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TEXAS COMMISSION FOR THE DEAF AND HEARING IMPAIRED

4800 North Lamar, Suite 310 • Austin, Texas 78756

P. O. Box 12904 • Austin, Texas 78711

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RQ 786

January 13, 1995

JAN 17 95

Sarah Shirley, Chief
Opinion Committee
Office of the Attorney General
P. O. Box 12548
Austin, TX 78711

Opinion Committee

SJS
FILE# ML-31308-95
ID# 31308

Dear Ms. Shirley:

I would like to request an opinion on behalf of the Texas Commission for the Deaf and Hearing Impaired (TCDHI). TCDHI would like clarification on what qualifications are required for interpreters used in administrative settings or court settings. Additionally, the agency would like to know who qualifies to receive services of the interpreter in court settings.

These questions have been raised as a result of the following two incidents: An unqualified signer, who was also a member of the Juvenile Court staff, was used to interpret for a detention hearing in Juvenile Court involving a hearing juvenile and his deaf uncle. The second incident involved an unqualified interpreter being used during a Grand Jury hearing which resulted in a complaint being filed by the consumer. Please see the attached letters detailing these two incidents.

In addition to federal laws, current state laws requiring that interpreters be used in certain situations are as follows:

Texas state laws require that a qualified interpreter be appointed to assist in communication between persons who are deaf and those who are hearing in civil and criminal court and formal governmental proceedings.

Criminal Courts

The Texas Code of Criminal Procedure, Article 38.22, Section 3(a) and (d) and Article 38.31 (a), Sections (a) through (g) and the Texas Government Code, Section 62.1041, require that in criminal court, a qualified interpreter must be provided for a *defendant* who is deaf at an arraignment, hearing, examining trial, or trial, and must be provided for a *juror* who is deaf, including jury deliberation.

Civil Courts

The Texas Civil Practice and Remedies Code, Section 21.001-21.009, requires that in civil court, a qualified interpreter must be provided for a person who is deaf that is party or witness to the proceedings or who is a juror.

The Texas Code of Criminal Procedures and the Texas Civil Practice and Remedies Code define what is meant by the requirements for use of a "qualified interpreter" by listing the types of acceptable certification for interpreters in courts. These acceptable certificate

levels are Levels III, IV, or V., or equivalent from the Registry of Interpreters for the Deaf (RID) as determined by TCDHI and Board for Evaluation of Interpreters (BEI).

§81.0061 of the Texas Human Resources Code states that TCDHI shall prescribe the qualifications for interpreters, and §82.001 of the Human Resources Code goes on to define "qualified interpreter":

"Qualified interpreter' means a person employed as an interpreter who holds a current certification issued by the Board for Evaluation of Interpreters, or another current certificate that the TCDHI determines is comparable or appropriate and approves."

This statute does not state that an interpreter has to be certified at a specific level for different settings.

Rule 183 of The Rules of Civil Procedures in the Texas Rules of Court imply that "The court may appoint an interpreter of its own selection...." Qualifications of the interpreter seem to be left up to the court in this rule.

Regarding who is eligible to receive the services of a qualified interpreter, §2001.005 of the Texas Governmental Code states that:

"In a contested case, a state agency shall provide an interpreter...to interpret the proceedings for a party or subpoenaed witness who is deaf or hearing impaired."

Parties or subpoenaed witnesses are the only ones included in those who are eligible for interpreter services according to the preceding statute.

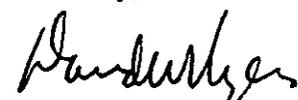
A third issue needing clarification:

Who is responsible for payments for interpreters required in the provision of court mandated services. Examples would be defensive driving classes, family or individual counseling, and such services that may not be covered by the ADA.

No documentation is attached related to this third issue, but TCDHI receives frequent inquiries regarding this issue and would like clarification from the Opinion Committee.

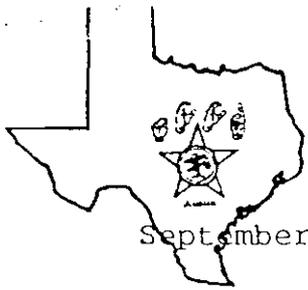
Thank you for your assistance in this matter. We will be happy to provide further information upon request.

Sincerely,



David W. Myers
Executive Director

DWM:lk



TRAVIS COUNTY COUNCIL FOR THE DEAF, INC.

Services funded in part by the Texas Commission for the Deaf

2201 POST ROAD • ROOM 100 • AUSTIN, TEXAS 78704

512/473-9210 TDD 512/473-9205 VOICE

September 20, 1994

Mr David Myers
Executive Director
Texas Commission for the Deaf and Hearing Impaired
P O Box 12904
Austin, Texas 78711

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SEP 28 1994

TEXAS COMMISSION
FOR THE DEAF AND HEARING IMPAIRED

Dear Mr Myers,

Travis County Council for the Deaf would like to confirm our interest in your obtaining an Attorney General opinion on the requirements and qualifications of an interpreter in court settings. We have recently had several experiences which might have been resolved by an Attorney General opinion.

I have enclosed correspondence between our office and Jeanne Meurer of the 98th District Court. Judge Meurer also feels that the requirement for a qualified interpreter does not apply to a parent or guardian in a juvenile case since they are not a defendant or witness who will be called in a hearing. I would appreciate clarification on this issue from the Attorney General's Office.

In an unrelated case, an unqualified interpreter was used during a Grand Jury in our area. While our agency has no doubt that an interpreter certified at Level III, IV or V is required for Grand Jury, Grand Jury does not seem to be specifically mentioned in the law. The consumer involved has filed a grievance and has written a letter of complaint to the court. We have written a letter to the District Attorney regarding the qualifications of an interpreter for court situations.

I would appreciate clarification on these situations. If the Attorney General's Opinion does not resolve this issue, I would like to pursue the possibility of legislation which would make the requirements for effective communication and qualified interpreters very clear. Please let me know if I can help make this happen.

Thank you for your assistance on this issue; we appreciate your support of us and your efforts on behalf of the Deaf Community.

Sincerely,

Deborah Drummond
Supervisor of Interpreter Services

TRAVIS COUNTY DEPARTMENT OF HUMAN SERVICES

SERVICES FOR THE DEAF
2201 POST ROAD/RM. 100
AUSTIN, TEXAS 78704
512-473-9205 Voice
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August 24, 1994

The Honorable John K. Deets, District Judge
Gardner/Bells Juvenile Justice Center
2515 S Congress Avenue
Austin, Texas 78704

Dear Judge Deets,

State law requires that a "qualified" interpreter be provided for defendants, witnesses, victims who are deaf. "Qualified" means certified by the Texas Commission for the Deaf and Hearing-Impaired at Level III, IV, V. This law pertains to deaf juveniles as well as deaf parents or other parties involved in the juvenile justice system. There is no system by which this requirement can be waived. Please contact Stuart Bowen in the Attorney General's Office at 475-4208 if you would like clarification. A copy of the law is attached for your information.

Travis County Services for the Deaf/Travis County Council for the Deaf provide sign language interpreters throughout the Austin area for virtually any type of appointment, meeting, or hearing. The Travis County Commissioner's Court has budgeted funds within the Services for the Deaf budget for any County related interpreter need. No Juvenile Court funds are affected by interpreter requests.

Travis County Services for the Deaf also has an interpreter on staff for County assignments. We also have a position called Deaf Legal Services Coordinator; Kristin Lund has recently assumed this position.

On 8/23/94, a detention hearing was held at Juvenile Court involving a hearing juvenile and his deaf uncle. I understand that a non-qualified signer was used for this hearing. A non-qualified individual should not be expected to provide this type of interpretation. In addition to the fact that this signer was used in conflict with the requirements of state law, I have concern that the information was not interpreted faithfully, accurately and without bias. A probation officer or clerk "interpreting" is functioning in a dual role which does not do justice to the judges's questions and comments or to the deaf party's responses.

It is admirable that probation or clerk staff of the Juvenile Court have acquired sign language skills. These communicators make it possible for the general public to access the Juvenile Court. The Juvenile Court should be commended for making an attempt to be accessible as required by the Americans with Disabilities Act.

We look forward to working with you. Please contact Kristin Lund, our Deaf Legal Services Coordinator, or Yvonne Holmes or Frances Babicki, our Interpreter Coordinators, at 473-9205. We would be glad to assist you in providing legally qualified sign language interpreters or other services to people who are deaf involved with the Juvenile Justice System. We can usually send an interpreter on request, especially if you will work with us on the time. (ie: we may not have someone at 9, but may have someone at 9:45.) I have enclosed a packet of information which may be of interest. Please contact me if I can provide additional information or assistance.

Sincerely,



Deborah Drummond
Supervisor of Interpreter Services

Enclosure

cc: Elaine Carpenter, Juvenile Public Defender
William B. King, Referee
Steve Robinson, Chief Probation Officer
Charles Vaughn, Assistant Chief Probation Officer
David Jaso, Assistant Chief Probation Officer
Barbara Swift, Assistant Chief Probation Officer



98TH DISTRICT COURT

W. JEANNE MEURER
Judge
(512) 473-9307

CLARA ARELLANO
Judicial Aide
(512) 473-9303
FAX (512) 473-9332

TRAVIS COUNTY COURTHOUSE
P. O. BOX 1748
AUSTIN, TEXAS 78767

HAYDEN BOWMAN
Court Clerk
(512) 473-9457
FAX (512) 473-9010

VELIA MENDEZ GALAN
Official Court Reporter
(512) 473-9629

September 1, 1994

MARY AMELL
Bailiff
(512) 473-9384

Ms. Deborah Drummond
Supervisor of Interpreter Services
Travis County Department of
Human Services
2201 Post Road, Room 100
Austin, TX 78704

Dear Ms. Drummond:

Judge Dietz referred your letter to me for response. Thank you for your concern. We are aware of the services available and rely on the parties to the suit to arrange for any special needs for parties or witnesses to the lawsuit, i.e., interpreters.

While I am unaware of the case in question, it would appear that the scenario you present does not meet the requirements you cite. While juvenile cases are conducted under the Rules of Civil Procedure and not the Code of Criminal Procedure, even under the Code of Criminal Procedure the requirement for a "qualified interpreter" is for a defendant or a witness who will be called at a hearing. The uncle at a detention hearing meets neither of these requirements.

Regardless of that, we have in the past and will continue to provide proper services to assist any party or witness with a disability. If you feel otherwise, I would be happy to visit with you further. I routinely have worked with the deaf interpreter over the years and certainly appreciate them and the prompt and important work they do.

Should you have any questions, please feel free to contact me.

Yours very truly,

A handwritten signature in cursive script, appearing to read "W. Jeanne Meurer".

W. JEANNE MEURER
Judge, 98th District Court
Travis County, Texas

WJM/ca



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W. Jeanne Meurer
Judge, 98th District court
Travis County Courthouse
P O Box 1748
Austin, Texas 78767

Dear Judge Meurer,

Thank you for your letter regarding the use of sign language interpreters in court. I appreciate your efforts to clarify the ramifications of the interpreter law.

As you can imagine, my concern relates to the issue of good communication needed in a court situation. As a service provider and advocate, I believe that any individual who is deaf, whether a victim, witness, defendant, parent or relative, involved in a court action has a right to understand the proceedings.

I have enclosed a reference to the Civil Practice and Remedies Code which I believe I neglected to include in my original letter to Judge Dietz. This reference describes requirements for interpreters in court and their qualifications in both Civil and Criminal cases. The Americans with Disabilities Act also has a bearing on the rights of deaf individuals in a court situation. I have attached a copy of a specific brief from the Department of Justice which addresses this aspect of the law. A segment of the ADA states that government funded programs shall provide "effective communication."

In the situation I referred to Judge Dietz, the uncle who happened to be deaf, was being asked to accept responsibility for the juvenile. He was asked questions regarding his ability to support, discipline and control the juvenile to ensure that he would comply with the judge's orders. Although he may not officially meet the requirements of the Texas Code of Criminal Procedure or the Civil Code, he still needed an interpreter to adequately understand the questions and agree to accept responsibility for his nephew.

I have written to the Texas Commission for the Deaf and Hearing Impaired asking that they contact the Attorney General's Office regarding the ramifications of the Interpreter Law. I have asked that they determine the relevance of the law to the rules of Civil and Criminal Procedure, to the involvement of a deaf parent or guardian of a juvenile involved with the Juvenile Court, or to the interpretation at a grand jury. When I receive a response I will be sure to share it with you. The law in place may have an unintended loophole. If that is the case, I hope that this can be resolved during the Legislative Session.

Thank you for your long term support and willingness to provide services to people who are deaf or hard of hearing. We are pleased to continue to work with you in providing sign language interpreters when the need arises. Thank you, personally, for your consideration last week when I was in your court to interpret for a deaf individual.

Sincerely,


Deborah Drummond
Supervisor of Interpreter Services