

# ¿Necesita Su Cliente Un Interpretete?

## Does Your Client Need an Interpreter?

By John L. Machado

You've just been appointed by the judge to a client who speaks perfect Spanish, but no English. Perhaps you get a referral in a personal injury case from a woman who describes the accident in broken English. How will your client be able to tell their version of the story to a judge or a jury? Fortunately, both the federal and state courts in the Commonwealth of Virginia have put procedures in place to assist you with the representation of your client and allow them their day in court.

The right of a client to have an interpreter in a criminal case is fundamental. It goes without saying that a defendant should have an interpreter in court to understand the nature of the charges against him or her, to defend himself or herself. Recognizing this important right, both Virginia and the federal government have codified the need for interpreters in their respective codes.

In 1978, the U. S. Congress passed the Court Interpreters Act, codified at 28 U.S.C. § 1827. Pursuant to that legislation, a system was started whereby an interpreter could become "federally certified" to provide their services in federal court. Under the act, a judge or magistrate "shall utilize the services of the most available certified interpreter, or where no certified interpreter is reasonably available, the services of an otherwise qualified interpreter" in any proceedings instituted by the United States (e.g., criminal proceedings) for the defendant or a witness who may present testimony in the criminal proceeding.<sup>1</sup> The court, however, must make a threshold determination that the individual who needs the interpreter "speaks only or primarily a language other than English," and that his or her language deficiency inhibits comprehension of the proceedings, communication with counsel or the presiding judicial officer, or comprehension of questions and the presentation of testimony.<sup>2</sup>

Similarly, the defendant's right to an interpreter is mandatory in criminal cases in circuit and district courts of the Commonwealth. Pursuant to the Virginia Code, "In any criminal case in which a non-English-speaking person is the accused, an interpreter for the non-English-Speaking person **shall** be appointed" by the judge of the court.<sup>3</sup> A defendant is allowed to provide an interpreter of his own choosing, provided that the court determines the interpreter is competent. However, if it is a witness or a victim who needs the interpreter, then the interpreter shall be appointed by

the court "unless the court finds that the person does not require the services of the interpreter."<sup>4</sup> The fee to pay an interpreter is part of the trial expense, but that fee is not to be assessed to the defendant as part of any court costs.

In civil cases, Virginia has made additional efforts to provide non-English speakers access to the courts. Pursuant to the Virginia Code, in a civil proceeding where a non-English-speaking person is a party or witness, an interpreter "**may** be appointed by the court."<sup>5</sup> Besides the non-mandatory statutory language, unlike the criminal counterpart, the court may, in its discretion, assess the court interpreter fee to one of the parties as part of the cost of the case.<sup>6</sup>

### Attorney-Client Privilege Preserved

It should be noted that under the Virginia Code, the use of an interpreter does not destroy the attorney-client privilege. The interpreter cannot be compelled to testify as to any communications which would ordinarily be privileged.<sup>7</sup> Furthermore, all Virginia interpreters are required to adhere to their own Code of Professional Responsibility, which requires them to protect the confidentiality of all privileged and other confidential information.<sup>8</sup>

### How Do I Get An Interpreter?

Once you have made a determination that your client needs an interpreter, you should contact the clerk's office. Most of the clerk's offices will help you in locating and coordinating the use of the interpreter. In civil cases, you should contact the clerk's office to see whether the court requires you to bring your own interpreters or whether the court will provide one. The chart, page 2, lists the names and telephone numbers of all the clerk's office contacts for those county courts where such services are more common, as well as all Virginia federal district courts. Please note that in the Western District of Virginia, all coordination of interpreters is handled through the clerk's office in Roanoke.

Not surprisingly, Spanish language interpreters are the most often requested interpreters in Virginia.<sup>9</sup> Accordingly, the Judicial Council of Virginia has established a voluntary certification process for Spanish-speaking interpreters. To date, this is the only language in which Virginia has established a certification process. If you

are seeking a Spanish language interpreter, you should contact the Judicial Planning Department, Office of the Executive Secretary of the Supreme Court of Virginia at (804) 786-6455. A list of certified interpreters, and the circuits or districts in which they work, can be obtained on the World Wide Web at [www.courts.state.va.us/flilist.htm](http://www.courts.state.va.us/flilist.htm).

Finally, always remember that if you do have a client who is not fluent in English, you are ethically bound to ensure that your client can communicate effectively and understand all court proceedings. Your clients need to know what is going on in court, and you have an ethical (and a moral) duty to communicate successfully. If you have any doubts as to whether your client fully understands you or the court, take the extra step of getting them an interpreter. You owe it to your client. 🗣️

Endnotes

- 1 28 U.S.C. § 1827(d)(1).
- 2 28 U.S.C. § 1827(d)(1)(A),(d)(1)(B).
- 3 Va. Code § 19.2-164 (emphasis added).
- 4 Id.
- 5 Va. Code § 8.01-384.1:1 (emphasis added).
- 6 Id.
- 7 See Va. Code § 8.01-384.1:1 (civil cases); § 19.2-164 (criminal cases).
- 8 Canon 5, Code of Professional Responsibility for Foreign Language Interpreter's Serving Virginia Court (available at [www.courts.state.va.us/interpreters.usage.htm](http://www.courts.state.va.us/interpreters.usage.htm)).
- 9 According to figures provided by the United States Census, over 62% of Virginia residents who speak a non-English language speak Spanish. U.S. Bureau of the Census, 1990 Census of Population, CPHL-96.

## Clerk's Office Contacts for Interpreters

### FEDERAL COURTS

Eastern District of Virginia:

Alexandria:	Kathy Bartell (703) 299-2150
Newport News:	Kay Armistead (757) 223-4608
Norfolk:	Susan Carpenter (757) 222-7232
Richmond:	Linda McDonald (804) 916-2231

Western District of Virginia:

Roanoke:	Brenda Dameron (540) 857-5106
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### STATE COURTS

Arlington County:

Circuit Court:	Lois Gilroy or Sonia Samee (703) 228-7000
District Court:	Tarrah Piper (703) 228-4490

Fairfax County:

Circuit Court (Civil):	Pam Hedrick (703) 246-4941
Circuit Court (Criminal):	Mary McGaffic (703) 246-4946
District Court:	Rana Malik (703) 246-4620

Loudoun County:

Circuit Court:	Joyce Long (703) 777-0270
District Court:	Judy Waddell (703) 777-0312

Prince William County:

Circuit Court:	Bob Marsh (703) 792-6034
District Court:	Marjorie Cox (703) 792-6141

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