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EC CIRCUIT CLERK, WV

IN THE TWENTY-THIRD JUDICIAL CIRCUIT OF WEST VIRGINIA COMPOSED OF THE
CIRCUIT COURTS OF BERKELEY, JEFFERSON AND MORGAN COUNTIES

IN RE: COURT-APPOINTED COUNSEL

ADMINISTRATIVE ORDER

On this, the 26th day of April, 2024, this matter comes before the Chief Judge of the Twenty-Third Judicial Circuit of West Virginia for Berkeley, Jefferson and Morgan Counties, upon consultation and concurrence with all sitting circuit court judges in the Twenty-Third Judicial Circuit, it is necessary to expand our list of panel attorneys.

WHEREAS, pursuant to Rule 44 of the W. Va. Rules of Criminal Procedure, “[e]very defendant who is unable to obtain counsel **shall be entitled to have counsel assigned** to represent him or her at every stage of the proceedings from initial appearance before the magistrate or circuit court through appeal, unless the defendant waives such appointment” (emphasis added). Further, the Court must appoint counsel for indigent defendants in post-conviction habeas corpus proceedings (*see* W. Va. Code § 53-4A-4; Rules Governing Post-Conviction Proceedings in West Virginia, Rules 4 and 6).

WHEREAS, pursuant to W. Va Code § 49-4-601(f), in abuse and neglect cases the Court is **required to appoint** counsel (1) to every child to represent his or her interests at all stages of the proceedings; (2) to any unrepresented parent, guardian, custodian, or other person standing *in loco parentis*; and (3) to a parent, guardian, custodian, or other person standing *in loco parentis* with the child who is alleged to have neglected or abused the child and who has not retained counsel and is financially unable to retain counsel beyond the initial hearing. In addition, the Court is further required to appoint guardians *ad litem* to protect the interests of any and all minor child(ren) in abuse and neglect cases and to assist the Court in making such determinations. *See* Rule 18a of the West Virginia Rules of Procedure For Child Abuse and Neglect; Rule 21.03 of the

West Virginia Trial Court Rules; *In re K.B.-R.*, 246 W. Va. 682, 874 S.E.2d 794, 796 (2022). Further, “[u]nder no circumstances may the same attorney represent both the child and another party. The same attorney may not represent more than one parent or custodian: *Provided*, That one attorney may represent both parents or custodians where both parents or custodians consent to this representation after the attorney fully discloses to the client the possible conflict and where the attorney advises the court that she or he is able to represent each client without impairing her or his professional judgment. If more than one child from a family is involved in the proceeding, one attorney may represent all the children.” W. Va. Code Ann. § 49-4-601(f)(5). Thus, the Court is sometimes required to appoint more than one attorney and/or guardian *ad litem* in these cases, depending upon individual circumstances.

Similarly, pursuant to W. Va. Code § 49-4-701(h), in juvenile delinquency and juvenile status offense cases, the Court is **required to appoint** counsel for every juvenile “if the juvenile or the juvenile's parent or custodian executes an affidavit showing that the juvenile cannot afford an attorney.”

WHEREAS, the number of abuse and neglect cases (and/or parties in said cases) as well as juvenile delinquency cases continue to increase, making it more difficult to find sufficient counsel, especially in abuse and neglect cases as the same attorney may not represent both the child and another party, and the same attorney generally may not represent more than one parent or custodian.

WHEREAS, in criminal and post-conviction habeas corpus cases the counties of Berkeley, Jefferson, and Morgan have considerably more accused defendants than lawyers who have chosen to practice criminal law, and considerably more abuse and neglect and juvenile delinquency cases

requiring appointment of counsel than we have attorneys who desire to practice in those areas of law.

THEREFORE, the judges will continue to appoint attorneys who have requested to be on the panel list first; however, as necessary, any attorney licensed to practice law in West Virginia who practices in Berkeley, Jefferson, or Morgan counties may be appointed to any criminal, post-conviction habeas corpus, abuse and neglect, or juvenile delinquency case in the 23rd Judicial Circuit. Declination of appointments will be considered on a case-by-case basis. *But see* Rule 6.2 of the West Virginia Rules of Professional Conduct (“A lawyer shall not seek to avoid appointment by a tribunal to represent a person except for good cause....”); “A lawyer need not necessarily have special training or prior experience to handle legal problems of a type with which the lawyer is unfamiliar. A newly admitted lawyer can be as competent as a practitioner with long experience. Some important legal skills, such as the analysis of precedent, the evaluation of evidence and legal drafting, are required in all legal problems.... A lawyer can provide adequate representation in a wholly novel field through necessary study.” Rule 1.1, Comment [2], of the West Virginia Rules of Professional Conduct; “A lawyer may accept representation where the requisite level of competence can be achieved by reasonable study and preparation. This applies as well to a lawyer who is appointed as counsel for an unrepresented person.” *Id.* at Comment [4].

Appointments will be rotated for those who have not requested to be placed on the panel list so that no attorney will be required to expend an excessive amount of time serving as appointed counsel. *See Jewell v. Maynard*, 181 W.Va. 571, 582, 383 S.E.2d 536, 547 (1989).

New panel attorneys are directed to Public Defender Services website for guidance on the process for requesting compensation pursuant to W. Va. Code § 29-21-13a. Attorneys may also take said appointments as voluntary *pro bono publico* service per Rule 6.1 of the West Virginia

Rules of Professional Conduct. Furthermore, new panel attorneys are directed to *Jewell v. Maynard, supra*, for a full discussion on the requirements of attorneys to accept court appointments, as well as the *Trial Handbook for West Virginia Lawyers*, §1:1 (attorney and client relationship).

Law firms with more than two attorneys are encouraged to provide names of associate attorneys who may have more time to perform as panel attorneys in order to minimize the inconvenience to firms that traditionally do not practice in the areas of criminal law, post-conviction habeas corpuses, abuse and neglect, or juvenile delinquency. Failure to do so may require the judges of the 23rd Judicial Circuit to make random and rotating appointments from all attorneys practicing in the 23rd Judicial Circuit.

Furthermore, W. Va. Code § 49-4-601(g) mandates training for any attorney representing a party in a child abuse and neglect case. The attorney “shall receive a minimum of eight hours of continuing legal education training per reporting period on child abuse and neglect procedure and practice. In addition to this requirement, any attorney appointed to represent a child must first complete training on representation of children that is approved by the administrative office of the [West Virginia] Supreme Court of Appeals.” A guardian *ad litem* may not be paid for his or her services without meeting the certification and educational requirements of the West Virginia Supreme Court of Appeals. Any questions regarding training should be directed to Stacie.Mullins@courtswv.gov or Kandi.Greeter@courtswv.gov.

Consistent with the findings, opinions, and rationale in *Jewell v. Maynard, supra*, lawyers are “true professionals” and are therefore “expected to help those in need even when those in need cannot pay.” 181 W.Va. at 581, 383 S.E.2d at 546. Further, [e]very student who enters law school

understands that it is an ancient and honored tradition of the law that a reasonable part of a lawyer's time be devoted to uncompensated public service." *Id.*

The Clerks of the Circuit Courts of Berkeley, Jefferson and Morgan Counties shall enter the foregoing. The Clerk of the Circuit Court of Berkeley County is further directed to provide copies of this Order to all practicing attorneys in the Twenty-Third Judicial Circuit.

Entered: April 26, 2024.


LAURA V. FAIRCLOTH, CHIEF JUDGE

TELEPHONE INTERPRETING – QUICK REFERENCE GUIDE

DIAL: 1-800-821-3420

ACCESS CODE: 230590

The three most common ways to use Fluent's Telephone Interpreting Service

- 1. You are face-to-face with a Limited English Proficiency (LEP) person**
 - a. Dial the telephone number above and provide the Operator your Access Code
 - b. Provide the Operator with the language you require
 - c. The interpreter will be connected to the call
- 2. You need to place a call to a LEP person**
 - a. Dial the telephone number above and provide the Operator your Access Code
 - b. Notify the Operator you need to place a call, giving the Operator the required language
 - c. Stay on the line, the Operator will dial the LEP person and connect you, the LEP person and the interpreter on a three-way call
- 3. A LEP person calls you**
 - a. Place the LEP person on conference hold
 - b. Dial the telephone number above and provide the Operator your Access Code
 - c. Provide the Operator with the required language
 - d. When the interpreter is connected, conference in the LEP person

Customer Service:
1-888-225-6056
www.FluentLS.com

Berry, Darla

From: Thompson, Sara
Sent: Friday, April 26, 2024 2:17 PM
To: AllCircuitClerks; allmagct; AllMHC; cjsec; fcc; AllDeputyCircuitClerks; fsc
Cc: Arrowood, Pepper; Tackett, Lisa; Lynch, Evan; Bundy, Jennifer
Subject: ANOUNCEMENT- New Spanish Language Forms Available and Translation Procedures and Resources
Attachments: Telephone Interpreting.pdf

Exciting news for the Judiciary regarding translation services for persons with limited English proficiency!

Spanish versions of many mental hygiene, domestic violence, and personal safety forms and court orders are now available.

- Public forms are available on the court's website, and both Spanish forms and orders are available on the intranet.
- Mental hygiene forms are bilingual forms with both English and Spanish available on the same form.
- Bilingual versions of domestic violence and personal safety forms are coming soon.
- These pre-translated forms and orders will increase understanding for Spanish speaking persons and speed up the translation process.

Typically, the translation of a form or order, can take weeks to complete. With pre-translated forms/orders, only the information filled into blanks will need to be translated, significantly reducing the time needed for a complete translation. This means that information entered on Spanish forms in Spanish, will need to be translated into English onto the English form for the court's use. Information that the court enters on an English language order will be translated into Spanish and entered onto the Spanish version of the order before it is sent to the Spanish speaking person.

Important Resources

Information about interpreting and translation services for persons with limited English proficiency (this includes persons with some ability to speak and understand English), and sign language interpreters is available on the intranet: [Interpreter/Translator Information \(sharepoint.com\)](#).

Any person needing interpreter services (whether or not they have a case) must be provided with an interpreter to ensure that they have full access to court processes and can communicate with court personnel. The **on-demand telephonic interpreting** system can be used for **ANY LANGUAGE** for regular interactions and discussions. Information on this service is attached. This information can also be found on the SharePoint site linked above.

For forms, **ALL PERSONS** with limited English proficiency can have an interpreter to assist with filling out forms. This is also available for Spanish speaking individuals who do not want to use the Spanish forms. The telephonic system is a good resource for court staff to assist with filling out forms, especially where waiting on an in-person interpreter or for a form to be translated (days to weeks) is not an option. Information entered must **EXACTLY** match what the individual has said and is considered that person's entry, not the transcriber's entry.

If you have questions or need assistance with this process and interpreter services, please contact Sara Thompson or Kaitlyn Tully at the Administrative Office.

Sara E. Thompson
Deputy Director of Court Services

Supreme Court of Appeals of West Virginia Administrative Office
1900 Kanawha Boulevard, East
Building One, Room E-100
Charleston, WV 25305
Cell: (304) 389-4158