

MEMORANDUM OF UNDERSTANDING
Effective August 1, 2018

Parties: The parties to this agreement are the Virginia Department for the Deaf and Hard-of-Hearing (VDDHH) and, on behalf of the Virginia court system, the Office of the Executive Secretary of the Supreme Court of Virginia (OES). This memorandum of understanding may be referred to as “this MOU” or “this agreement.”

Purpose: The purpose of this agreement is to provide guidance and instructions for the provision of qualified interpreters for the deaf and hard of hearing in Virginia courts. As providers of public programs and services, VDDHH and the courts of the Commonwealth of Virginia recognize the need to comply with the Americans with Disabilities Act of 1990 (“ADA”), 42 U.S.C. § 12101 et seq. In accordance with the requirements of Title II of the ADA, 42 U.S.C. §§ 12131-12134; and the regulations contained in 28 C.F.R. Part 35, § 35.101 et seq., Virginia courts and VDDHH do not discriminate against qualified individuals with disabilities on the basis of disability in their services, programs, or activities. The Code of Virginia (§ 19.2-164.1 and § 8.01-384.1) requires courts to procure interpreters for circuit and district courts through VDDHH in criminal and civil cases, respectively. This agreement is intended to provide maximum benefits to the deaf and hard-of-hearing in accordance with applicable federal and state laws.

The parties recognize that the need for interpretation services does, on occasion, arise as a Nonscheduled Interpreter Request (NIR), which is defined as a service event scheduled to begin within two hours of the request. Additionally, the parties recognize that there are a potentially limited number of interpreters able to provide interpretation services in legal proceedings in certain geographic areas of the Commonwealth. Accordingly, VDDHH and OES agree that OES, on behalf of Virginia courts, may independently negotiate a separate contract to secure auxiliary aids and services, not limited to on-demand video remote interpreting (VRI) for sign language interpretation, Communication Access Realtime Translation (CART) services, and interpretation related to videotaping for duplication or broadcast purposes. As for interpreters for circuit courts and district courts, the parties agree these contracts will be utilized only in the event that VDDHH is unable to timely provide interpretation services. The parties further agree that auxiliary aids and services procured for circuit and general district courts under such separate contract(s) shall be considered services procured through VDDHH; however, these services are exempt from the terms of this MOU.

General Provisions:

1. VDDHH will secure and OES will compensate interpreters who have a full certification from the Registry of Interpreters for the Deaf, or such other qualification acceptable to VDDHH, and who are specially trained and qualified to handle legal or court proceedings.

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2. VDDHH will ensure that interpreters provided for court assignments and court-related assignments are qualified interpreters, giving primary consideration to the expressed preference for a particular auxiliary aid or service by an individual who is deaf or hard of hearing. A “qualified” interpreter means someone who is able to interpret effectively, accurately, and impartially, both receptively (i.e., understanding what the person with the disability is saying) and expressively (i.e., having the skill needed to convey information back to that person) using any necessary specialized vocabulary. For example, if the individual requiring interpretation services uses or indicates that she is most comfortable with signed English, an interpreter fluent in signed English should be provided.
3. Interpreters and CART providers coordinated by VDDHH will be compensated according to the fee schedule set out in this agreement.
4. Requests for compensation will be processed only when accompanied by appropriate documentation as set out in this agreement. All requests for payment must comply with OES policies regarding the timely submission of payments, included in the Chart of Allowances.
5. For purposes of this agreement, “court assignments” include any appearance in any state court or before any magistrate in Virginia. “Court-related assignments” include meetings with court-appointed attorneys and any *pre-disposition* classes, home studies, intake interviews, treatment programs, etc.
6. All court and court-related assignments must be pre-authorized by the Judge, Special Justice, Clerk of Court, magistrate, court-appointed counsel, guardian ad litem, mediator, or other approved user, and notice of such pre-authorization must be received by VDDHH in order for VDDHH to secure an interpreter or CART provider and approve reimbursement. Pre-authorization for court-related assignments must be in writing. OES will instruct Clerks of Court to consult with the OES ADA Coordinator when refusing to authorize an assignment, and VDDHH shall notify the Clerk of Court and OES if there are concerns about a vendor’s request for payment or reimbursement.
7. Under this agreement, the Clerk of any court of the Commonwealth or any judge, special justice, court-appointed counsel, defense attorney, magistrate, or other authorized person may contact VDDHH to secure a qualified interpreter or CART provider for any in-person court or court-related assignment for which a deaf or hard of hearing person is involved or requests access. Such contact normally should be made via email to isprequests@vddhh.virginia.gov. Requests may be made by telephone (804.662.9502) or via fax (804.662.9718). If the need for interpretation is immediate (i.e., same day), the request shall be made by telephone, and the requestor shall ensure that he or she speaks with a

person at VDDHH. Such requests should not be sent via email only, and should not be left on voicemail.

The "Interpreter Request Form" (available on the Virginia Judicial System web site) shall be used to provide the following information:

- a. The names of all parties to the proceeding, specifying which individual(s) are in need of interpretation services.
- b. The specific charge(s) or indicate it is a civil case.
- c. The nature of the hearing (i.e. trial, arraignment, sentencing, etc.).
- d. The case number(s).
- e. The court (General District, Circuit, Juvenile and Domestic Relations).
- f. The address of the court, magistrate's office or other location where the interpreter should report, including detailed location information, including but not limited to floor and/or room number, if applicable.
- g. The date and time of the assignment, including a scheduled end time.

NOTE: If no end time is provided, the interpreter or CART provider will be scheduled for 2 hours. If the case is not completed within the two-hour time frame, the service provider will stay only if the provider does not have another appointment scheduled elsewhere.

- h. The contact person for the assignment.
- i. Request for two interpreters, if needed.
- j. Any specifically requested auxiliary aid or service, if expressed by the individual who is deaf or hard of hearing.
- k. The urgency of the matter, if time sensitive.

(Item i applies when cases are expected to last several hours, with multiple deaf persons involved, or in cases involving deaf persons with a preference for a particular language skill. VDDHH may provide the requesting court or magistrate with two interpreters or a deaf relay interpreter if is deemed necessary based on previous experience with the case or the consumer(s) involved. If VDDHH does not supply the auxiliary aid or service that is requested under paragraph j above, the decision not to supply the auxiliary aid or service requested will be made only after consultation with the requester which will include completion

of a communication assessment, and after demonstrating to OES that another equally effective means of communication is available.)

8. When in-person court assignments are scheduled more than two days in advance of the appearance, VDDHH will verify all in-person court assignments with the requester at least two days prior to the assignment date, including confirming the request is for five-hours or more of “hands-up time” and if for more than one day. Verification will include the name of the assigned service provider, any restrictions on the arrival and/or departure time of the confirmed interpreter or CART provider, and confirmation that the case is still on the docket.
9. OES will provide or make available on its web site information and education to affected court personnel about this agreement and the provision and use of qualified interpreters for the deaf and CART providers, including the use of VRI. VDDHH will be available to assist in providing information and educational materials. VDDHH will provide OES with communication assessment aids so that court personnel may determine what services are needed.
10. Scheduled requests are those delivered to VDDHH during regular business hours, at least two hours prior to the assignment. VDDHH will coordinate these scheduled requests as quickly as possible. The parties recognize there will be requests requiring attention outside of regular business hours, nonscheduled interpreter requests (NIRs), situations in which the scheduled vendor of services does not arrive for an assignment, and other times when VDDHH cannot secure a qualified interpreter or other vendor of services. If VDDHH is unable to secure coverage within an hour after receiving an NIR or same-day request, VDDHH will document the situation and notify both the ADA Coordinator at OES and the requester that there is no interpreter or CART provider available for the assignment.
11. VDDHH will develop a roster of interpreting agencies and individuals, sufficient to meet the needs of Virginia’s judicial system, of mutually agreeable qualified interpreters for legal proceedings. VDDHH will provide OES with lists of qualified in-person interpreters for court assignments and in-person CART providers, updating these quarterly or more frequently if necessary. Nothing in this MOU restricts court staff or magistrates from contacting interpreters or CART providers directly if they determine VDDHH is unable to obtain services in a timely manner. Under this paragraph, selecting and contracting directly with interpreters using lists of qualified interpreters or agencies provided by VDDHH or using interpreters whom VDDHH or OES recognize to be qualified, are agreed by the parties to constitute the procurement of interpreters through VDDHH within the meaning of Va. Code §§ 19.2-164.1 and 8.01-384.1.

Fee Provisions For Sign Language Interpreters:

1. Interpreters with standard full certificates (CSC, CI, CT, CDI, RSC, MCSC, OIC:C) from the Registry of Interpreters for the Deaf (RID) secured for court and court-related assignments will be paid at a rate of \$60 per hour. Interpreters with an RID Special Certificate: Legal (SC:L) or equivalent will be paid at a rate of \$70 per hour. If, in the absence of SC:L certification, OES or VDDHH determine that another qualification or specialist certificate for legal interpretation is recognized or equivalent to the SC:L, these interpreters with that qualification or certificate will qualify to be paid at a rate of \$70 per hour.
2. Interpreters will be paid portal-to-portal from the time they leave their home base until the time they return from the assignment. Travel Industry Time/Distance Standards of 2 hours per hundred miles of variables thereof (i.e. 1 hour per 50 miles, ½ hour per 25 miles, etc.) may be applied in determining appropriate maximum portal-to-portal charges.
3. A two-hour minimum fee will be paid for the interpreter's service. The clock on the two-hour minimum includes portal-to-portal travel and actual court time.
4. A two-hour minimum (paid as one-hour travel and one hour onsite) fee will be paid on all cases scheduled for less than 5 hours of "hands up" onsite time and cancelled with less than 24-hours' notice¹ only when accompanied by appropriate documentation as set out in this agreement, and VDDHH and OES were unable to secure work for the interpreter during the cancelled time period.
5. A four-hour minimum (paid as two hours travel and two hours onsite) fee will be paid on all cases the requester estimates will be for 5 hours of "hands up" onsite time on a single date and cancelled with less than 24-hours' notice only when accompanied by appropriate documentation as set out in this agreement, and VDDHH and OES were unable to secure work for the interpreter during the cancelled time period.
6. An eight-hour minimum fee (paid as four hours travel and four hours onsite) will be paid on any case scheduled for more than one day which is cancelled with less than 24-hours' notice only when accompanied by appropriate documentation as set out in this agreement, and VDDHH and OES were unable to secure work for the interpreter during the cancelled time period.
7. For cancellations where the deaf consumer or another party to the case fails to appear ("no shows"), the court will pay the two-hour minimum or actual time (portal-to-portal), whichever is greater, as long as VDDHH and OES were unable to secure work for the interpreter during this time period. A signed Court

¹ For purposes of this MOU, "24-hours' notice" also refers to notice the day prior to a weekend or holiday for appearance at or earlier than the same time on the following business day.

Certification of Interpreter Services form (attached as Exhibit A) will be required for payment for “no shows”. In order to receive payment for “no shows,” the interpreter is required to remain on-site until the case is called.

8. Interpreters will not be reimbursed for mileage, tolls, or parking.
9. Fees will cap out for onsite interpreters as follows:
 - a. Interpreters with standard full certificates from RID will receive a daily fee capped at \$360. This will apply for each interpreter providing court or court-related services in a single jurisdiction (city or county) in a single day, regardless of the number of court or court-related assignments completed except as provided in b. and c. below.
 - b. Interpreters who hold an RID Special Certificate: Legal (SC:L) will receive a daily fee cap of \$420. If, in the absence of SC:L certification, VDDHH deems another qualification or specialist certificate for legal interpretation equivalent to the SC:L, VDDHH will notify OES and those interpreters will qualify for a daily fee cap of \$420.
 - c. A daily fee cap of \$500 will apply for each interpreter providing court or court-related services in a single jurisdiction (city or county) in a single day, in the jurisdictions listed in (i) below, regardless of the number of court or court-related assignments completed, except as provided in d. below.
 - (i) The Cities of Bristol, Danville, Martinsville, Norton, Radford, Roanoke, and Salem and the Counties of Accomac, Bland, Buchanan, Carroll, Dickenson, Floyd, Franklin, Galax, Giles, Grayson, Henry, Lee, Montgomery, Northampton, Patrick, Pittsylvania, Pulaski, Roanoke, Russell, Scott, Smyth, Tazewell, Washington, Wise, and Wythe.
 - d. An additional \$100 fee cap will apply for each additional jurisdiction (city or county) where the same interpreter provides court or court-related services on the same day.
 - e. For assignments involving jury duty, jury trials, or other situations where the interpreter is scheduled to be onsite for more than 6 hours, the fee cap may be waived by OES.
10. Reimbursement over the allowed fee cap for expenses related to necessary overnight lodging by an interpreter will be negotiated on a case-by-case basis between VDDHH and OES and must be pre-approved. Reimbursement for overnight travel expenses requires receipts, and the maximum reimbursement

amount will be those within judicial system travel guidelines. Overnight lodging may be approved by OES when traveling more than 100 miles one way.

Fee Provisions for CART Providers:

1. In situations requiring Communication Access Realtime Translation (CART) services, qualified CART providers will be paid at a rate of \$150 per hour for on-site time and \$75 per hour for travel time, except as noted below.
 - a. A minimum two-hour appearance fee plus one-hour for travel time will be paid in all cases. The clock on the minimum includes portal-to-portal travel and actual court time.
 - b. For CART requests no vendor will accept at the above rate, VDDHH will explain the difficulty in covering the assignment to OES and submit a request for a rate exemption to OES, with a specific rate request for approval. VDDHH will only claim difficulty if the vendor solicits a rate exception. VDDHH will not submit rate exceptions if a vendor will accept the standard assignment rate.
 - c. There will be no fee cap for CART providers.
 - d. No mileage will be paid to CART providers.
 - e. For cancellations by the court with less than 24-hour notice, the court will pay the two-hour minimum fee as outlined in this section, as long as VDDHH and OES were unable to secure work for the CART provider during the cancelled time period. For cancellations where the deaf consumer or another party to the case fails to appear (“no shows”), the court will pay the two-hour minimum or actual time (portal-to-portal), whichever is greater as long as VDDHH and OES were unable to secure work for the CART provider during the cancellation time period. A signed Court Certification of CART Services form will be required for payment for “no shows”.

Documentation Provisions:

1. A VDDHH Court Certification of Interpreter Services form must be submitted on behalf of each interpreter or CART provider for each separate court assignment completed. This form must include:
 - a. the name of the service provider,
 - b. the name of the court or magistrate’s office,
 - c. the court (General District, Juvenile and Domestic Relations, etc.),

- d. the date of the assignment,
 - e. the name of the individual in need of interpretation services, and
 - f. the start and end times of the assignment.
2. A Virginia Travel Expense Reimbursement Voucher (attached as Exhibit B) must be submitted to VDDHH by the interpreter or CART provider in accordance with agency policies and procedures. If the invoice is for cancellation, VDDHH will confirm the planned duration of the assignment and that no other assignment was offered during that time period or it was due to a "no show".
 3. VDDHH will verify all Travel Expense Vouchers and Court Certification of Interpreter Services Forms and, if documentation is complete and accurate, will forward approved invoices to OES for payment. If OES finds the voucher is incomplete and/or inaccurate, it will be returned to VDDHH for correction.
 4. In the case of an invoice for late cancellations, if VDDHH was notified by email or fax, no additional documentation needs to accompany the invoice. If, however, notification is provided to VDDHH by telephone, an email notice from VDDHH to the interpreter noting the date and time of the phone call from the court must be submitted with the completed invoice.

Special Provisions:

1. In situations involving commitment hearings, VDDHH may approve payment for necessary expenses in addition to the interpreter fee provided by Va. Code § 37.2-804. Necessary expenses may include portal-to-portal travel time, tolls, parking, or other expenses with prior approval. Payment for interpreter services in commitment hearings will be processed in accordance with approved procedures inherent to submitting the DC-60.
2. VDDHH will maintain documentation of court-related requests for accommodation and complaints received about the quality of services provided and any other service-related issues in connection with these requests, forwarding to OES the requests and complaints as soon as possible. VDDHH will direct those wishing to make a request for court accommodation or complaint to the Interpreter for the Deaf Complaint form and to the ADA Accommodation Request and ADA Grievance forms available on the Virginia Judicial System web site.
3. VDDHH will maintain an Auxiliary Aid and Service Log outlining each court and court-related request for auxiliary aids and services. It will contain: Time and date request was made, the name of the defendant or other participant in the judicial proceedings who is deaf or hard of hearing, the nature of the auxiliary

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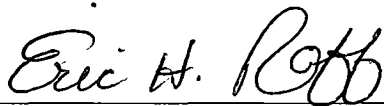
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aid or service provided, and the time and date the appropriate auxiliary aid or service was provided. If no auxiliary aid or service was provided, the log shall contain a statement why the auxiliary aid and service was not provided. The log should identify the court authorizing the service, and if VDDHH consulted existing knowledge or the individual requiring the auxiliary aid or service so as to coordinate an appropriate vendor. These logs will be provided electronically to OES every six months, in January and July.

4. VDDHH will maintain all written correspondence relating to interpreting and CART services providers for court and court-related assignments, and will make electronic documentation of same available to OES annually. VDDHH will monitor the performance of qualified interpreters and CART providers coordinated under this MOU by tracking response time and providing tools to solicit feedback from individuals requiring services. Should VDDHH become able either directly or under contract to coordinate, develop, or procure additional aids and services, it will share information with OES about expanded capabilities to support court users who are deaf and hard of hearing.
5. OES may request other documentation from VDDHH throughout the duration of this agreement. If a non-OES party requests documentation related to court and court-related auxiliary aids and services coordinated by VDDHH, OES will be notified by VDDHH of the request and will be copied on any materials provided to the requester.

This Memorandum of Understanding is entered into this 1st day of AUGUST, 2018.



Eric H. Raff, Director
VDDHH



Karl R. Hade, Executive Secretary
Supreme Court of Virginia