

# An Attorney's Guide to Working with Limited English Proficient (LEP) Individuals

*This guide is created through a partnership with the Administrative Office of Courts and the Mississippi Access to Justice Commission.*

## **What is a Limited English Proficient individual?**

“Limited English Proficient (LEP) individual means any party or witness who cannot readily understand or communicate in spoken English or who does not speak English as his or her primary language and who consequently has a limited ability to read, speak, write or understand English and cannot equally participate in or benefit from the proceedings unless an interpreter is available to assist the individual. The fact that a person for whom English is a second language knows some English does not prohibit that individual from being allowed to have an interpreter.” Miss. Code Ann. § 9-21-71(a).

## **Do you have an LEP individual involved in the case? (a party, witness, any participant)**

The LEP individual does not just have to be your client for you to advocate for their rights. Your case, your client's rights and the record will be better protected if all LEP individual's rights are protected. If so, determine the language the individual speaks and specific dialect (if any).

## **What are LEP individuals entitled to?**

“An LEP individual is entitled to use an interpreter in any instance arising out of or pertaining to the individual's involvement in litigation.” Miss. Code Ann. § 9-21-73 (4).

## **Who pays for the Interpreter?**

“The expenses of providing an interpreter in any court proceeding or instance arising out of litigation must be payable out of the county or municipal treasury at no cost to the litigant.” Miss. Code Ann. § 9-21-81 (2).

## **Do you need an interpreter for your case?**

“An interpreter is needed and a court interpreter shall be appointed when the judge determines, after an examination of a party or witness, that: (a) the party cannot understand and speak English well enough to participate fully in the proceedings and to assist counsel; or (b) the witness cannot speak English so as to be understood directly by counsel, court and jury.” Miss. Code Ann. § 9-21-79 (1).

Absent a prior request for an interpreter either by counsel, court staff or a self-represented party or if circumstances during the proceedings cause the judge concern about a party's ability to communicate in and understand English, the judge shall determine, on the record, the need to appoint an interpreter. Questions should require fully structured sentences as a reply, not just “yes” or “no” answers. The judge shall, on

the record, *voir dire* the LEP Party in English to assess proficiency and allow him/her to consult with counsel before deciding whether to grant such request.

“The court should examine a party or witness on the record to determine whether an interpreter is needed if:

- (a) A party or counsel requests such an examination;
- (b) It appears to the court that the party or witness may not understand and speak English well enough to participate fully in the proceedings; or
- (c) The party or witness requests an interpreter. The fact that a person for whom English is a second language knows some English does not prohibit that individual from being allowed to have an interpreter.

Miss. Code Ann. § 9-21-79 (2).

**SAMPLE QUESTIONS to assess English proficiency:**

1. What is your name?
2. Where are you from? Tell me a little about your country.
3. In what language(s) do you communicate daily/mostly?
4. Describe how comfortable you are speaking and understanding English.
5. Tell me about your education.
6. Describe some of the people and things you see in the courtroom.

“After the examination, the court should state its conclusion on the record, and the file in the case shall be clearly marked and data entered electronically when appropriate by court personnel to ensure that an interpreter will be present when needed in any subsequent instance arising out of the litigation.” Miss. Code Ann. § 9-21-79 (3).

### **Interpreters in Criminal Cases:**

“In all criminal cases wherein the defendant is a Limited English Proficient (LEP) individual, the court shall appoint a qualified interpreter as provided in Section 9-21-80, sworn truly to interpret, and allow him a reasonable compensation, as set by the court, payable out of the county or municipal treasury at no cost to the defendant.” Miss. Code Ann. § 99-17-7.

### **How to get an interpreter appointed:**

Check with the Clerk. Some courts may have local rules pertaining to court interpreters. If no local rules are in place, contact the court administrator assigned to your case. Some judges may have a preference regarding the steps to appointing a court interpreter.

## **Can I just use a bilingual individual as the interpreter?**

NO! A Limited English Proficient individual is entitled to the most qualified interpreter available.

### **INTERPRETER ORDER OF APPOINTMENT:**

The judge must appoint the most qualified interpreter that is reasonably available.

“The court shall appoint an interpreter in the following order of preference:

- (a)** Certified court interpreter.
- (b)** Registered court interpreter.
- (c)** Non-credential interpreter.”

Miss. Code Ann. § 9-21-80 (1).

“A non-credentialed interpreter may be appointed if:

- (a)** Neither a certified nor registered court interpreter reasonably is available; and
- (b)** The court has evaluated the totality of the circumstances, including the gravity of the judicial proceeding and the potential penalty or consequence involved.”

Miss. Code Ann. § 9-21-80 (2).

“A summary of the efforts made to obtain a certified or registered court interpreter, as well as a summary of the efforts to determine the capabilities of the proposed non-credentialed interpreter, must be made in open court and placed on the record.” Miss. Code Ann. § 9-21-80 (4).

### **INTERPRETER QUALIFICATIONS**

Whenever there is an interpreter providing services in a proceeding, the interpreter’s certification/qualification must be determined on the record.

“If the court appoints a non-credentialed interpreter, the court must make the following findings on the record:

The proposed interpreter appears to have:

- (i) adequate language skills, knowledge of interpreting techniques, and familiarity with interpreting in a court setting; and
- (ii) read and understand, and agrees to abide by, the Mississippi Code of Ethics for Court Interpreters and the Mississippi Rules on Standards for Court Interpreters.”

Miss. Code Ann. § 9-21-80 (3) (a).

If the interpreter is Certified, the judge is not required to go through the qualifications on the record.

Whenever the court is presented with an interpreter that is not certified, the judge shall assess and determine the interpreter's credentials by asking some basic questions on the record, such as:

- ✓ What is your native language?
- ✓ If other than English, how did you learn English?
- ✓ Where or how did you learn the language?
- ✓ Do you know the person for whom you will interpret or any of the parties involved in this proceeding? How so?
- ✓ Can you remain impartial and objective as an interpreter?
- ✓ How long have you been an interpreter?
- ✓ Have you had any formal training in court interpreting?
- ✓ Are you familiar with the modes of interpretation? (Simultaneous, Consecutive and Sight translation of documents.)
- ✓ Are you familiar with the Code of Professional Responsibility for Court Interpreters? Can you name some of its points? (Interpret accurately, completely, and impartially; give accurate representation of qualifications; confidentiality; limit the scope of work to interpreting; show professional demeanor; duty to report ethical violations; and report impediments to performance.)

Once the judge, counsel and LEP individual are satisfied with the interpreter's credentials and/or qualifications, the judge shall then determine whether there are any potential conflicts with the interpreter's participation in the case. Then the judge shall appoint the court interpreter and administer the oath.

### **What does a court interpreter do for the LEP individual?**

An interpreter is a neutral party and an arm of the court. A court interpreter enables an LEP individual to be on "equal footing" as a native English speaker.

### **What is the court interpreter's involvement in the case?**

To interpret from English into the target language and the target language into English accurately, completely, and impartially using their best skill and judgment.

### **What should I do differently when there is an interpreter in a case?**

- Slow your normal rate of speech when addressing the court to allow the interpreter to interpret simultaneously for the LEP individual.

- Speak directly in the first person to the LEP individual. Do not say: "Ask him if he understands . . ."
- Speak in segments when addressing the LEP individual and pause to allow the interpreter to interpret during the pause.
- Use simple legal language.
- Avoid asking compound questions.
- Don't: Ask the interpreter to explain the proceedings to the LEP individual.
- Don't: Use acronyms or legal jargon that may present a challenge for the interpreter. Fully state the name for which the acronym stands.
- Don't: Ask the interpreter to participate in any other activities other than interpreter for the LEP individual.

### **Should there be instructions to a jury about the interpreter?**

YES! It is suggested that a jury instruction be provided. Examples:

Proceedings Interpretation: "This court seeks a fair trial for all people regardless of the language they speak and regardless of how well they understand or speak the English language. Bias against or for persons who are not proficient in English is not allowed. Therefore, do not allow the fact that the party requires an interpreter to influence you in any way."

Witness Interpretation: "Treat the interpretation of the witness' testimony as if the witness had spoken English and as if the interpreter were not present. Do not allow the fact that testimony is given in a language other than English to affect your perception of the witness' credibility. Those members of the jury who may be proficient or have some understanding of the foreign language being used during these proceedings shall base all deliberations and decisions on the evidence presented in English through the interpretation."

### **SOME RED FLAGS:**

Google translate has been utilized in the case.

Miranda Rights were not provided in native language.

Family member used or requested as the interpreter.

Interpreter is denied for the LEP Individual.

Interpreter was not used in questioning, recording of interview.

The interpretation was much longer/shorter than the original message.

Interpreter with a potential conflict was used.

### **Tips to Remember:**

A good, experienced interpreter:

- o will give an accurate and smooth interpretation; speak loudly and clearly while being unobtrusive;
- o will use the first-person during interpretation and refer to him/herself in the third person as “the interpreter”;
- o will ask the court’s permission to clarify a term, get a repetition, or correct the record if the interpreter knows a previous interpretation was in error;
- o will not have private conversations with the LEP at any given time; will not lead the witness or influence answers through body language;
- o will not perform any duty other than interpreting;
- o will not substitute an “uh-huh” with a “yes” or a “no” but will repeat the sound.
- o will not interject comments nor offer an opinion about the witness for the court/counsel no matter how harmless the comment may appear.

Additional helpful hints:

- ☐ Provide the interpreter with any information on the witness that may affect communication such as speech defects, mental health issues, emotional distress issues, education level, etc.
- ☐ Explain to the witness the role of the interpreter as an impartial officer of the court, responsible only for accurately interpreting the proceedings and/or testimony.
- ☐ Advise the witness that the interpreter will interpret everything he/she says. Advise the witness not to say anything he/she does not want heard.
- ☐ Instruct the witness not to engage in “private” conversations with the interpreter.
- ☐ Instruct the witness to wait to hear the interpreted question before answering even if they understand some English. Advise witness to look at counsel or jury when answering.
- ☐ Place the interpreter by the witness at the stand and make sure the interpreter does not obstruct the witness for the jury.
- ☐ During testimony by a non-English-speaking witness, address all questions directly to the witness as if the interpreter were not there.
- ☐ Do not ask the interpreter to explain or restate anything said by a party.
- ☐ Phrase your questions clearly and, whenever possible, avoid unnecessary ambiguities.

### **Additional Ways to Advocate for your Client**

It is important to provide appropriate notice as to the role of the court interpreter to all parties, witnesses and jurors, present in court proceedings in which court interpreters are providing services.

Example of appropriate notice to parties and witnesses who are testifying:

“I would like to explain the role of the court interpreter. The court interpreter is here only to interpret the questions that you are asked and to interpret your responses to them. The interpreter will interpret everything said in English into your language. The interpreter will also interpret everything you say into English and will not add to your testimony, omit anything, or summarize what you have said. If you do not understand the court interpreter, please let me know. If you need a question repeated or a clarification, please request the repetition or clarification from the person who asked the question. Please wait until you have heard the entire interpreted question or statement before answering. Please know the interpreter is not a lawyer and is prohibited from giving legal advice. Do you have any questions about the role or responsibilities of the court interpreter?”