

# In the Supreme Court of the State of Idaho

IN RE: AMENDMENTS TO IDAHO  
COURT ADMINISTRATIVE RULE 52

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ORDER

The Court, having reviewed a recommendation from the Language Access Committee and the Administrative Conference to amend the Idaho Court Administrative Rules, and the Court being fully informed;

NOW, THEREFORE, IT IS ORDERED that the Idaho Court Administrative Rules are amended as follows:

## **Idaho Court Administrative Rule 52. ~~Policy Declaration Relating To~~ Court Interpreters**

(a) **Statement of Policy.** ~~It is the policy of the Supreme Court and the intent of these rules to secure the rights, constitutional and otherwise, of persons who, because of a non-English-speaking cultural background or physical impairment, are unable to understand or communicate adequately in the English language when they appear in the courts or are involved in court proceedings, or are otherwise seeking access to the courts.~~

The Supreme Court is committed to removing barriers that hinder equal access to justice by individuals with limited English proficiency (LEP). This commitment serves the Court's interest in ensuring accurate communication in court proceedings, protecting the integrity of evidence, and providing language access policies, services, and resources that enhance the quality and availability of interpreting and translation services in Idaho courts. The Court is committed to taking all reasonable steps to provide meaningful access to its courts for all individuals, regardless of national origin, ethnicity, or limited ability to read, write, speak, hear, or understand the English language.

(b) **Scope.**

This rule applies to court interpreters who provide spoken language interpretation for the courts. This rule does not apply to interpreters for the deaf, deaf-blind, and hard of hearing, except that all interpreters for the deaf, deaf-blind, and hard of hearing will submit the oath in accordance with subsection (f) of this rule and may be subject to subsection (g) regarding removal in an individual case. The courts will utilize the Registry of Interpreters for the Deaf or other court recognized certifying bodies for court interpreters for the deaf, deaf-blind, and hard of hearing. The cost for interpreter services for all interpreters will be paid in accordance with subsection (h).

**(b) Definitions:**

For the purpose of these rules, the following words have the following meanings:

(1) "Appointing authority" means a district or magistrate judge, including pro tem and retired judges within the scope of their appointments, or the judge's designee.

(2) "Bilingual employee" means an employee who has demonstrated proficiency in both English and one other language. A bilingual employee may provide court operations in both languages but, without additional interpreter credentials, is not qualified to serve as a court interpreter.

~~(2) "Certified ñ Master Level interpreter" means an individual who has passed the certification exam with an 80 percent or higher on each portion of the exam: simultaneous, consecutive, sight English, and sight foreign. The score for the sight translation portion of the exam will not be combined.~~

(3) "Certified interpreter" means an individual who has:

(A) completed the Intro to Court Interpretation class;

(B) completed the ethics review and written exam prep-class;

(C) passed the National Center for State Courts (NCSC) written exam, with a score of 80 percent or higher; and,

(D) passed the NCSC oral certification exam, with:

(i) a score of 70 percent or higher on the simultaneous and consecutive portions;

(ii) an average score of 70 percent across both sight-English and sight-foreign; and,

(iii) a minimum score of 65 percent in both sight translations.

~~(4) "Certified interpreter" means a an individual who has passed the certification exam with a 70 percent or higher in the simultaneous and consecutive portions, and an average of 70 percent across both sight English and sight foreign. Must achieve a minimum score of 65 percent in both sight translations.~~

"Certified – Master Level interpreter" means an individual who has passed the federal court interpreter certification exam, or:

(A) completed the Intro to Court Interpretation class;

(B) completed the ethics review and written exam prep-class;

(C) passed the NCSC written screening exam with a score of 80 percent or higher; and,

(D) passed the NCSC oral certification exam in one testing cycle, with:

(i) a score of 80 percent or higher on the simultaneous and consecutive portions;

(ii) an average score of 80 percent for both sight-English and sight-foreign; and,

(iii) a minimum score of 80 percent in both sight translations.

(5) "Conditionally approved interpreter" means a an individual who has: ~~received an overall score of 55 percent or higher on the certification exam without reaching the certified or master level, with no single score falling below a 50 percent, including on the separate sight translation scores. An individual may fall under this level of qualification for a period of only two years.~~

(A) completed the Intro to Court Interpretation class;

(B) completed the ethics review and written exam prep-class;

(C) passed the NCSC written exam with a score of 80 percent or higher; and,

(D) received an overall score of 55 percent or higher on the NCSC oral certification exam, with no single score falling below a 50 percent, including on the simultaneous, consecutive, and both sight-English and sight-foreign translation portions.

An individual may fall under this level of qualification for a period of two calendar years, after which they must retake the entire NCSC oral certification exam to remain on the roster.

(6) "Court operations" means services and programs conducted by the local court, local administrative offices, that remain within the overall responsibility of the Supreme Court. Court operations are intended to be distinct from a "court proceeding" which is defined below.

(57) "Court proceeding" means any civil, criminal, domestic relations, juvenile, traffic, or other in-court proceeding in which ~~a non-English-speaking~~ an individual with limited English proficiency (LEP) person is a ~~principal party in interest, or a witness, or crime victim.~~

~~(6) "Non-English-speaking person" means any principal party in interest or witness whose communication or understanding in the English language does not permit effective participation in a court proceeding.~~

(8) "Limited English Proficient (LEP)" means an individual does not speak English as his or her primary language and has a limited ability to read, speak, write, or understand the English language.

~~(79) "Principal party in interest" means a person~~ an individual involved in a court proceeding who is a named party, or who will be bound by the decision or action, or who is foreclosed from pursuing his or her rights by the decision or action which may be taken in the proceeding. A party in interest also includes the parent(s) or legal guardian(s) of a juvenile, minor child, or an individual with a disability.

(10) "Roster" is a list of court interpreters maintained by the Supreme Court Administrative Office of the Courts, who meet the qualifications under this rule to provide interpreter services for the courts.

~~(811) "Registered interpreter" means an interpreter for a language for which an NCSC oral no-certification exam does not exists for the language, yet the individual has: passed the written exam with an 80 percent and has completed the orientation workshop, and has passed an oral English exam and other language proficiency assessment.~~

(A) completed the Intro to Court Interpretation class;

(B) completed the ethics review class and written exam prep-class;

(C) passed the NCSC written exam with a score of 80 percent or higher; and,

(D) passed an oral proficiency exam and other language proficiency assessment.

(912) "Witness" means anyone who testifies in any court proceeding.

**(ed) Implementing Responsibilities.**

The Supreme Court, through the Administrative Office of the Courts, shall administer the State Court Interpreter Training and Certification Program. The Administrative Director Office of the Courts shall establish programs and develop resources for the improvement of court interpreting services, including training and certification of interpreters, establishing development and maintaining maintenance of a program policy manual, maintaining and distributing a directory roster of court interpreters, and collecting and analyzing statistics or other data pertinent to interpreter utilization. ~~An inventory of standard forms and training materials will also be maintained.~~

**(d) Priority of Appointment for Interpreters.**

(1) Subject to subsection (d)(2) of this rule, an interpreter shall be appointed when the appointing authority ~~or his/her designee~~ determines that a ~~principal~~ party in interest, or witness, or crime victim does not communicate in or understand the English language sufficiently to permit effective participation in a court proceeding.

(2) In any court proceeding in which an interpreter is required, the appointing authority shall appoint an interpreter according to the following priority:

(A) ~~a certified ñ master level or certified interpreter~~ Certified – Master Level;

(B) ~~a conditionally approved interpreter~~ Certified interpreter;

(C) ~~a registered interpreter.~~ Conditionally approved interpreter; or

(D) For a language for which there is no oral certification exam available from the NCSC, a Registered interpreter.

(3) The appointing authority may appoint an interpreter of lower priority on the foregoing list only when: ~~good cause exists. Good cause includes, but is not limited to, a determination made prior to the proceeding by the appointing authority that:~~

(A) the interpreter is employed by the State or an Idaho county, and, given the totality of the circumstances, including the nature of the proceeding, use of an interpreter having lower priority will not impair the ability of the individual with LEP to have meaningful access to court proceedings, programs, services, and activities; or

(B) when good cause exists. A good cause determination includes, but is not limited to, a determination that:

(i) ~~Given the totality of the circumstances, including the nature of the proceeding and the potential penalty or consequences involved, the services of an interpreter of higher priority are not reasonably available to the appointing authority; or~~ The services of an interpreter of higher priority are not reasonably available to the appointing authority, and, given the totality of the circumstances, including the nature of the proceeding and the potential penalty or consequences involved, use of an interpreter having lower priority will not impair the ability of the individual with LEP to have meaningful access to court proceedings, programs, services, and activities; or

(ii) ~~The current list of certified interpreters maintained by the Idaho Supreme Court does not include an interpreter certified in the language spoken by the non-English speaking person. The court is not required to~~

~~articulate such a determination in a court proceeding, unless the appointment of an interpreter is challenged by a party. If a party challenges the appointment of an interpreter, the court shall make a determination on the record as to whether the appointment of the interpreter conforms with the provisions of this rule. The current roster of certified or registered interpreters maintained by the Administrative Office of the Courts does not include an interpreter certified or registered in the language spoken by the individual with LEP.~~

The appointing authority is not required to articulate the basis for appointment under this rule in a court proceeding unless the appointment of an interpreter is challenged. If the appointment of an interpreter is challenged, the court shall make a determination on the record as to whether the appointment of the interpreter conforms with the provisions of this rule.

~~(34) In extraordinary circumstances, upon a finding by the court that no certified master level interpreter, certified interpreter, conditionally approved interpreter or registered roster interpreter is available, and that it is necessary to conduct the a court proceedings before such an interpreter is likely to become available, the appointing authority may appoint a person an individual as interpreter if the appointing authority finds that such person individual is able to interpret from English to the language of the non-English speaking individual with LEP and from the language of that person individual into English. The appointing authority may not appoint bilingual employees for court proceedings unless good cause is stated on the record. The appointing authority shall not appoint or use family, friends, companions, untrained, or biased individuals, to serve as an interpreter in a court proceeding other than for brief and simple communications such as to reschedule the court proceeding.~~

~~(5) Family, friends, companions, untrained, or biased individuals should not be used as an interpreter for court operations other than for brief and simple communications.~~

#### **(ef) Interpreter Oath.**

All court interpreters, before commencing their duties, shall take the following oath:

"Do you solemnly swear or affirm that you will interpret and/or translate accurately, completely, and impartially, using your best skill and judgment in accordance with the standards prescribed by law and the Idaho Code of Professional Responsibility for Interpreters in the Judiciary?"

~~A district judge, or magistrate judge, or other individual authorized to administer oaths, may will administer the oath to an interpreter in writing, and the written oath shall be filed with the clerk of the district court for the county on the record, prior to the start of the court proceeding for which the interpreter is interpreting unless the court interpreter is employed by the State or an Idaho county and is listed on the roster. Once the oath has been filed, it shall remain in effect until such time as the interpreter is removed under~~



~~subsection (f) of this rule, and while the written oath remains in effect it need not be administered to the interpreter at any subsequent court proceeding in the county. Court interpreters on the roster shall also file a written oath with the Administrative Office of the Courts. The written oath shall remain in effect for 2 years unless the interpreter is removed under subsection (g) of this rule.~~

**(fg) Removal of an Interpreter in an Individual Case.**

Any of the following actions shall be ~~good-cause grounds for a judge~~ an appointing authority to remove an interpreter from a court proceeding:

- (1) ~~being unable~~ failing to interpret adequately;
- (2) knowingly and willfully making false interpretation while serving in an official capacity;
- (3) knowingly and willfully disclosing confidential or privileged information obtained while serving in an official capacity;
- (4) failing to appear as scheduled;
- (5) misrepresentation of credentials or other material misstatement of fact relative to appointment as an interpreter;
- (6) removal from the ~~Idaho Supreme Court's list~~ roster of court interpreters; and
- (7) ~~a plea of guilty or finding of guilt, regardless of the form of judgment or withheld judgment, of a crime substantially related to the qualifications, functions, or duties of an interpreter, or that involves dishonesty, fraud, or moral turpitude;~~
- ~~(8) failing to follow other standards prescribed by law and the Idaho Code of Professional Responsibility for Interpreters in the Judiciary.~~

If an interpreter is removed from a court proceeding, the appointing authority or Trial Court Administrator shall inform the Supreme Court Language Access Coordinator of the removal.

**(gh) Cost of Interpreter Services.**

In all court proceedings in which an interpreter is appointed, the ~~court~~ Supreme Court shall determine a reasonable fee for the interpreter's services, which shall be paid out of the district court fund or paid by the county as prescribed by law. In no circumstances shall the individual with LEP be responsible for paying interpreter services.

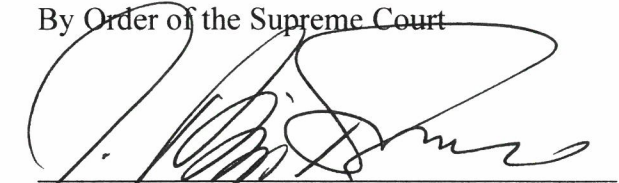
IT IS FURTHER ORDERED that this order and these amendments shall be effective July 1, 2024.

IT IS FURTHER ORDERED that the above designation of the striking of words from the Rules by lining through them, and the designation of the addition of new portions of the Rules by underlining such new portion is for the purposes of information only as amended, and NO OTHER AMENDMENTS ARE INTENDED. The lining through and underlining shall not be considered a part of the permanent Idaho Court Administrative Rules.

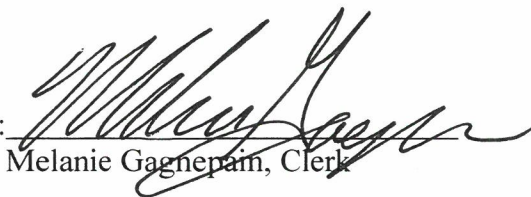
IT IS FURTHER ORDERED, that notice of this Order shall be published for three consecutive weeks on the Idaho State Bar's website and in its weekly E-Bulletin, and that as soon as practicable, a summary of the amendment(s) effected by this Order shall be published in one issue of *The Advocate*.

DATED this 5<sup>th</sup> day of March 2024.

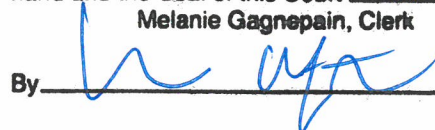
By Order of the Supreme Court

  
G. Richard Bevan  
Chief Justice, Idaho Supreme Court

ATTEST:

  
Melanie Gagnepain, Clerk

I, Melanie Gagnepain, Clerk of the Supreme Court/  
Court of Appeals of the State of Idaho, do hereby  
Certify that the above is a true and correct copy of the  
Order entered in the above entitled  
cause and now on record in my office. WITNESS my  
hand and the Seal of this Court 3-6-24  
Melanie Gagnepain, Clerk

By  Deputy