

Limited English Proficient Interpreter Appointment MCR 1.111 Summary

- The court **shall appoint** an interpreter if it determines, either upon request or on its own initiative, that it is necessary for the party or testifying witness to meaningfully participate in the case/court proceeding. [MCR 1.111(B)(1).]
- The court **may appoint** an interpreter for a person other than a party or testifying witness if he or she has a substantial interest in the case/court proceeding. [MCR 1.111(B)(2).]
- A person **may waive** the right to an interpreter unless the court requires it to protect the person's rights and the integrity of the case/court proceeding. In accepting a waiver, the court **must make a finding on the record** that the person's waiver is knowing and voluntary. [MCR 1.111(C).]
- The court should avoid an appointment that creates a conflict of interest, and **shall state on the record** its reasons for appointment if a perceived conflict or appearance of impropriety exists. [MCR 1.111(E).]
- The court **shall appoint** a certified interpreter whenever practicable; however the court **may appoint** a qualified interpreter if a certified interpreter is not reasonably available. If the court appoints a qualified interpreter instead of a certified interpreter, the court must:
 - **Make a record** of its reasons for using a qualified interpreter, considering the gravity of the proceeding and whether the matter should be rescheduled; [MCR 1.111(F)(1)] and
 - **Determine through *voir dire*** that the qualified interpreter is competent to provide interpretation services for the proceeding. [MCR 1.111(A)(6)(a)(iii), (b)(iii), and (c)(iii).]
- If neither a certified nor qualified interpreter is reasonably available, the court **may appoint** a noncertified, nonqualified interpreter. To do this, the court must:
 - **Make a record** of the reasons for using a noncertified, nonqualified interpreter, considering the gravity of the proceedings and whether the matter should be rescheduled. [MCR 1.111(F)(2).]
 - **Determine through *voir dire*** that the person is capable of conveying the intent and content of the speaker's words sufficiently to allow the matter to proceed without prejudice. [MCR 1.111(F)(2).]
- The court **may use a court employee** as a courtroom interpreter, if the employee meets the minimum requirements for interpreters and is not otherwise disqualified. [MCR 1.111(E)(2)(b).]
- If the court has any doubt as to an individual's eligibility for an interpreter, the court **should appoint** one. [MCR 1.111(F)(6).]
- The court **shall administer an oath** to an interpreter that substantially conforms with:

“Do you solemnly swear or affirm that you will truly, accurately and impartially interpret in the matter now before the court and not divulge confidential communications, so help you God?” [MCR 1.111(G).]

 - The oath substantially conforms if the FLI objects to the phrase “so help you God.”
- If a party is financially able to pay for interpretation costs, the court **may order either party to reimburse** the court. “Financially able to pay” means the person's family or household income is greater than 125 percent of the federal poverty level, and an assessment would not unreasonably impede the person's ability to defend or pursue the claims. [MCR 1.111(A)(3) and (F)(5).]
- A court that denies a request for an interpreter or assesses interpreter cost reimbursement **must do so by entry of a written order**. A limited English proficient (LEP) individual may request review of the order. The chief judge, or another SCAO-appointed judge if the chief judge issued the order, will conduct the review. Such a request stays the underlying proceeding. [MCR 1.111(H).]

Certified interpreter: A person who has passed an SCAO-approved test and has registered with and met all SCAO requirements.

Qualified interpreter: A person who provides interpretation services (or works for an entity that provides in-person or telephonic interpreter services) that is registered with and met all SCAO requirements and is determined through *voir dire* by the court to be competent to provide interpretation services.

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Suggested *voir dire* questions for interpreters:

Skill-based questions:

- Do you have any training or credentials as an interpreter?
- What is your native language?
- What was the highest grade you completed in school?
- Have you spent any time in a country where this language is commonly spoken?
- Did you formally study the non-native language in school? To what extent?
- Do you know the words likely to be used, legal or otherwise, in both languages?
- Have you had an opportunity to speak with the non-English speaking person informally? (If not, consider providing an opportunity now.)
 - Based on your discussion with the non-English speaking person, were there any communication problems? (Note: Pay attention to the interaction, and each person's facial clues to gauge understanding.)
 - Are you familiar with the words used by, and speaking patterns of, all speakers at the hearing?
- Can you interpret simultaneously (i.e., listen to one language and orally interpret in the other language, even though the speaker has not paused – as in an opening statement)?
- Can you interpret consecutively (i.e., listen to one language and orally interpret in the other language during a speaker's pause – as in when an attorney questions a witness)?
- Have you interpreted in any noncourt settings?
- Have you ever had your interpreting skills evaluated?
- Has a judge ever allowed you to interpret in court?
- Have you had training in professional ethics for court interpreters?

Conflict of interest questions:

- Have you ever been disqualified from interpreting in any court or administrative hearing?
- Are you employed or otherwise compensated by a business owned or controlled by any party or a witness?
- Are you a friend, a family member, or a household member of any party or witness?
- Are you a potential witness in this matter?
- Are you a law enforcement officer? If so, in which jurisdiction?
- Do you have a pecuniary (financial) or other interest in the outcome of the case?
- Do you know of any reason why your appointment would create a conflict of interest, a perceived conflict of interest, or any appearance of impropriety?
- Are you aware of any reason your appointment would fail either to protect a party's rights or to ensure the integrity of the proceedings?

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