

SENATOR FLORENCE SHAPIRO
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OPINION COMMITTEE

The Senate of
The State of Texas

May 29, 2002

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DISTRICT OFFICE:
5005 Addison Circle
Addison, Texas 75001
(972) 385-9876
(972) 385-9877 (Fax)

AUSTIN OFFICE:
P.O. Box 12068
Austin, Texas 78711
(512) 463-0108
(512) 463-7579 (Fax)
TDD 1-800-735-2989

The Honorable John Cornyn
Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711-2548

ATTN: Opinions Committee

RE: Request for an Opinion Interpreting Chapter 57 TEX. GOVT. CODE.

Dear General Cornyn:

New requirements in the Government Code for courts to appoint licensed interpreters have raised questions within Justice of the Peace courts. Chapter 57, Texas Government Code was passed in the last session of the legislature and became effective September 1, 2001. This chapter requires licensed court interpreters and certified court interpreters to be appointed by the courts. The law defines the terms licensed court interpreters and certified court interpreters and states:

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.

Rule 183 of the Texas Rules of Civil Procedure speaks to the appointment of interpreters in civil matters and states, "The court may appoint an interpreter of its own selection and may fix the interpreter's reasonable compensation. 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."

Please harmonize Rule 183 Texas Rules of Civil Procedure and Ch. 57 Texas Government Code. The specific questions are:

- 1) a) 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

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be required to appoint a licensed interpreter under the provisions of Ch. 57 Texas Government Code?

b) If the above stated scenario is considered a proceeding, would a clerk of the court assisting such an individual be in violation of this law if the clerk is not licensed or certified as an interpreter? Would the court be in jeopardy of violating the law by allowing a clerk under these circumstances to assist an individual?

c) In a Failure to Attend School hearing, a juvenile charged with violation of the Education Code is required to be accompanied by a parent or guardian in court when entering a plea (Ch. 45.0215 Code of Criminal Procedure). In addition, the parent of a child charged with failure to attend school may also be sanctioned (45.054 (a)(3), (b), (d) Code of Criminal Procedure). 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?

2) a) Justice of the Peace 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. Because of this contractual relationship with the County, this vendor will always look to the County for payment when its interpreters are requested. Rule 183 Texas Rules of Civil Procedure states, "The court may appoint an interpreter of its own selection and may fix the interpreter's reasonable compensation." In 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?

b) In civil proceedings, if a party to a suit or a witness makes the statement in court "I don't speak English," does this constitute a motion or request for purposes of Ch. 57.002 (a) Texas Government Code ?

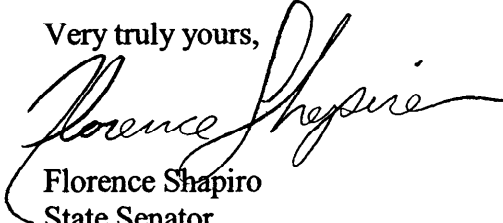
c) In civil proceedings, when "a motion for the appointment of an interpreter is filed by a party or requested by a witness" may the court require the movant or the requesting party to pay an amount to the court as security for the cost of the interpreter which the court will appoint? Does it make a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

d) 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?

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- e) 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?
- f) May the court appoint a licensed interpreter who the parties to a civil proceeding (plaintiff or defendant) have agreed upon and who have made arrangements for the payment of the interpreter by a party or the parties and who submit the interpreter's name to the court for appointment of the interpreter by the court?
- (3) 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?

Thank you for your prompt attention to this matter. Please contact my office if I may be of any further assistance or provide any further information in this matter.

Very truly yours,

Florence Shapiro
State Senator

cc: Senfronia Thompson, State Representative