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May 6, 2024

Representative Phillip R. DeVillier
Speaker of the House of Representatives
P.O. Box 94062
Baton Rouge, Louisiana 70804


Senator Cameron Henry
President of the Senate
P.O. Box 94183
Baton Rouge, Louisiana 70804

**RE: HOUSE CONCURRENT RESOLUTION NO. 71 OF THE 2022 REGULAR
SESSION**

Dear Mr. Speaker and Mr. President:

The Louisiana State Law Institute respectfully submits its report to the legislature relative to the appointment of interpreters in court proceedings.

Sincerely,


Guy Holdridge
Director

GH/pc

Enclosure

email cc: David R. Poynter Legislative Research Library
drplibrary@legis.la.gov

Secretary of State, Ms. Nancy Landry
admin@sos.louisiana.gov

**LOUISIANA STATE LAW INSTITUTE
CODE OF CIVIL PROCEDURE COMMITTEE
CODE OF CRIMINAL PROCEDURE COMMITTEE**

**REPORT IN RESPONSE TO HOUSE CONCURRENT
RESOLUTION NO. 71 OF THE 2022 REGULAR SESSION**

Relative to the appointment of interpreters in court proceedings

Prepared for the
Louisiana Legislature on

May 6, 2024

Baton Rouge, Louisiana

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2022 Regular Session

HOUSE CONCURRENT RESOLUTION NO. 71

BY REPRESENTATIVE WHITE

A CONCURRENT RESOLUTION

To urge and request the Louisiana State Law Institute to study proposed changes by the Office of Language Access Stakeholder Committee of the Louisiana Supreme Court and make recommendations to the Legislature of Louisiana regarding the laws on the use of interpreters in court proceedings.

WHEREAS, the Language Access Plan in Louisiana Courts was approved by the Supreme Court of Louisiana and was the result of the Memorandum of Agreement with the United States Department of Justice; and

WHEREAS, the Memorandum of Agreement requires the exploration of revisions to state laws to provide language assistance services at no cost to individuals with limited English proficiency in all state court proceedings and operations; and

WHEREAS, there has been an increased need for qualified interpreters in court proceedings; and

WHEREAS, concerns have arisen as to whether current state laws regarding interpreter qualifications adequately provide for the processes of appointment, qualifications, and competence of interpreters; and

WHEREAS, Code of Evidence Article 604 provides that an interpreter shall be qualified as an expert and shall give an oath or affirmation to make a true translation of testimony in court proceedings; and

WHEREAS, Code of Evidence Article 702 provides that a witness who is qualified as an expert may testify in the form of an opinion or otherwise; and

WHEREAS, while interpreters may qualify as experts, it is well accepted that interpreters do not give opinions; and

WHEREAS, standards and guidance to follow when considering the competence of an interpreter for purposes of qualification, as well as avenues to challenge the accuracy of the interpretation itself are absent from Louisiana laws; and

WHEREAS, judicial efficiency may be enhanced through the clarification of rules governing interpreters and interpretations in Louisiana law.

THEREFORE, BE IT RESOLVED that the Legislature of Louisiana does hereby urge and request that the Louisiana State Law Institute study the Office of Language Access Stakeholder Committee's proposed changes, when received, and give recommendations, if any, to the laws on the use of interpreters in court proceedings to enhance judicial efficiency and clarity within the rules of evidence and procedure.

BE IT FURTHER RESOLVED that a copy of this Concurrent Resolution be transmitted to the director of the Louisiana State Law Institute and that the Louisiana State Law Institute report its findings and recommendation to the Legislature of Louisiana on or before April 28, 2023.

BE IT FURTHER RESOLVED that the Louisiana State Law Institute shall submit one print copy and one electronic copy of any report produced pursuant to this Resolution to the David R. Poynter Legislative Research Library as required by R.S. 24:772.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

May 6, 2024

To: Representative Phillip R. DeVillier
Speaker of the House
P.O. Box 94062
Baton Rouge, Louisiana 70804

Senator Cameron Henry
President of the Senate
P.O. Box 94183
Baton Rouge, Louisiana 70804

**REPORT TO THE LEGISLATURE IN RESPONSE TO HOUSE CONCURRENT
RESOLUTION NO. 71 OF THE 2022 REGULAR SESSION**

House Concurrent Resolution No. 71 of the 2022 Regular Session requested the Law Institute to study proposed changes by the Office of Language Access Stakeholder Committee of the Louisiana Supreme Court relative to the use of interpreters in court proceedings. Specifically, the resolution noted that the Language Access Plan, approved by the Supreme Court of Louisiana as a result of the Memorandum of Agreement with the United States Department of Justice, requires the exploration of revisions to state laws to provide language assistance services at no cost to individuals with limited English proficiency in all state court proceedings. Further, the resolution noted that concerns have arisen as to whether current state laws regarding interpreter qualifications adequately provide for the processes of appointment, qualifications, and competence of interpreters. The resolution also noted that standards and guidance to follow when considering the competence of an interpreter for purposes of qualifications, as well as avenues to challenge the accuracy of the interpretation itself, are absent from Louisiana law.

In fulfillment of this request, the Law Institute assigned this project to the Code of Civil Procedure Committee, which operates under the leadership of Judge Guy Holdridge as Reporter. The Code of Civil Procedure Committee subsequently met with stakeholders and convened on several occasions to discuss the resolution. Moreover, representatives of the Louisiana Supreme Court's Office of Language Access, on behalf of the Language Access Stakeholder Committee, attended the Committee's meetings and provided the Committee with information relating to the promulgation and development of the Louisiana Supreme Court's own policies with respect to language access.

The Committee received initial suggestions from the Office of Language Access and, in addition to its own assessment of the relevant laws, conducted a study to evaluate and align these initial suggestions with Louisiana law. Several issues were contemplated by the Committee, including the lack of clear guidance in the law regarding foreign language interpreters. Finding that the resolution's concern with respect to interpreters is primarily an evidentiary matter, the Committee turned to Code of Evidence Article 604 and found it necessary to reference the Rules of the Louisiana Supreme Court, since interpreters are qualified and regulated in accordance with

these rules. Moreover, the Committee suggested removing the reference relative to the interpreter being an “expert” to clarify the distinction between experts and interpreters under the law.

To incorporate the suggestions of the Office of Language Access, the Law Institute proposed the creation of Code of Evidence Article 604.1, which aims to provide the framework through which interpreters are qualified and the procedure with which to challenge interpretations and translations. To protect a litigant’s due process rights, Article 604.1 provides that parties should be permitted to object to the qualifications of any court-appointed interpreter and to conduct a voir dire examination of the interpreter. Moreover, to alleviate circumstances in which a qualified interpreter is not readily available, the proposal suggests that parties be given the ability to consent to the use of an interpreter who is *not* qualified in accordance with the rules. The Committee determined that this change would support judicial efficiency, but because the Committee acknowledged that an interpreter under this provision may be an inherently biased person, the suggested language is only permissive – should the court deem the use of the person to whom consent was given prejudicial, the court is permitted to appoint another interpreter. The proposed revisions also explicitly provide that any party may object to the interpretation or translation of an interpreter, the intent of which is to preserve the accuracy of the record and clarify that a party has not waived any right to object by consenting to the use of a particular interpreter. In furtherance of preserving the accuracy of the record, the Law Institute also recommended that in all court proceedings, interpreted communications with the court should be recorded and retained by the court in an audio or audiovisual format. Finally, in response to a concern that these proposals would be misinterpreted to preclude the use of a party’s own non-court-appointed interpreter, language was included to provide that no party is precluded from having its own interpreter at any proceeding for the party’s own purposes.

The Code of Civil Procedure Committee also suggested changes to Code of Civil Procedure Article 192.2 relative to the appointment of an interpreter for non-English-speaking persons. These revisions make clear that the appointment of an interpreter must be in accordance with the applicable Code of Evidence articles and the Rules of the Louisiana Supreme Court. Similar changes were made by the Law Institute’s Code of Criminal Procedure Committee in Code of Criminal Procedure Article 25.1, and that Committee also reviewed and approved the proposed revisions to Code of Evidence Articles 604 and 604.1.

Ultimately, the Law Institute recognized that current law was inadequate in addressing the standards and guidance to follow when considering the competence of an interpreter for purposes of qualifications, as well as avenues to challenge the accuracy of the interpretation itself. The Law Institute, in collaboration with the Louisiana Supreme Court’s Office of Language Access, evaluated the proposed framework and submitted its proposed revisions to the Legislature as Senate Bill No. 103 of the 2024 Regular Session.