate remotely.

(2) In determining whether the services of a sign language interpreter are necessary for the meaningful participation of a party, witness, or juror, pursuant to division (B) of this rule, the court shall conduct an examination of the party, witness, or juror on the record. During the examination, the court shall utilize the services of a sign language interpreter; however, in doing so the court is not required to comply with the requirements of division (E) of this rule. The interpreter may participate remotely.

(H) Waiver

A party may waive the right to a foreign language interpreter under division (A) of this rule or sign language interpreter under division (B) of this rule, unless the court has determined the interpreter is required for the protection of the party's rights and the integrity of the case or court function. When accepting the party's waiver, the court shall utilize the services of a foreign language interpreter or sign language interpreter; however, in doing so the court is not required to comply with the requirements of division (D) or (E) of this rule. The interpreter may participate remotely.

(I) Administration of oath or affirmation

A court shall administer an oath or affirmation to a foreign language interpreter appointed pursuant to division (A) of this rule or sign language interpreter appointed pursuant to division (B) of this rule in accordance with Rule 604 of the Rules of Evidence.