

PROPOSED Texas Rule of Civil Procedure 183

183. Interpreters and Translators

(a) *Appointed by the court.* **When needed for effective communication or when required by law**, the court must appoint a qualified interpreter or translator for court proceedings involving a party or witness with a **communication disability** or **with** limited English proficiency.¹

(b) *Definitions.*

- (1) *Court proceeding.* Court proceeding includes the proceedings listed in §57.001(7) of the Texas Government Code.
- (2) *Communication Disability.* Communication disability means a disability that inhibits the individual's comprehension of the proceedings or communication with others.²
- (3) *Limited English Proficiency.* Limited English proficiency means that the person does not speak English as a primary language or has a limited ability to read, write, speak, or understand English.³
- (4) *Qualified.* **Qualified means a competent interpreter or translator who is licensed or certified when [available or] required by law. When the court may appoint an interpreter or translator who is not licensed or certified, the interpreter or translator must**
 - a. **qualify as an expert under the Texas Rules of Evidence;**⁴
 - b. **be at least 18 years of age;**
 - c. **not be a party; and,**
 - d. **unless agreed by all parties and approved by the court, not be a witness, a relative of a party or witness, or a counsel in the proceeding.**

(c) *Payment of Fees.*

¹ Proposed Rule 183 covers interpreters (translating oral communication) and translation (translating written materials). Currently, Tex. R. Evid. 1009(g) may appoint a translator "if necessary" and tax the reasonable value of the translator's services as court costs. Rule 1009(g) may need revision to conform to the proposed Tex. R. Civ. P. 183. A similar rule should be added to the Justice Court rules, which currently do not address interpreters or translators. Rule 183 would be a separate basis to appoint to avoid inadvertently repealing Tex. Gov't Code §57.002 under Tex. Gov't Code §22.004. §57.002 requires appointment on motion. The proposed amendment would require proof the interpreter is needed for "effective communication," but §57.002 has no such requirement.

² See Tex. Gov't Code §57.001(4). Disability is preferred to the term "impaired."

³ Definition is derived from the Department of Justice's "Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Person." 67 Fed. Reg. 41455 (6/18/2002).

⁴ This proposal attempts to reconcile the use of licensed or certified interpreters with practical reality such interpreters may not be readily available. Tex. R. Evid. 604 and 1004 require interpreters and translators (respectively) be "qualified," but leave the qualifications undefined. Fed. R. Evid. 604 requires interpreters be qualified as an expert under Fed. R. Evid. 702. 28 U.S.C. §1827(a) requires federal court use O.C.A. certified interpreters when reasonably available. Tex. Gov't Code §57.002 requires licensed or certified interpreters; they must be at least 18 years of age. Section 57.002 permits uncertified/unlicensed interpreters in counties under 50,000 in population, in larger counties if no interpreter is available within 75 miles, or when allowed by Tex. Civ. Prac. & Rem. Code §21.021. The other restrictions are based on anecdotal information that some court have permitted family members of parties to interpreter, e.g., in domestic cases a person charged with abuse has been permitted to testify for the victim.

- (1) *Reasonable Compensation*. When appointing an interpreter or translator, the court shall determine a reasonable fee for the interpreter's or translator's services.
- (2) *Fees Taxed as Costs*. At the request of the clerk or on motion of any party or on the court's own motion, the court may tax as court costs the reasonable fee of any interpreter or translator utilized during court proceedings. **Fees for interpretation or translation services provided though the court or otherwise paid for with public funds must not be taxed as costs.**
- (3) *When Fees May Not be Taxed as Costs*. In no case shall the court tax these fees as costs against:
 - i. A party with a communication disability if the services were needed for effective communication;⁵
 - ii. A party unable to afford payment of costs under Rule 145;
 - iii. A party with limited English proficiency, unless the court finds in writing the party can easily afford the costs and the costs will not impede the party's access to the judicial process;⁶ or
 - iv. *A party who can otherwise not easily afford the costs and the costs may impede the party's access to the judicial process.*⁷

(d) *Services Provided Free of Charge*. **The Court shall not tax or assess the fees for interpretation or translation services to individuals listed in (c)(3).**

(e) *No Delay of Case*. Except on motion by a party with a communication disability or limited English proficiency, the court may not delay a court proceeding until a party pays for translation or interpretation services.⁸

⁵ Charging a person with a disability for an interpreter or other auxiliary aid or service that she needs for effective communication is prohibited by the Americans with Disabilities Act and Chapter 121 of the Texas Human Resources Code.

⁶ "DOJ Guidance makes clear that court proceedings are among the most important activities conducted by recipients of federal funds, and emphasizes the need to provide interpretation free of cost. Courts that charge interpreter costs to the parties by arranging for the interpreter's presence, but they are not "providing" the interpreter. DOJ expects that, when meaningful access requires interpretation, courts will provide interpreters at no costs to the persons involved." Language Access Guidance Letter to State Courts from Assistant Attorney General Thomas E. Perez, Aug. 16, 2010.

⁷ The ad hoc committee was divided about Section (iv), which appears to excuse English-speaking, unimpaired parties that are low-income. Inclusion was based on construing the ABA standard: "Courts should avoid placing the burden of paying for language access disproportionately on LEP individuals in a manner that discourages access to court by LEP persons or inhibits requests for language services necessary to enable LEP person to participate fully in proceedings. In considering whether to provide an interpreter without charge, courts should be mindful that the poverty/indigency threshold is unrealistically low. For that reason, any effort by a court to impose fees on particular persons and litigants should take into consideration that the cost of interpreter services will burden most people of modest or even "middle class" means, and of many small or moderate-size businesses. Litigants in those categories will not be treated on a par with persons who do not require language services and will effectively be denied access to justice, if they are unable or dissuaded from using the courts, because they are subject to up-front fees or know that they will be assessed fees under an after-the-fact recoupment mechanism." [ABA Standards for Language Access in Courts](#), Standard 2.3, Responsibility for costs of language services.

⁸ This is based on anecdotal information that some courts have postponed hearings indefinitely until an LEP person pays for an interpreter or dismisses for want of prosecution because the person has not paid for interpreter to appear.

Alternative (e) *No Delay of Case*. The court may not delay a court proceeding because the translator or interpreter cannot be present, unless a person with a communication disability or limited English proficiency requests a continuance and explains why the interpreter or translator is unable to attend.⁹

⁹ This alternative was suggested because of difficult issues of securing outside interpreters or translators. Courts may be unable to locate third-party professionals for some languages willing to appear for free; parties may be unable to pay. The court should not have to decide who must pay, when, and how much before scheduling a hearing or trial; however, the party needing such services should be able to request a continuance. Both alternatives leave unresolved what the court may do when a translator or interpreter are needed, but cannot provide the service and the party cannot afford to pay.