

“Mi Tribunal es Mi Tribunal”

The Use of Foreign Language Interpreters and the Ethical Considerations Involved

Presented by David L. Garza
Presiding Judge, City of Bee Cave

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Learning Objectives: As a result of this presentation, the participants will be better able to:

- ❖ Identify and discuss the relevant statutes and case law pertaining to the use of language court interpreters in Municipal court;
- ❖ Identify and better understand the Judge’s (and attorney’s) ethical obligations regarding the selection and use of language court interpreters;
- ❖ Identify and discuss the issues in hypothetical situations presented in class.

Enabling Legislation

- ❖ Chapter 57, Tex. Gov’t. Code
- ❖ Article 15.17, Code of Criminal Procedure
- ❖ Article 38.30, Code of Criminal Procedure
- ❖ Article 38.31, Code of Criminal Procedure
- ❖ Tex. Atty. Gen. Op. No. JC-0584 (2002)
- ❖ 6th Amendment, U.S. Constitution
- ❖ Article 1, Section 10, Texas Constitution
- ❖ Case Law

**Chapter 57, Tex. Gov't Code
Effective Sept. 1, 2001**

Controlling law on interpreter qualifications for both civil and criminal cases.

General Rule: Licensed Interpreter is required.

Tex. Gov't Code §57.002(a) requires a licensed interpreter be appointed upon...

- ❖ Motion filed by a party; or
- ❖ Request of a witness

Chapter 57, Tex. Gov't Code

Tex. Gov't Code §57.002(b) allows a court to appoint a licensed interpreter on its own motion.

Tex. Gov't Code §57.002 (b) (1) requires that the interpreter's license must have specific designation.

- ❖ Basic, restricted;
- ❖ "Master" - Unrestricted

**Chapter 57, Tex. Gov't Code,
Exceptions...**

Tex. Gov't Code §57.002 (c): an *unlicensed* interpreter may be appointed in counties with a population under 50,000;

Tex. Gov't Code §57.002 (d): an *unlicensed* interpreter can be used in ANY county for...

- ❖ Non-Spanish interpretation WHEN...
- ❖ No licensed court interpreter for that language is available within 75 miles

Chapter 57, Tex. Gov't Code

Tex. Gov't Code §57.002 (e): when an unlicensed interpreter can be used, the person interpreting must...

- ❖ Be at least 18 years of age;
- ❖ Not be a party to the proceeding; and
- ❖ Be qualified under the Texas Rules of Evidence

Chapter 57, Tex. Gov't Code

§57.001 Definitions.

- ❖ “Licensed court interpreter” means an individual licensed to interpret court proceedings for an individual who can hear but who does not comprehend English or communicate in English;
- ❖ “Certified court interpreter” means an individual who is a qualified interpreter ... to interpret court proceedings for a hearing impaired individual.

Glossary of terms

- ❖ Interpret / Interpretation: Spoken language
- ❖ Translate / Translation: Written material
- ❖ Licensed interpreter: Spoken language
- ❖ Certified interpreter: Deaf or hearing impaired
- ❖ “Qualified” interpreter: Unlicensed
- ❖ TDLR: Texas Department of Licensing and Regulation; issues court interpreter licenses

Tex. Atty. Gen. Op. No. JC-0584 (2002)

- ❖ The court has discretion to decide whether interpreter is needed;
- ❖ If interpreter is needed, court must appoint a licensed interpreter unless exception applies;
- ❖ In a criminal case, a defendant has the right to an interpreter in a plea proceeding;
- ❖ Defines what “to act as an interpreter” means;
- ❖ Discusses what constitutes a motion or request to have an interpreter appointed.

Case Law

Ridge v. State, 205 S.W. 3d 591, 595-97 (Waco 2006, pet. ref'd)

FACTS:

- ❖ Court, on its own motion, in a county with over 50,000 population, appointed a Spanish interpreter for a witness in a case;
- ❖ Record did not reflect whether interpreter was licensed or not;
- ❖ No objection made on the record as to the interpreter’s qualifications;

Case Law

Ridge v. State, 205 S.W. 3d 591, 595-97 (Waco 2006, pet. ref'd)

- ❖ Appellant argued that he had been deprived his right of confrontation because court appointed unlicensed interpreter;
- ❖ State responded that error was not preserved because no objection was made and that Ch. 57 did not apply when the court *sua sponte* appoints an interpreter

Case Law

Ridge v. State, 205 S.W. 3d 591, 595-97 (Waco 2006, pet. ref'd)

Waco Court of Appeals held:

- ❖ Both CCP art. 38.30 and Tex. Gov't Code §57.002(a) governed interpreter qualifications in this case
- ❖ Under Tex. Gov't Code §57.002(a), the interpreter had to be licensed

Case Law

Ridge v. State, 205 S.W. 3d 591, 595-97 (Waco 2006, pet. ref'd)

- ❖ When a licensed court interpreter is required by statute, no objection is needed to preserve error;
- ❖ Where the record is silent as to interpreter qualifications, error cannot be presumed.

Case Law Caveats

Outdated cases: Most of the case law either...

- ❖ predates enactment of Tex. Gov't Code Ch. 57
- ❖ Fails to discuss or apply that chapter

Focus on criminal due process...

- ❖ 6th Amendment rights (confrontation clause, effective assistance of counsel, right to be present)
- ❖ CCP art. 38.30, interpreter qualifications
- ❖ Preservation of error

Case Law Caveats

Only one case found that discusses the “population” or “non-Spanish” exceptions in Tex. Govt. Code Ch. 57:

- ❖ *Ridge v. State*, 205 S.W.3d 591, 595-97 (Waco 2006, pet. Ref’d)

Misuse and confuse statutory terms.

Have limited precedential value.

Chapter 57, Tex. Gov’t Code

Due Process Considerations exist for both Criminal and Civil cases...

Criminal cases:

- ❖ Confrontation clause
- ❖ Right to effective assistance of counsel
- ❖ Right to be present at hearing
- ❖ Right to meaningful participation in defense

Chapter 57, Tex. Gov’t Code

Civil cases – (for any proceeding accorded finality)

- ❖ Right to notice (be apprised of pendency of the action)
- ❖ Right to present objections (be heard; be present at case)

Chapter 57, Tex. Gov't Code

It is a Class A misdemeanor to act as a licensed court interpreter without holding the appropriate state license.

To “act as an interpreter” means to interpret proceedings for a party or witness, to interpret a party or witness’s testimony to others in the proceeding, or to serve as a conduit of information between the party or witness and others in the proceeding.

Chapter 57, Tex. Gov't Code

So what does all this have to do with me, you might ask?

Ethical considerations under the Texas Code of Judicial Conduct make the use of unlicensed interpreters problematic.

When a party’s attorney is allowed to act as the court’s interpreter, additional ethical issues may arise under the DR’s.

Code of Judicial Conduct

Judicial Canons:

Canon 1: A Judge should participate in establishing, maintaining, and enforcing high standards of conduct and avoid manifestations of bias or prejudice.

Code of Judicial Conduct

Judicial Canons:

Canon 2(A): A Judge shall comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Code of Judicial Conduct

Judicial Canons:

Canon 3(B)(4): A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and should require similar conduct of lawyers, and of staff, court officials, and others subject to the judge's direction and control.

Code of Judicial Conduct

Judicial Canons:

Canon 3(B)(5): A judge shall perform judicial duties without bias or prejudice.

Code of Judicial Conduct

Judicial Canons:

Canon 3(B)(6): A judge shall not, in the performance of judicial duties, by words or conduct, manifest a bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, and shall not knowingly permit staff, court officials and others subject to the judge's direction and control to do so.

Code of Judicial Conduct

Judicial Canons:

Canon 3(B)(8): A Judge shall accord to every person who has a legal interest in a proceeding, or to that person's lawyer, the right to be heard according to law.

Code of Judicial Conduct

Judicial Canons:

Canon 3(B)(9): A judge should dispose of all judicial matters promptly, efficiently, and fairly.

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Hypothetical Scenarios

- ❖ Hearing on a family violence protective order application;
- ❖ Applicant does not speak English;
- ❖ Parties want the hearing to proceed that day;
- ❖ Takes place in county with >50,000 population.

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- ❖ **Hypothetical One:**
- ❖ The applicant’s 17 year old daughter, who is also a witness in the case, is allowed to interpret her mother’s testimony from Spanish to English for the court during the hearing;
- ❖ No one investigated or questioned the daughter’s ability to interpret for the court;
- ❖ Did the judge fulfill is or her ethical obligations with regard to the interpreter’s qualifications?

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- ❖ **Hypothetical Two:**
- ❖ Same situation as in Hypothetical One, but instead of her daughter, the applicant’s attorney interprets the applicant’s testimony from Spanish to English for the court;
- ❖ Did the judge fulfill his or her ethical obligations with regard to the interpreter’s qualifications?

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Helpful Resources/Links

- ❖ TX Govt. Code §57.002 et seq.
- ❖ TX Atty. Gen. Op. No. JC-0584 (2002)
- ❖ Ridge v. State, 205 S.W.3d 591, 595-97 (Waco 2006, pet. Ref’d)

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- ❖ OCA Article, “Appointment and Qualifications of Language Interpreters– Relevant Law”, by Ann Landeros;
- ❖ OCA Flow Chart by Ted Wood, for determining use of Language Interpreters;
- ❖ TDLR Website, www.tdlr.state.tx.us (FAQ’s)

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- ❖ Texas Remote Interpreter Project (TRIP) at www.txcourts.gov/oca/DVRA/trip.asp ;
- ❖ Language Line Services at www.languageline.com provides telephone interpreting services;
- ❖ Use local College or University Language Departments for uncommon or obscure language or dialect.

Summary

- ❖ Best Practice
- ❖ Controlling law
- ❖ Statutory Definitions
- ❖ Due Process in both Criminal and Civil cases
- ❖ Interpreter Qualifications / Ethical Obligations
- ❖ Attorney as Interpreter / Ethical Issues

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November 26, 2002

The Honorable Florence Shapiro
Chair, Senate Committee on State Affairs
Texas State Senate
P.O. Box 12068
Austin, Texas 78711-2068

Opinion No. JC-0584

Re: Whether chapter 57 of the Government Code
requires the appointment of licensed court interpreters
in certain circumstances, and related questions
(RQ-0558-JC)

Dear Senator Shapiro:

You ask about chapter 57 of the Government Code, a recently enacted statute that establishes qualifications for court interpreters for hearing-impaired individuals (interpreters for the deaf) and individuals who do not communicate in English (spoken-language interpreters) and requires courts to appoint qualified court interpreters. Your questions focus on the appointment of spoken-language interpreters and the payment of their fees in justice court proceedings.¹

We conclude that chapter 57 applies to a plea in a misdemeanor case in justice court, but that a court clerk who merely converses with a defendant in a language other than English does not “act as a licensed court interpreter” within the meaning of chapter 57. In either a civil or criminal proceeding, whether a party has filed a motion for or a witness has requested the appointment of an interpreter will depend upon the facts and is a question for the trial court in the first instance. The court may grant or deny such a motion or request. In a criminal proceeding, a court must also take into account the defendant’s constitutional right to an interpreter and article 38.30 of the Code of Criminal Procedure. Chapter 57 establishes qualifications for interpreters appointed in criminal cases under the authority of article 38.30. If the only person who is licensed to interpret in a particular language resides in a distant location, a court in a populous county would be required to appoint that person. On the other hand, if there is no interpreter licensed to interpret in a particular language, the appointment of an unlicensed person may be within a court’s inherent power. Finally, we conclude that chapter 57 does not alter preexisting law on the payment of appointed court interpreters. It does not require counties to pay for spoken-language interpreters in civil cases. Courts retain their authority under the Rules of Civil Procedure and the Civil Practice and Remedies Code to fix an interpreter’s compensation and to direct how an interpreter will be paid in civil cases. A county may not require a court to select an interpreter from an interpreter service under contract with the county, although a court may choose to select such an interpreter.

¹Letter from Honorable Florence Shapiro, Chair, Senate Committee on State Affairs, to Honorable John Cornyn, Texas Attorney General (May 29, 2002) (on file with Opinion Committee) [hereinafter Request Letter].

I. Legal Framework

A. Statutes Predating Government Code Chapter 57

Your questions relate not only to chapter 57 but also to numerous other provisions providing for the appointment and payment of court interpreters. Therefore, before turning to your questions, we briefly review the legal framework regarding court interpreters. First, we examine a number of provisions that predate chapter 57. Although your questions deal with chapter 57's application to spoken-language interpreters as opposed to interpreters for the deaf, we include in our review provisions relating to interpreters for the deaf as those provisions are relevant to our later analysis of chapter 57.

1. Appointment and Payment of Interpreters in Civil Cases

With regard to the appointment of interpreters in civil cases generally, Rule 183 of the Texas Rules of Civil Procedure provides that a court “may appoint an interpreter of its own selection and may fix the interpreter’s reasonable compensation.” TEX. R. CIV. P. 183. Rule 183 is not specific as to the type of interpreter and authorizes courts to appoint both spoken-language interpreters and interpreters for the deaf. This rule is generally applicable in civil cases, including civil matters in justice court. *See* TEX. R. CIV. P. 523 (“All rules governing the district and county courts shall also govern the justice courts, insofar as they can be applied, except where otherwise specifically provided by law or these rules.”).

With respect to payment, Rule 183 further provides that an interpreter’s “compensation shall be paid out of funds provided by law or by one or more of the parties as the court may direct, and may be taxed ultimately as costs, in the discretion of the court.” TEX. R. CIV. P. 183. In addition, section 31.007 of the Civil Practice and Remedies Code authorizes the “judge of any court” to include interpreter costs in any order or judgment. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 31.007(b)(3) (Vernon 1997); *see also* TEX. R. CIV. P. 559 (In justice court, “[t]he successful party in the suit shall recover his costs, except in cases where it is otherwise expressly provided.”). Finally, some statutes expressly provide for the payment of court interpreters as costs in specific matters, such as certain mental-health and probate cases.²

Subchapter A of chapter 21 of the Civil Practice and Remedies Code requires the appointment of interpreters for the deaf in civil cases, *see* TEX. CIV. PRAC. & REM. CODE ANN. § 21.002(a) (Vernon 1997) (“In a civil case or in a deposition, a deaf person who is a party or witness is entitled to have the proceedings interpreted by a court-appointed interpreter.”), and establishes

²*See* TEX. HEALTH & SAFETY CODE ANN. § 571.017(a) (Vernon 1992) (“The court shall order the payment of reasonable compensation to attorneys, physicians, language interpreters, sign interpreters, and masters appointed under this subtitle.”), (b) (“The compensation paid shall be taxed as costs in the case.”); TEX. PROB. CODE ANN. § 665A (Vernon Supp. 2002) (“The court shall order the payment of a fee set by the court as compensation to the attorneys, mental health professionals, and interpreters appointed under Section 646 or 687 of this code, as applicable, to be taxed as costs in the case.”).

qualifications for interpreters for the deaf, *see id.* § 21.003 (to be eligible for appointment, an interpreter must hold “a current Reverse Skills Certificate, Comprehensive Skills Certificate, Master’s Comprehensive Skills Certificate, or Legal Skills Certificate issued by the National Registry of Interpreters for the Deaf or a current Level III, IV, or V Certificate issued by the Board for Evaluation of Interpreters”). In contrast to Rule 183, subchapter A also provides for the payment of interpreters with county funds. *See id.* § 21.006(a) (“The interpreter shall be paid a reasonable fee determined by the court after considering the recommended fees of the Texas Commission for the Deaf and Hard of Hearing.”), (c) (“The interpreter’s fee and expenses shall be paid from the general fund of the county in which the case was brought.”).

No statute predating chapter 57 of the Government Code requires the appointment of spoken-language interpreters in civil cases or addresses their qualifications.

2. Appointment of Interpreters in Criminal Matters

The United States and Texas Constitutions provide defendants in criminal cases with the right to confront witnesses against them. *See* U.S. CONST. amend. VI; TEX. CONST. art. I, § 10. That right includes the right to have trial proceedings interpreted to a defendant in a language he or she can understand. *See Baltierra v. State*, 586 S.W.2d 553, 558 (Tex. Crim. App. 1979).

Articles 38.30 and 38.31 of the Code of Criminal Procedure provide for the appointment of interpreters in criminal cases. *See* TEX. CODE CRIM. PROC. ANN. arts. 38.30 (Vernon Supp. 2002) (spoken-language interpreters), 38.31 (interpreters for the deaf). Article 38.30 provides for the appointment of spoken-language interpreters:

When a motion for appointment of an interpreter is filed by any party or on motion of the court, in any criminal proceeding, it is determined that a person charged or a witness does not understand and speak the English language, an interpreter must be sworn to interpret for him.

Id. art. 38.30(a). Article 38.30 has been construed in light of a defendant’s constitutional right to an interpreter. *See Baltierra*, 586 S.W.2d at 558. Thus, although article 38.30(a) requires a party to file a motion for appointment of an interpreter, “[t]he onus is upon the trial court to inquire whether the accused’s rights would be safeguarded in the absence of an interpreter when the ability of the defendant to speak and understand English is raised to some extent.” *Cantu v. State*, 993 S.W.2d 712, 721-22 (Tex. App.—San Antonio 1999, pet. ref’d) (citing *Baltierra*, 546 S.W.2d at 558-59 n.9); *see also Vasquez v. State*, 819 S.W.2d 932, 938 (Tex. App.—Corpus Christi 1991, pet. ref’d). A defendant waives his right to an interpreter, however, when he does not object or file a motion for an interpreter, unless the trial court is otherwise aware that he needs one. When a defendant fails to object or to file a motion at the trial-court level, a reviewing court will examine the record on appeal to determine whether the trial court should have inquired into the matter on its own. *See, e.g., Cantu*, 993 S.W.2d at 721-22 (reviewing record to evaluate defendant’s claim that his plea was not voluntary or knowing based on a lack of an interpreter and determining that claim negated by the

record); *Vasquez*, 819 S.W.2d at 938 (“In the absence of facts to show that appellant could not understand English, we find no error. . .”). If a defendant moves for the appointment of an interpreter, it is within the trial court’s discretion to determine whether the defendant requires an interpreter. *See Martins v. State*, 52 S.W.3d 459, 473 (Tex. App.–Corpus Christi 2001, no pet.) (“mere fact that a defendant may better express himself in Spanish than English does not require that the trial court appoint an interpreter even where it has been requested”); *see also* Tex. Att’y Gen. Op. No. JM-113 (1983) (concluding that a court has discretion in deciding whether to appoint a language interpreter for a non-English speaking defendant, but has no discretion in deciding whether to appoint an interpreter for the deaf).

Article 38.30 provides for the payment of interpreters with county funds. *See* TEX. CODE CRIM. PROC. ANN. art. 38.30(b)-(c) (Vernon Supp. 2002); *see also* Tex. Att’y Gen. Op. No. DM-245 (1993) at 4 (“Article 38.30 of the Code of Criminal Procedure requires interpreters in criminal cases to be paid from county funds. A judge of a county court-at-law may not assess interpreters’ fees either as costs or require payment as a condition of probation.”).

Article 38.31 requires the appointment of interpreters for the deaf:

If the court is notified by a party that the defendant is deaf and will be present at an arraignment, hearing, examining trial, or trial, or that a witness is deaf and will be called at a hearing, examining trial, or trial, the court shall appoint a *qualified interpreter* to interpret the proceedings in any language that the deaf person can understand, including but not limited to sign language.

TEX. CODE CRIM. PROC. ANN. art. 38.31(a) (Vernon Supp. 2002) (emphasis added). Article 38.31 uses the same interpreter qualifications prescribed in chapter 21, subchapter A of the Civil Practice and Remedies Code, and has similar payment provisions. *See id.* art. 38.31(f), (g)(2); TEX. CIV. PRAC. & REM. CODE ANN. §§ 21.003, .006 (Vernon 1997). Article 38.31 is silent with respect to how interpreters are paid, but a 1983 opinion of this office concludes that their fees and expenses are paid from the county general fund. *See* Tex. Att’y Gen. Op. No. JM-113 (1983).

3. Provisions Authorizing the Employment of Court Interpreters

The provisions discussed above govern the appointment and payment of court interpreters in particular cases. A separate category of statutes authorizes certain courts to employ interpreters on a full-time or part-time basis. Chapter 21, subchapter B of the Civil Practice and Remedies Code provides for the appointment of full-time or part-time Spanish language interpreters in district courts in certain counties. *See* TEX. CIV. PRAC. & REM. CODE ANN. §§ 21.021-.023 (Vernon 1997). Subchapter C provides for the appointment of “official interpreters” in county courts at law. *See id.* §§ 21.031-.032. In addition, local laws provide for the appointment of court interpreters in specific

courts.³ Unlike subchapter A, which establishes a party's "entitlement" to an interpreter for the deaf, these provisions do not address when interpreters must be used in particular cases.

Section 152.903 of the Local Government Code governs the compensation of interpreters employed by district courts: "[T]he commissioners court of a county may set the compensation of interpreters employed by the district courts in the county." TEX. LOC. GOV'T CODE ANN. § 152.903(a) (Vernon 1999); *see also id.* § 152.903(b) ("The salary of an interpreter shall be paid on warrants issued by the district court or the clerk of the court in favor of the interpreter."). Section 152.903 also provides that the salary of a Spanish language interpreter appointed under Civil Practice and Remedies Code chapter 21, subchapter B "is payable in equal monthly payments or by any other distribution at the option of the county." *See id.* § 152.903(c). The compensation of interpreters employed by other county courts is governed by subchapter B of chapter 152, which governs the setting of county employee salaries generally. *See id.* Revisor's Note; *see also id.* § 152.011 ("The commissioners court of a county shall set the amount of the compensation, office and travel expenses, and all other allowances for county and precinct officers and employees who are paid wholly from county funds."). Section 152.903 "does not apply to interpreters for deaf or deaf-mute persons appointed under Subchapter A, Chapter 21, Civil Practice and Remedies Code, or Article 38.31, Code of Criminal Procedure." *Id.* § 152.903(d).

Civil Practice and Remedies Code chapter 21, subchapter D provides for the collection of an interpreter fee as a court cost in civil cases. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 21.051 (Vernon 1997) ("The clerk of the court shall collect an interpreter fee of \$3 as a court cost in each civil case in which an interpreter is used. The clerk shall collect the fee in the manner provided for other court costs and shall deposit the fee to the credit of the general fund of the county."). Presumably, this fee is used by counties to defray the salaries of interpreters who are employed by the courts and paid by the county. And presumably, this fee is not collected in cases involving interpreters who are appointed by a court to interpret on a one-time basis and who are paid by the parties.

B. Government Code Chapter 57

Now we turn to chapter 57 of the Government Code, the new law that is the focus of your query. It generally requires the appointment of a certified or licensed court interpreter, *see* TEX. GOV'T CODE ANN. § 57.002 (Vernon Supp. 2002), and provides for certification and licensing. It does not address the payment of interpreters.

³*See, e.g.,* TEX. GOV'T CODE ANN. §§ 24.207(c) (Vernon 1988) ("The judge [of the 105th Judicial District], with the approval of the commissioners court, may appoint an official interpreter of the court in Nueces County who serves at the will of the judge."), 25.1102(g) (Vernon Supp. 2002) ("The official interpreter of the district courts of Hidalgo County serves as official interpreter of each county court at law. If the official interpreter is not available, the judge of a county court at law may appoint a temporary interpreter. The temporary interpreter shall be compensated at an amount not to exceed \$5 a day paid out of the county's general fund on certificate of the judge. Subject to the commissioners court approval, the judge of a county court at law may appoint an official interpreter for the court as provided by law.").

For purposes of chapter 57, a “certified court interpreter” is an interpreter for the deaf “who is a qualified interpreter as defined in Article 38.31, Code of Criminal Procedure, or Section 21.003, Civil Practice and Remedies Code, or certified under Subchapter B by the Texas Commission for the Deaf and Hard of Hearing to interpret court proceedings for a hearing-impaired individual.” *Id.* § 57.001(1). A “licensed court interpreter” is a spoken-language interpreter who is “licensed under Subchapter C by the Texas Commission of Licensing and Regulation to interpret court proceedings for an individual who can hear but who does not comprehend English or communicate in English.” *Id.* § 57.001(5). Subchapter B provides for the certification of court interpreters to interpret court proceedings for hearing-impaired individuals by the Texas Commission for the Deaf and Hard of Hearing. *See id.* §§ 57.021-.025. And subchapter C provides for the Commission of Licensing and Regulation to license spoken-language court interpreters to interpret court proceedings for individuals who do not communicate in English. *See id.* §§ 57.041-.048. A person who was practicing as a court interpreter prior to chapter 57’s effective date may be licensed or certified without examination by submitting to the relevant commission the required fees and proof of the person’s experience. *See* Act of May 28, 2001, 77th Leg., R.S., ch. 1139, § 5, 2001 Tex. Gen. Laws 2537, 2541.

It is an offense under chapter 57 for an uncertified or unlicensed person to hold one’s self out as or to act as a certified or licensed court interpreter. *See* TEX. GOV’T CODE ANN. §§ 57.026 (Vernon Supp. 2002) (“A person may not advertise, represent to be, or act as a certified court interpreter unless the person holds an appropriate certificate under this subchapter.”), 57.049 (“A person may not advertise, represent to be, or act as a licensed court interpreter unless the person holds an appropriate license under this subchapter.”). A person who commits this offense is subject to administrative penalties and to prosecution for a Class A misdemeanor. *See id.* §§ 57.027(a) (“A person commits [a Class A misdemeanor] offense if the person violates this subchapter or a rule adopted under this subchapter.”), (b) (“A person who violates this subchapter or a rule adopted under this subchapter is subject to an administrative penalty assessed by the [Commission for the Deaf and Hard of Hearing].”), 57.050(a) (“A person commits [a Class A misdemeanor offense] if the person violates this subchapter or a rule adopted under this subchapter.”), (b) (“A person who violates this subchapter or a rule adopted under this subchapter is subject to an administrative penalty assessed by the [Commission of Licensing and Regulation] as provided by Subchapter F, Chapter 51, Occupations Code.”).

Significantly, section 57.002 requires a court to appoint a certified or licensed court interpreter upon the motion of a party or the request of a witness:

(a) A court shall appoint a certified court interpreter or a licensed court interpreter if a motion for the appointment of an interpreter is filed by a party or requested by a witness in a civil or criminal proceeding in the court.

Id. § 57.002(a). In addition, a court may, on its own motion, appoint a certified court interpreter or a licensed court interpreter. *Id.* § 57.002(b). Under subsection (c) of this provision, smaller counties have more flexibility with regard to the qualifications of spoken-language interpreters (but not with

regard to interpreters for the deaf): “In a county with a population of less than 50,000, a court may appoint a spoken language interpreter who is not a certified or licensed court interpreter and who: (1) is qualified by the court as an expert under the Texas Rules of Evidence; (2) is at least 18 years of age; and (3) is not a party to the proceeding.” *Id.* § 57.002(c).

Although section 57.002 clearly modifies the authority of a court to determine the qualifications of an interpreter, we do not construe section 57.002 to strip a court of its authority to determine whether a party or witness is able to communicate in English and requires an interpreter. Section 57.002(a) provides that “[a] court *shall* appoint a certified court interpreter or a licensed court interpreter if a motion for the appointment of an interpreter is filed by a party or requested by a witness.” *Id.* § 57.002(a) (emphasis added). The word “shall” generally imposes a mandatory duty, *see id.* § 311.016(c) (Vernon 1998) (Code Construction Act), but we must look at a statute as a whole to determine the nature of that duty. *See D.R. v. J.A.R.*, 894 S.W.2d 91, 95 (Tex. App.—Fort Worth 1995, writ denied) (noting that while the word “shall” is generally construed to be mandatory, “[t]here is no absolute test by which it may be determined whether a statutory provision is mandatory or directory. . . . In determining whether the Legislature intended the particular provision to be mandatory or merely directory, consideration should be given to the entire act, its nature and object, and the consequences that would follow from each construction.”). We construe section 57.002(a) to impose on a court the mandatory duty to appoint a *certified* or *licensed* interpreter when the court appoints an interpreter. *See* TEX. GOV’T CODE ANN. § 57.002(a) (Vernon Supp. 2002) (“[a] court *shall* appoint a *certified* court interpreter or a *licensed* court interpreter”) (emphasis added). However, we believe section 57.002(a)’s conditional clause – “if a *motion* for the appointment of an interpreter is filed by a party or *requested* by a witness,” *id.* § 57.002(a) (emphasis added) – indicates that the legislature intended for courts to have discretion to determine whether the party or witness requires an interpreter. *See D.R.*, 894 S.W.2d at 94-95 (in statute providing that “[i]f the court finds that a motion to modify under Section 14.081 . . . is filed frivolously or is designed to harass a party, the court shall tax attorney’s fees as costs against the offending party as provided by Section 11.18 of this code,” the word “shall” merely directs the trial court to award the attorney fees as costs under section 11.18 but does not make the awarding of attorney fees mandatory). Furthermore, it would not be reasonable to construe section 57.002 to require a court to grant every motion or request for an interpreter. For example, the legislature would not have intended to require courts to appoint interpreters when the witness or party clearly does not require one or has requested the appointment of an interpreter in bad faith. *See* TEX. GOV’T CODE ANN. § 311.021 (Vernon 1998) (in enacting a statute, it is presumed that “a just and reasonable result is intended” and “a result feasible of execution is intended”) (Code Construction Act).

II. Questions

Your questions deal with spoken-language interpreters as opposed to interpreters for the deaf. Thus, we do not consider whether the right to the appointment of an interpreter for the deaf under the Civil Practice and Remedies Code or the Code of Criminal Procedure is broader than the right to a

certified interpreter under chapter 57 of the Government Code.⁴ Nor do we address any issues raised by the interplay between Texas law on the appointment and payment of interpreters for the deaf and the Federal Americans with Disabilities Act, 42 U.S.C. §§ 12101-12213 (2000). *See* Tex. Att’y Gen. Op. No. DM-411 (1996) at 9 (concluding that to the extent interpreter services are required to make court mandated services available to deaf or hearing-impaired persons on a non-discriminatory basis as required by the Americans with Disabilities Act, the costs of such services may not be imposed on those persons by taxing them as court costs).

All of your questions appear to pertain to the appointment of interpreters in justice courts. Because you mention Dallas County specifically, we assume that you are not asking about courts in counties with populations of less than 50,000 that have more flexibility with respect to the appointment of spoken-language interpreters under chapter 57. *See* TEX. GOV’T CODE ANN. § 57.002(c) (Vernon Supp. 2002) (exception for less populous counties). Given your interest in how court interpreters will be paid, we also assume that you do not ask about interpreters who are employed by courts on a full- or part-time basis and whose salaries are paid with county funds under chapter 152 of the Local Government Code. *See* discussion *supra* pp. 4-5.

To the extent your questions require us to interpret statutes, we must attempt to give effect to the legislature’s intent. *See* TEX. GOV’T CODE ANN. §§ 311.021, .023 (Vernon 1998); *Mitchell Energy Corp. v. Ashworth*, 943 S.W.2d 436, 438 (Tex. 1997). To do so, we construe a statute according to its plain language. *See RepublicBank Dallas, N.A. v. Interkal, Inc.*, 691 S.W.2d 605, 607-08 (Tex. 1985); *Bouldin v. Bexar County Sheriff’s Civil Serv. Comm’n*, 12 S.W.3d 527, 529 (Tex. App.–San Antonio 1999, no pet.). Words and phrases that have acquired a technical or particular meaning, by legislative definition or otherwise, must be construed accordingly. *See* TEX. GOV’T CODE ANN. § 311.011(b) (Vernon 1998). Otherwise, words and phrases must be read in context and construed according to the rules of grammar and common usage. *Id.* § 311.011(a). Finally, when a statute is ambiguous, we may consider, among other things, the object sought to be attained, the circumstances under which a statute was enacted, legislative history, and the consequences of a particular construction. *See id.* § 311.023; *see also id.* § 311.021 (in enacting a statute, it is presumed that “a just and reasonable result is intended” and “a result feasible of execution is intended”).

⁴*Compare* TEX. CIV. PRAC. & REM. CODE ANN. § 21.002(a) (Vernon 1997) (“In a civil case or in a deposition, a deaf person who is a party or witness *is entitled* to have the proceedings interpreted by a court-appointed interpreter.”) (emphasis added) and TEX. CODE CRIM. PROC. ANN. art. 38.31(a) (Vernon Supp. 2002) (“If the court is notified by a party that the defendant is deaf and will be present at an arraignment, hearing, examining trial, or trial, or that a witness is deaf and will be called at a hearing, examining trial, or trial, the court *shall* appoint a qualified interpreter”) (emphasis added), *with* TEX. GOV’T CODE ANN. § 57.002(a) (Vernon Supp. 2002) (“A court shall appoint a certified court interpreter or a licensed court interpreter *if a motion for the appointment of an interpreter is filed by a party or requested by a witness* in a civil or criminal proceeding in the court.”) (emphasis added).

A. Appointment of Interpreter for Plea in a Misdemeanor Case

First, you ask a multi-part question about chapter 57's application when a defendant enters a plea in a misdemeanor case:

What is a "proceeding in the court"? If an individual who appears to enter a plea in a misdemeanor case in a justice court (most pleas in justice courts are made at the counter by having the defendant fill out a plea sheet) and who does not speak English asks for assistance from a clerk of the court, is this a proceeding in the court and would the court be required to appoint a licensed interpreter under the provisions of Ch. 57 Texas Government Code?

Request Letter, *supra* note 1, at 2 (question 1(a)). You also ask whether "a clerk of the court assisting such an individual [would] be in violation of this law if the clerk is not licensed or certified as an interpreter" and whether "the court [would] be in jeopardy of violating the law by allowing a clerk under these circumstances to assist an individual?" *Id.* (question 1(b)). Your query goes to several different issues – what constitutes a "criminal proceeding in the court"; when chapter 57's appointment and criminal provisions apply; what constitutes a motion for the appointment of an interpreter; and the relationship between chapter 57's requirements and article 38.30 of the Code of Criminal Procedure.

A defendant's plea in a criminal misdemeanor case is a step in a "criminal proceeding in the court" subject to chapter 57. Section 57.002(a) provides that "[a] court shall appoint a certified court interpreter or a licensed court interpreter if a motion for the appointment of an interpreter is filed by a party or requested by a witness in a civil or *criminal proceeding in the court.*" TEX. GOV'T CODE ANN. § 57.002(a) (Vernon Supp. 2002) (emphasis added). A misdemeanor action in justice court is a criminal proceeding. *See* TEX. CONST. art. V, § 19 ("Justice of the peace courts shall have original jurisdiction in *criminal matters of misdemeanor cases* punishable by fine only, exclusive jurisdiction in civil matters where the amount in controversy is two hundred dollars or less, and such other jurisdiction as may be provided by law.") (emphasis added). We construe the language "in the court" not to require that the proceeding occur in the courtroom but rather that the particular proceeding be before the court to which the motion or request for appointment of an interpreter is made. In Attorney General Opinion JC-0579 (2002), this office concluded that chapter 57 requires the appointment of interpreters in grand jury proceedings, proceedings that take place outside a courtroom, *see* TEX. CODE CRIM. PROC. ANN. arts. 20.01 (Vernon 1997) (grand jury room), 20.011 (Vernon Supp. 2002) (limiting who may attend grand jury proceedings in grand jury room), but that are subject to a court's jurisdiction, *see, e.g., id.* arts. 19.07, 19.22, 19.26 (Vernon Supp. 2002), 19.35 (Vernon 1997), 20.06, 20.21-.22 (Vernon Supp. 2002). In light of the statute's remedial purpose, we adopted a broad interpretation of the phrase "criminal proceeding" to include "all possible steps in an action from its commencement to its execution." Tex. Att'y Gen. Op. No. JC-0579 (2002) at 2-3. This broad reading would include the taking of a plea.

But our conclusion that a plea in a misdemeanor case is within the scope of section 57.002(a) does not mean that a court clerk who assists a defendant in filing a plea by conversing with the defendant in a language other than English necessarily violates chapter 57. Chapter 57 does not preclude a court clerk from conversing with a defendant in another language, provided that the clerk is not acting as a translator between the defendant and a third person. Under the relevant criminal provision, section 57.049, a person may not “advertise, represent to be, or act as a licensed court interpreter unless the person holds an appropriate license under this subchapter.” TEX. GOV’T CODE ANN. § 57.049 (Vernon Supp. 2002). Chapter 57 defines the term “licensed court interpreter,” *see id.* § 57.001(5), but it does not define what it means to act as a licensed court interpreter. Under the Code Construction Act, “[w]ords and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly.” *Id.* § 311.011(a) (Vernon 1998). “Court interpreter,” or “interpreter,” is a technical legal term that refers to a person “sworn at a trial to accurately translate the testimony of a witness who is deaf or who speaks a foreign language.” BLACK’S LAW DICTIONARY 824 (7th ed. 1999). The duties of a court interpreter are also spelled out by statutes requiring interpreters for the deaf to take an oath that they will make a true translation to the deaf person of the proceedings and repeat the deaf person’s answers to questions to counsel, court, and jury using the interpreter’s “best skill and judgment.” TEX. CIV. PRAC. & REM. CODE ANN. § 21.005(a) (Vernon 1997); TEX. CODE CRIM. PROC. ANN. art. 38.31(e) (Vernon Supp. 2002); *see also* TEX. R. EVID. 604 (“An interpreter is subject to the provisions of these rules relating to qualification as an expert and the administration of an oath or affirmation to make a true translation.”). Thus, to “act as a court interpreter” means to translate proceedings for a party or witness or to translate a party’s or witness’s testimony to others in the proceedings, serving as a conduit of information between the party or witness and other parties to the proceedings. This is the conduct for which chapter 57 requires a person to have a license or certificate. Section 57.049 does not apply when a court clerk merely converses with a defendant in another language, even if the clerk assists the defendant, provided that the clerk is not acting as a translator between the defendant and the court or another third person.

You also ask what constitutes a motion under section 57.002 in the context of a misdemeanor action in justice court. According to the plain language of section 57.002, the defendant, who is a party to the proceeding, must move for the appointment of an interpreter in order for chapter 57’s appointment requirement to apply. *See* TEX. GOV’T CODE ANN. § 57.002(a) (Vernon Supp. 2002) (requiring the appointment of an interpreter “if a *motion* for the appointment of an interpreter is *filed* by a *party* or requested by a witness”) (emphasis added). In criminal proceedings in justice court, “[a]ll pleading of the defendant . . . may be oral or in writing as the court may direct.” TEX. CODE CRIM. PROC. ANN. art. 45.021 (Vernon Supp. 2002). Thus, whether or not a defendant in justice court “who does not speak English” and who “asks for assistance from a clerk of the court” to enter a plea has moved for appointment of an interpreter will depend upon the circumstances and, in the first instance, is a matter for the court taking the plea. And, as we have noted, the court may grant or deny a motion for an interpreter based on the court’s assessment of the defendant’s ability to communicate in English. *See* discussion *supra* p. 7.

In the situation you describe, a court must also consider the requirements of article 38.30 of Code of the Criminal Procedure and the defendant’s constitutional rights. As provisions providing

for the appointment of interpreters fall under the general rubric of evidentiary rules, *see* TEX. CODE CRIM. PROC. ANN. ch. 38 (Vernon Supp. 2002) (entitled “Evidence in Criminal Actions”); TEX. R. EVID. 604 (“An interpreter is subject to the provisions of these rules relating to qualification as an expert and the administration of an oath or affirmation to make a true translation.”), article 38.30 applies in criminal proceedings in justice court, *see* TEX. CODE CRIM. PROC. ANN. art. 45.011 (Vernon Supp. 2002) (“The rules of evidence that govern the trials of criminal actions in the district court apply to a criminal proceeding in a justice or municipal court.”).

Article 38.30 requires the appointment of a spoken-language interpreter when “it is determined that a person charged or a witness does not understand and speak the English language.” *Id.* art. 38.30(a). In addition, given a defendant’s constitutional right to confront witnesses and understand the proceedings, a court must appoint an interpreter if the court is aware that the defendant does not speak English and cannot understand the proceedings, unless the defendant waives that right. *See* cases cited *supra* pp. 3-4. A defendant who enters a guilty plea waives the right to confront witnesses. Thus, when taking a guilty plea, the court must consider whether the defendant requires an interpreter in order to intelligently and voluntarily waive his right to confrontation. *See Briones v. State*, 595 S.W.2d 546, 547-48 (Tex. Crim. App. 1980) (“The question involved in the case at bar is not whether the failure to appoint an interpreter denied the appellant’s right to confrontation. Rather the question is whether the failure to appoint an interpreter prevented the appellant from intelligently and voluntarily waiving his right to confrontation and entering a plea of *nolo contendere*.”). Whether a defendant requires the assistance of an interpreter to enter a guilty plea is a question of fact for the trial court in the first instance.

Finally, your first question raises the relationship between article 38.30 of the Code of Criminal Procedure and chapter 57 of the Government Code. When a court appoints a spoken-language interpreter in a criminal case, we conclude that chapter 57 establishes the requisite interpreter qualifications. Therefore, the interpreter must be licensed under chapter 57 unless the section 57.002(c) exception applies.

Unlike article 38.31, which establishes qualifications for interpreters for the deaf, article 38.30 does not establish qualifications for spoken-language interpreters. *Compare* TEX. CODE CRIM. PROC. ANN. art. 38.30(a) (Vernon Supp. 2002) (“Any person may be subpoenaed, attached or recognized in any criminal action or proceeding, to appear before the proper judge or court to act as interpreter therein, under the same rules and penalties as are provided for witnesses.”), *with id.* art. 38.31(g)(2) (specific qualifications for interpreters for the deaf). Prior to the enactment of chapter 57, a spoken-language interpreter appointed in a criminal case was “not required to have specific qualifications or training.” *Kan v. State*, 4 S.W.3d 38, 41 (Tex. App.—San Antonio 1999, pet. ref’d) (“The competency of an individual to act as an interpreter is a question for the trial court, and absent a showing of abuse of discretion, that determination will not be disturbed on appeal.”).

While chapter 57 does not expressly state that spoken-language interpreters appointed under article 38.30 must be licensed interpreters, we construe chapter 57 to govern the qualifications of interpreters appointed under article 38.30 because the legislature intended chapter 57’s licensing requirements to apply in all civil and criminal proceedings. Section 57.049, which provides that “[a]

person may not advertise, represent to be, or act as a licensed court interpreter unless the person holds an appropriate license under this subchapter,” TEX. GOV’T CODE ANN. § 57.049 (Vernon Supp. 2002); *see also id.* § 57.050, indicates that the legislature intended chapter 57’s licensing requirements to apply to anyone who acts as a spoken-language court interpreter in a civil or criminal proceeding in Texas. This intent is also evident in the special provision for the certification or licensing of persons acting as court interpreters prior to chapter 57’s effective date. *See* Act of May 28, 2001, 77th Leg., R.S., ch. 1139, § 5, 2001 Tex. Gen. Laws 2537, 2541. Furthermore, chapter 57’s qualifications for interpreters for the deaf are consistent with the qualifications for interpreters for the deaf appointed under chapter 21 of the Civil Practice and Remedies Code and article 38.31 of the Code of Criminal Procedure. *See* TEX. GOV’T CODE ANN. § 57.001(1) (Vernon Supp. 2002) (A “[c]ertified court interpreter” is an interpreter for the deaf “who is a qualified interpreter as defined in Article 38.31, Code of Criminal Procedure, or Section 21.003, Civil Practice and Remedies Code, or certified under Subchapter B by the Texas Commission for the Deaf and Hard of Hearing to interpret court proceedings for a hearing-impaired individual.”). The legislative history of chapter 57 indicates that the legislature intended to standardize qualifications for both interpreters for the deaf and spoken-language interpreters throughout the Texas judicial system. *See* HOUSE COMM. ON JUDICIAL AFFAIRS, BILL ANALYSIS, Tex. H.B. 2735, 77th Leg., R.S. (2001) (“House Bill 2735 provides a program for certification of court interpreters to aid non-English speaking and hearing-impaired individuals.”); SENATE COMM. ON JURISPRUDENCE, BILL ANALYSIS, Tex. H.B. 2735, 77th Leg., R.S. (2001) (“The Texas judicial system does not have a statewide standard for interpreters who assist these participants. H.B. 2735 sets forth provisions for the establishment and administration of programs for the certification of court interpreters to aid non-English speaking and hearing-impaired individuals within the judicial system.”).

B. Appointment of Interpreter in Certain Juvenile Proceedings

You also ask about the appointment of interpreters for parents in proceedings involving juveniles under article 45.0215 and article 45.054 of the Code of Criminal Procedure. Under article 45.0215, a justice of the peace must issue a summons to compel a juvenile defendant’s parent, guardian, or managing conservator to be present during the taking of the defendant’s plea and other proceedings. *See* TEX. CODE CRIM. PROC. ANN. art. 45.0215(a)(2) (Vernon Supp. 2002). If the court is not able to secure the appearance of the defendant’s parent, guardian, or managing conservator, “the court may . . . take the defendant’s plea and proceed against the defendant.” *Id.* art. 45.0215(b). Article 45.054 authorizes a justice court that makes a finding that an individual has failed to attend school under section 25.094 of the Education Code to enter an order that imposes certain conditions on the individual’s parents and to require the parents’ attendance at a hearing. *See id.* § 45.054(a)(3) (authorizing order that individual and parent attend class), (b) (providing that order under subsection (a)(3) enforceable by contempt), (c) (authorizing court to summon parent to hearing), (d) (parent who fails to attend hearing after receiving notice commits class C misdemeanor). In light of these two provisions you ask:

If the parent or guardian, who may or may not be a witness but is required to be in attendance and subject to sanctions, cannot speak

English must the court appoint a licensed interpreter before proceeding with the respondent juvenile's hearing?

Request Letter, *supra* note 1, at 2 (question 1(c)). Our answer to this question assumes that the parent cannot communicate in English and requires an interpreter.

Again, chapter 57 requires a justice court to appoint "a licensed court interpreter if a motion for the appointment of an interpreter is filed by a party or requested by a witness in a civil or criminal proceeding in the court." TEX. GOV'T CODE ANN. § 57.002(a) (Vernon Supp. 2002). A juvenile proceeding under chapter 45 of the Code of Criminal Procedure constitutes a criminal proceeding within the meaning of chapter 57. *See* Tex. Att'y Gen. Op. No. JC-0579 (2002) at 2-3.

A court must appoint a licensed interpreter for a parent who is a witness in a proceeding and who requests the appointment of a spoken-language interpreter. *See* TEX. GOV'T CODE ANN. § 57.002(a) (Vernon Supp. 2002). A court also must appoint a licensed interpreter for a parent under chapter 57 if the parent is a party to the proceeding and he or she files a motion for the appointment of a spoken-language interpreter. *See id.* Unless the court has specifically named the parent as a party, a parent does not appear to be a party to the proceedings about which you ask. Chapter 57 does not define the term "party." The term "party" is a technical legal term that refers to "[o]ne by or against whom a lawsuit is brought." BLACK'S LAW DICTIONARY 1144 (7th ed. 1999); *see also* TEX. GOV'T CODE ANN. § 311.011(b) (Vernon 1998) ("Words and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly."). This office construed the term "party" in section 21.002 of the Civil Practice and Remedies Code, which requires the appointment of an interpreter in a civil case for a party who is deaf, to include only a person who has been named as a party by the court or who is deemed a party by statute. *See* Tex. Att'y Gen. Op. No. DM-411 (1996) at 9 (concluding that "[a] custodial relative not included within [Family Code] section 51.02(10)'s list of parties who is not a witness to the proceedings is not entitled as a matter of law to the services of an interpreter" under section 21.002 of the Civil Practice and Remedies Code).

Unlike the Family Code's juvenile justice provisions, which expressly define the term "party" to include a juvenile's parent, *see* TEX. FAM. CODE ANN. § 51.02(10) (Vernon 2002), chapter 45 of the Code of Criminal Procedure does not define the term. And neither of the two provisions you ask about names a juvenile's parent as a party to the proceeding. However, while article 45.0215 merely requires that a court summon a parent to attend a proceeding involving his or her child, article 45.054 authorizes a court to impose conditions and sanctions against a parent. If a court contemplates imposing conditions or sanctions against a parent, then we believe the court should treat the parent as a witness or a party. As noted above, spoken-language interpreters appointed for parties or witnesses under article 38.30 of the Code of Criminal Procedure are paid with county funds. *See* TEX. CODE CRIM. PROC. ANN. art. 38.30(b) (Vernon Supp. 2002); *see also id.* art. 38.30(a) ("When a motion for appointment of an interpreter is filed by any party or on motion of the court, in any criminal proceeding, it is determined that a person charged or a witness does not understand and speak the English language, an interpreter must be sworn to interpret for him.") (emphasis added).

C. Appointment of Interpreter When there is No Person Licensed to Interpret in a Particular Language

In a related question, you ask what a court may do when a spoken-language interpreter in a particular language is not available or there is no individual licensed to interpret in that language:

What may a court do when a court is required to appoint a licensed interpreter and no licensed interpreter for the needed language exists in Texas? To what lengths must a court go to find and appoint a licensed interpreter? As an example, if the only licensed interpreter for a particular language lives in El Paso, would a court in Dallas be required under this law to appoint that interpreter and pay or require the parties to a civil suit to pay for the interpreter's costs? If no licensed interpreter for a particular language exists in Texas, could a court allow a non licensed individual to interpret? Or, would the individual interpreting be in violation of Chapter 57 and possibly be committing a Class A misdemeanor?

Request Letter, *supra* note 1, at 3 (question 3).

Chapter 57 of the Government Code, in requiring the appointment of a *licensed* interpreter, modifies a court's authority under Rule 183 of the Rules of Civil Procedure or article 38.30 of the Code of Criminal Procedure to select a spoken-language interpreter. Significantly, chapter 57 requires the appointment of a licensed interpreter, with only one exception. *See* TEX. GOV'T CODE ANN. § 57.002(a), (c) (Vernon Supp. 2002). That exception specifically permits the appointment of an unlicensed interpreter, but only in a county with a population of less than 50,000. *See id.* § 57.002(c). Thus, if the only person who is licensed to interpret in a particular language under Government Code chapter 57, subchapter C resides in a distant location, a court in a populous county would still be required to appoint that person. As discussed more extensively below, *see infra* Part II.F, a court in a civil case would direct payment of the interpreter under the Civil Practice and Remedies Code and the Rules of Civil Procedure or other applicable law.

On the other hand, if there is no interpreter licensed under subchapter C to interpret in a particular language, a court will have no option other than to appoint an interpreter who is not licensed. Indeed, such a course may be necessary in order to protect the rights of a party or witness to a proceeding and thus within a court's inherent power. *See* TEX. GOV'T CODE ANN. § 21.001 (Vernon Supp. 2002) (inherent power and duty of courts). We presume that an unlicensed person who acts as an interpreter pursuant to an appointment under the section 57.002(c) exception (and who does not hold him- or herself out as a licensed court interpreter) does not violate chapter 57, *see id.* § 57.049 ("A person may not advertise, represent to be, or act as a *licensed* court interpreter unless the person holds an appropriate license under this subchapter.") (emphasis added), even though this exception is not expressly referenced in section 57.049, *see id.* By analogy, we believe that if a court makes a finding that there is no interpreter licensed under subchapter C to interpret in a particular language and if the person who is appointed to interpret in these circumstances does not

represent him- or herself to be a licensed interpreter, that person would not violate section 57.049. *See id.*

D. What Constitutes a Motion or Request for an Interpreter in a Civil Proceeding

You ask whether, in a civil proceeding, a party's or witness's statement in court that "I don't speak English" "constitute[s] a motion or request for purposes of Ch. 57.002(a) Texas Government Code?" Request Letter, *supra* note 1, at 2 (question 2(b)). While we can provide some guidance with respect to this question, whether a witness has requested the appointment of an interpreter or a party has filed a motion for the appointment of an interpreter is ultimately a question that must be resolved by the court.

In the context of a civil action, chapter 57 appears to require that a party file a written motion for the appointment of an interpreter. Again, section 57.002 requires the appointment of a licensed court interpreter "if a *motion* for the appointment of an interpreter is *filed* by a party." TEX. GOV'T CODE ANN. § 57.002(a) (Vernon Supp. 2002) (emphasis added). In using the terms "motion" and "filed," section 57.002 appears to contemplate written motions. In justice court, however, "pleadings shall be oral, except where otherwise specially provided." TEX. R. CIV. P. 525. Furthermore, nothing precludes a court from granting a party's oral motion or request for appointment of an interpreter, or from appointing an interpreter on its own motion. *See* TEX. GOV'T CODE ANN. § 57.002(b) (Vernon Supp. 2002) ("A court may, on its own motion, appoint . . . a licensed court interpreter."); *see also* TEX. R. CIV. P. 183 (authorizing a court to appoint an interpreter).

A witness may request the appointment of an interpreter in an oral statement. With respect to witnesses, section 57.002's appointment requirement is triggered "if . . . requested by a witness." TEX. GOV'T CODE ANN. § 57.002(a) (Vernon Supp. 2002). In contrast to a "motion," which is "filed" by a party, *see id.*, the term "request" does not appear to specify a written pleading. Whether a witness's statement in court that "I don't speak English" constitutes a request for the appointment of an interpreter will depend upon the circumstances and must be determined by the trial court in the first instance.

In either case, the court may grant or deny a motion or request for the appointment of an interpreter based on the court's assessment of the party's or witness's ability to communicate in English. *See discussion supra* p. 7.

E. Appointment of Interpreter Requested by Parties in a Civil Case

With respect to civil proceedings, you also ask whether a court may "appoint a licensed interpreter who the parties . . . have agreed upon and who [the parties] have made arrangements for the payment of" when the parties "submit the interpreter's name to the court for appointment of the interpreter by the court." Request Letter, *supra* note 1, at 3 (question 2(f)).

A court may appoint a licensed interpreter who has been agreed upon and requested by the parties in a civil case and whom the parties have arranged to pay. Rule 183 of the Rules of Civil

Procedure authorizes a court to appoint an interpreter of its own selection and to direct payment of the interpreter. Section 57.002 of the Government Code modifies that authority by requiring a court to appoint a licensed interpreter. Neither the statute nor the rule preclude a court from choosing to appoint a licensed interpreter requested by the parties whom the parties have arranged to pay.

F. Payment of Interpreters

Finally, we address your questions about payment of interpreters under chapter 57. You ask several general questions about payment of spoken-language interpreters in civil proceedings:

In civil proceedings, when “a motion for the appointment of an interpreter is filed by a party or requested by a witness” may the court require the movant or the requesting party to pay an amount to the court as security for the cost of the interpreter which the court will appoint? Does it make a difference if the movant or the requesting party is a defendant or witness for the defendant or a plaintiff or witness for the plaintiff?

If a defendant movant or witness for the defendant who requests an interpreter in a civil matter declares an inability to pay the costs, is the County responsible for the costs of an interpreter? Or may the court require the plaintiff to pay for an interpreter’s services as costs of court and leave it to the plaintiff to collect from the defendant should the plaintiff prevail?

If a plaintiff movant or witness for plaintiff who requests an interpreter in a civil matter declares an inability to pay the costs, is the County responsible for the costs of an interpreter?

Request Letter, *supra* note 1, at 2 (question 2(c)-(e)). As noted above, we assume you intend to ask about interpreters appointed to serve in particular cases and not interpreters who are employed by the county and paid by the county under chapter 152 of the Local Government Code.

Chapter 57 of the Government Code modifies the law with respect to when an interpreter must be appointed and prescribes interpreter qualifications, but it does not address the payment of interpreters. The law in this area is unchanged. A court retains its authority under the Rules of Civil Procedure and the Civil Practice and Remedies Code to fix an interpreter’s compensation and to direct how an interpreter will be paid. Rule 183 of the Texas Rules of Civil Procedure provides that “[t]he compensation [of an interpreter] shall be paid out of funds provided by law or by one or more of the parties as the court may direct, and may be taxed ultimately as costs, in the discretion of the court.” TEX. R. CIV. P. 183. In addition, the Civil Practice and Remedies Code authorizes the “judge of any court” to “include in any order or judgment all costs, including . . . interpreters . . . and . . . such other costs and fees as may be permitted by these rules and state statutes.” TEX. CIV. PRAC. & REM. CODE ANN. § 31.007 (Vernon 1997). A special justice court rule provides that “[t]he

successful party in the suit shall recover his costs, except in cases where it is otherwise expressly provided.” TEX. R. CIV. P. 559.

Whether a county may ultimately be responsible for paying an interpreter’s fees will depend upon the nature of the civil action. As a general matter, counties are not responsible for paying spoken-language interpreters’ fees in civil actions. Chapter 57 does not expressly impose this obligation on counties, and the legislative history does not indicate that the legislature intended chapter 57 to have that effect. *See* FISCAL NOTE, Tex. H.B. 2735, 77th Leg., R.S. (2001) (“No significant fiscal implication to units of local government is anticipated.”). We note, however, that specific provisions that predate chapter 57 may require a county to pay interpreter fees as costs in certain kinds of actions in particular situations. *See, e.g.*, TEX. HEALTH & SAFETY CODE ANN. §§ 571.017 (Vernon 1992), .018 (Vernon Supp. 2002) (mental health proceedings); TEX. PROB. CODE ANN. § 665A (Vernon Supp. 2002) (“If after examining the proposed ward’s assets the court determines the proposed ward is unable to pay for services provided by an attorney, a mental health professional, or an interpreter appointed under Section 646 or 687 of this code, as applicable, the county is responsible for the cost of those services.”).

With respect to payment, you also ask a question about a specific situation. You explain that justice courts in Dallas County “have been instructed by the Dallas County Commissioners Court to use interpreters from the County’s contract vendor which provides language interpreters for the courts.” Request Letter, *supra* note 1, at 2. You also state that “[b]ecause of this contractual relationship with the County, this vendor will always look to the County for payment when its interpreters are requested.” *Id.* You ask, “[i]n light of the language contained in Rule 183, can a court be required by a commissioners court to only appoint interpreters under a contract between the county and an interpreter service?” *Id.* (question 2(a)). Again, we assume you do not intend to ask about the payment of interpreters who are court employees and whose salaries are paid by the county.

In short, we conclude that a commissioners court is not authorized to require a court to appoint interpreters from an interpreter service under contract with the county. A commissioners court’s authority is limited to exercising “such powers and jurisdiction over all county business” as is conferred by the constitution and statutes. TEX. CONST. art. V, § 18(b). The authority of the commissioners court to contract on behalf of the county is limited to that conferred either expressly or by necessary implication by the constitution and laws of this state. *See Jack v. State*, 694 S.W.2d 391, 397 (Tex. App.—San Antonio 1985, writ ref’d n.r.e.) (citing *Childress County v. State*, 92 S.W.2d 1011, 1016 (Tex. 1936); *Wilson v. County of Calhoun*, 489 S.W.2d 393, 397 (Tex. Civ. App.—Corpus Christi 1972, writ ref’d n.r.e.)). Again, chapter 57 of the Government Code does not address the payment of interpreters. Rule 183 of the Rules of Civil Procedure and article 38.30 of the Code of Criminal Procedure control.

In the civil context, Rule 183 of the Texas Rules of Civil Procedure expressly provides that a court may appoint an interpreter of its own selection. *See* TEX. R. CIV. P. 183 (“The court may appoint an interpreter of its own selection and may fix the interpreter’s reasonable compensation.”). No statute gives a commissioners court the authority to direct a court to appoint a specific interpreter or to otherwise limit a court’s discretion to appoint an interpreter of its own selection in civil cases

generally. We also note that Rule 183 does not, as a general matter, provide that a county will pay the costs of an interpreter. *See id.* (“The compensation shall be paid out of funds provided by law or by one or more of the parties as the court may direct, and may be taxed ultimately as costs, in the discretion of the court.”). *But see* statutes cited *supra* p. 17.

In the criminal context, article 38.30(a) of the Code of Criminal Procedure does not expressly state that a court may select a spoken-language interpreter of its own choosing, *see* TEX. CODE CRIM. PROC. ANN. art. 38.30(a) (Vernon Supp. 2002), but we conclude that it gives a court this authority. First, subsection (a)’s statement that “[a]ny person may be subpoenaed, attached or recognized in any criminal action or proceeding, to appear before the proper judge or court to act as interpreter therein,” *id.* (emphasis added), suggests that judges have the discretion to select interpreters. In addition, although subsection (b) of article 38.30 provides that interpreters will be paid from county general funds, it gives a commissioners court no authority with respect to the selection of interpreters. *See id.* art. 38.30(b). It also establishes that an interpreter shall be paid not less than \$15 nor more than \$100 a day “at the discretion of the judge presiding.” *Id.* Furthermore, subsection (c), which authorizes a commissioners court to set a payment schedule and to expend funds for the services of court interpreters in excess of the range established by subsection (b), does not authorize a commissioners court to select interpreters. Accordingly, we conclude that article 38.30 vests a court with the discretion to select an interpreter in a criminal case and requires a county to pay an interpreter selected by a court.

Finally, we note that neither Rule 183 nor article 38.30 precludes a court from selecting an interpreter from an interpreter service under contract with the county if the court chooses to do so. In either case, the appointment must comply with chapter 57 of the Government Code.

S U M M A R Y

Chapter 57 of the Government Code applies to a plea in a misdemeanor case in justice court. A court clerk who merely converses with a defendant in a language other than English does not “act as a licensed court interpreter” within the meaning of chapter 57. In either a civil or criminal proceeding, whether a party has filed a motion for or a witness has requested the appointment of an interpreter will depend upon the facts and is a question for the trial court in the first instance. The court may grant or deny such a motion or request. In a criminal proceeding, a court must also take into account the defendant’s constitutional right to an interpreter and article 38.30 of the Code of Criminal Procedure. Chapter 57 establishes qualifications for spoken-language interpreters appointed in criminal cases under the authority of article 38.30.

If the only person who is licensed to interpret in a particular language resides in a distant location, a court in a populous county would be required to appoint that person. On the other hand, if there is no interpreter licensed to interpret in a particular language, the appointment of an unlicensed person may be within a court’s inherent power.

Chapter 57 does not alter preexisting law on the payment of appointed court interpreters. It does not require counties to pay for spoken-language interpreters in civil cases. Courts retain their authority under the Rules of Civil Procedure and the Civil Practice and Remedies Code to fix an interpreter’s compensation and to direct how an interpreter will be paid in civil cases. A county may not require a court to select an interpreter from an interpreter service under contract with the county, although a court may choose to do so.

Yours very truly,

A handwritten signature in black ink, appearing to read "John Cornyn", written in a cursive style.

JOHN CORNYN
Attorney General of Texas

HOWARD G. BALDWIN, JR.
First Assistant Attorney General

NANCY FULLER
Deputy Attorney General - General Counsel

SUSAN DENMON GUSKY
Chair, Opinion Committee

Mary R. Crouter
Assistant Attorney General, Opinion Committee

Delarenta Lamar Ridge, Appellant v. The State of Texas, Appellee

No. 10-05-00277-CR, No. 10-05-00282-CR

COURT OF APPEALS OF TEXAS, TENTH DISTRICT, WACO

205 S.W.3d 591; 2006 Tex. App. LEXIS 7921

August 30, 2006, Opinion Delivered

August 30, 2006, Opinion Filed

NOTICE: **[**1]** PLEASE CONSULT THE TEXAS RULES OF APPELLATE PROCEDURE FOR CITATION OF UNPUBLISHED OPINIONS.

SUBSEQUENT HISTORY: Petition for discretionary review refused by *In re Ridge*, 2007 Tex. Crim. App. LEXIS 674 (Tex. Crim. App., May 23, 2007) Petition for discretionary review refused by *In re Ridge*, 2007 Tex. Crim. App. LEXIS 673 (Tex. Crim. App., May 23, 2007)

DISPOSITION: Affirmed.

COUNSEL: For Appellant/Relator: Dawn A. Moore, BOSWELL & MOORE, P.C., Denton, TX.

For Appellee/Respondent: Bruce Isaacks, DENTON COUNTY CRIMINAL DISTRICT ATTORNEY, Denton, TX.

JUDGES: Before Chief Justice Gray, Justice Vance and Justice Reyna. (Chief Justice Gray, concurring).

OPINION BY: FELIPE REYNA

OPINION

[*592] A jury convicted Delarenta Lamar Ridge of two charges of aggravated robbery. The jury assessed his punishment at twenty years' imprisonment for one charge and forty-five years' imprisonment for the other. Ridge contends in four points that: (1) the court erred by failing to appoint a licensed interpreter for the testimony of one of the complainants; (2) the court's failure to do so violated his right of confrontation under the *Sixth Amendment to the United States Constitution* and *article I, section 10 of the Texas Constitution* (two points); and (3) he was denied the right to counsel during the 30-day period following imposition of sentence. We will affirm.

Background

The State charged Ridge in separate indictments with the aggravated robberies of Abel Arriaga and Carlos Sosa. According to the testimony, Arriaga and Sosa were seated in a four-door pickup truck in a parking lot when Ridge and Dunte Daniels walked "past the truck a little **[**2]** bit." Arriaga testified that Ridge then came back and knocked on the front passenger's window where Arriaga was seated. Arriaga thought Ridge was going to ask a question, so he lowered the window about halfway. Ridge then pointed a black handgun at Arriaga and demanded his wallet. Arriaga told Ridge that he did not have a wallet. Ridge then pulled the trigger three times, but the handgun did not fire. Ridge pointed the handgun at the ground and tried to fire it. He finally succeeded. He then began to open Arriaga's door, pointing the handgun at Arriaga. Because the gunshot caused people to emerge from nearby apartments, Ridge and Daniels fled on foot to a friend's apartment.

[*593] Arriaga testified that Ridge is taller than Daniels. ¹ He unequivocally identified Ridge as the person who threatened him with the handgun. He did not notice Daniels again until they fled the area.

1 State's Exhibit Nos. 7 & 8 are photographs of Ridge and Daniels. The backgrounds of these photographs have markings indicating that Ridge is slightly more than 70 inches tall, while Daniels is only 60 inches tall.

[**3] Sosa was sitting in the right rear passenger's seat of the truck. ² He testified that he saw Ridge and Daniels on that date and that the taller of them threatened Arriaga with a handgun. However, he could not say whether Ridge or Daniels was the taller of the two. Thus, he could not identify Ridge in court as the person who threatened Arriaga. Sosa testified that the shorter of the two men was standing near his door. After the taller man fired the handgun at the ground then threatened Arriaga again, Sosa opened his door, apparently in an attempt to flee. At that point, the shorter man stuck something against Sosa's back. Sosa could not say for certain that the man held a gun to his back,

but Sosa thought it was a gun because it felt round and he "felt the iron" against his back. Sosa froze until the attackers fled.

2 Sosa testified through an interpreter. Although the record is unclear, it appears that the prosecutor arranged for this interpreter to appear and assist with Sosa's testimony.

Officers [**4] were directed to the apartment where Ridge and Daniels hid. They found them inside. After receiving the consent of the apartment owner, the officers searched the apartment and found a black handgun under a sofa cushion on the side where the owner testified Ridge had been sitting. Arriaga and Sosa viewed Ridge and Daniels that night and identified them as the robbers.

The police were unable to find any identifiable fingerprints on the handgun or the two shell casings taken from it. Arriaga testified that the handgun "looks like" the weapon Ridge threatened him with. Sosa told the police in a written statement given on the night of the robbery that Arriaga was threatened with a white handgun.³

3 Sosa's statement was taken by a Spanish-speaking officer and translated into English.

Ridge signed a written confession the next day, admitting that he was involved in the robbery. However, Ridge insisted in his confession that Daniels held the handgun and demanded Arriaga's wallet.

Licensed Interpreter

[**5] Ridge contends in his first point that the court erred by failing to appoint a licensed interpreter for Sosa's testimony.

The State responds that (1) Ridge failed to preserve this point for appellate review by failing to object; (2) no error is shown because the record is silent as to the interpreter's licensure status; (3) *section 57.002 of the Government Code*, which provides for the appointment of licensed interpreters in civil and criminal proceedings, does not apply unless a motion is filed for the appointment of an interpreter; and (4) assuming the court erroneously failed to appoint a licensed interpreter, Ridge was not harmed.

Article 38.30 of the Code of Criminal Procedure provides for the appointment of interpreters in criminal proceedings. The version of this statute applicable to Ridge's case provides in pertinent part:

When a motion for appointment of an interpreter is filed by any party or on motion of the court, in any criminal proceeding, it is determined that a person

charged or a witness does not understand and speak the English language, [*594] an interpreter must be sworn to interpret for him. Any [**6] person may be subpoenaed, attached or recognized in any criminal action or proceeding, to appear before the proper judge or court to act as interpreter therein, under the same rules and penalties as are provided for witnesses. In the event that the only available interpreter is not considered to possess adequate interpreting skills for the particular situation or the interpreter is not familiar with use of slang, the person charged or witness may be permitted by the court to nominate another person to act as intermediary between himself and the appointed interpreter during the proceedings.

Act of May 21, 1991, 72d Leg., R.S., ch. 700, § 1, 1991 Tex. Gen. Laws 2505, 2505 (amended 2005) (current version at *Tex. Code Crim. Proc. Ann. art. 38.30(a)* (Vernon Supp. 2006)) (hereinafter, "*Tex. Code Crim. Proc. Ann. art. 38.30(a)*").⁴

4 The primary aim of the 2005 amendments to *article 38.30* was to add *subsection (a-1)* governing "qualified telephone interpreters." See Act of May 26, 2005, 79th Leg., R.S., ch. 956, § 1, 2005 Tex. Gen. Laws 3225, 3225-26. The remaining amendments were primarily non-substantive. For example, *subsection (a)* was amended to remove gender-specific language. Id.

[**7] *Section 57.002 of the Government Code* applies to the appointment of interpreters in civil and criminal proceedings. *Section 57.002* provides in pertinent part:

(a) A court shall appoint a certified court interpreter or a licensed court interpreter if a motion for the appointment of an interpreter is filed by a party or requested by a witness in a civil or criminal proceeding in the court.

(b) A court may, on its own motion, appoint a certified court interpreter or a licensed court interpreter.

Tex. Gov't Code Ann. § 57.002(a), (b) (Vernon Supp. 2006).⁵

5 The version of *section 57.002(c)* applicable at the time of Ridge's trial applied to any county "with a population of less than 50,000." See Act of May 28, 2001, 77th Leg., R.S., ch. 1139, § 1, 2001 Tex. Gen. Laws 2537, 2538 (amended 2005) (current version at *Tex. Gov't Code Ann.*

§ 57.002(c) (Vernon Supp. 2006)). *Subsection (c)* permits the appointment of interpreters who are not licensed under certain circumstances. *Id.* The 2000 census found Denton County's population to be 432,976. *See* State & County QuickFacts, U. S. Census Bureau, <http://quickfacts.census.gov/qfd/states/48/48121.html> (last visited Aug. 24, 2006). Accordingly, we take judicial notice that the population of Denton County was more than 50,000 when Ridge committed these offenses and at the time of his trial. *See City of Waco v. Bittle*, 167 S.W.3d 20, 28 n.9 (Tex. App.A-Waco 2005, *pet. denied*). Thus, *subsection (c)* does not apply.

[**8] The Court of Criminal Appeals has held that a defendant's right to an interpreter under *article 38.30* must be implemented unless expressly waived if the trial judge is aware that the defendant has difficulty understanding the English language. *Garcia v. State*, 149 S.W.3d 135, 144-45 (Tex. Crim. App. 2004). Because *article 38.30* applies not only to defendants but also to witnesses who do not understand the English language, the First Court of Appeals has likewise concluded that the appointment of an interpreter for a witness must be implemented unless expressly waived if the trial judge is aware that the witness has difficulty understanding the English language. *Miller v. State*, 177 S.W.3d 1, 6 (Tex. App.-Houston [1st Dist.] 2004, *no pet.*).

The correctness of the State's preservation argument rests on whether the right to an interpreter under *article 38.30* necessarily includes the right to a licensed⁶ interpreter under *section 57.002*. [*595] Aside from a reference to the general preservation rule, the State cites only one case as direct support for its preservation argument. *See Tex. R. App. P. 33.1(a); Garcia v. State*, 887 S.W.2d 862 (Tex. Crim. App. 1994), [**9] *overruled in part on other grounds by Hammock v. State*, 46 S.W.3d 889, 893 (Tex. Crim. App. 2001).⁷ *Garcia II*⁸ stands for the proposition that an objection to the accuracy of an interpretation is insufficient to constitute an objection to the competence or qualifications of the interpreter.⁹ *See Garcia II*, 887 S.W.2d at 874-75. This is a correct statement of the law, but it does not answer the question presented, namely, whether an objection is even required.

6 *Section 57.002* refers to both "certified" and "licensed" interpreters. *See Tex. Gov't Code Ann. § 57.002(a)* (Vernon Supp. 2006). "'Certified court interpreter' means an individual who is a qualified interpreter as defined in *Article 38.31, Code of Criminal Procedure*, or *Section*

21.003, Civil Practice and Remedies Code, or certified under Subchapter B by the Department of Assistive and Rehabilitative Services to interpret court proceedings for a hearing-impaired individual." *Id. § 57.001(1)* (Vernon Supp. 2006). "'Licensed court interpreter' means an individual licensed under Subchapter C by the Texas Commission of Licensing and Regulation to interpret court proceedings for an individual who can hear but who does not comprehend English or communicate in English." *Id. § 57.001(5)* (Vernon Supp. 2006). Because Ridge's point concerns the appointment of a licensed interpreter, we refer hereinafter to only licensed interpreters unless otherwise indicated.

[**10]

7 In *Hammock*, the Court of Criminal Appeals "disavow[ed] any language in *Garcia* that requires an objection to the admission of evidence before a limiting instruction can be requested." *Hammock v. State*, 46 S.W.3d 889, 893 (Tex. Crim. App. 2001).

8 Because this appeal involves two *Garcia* decisions from the Court of Criminal Appeals, we refer to the 2004 decision (*149 S.W.3d 135*) as "*Garcia I*" and the 1994 decision (*887 S.W.2d 862*) as "*Garcia II*."

9 Ridge did object to the accuracy of a portion of the interpretation.

Ridge's failure to object will not defeat his claim if *section 57.002* requires a trial court to appoint a licensed interpreter whenever¹⁰ it appoints an interpreter under *article 38.30*. The Dallas Court of Appeals has held in an unpublished opinion that a trial court is not required to appoint a licensed interpreter under *section 57.002* unless a party files a motion for the appointment of an interpreter. *See Hernandez v. State*, No. 05-03-00107-CR, 2003 Tex. App. LEXIS 7322, at *14-15 (Tex. [**11] App.-Dallas Aug. 27, 2003, *no pet.*) (not designated for publication).

10 We note again that *section 57.002(c)* excuses a court in a county with a population of less than 50,000 from appointing a licensed interpreter under certain circumstances.

The court reached this conclusion from the language of *section 57.002*. *Subsection (a)* states in pertinent part that a "court shall appoint" a licensed interpreter "if a motion for the appointment of an interpreter is filed by a party or requested by a witness." *Tex. Gov't Code Ann. § 57.002(a)* (emphases added). Conversely, *subsection (b)* provides in pertinent part that a trial court "may, on its own motion, appoint" a licensed

interpreter. *Id.* § 57.002(b) (emphasis added). Because the defendant in *Hernandez* did not file a motion for an interpreter, the court concluded that *section 57.002* did not apply. See *Hernandez*, 2003 Tex. App. LEXIS 7322, at *15.

The El Paso Court of Appeals has concluded [**12] that, notwithstanding the language of *section 57.002*, a court-appointed "interpreter is not required to be an 'official' or 'certified' interpreter under the Code, but only to have sufficient skill in translating and to be familiar with the use of slang." *Menjivar v. State*, No. 08-02-00143-CR, 2003 Tex. App. LEXIS 1553, at *2-3 [**596] (Tex. App.-El Paso Feb. 20, 2003, no pet.) (not designated for publication) (citing *Tex. Code Crim. Proc. Ann. art. 38.30(a)*; *Tex. Gov't Code Ann. §§ 57.002, 57.021* (Vernon Supp. 2006); *Mendiola v. State*, 924 S.W.2d 157, 161 (Tex. App.-Corpus Christi 1995, pet. ref'd, untimely filed)). Apparently, the El Paso Court concluded that the general interpreter requirements found in *article 38.30(a)* control in criminal proceedings over the more specific requirements of *section 57.002*.

Other courts have held, consistent with caselaw existing before the enactment of *section 57.002* and before the Court of Criminal Appeals' decision in *Garcia I*, that questions regarding the competency or qualifications of an interpreter must be raised by trial objection or they are forfeited. [**13] See, e.g., *Mendoza v. State*, No. 13-03-00755-CR, 2005 Tex. App. LEXIS 8247, at *18 (Tex. App.-Corpus Christi Oct. 6, 2005, no pet.) (not designated for publication) (citing *Montoya v. State*, 811 S.W.2d 671, 673 (Tex. App.-Corpus Christi 1991, no pet.); *Escamilla v. State*, No. 08-03-00193-CR, 2005 Tex. App. LEXIS 4193, at *19 (Tex. App.-El Paso May 31, 2005, no pet.) (citing *Montoya*, 811 S.W.2d at 673).

Contrary to the decisions of the Dallas and El Paso Courts in *Hernandez* and *Menjivar*, the Attorney General has construed *section 57.002* to require the appointment of a licensed interpreter whenever a court appoints an interpreter under *article 38.30*. See Op. Tex. Att'y Gen. No. JC-0584 (2002). The Attorney General's opinion provides a thorough examination of these two statutes and others which relate to this issue. The following excerpts from the Attorney General's opinion set forth the conclusions of that office regarding the appropriate construction of *section 57.002*.

We construe *section 57.002(a)* to impose on a court the mandatory duty to appoint a certified or licensed interpreter when the court [**14] appoints an interpreter. Op. Tex. Att'y Gen. No. JC-0584 at 7.

When a court appoints a spoken-language interpreter in a criminal case, we conclude that chapter 57 establishes the requisite interpreter qualifications. Therefore, the interpreter must be licensed under chapter 57 unless the *section 57.002(c)* exception applies.

Op. Tex. Att'y Gen. No. JC-0584 at 11.

While chapter 57 does not expressly state that spoken-language interpreters appointed under *article 38.30* must be licensed interpreters, we construe chapter 57 to govern the qualifications of interpreters appointed under *article 38.30* because the legislature intended chapter 57's licensing requirements to apply in all civil and criminal proceedings.

Id.

We agree with the Attorney General's interpretation of the statute. It would be an absurd result to say that a trial court has a mandatory duty to appoint a licensed interpreter whenever an interpreter is requested but that the trial court has the discretion to appoint whomever it chooses if the court decides *sua sponte* to appoint an interpreter. See *Haley v. State*, 173 S.W.3d 510, 514 (Tex. Crim. App. 2005) ("We look solely to the statute's plain language for its meaning [**15] unless its text is ambiguous or the application of its plain language would lead to an absurd result that the Legislature could not have possibly intended."). This is particularly true given the various rights at stake when a defendant or witness who does not understand the English language appears in court. See *Garcia I*, 149 S.W.3d at 140-45.

[**597] We decline to follow the decisions of the El Paso and Corpus Christi Courts that complaints regarding the qualifications of an interpreter must be preserved by trial objection because those decisions fail to account for the Court of Criminal Appeals' decision in *Garcia I* and the application of *section 57.002* to criminal proceedings.

Therefore, we hold that a trial court has an independent duty to appoint a licensed interpreter if the court is made aware that a defendant or witness does not understand the English language, unless the defendant expressly waives the right to a licensed interpreter. *Id.* at 144-45; Op. Tex. Att'y Gen. No. JC-0584, at 11; see also *Tex. Code Crim. Proc. Ann. art. 38.30(a)*; *Tex. Gov't Code Ann. § 57.002(a)*, [**16] (b).

Here, the prosecutor made the court aware that Sosa did not understand English. Ridge did not expressly waive his right to a licensed interpreter. However, there is nothing in the record to support Ridge's

contention that the person who interpreted Sosa's testimony was not licensed.

Ridge argues that he should prevail because "[t]here is no evidence in the record supporting the conclusion that the interpreter who translated for Carlos Sosa at trial was a 'licensed interpreter.'" Appellant's Brief at 5. Nevertheless, we will not find error from a silent record. To do so would be to find error on the basis of speculation, which we cannot do. *Cf. Rayme v. State*, 178 S.W.3d 21, 29 (Tex. App.-Houston [1st Dist.] 2005, pet. ref'd) (ineffective assistance claim cannot be based on speculation); *Jones v. State*, 170 S.W.3d 772, 775 (Tex. App.-Waco 2005, pet. ref'd) (same).

A presumption of regularity attaches to the proceedings in the trial court and to the court's judgment. *See Light v. State*, 15 S.W.3d 104, 107 (Tex. Crim. App. 2000); *Downs v. State*, 137 S.W.3d 837, 840 (Tex. App.-Houston [1st Dist.] 2004, pet. ref'd); *Cochrane v. State*, 66 S.W.3d 415, 417 (Tex. App.-Tyler 2001, no pet.). An appellant bears the burden of overcoming this presumption.¹¹ *Marras v. State*, 741 S.W.2d 395, 407 (Tex. Crim. App. 1987); *Downs*, 137 S.W.3d at 840; *Cochrane*, 66 S.W.3d at 417. Here, Ridge has failed to sustain his burden of overcoming the presumption of regularity.

11 In this instance, the presumption of regularity could be overcome by the presentation of evidence regarding the interpreter's licensure status in a hearing on a motion for new trial. However, the better practice would be for the trial court to establish the interpreter's licensure status when the interpreter is sworn. Here, the record does not even reflect that the interpreter was sworn.

Accordingly, we overrule Ridge's first point.

Right of Confrontation

Ridge contends in his second and third points respectively that the court's failure to appoint a licensed [**18] interpreter violated his right of confrontation under the *Sixth Amendment to the United States Constitution* and *article I, section 10 of the Texas Constitution*. However, because Ridge has not established that the court failed to appoint a licensed interpreter, Ridge necessarily cannot establish that such failure violated his right of confrontation under either constitution. Thus, we overrule his second and third points.¹²

12 Ridge's second and third points could also be overruled because of his failure to object. *See Paredes v. State*, 129 S.W.3d 530, 535

(Tex. Crim. App. 2004); *Steels v. State*, 170 S.W.3d 765, 771 (Tex. App.-Waco 2005, no pet.); *Oveal v. State*, 164 S.W.3d 735, 739 n.2 (Tex. App.-Houston [14th Dist.] 2005, pet. ref'd).

[*598] Denial of Counsel

Ridge contends in his fourth point that he was denied his right to counsel during the 30-day period after sentencing. Thus, Ridge argues he did not have counsel to assist him in deciding whether [**19] to file a motion for new trial.

The court imposed sentence on May 4, 2005. Ridge mailed a letter to the trial court on May 24 advising: (1) he wanted to appeal; (2) he wanted trial counsel to withdraw and other counsel appointed for appeal; and (3) he intended to raise "blatant acts of ineffective assistance of counsel among numerous acts that my appeal will cover." Upon receipt of Ridge's letter, the trial court appointed appellate counsel on June 3.

When a motion for new trial is not filed, there exists a rebuttable presumption that the defendant was informed by counsel of the right to file a motion for new trial, the merits of filing a motion for new trial were discussed, and the defendant rejected this course of action. *See Oldham v. State*, 977 S.W.2d 354, 363 (Tex. Crim. App. 1998); *Hudson v. State*, 128 S.W.3d 367, 381 (Tex. App.-Texarkana 2004, no pet.); *Kane v. State*, 80 S.W.3d 693, 695 (Tex. App.-Fort Worth 2002, pet. ref'd); *accord Smith v. State*, 17 S.W.3d 660, 662-63 (Tex. Crim. App. 2000).

The facts in Ridge's case are very similar to the facts in *Smith*. *Cf. Smith*, 17 S.W.3d at 662-63. [**20] Ridge's *pro se* notice of appeal and his stated intent to pursue ineffective assistance of counsel claims on appeal are not sufficient to rebut the presumption that his trial counsel provided effective assistance during the 30 days after sentencing. *See id.* Accordingly, we overrule Ridge's fourth point.

We affirm the judgment.

FELIPE REYNA Justice

CONCUR BY: TOM GRAY

CONCUR

CONCURRING Opinion

Ridge appeals his convictions for aggravated robbery. *See Tex. Penal Code Ann. § 29.03(a)* (Vernon 2003). We should affirm for different reasons than

those in the majority's analysis. Because the Court does not do so, I concur in the judgment but not the opinion of the Court.

In Ridge's first three issues, he contends that the interpreter appointed by the trial court to interpret the testimony of one Spanish-speaking witness was not licensed in accordance with the Texas Government Code. See *TEX. GOV'T CODE ANN.* §§ 57.001(5), 57.002(a)-(b) (Vernon Supp. 2006); Act of May 28, 2001, 77th Leg., R.S., ch. 1139, § 1, sec. 57.002(c), 2001 Tex. Gen. Laws 2537, 2538 (amended 2005) (current version at *TEX. GOV'T CODE ANN.* § 57.002(c) [**21] (Vernon Supp. 2006)); *Tex. Gov't Code Ann.* §§ 57.041-57.051 (Vernon 2005). In Ridge's first issue, he contends that the Government Code requires the appointment of licensed interpreters. See *Tex. Gov't Code Ann.* § 57.002(a)-(b). In his second and third issues, he contends that the confrontation clauses of the United States and Texas Constitutions require the appointment of licensed interpreters. See *U.S. Const. amend. VI*; *Tex. Const. art. I, § 10*.

"As a prerequisite to presenting a complaint for appellate review, the record must show that . . . the complaint was made to the trial court by a timely request, objection, or motion" *Tex. R. App. P. 33.1(a)*. "Except for complaints involving systemic (or absolute) requirements, or rights that are waivable only . . . all other complaints, whether constitutional, statutory, or otherwise, are forfeited by failure to comply with *Rule 33.1(a)*." *Neal v. State*, 150 S.W.3d 169, 175 (*Tex. Crim. App.* 2004) (quoting *Mendez v. State*, 138 S.W.3d 334, 342 (*Tex. Crim. App.* 2004)).

[*599] [W]hen a trial judge is aware that the [**22] defendant has a problem understanding the English language, the defendant's right to have an interpreter translate the trial proceedings into a language which the defendant understands is a category-two *Marin* right. In these circumstances, the judge has an independent duty to implement this right in the absence of a knowing and voluntary waiver by the defendant.

Garcia v. State, 149 S.W.3d 135, 145 (*Tex. Crim. App.* 2004); see *Marin v. State*, 851 S.W.2d 275 (*Tex. Crim. App.* 1993). However, "a trial court is under no duty to question the interpreter to determine her qualifications; instead if a question regarding her qualifications arose, the Appellant should have objected and made a record." *Escamilla v. State*, No. 08-03-00193-CR, 2005 *Tex. App. LEXIS* 4193, at *19 (*Tex. App.-El Paso May*

31, 2005, no pet.); accord *Montoya v. State*, 811 S.W.2d 671, 673 (*Tex. App.-Corpus Christi* 1991, no pet.); *Castillo v. State*, 807 S.W.2d 8, 9 (*Tex. App.-Corpus Christi* 1991, pet. ref'd). An appellant forfeits a complaint concerning the qualification of an interpreter not presented to the trial court. *Mendoza* [**23] *v. State*, No. 13-03-755-CR, 2005 *Tex. App. LEXIS* 8247, at *18 (*Tex. App.-Corpus Christi Oct. 6, 2005, no pet.*) (mem. op.); accord *Montoya* at 673; *Castillo* at 9.

Ridge did not object to the qualifications of the interpreter. We should overrule Ridge's first, second, and third issues on that basis.¹

1 Moreover, the Government Code does not mandate the appointment of a licensed interpreter. The Government Code provides:

(a) A court shall appoint . . . a licensed court interpreter if a motion for the appointment of an interpreter is filed by a party or requested by a witness in a civil or criminal proceeding in the court.

(b) A court may, on its own motion, appoint . . . a licensed court interpreter.

Tex. Gov't Code Ann. § 57.002(a)-(b). At least in the absence of a party's motion or a request for an interpreter, *Section 57.002* does not mandate the appointment of a licensed interpreter. See *id.* § 57.002(b). "The interpreter is not required to be an 'official' or 'certified' interpreter under the Code, but only to have sufficient skill in translating and to be familiar with the use of slang." *Menjivar v. State*, No. 08-02-00143-CR, 2003 *Tex. App. LEXIS* 1553, at *2-*3 (*Tex. App.-San Antonio Feb. 20, 2003, no pet.*) (mem. op.) (citing Act of May 28, 2001, 77th Leg., R.S., ch. 1139, § 1, sec. 57.002(a)-(c), 2001 Tex. Gen. Laws at 2538 (amended 2005); *id.* sec. 57.021 (amended 2005) (current version at *Tex. Gov't Code Ann.* § 57.021 (Vernon Supp. 2006)); Act of May 21, 1991, 72d Leg., R.S.,

ch. 700, § 1, 1991 Tex. Gen. Laws 2505, 2505 (amended 2005) (current version at *Tex. Code Crim. Proc. Ann. art. 38.30(a)* (Vernon Supp. 2006)); accord *Mendiola v. State*, 924 S.W.2d 157, 161 (*Tex. App.-Corpus Christi* 1995, *pet. ref'd*); see *Hernandez v. State*, No. 05-03-00107-CR, 2003 *Tex. App. LEXIS* 7322, at *14-*17 (*Tex. App.-Dallas* Aug. 27, 2003, *no pet.*) (not designated for publication). To that extent, Section 57.002 is thus in accord with *Texas Code of Criminal Procedure Article 38.30*. See *Tex. Code Crim. Proc. Ann. art. 38.30(a)*. "The question of an interpreter's competency and qualifications is committed to the discretion of the trial court and absent an abuse of this discretion, decisions on this subject will not be disturbed on appeal." *Castaneda v. State*, No. 13-02-146-CR, 2004 *Tex. App. LEXIS* 9773, at *4 (*Tex. App.-Corpus Christi* Nov. 4, 2004, *pet. ref'd*) (mem. op.); see *Montoya*, 811 S.W.2d at 673. Ridge did not file a motion for an interpreter. Moreover, the record does not show whether the interpreter was licensed. Accordingly, Ridge does not show that the trial court erred in appointing the interpreter.

[**24] In Ridge's fourth issue, he contends that he was denied the effective assistance of counsel during the period for filing a motion for new trial.² See *U.S. Const. amend. VI*; [*600] *Rompilla v. Beard*, 545 U.S. 374, 380, 125 S. Ct. 2456, 2462, 162 L. Ed. 2d 360 (2005); *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). "Ineffective assistance under *Strickland* [*v. Washington*] is deficient performance by counsel resulting in prejudice, with performance being measured against an 'objective standard of reasonableness,' 'under prevailing professional norms.'" *Rompilla*, 125 S. Ct. at 2464 (quoting *Strickland* at 687, 688). "[C]ounsel is 'strongly presumed' to make decisions in the exercise of professional judgment." *Yarborough v. Gentry*, 540

U.S. 1, 5, 124 S. Ct. 1, 157 L. Ed. 2d 1 (2003) (quoting *Strickland* at 690). "A *Strickland* claim must be 'firmly founded in the record' and 'the record must affirmatively demonstrate' the meritorious nature of the claim." *Goodspeed v. State*, 187 S.W.3d 390, 392 (*Tex. Crim. App.* 2005) (quoting *Thompson v. State*, 9 S.W.3d 808, 813 (*Tex. Crim. App.* 1999)); [**25] accord *Salinas v. State*, 163 S.W.3d 734, 740 (*Tex. Crim. App.* 2005). When "there [i]s no evidence in the record to show 'that trial counsel thought that his duties were completed with the end of trial, and had therefore abandoned the appellant'; "[t]here is nothing in the record to suggest that the attorney did not discuss the merits of a motion for new trial with the appellant, which the appellant rejected"; and "[w]hen a motion for new trial is not filed in a case, the rebuttable presumption is that it was considered by the appellant and rejected." *Smith v. State*, 17 S.W.3d 660, 662 (*Tex. Crim. App.* 2000) (quoting *Oldham v. State*, 977 S.W.2d 354, 362, 363 (*Tex. Crim. App.* 1998)). Likewise, an appellant's giving notice of appeal *pro se* is "an indication that she was aware of some of her appellate rights, 'and we presume she was adequately counseled unless the record affirmatively displays otherwise.'" *Id.* (quoting *Oldham* at 363).

2 I assume that the right to effective assistance applies to that period. See *Smith v. State*, 17 S.W.3d 660, 663 n.3 (*Tex. Crim. App.* 2000).

[**26] Ridge points to his allegation of ineffective assistance in his *pro-se* notice of appeal. The record does not affirmatively show that trial counsel did not adequately represent Ridge during the period for filing a motion for new trial. Accordingly, Ridge does not establish that he did not receive the effective assistance of counsel. We should overrule Ridge's fourth issue on that basis.

We should, after overruling Ridge's issues on the above grounds, affirm.

TOM GRAY

Chief Justice

GOVERNMENT CODE

TITLE 2. JUDICIAL BRANCH

SUBTITLE D. JUDICIAL PERSONNEL AND OFFICIALS

CHAPTER 57. COURT INTERPRETERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 57.001. DEFINITIONS. In this subchapter and for purposes of Subchapter B:

(1) "Certified court interpreter" means an individual who is a qualified interpreter as defined in Article 38.31, Code of Criminal Procedure, or Section 21.003, Civil Practice and Remedies Code, or certified under Subchapter B by the Department of Assistive and Rehabilitative Services to interpret court proceedings for a hearing-impaired individual.

(2) "Department" means the Department of Assistive and Rehabilitative Services.

(3) "Commissioner" means the commissioner of the Department of Assistive and Rehabilitative Services.

(4) "Hearing-impaired individual" means an individual who has a hearing impairment, regardless of whether the individual also has a speech impairment, that inhibits the individual's comprehension of proceedings or communication with others.

(5) "Licensed court interpreter" means an individual licensed under Subchapter C by the Texas Commission of Licensing and Regulation to interpret court proceedings for an individual who can hear but who does not comprehend English or communicate in English.

(6) "Real-time captioning" means transcribing the spoken words of an oral proceeding to simultaneously project the words on a screen.

(7) "Court proceeding" includes an arraignment, deposition, mediation, court-ordered arbitration, or other form of alternative dispute resolution.

Added by Acts 2001, 77th Leg., ch. 1139, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. [614](#), Sec. 1, eff. September 1, 2005.

Sec. 57.002. APPOINTMENT OF INTERPRETER. (a) A court shall appoint a certified court interpreter or a licensed court interpreter if a motion for the appointment of an interpreter is filed by a party or requested by a witness in a civil or criminal proceeding in the court.

(b) A court may, on its own motion, appoint a certified court interpreter or a licensed court interpreter.

(b-1) A licensed court interpreter appointed by a court under Subsection (a) or (b) must hold a license that includes the appropriate designation under Section 57.043(d) that indicates the interpreter is permitted to interpret in that court.

(c) Subject to Subsection (e), in a county with a population of less than 50,000, a court may appoint a spoken language interpreter who is not a licensed court interpreter.

(d) Subject to Subsection (e), in a county with a population of 50,000 or more, a court may appoint a spoken language interpreter who is not a certified or licensed court interpreter if:

(1) the language necessary in the proceeding is a language other than Spanish; and

(2) the court makes a finding that there is no licensed court interpreter within 75 miles who can interpret in the language that is necessary in a proceeding.

(d-1) Subject to Subsection (e), a court in a county to which Section 21.021, Civil Practice and Remedies Code, applies may appoint a spoken language interpreter who is not a licensed court interpreter.

(e) A person appointed under Subsection (c) or (d):

(1) must be qualified by the court as an expert under the Texas Rules of Evidence;

(2) must be at least 18 years of age; and

(3) may not be a party to the proceeding.

Added by Acts 2001, 77th Leg., ch. 1139, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. [584](#), Sec. 1, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. [614](#), Sec. 2, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. [921](#), Sec. 7.002, eff.

September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. [1198](#), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. [1341](#), Sec. 12, eff. June 17, 2011.

SUBCHAPTER B. INTERPRETERS FOR HEARING-IMPAIRED INDIVIDUALS

Sec. 57.021. COURT INTERPRETER CERTIFICATION PROGRAM. (a) The department shall certify court interpreters to interpret court proceedings for a hearing-impaired individual.

(b) The department may contract with public or private educational institutions to administer a training program and by rule may provide for suspension of training offered by an institution if the training fails to meet requirements established by the department.

(c) The department shall maintain a list of certified court interpreters and other persons the department has determined are qualified to act as court interpreters and shall send the list to each state court and, on request, to other interested persons.

(d) The department may maintain a list of persons certified by the Texas Court Reporters Association as qualified to provide communication access real-time translation services for a hearing-impaired individual in a court proceeding and, on request, may send the list to a person or court.

(e) The department may accept gifts, grants, or donations from private individuals, foundations, or other entities to assist in administering the court interpreter certification program under this section.

Added by Acts 2001, 77th Leg., ch. 1139, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. [614](#), Sec. 3, eff. September 1, 2005.

Sec. 57.022. CERTIFICATION; RULES. (a) The department shall certify an applicant who passes the appropriate examination prescribed by the department and who possesses the other qualifications required by rules adopted under this subchapter.

(b) The executive commissioner of the Health and Human Services Commission by rule shall provide for:

(1) the qualifications of certified court interpreters;

(2) training programs for certified court interpreters each of which is managed by the department or by a public or private educational institution;

(3) the administration of examinations;

(4) the form for each certificate and procedures for renewal of a certificate;

(5) the fees for training, examinations, initial certification, and certification renewal;

(6) continuing education programs under this subchapter;

(7) instructions for the compensation of a certified court interpreter and the designation of the party or entity responsible for payment of compensation; and

(8) administrative sanctions enforceable by the department.

Added by Acts 2001, 77th Leg., ch. 1139, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. [614](#), Sec. 4, eff. September 1, 2005.

Sec. 57.023. EXAMINATIONS. (a) The department shall prepare examinations under this subchapter that test an applicant's knowledge, skill, and efficiency in the field in which the applicant seeks certification.

(b) A person who fails an examination may apply for reexamination at the next examination scheduled after the date the person failed the original examination.

(c) Examinations shall be offered in the state at least twice a year at times and places designated by the department.

Added by Acts 2001, 77th Leg., ch. 1139, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. [614](#), Sec. 5, eff. September 1, 2005.

Sec. 57.024. DUTIES OF THE COMMISSIONER. (a) The

commissioner shall enforce this subchapter.

(b) The commissioner shall investigate allegations of violations of this subchapter.

Added by Acts 2001, 77th Leg., ch. 1139, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. [614](#), Sec. 6, eff. September 1, 2005.

Sec. 57.025. DENIAL, SUSPENSION, OR REVOCATION OF CERTIFICATE. (a) The executive commissioner of the Health and Human Services Commission shall adopt rules establishing the grounds for denial, suspension, revocation, and reinstatement of a certificate issued under this subchapter. The department may revoke or suspend certification under this subchapter only after a hearing.

(b) The department may reissue a certificate to a person whose certificate has been revoked if the person applies in writing to the department and shows good cause to justify reissuance of the certificate.

Added by Acts 2001, 77th Leg., ch. 1139, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. [614](#), Sec. 7, eff. September 1, 2005.

Sec. 57.026. PROHIBITED ACTS. A person may not interpret for a hearing-impaired individual at a court proceeding or advertise or represent that the person is a certified court interpreter unless the person holds an appropriate certificate under this subchapter.

Added by Acts 2001, 77th Leg., ch. 1139, Sec. 1, eff. Jan. 1, 2002.

Amended by:

Acts 2005, 79th Leg., Ch. [614](#), Sec. 8, eff. September 1, 2005.

Sec. 57.027. CRIMINAL OFFENSE; ADMINISTRATIVE PENALTY. (a) A person commits an offense if the person violates this subchapter or a rule adopted under this subchapter. An offense under this subsection is a Class A misdemeanor.

(b) A person who violates this subchapter or a rule adopted under this subchapter is subject to an administrative penalty

assessed by the department.

Added by Acts 2001, 77th Leg., ch. 1139, Sec. 1, eff. Jan. 1, 2002.

Amended by:

Acts 2005, 79th Leg., Ch. [614](#), Sec. 9, eff. September 1, 2005.

SUBCHAPTER C. COURT INTERPRETERS FOR INDIVIDUALS WHO DO NOT
COMMUNICATE IN ENGLISH

Sec. 57.041. DEFINITIONS. In this subchapter:

(1) "Board" means the licensed court interpreter advisory board.

(2) "Commission" means the Texas Commission of Licensing and Regulation.

(3) Repealed by Acts 2003, 78th Leg., ch. 816, Sec. 8.005.

(4) "Department" means the Texas Department of Licensing and Regulation.

(4-a) "Executive director" means the executive director of the department.

(5) "Licensed court interpreter" has the meaning assigned by Section 57.001.

Added by Acts 2001, 77th Leg., ch. 1139, Sec. 1, eff. Sept. 1, 2001.

Amended by Acts 2003, 78th Leg., ch. 816, Sec. 8.001, 8.005, eff. Sept. 1, 2003.

Sec. 57.042. LICENSED COURT INTERPRETER ADVISORY BOARD.

(a) The licensed court interpreter advisory board is established as an advisory board to the commission. The board is composed of nine members appointed by the presiding officer of the commission, with the commission's approval. Members of the board serve staggered six-year terms, with the terms of one-third of the members expiring on February 1 of each odd-numbered year.

(b) The advisory board is composed of:

(1) an active district, county, or statutory county court judge who has been a judge for at least the three years preceding the date of appointment;

(2) an active court administrator who has been a court

administrator for at least the three years preceding the date of appointment;

(3) an active attorney who has been a practicing member of the state bar for at least the three years preceding the date of appointment;

(4) three active licensed court interpreters; and

(5) three public members who are residents of this state.

(c) The presiding officer of the commission, with the commission's approval, shall select from the board members a presiding officer of the board to serve for two years.

(d) Members shall be appointed without regard to race, sex, religion, or ethnic origin. The membership of the board must reflect the geographical and cultural diversity of the state.

(e) The presiding officer of the commission, with the commission's approval, may remove a member of the board for inefficiency or neglect of duty in office. If a vacancy occurs on the board, the presiding officer of the commission, with the commission's approval, shall appoint a member who represents the same interests as the former member to serve the unexpired term.

(f) The board shall meet at least twice a year at the call of the presiding officer at a place designated by the presiding officer. A majority of the board constitutes a quorum.

(g) The board shall advise the commission regarding the adoption of rules and the design of a licensing examination.

(h) A board member is entitled to reimbursement for expenses incurred in attending meetings of the board in the amount of the per diem set by the General Appropriations Act. A member may not receive compensation for the member's services as a board member. Service on the board by a member appointed under Subsection (b)(1) is an additional duty required by the member's other official capacity, and that service on the board is not a dual office holding.

Added by Acts 2001, 77th Leg., ch. 1139, Sec. 1, eff. Sept. 1, 2001.
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 8.002, eff. Sept. 1, 2003.

Sec. 57.043. ISSUANCE OF LICENSE; TERM. (a) The executive director shall issue a court interpreter license to an applicant who:

(1) can interpret for an individual who can hear but who does not comprehend English or communicate in English;

(2) passes the appropriate examination prescribed by the executive director not earlier than two years before the date the executive director receives the applicant's application for a license; and

(3) possesses the other qualifications for the license required by this subchapter or by rules adopted under this subchapter.

(b) The commission shall adopt rules relating to licensing under this subchapter and the executive director shall prescribe all forms required under this subchapter.

(c) A license issued under this subchapter is valid for one year from the date of issuance.

(d) A license issued under this subchapter must include at least one of the following designations:

(1) a basic designation that permits the interpreter to interpret court proceedings in justice courts and municipal courts that are not municipal courts of record, other than a proceeding before the court in which the judge is acting as a magistrate; or

(2) a master designation that permits the interpreter to interpret court proceedings in all courts in this state, including justice courts and municipal courts described by Subdivision (1).

(e) In adopting rules relating to licensing under this subchapter, the commission shall, after consulting with the board, prescribe the minimum score an individual must achieve on an examination to receive a license that includes a basic designation under Subsection (d) and the minimum score an individual must achieve to receive a license that includes a master designation under that subsection.

Added by Acts 2001, 77th Leg., ch. 1139, Sec. 1, eff. Sept. 1, 2001.
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 8.003, eff. Sept. 1,

2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. [1198](#), Sec. 2, eff. September 1, 2011.

Sec. 57.044. COURT INTERPRETER LICENSE. To qualify for a court interpreter license under this subchapter, an individual must apply on a form prescribed by the executive director and demonstrate, in the manner required by the executive director, reasonable proficiency in interpreting English and court proceedings for individuals who can hear but who do not comprehend English or communicate in English.

Added by Acts 2001, 77th Leg., ch. 1139, Sec. 1, eff. Sept. 1, 2001.

Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.001, eff. Sept. 1, 2003.

Sec. 57.045. FEES. The commission by rule shall set license and examination fees under this subchapter.

Added by Acts 2001, 77th Leg., ch. 1139, Sec. 1, eff. Sept. 1, 2001.

Sec. 57.046. EXAMINATIONS. (a) The executive director shall prepare examinations under this subchapter that test an applicant's knowledge, skill, and efficiency in interpreting under this subchapter. The same examinations must be used for issuing a license that includes a basic designation or master designation as described by Section 57.043(d).

(b) An individual who fails an examination may apply for reexamination at a scheduled examination held at least six months after the date the individual failed the original examination.

(c) Examinations shall be offered in the state at least twice a year at times and places designated by the executive director.

Added by Acts 2001, 77th Leg., ch. 1139, Sec. 1, eff. Sept. 1, 2001.

Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.002, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. [1198](#), Sec. 3, eff. September

1, 2011.

Sec. 57.047. DEPARTMENT DUTIES; INSPECTIONS. (a) The executive director shall enforce this subchapter.

(b) The department shall investigate allegations of violations of this subchapter.

Added by Acts 2001, 77th Leg., ch. 1139, Sec. 1, eff. Sept. 1, 2001.

Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.003, 26.004, eff. Sept. 1, 2003.

Sec. 57.048. SUSPENSION AND REVOCATION OF LICENSES; REISSUANCE. (a) After a hearing, the commission shall suspend or revoke a court interpreter license on a finding that the individual:

(1) made a material misstatement in an application for a license;

(2) disregarded or violated this subchapter or a rule adopted under this subchapter; or

(3) engaged in dishonorable or unethical conduct likely to deceive, defraud, or harm the public or a person for whom the interpreter interprets.

(b) The executive director may reissue a license to an individual whose license has been revoked if the individual applies in writing to the department and shows good cause to justify reissuance of the license.

Added by Acts 2001, 77th Leg., ch. 1139, Sec. 1, eff. Sept. 1, 2001.

Amended by Acts 2003, 78th Leg., ch. 816, Sec. 8.004, eff. Sept. 1, 2003.

Sec. 57.049. PROHIBITED ACTS. A person may not advertise, represent to be, or act as a licensed court interpreter unless the person holds an appropriate license under this subchapter.

Added by Acts 2001, 77th Leg., ch. 1139, Sec. 1, eff. Jan. 1, 2002.

Sec. 57.050. OFFENSE; ADMINISTRATIVE PENALTY. (a) A person commits an offense if the person violates this subchapter or a rule adopted under this subchapter. An offense under this

subsection is a Class A misdemeanor.

(b) A person who violates this subchapter or a rule adopted under this subchapter is subject to an administrative penalty assessed by the commission as provided by Subchapter F, Chapter 51, Occupations Code.

Added by Acts 2001, 77th Leg., ch. 1139, Sec. 1, eff. Jan. 1, 2002.

Sec. 57.051. SUNSET. The licensed court interpreter advisory board is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this subchapter expires September 1, 2017.

Added by Acts 2001, 77th Leg., ch. 1139, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. [1232](#), Sec. 3.02, eff. June 17, 2011.

JUDICIAL ETHICS AND QUALIFICATIONS OF COURT INTERPRETERS¹

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At the beginning of a hearing on a family violence protective order application, the judge learns for the first time that the applicant does not speak English. The parties request that the hearing proceed that day despite the fact that the court's usual interpreter is unavailable. The hearing takes place in a county with more than 50,000 in population.²

Hypothetical One. The applicant's 17-year-old daughter, who is also a witness in the case, is allowed to interpret her mother's testimony from Spanish to English for the court during a hearing. No one investigated or questioned the daughter's ability to interpret for the court. Did the judge fulfill his or her ethical obligations with regard to the interpreter's qualifications?

Answer to Hypothetical On. By selecting an underage, unlicensed person to serve as the court's interpreter, the judge violated not only the law governing interpreter qualifications but also the Texas Canons of Judicial Conduct by failing to: (1) comply with the law; (2) to maintain and enforce high standards; and (3) accord the applicant her right to be heard according to law. How could the judge have avoided having an otherwise routine hearing turn into an ethical quagmire?

After reviewing the law controlling interpreter qualifications, this article examines ethical considerations that may impact the judge's selection of a court interpreter, especially when the person selected is not a licensed court interpreter. It also discusses ethical issues that may arise under both the judicial canons and the Texas Disciplinary Rules of Professional Conduct when the judge allows a party's attorney to interpret for the court.³

I. Controlling Law

Under the Canons of Judicial Conduct, a judge must maintain and enforce high standards of conduct and avoid manifestations of bias or prejudice.⁴ The judge must also ensure

¹ As used in this article, "licensed court interpreter" refers to licensed interpreters for hearing persons. As discussed later in the article, "certified court interpreter" is the statutorily-defined term used for those who have a state certification to interpret for hard-of-hearing persons.

² These facts apply to all the hypotheticals given in this article.

³ In this context, "for the court" means that the attorney is interpreting for the benefit of the judge and the official record, not just for the attorney's client. This article does not address ethical issues that may arise when the attorney interprets solely for client's benefit during a legal proceeding.

⁴ Code of Judicial Conduct Canon 1: An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing high standards of conduct, and should personally observe those standards so that the integrity and independence of the

that the court staff, court officials, and others providing services to the court maintain decorum and avoid manifestations of bias or prejudice.⁵ Because court interpreters are a type of court official (or at least a person subject to the judge's direction and control), a judge's ill-advised selection of a court interpreter could cause an ethical dilemma if the interpreter fails to maintain certain standards.

Threshold determination. The trial judge always has the discretion to decide *if* an interpreter should be used in a court proceeding.⁶

General rule and its exceptions. Texas Gov't Code § 57.002 is the controlling law on interpreter qualifications for both civil and criminal cases. That statute states that when a court interpreter is required, the trial judge *must* appoint a licensed court interpreter except: (1) if the proceeding is in a county with less than 50,000 in population; or (2) for non-Spanish interpretation in any size county, if there is no licensed court interpreter available within 75 miles.⁷

judiciary is preserved. The provisions of this Code [of Judicial Conduct] are to be construed and applied to further that objective.

Code of Judicial Conduct Canon 3(B)(6): A judge shall not, in the performance of judicial duties, by words or conduct, manifest a bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, and shall not knowingly permit staff, court officials and other subject to the judge's direction and control to do so.

⁵ Code of Judicial Conduct Canon 3(B)(4): A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and should require similar conduct of lawyers, and of staff, court officials, and others subject to the judge's direction and control.

See, footnote 2, Code of Judicial Conduct Canon 3(B)(6)

⁶ Op. Tex. Att'y Gen. No. JC-0584 at 6 (2002). Although section 57.002 clearly modifies the authority of a court to determine the qualifications of an interpreter, we do not construe section 57.002 to strip a court of its authority to determine whether a party or witness is able to communicate in English and requires an interpreter . . . it would not be reasonable to construe section 57.002 to require a court to grant every motion or request for an interpreter. . . . We construe section 57.002(a) to impose on a court the mandatory duty to appoint a certified or licensed interpreter when the court appoints an interpreter.

The court's discretion must be exercised regardless of how the court becomes aware that interpretation may be needed. See *Ridge v. State*, 205 S.W.3d 591, 597 (Tex. App.—Waco 2006, pet. ref'd) (A trial court has an independent duty to appoint a licensed interpreter if the court is made aware that a defendant or witness does not understand the English language, unless the defendant expressly waives the right to a licensed interpreter.)

In the *Ridge* case, the Waco Court of Appeals declined to follow the holdings in *Hernandez v. State*, No. 05-03-00107-CR, 2003 Tex. App. Lexis 732, at *14-15 (Tex. App.—Dallas, Aug. 27, 2003, no pet.); *Menjivar v. State*, No. 08-02-00143-CR, 2003 Tex. App. Lexis 1553 at * 2-3 (Tex. App.—El Paso, Feb. 20, 2003, no pet.) and *Mendiola v. State*, 924 S.W.2d 157, 161 (Tex. App.—Corpus Christi 1995, pet. ref'd, untimely filed). Those cases all held that the requirement in Tex. Gov't Code § 57.002 that a licensed court interpreter be appointed did not apply unless a party filed a motion for appointment of an interpreter.

⁷ Tex. Gov't Code § 57.002.

Criminal cases. Along with Tex. Gov't Code § 57.002, Article 38.30 of the Texas Code of Criminal Procedure⁸ also controls court interpreter qualifications in a criminal case. That statute permits any person to act as the court's interpreter "under the same rules and penalties as are provided for witnesses."⁹

Civil cases. For interpretation in civil cases, Texas Government Code § 57.002 alone governs qualifications in most instances.¹⁰

Violations. It is a Class A misdemeanor to act as a licensed court interpreter without holding the appropriate state license.¹¹ To "act as a court interpreter" means to translate proceedings for a party or witness, to translate a party or witness's testimony to others in the proceeding, or to serve as a conduit of information between the party or witness and other parties to the proceeding.¹² The statute does not provide for any exceptions to the prohibition, not even for interpretation by a party's lawyer or by the judge.

A. Notes on terminology

The terms "interpret" and "translate" and "licensed" and "certified" are not synonyms in Texas law and should not be used interchangeably. Unfortunately, these terms are often confused and misused in case law, so that when reading precedential cases, the reader must often deduce the meaning of the term from the context. The following definitions are derived from statute and professional usage:

1. *Interpret* refers to the immediate *oral* communication of meaning from one language (the source language) into another (the target language).

⁸ Tex. Code Crim. Pro. Art. 38.30(a):. . . Any person may be subpoenaed, attached, or recognized in any criminal action or proceeding, to appear before the proper judge or court to act as interpreter therein under the same rules and penalties as are provided for witnesses. In the event that the only available interpreter is not considered to possess adequate interpreting skills for the particular situation or the interpreter is not familiar with use of slang, the person charged or witness may be permitted by the court to nominate another person to act as an intermediary between the person charged or witness and the appointed interpreter during the proceedings. . . .

⁹ Ibid.

¹⁰ Additional qualifications are set out in Tex. Civ. Prac. & Rem. Code chapter 21, but that chapter applies only in certain counties. Chapter 21 does not mention whether the interpreter must be licensed, so it does not conflict with the licensing requirement in Tex. Gov't Code § 57.002(a).

¹¹ Tex. Gov't Code § 57.049.

¹² Op. Tex. Att'y Gen. No. JC-584 (2002). Note: This is an example of an authority using the term "translate" as a synonym for "interpret."

2. *Translate* refers to conveying the meaning of a *written* material from a source language into a target language.¹³ Interpretation and translation require somewhat different training and skills. The ability to translate written material does not automatically confer an ability to interpret orally with the competency required to be a licensed court interpreter.
3. *Licensed court interpreter*. Under Texas law, a “licensed” court interpreter is a person who interprets one language into another for a hearing person in a court proceeding.¹⁴
4. *Certified court interpreter*. Texas law uses the term “certified” interpreter for a person who interprets for deaf and hard-of-hearing persons during a court proceeding.¹⁵
5. *Limited English proficiency*. Hearing persons who are not able to communicate adequately in English are commonly referred to as having limited English proficiency (LEP).

B. Interpreter qualifications: the general rule and the exceptions to the rule in Tex. Gov’t Code Chapter 57

The judge in Hypothetical One, whose court was in a county over 50,000 in population and who needed a Spanish interpreter for that protective order hearing, erred in using an unlicensed person to interpret.

As noted above, the general rule, set out in Tex. Gov’t Code § 57.002, requires a court interpreter to have a state license.¹⁶ This rule applies to interpretation in both civil and criminal proceedings. An unlicensed person may interpret for a court: (1) in counties with less than 50,000 in population; or (2) regardless of county population, when the language is not Spanish and there is no licensed court interpreter available within 75

¹³ See definition at: <http://www.lep.gov/faqs/faqs.html>. “. . . a successful interpretation is one that faithfully and accurately conveys the meaning of the source language orally, reflecting the style, register, and cultural context of the source message, without omissions, additions, or embellishments on the part of the interpreter.” Id.

¹⁴ Tex. Gov’t Code § 57.001(5). Texas is one of the few states that uses the term “licensed” instead of “certified” for court interpreters who interpret for hearing persons. In Tex. Gov’t Code § 57.001, “court proceeding” is defined as “an arraignment, deposition, mediation, court-ordered arbitration, or other form of alternative dispute resolution.”

¹⁵ Tex. Gov’t Code § 57.001(1).

¹⁶ Tex. Gov’t Code § 57.002(a). The article henceforth uses the term “court interpreter” only in the context of interpretation for hearing persons.

miles.¹⁷ Whether or not “available within 75 miles” includes or excludes a licensed interpreter who is available by telephone or videoconference is not known.

The judge in Hypothetical One also erred in using an interpreter who was under 18 years of age.

Even when the statute permits an unlicensed person to interpret for the court, the interpreter must: (1) be at least 18 years of age; (2) not be a party to the proceeding; and (3) be qualified as an expert under the Texas Rules of Evidence.¹⁸

C. Misdemeanor offense

By interpreting from Spanish in a court proceeding held in a county over 50,000 in population without having the required court interpreter's, the applicant's daughter committed a misdemeanor offense.

As noted above, under Tex. Gov't Code § 57.049, it is a Class A misdemeanor offense to act as a court interpreter without having a state license when licensure is required under Tex. Gov't Code § 57.002. Based on the size of the county (50,000 or more) and the language to be interpreted (Spanish) in Hypothetical One, the judge was legally required to use a licensed court interpreter in this case and the applicant's daughter's service constituted a Class A offense. It is an open question whether the judge, by appointing the unlicensed person to interpret, was a party to the offense.

Note that even if the court hearing had been in a county under 50,000 in population, the applicant's daughter could not have qualified as the court's interpreter because she was under 18 years of age.¹⁹

D. Construing Texas Government Code § 57.002

Most case law concerning interpreter qualifications predates the enactment of Texas Government Code Chapter 57. Even after Chapter 57 took effect (September 2001), some appellate courts failed to apply it for several years, at least in the criminal context. In the construing court interpreter qualifications, any case that predates the effective date of or fails to discuss the application of Chapter 57 will have limited precedential value.

To date, the most exhaustive discussions of Tex. Gov't Code § 57.002 appear in Texas Attorney General Opinion No. JC-0584 (2002) and in *Ridge v. State*, 205 S.W.3d 591 (Tex. App. --Waco 2006, pet. ref'd). Any analysis of how and when to apply § 57.002 should include these authorities.

¹⁷ Tex. Gov't Code § 57.002(b).

¹⁸ Tex. Gov't Code § 57.002(e).

¹⁹ Tex. Gov't Code § 57.002(e)(2).

Attorney General Opinion No. JC-0584. The Attorney General Opinion addressed multiple issues concerning the application of § 57.002. The Opinion defined what constitutes “to act as a court interpreter” and held that:

- (1) the judge has discretion to decide whether an interpreter is needed;
- (2) if the judge decides an interpreter is needed, then a licensed court interpreter must be appointed unless an exception applies; and
- (3) in a criminal case, a defendant has the right to an interpreter even in a plea proceeding.

The Ridge case. In *Ridge v. State*,²⁰ the court on its own motion appointed an interpreter for a witness in a criminal case. The case was heard in a county with a population of 50,000 or more. The record did not reflect the interpreter’s qualifications and no one objected to the interpreter’s appointment. The Waco Court of Appeals found that:

- (1) interpreter qualifications in the criminal proceeding were governed by both Code of Criminal Procedure Art. 38.30 and Texas Government Code § 57.002;
- (2) pursuant to § 57.002, because the case was in a county over 50,000 in population, the court interpreter had to be licensed even if appointed based on the court’s own motion;²¹
- (3) when a licensed court interpreter is required, no objection is needed to preserve error about the interpreter’s qualifications; and
- (4) where the record is silent as to the court interpreter’s qualifications, error cannot be presumed.

II. Court Interpreter Selection: Ethical Considerations Under the Code of Judicial Conduct

The judge in Hypothetical One had an ethical duty to investigate whether the applicant’s daughter could interpret accurately, completely, and impartially, and without violating a law.

²⁰ 205 S.W.3d 591 (Tex. App. --Waco 2006, pet. ref’d).

²¹ In the *Ridge* case, the Waco Court of Appeals declined to follow the holdings in *Hernandez v. State*, No. 05-03-00107-CR, 2003 Tex. App. Lexis 732, at *14-15 (Tex. App.—Dallas, Aug. 27, 2003, no pet.); *Menjivar v. State*, No. 08-02-00143-CR, 2003 Tex. App. Lexis 1553 at * 2-3 (Tex. App.—El Paso, Feb. 20, 2003, no pet.) and *Mendiola v. State*, 924 S.W.2d 157, 161 (Tex. App. --Corpus Christi 1995, pet. ref’d, untimely filed). Those cases all held that the requirement in Tex. Gov’t Code § 57.002 that a licensed court interpreter be appointed did not apply unless a party filed a motion for appointment of an interpreter.

A. Canon 1 (Maintaining and enforcing high standards)

Will the interpreter be able to adhere to the high standards that the judge must maintain and enforce? A licensed court interpreter is bound by a code of ethics and professional responsibility that sets the minimum standards of demeanor and competency.²² A judge must ensure that the court's interpreter adheres to these minimal standards.

The United States Department of Justice Guidelines suggest an interpreter's competency is a function of:

- demonstrated proficiency in communicating in both languages;
- knowledge of specialized terms in both languages;
- demonstrated truthfulness;
- accuracy in interpretation;
- ability to remain impartial; and
- ability to maintain confidentiality.

A judge can use the Guidelines as a starting point to evaluate any interpreter's competency.

To obtain and keep a state license, a licensed court interpreter will have demonstrated knowledge of the profession's ethical standards and be subject to discipline by the licensing body for failing to adhere to those standards.²³ A judge can reasonably rely on licensure as a *prima facie* indicator that the interpreter's conduct will meet minimum professional standards.

Fulfilling the judicial obligation to maintain and enforce high standards of conduct may be difficult when an unlicensed person interprets for a court proceeding. The unlicensed interpreter may not understand the concepts of due process and impartiality and probably will not know the ethical and technical standards governing court interpretation.

The Texas Court Interpreter's Code of Ethics and Professional Responsibility is applicable to all persons who deliver interpreting services to the judiciary.²⁴ But as a

²² The Texas Licensed Court Interpreters Code of Ethics and Professional Responsibility can be found at 16 Tex. Admin. Code § 80.100. The Code provides that a licensed court interpreter must: interpret accurately and completely (Canon 1); inform the court of impediments to accurate and complete interpretation (Canons 2 and 7); remain impartial and avoid conflicts of interest (Canon 3); maintain a professional demeanor (Canon 4); maintain confidential or privileged information (Canon 5); limit the service to interpreting and not give legal advice or express a personal opinion (Canon 6); report ethical violations (Canon 8); and maintain professional competency through training and education (Canon 9).

²³ Tex. Gov't Code § 57.048.

²⁴ 16 TAC § 80.100(b)

practical matter, the licensing agency for court interpreters has only a limited range of sanctions available to deter the unqualified and unlicensed interpreter.²⁵

Even when using an unlicensed person as a court interpreter, the judge must fulfill the judicial duty to maintain high standards. To maintain high standards, the judge should examine not only unlicensed interpreter's ability to interpret accurately and completely, but also the person's understanding of the duty to interpret without bias or prejudice and to maintain a professional demeanor while interpreting.

B. Canon 2(A) (Complying with the law)

Can the selected interpreter provide services without violating a law?²⁶ With respect to court interpretation, among the laws that must be upheld are:

- The prohibition in Tex. Gov't Code § 57.049 regarding acting as a court interpreter without a license (unless an exception in Tex. Gov't Code § 57.002 applies);
- The requirement that each party be afforded due process (minimal due process being the right to notice and an opportunity to present a case);²⁷ and
- The court interpreters' ethical and professional standards.²⁸

C. Canon 3(B)(4) (Being patient, dignified, and courteous when dealing with a participant in a legal proceeding)

Will the interpreter display the proper demeanor? In addition to the judge's general duty to maintain and enforce high standards, the judge has a specific duty to require that court staff and court officials, including the court's interpreter, provide services in a professional and unbiased manner.

²⁵ The Texas Department of Licensing and Regulation (TDLR) licenses court interpreters. There is broad language in Tex. Occ. Code chapter 51 and 16 Tex. Admin. Code § 80.90 authorizing TDLR to impose sanctions on *any* person, whether or not licensed, who violates a provision in 16 Tex. Adm. Code chapter 80. However, as a practical matter, the available sanction for an unlicensed interpreter's violation of 16 TAC § 80.100 appears to be limited to denying a subsequent application for licensure. See 16 TAC § 60.23.

²⁶ Code of Judicial Conduct Canon 2(A): A judge shall comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

²⁷ *Minnick v. State Bar of Texas*, 790 S.W.3d 87, 90 (Tex. App.—Austin 1990, writ den.). “An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under the circumstances, to apprise interested parties of the pendency of the action and afford them the opportunity to present their objections.” (citing *Peralta v. Heights Medical Center, Inc.*, 485 U.S. 80, 84, 108 S. Ct. 896, 99 L. Ed. 2d 75 (1988)).

²⁸ 16 Tex. Admin. Code § 80.100.

Any person interpreting for a court must show courtesy to all participants. Although the licensed court interpreter has a professional obligation to maintain appropriate courtroom decorum,²⁹ a non-professional interpreter, such as a party's friend or family member, may not have the skills needed. For instance, a professional interpreter will have been trained to convey the speaker's register, style, and tone, even for subjects that are sensitive or embarrassing while the non-professional interpreter may find repeating such information demeaning or inject personal emotions into the interpretation.

D. Canon 3(B)(5 and 6) (Performing judicial duties without bias or prejudice and without manifesting bias or prejudice)

Will the interpreter be able to provide services that avoid manifestations of bias or prejudice?³⁰ Any law, regulation, or policy that has a disproportionate adverse effect on LEP persons constitutes discrimination based on national origin. Failing to afford an LEP person the right to meaningful participation in a legal proceeding constitutes impermissible bias or prejudice.³¹ The United States Department of Justice (DOJ) and the American Bar Association interpret this mandate to apply to both civil and criminal cases. The DOJ has taken the position that court interpretation services sufficient to allow meaningful participation must be provided without cost to a party or witness and without regard to indigency.³²

²⁹ 16 TAC § 80.100(f).

³⁰ Code of Judicial Conduct Canon 3(B)(6): A judge shall not, in the performance of judicial duties, by words or conduct, manifest a bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, and shall not knowingly permit staff, court officials and other subject to the judge's direction and control to do so.

Code of Judicial Conduct Canon 3(B)(5): A judge shall perform judicial duties without bias or prejudice.

Code of Judicial Conduct Canon 3(C)(1): A judge should diligently and promptly discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration

³¹ 42 U.S.C. § 2000d. No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. *See also*, 42 U.S.C. § 2000 (601); 28 C.F.R. 42.104(b)(2).

A court that is part of a system that receives federal assistance is required to provide language access. By virtue of being part of a system that accepts federal assistance, Texas courts are subject to these language access provisions.

³² *See*, Department of Justice Letter to Chief Justices and State Court Administrators, dated August 16, 2010, page 2, available at www.lep.gov; and American Bar Association Language Access Standards in Courts, February 2012, available at: http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_standards_for_language_access_proposal.authcheckdam.pdf.

E. Canon 3(B)(8) (According every person with a legal interest in a proceeding the right to be heard according to law)

Will the interpreter's services support the due process rights of all participants?³³ The interpreter's function is "to remove the language barrier, to the extent possible, so that the person's access to justice is the same as that of a similarly situated English speaker for whom no such barrier exists."³⁴

A licensed court interpreter cannot give legal advice nor express personal opinions while interpreting,³⁵ is required to remain impartial and unbiased, and must avoid conflicts of interest.³⁶ Further, the licensed interpreter has an ethical obligation to promote due process. In most cases, the unlicensed interpreter will lack education about or knowledge of interpreter ethics or the due process rights that must be afforded participants in a court proceeding.

F. Canon 3(B)(9) (Disposing of all judicial matters promptly, efficiently, and fairly)

Will the interpreter's services allow the judge to dispose of the matter promptly, efficiently, and fairly?³⁷ Having to reset or continue a matter due to a language barrier with a party or witness may impede the judge's ability to fulfill this canon. Continuances based on the inability to secure an interpreter, or an *ad hoc* interpreter's lack of competence, are especially problematic when the matter involves an emergency related to physical safety, such as an application for a family violence protective order.³⁸

**III. Attorney-Interpreter: Ethical Considerations Under
the Texas Disciplinary Rules of Professional Conduct and with to
Reference to the Canons of Judicial Conduct**

³³ Code of Judicial Conduct Canon 3(B)(8): A judge shall accord to every person who has a legal interest in a proceeding, or to that person's lawyer, the right to be heard according to law.

³⁴ 16 TAC § 80.100(a).

³⁵ 16 TAC § 80.100(h).

³⁶ 16 TAC § 80.100(e).

³⁷ Code of Judicial Conduct Canon 3(B)(9): A judge should dispose of all judicial matters promptly, efficiently, and fairly.

³⁸ For civil cases involving intimate partner violence, a county or district level court may request free interpretation services from the Office of Court Administration's Texas Remote Interpreter Project. Information about this project is available at (512) 463-5656 or <http://www.courts.state.tx.us/oca/DVRA/trip.asp>

Hypothetical Two. Instead of her daughter, the applicant's attorney interprets the applicant's Spanish language testimony into English for the court.

Attorneys are sometimes recruited, or volunteer, to interpret for the court while representing a client in the same matter. This practice is problematic under Texas Government Code chapter 57, the Canons of Judicial Conduct, and the Texas Disciplinary Rules of Professional Conduct.

A. Controlling law

Unless the attorney was also a licensed court interpreter, the judge in Hypothetical Two allowed the applicant's attorney to violate the law by acting as the court's interpreter which simultaneously representing the applicant.

Under the general rule in Texas Government Code § 57.002, the court's interpreter must be licensed in counties with 50,000 or more in population when the language to be interpreted is Spanish. Under the facts in Hypothetical Two, there is no statutory exception that allows a party's attorney to interpret for the court. Even when licensed both as an attorney and a court interpreter, a party's attorney cannot also serve as the court interpreter unless the judge and all parties agree.³⁹

B. Canons of Judicial Conduct

Before allowing the party's attorney to interpret for the court, the judge in Hypothetical Two should have first determined that this arrangement would not result in a violation of a canon of judicial conduct.

1. *Complying with the law (Canon 2(A)).* If the interpreter is also a party's attorney, will the attorney be able to serve both functions without violating a law? Unless an exception to chapter 57's general rule regarding interpreter qualifications applies or the attorney is also a licensed court interpreter, an attorney who interprets for the court in a legal proceeding may be committing a Class A misdemeanor. There are no exceptions to the prohibition in § 57.049 against acting as a court interpreter without a license. Neither being an officer of the court or a court official nor having a law license confers the right to act as a licensed court interpreter under Tex. Gov't Code chapter 57.
2. *Enforcing high standards of conduct (Canon 1).* As noted above, Canon 1 requires the judge to maintain and enforce high standards of conduct. The attorney-interpreter may find that the standards required of an interpreter (to interpret without bias, etc.) are at odds with the duty to zealously advocate for the

³⁹ 16 Tex. Admin. Code § 80.100(e).

client. If the attorney-interpreter cannot both advocate zealously and interpret impartially, the judge will not be able to maintain and enforce high standards of conduct.

3. *Affording participants the right to be heard according to law* (Canon 3(B)(8)). An attorney and an interpreter have quite different roles in a hearing with regard to due process. The attorney works to protect the client's due process rights; the interpreter works to eliminate language issues that impede the court's ability to provide due process to all parties. Serving the dual role as an attorney-interpreter sets up a conflict regarding providing due process to the client and assisting the judge in providing due process to all participants in a legal proceeding.

C. The Texas Disciplinary Rules of Professional Conduct

Before allowing the applicant's attorney to interpret for the court, the judge in Hypothetical Two should have evaluated the attorney's ability to serve in the dual capacity without adverse impact on the client and without otherwise violating the attorney's ethical duties.

Under the Texas Disciplinary Rules (DR) of Professional Conduct, an attorney must:

- competently and diligently represent the client (DR 1.01);
- abide by the client's wishes (DR 1.02);
- adequately communicate with the client so the client can make informed decisions (DR 1.03);
- render candid advice to the client (DR 2.01);
- persuade the client to disclose the false or misleading nature of evidence (DR 3.03(b)); and
- avoid becoming a witness to a contested issue in a case (DR 3.08).

Only if the attorney can serve as an interpreter and fulfill all ethical duties to the client and the court can the judge permit dual service. It is difficult to envision how, during a court hearing, the attorney can both engage in privileged communications that keep the client adequately informed of trial developments and simultaneously interpret all communications for the court. Should there be an issue about the accuracy of interpretation, the attorney-interpreter would be constrained ethically if the client refuses permission to disclose the potentially misleading interpretation. In other words, in a dual role, the attorney might not ethically be able to disclose information that the interpreter is ethically required to disclose.

D. Practical Considerations

Ethical considerations aside, the judge in Hypothetical Two faced numerous practical challenges in using the party's attorney as the court interpreter.

Even if all ethical obligations to the client are satisfied, having the attorney also interpret poses numerous practical challenges, including:

- how to preserve objections to specific instances of interpretation;
- how to preserve attorney-client privilege;
- how to make or respond to evidentiary objections in a timely fashion; and
- how to execute trial strategy while also interpreting.

IV. Interpretation Resources for Certain Family Violence Cases

Hypothetical Three. The judge has his court coordinator schedule an appointment with the Texas Remote Interpreter Project (TRIP). The TRIP interpreter, who is a licensed court interpreter, sets up a conference call, and provides consecutive interpretation through the court's speakerphone. If the court has videoconferencing equipment available in the courtroom, the TRIP interpreter can provide services with that technology.

Civil cases in all counties. When a Spanish language court interpreter is needed in county and district-level courts for a civil case involving *intimate partner violence*, the court can request *free* interpretation services from the Office of Court Administration's Texas Remote Interpreter Project (TRIP).⁴⁰ For Spanish interpretation, the TRIP provides licensed court interpreters at no cost to the court or the parties. Access to the TRIP service requires that the court have either: (1) long-distance calling capacity and a speakerphone; or (2) a videoconferencing capacity (computer with an internet connection, a webcam, and speakers). For non-Spanish language needs, TRIP funds access to a commercial telephonic interpretation service.

Criminal cases in counties under 50,000. Additionally, in counties under 50,000 in population, the court may use TRIP for criminal cases involving intimate partner violence.

V. Conclusion

By statute, a judge may only appoint a person who holds a court interpreter's license to interpret in a court proceeding, unless one of two statutory exceptions apply. Even when an unlicensed person can interpret for court, ethical considerations under the Texas Code of Judicial Conduct make use of the unlicensed interpreter problematic. When a party's attorney is allowed to act as the court's interpreter, additional ethical issues may arise under the Texas Disciplinary Rules of Professional Conduct.

⁴⁰ Information about the TRIP is available at: (512) 463-5656 or <http://www.courts.state.tx.us/oca/DVRA/trip.asp>

For purposes of Judicial Canon 3(B)(4), the court interpreter is a court official under the judge's direction and control for the duration of the appointment. The judge must ensure the interpreter maintains a professional demeanor. The judge also has an ethical obligation under Canon 1 to ensure that the interpreter's conduct conforms to high standards, such as those found in the Texas Court Interpreters Code of Ethics and Professional Responsibility.

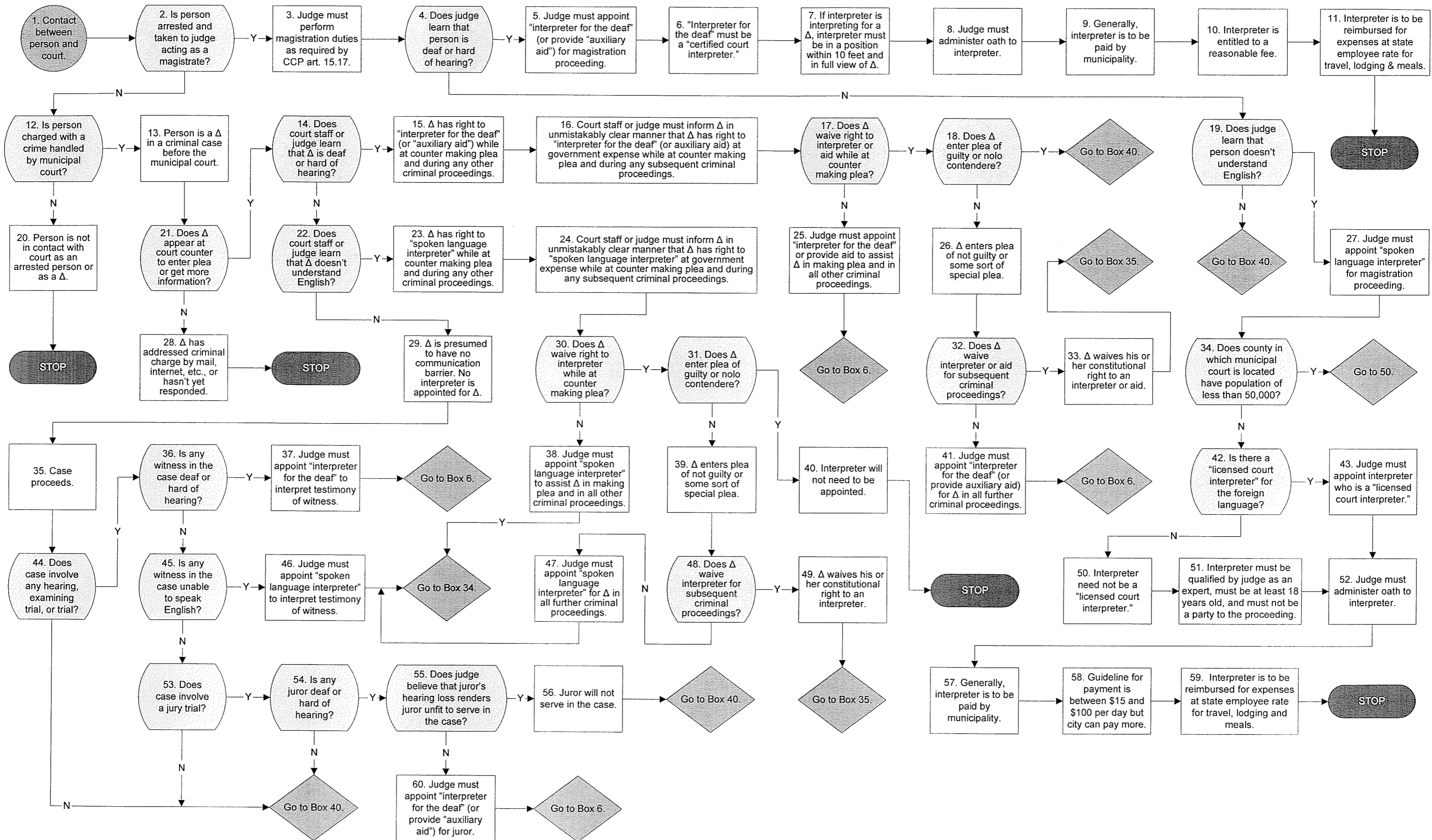
The judge must also use the interpreter's services in conformance with the law (Canon 2(A)), ensure due process for all participants (Canon 3(B)(8)), and avoid bias or prejudice (Canon 3(B)(5), Canon 3(B)(6), and Canon 3(C)(1)).

Using a licensed court interpreter, who has the demonstrated the skills to interpret accurately and whose licensure depends on adherence to ethical and professional standards, is one way a judge can make good faith effort to meet all the ethical obligations imposed by the Texas Canons of Judicial Conduct.

When using a party's attorney to interpret for the court, the judge must also ensure that the attorney can serve dual roles without violating one or more of the Texas Disciplinary Rules of Professional Conduct. If the attorney-interpreter cannot fulfill all the ethical duties owed the client while interpreting for the court, the judge should not allow the dual service. Before being allowed to interpret for the court, a party's attorney should both have a court interpreter's license and the agreement of the other parties and the judge to serving a dual role.

In all counties, county and district-level courts handling *civil* cases with issues of intimate partner violence may call on the TRIP to provide free interpretation services by licensed court interpreters for Spanish and by commercial telephonic interpretation services for languages other than Spanish. In counties under 50,000 in population, TRIP services are also available for *criminal* cases involving intimate partner violence.

FLOWCHART FOR COURT INTERPRETERS IN MUNICIPAL COURTS -- OCTOBER 2004



Δ = defendant

**The State of Texas
Office of Court Administration
Texas Remote Interpreter Project**

**COURT GUIDE TO USING THE
TEXAS REMOTE INTERPRETER PROJECT SERVICES**

1. **Project overview.** The Office of Court Administration's (OCA's) Texas Remote Interpreter Project (TRIP) is a three-year, grant-funded program that provides:
 - *free* foreign language interpretation services
 - in cases involving **intimate partner** violence
 - Available to ALL counties:
 - in **civil** cases
 - by licensed court interpreters (Spanish) or licensed or qualified interpreters (languages other than Spanish)
 - Available to counties with a population of less than 50,000:
 - in **criminal** cases
 - by licensed court interpreters (Spanish only)
 - for hearings in district and county-level courts
 - *via* telephone call using the court's speakerphone; by voice over Internet protocol (VOIP); or by computer videoconferencing

Remote site interpretation means that the interpreters are not physically present in the courtroom. Spanish language interpretation services will be provided entirely by licensed court interpreters employed by OCA. Interpretation services for languages other than Spanish will be provided by a commercial interpretation service under contract with OCA.

In civil cases only, a limited amount of grant funds are available for *free* remote interpretation services in languages other than Spanish. In the context of this project, "civil" cases include magistrate's orders of emergency protection (EPO) issued under provisions of the Texas Code of Criminal Procedure. For a magistrate's order of emergency protection (EPO) that is heard in conjunction with a criminal matter (e.g., magistration, bond hearing), TRIP services are available only if the OCA receives the court's confirmation (which will be documented during the appointment confirmation process for the hearing) that the criminal issues are incidental to the civil EPO hearing.

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Revised July 2012

TRIP services must **not** be used to replace county-funded licensed Spanish court interpreter services in **civil** and **criminal** cases involving family violence between intimate partners provided at no cost to either party;¹ or licensed or qualified interpreters in languages other than Spanish in **civil** cases involving family violence between intimate partners provided at no cost to either party. However, TRIP services are available in certain limited situations for counties that provide county-funded interpretation services, as follows:

- For counties that provide interpreter services in **civil** matters without cost to either party, the project services are available only if OCA receives the court's confirmation (which will be documented during the appointment confirmation process for the hearing) that (1) there is no county-funded licensed Spanish court interpreter or licensed or qualified court interpreter in a language other than Spanish available at the time of the hearing; and (2) delaying the case would likely cause undue hardship to or is likely to endanger the party seeking relief.
- For counties with a population of less than 50,000, the Spanish interpretation services provided by OCA's licensed court interpreters are available in **criminal** matters only if OCA receives the court's confirmation (which will be documented during the appointment confirmation process for the hearing) that (1) there is no county-funded licensed Spanish court interpreter available at the time of the hearing; and (2) delaying the case would likely cause undue hardship to or is likely to endanger the party seeking relief.

1.1 *Contact information.*

Texas Remote Interpreter Project

P O Box 12066

Austin, Texas 78711-2066

Phone: (512) 463-5656

Fax: (512) 463-3413

Email: interpreter@txcourts.gov

Information about the Project is also available on OCA's website, at: <http://www.courts.state.tx.us/oca/DVRA/trip.asp>

1.2 *Service priorities.* TRIP's focus is on improving access to licensed Spanish court interpreters, and licensed or qualified interpreters in languages other than Spanish, in rural areas. As capacity allows, services are available on demand and by appointment. If capacity is reached, then the services will be provided according to the following priorities. However, once a request for interpretation at a given time and date has been confirmed, it will be provided regardless of service priority.

- **Service Priority 1**—Counties with a population of less than 50,000 can schedule an appointment beginning 30 days before the proceeding.

¹ Interpreter services in criminal cases are only available to counties with a population of less than 50,000.

- **Service Priority 2**—Counties with a population of 50,000 or more but less than 500,000 can schedule an appointment beginning two business days before the proceeding.
- **Service Priority 3**—Counties with a population of 500,000 or more can schedule an appointment on the day before the service is needed.

(See **Attachment A** for a list of counties within the respective priority categories. The list can also be found on OCA’s website at:

<http://www.courts.state.tx.us/oca/DVRA/trip.asp>.)

1.3 Enrolling in the program. To enroll, a court must complete the form at: www.appointmentquest.com/provider/2150096234/signup. If a court lacks Internet access, the court can call OCA, at (512) 463-5656, to request that an enrollment form be faxed to it. After the court enrolls, OCA will send the court a “Participation Agreement” that must be signed by the judge and returned to OCA by mail or by fax to (512) 463-3413, before services can be scheduled.

2. Court interpretation in Spanish.

(See **Attachment B** for a judicial benchcard that provides a brief summary of the policies and procedures for scheduling and using the Spanish interpretation services provided by OCA’s staff interpreters.)

Spanish language interpretation services will be provided entirely by licensed court interpreters employed by OCA. These interpreters have passed stringent oral and written testing developed by the Consortium for State Court Interpreter Certification with the help of the National Center for State Courts, are experienced in Texas courtroom procedures, meet annual continuing education requirements, comply with the Licensed Court Interpreters Code of Ethics and Professional Responsibility, and receive ongoing training in family violence issues.

While the interpretation services are free, the court is responsible for the payment of any phone charges incurred.

2.1 Mode of interpretation. Interpretation will be *consecutive*, meaning that only one person talks at a time, usually about two sentences.² Sight translation of documents (oral translation of text written in one language into another language, in real time) and interpretation of audio or video recordings are **not** available services.

2.2 Required technology. To use this service, a court needs a:

² However, simultaneous interpretation may be provided in special circumstances if arrangements are made in advance.

- (1) speakerphone in the courtroom and the ability to initiate a long-distance telephone call;³
- (2) computer with a microphone and Internet access (for free voice over Internet service, which is commonly referred to as “VOIP”); or
- (3) computer with a microphone, a webcam, and broadband Internet access (for free videoconferencing).

Videoconferencing is the preferred method for providing remote-site interpretation services, due to the importance of non-verbal cues in rendering an accurate interpretation. Wired networks (a physical network plug is inserted into the computer) are preferred for videoconferencing. Wireless networks should be avoided due to lower image and sound quality. For video, the minimal quality is uninterrupted, intelligible audio coupled with the ability to recognize the speaker’s facial features at least 80% of the time. The interpreter may halt a session if audio quality becomes insufficient for accurate interpretation.

2.3 *MegaMeeting videoconferencing.* OCA interpreters use MegaMeeting, a web-based commercial videoconferencing service for both VOIP and videoconferencing. MegaMeeting **does not require installation of any software** and usually is not blocked by courthouse network security programs. The participants will simply log on to a website by clicking on a link in the e-mail they receive in confirmation of each service request. To participate in a MegaMeeting videoconference, the court’s computer must have at least 256 MB RAM/240 kbps speed and be linked to an Internet browser with a Flash Player 7 plug-in. MegaMeeting can be used with or without a webcam (the latter use will be voice-only).

2.4 *Minimum quality standards.* Whatever the telecommunication medium used, the court’s technology must meet minimum quality standards. This quality will be assessed by an OCA staff interpreter during a test call or videoconference session, which will be scheduled before the first use in that courtroom. Subsequent changes to the network or related equipment in a given courtroom may require adjustments to the interpreting services available, as remote interpreting is only feasible with a high-quality connection. Because the equipment can vary from courtroom to courtroom within a given courthouse, OCA will schedule test calls or videoconference sessions for each courtroom where remote interpreters will be used.

³ The speakerphone must be “full duplex,” meaning both parties can speak at the same time and still hear each other simultaneously. Since the late 1990s, all but the least expensive speakerphones have the full-duplex feature. Full duplex speakers also have an echo-elimination function. With older, half-duplex phones, the speaker cannot hear the other party until he stops speaking, and the first few words of the sentence may be cut off. To test your phone, try placing a call and speaking at the same time as the other person, interrupting, to see if you can both be heard at once.

2.5 *Hours of service.* Spanish language interpretation services are available on weekdays, except on state holidays, as posted on AppointmentQuest. The court can log in at <http://www.appointmentquest.com/provider/2150096234/login> to check availability. If a court does not have Internet access, the court can obtain information about the hours of service on a particular day(s) by calling OCA, at (512) 463-5656, or faxing a request for that information to (512) 463-3413.

2.6 *Scheduling.* When the court has or will set a hearing date for which interpretation services are needed, the judge or court staff can access the interpreters' calendar, which is posted online at www.appointmentquest.com/provider/2150096234/login, to determine interpreter availability and schedule services. The court will select an available time and date and enter the required prehearing information directly into the AppointmentQuest calendar. The calendar will automatically send a confirmation message to the court. If two or more interpreted proceedings are planned back-to-back, the court must set up a separate appointment for each, signing up for adjoining time slots of the expected, approximate length.

If a court does not have Internet access, the court can call OCA, at (512) 463-5656, to determine interpreter availability and request a prehearing information form. The court must fax a request for interpreter services, along with the required prehearing information, to (512) 463-3413. The interpreter will confirm the appointment by fax or phone call.

2.7 *Appointment length.* The court should allow 40% more time for consecutive interpretation, which is the type of interpretation provided by remote interpreters than is needed for simultaneous interpretation, which is the type of interpretation provided when the interpreter is present in the courtroom. AppointmentQuest accepts appointments in increments as short as 10 minutes (useful for multiple, short proceedings). Long appointments (those over 2.0 hours) are available. However, due to time constraints, special arrangements must be made to schedule long appointments. To schedule an appointment over 2.0 hours, court staff must contact the interpreters by email, at interpreter@txcourts.gov, or phone, at (512) 463-5656, at least seven business days before the hearing date.

2.8 *Cancellation policy.* If a court has Internet access, the court must use AppointmentQuest to cancel appointments. If a court does not have Internet access, the court must send written notification of the cancellation by fax to OCA, at (512) 463-3413. OCA must be notified of any changes in or cancellations of scheduled interpreter services as far in advance as possible, to allow other courts the opportunity to schedule interpreter services during that time period.

2.9 *Compliance monitoring.* For grant purposes, OCA must document that scheduled services were either used or timely cancelled. Therefore, OCA will monitor compliance with scheduling and cancellation policies and will discontinue or suspend services to non-compliant courts.

3. Non-Spanish language interpretation (in civil cases only)

In civil cases only, TRIP funds interpretation services for languages other than Spanish. These services are provided telephonically by a commercial interpretation service under contract with OCA. The commercial service's interpreters are not necessarily licensed as court interpreters by the state of Texas; however, they are screened, trained, qualified, and monitored through an internal program of the vendor. In counties with a population of 50,000 or more, the court must make a finding on the record that the commercial service's interpreter is being used to interpret because there is no licensed court interpreter within 75 miles who can interpret in the language that is necessary in the proceeding. (Tex. Gov't Code § 57.002).

While the interpretation services are free, the court is responsible for the payment of any phone charges incurred.

3.1 *Mode of interpretation.* As with OCA's licensed Spanish court interpreters, the commercial service's interpretation will be consecutive interpretation. Sight translation of documents and interpretation of audio or video recordings are **not** available services.

3.2 *Technical requirements.* To use the commercial services, the court must have a full-duplex speakerphone available in the courtroom.

3.3 *Hours of service.* Non-Spanish court interpretation services are available Monday through Friday, 8:00 a.m. to 5:00 p.m. CST.

3.4 *Scheduling.* Non-Spanish services are available during regular office hours (8:00 a.m. to 5:00 p.m., Monday-Friday); however, the court must use the Non-Spanish option on the AppointmentQuest scheduling program to provide prehearing information and request an appointment. When OCA staff confirms the appointment (by email or telephone), staff will also send the court an approval code along with the telephone number for the commercial service. At the scheduled hearing time, the court will call the commercial service and provide the approval code. Although the non-Spanish interpretation services *may* be available upon demand, to ensure that OCA has time to process the request for these services, at least one business day's notice is recommended. If two or more interpreted proceedings are planned back-to-back, the court must obtain an approval code for each proceeding.

Courts with Internet access must use AppointmentQuest (www.appointmentquest.com/provider/2150096234/login) to submit the required prehearing information and obtain an approval code.

If a court does not have Internet access, the court can contact OCA by phone, at (512) 463-5656, or fax, at (512) 463-3413, to obtain a prehearing information form. The completed form must be returned by fax or mail to OCA before services can be scheduled.

3.5 Cancellation policy and compliance monitoring. Appointments for non-Spanish interpretation services are subject to the same cancellation policy and compliance monitoring as apply to appointments for OCA staff interpreter services.

4. Data collection and reporting.

4.1 Required data. By the terms of the grant, OCA is required to collect and maintain data that measure the effectiveness of the program; therefore, the courts must provide certain basic information on each case both before and after the interpretation services are provided. Additional data elements, such as the actual time the interpreter spent on a case, will be tracked internally.

4.1.1 Prehearing data. The prehearing information to be provided by the court to OCA includes, but is not limited to the:

- type of case (i.e., for criminal cases, the offense charged; for civil cases, whether the matter is a Family Code protective order, magistrate's order of emergency protection, sexual assault victim's protective order, temporary order of emergency protection for a child under Family Code § 152.024, etc.)
- type of proceeding (hearing on the merits, pre-trial matter, post-trial matter or other (e.g., contempt);
- name of the Limited English Proficiency (LEP) participant;
- role of the LEP participant in this case (e.g., applicant, respondent, or non-party witness);
- primary language of the LEP participant; and
- court's telecommunication technology (videoconference, telephone, or VOIP).

In addition, the court should provide OCA with any other information that would be helpful in providing the interpretation services (e.g., recent changes in the telecommunications equipment used in the courtroom, a new judge who has not used the system before, an LEP person who is a child, etc.).

4.1.2 Post-hearing data. Information to be provided by the court to OCA includes:

- whether the case involves violations of pretrial (bond) conditions;
- whether the resolution resulted in an offender being ordered to attend batterer's intervention counseling;

- the resolution resulting from the proceeding (issuance of order, continuance, dismissal, etc.); and
- whether the case resulted in the issuance of a protective order.

This information may be requested verbally by the OCA staff interpreter at the end of each hearing in which Spanish interpretation services have been provided. For non-Spanish interpretation services, or if the information is not available at the close of the hearing in which Spanish interpretation services have been provided, OCA will send the court a post-hearing request for information, which can be returned by mail, fax or email. The court should provide the information as soon as possible (within 7 business days after the hearing adjourns) or state in writing that despite its best efforts, the information is not available.

- 4.2 *Non-compliance.*** If the court fails to provide the required prehearing and post-hearing data (or provide a written statement that despite its best efforts, post-hearing information is not available), it will be ineligible to participate further in TRIP until the required data or statement is provided.

5. OCA interpreter staff.

- 5.1** Comments about the TRIP may be sent to marco.hanson@txcourts.gov or (512) 463-1625.

- 5.2 *Code of Ethics and professional standards of interpreters*** TRIP services by Spanish court interpreters licensed in Texas will conform to the ethical and professional standards set out in 16 Texas Administrative Code § 80.100, summarized here. (See **Attachment C**). The interpreter shall be able to readily communicate with the LEP person, be able to interpret the LEP person's statements, and be able to accurately repeat and interpret statements of the LEP person to the judge or jury. The interpreter shall take and honor the oath or affirmation to use the interpreter's best skill and judgment to interpret truly and accurately during the court proceeding. The interpreter shall be able to effectively, impartially, and accurately interpret both receptively and expressively. The interpreter will recuse him or herself from participation in any proceeding in which the interpreter has an interest or a bias. The interpreter will follow the laws of the United States and the state of Texas with regard to provision of interpretation services.

ATTACHMENT A

THE TEXAS REMOTE INTERPRETER PROJECT – JUDICIAL BENCHCARD WORKING WITH OCA SPANISH INTERPRETERS

- Interpreters:** Licensed **Spanish** court interpreters with training on family violence issues.
- Courts:** District and county-level courts
- Case Types:** For all counties, **civil** cases involving family violence between **intimate partners** (including a magistrate’s order of emergency protection). Additionally, in counties with a population of less than 50,000, **criminal** cases involving family violence between **intimate partners**.
- Service Priority 1:** Counties with a population of less than 50,000 can schedule an appointment beginning 30 days before the proceeding.
- Service Priority 2:** Counties with a population of 50,000 or more but less than 500,000 can schedule an appointment beginning two business days before the proceeding.
- Service Priority 3:** Counties with a population of 500,000 or more can schedule an appointment beginning on the day before the proceeding (subject to the availability of an interpreter).
- Appointments:** Weekdays except state holidays. To check availability, log in at <http://www.appointmentquest.com/provider/2150096234/login>.¹
- Cost:** **Free** for qualifying **civil** and **criminal** cases. (Phone charges are paid by the court.)
- Technology:** Landline speakerphone (minimum) or high-speed Internet (preferred).

To enroll in the program (required before the first appointment):

1. Log on to www.appointmentquest.com/provider/2150096234/signup.
2. Submit the information required to enroll the court.
3. Participation Agreement, which will be faxed to the court, must be signed **by the judge** and returned to OCA.
4. An OCA interpreter will schedule a test call or videoconferencing session.

To schedule an interpreter:

1. Log on to www.appointmentquest.com/provider/2150096234/login.
2. Submit the information requested about the proceeding.
3. An OCA interpreter will respond by the next business day to confirm the appointment with connection details.

TELEPHONE ONLY—A few minutes before the scheduled appointment:

1. Call the phone number provided in your appointment confirmation email.
2. Identify the court to the interpreter and provide requested information.

VIDEOCONFERENCE or VOICE OVER INTERNET PROTOCOL (VOIP)—A few minutes before the scheduled appointment:

1. Click on the link to MegaMeeting.com sent in the confirmation e-mail.
2. Identify the court to the interpreter and provide requested information.

¹ Courts without Internet access should contact OCA (at phone 512-463-5656 or fax 512-463-3413) to obtain services.

Procedure for successful use:

1. When the court has multiple short proceedings (10 minutes or less) that will be heard consecutively, court staff should schedule the hearings in consecutive 10-minute increments.
2. Prior to the hearing, any document that a participant or the court anticipates using should be sent to the interpreter by fax to 512-463-3413. However, the interpreter is **NOT** permitted to perform sight translation of documents or interpretation of audio or video recordings.
3. The judge or the judge's designee should make sure that all parties are close enough to a microphone (and for video conference calls, the video camera and screen) to be clearly heard by the interpreter. The judge should confirm at the beginning of the proceeding that (1) all participants can hear each other; and (2) the interpreter and limited English proficiency (LEP) participant understand each other in Spanish.
4. When the hearing convenes, the judge should ask for and resolve any challenges to the interpreter's qualifications or appearance via telecommunication. OCA staff interpreters' qualifications are available at <http://www.courts.state.tx.us/oca/DVRA/dvra-home.asp>.
5. After resolving all legal challenges to the interpreter, the judge should administer the interpreter's oath. (See below for sample oath).
6. The judge should instruct all hearing participants on the use of the interpreter (see below).
7. The judge should ensure that: (1) all speakers pause at reasonable intervals (about every two sentences/10 seconds); and (2) the LEP participant pauses for interpretation, even if the participant understands or speaks some English.
8. Especially on voice-only calls, the judge and the participants should remember that the interpreter cannot see any of the gestures, evidence, or other visual cues in the courtroom.

Sample oath to administer to interpreter: "Do you solemnly swear that you will well and truly and to the best of your ability discharge the duties of interpreter and translate from English into Spanish, and from Spanish into English, such questions and answers as shall be put to the witness and received from the witness in the case now pending before the Court?"

Sample instructions for the judge to give to all hearing participants: "We will be using a Spanish interpreter today who is at a remote site. The interpreter will communicate with [name of Spanish-speaking participant]. It is important to speak clearly and at a moderate speed so that our voices will be heard through the microphone located [place]. The interpretation will be consecutive so the speaker must pause every 10 seconds or so. If we speak too fast or for too long, the interpreter will have to ask for repetitions to make sure [he/she] conveys the exact same information in the other language. Please direct all questions and statements to the Spanish-speaker rather than to the interpreter. For example, phrase the question as 'What is your marital status?' rather than as 'Ask her what her marital status is.' The interpreter will then speak from the perspective of the person for whom [he/ she] is interpreting."

Required case data: To fulfill grant requirements, the interpreter will ask the court for certain case information at the close of the hearing or in a later communication. If the court fails to provide the required data, it will be ineligible to participate further in the Texas Remote Interpreter Project until the required data is provided.

Technical Assistance: interpreter@txcourts.gov or (512) 463-5656
Comments: interpreterprogramsupervisor@txcourts.org or 512-463-1625

ATTACHMENT B
COUNTIES ALPHABETICALLY BY PRIORITY LEVELS

Service Priority 1: Counties with a population of less than 50,000

Andrews	Culberson	Hopkins	McCulloch	Stephens
Aransas	Dallam	Houston	McMullen	Sterling
Archer	Dawson	Howard	Medina	Stonewall
Armstrong	De Witt	Hudspeth	Menard	Sutton
Atascosa	Deaf Smith	Hutchinson	Milam	Swisher
Austin	Delta	Irion	Mills	Terrell
Bailey	Dickens	Jack	Mitchell	Terry
Bandera	Dimmit	Jackson	Montague	Throckmorton
Baylor	Donley	Jasper	Moore	Titus
Bee	Duval	Jeff Davis	Morris	Trinity
Blanco	Eastland	Jim Hogg	Motley	Tyler
Borden	Edwards	Jim Wells	Navarro	Upshur
Bosque	Erath	Jones	Newton	Upton
Brewster	Falls	Karnes	Nolan	Uvalde
Briscoe	Fannin	Kendall	Ochiltree	Val Verde
Brooks	Fayette	Kenedy	Oldham	Waller
Brown	Fisher	Kent	Palo Pinto	Ward
Burleson	Floyd	Kerr	Panola	Washington
Burnet	Foard	Kimble	Parmer	Wharton
Caldwell	Franklin	King	Pecos	Wheeler
Calhoun	Freestone	Kinney	Polk	Wilbarger
Callahan	Frio	Kleberg	Presidio	Willacy
Camp	Gaines	Knox	Rains	Wilson
Carson	Garza	La Salle	Reagan	Winkler
Cass	Gillespie	Lamar	Real	Wood
Castro	Glasscock	Lamb	Red River	Yoakum
Chambers	Goliad	Lampasas	Reeves	Young
Childress	Gonzales	Lavaca	Refugio	Zapata
Clay	Gray	Lee	Roberts	Zavala
Cochran	Grimes	Leon	Robertson	
Coke	Hale	Limestone	Runnels	
Coleman	Hall	Lipscomb	Sabine	
Collingsworth	Hamilton	Live Oak	San Augustine	
Colorado	Hansford	Llano	San Jacinto	
Comanche	Hardeman	Loving	San Saba	
Concho	Hartley	Lynn	Schleicher	
Cooke	Haskell	Madison	Scurry	
Cottle	Hemphill	Marion	Shackleford	
Crane	Hill	Martin	Shelby	
Crockett	Hockley	Mason	Sherman	
Crosby		Matagorda	Somervell	

Service Priority 2: Counties with a population of 50,000 or more but less than 500,000

Anderson	Galveston	Liberty	Rusk
Angelina	Grayson	Lubbock	San Patricio
Bastrop	Gregg	Maverick	Smith
Bell	Guadalupe	McLennan	Starr
Bowie	Hardin	Midland	Taylor
Brazoria	Harrison	Montgomery	Tom Green
Brazos	Hays	Nacogdoches	Van Zandt
Cameron	Henderson	Nueces	Victoria
Cherokee	Hood	Orange	Walker
Comal	Hunt	Parker	Webb
Coryell	Jefferson	Potter	Wichita
Ector	Johnson	Randall	Williamson
Ellis	Kaufman	Rockwall	Wise

Service Priority 3: Counties with a population of 500,000 or more

Bexar	Denton	Harris	Travis
Collin	El Paso	Hidalgo	
Dallas	Fort Bend	Tarrant	

Source: U.S. Census Bureau, 2010 Census

ATTACHMENT C

Licensed Court Interpreters Code of Ethics and Professional Responsibility 16 Texas Administrative Code § 80.100

(a) **Preamble.** Many persons who come before the courts are non- or limited-English speakers. The function of court interpreters and translators is to remove the language barrier to the extent possible, so that such persons' access to justice is the same as that of similarly situated English speakers for whom no such barrier exists. The degree of trust that is placed in court interpreters and the magnitude of their responsibility necessitate high, uniform ethical standards that will both guide and protect court interpreters in the course of their duties as well as uphold the standards of the profession as a whole. Interpreters are highly skilled professionals who fulfill an essential role in the administration of justice.

(b) **Applicability.** This code shall guide and be binding upon all persons, agencies and organizations who administer, supervise use, or deliver interpreting services to the judiciary. This code is therefore intended not only to set forth fundamental ethical precepts for court interpreters to follow, but also to encourage them to develop their own, well-informed ethical judgment.

(c) **CANON 1: ACCURACY AND COMPLETENESS.** Interpreters shall render a complete and accurate interpretation or sight translation, without altering, omitting, or adding anything to what is stated or written, and without explanation. The register, style, and tone of the source language should be conserved. While interpreting or translating, court interpreters are to use the same grammatical person as the speaker. Guessing should be avoided. Interpreter errors should be corrected for the record as soon as possible.

(d) **CANON 2: REPRESENTATION OF QUALIFICATIONS.** Interpreters shall accurately and completely represent their certifications, accreditations, training, education, and pertinent experience. Court interpreters shall bring to the judge's attention any circumstances or conditions that impede full compliance with any canon of this code, including, but not limited to: interpreter fatigue, inability to hear, or inadequate knowledge of specialized terminology, and must decline assignments under conditions that make such compliance unattainable. Acceptance of a case by an interpreter conveys linguistic competency in legal settings.

(e) **CANON 3: IMPARTIALITY AND AVOIDANCE OF CONFLICTS OF INTEREST.** Interpreters shall be impartial and unbiased and shall refrain from conduct that may give an appearance of bias. Interpreters shall immediately disclose to the Court and all parties any real, potential, or perceived conflicts of interest. Interpreters shall abstain from comment on cases in which they serve. An interpreter who is also an attorney should not serve in both capacities in the same matter, unless agreed to by the judge and all parties.

(f) **CANON 4: PROFESSIONAL DEMEANOR.** Interpreters shall conduct themselves in a manner consistent with the dignity of the court and shall be as unobtrusive as possible.

(g) **CANON 5: CONFIDENTIALITY.** Interpreters shall not disclose privileged or confidential communications or information acquired in the course of interpreting or preparing for interpretation, unless authorized by the Court or by law.

(h) **CANON 6: SCOPE OF PRACTICE.** Interpreters shall limit themselves to interpreting or translating, and shall not give legal advice, express personal opinions to individuals for whom they are interpreting, or engage in any other activities which may be construed to constitute a

service other than interpreting or translating while serving as an interpreter. An interpreter may convey legal advice including the explanation of forms and/or services to a person only while an attorney is giving it.

(i) CANON 7: ASSESSING AND REPORTING IMPEDIMENTS TO PERFORMANCE.

Interpreters shall assess at all times their ability to deliver their services. When interpreters have any reservation about their ability to satisfy an assignment competently, they shall immediately convey that reservation to the judge.

(j) CANON 8: DUTY TO REPORT ETHICAL VIOLATIONS. Interpreters shall report to the judge any effort to influence or impede the performance of their duty, or their compliance with any legal requirement, any provision of this code, or any other official policy governing court interpreting. An interpreter having knowledge that another interpreter has committed a violation of any provision of this code shall inform the judge and/or the appropriate licensing authority.

(k) CANON 9: PROFESSIONAL DEVELOPMENT. Interpreters shall continually improve their skills and knowledge and advance the profession through activities such as professional training and education, and interaction with colleagues and specialists in related fields. Interpreters should keep informed of all statutes, rules of courts and policies of the judicial system that relate to the performance of their professional duties.

Texas Department of Licensing and Regulation (TDLR)

Website

<http://www.license.state.tx.us/>

Contact Information

Main Office – Austin:

Texas Department of Licensing and Regulation
920 Colorado
Austin, Texas 78701

Mailing Address:

Texas Department of Licensing and Regulation
P.O. Box 12157
Austin, Texas 78711

Telephone: (512) 463-6599

Toll-Free (in Texas): (800) 803-9202

Fax: (512) 463-9468

Relay Texas-TDD: (800) 735-2989

Customer Service

Licensed Court Interpreters - CS.Court.Interpreters@license.state.tx.us

License Search: <http://www.license.state.tx.us/LicenseSearch/>

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