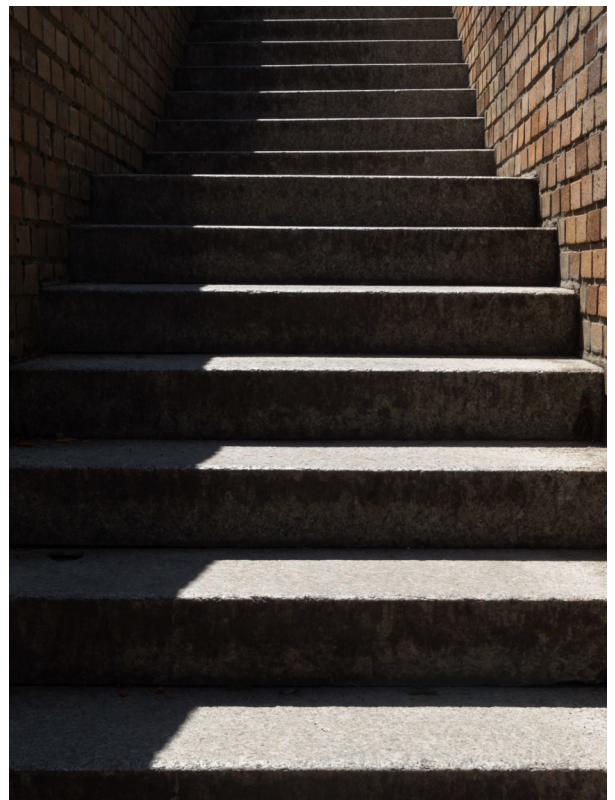


Interpreter Certification Tiers: Implications for the Administration of Justice

A White Paper by
the National
Association of
Judiciary
Interpreters and
Translators (NAJIT)



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What is an interpreter certification?

Interpreters who work for the courts get certified by taking a criterion-referenced examination. These testing instruments are objectively designed by expert psychometricians and include critical tasks, functions, and knowledge identified to be essential for court interpreters by respected and experienced members of the profession. The criteria established by the team of subject matter experts in conjunction with scholarly works published in the field of interpreting define the minimum threshold candidates must meet to perform competently in legal settings.

* The Administrative Office of the U.S. Courts is currently certifying interpreters in English-Spanish only.

** The Consortium for State Interpreter Certification created by the National Center for State Courts (NCSC) later became the Council for Language Access Coordinators (CLAC). The NCSC remains the one organization that provides states with uniform testing instruments for interpreters in a variety of languages. It also provides technical recommendations for languages for which there is no testing instrument at this time.

Criterion-referenced examinations provide objective evaluations of candidates and have been the standard methodology for interpreter certification examinations since the passing of the [Court Interpreters Act](#) of 1978 (28 USC §1827) which instituted the federal certification program for court interpreters of Spanish, Navajo and Haitian Creole*. In 1995 the National Center for State Courts established the Consortium (now The Council of Language Access Coordinators)** for developing and administering court interpreter test and training programs.



The **Administrative Office of the U.S. Courts** established a passing score of 80% for the Federal Court Interpreter Certification Examination (FCICE) with the objective of measuring how a candidate would perform in an actual court setting. Given that candidates often get nervous and test somewhat below their best performance in a real-life situation, the panel of experts determined that a 20% margin of error was the maximum acceptable under the quality standards being set by the federal certification examination.

The passing score is an integral part of the expert design that goes into all of these tests to ensure that the candidates who become certified interpreters have met the minimum requirements for the title they hold.

The passage of the Court Interpreters Act and the subsequent development of a certification program for court interpreters is closely linked to protecting the constitutional rights of non-English speakers, particularly as set forth in the 6th Amendment:

In all criminal prosecutions, the accused shall enjoy the right to (...) be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

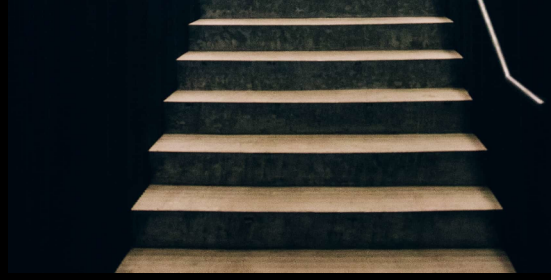
For a defendant in a criminal prosecution who does not speak the language of the court, these constitutional guarantees can only apply when the services of a competent interpreter are provided. If a person cannot understand what is happening during a criminal prosecution against them because of limited or non-existent English proficiency, and the interpreter provided is unable to convey fully and accurately at least 80% of what the attorneys, the court, or the witnesses are saying, then that defendant's due process guarantees and equal protection under the law are put at risk.

Granted, the standard for federal certification is high. Since the inception of the FCICE, the passing rate for this exam falls below 20%. On the other hand, there are very few universities offering graduate-level programs that can yield a pool of qualified candidates possessing the interpreting skills needed to pass the federal certification examination.

Although the **National Center for State Courts (NCSC)** created a test that was intended to set a uniform high standard for interpreter certification by state court systems, eventually the members of the Council for Language Access Coordinators (CLAC) set different thresholds for their states' certifications programs. Some currently have passing scores of 80%, while others have certification exam passing score at 70% or less, intended to increase the number of certified interpreters in their states.

A passing score of 70% in the NCSC test means that certification candidates are allowed a 30% margin of error in their performance, which may be in the form of mistranslations or omissions. While this is an unfortunate decision by the court administrators who have the final word on each state's interpreter program, NAJIT recognizes that a certification examination with a lower passing score is still preferable to no certification at all.

What are certification tiers?



The demand for interpreters in the state court systems at times exceeds the number of qualified individuals available to serve the courts. The unavailability of enough qualified interpreters to meet the demand for interpreting services in the courts has led states to devise different credentialing levels that allow individuals to be included on official rosters although they have not been able to demonstrate, through a criterion-referenced examination, that they possess the knowledge and skills necessary to perform competently, as court work would require.

These credentialing levels are also known as **certification tiers** and according to the NCSC, the following list represents some of the most common designations used by different state court administrators to credential interpreters:

- Certified
- Registered
- Master
- Qualified
- Provisional
- Approved

- Conditionally Approved
- Eligible
- Non-Credentialed

None of these designations have standardized definitions. A "master" interpreter in one state may not be equivalent to a "master" interpreter in another state. Two states may define a "conditionally approved" and a "provisional" interpreter as being exactly the same. Each state has absolute autonomy to decide what "certified", "registered", "qualified", "eligible" and "approved" mean for their particular interpreter program.

A **Tier 4** certified interpreter in Hawai'i, for example, is described as having passed a full Consortium oral exam with an overall average score of 70%, whereas in Arizona a **Tier 4** interpreter is described as having received a score of 80% or higher on each component of that same exam.

In Illinois, an interpreter is listed as "**Registered**" if they have taken the NCSC exam and passed with a score under 70% but no lower than 60%, whereas in Idaho a "**Registered**" interpreter is one for which there is no certification exam currently available in their foreign language, therefore only their English proficiency has been tested.

The NCSC currently offers full written and oral examinations for state certification in Cantonese, Filipino (Tagalog), French, Haitian Creole, Hmong, Khmer, Korean, Mandarin, Polish, Portuguese, Russian, Spanish, and Vietnamese. Abbreviated examinations are available in Bosnian/Serbian/Croatian and Turkish. Only Sight Translation and Simultaneous Interpreting are available in Modern Standard Arabic, while only Consecutive Interpreting is available in Egyptian Colloquial or Levantine Colloquial. In addition to the full certification examinations available from the NCSC, the State of California has its own certification system and administers full certification examinations in Eastern Armenian and Punjabi.

American Sign Language (ASL) interpreters also have different designations, although testing and credentialing of sign language interpreters is not a governmental function, except in the State of Texas. The Office of Deaf and Hard of Hearing Services (DHHS) in Texas has the Board for Evaluation of Interpreters (BEI) for the testing and certification of ASL interpreters. Nevertheless, Texas, as well as every other state rely on the credentials recognized by the Registry of Interpreters for the Deaf (RID). One of those is the National Interpreter Certification (NIC) administered by the *Center for the Assessment of Sign Language Interpretation*, an entity

created by RID solely for the purpose of testing and certifying ASL interpreters. The other is the National Association of the Deaf Certification (NAD) which has three levels; NAD III is for a Generalist ASL interpreter (i.e., average performance), NAD IV is Advanced (i.e., above average performance), and NAD V is Master (i.e., superior performance.)



How can interpreter certification tiers affect the administration of justice?

Judges, lawyers, and the general public--including the Limited English Proficiency (LEP) population--are not sufficiently informed about the difference between credentialing tiers. This lack of information at times results in a general misconception that a fully certified interpreter has been provided for a defendant and/or witness in a criminal case, or a litigant in a civil matter, when the interpreter provided may be someone listed on

a roster simply because they have taken the first steps towards becoming certified, or there is no certification exam in their foreign language and they have only been able to demonstrate written and oral proficiency in the English language.

Interpreting encompasses much more than a command of two languages. It requires knowledge of two legal



systems and the terminology to convey equivalent concepts for what are often disparate systems. Grand juries, for example, exist only in the United States and Liberia, so while there may be

terms used to translate “grand jury”, the legal concept itself may not necessarily be communicated. A bilingual person who lacks the proper knowledge to convey equivalent concepts rather than word combinations of little legal significance in the target language is useless to the LEP individual who requires an interpreter.

The use of unqualified interpreters for in-court or out-of-court proceedings because their names appear on an official roster and are, therefore, assumed to be

“certified,” jeopardizes the legitimacy of any legal proceeding. Parties need to be aware of the true extent--or limitations--of the qualifications possessed by individuals who make up the different tiers of interpreting services. Proceeding in any other fashion not only jeopardizes the rights of the LEP individuals under the Constitution, particularly in criminal prosecutions, but also under the 1964 Civil Rights Act.

Defense attorneys have a primary responsibility to ensure that their clients are being afforded the most competent interpreters available in their jurisdiction, but prosecutors also have a duty to uphold the legal and ethical principles of the U.S. Department of Justice's language access directives. Judges, however, always have the final word. Judges are the only ones in control of their courtrooms and the only ones who can prevent miscarriages of justice by making sure the interpreters in their courtrooms are always the most qualified and competent available.



How can you be sure the services of the most qualified interpreter are always sought first?

Language access plans in most, if not all, state courts either mandate or strongly recommend that whenever an individual of Limited English Proficiency (LEP) or a deaf or hard of hearing person requires the services of an interpreter, every effort must be made to contract the services of the most qualified interpreter first.

One example of such a mandate is the the Tennessee Supreme Court Rule 42(3) which states:

[A non-credentialed interpreter may be appointed] "... only after the court has made a finding that diligent, good faith efforts to obtain the certified or registered interpreter, as the case may be, have been made and none has been found to be reasonably available. A noncredentialed interpreter may be appointed

only after the court has evaluated the totality of the circumstances including the gravity of the judicial proceeding and the potential penalty or consequence involved."

Knowing the law, the rules and regulations that have a direct bearing on the certification of interpreters in a given state and how interpreters are appointed to proceedings in court is the best way of ensuring that only the most qualified and competent interpreters will be called in to provide interpreting services when needed.

Recommended Procedure to be followed by defense attorneys or prosecutors in a criminal case:

The Language Access Coordinator in the State Office of Court Administration should be contacted to ascertain the exact designation for the highest qualified interpreters of the foreign language in which services are required. If there is a public roster available online, that link should be requested as well. Once that information has been obtained, a motion

should be submitted to the presiding judge in the case asking that an interpreter from the highest qualified on the list be appointed. The judge must be provided with the name, telephone or email of the interpreter, and any other pertinent information required to make the appointment.

Recommended Procedure to be followed by an attorney for a civil litigant:

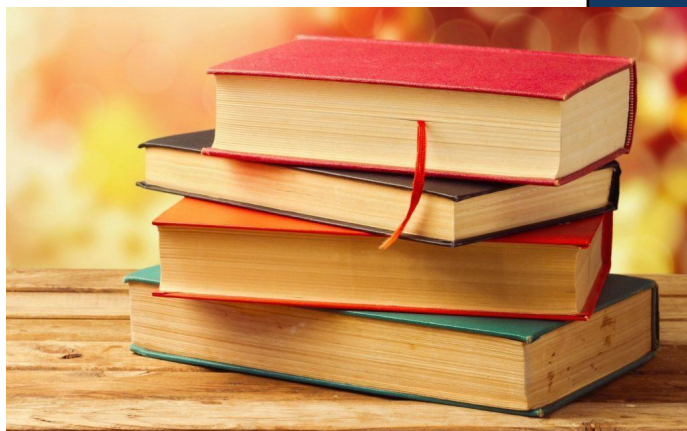
The previously described steps should be followed. In the event that depositions must be taken prior to the case being heard in court, there may be a need for additional action such as having the court's pre-approval of professional interpreting or translation services, as well as any related expenses, such as travel to the deposition site. Everything should be done in accordance with local policies and regulations. The interpreting of out-of-court witness testimony must never be entrusted to unqualified individuals as this could very well put the entire case at risk. Language access laws also provide for civil litigants to have qualified interpreters.

The role of the judge:

Finally, it is within the discretion of the judge to protect the rights of criminal defendants, civil litigants, and *pro se* Limited English Proficient



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