

FEBRUARY 2006

## **Model Judges Bench Book on Court Interpreting**

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City, State, Zip

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The purpose of this document is to provide program managers with a sample of what should be included in a judge's bench book, without having to gather all the information and conduct independent research. This document has been prepared so that it may be easily adapted to each state.

## Acknowledgements

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This document consists of excerpted material from a variety of sources. A reference section has been prepared to give credit to the major contributors.

This document was compiled from various sources. Because the National Center for State Courts and all of the member states of the Consortium for State Court Interpreter Certification so freely exchange information, copies of documents, publications, best practices, and procedures, it may be impossible to identify where a theory or idea actually originated. Because of that, thanks and acknowledgments are extended to each state in the Consortium, to staff at the National Center for State Courts, and to the federally certified interpreters who act as trainers, consultants, and national leaders in the field of interpreting in the courts. [Florida]

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# 1. Introduction

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## Access to Justice

Thousands of cases every year in Idaho's courts require the skills of an interpreter or assistance for the hearing impaired and the need is growing. Idaho law requires that when a participant in a legal proceeding is not able to understand or speak English that "the court shall appoint a qualified interpreter to interpret the proceedings (§9-205)." The United States Constitution and Idaho law guarantees individuals the right to due process and the right to meaningful participation in the proceedings before them. [Idaho]

As time-consuming and resource intensive as interpreting may be, we must demand recognition that the ability to effectively communicate in court is a fundamental and basic right of all persons. Without competent interpretation, participation in our legal process is meaningless; it is the same as being unable to hear or speak. This is not an issue of providing more resources or special treatment – it is placing the non-English speaking person on *equal footing* with an English speaking person – nothing more, nothing less. It is up to us to make sure that our courts provide a "level playing field" and ... Equal Justice for All. [Washington]

## Demographics of State

Nearly one out of every seven Americans over the age of five does not use English as a primary language. Of those 32 million persons, nearly half speak English "less than 'very well.'" Because of our geographic location, Washington proportionately has even greater numbers of non-English speaking persons. Washington's non-English population has increased by more than 10 percent over the past 10 years. [Washington]

## Racial and Ethnic Task Force and/or Court Interpreter Advisory Committee [Washington]

The Court Interpreter Certification Advisory Commission (Commission) was established by Supreme Court order on June 3, 1999. The Commission was given specific direction and tasks to be completed within five years, at which time the order expired. The order stated, "The Commission shall be responsible for developing a comprehensive court interpreter certification program plan, aimed at improving the access of non-English-speaking persons to legal proceedings in the court system of the state of Washington and carry out the provisions of RCW 2.43 et seq. and GR 11, 11.1, and 11.2." The Commission was given the following directives:

- Criteria and standards for certification of court interpreters;
- Criteria and standards for appointment of court interpreters by the courts;
- Criteria for reviewing appointment of court interpreters (certified and non-certified) by courts;
- Procedures for testing of interpreters, both written and oral;

- Procedures for appeals of test results;
- Development of continuing education curriculum;
- Fee schedule for interpreters and action to be taken for nonpayment of dues;
- Administrative action to be taken for failure to comply with the continuing education requirement;
- Disciplinary action for violations of the Code of Conduct pursuant to GR 11.1 and RCW 2.43.080;
- Court rules or statutes as the Commission deems necessary to implement the plan

The Commission developed education, testing, and program administration policies that are contained in the *Interpreter Program Manual*. The Commission maintains subcommittees to determine the appropriate course of action on the following issues: discipline, continuing education, and judicial education.

### **Administrative Office of the Courts' Program Administration** [Washington]

The Commission advises the Administrative Office of the Courts (AOC) on elements of the Interpreter Program. The AOC is responsible for establishing and administering a comprehensive testing and certification program for language interpreters (RCW 2.43.070). The AOC worked with the Commission to standardize the testing and scoring process, implement a continuing education/court hour requirement, pass a disciplinary process, and publish a directory of court certified interpreters on the AOC website [www.courts.wa.gov/programs&orgs/certifiedcourtinterpreters](http://www.courts.wa.gov/programs&orgs/certifiedcourtinterpreters).

Every court certified interpreter is issued an ID badge with a picture identifier and expiration date. Interpreters are encouraged to wear their badge in court proceedings and judges are equally encouraged to ask and see the interpreter's badge. However, court administrators are strongly advised to check the AOC website to ensure that interpreters used in court are current on their certification requirements.

### **Consortium for State Court Interpreter Certification** [NCSC website FAQ's]

The Consortium was officially founded in July 1995 by Minnesota, New Jersey, Oregon, and Washington. The came about as a consequence of findings and professional relationships established during research by the National Center for State Courts between 1992 and 1995 (See Hewitt, William E., *Court Interpretation: Model Guides for Policy and Practice in the State Courts*, Williamsburg, VA, National Center for State Courts, 1995).

The Consortium is a multi-state partnership dedicated to developing court interpreter proficiency tests, making tests available to member states, and regulating the use of the tests. Consortium resources achieve economies of scale across jurisdictional and organizational boundaries.

The Consortium addresses resource shortages by defining and implementing standards for identifying proficient, qualified interpreters. Without those standards, state courts risk

employing unqualified interpreters, leaving equal access to justice by linguistic minorities an unfulfilled obligation.

Consortium members have established core curriculum and training materials for basic orientation workshops for all interpreters employed in the courts, regardless of language. Members of the Consortium maintain communication, share problems and solutions, and stand together as a body capable of influencing policy and practice for improving the quality of interpreter services nationwide. Information exchange among the members results in shared policy documents, court rules, forms, and statistics.

As of August 2005, there are 34 member states representing over two-thirds of the nation's non-English speaking population.

## 2. Existing Law and Policy

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### **United States Constitution and [state] Constitution**

The United States Constitution and the [state] Constitution guarantees individuals the right to due process and the right to meaningful participation in the proceedings before them.

### **Title VI of the Civil Rights Act**

[Excerpted from the United States Department of Justice Civil Rights Division homepage found at <http://www.usdoj.gov/crt/cor/coord/titlevi.htm>.]

Overview of Title VI of the Civil Rights Act of 1964

Title VI, 42 U.S.C. § 2000d et seq., was enacted as part of the landmark Civil Rights Act of 1964. It prohibits discrimination on the basis of race, color, and national origin in programs and activities receiving federal financial assistance. As President John F. Kennedy said in 1963:

Simple justice requires that public funds, to which all taxpayers of all races [colors, and national origins] contribute, not be spent in any fashion which encourages, entrenches, subsidizes or results in racial [color or national origin] discrimination.

If a recipient of federal assistance is found to have discriminated and voluntary compliance cannot be achieved, the federal agency providing the assistance should either initiate fund termination proceedings or refer the matter to the Department of Justice for appropriate legal action. Aggrieved individuals may file administrative complaints with the federal agency that provides funds to a recipient, or the individuals may file suit for appropriate relief in federal court. Title VI itself prohibits intentional discrimination. However, most funding agencies have regulations implementing Title VI that prohibit recipient practices that have the effect of discrimination on the basis of race, color, or national origin.

To assist federal agencies that provide financial assistance, the wide variety of recipients that receive such assistance, and the actual and potential beneficiaries of programs receiving federal assistance, the U.S. Department of Justice has published a Title VI Legal Manual. The Title VI Legal Manual sets out Title VI legal principles and standards. Additionally, the Department has published an Investigation Procedures Manual to give practical advice on how to investigate Title VI complaints. Also available on the Coordination and Review Website are a host of other materials that may be helpful to those interested in ensuring effective enforcement of Title VI.

Additional information regarding Title VI compliance can be found at [www.lep.gov](http://www.lep.gov).



## **Americans with Disabilities Act [Oregon]**

The Americans with Disabilities Act (ADA), 42 USC § 12115-12161, specifically Title II, prohibits discrimination against people with disabilities in state and local government services. 42 USC § 12102(2). The definition of a person with disabilities is as follows:

A person:

- a. with a physical or mental impairment that substantially limits one or more of the major life activities of such individual,
- b. with a record of such an impairment, or
- c. who is regarded as having such an impairment.

[Minnesota Best Practices]

Title II of the Americans with Disabilities Act (“ADA”) requires local and state courts to provide qualified sign language interpreters or other auxiliary aids such as transcription or assistive listening systems, to ensure effective communication with deaf and hard of hearing persons. Unlike Minnesota law, Title II covers all persons with disabilities and is not limited to litigants or witnesses. Title II also requires that when selecting the appropriate reasonable accommodation, deference be given to the deaf or hard of hearing individual’s choice of what auxiliary aid he or she needs:

In determining what type of auxiliary aid and service is necessary, a public entity shall give primary consideration to the requests of the individual with disabilities.

In its analysis, the Justice Department states:

The public entity shall honor the choice of the individual with disabilities for a particular auxiliary aid] unless it can demonstrate that another effective means of communication exists or that use of the means chosen would not be required under § 35.164.

Deference to the request of the individual with a disability is desirable because of the range of disabilities, the variety of auxiliary aids and services, and different circumstances requiring effective communication. For instance, some courtrooms are now equipped for “computer-assisted transcripts,” which allow virtually instantaneous transcripts of courtroom argument and testimony to appear on displays. Such a system might be an effective auxiliary aid or service for a person who is deaf or has a hearing loss who uses speech to communicate, but may be useless for someone who uses sign language.

Although in some circumstances a notepad and written materials may be sufficient to permit effective communication, in other circumstances they may not be sufficient. For example, a qualified interpreter may be necessary when the information being communicated is complex, or is exchanged for a lengthy period of time. Generally, factors to be considered in determining whether an interpreter

is required include the context in which the communication is taking place, the number of people involved, and the importance of the communication.

The regulation specifies the qualifications that will be required of an interpreter:

Qualified interpreter means an interpreter who is able to interpret effectively, accurately, and impartially both receptively and expressively, using any necessary specialized vocabulary.

Note, however, that this definition may not be controlling if state law requires a higher degree of competence, such as a state law which requires court interpreters to possess a particular level of skill or certification, as in Minnesota.

### **State Statute, Rule, Order, and Policies**

*This section left for state specific information. See Minnesota and Washington bench books for example.*

### **Caselaw**

*This section left for state specific information. See Minnesota and Washington bench books for example.*

### 3. Training and Certification

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#### Training and Certification Process

As a member of the Consortium for State Court Interpreter Certification, the [state] Administrative Office of the Courts has access to certification exams in the following languages: Arabic, Cantonese, Haitian-Creole, Hmong, Korean, Laotian, Mandarin, Russian, Somali, Spanish, and Vietnamese.

In order to become a certified court interpreter an individual must complete the following steps:

[Insert state certification process below. See following steps for example.]

#### Step One: The Orientation Workshop

The two-day orientation workshop is a prerequisite to the written exam, as well as the skill-building workshop and the certification exam. The workshop includes the following topics:

- Code of Conduct: Principles and Practice
- Skills and Modes of Interpreting
- Small Group Discussion and Role-Playing
- Breakout Sessions to Practice the Modes of Interpreting
- Criminal Procedure and Legal Terminology
- Resources, References, and Self-Study
- Vocabulary Development
- What A Certification Exam Looks Like

#### Step Two: The Written Screening Exam

The written exam is a prerequisite to the optional skill-building workshop and the certification exam. The exam consists of three parts: general language proficiency, court-related terms and ethics and professional conduct. The exam contains 135 multiple-choice questions.

The written exam is constructed to measure entry-level knowledge that a minimally competent person entering the court interpreting field would need, including: English general vocabulary, common words and phrases likely to be heard in court, the typical progression of cases through the court system, provisions of the code of professional responsibility, and written translation.

In order to pass the test, 80 percent of the multiple-choice items must be answered correctly. Individuals who are unable to pass this exam should consider attending classes at a college or university to enhance their proficiency in the English language. The time frame within which you can register to retake the written exam is one year. Passing this test does not mean that an individual is a “certified” or “approved” court interpreter.

### Step Three: Optional Skill-Building Workshop (Spanish language only)

The six-day skill-building workshop gives participants one-on-one time with experienced faculty, as well as intensive practice in the three modes of interpreting. This is an optional workshop designed to assist participants in their preparation for the certification exam.

### Step Four: Certification Exam

An individual may sit for the certification exam one time in a calendar year. The certification exam consists of an oral exam on simultaneous interpreting, consecutive interpreting, and sight translation. If a candidate passes all three sections with a 70 percent or higher, he or she becomes a certified court interpreter in the state of [state].

### **Importance and Purpose of Certification**

Court interpreting is a highly specialized profession that requires the interpreter to render a complete and accurate interpretation or translation without altering, omitting, editing, or summarizing anything to what is stated or written, and without explanation. All words including slang, vulgarisms, and epithets are interpreted to convey the intended meaning. A full rendition of in-court proceedings can only be done if the interpreter is skilled in the three modes of interpreting—simultaneous interpreting, consecutive interpreting, and sight translation. Court interpreters must have an extensive vocabulary in both the English language and the foreign language.

Individuals who pass the certification exam have demonstrated a minimum level of competency necessary to interpret in the courtroom. Individuals who are unable to pass this exam do not yet possess the necessary skills to perform the important function of a court interpreter. Take for example an exam candidate who fails a section of the certification exam with a 45 percent. Is it acceptable for a court interpreter to only be able to accurately interpret 45 percent of what transpires in the courtroom?

The role of the court interpreter is to place the non-English speaker on equal footing with those that speak English. In doing so, the non-English speaker is provided with equal access to justice. Only through certification are court interpreters able to demonstrate whether or not they can perform the functions of this very important responsibility.

## 4. Determining Whether or Not A Court Interpreter Is Needed

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[Excerpted from A Judge's Guide to Immigration Law in Criminal Proceedings.]

The responsibility for appointing an interpreter where a defendant is non- or limited-English speaking rests with the trial court. This is true even if the defendant or his counsel does not request an interpreter. The court must make the determination in the first instance as to whether an interpreter is necessary.

The Federal Court Interpreters Act, 28 USC § 1827(d)(1), and many state statutes and court rules provide that the presiding judicial officer shall appoint an interpreter, either *sue sponte* or by motion of a party, whenever the ability of a party or witness to speak and understand English fully is called into question. Even when the defendant or witness speaks some English, if put on notice either through the defense counsel or through direct communication with the defendant or witness, the court should evaluate whether an interpreter needs to be appointed in order for the defendant to be able to fully understand, communicate, and participate in the proceedings.

The appropriate way to determine whether to appoint an interpreter is to conduct an inquiry on the record, allowing the judge to determine whether the defendant or witness is able to understand the proceedings, communicate with counsel and effectively participate in his own defense.

In evaluating a defendant's or witness's English language competency, it is important to be mindful that a person with a limited ability to understand or speak English may be able to handle routine matters in English but may not be able to express complex, emotionally sensitive matters. This is particularly true in the stress-charged environment of a criminal trial. In addition, persons who are not native speakers of English develop an extensive listening vocabulary before acquiring a comparable spoken vocabulary, and generally are able to understand more than they can articulate. It is therefore recommended that the judge's *voir dire* includes active vernacular, and avoids "yes" or "no" questions, so as to be able to better evaluate the level of English-language comprehension and the ability to effectively communicate in English.

An interpreter should be appointed in a criminal case when the defendant: [Florida Bench Book]

- a. Is unable to accurately describe persons, places, and events that affect his or her defense;
- b. Is unable to tell the court what happened over a period of time;
- c. Is unable to request clarification when statements are vague or misleading, during cross-examination, to defend their position, or otherwise participate in his or her defense;
- d. Is not on an equal footing with an English-speaking defendant with an equivalent education and background.

An interpreter should be appointed in a civil case when:

- a. An indigent civil litigant is unable to understand the court proceedings because of the inability to speak or understand the English language;

- b. A fundamental issue or interest is at stake, such as would be the case in matters involving parental rights, paternity rights, dissolution of marriage, civil commitment, etc.; and
- c. The court cannot resolve the issues in dispute without the services of an interpreter.

***Suggested Voir Dire Questions to Determine English Proficiency and the Need for an Interpreter***

To make efficient and effective determinations about whether an interpreter is needed, ask at least one or two questions from each of the following categories:

(1) Identification, such as:

- ◆ Please tell the court your name.
- ◆ What is your address?
- ◆ When is your birthday? or When were you born?
- ◆ How old are you?
- ◆ Where were you born?

(2) Active vocabulary in vernacular English, such as:

- ◆ How long have you been speaking English?
- ◆ How did you learn English?
- ◆ How did you get to court today?
- ◆ What kind of work do you do?
- ◆ Did you go to school as a child?
- ◆ Where did you go to school?
- ◆ What is the highest grade you completed in school?
- ◆ What have you eaten today?
- ◆ How comfortable are you understanding and speaking English?

(3) Simple, direct questions requiring a response other than “yes” or “no.”

[Citation from ABA publication - Adapted from Guadalupe Valdes and Phyllis Wilcox, The Use of Court Interpreters in New Mexico: A Handbook for Judges, Attorneys and Interpreters ¶¶ 1.5-2, 1.5-3 (1986); Cal. R. Ct. appendix div. I § 18; *Model Voir Dire for Determining the Need for an Interpreter, in Judge’s Guide to Standards for Interpreted Proceedings*, Figure 6.1 in Hewitt, Court Interpretation: Model Guides for Policy and Practice in the State Courts (1995).]

## 5. Waiving the Right to an Interpreter

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[Excerpted from A Judge's Guide to Immigration Law in Criminal Proceedings.]

### **Waiver Must Be Knowing and Voluntary**

Before permitting a defendant to waive the right to an interpreter, the judge should take precautions to ensure that the waiver is knowingly and voluntarily given. In many jurisdictions, a defendant's waiver of the right to an interpreter is only permitted by the court if the waiver is made expressly by the defendant on the record after having had an opportunity to consult with counsel, and after the court has explained, through an interpreter in the defendant's primary language, the nature and effect of the waiver.

A waiver need not be granted where the court has determined an interpreter is required. At least one circuit court has ruled that if the presiding judicial officer determines that the use of an interpreter is necessary to assure complete and accurate communication with a witness, the officer should not permit the witness to waive this right.

### ***Suggestions for Ensuring that a Waiver of the Right to an Interpreter is Knowing and Voluntary***

1. Explain the waiver in the defendant's native language.
2. Provide the defendant with the opportunity to consult with counsel before waiving his or her right to an interpreter.
3. Provide a written waiver in English and in the defendant's native language, and ensure that the defendant, not counsel, signs the waiver.

### **Waiver is Revocable at Any Time**

The waiver of the right to an interpreter is revocable. If at any time during the proceedings a defendant who had previously waived the right to an interpreter indicates that he wishes to retract the waiver, the judge is thus put on notice of a defendant's English-comprehension limitations, and must conduct an inquiry to determine whether an interpreter should be appointed.

## 6. Appointment of A Court Interpreter

### When the Court is Required by Law to Appoint an Interpreter [Florida]

The following is the recommendation provided by the Judicial Management Council's Committee on Trial Court Performance and Accountability, Court Interpreter Workgroup, in a draft report dated May 2001.

DIVISION Case type	COURT INTERPRETATION PROVIDED	COMMENTS
<b>ALL DIVISIONS</b>		
Criminal Contempt	Yes	Court Interpreter services required in all Criminal Contempt proceedings at state expense.
Jurors	No	Language interpreters are not allowed in jury deliberations. Therefore, interpretation should not be provided in earlier juror stages of the trial process.
<b>CIRCUIT CIVIL</b>		
All	No	Court interpreter services are not required to be provided by the court. Parties may bring interpreters to court if needed.
<b>CIRCUIT CRIMINAL</b>		
All	Yes	Court interpreter services required in all cases, including: every person who is a party to the case; every proceeding.
<b>DOMESTIC RELATIONS</b>		
Dissolution	No	Court interpreter services are not required to be provided by the court. Parties may bring interpreters to court if needed;



		<i>But:</i>
Custody	Yes	Court may appoint an interpreter and charge either party, but if both are indigent an interpreter should be provided.
Child Support Enforcement	No/Yes	A court should appoint an interpreter only in actions brought by the Dept. of Revenue where the respondent is indigent.
Domestic Violence (Injunctions, Extension Hearings)	Yes	A court should appoint an interpreter in all.
Repeat Violence	Yes	A court should appoint an interpreter in all.
Paternity	Yes/No	A court should appoint an interpreter in any action where the respondent is indigent, and in actions brought by an individual (not DOR) who is indigent.
Adoption	No	Court interpreter services are not required to be provided by the court.
Name Change	No	Court interpreter services are not required to be provided by the court.
<b>JUVENILE</b>		
Delinquency, Dependency CINS/FINS	Yes	Court interpreter services required in all cases, including: every person who is a party to the case (parents or caregivers); every proceeding
<b>PROBATE, GUARDIANSHIP, AND MENTAL HEALTH</b>		

Probate	No	Court interpreter services are not required to be provided by the court. Parties may bring interpreters to court if needed.
Guardianship/Property	No	Court interpreter services are not required to be provided by the court. Parties may bring interpreters to court if needed.
Guardianship/Person	No/Yes	Court interpreters may be appointed, with costs assessed, or at public expense if ward is indigent.
Mental Health	Yes	A court interpreter should be appointed in any proceeding in which a person may potentially lose the ability to control the decisions about his or her life, and extends to conferences between court-appointed counsel and clients, as there is no agency to provide this service. The requirement also extends to examinations ordered by the court.
Petition for Incapacity	Yes	Court interpreter services are required at public expense for conferences between court-appointed counsel and clients, at all proceedings and in all court-ordered examinations.
Baker Act	No/Yes	If a public defender has been appointed, then the public defenders= office is required to provide court interpreter services for conferences between the public defender and the client.

Marchman Act	Yes/No	Court interpreter services are required at public expense for the defendant, not the family members seeking court action.
<b>COUNTY CIVIL</b>		
All	No	Court interpreter services are not required to be provided by the court. Parties may bring interpreters to court if needed.
<b>COUNTY CIVIL TRAFFIC</b>		
All	No	Court interpreter services are not required to be provided by the court. Parties may bring interpreters to court if needed.
<b>COUNTY CRIMINAL</b>		
All	Yes	Court interpreter services required in all cases, including: every person who is a party to the case; and every proceeding.

[See also sections III and IV of Oregon’s Bench Book and section 4 of the Minnesota Best Practices Manual.]

**Priority of Appointment** [insert state policy, if applicable]

Pursuant to I.C.A.R. 52(d)(1) an interpreter shall be appointed when an interpreter is requested or when the appointing authority determines that a principal party in interest or witness does not communicate in or understand the English language sufficiently to permit effective participation in a court proceeding. Section (d)(2) requires that the interpreter shall be appointed according to the following priority:

- (A) a certified interpreter,
- (B) a conditionally approved interpreter,
- (C) a qualified interpreter.

The appointing authority may appoint an interpreter of lower priority on the foregoing list only when good cause exists. Good cause includes, but is not limited to, a determination made prior to the proceeding by the appointing authority that:

- (i) Given the totality of the circumstances, including the nature of the proceeding and the potential penalty or consequences involved, the services of an interpreter of higher priority are not reasonably available to the appointing authority; or
- (ii) The current list of certified interpreters maintained by the Idaho Supreme Court does not include an interpreter certified in the language spoken by the non-English speaking person.

The court is not required to articulate such a determination in a court proceeding, unless the appointment of an interpreter is challenged by a party. If a party challenges the appointment of an interpreter, the court shall make a determination on the record as to whether the appointment of the interpreter conforms with the provisions of this rule.

### **Determining an Interpreter's Qualifications**

[Oregon and excerpts from A Judge's Guide to Immigration Law in Criminal Proceedings]

The court must take special care to appoint an interpreter who is uniquely qualified to interpret in the language used by the non-English-speaking person. It is critical for the protection of both the integrity of the judicial proceedings and the rights of the defendants that the court determines the competency of any interpreters before they are engaged in their duties.

The role and responsibilities of a court interpreter are highly specialized. Especially in the context of criminal proceedings where the stakes are generally high, it is critical that the court ensure that the interpretation provided is clear, accurate and delivered properly and in a manner fully consistent with the nature and tenor of the proceedings. Courts must, therefore, ensure that the individual is qualified to interpret. In addition, courts must consider whether the use of that individual as an interpreter creates a conflict of interest, a perception of impropriety, or inhibits that person from providing adequate interpretation. In particular, the employment of counsel or the judge as interpreter can interfere with the proper execution of the other duties these individuals have in the courtroom.

### ***Foundation Questions for Certified and Noncertified Interpreters in Order to Qualify the Interpreter***

1. Suggested Questions to Ask Certified and Noncertified Interpreters:
  - a. Do you hold the \_\_\_\_\_ Certified Court Interpreter credential issued by the Office of the State Court Administrator?
  - b. Have you read and do you understand and agree to adhere to the Code of Professional Responsibility for Interpreters in \_\_\_\_\_ Courts?
  - c. Having that code in mind, are you aware of any conflicts of interest you may have in this particular case?
  - d. Have you had an opportunity to speak with the person in this case who needs an interpreter? Can you readily communicate with the non-English speaking person?
2. Suggested Foundation Questions to Ask Noncertified Interpreters:

- a. Do you have any particular training or credentials as an interpreter?
- b. What is your native language?
- c. How did you learn English?
- d. How did you learn [the foreign language]?
- e. Can you read both languages? (Not for ASL interpreters.)
- f. What was the highest grade you completed in school?
- g. Have you spent any time in a foreign country?
- h. Have you spent any time in a country speaking the language of the person requiring interpretation?
- i. Did you formally study [English/foreign language] in school? How much formal study in that language did you have?
- j. Have you ever interpreted in court before? Where? How often?
- k. Are you certified by any other state or the federal courts? (Not for ASL interpreters.)
- l. Do you hold one or more certifications from any national organizations? Please explain what was involved in obtaining this certification.
- m. Have you received any special training in court interpreting?
- n. Are you familiar with the Code of Professional Responsibility for Court Interpreters [where one exists]? Please explain some of the main points.
- o. Are you a potential party in this case?
- p. Is there a possibility that you will be called to testify in this case?
- q. Do you know Mr. X? Have you ever worked for Ms. Y? Do you know the lawyer for Mr. T?
- r. Have you had an opportunity to speak with the non-English-speaking person informally? Were there any particular communication problems?
- s. Are you familiar with the dialect spoken by Mr. B?
- t. Are you familiar with the accent of people from the region of the country where Ms. L is from?
- u. Describe the simultaneous and consecutive modes of interpretation and how they differ.
- v. Are you able to interpret simultaneously without omitting or changing anything that is said?
- w. Are you able to interpret consecutively?
- x. Do you ever summarize statements while interpreting? Do you understand that the law requires you to interpret everything said by all parties?

### **Appointing Multiple Interpreters to a Proceeding** [Oregon]

1. Multiple Parties Needing Same Language Interpreter
  - a. Separate Interpreters - The court should afford each party a separate interpreter if needed to avoid a conflict of interest.
  - b. Preferred Procedure (if equipment available):
    - 1) To ensure uniform interpretation, one interpreter interprets the proceeding through closed circuit electronic transmission system, and all parties needing an interpreter listen by means of individual headphones.
    - 2) If interpreter for the proceeding provides interpretation to multiple parties, at least one other interpreter must be available to assist in communication between client and attorney during proceedings.
2. Party and Witnesses Needing Interpreter

Provide one interpreter for a party and a separate interpreter who can interpret for all witnesses (if a party's interpreter serves as an interpreter for a witness, the interpreter cannot assist in communications between the party and counsel).

### 3. Exception for Separate Interpreters

When separate interpreters are not available, for example in rural communities, then the potential conflict should be disclosed and any waiver put on the record.

#### **Resources to Locate Interpreters** [Washington]

The following resources are for courts to consider when a Washington State court certified interpreter is not available or the court needs an interpreter in a non-certifiable language. Some of these sources may provide names of interpreters with only marginal skills and no court experience. Judicial officers must exercise discretion to determine qualifications to serve as an interpreter in a particular court proceeding.

- A. **Other State Courts** (Consortium member states recommended above non-consortium states): Local court administrators (federal, superior, municipal, district), particularly courts in larger jurisdictions may have names of qualified interpreters for a particular language or dialect needed.
- B. **Non-Government Organizations**: Some schools, churches, and ethnic community organizations may be of assistance in locating an interpreter for rare languages or dialects. Exercise caution when using this alternative due to possible conflict of interest.
- C. **Language Line Services**: Appropriate to use for short hearings of approximately 15 minutes in duration (e.g., arraignment), "at the public counter" interpretations of non-legal matters between parties and court staff, or if the court is having difficulty determining what language the person speaks. It is not appropriate to use for long hearings or trials.
- D. **Colleges and Universities**: Foreign language departments and international student organizations of local colleges and universities can be a resource.
- E. **Medical Facilities**: Hospitals and clinics use interpreters. The Department of Social and Health Services offers certification in medical interpreting (360) 664-6035.
- F. **Private/Commercial**: Private language schools and commercial interpreting agencies are available but not endorsed or rated by the AOC.

[See also Section IX of Oregon Bench Book.]

## 7. Role of the Court Interpreter and Professional Code of Ethics

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### Role of the Court Interpreter [Minnesota]

The role of the court interpreter can be defined in the following ways:

- The duty of the Court Interpreter is to serve as a conduit between non-English speakers and English-speaking officials in legal forums. As they convert one language to another, interpreters play a critical role in the administration of justice and make it possible to ensure the rights of due process and participation in the court system for all those involved.
- The goal of a court interpreter is to enable the judge and jury to react in the same manner to a non-English-speaking witness as they do with one who speaks English. Also, the limited – or non-English-speaking defendant should be enabled to hear everything that an English speaker has the privilege to hear.
- The proper role of the interpreter is to place the non-English speaker, as closely as linguistically possible, in the same situation as an English speaker in a legal setting. In doing so the interpreter does not give any advantage or disadvantage to the non-English-speaking witness or defendant.
- The goal of a court interpreter is to produce a legal equivalent, a linguistically true and legally appropriate interpretation.

Court interpretation for foreign language speaking and deaf or hearing impaired individuals is a highly specialized form of interpreting that cannot be effectively performed without commensurate specialized training and skills. Being bilingual, even fluently so, is insufficient qualification for court interpreting. Interpreters must be able to interpret with exactitude while accurately reflecting a speaker’s nuances and level of formality. The interpreter must interpret the original source material without editing, summarizing, deleting, or adding; while conserving the language level, style, tone, and intent of the speaker. The interpreter must render what may be termed the “legal equivalent” of the source message.

Interpreting requires the use of several cognitive and motor skills, including:

1. Listen
2. Comprehend
3. Abstract the message from the words and word order
4. Store ideas
5. Search for the conceptual and semantic matches
6. Reconstruct the message in the other language
7. WHILE . . . speaking and listening for the next chunk of language to process
8. WHILE . . . monitoring their own output.

Court interpreters must be able to use these skills in three different modes: simultaneous interpretation, consecutive interpretation, and sight interpretation of documents.

[Oregon]

“Interpret” is the appropriate professional term for orally rendering the proceeding/statements. “Translate” is the professional term for converting written information from one language to another. Several references in ORS do not respect the professional terminology, probably because the drafter was not familiar with the profession, not because the drafter intended to differentiate.

[Washington]

The Proper Role of a Court Interpreter Should Be:

- A conduit/facilitator of communications.
- To interpret accurately all communications to and from English and the target language.
- To interpret thoroughly and precisely, adding or omitting nothing, giving consideration to grammar, syntax, and level of language.

Ethical Considerations:

- Should be considered an officer of the court.
- Abide by a code of professionalism expected of any court officer to promote confidence and impartially in the judicial process.
- The interpreter shall avoid any conflict of interest, financial or otherwise.
  - Shall not render services if a potential witness, associate, friend or relative of a party.
  - Shall not render services if he/she has a stake in the outcome.
  - Shall not render services where he/she has served as an investigator in a preparation of litigation.
- Shall not disclose any communication that is otherwise privileged without consent or court order.
- Shall not comment on a matter where he/she has served as an interpreter.
- Report any effort by another to solicit, entice, or induce the interpreter to violate any law or canon of conduct for interpreter.
- Shall not give legal advice and shall refrain from the unauthorized practice of law.

What You Should Expect From an Interpreter:

- He/she will request clarification if a phrase or word is not understood



- He/she will interpret in the first person and should address the court in the third person, in order to keep a clear record.
- He/she will have paper and pencils available at all times and may have a dictionary or other reference material with him/her.
- He/she will be as unobtrusive and professional as possible.
- He/she will not converse with the defendant or party except to interpret everything that is said in the courtroom.

Red Flags to Watch For:

- Beware of the interpreter who does not carry a Washington State interpreter badge.
- Be clear to identify the interpreter's level of certification (Washington State, Federal, other state).
- Beware if the interpreter is not interpreting everything that is being said in the courtroom. Summary and paraphrase interpreting have no place in the courtroom, under any circumstances.
  - By observation, you can determine if the interpreter is simultaneously interpreting the testimony, both questions and answers of witnesses, the closing arguments of counsel, etc. The party is entitled to hear everything that is happening, as it is happening.
- Beware if you observe the interpreter engaging in conversation with the non-English speaking party or witness.
- Beware if the interpreter is coaching or encouraging a party to answer in a certain way (such as nodding or using facial expressions). The interpreter should simply interpret everything that is being said in the courtroom, with no personal input whatsoever.

Beware if the interpreter draws undue attention to himself/herself. A trained interpreter will be as unobtrusive as possible and professional in manner.

**Code of Professional Responsibility in the Judiciary** [Minnesota and Oregon]

To clarify the role and govern the behavior of the interpreter in the state court system, the Code of Professional Responsibility was promulgated by the \_\_\_\_\_ Supreme Court in \_\_\_\_\_. (See Appendix A.) Judges should be familiar with the code and its canons.

**Reporting Policy Violations by Interpreters** [New Jersey]

If a judge or staff person believes that an interpreter engaged in conduct that violates either the Code of Professional Responsibility or any other judiciary policy, he or she should so advise the

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## **8. Conducting Court Proceedings Using Interpreters and Other Practical Considerations for Facilitating the Interpreter’s Performance of Duties**

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### **Interpreter Oath** [New Jersey]

All interpreters shall take the following written or oral oath: “Do you solemnly swear or affirm that you will interpret accurately and impartially, follow all guidelines for court interpreting that are binding on you, and discharge all of the solemn duties and obligations of an official interpreter?” An interpreter who has not taken this oath shall not be permitted to interpret.

This standard sets forth a uniform oath to be administered to all interpreters, something that does not presently exist. *New Jersey Rule of Evidence* 604 simply requires an interpreter to be “subject to all provisions” of the evidence rules that relate to witnesses and to “take an oath or make an affirmation or declaration to interpret accurately.”

Under present practice, interpreters should be sworn before starting to interpret for each particular proceeding of record. This is time-consuming and adds one more task for the judge or hearing officer to perform. The practice of administering the oath has also been honored more in the breach than in the execution. A preferable approach is for interpreters to take the oath only at the beginning of their career as an interpreter for the New Jersey judiciary. Once so administered, the oath would be in effect throughout their careers, just as attorneys are bound by the oath they take when they are admitted to the New Jersey bar.

All staff interpreters should take the oath at the time they begin state employment, and a record of the oath at the time they begin state employment, and a cord of the oath should become a part of their permanent personnel file. Freelance interpreters may swear by affidavit at the time their names are entered into the official registry of interpreters maintained by the judiciary; those affidavits should be kept on file in the central office. As for interpreters from agencies, the central office should make arrangements with such interpreting agencies to use only interpreters who have taken the oath. In the highly unusual case in which an interpreter not listed in the registry must be used in a particular proceeding, the judge or hearing officer conducting that proceeding would have to administer the oath on the record.

### **Preparation of the Court Interpreter**

[Excerpted from A Judge’s Guide to Immigration Law in Criminal Proceedings.]

The following recommendations are designed to facilitate the job of the interpreter and to assure greater accuracy in the interpretation.

1. Allow interpreters to acquaint themselves with the individual.

In recognition of different accents, dialects and regionalisms, and to ensure accuracy of interpretation, courts should provide interpreters with an opportunity to speak with the defendant or witness to determine whether they can communicate effectively, and to allow them both to familiarize themselves with each other's language particularities. The judge may then establish on the record that the interpreter and the person requiring assistance have had an opportunity to speak, and that they are able to understand each other's respective accents and identify each other's dialects and regionalisms.

Many languages have different dialects, and there will be times even a federally certified or a professionally qualified interpreters cannot effectively communicate with the person requiring an interpreter. In those cases, it is important to employ an interpreter who understands and speaks the appropriate dialect.

If at any time during the course of proceedings it becomes apparent that the interpreter is unable to communicate effectively with the presiding judicial officers, attorneys in the case, a party in the case, or a witness, the presiding judicial officer must dismiss the interpreter and obtain the services of another interpreter.

2. All interpreters to review relevant documents.

Permitting the interpreter to review indictments or other pre-hearing or pre-trial court documents to familiarize themselves with the nature of the case and its particular vocabulary often leads to a greater understanding of the proceedings. This, in turn, can lead to the court proceedings running more smoothly and efficiently.

3. Advise interpreters of their obligation to report impediments to performance and any errors they have made.

An interpreter is obligated by the Oath of True Interpretation to ensure that the interpretation provided is accurate and complete. Where an interpreter recognizes that a mistake in interpretation has been made, it is incumbent upon the interpreter to stop the proceedings and to make the correction for the judge. Similarly, where an interpreter is uncertain as to how to interpret a term or phrase, or where the question or testimony has been too long for the interpreter to accurately remember what was said, the interpreter should inform the judge. The judge, in turn, should direct the witness or the questioning attorney to restate or rephrase the question or testimony to facilitate an accurate and complete interpretation.

### **Preparation of Other Participants for Use of the Interpreter**

[Excerpted from A Judge's Guide to Immigration Law in Criminal Proceedings.]

At the commencement of proceedings, the judge should advise attorneys and witnesses about the role of the interpreter in order to ensure effective communication, preserve the integrity of the proceedings, and obviate the need for such an explanation at a time more likely to be distracting once the proceedings have begun. In addition, the judge should advise all persons communicating through an interpreter to avoid using complex language, or highly technical

language such as scientific, medical and legal terminology that can be expressed in simpler language. It is also useful for the court to advise parties to refrain from terms or expressions, such as slang, that may not have an equivalent in the native language of the person requiring the use of an interpreter.

***Suggested Judicial Instructions for all Individuals Who will be Communicating through a Court Interpreter***

1. The interpreter's only function is to assist the non or limited-English-speaking party to communicate effectively with the court, the attorneys, and other parties in the case.
2. The interpreter may not give legal advice, answer questions about the case, or help anyone in any other way except to facilitate communication.
3. An interpreter is not permitted to ask or answer questions, only interpret them. If a person who is using the services of an interpreter has any questions, those questions should be directed to the court, attorney, witness, or party to the case through the interpreter.
4. If someone cannot understand or communicate effectively with the interpreter, that person should tell the court or the presiding judicial officer.

[Citation from ABA publication – Excerpted from *Suggested Text for Judge's Statement in Court to Clarify the Role of the Interpreter, in Judges' Guide to Standards for Interpreted Proceedings, in Court Interpretation: Model Guidelines for Policy and Practice in State Courts (1995).*]

**Practical Considerations for Facilitating the Interpreter's Performance of Duties**

[Excerpted from A Judge's Guide to Immigration Law in Criminal Proceedings]

1. Interpretation equipment.

The use of wireless remote interpreting equipment, when available, can decrease the interpreter's intrusion into the proceedings. Where wireless remote interpreting equipment is not available, interpreters need to be positioned close enough to individuals requiring their services to permit clear audibility.

2. Positioning the interpreter in the courtroom.

During trial and other judicial hearings, interpreters should be seated where they will not interfere in any way with the proceedings. For example, interpreters should not be located in the witness stand where their close proximity to the witness may increase the chances that the fact-finders will pay attention to the interpreter rather than the witness. Nor should interpreters be placed in a spot where they may block the line of sight between persons requiring their services and other courtroom participants.

3. Audio recording of proceedings requiring an interpreter.

If errors in interpretation are made during the proceedings, a court reporter's transcript of the hearing will not be of any assistance as the court reporter is only able to record what the interpreter says, and not the actual testimony of the witness. Thus, to allow for review of any alleged errors in interpretation raised during trial or on appeal, it is of critical importance that an audio recording of all proceedings is made. This is often the only way to check the accuracy of an interpretation, even if the challenge is raised immediately following the alleged error, because it allows for the tape to be placed back at the point in time that the objection is made. It is particularly important for a tape recording to be made where a non-certified interpreter is employed.

#### 4. Interpreter fatigue.

Judges should be sensitive to, and make provisions for, interpreter fatigue. The task of interpreting is arduous and requires intense concentration, even more than that required of a court reporter. Where possible, two interpreters should be appointed to a trial so that the interpreters may switch off every half-hour. When this is not possible, there are other measures a judge can take to help ensure that the accuracy of the interpretation does not suffer from interpreter fatigue, such as giving regular rest-breaks and not permitting or requiring an interpreter to work more than seven hours over the course of the day.

#### ***Recommended Practices for Facilitating Accurate Interpretation***

1. If the interpreter cannot hear the person who is speaking, the judge may order that person to speak more audibly, either upon the judge's own request or upon the request of the interpreter.
2. The judge can require microphones to be used whenever interpreters are utilized in the courtroom to ensure the audibility of anyone whose testimony should appear in the transcript. This practice also ensures that the court reporter will hear every word spoken in court.
3. If the interpreter is having trouble hearing or is speaking too loudly, the judge should permit the interpreter to sit where hearing is better facilitated.
4. If attorneys or witnesses are speaking too rapidly for the interpreter to keep up, the judge can instruct the participants to speak more slowly.
5. When an interpreter is being used, judges and attorneys should try to avoid using complex language, and should avoid asking compound questions or using double negatives, to limit the possibility of confusion in the interpretation.
6. When there is no equivalent translation from one language into the next, as with some idiomatic expressions, the judge can instruct the attorney to rephrase the question.
7. The judge can instruct counsel to rephrase or ask more specific questions when there is a problem interpreting a concept or idea.

[Citation from ABA publication – Excerpted with permission from Roseann D. Gonzalez et al., Fundamentals of Court Interpretation: Theory, Policy and Practice 176, 180 (1991).]

## **Modes of Interpreting** [NCSC]

The mode of interpreting to be used at any given time (consecutive and simultaneous) depends on the types of communication to be interpreted within a proceeding and not on the types of proceeding. In fact, both the simultaneous and consecutive modes will often be appropriate within a proceeding. For example, interpreting would be simultaneous when a judge is making a defendant aware of his or her rights, and consecutive when the judge begins to question the defendant. The following guidelines for modes of interpreting are suggested.

The simultaneous mode of interpreting should be used for a person who is listening only. This is the normal mode for proceedings interpreting. Accordingly an interpreter should interpret in the simultaneous mode in situations such as the following:

- ◆ for a defendant when testimony is being given by another witness,
- ◆ for a defendant or witness when the judge is in dialog with an officer of the court or any person other than the defendant or witness,
- ◆ for a defendant when the court is addressing the jury or gallery or any other persons present in the courtroom, or
- ◆ for any non-English speaking party when the judge is speaking directly to the person without interruption or regular call for responses (e.g., lengthy advisements of rights; judge's remarks to a defendant at sentencing).

The consecutive mode of interpreting should be used when a non-English speaking person is giving testimony or when the judge or an officer of the court is communicating directly with such a person and is expecting responses (e.g., taking a plea). This should be the normal mode for witness interpreting.

The summary mode of interpreting should not be used. It is most often resorted to only by unqualified interpreters who are unable to keep up in the consecutive or simultaneous modes. Qualified interpreters may report the need to use summary interpreting if they are called upon to interpret highly technical testimony of expert witnesses which they do not understand or have the vocabulary to interpret. The judge should specifically instruct all interpreters to report if it is necessary to resort to summary interpreting. In circumstances when the problem does not involve unusual and highly technical language, the preferred course of action is to dismiss and replace the interpreter if there are other interpreters available who do not need to use the summary mode. Any time the judge determines that the proceedings must continue even if summary interpreting is being used, the judge's consent should be part of the record of the proceedings.

## **Use of Multiple Interpreters** [NCSC]

There are three basic functions an interpreter serves during court proceedings. In some circumstances, it is physically impossible for one interpreter to fulfill more than one of the functions at the same time.

- ◆ *Proceedings interpreting:* The most frequently encountered function an interpreter performs is to enable a non-English speaking person who is the subject of litigation understand the proceedings and communicate with the court when necessary. In short, “proceedings interpreting” makes the defendant or other litigant effectively present during the proceedings. It is conducted in the simultaneous mode.
- ◆ *Witness interpreting:* This function of the interpreter is to secure evidence from non-English speaking witnesses that is preserved for the record. It is sometimes called “record” interpreting, and it is conducted in the consecutive mode.
- ◆ *Interview interpreting:* This function of the interpreter is to facilitate communication between a non-English speaking person and her or his attorney to ensure the effective assistance of counsel, or to perform similar duties in any other interview setting associated with a court proceeding. (When an interpreter is used to assist in attorney-client consultations, the term “defense” interpreting is sometimes used.) Interviews may use both simultaneous and consecutive interpreting, depending on the circumstances.

When there is only one non-English speaking defendant and no non-English speaking witnesses, one interpreter is all that is needed. (If the hearing is lengthy, one interpreting team will be required.) If there are non-English speaking defendants and other non-English speaking witnesses, two interpreters will be needed during the witness testimony – the proceedings interpreter who is interpreting the English questions for the defendant (and who is able to assist the defendant with attorney-client communication), and the witness interpreter.

Then there are multiple non-English speaking defendants, must there be an interpreter for each person? For proceedings interpreting (making the defendants present), there need not be: one interpreter (or interpreting team) using the headset equipment can interpret at the same time for all of the defendants.

For defense interpreting, however, at least one additional interpreter needs to be available in multi-defendant cases so that defendants can communicate with counsel when necessary during the trial.

Some courts appoint an interpreter for each defendant so that each defendant’s interpreter can provide proceedings interpreting and defense interpreting when necessary. As noted above, this may be an unnecessarily expensive alternative. If the parties agree, two interpreters can trade off providing proceedings interpreting for all of the defendants and the “resting” interpreter can be signaled and used by any defendant to communicate with counsel as necessary.

In cases where a trial involves more than one defendant whose interests are in conflict with each other, counsel and the parties may be uncomfortable using the same interpreter for privileged communications. If this becomes an issue, the court may have no choice but to provide interpreters for each defendant. The practice should not be presumed necessary, however, because trained and qualified interpreters are under oath to protect confidentiality of communications and to refrain from communicating directly with any court participant except when they are engaged in interpretation.



## **Handling Interpreter Error and Allegation of Interpreter Error** [New Jersey]

If an interpreter reports having made an interpreting error or someone alleges such an error, the judge or hearing officer should use the detailed procedures set forth in the “Comments” portion of this standard for dealing with such errors or allegations of error.

Comments.

Correction of errors caught by the interpreter. In order to ensure the most accurate possible interpretation on the record, judges and hearing officers should accept the correction of errors when offered by the interpreter. In a jury trial, this should generally be done during a sidebar conference. In a non-jury proceeding, this should be done by permitting the record interpreter, if still interpreting, to correct the error at once, first identifying him/herself in the third person (e.g., "The interpreter wishes to correct an error") for the record and then proceeding to make the correction. If the interpreter becomes aware of an error after the testimony has been completed, the judge or hearing officer should determine whether the error should be corrected on the record. If a jury is present, this should be done in a sidebar conference.

Handling of allegations of errors. When anyone other than the interpreter (including the team interpreter) alleges that an interpreting error has been made, the judge or hearing officer should handle resolution of the allegation outside the presence of the jury, if any. If there is a team of interpreters, the team should first confer and try to reach an agreement and the judge or hearing officer should accept any such agreed-upon correction by the team. Notwithstanding an allegation of error, the interpreter or interpreting team should be presumed to have interpreted correctly, unless the interpreter agrees that he or she made a mistake; the burden of proof in any such situation should be on the person challenging the interpretation.

If the interpreter stands by the interpretation that is alleged to have been incorrect, then the judge or hearing officer should determine whether the issue surrounding the allegedly inaccurate interpretation is so substantial or potentially prejudicial as to warrant further attention. If it is not, the allegation of error should not be pursued further. If, however, the issue is substantial or potentially prejudicial, then the judge or hearing officer should:

- (1) ask the person whose speech was allegedly misinterpreted to clarify the term or terms in question. If that does not resolve the allegation of interpreter error, the judge or hearing officer should then hear evidence as to the correct interpretation from experts submitted by attorneys for all parties if they so wish, from the interpreter who made the alleged error, and from any other linguistic expert the judge or hearing officer may select or allow. In some situations, it may be advisable or necessary to play back the recording of what a witness has said since many perceived interpreting errors are a function of what was said in a foreign language rather than its interpretation; and
- (2) make a final determination as to the correct interpretation in view of the evidence. If the determination is different from the original interpretation, then the judge or

hearing officer should amend the record accordingly and, if applicable, so advise the jury.

### **Selecting and Instructing Jurors for Trials Where a Court Interpreter has been Appointed**

[Excerpted from A Judge's Guide to Immigration Law in Criminal Proceedings.]

#### A. Question Prospective Jurors about their Attitudes Toward Interpretation.

It is recommended that the jury *voir dire* include questions to determine whether the prospective juror would be prejudiced by the use of an interpreter. The Virginia Supreme Court, for example, recommends the following inquiry to determine whether prospective jurors are affected by the presence of an interpreter: “Do they hold prejudices against people who do not speak English? Do they speak a foreign language that will be used during the proceeding? If so, will they be able to pay attention only to the English interpretation?”

#### B. Instruct the Jury about the Role of the Interpreter.

When an interpreter is being used for proceedings, the judge should instruct the jury on the role of the interpreter in court. The instruction should occur at the beginning of the proceedings.

#### ***Suggested Text for Clarifying the Role of the Interpreter for the Jury***

1. We are going to have an interpreter assist us through these proceedings, and you should know what a court interpreter can and cannot do. The interpreter's sole responsibility is to enable us to communicate with each other. The interpreter is here only to help us communicate during the proceedings. The interpreter is not a party in this case, and has no interest in this case. The interpreter works for the court and does not work for either party. Accordingly, the interpreter is completely neutral.
2. The interpreter is not an attorney, and is prohibited from giving legal advice.
3. Does anyone have any questions about the role or responsibilities of the interpreter?
4. If any of you do not understand the interpreter at any time during the proceedings, please raise your hand and let me know.

[Citation from ABA publication – Adapted from “*Suggested Text for Clarifying the Interpreter's Role to the Jury*,” figure 6.4 in *Judges' Guide to Standards for Interpreted Proceedings*, in Court Interpretation: Model guides for Policy and Practice in the State Courts (1995).]

#### ***Suggested Jury Instructions for Witness Testimony Through an Interpreter***

When a witness testifies through an interpreter, the judge should provide the jurors with the following instructions:

1. The interpreter is a neutral actor.

2. The interpretation of the witness's testimony should be as if the witness had spoken English and the interpreter was not present.
3. The fact that the witness's testimony is given through the assistance of an interpreter should in no way affect the jury's view of the witness's credibility.

C. Situations in which a Prospective Juror Speaks the Interpreted Language.

If the prospective juror speaks the language of the person using an interpreter, that juror need not automatically be excluded. The juror should only consider as evidence the testimony that is provided through the interpreter, which comprises the official court record of the testimony provided.

When a juror who speaks the language of the witness interprets the testimony differently from the version given by the court interpreter, it is unrealistic to expect a juror to ignore what she hears the witness say. In such cases, it may be necessary to provide the juror with a special instruction on how to handle such situations.

**Other Jury Issues** [Oregon]

1. The court should give the Uniform Criminal Jury Instruction in criminal trials in which an interpreter is being used for the parties or witnesses.
2. Instructing the Jury if a Jury Panel Member(s) Knows the Language Being Interpreted
  - a. Suggested Instruction - "If any of you understand the language of the witness, disregard completely what the witness says in the other language. Consider as evidence only what is provided by the court interpreter in English."
  - b. Sign Language - 1) When a party needs sign language interpretation and a potential juror understands sign language, it may not be appropriate for the potential juror to serve, because the juror may be able to observe and understand privileged attorney-client communications. 2) An alternative solution to removing the potential juror is to provide the hearing-impaired party "real time" interpretation (similar to closed caption television) if available and the party reads and understands English.
  - c. Removing a Juror—ADA Implications - Before removing a hearing-impaired juror or juror with another disability, the court should consider whether removal might violate the ADA's antidiscrimination provisions.
3. Non-English Speaking Jurors [Revise to appropriately reflect laws of individual state.]
  - a. Court proceedings must be conducted in English; therefore, a person who does not speak English is not qualified to serve as a juror. The court may provide an interpreter so that the court can determine a potential juror's English-speaking abilities and to interpret an explanation of this requirement to the potential juror.

- b. Challenges to allow non-English speaking persons to serve as jurors have been unsuccessful in some jurisdictions. These challenges have generally been based on due process and equal protection guarantees. Oregon’s appellate courts have not yet addressed this issue.

#### 4. Disabled Jurors

- a. A person with a disability is not ineligible to act as a juror and cannot be excluded from the jury list or from jury service because of his or her disability.
- b. On written request of a deaf, hearing-impaired, or speech-impaired juror, and on the court’s finding, the juror needs an interpreter or assistive communication device, the court must appoint a qualified interpreter or provide an assistive communication device.
- c. The court must administer to the qualified interpreter an oath to communicate the proceedings accurately to the juror and to repeat the juror’s statements accurately.
- d. The interpreter appointed for the deaf, hearing impaired, or speech-impaired juror must be present during jury deliberations. Each party to the proceedings must stipulate to the interpreter’s presence. The interpreter cannot participate in the jury deliberations “except to facilitate communication between the disabled juror and other jurors” and the court must “so instruct the jury and the interpreter.”

#### **Other Instructions** [NCSC]

##### ***Suggested Text for Clarifying the Interpreter’s Role to the Witness***

I want you to understand the role of the interpreter. The interpreter is here only to interpret the questions that you are asked and to interpret your answers. The interpreter will say only what we or you say and will not add, omit, or summarize anything. The interpreter will say in English everything you say in your language, so do not say anything you do not want everyone to hear. If you do not understand a questions that was asked, request clarification from the person who asked it. Do not ask the interpreter. Remember that you are giving testimony to this court, not to the interpreter. Therefore, please speak directly to the attorney or me, not to the interpreter. Do not ask the interpreter for advice. Please speak in a loud, clear voice so that everyone and not just the interpreter can hear. If you do not understand the interpreter, please tell me. If you need the interpreter to repeat something you missed, you may do so, but please make your request to the person speaking, not to the interpreter. Finally, please wait until the entire question has been interpreted in your language before you answer. Do you have any questions about the role of the interpreter? Do you understand the interpreter?

##### ***Suggested Text for Clarifying the Interpreter’s Role to the Jury***

(Proceedings Interpreting)

This court seeks a fair trial for all regardless of the language they speak and regardless of how well they may or may not speak English. Bias against or for persons who have little or no proficiency in English because they do not speak English is not allowed. Therefore, do not allow the fact that the party requires an interpreter to influence you in any way.

(Witness Interpreting)

Treat the interpretation of the witness's testimony as if the witness had spoken English and no interpreter were present. Do not allow the fact that testimony is given in a language other than English to affect your view of [her] credibility. If any of you understand the language of the witness, disregard completely what the witness says in [her] language. Consider as evidence only what is provided by the interpreter in English. Even if you think an interpreter has made a mistake, you must ignore it completely and make your deliberations on the basis of the official interpretation.

## 9. Best Practices for Working with Interpreters

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### What Court Interpreters Would Tell You If They Were Here [Washington]

1. Take some time to become familiar with my profession. I would like very much for you to understand the professional services I am responsible for rendering. When you do that, you will be more likely to respect and treat me as a professional. You will be less likely to view me as a glorified clerk of someone of dubious professional standing (certainly no equal to court reporters!). It may be a helpful guide if you would treat me the way you tend to treat your reporter or any officer of the court.

Once you understand my job better, here are some things you will no longer do. Please understand this is not just me talking. The following examples represent the best thinking of judges, lawyers, and court administrators – as well as professional interpreters, of course – who have pondered the role of the interpreter in great depth. These examples are based on the Code of Professional Responsibility I am expected to follow.

- a. Do not ask me to explain or restate what you or anyone else says. I can only put into another language exactly what a person has said.
- b. Do not allow attorneys appearing before you to ask me to explain or restate what someone says. When I decline to perform this task for them, please support me and do not expect me to violate the Code.
- c. Do not ask me to take the person(s) for whom I am interpreting to an office, counter, etc.
- d. Do not let two or more people talk at the same time. There is no way I can interpret everything that is being said!
- e. Do not ask me not to interpret something. I am professionally bound to interpret everything that is said.
- f. Do not forbid me to interpret simultaneously during a proceeding because it interferes with your concentration or otherwise bothers you. There are many situations in which I am professionally, ethically, and legally bound to interpret in the simultaneous mode. If my whispered simultaneous interpreting gets too loud, respectfully ask if I can speak more quietly. I will do my very best to be as unobtrusive as possible.
- g. When an attorney or someone else alleges that I have made an error in interpretation, do not automatically assume that I have made one. Remember that the attorney is in an adversary relationship and I am not. I do make mistakes sometimes and I will be the first person to admit a mistake when I recognize one. But ask me if I agree with an attorney's allegation before

concluding that I have actually made a mistake. As a neutral party and a linguist, I should have more credibility before the court than virtually any attorney on such matters.

- h. Do not ask me when you are really talking to a witness, defendant, or someone else. If you say “Ask him if...” or “Tell him that...,” remember that I am required to say exactly that in the interpretation or to remind you to talk directly to the person you are addressing. If I do the former, the person with whom you are attempting to communicate will often be confused. If I do the latter, you may get upset.
2. Avoid rapid-fire delivery of what to you is very routine material and help attorneys avoid excessively fast speech. Understand that when we are interpreting into other languages, it is often the case that it will take more words for me to convey a message accurately and completely. Be patient and understanding if I have to keep reminding you or others to slow down so I can do my job, too.
3. I need breaks every bit as much as your reporters do, maybe even more. I am often the only person in the courtroom who is talking all of the time. While everyone else only has to understand what is being said, I have to both understand it and put it into another language. This is intensely demanding work. Furthermore, if the proceeding I am interpreting is a proceeding which involves simultaneous interpreting for more than an hour, two interpreters should be assigned to the case. We should be able to switch off every 30 minutes or so.
4. Please make efficient use of my services. I have other commitments to attend to when I finish interpreting for the case before you for which you have summoned me. Take my case as quickly as possible in order to prevent incurring the extra costs of having me wait and inconveniencing the other courts or court support services that may be waiting for my services.
5. Understand the human limits of my job. My main interest here is that you comprehend the fact that no person knows all of the words in any one language, much less all of the words of all the dialects of that language – and, much, much less, all of the words of all the dialects of two languages (not to mention the professional and legal jargon for which there is often no equivalent at all in other languages)! Sometimes I need to obtain clarification. It is unethical for me to make up an interpretation or guess at an interpretation of something I do not understand. Instead of viewing such a request as casting doubt upon my professional credentials, consider viewing it in terms of my commitment to accuracy.
6. Many of my colleagues are not very well qualified and want very much to improve their interpreting skills. They need support for attending courses and professional seminars. Please do everything you can to enable on-the-job training, so do not hesitate to take them – and me, sometimes – under your wing when there is something we need to learn.

7. Before you expect me to start interpreting for a given matter, give me the opportunity to find out what the nature of the proceeding is, who is involved, etc. Furthermore, let me speak to the linguistic minority person briefly to size up the person's communicative style and needs so I can make whatever adjustments may be necessary and appropriate to improve communication – or perhaps even discover that I might not be able to communicate sufficiently with the individual! Like any other professional, the better prepared I am, the better I will be able to do and the smoother the whole proceeding will flow.

### **What Should I Expect from an Interpreter?** [Florida]

There are a variety of actions or behaviors that will be apparent in a qualified interpreter.

1. He or she will request clarification if a phrase or word is not understood.
2. He or she will interpret in the first person and should address the court in the third person, in order to keep a clear record. For example:

Witness: (in native language) "I was at a party in my neighbor's house..."

Interpreter: (in English) "I was at a party in my neighbor's house...."

**NOT:** "She said she was at a party at her neighbor's house...."

Interpreter: (addressing the court): "Your Honor, the interpreter requests that the last question be repeated."

**NOT:** "Your Honor, I request that the last question be repeated."

3. He or she will have paper and pencils available at all times and may have a dictionary or other reference material with him or her.
4. He or she will be as unobtrusive and professional as possible.
5. He or she will not converse with the defendant or party except to interpret everything that is said in the courtroom.

He or she will not "explain" any form, document, or activity to the party or witness, nor lower the register of speech.

### **What Are the "Red Flags" I Should Watch for?** [Florida]

1. Beware of the interpreter who purports to be "certified" in the State of Florida. Unless he or she is Federally certified, having passed the U.S. Administrative Office of the Court's



examination, there is no certification currently existing in Florida. He or she may be misrepresenting their qualifications.

2. Beware if the interpreter is not interpreting everything that is being said in the courtroom. Summary and paraphrase interpreting have **no place** in the courtroom, under any circumstances.

By observation, you can determine if the interpreter is simultaneously interpreting (for instance) the testimony, both questions and answers of witnesses, the closing arguments of counsel, etc. The party is entitled to hear everything that is happening, as it is happening.

3. Beware if you observe the interpreter engaging in conversation with the non-English speaking party or witness.
4. Beware if the interpreter is coaching or encouraging a party to answer in a certain way (such as nodding “yes” or “no,” “ssh-shing” the party, or using facial expressions to convey personal encouragement or discouragement). The interpreter should simply interpret everything that is being said in the courtroom, with no personal input whatsoever.
5. Beware if the interpreter draws undue attention to himself or herself. A trained interpreter will be as unobtrusive as possible and professional in manner.

### **What Should I Do to Assist the Interpreter?** [Florida]

To best utilize the services of an interpreter in your courtroom, you should be familiar with the *Code of Professional Responsibility for Interpreters in the Judiciary in the State of Florida* which is found at the end of this guide.

1. If more than one party needs a language interpreter in the same language,
  - a. The court should afford each party a separate interpreter to avoid the appearance of a conflict of interest. Or, if equipment is available:

An interpreter can interpret for more than one party over an electronic transmission system, with each party listening by means of individual headphones. If the electronic transmission system is used, a second interpreter should be available to assist.
  - b. If neither of the described situations is possible, a clear record should be established, disclosing any possible conflicts of interest and placing waivers on the record.
2. After establishing the qualifications of the interpreter for the record, the court should:

- a. Summarize the facts of the case for the interpreter and allow him/her to read any pertinent documents to become familiar with vocabulary, names, addresses, and so forth.
- b. Introduce the interpreter to the party requiring the services and allow them to converse enough to determine that clear communication is possible between them.
- c. When the interpreter is performing simultaneous interpretation, speak and read slowly and clearly enough for the interpreter to keep up.
- d. When the interpreter is performing consecutive interpreting (during question and answer testimony), speak in logical, meaningful phrases, pausing to allow the interpreter to keep the pace. Remember that consecutive interpreting should be complete and accurate, but not verbatim or literal. For example, a “red herring” translated to Spanish verbatim is a “red fish” and has no meaning. Instead, a correct interpretation may be a “false lead.”
- e. Do not allow more than one person to speak at the same time and require counsel and witnesses to speak audibly.
- f. Assure the interpreter that it is appropriate to ask for clarification or to address the court if he or she cannot interpret for any reason.
- g. If the proceeding is longer than 30 minutes, allow the interpreter to take a break; his or her accuracy will plummet after 30 minutes. If the proceeding is longer than two hours, two interpreters should be used to relieve each other every 30 minutes.
- h. Speak directly to the party or witness, not to the interpreter. For example, do not say, “Ask him where he was that night.” The interpreter must interpret those precise words, for the non-English speaking party and it will be confusing. Instead, say, “Where were you that night?” Use the interpreter as a language source or conduit only.
- i. Do not ask the interpreter to explain or restate anything and do not allow attorneys to ask that of an interpreter. Qualified interpreters are prohibited from explaining, giving legal advice, or changing the level, or register, of the language. They are only to interpret what is said in the way it is said.
- j. Do not ask the interpreter to refrain from interpreting any portion of the proceedings. It is unethical for him/her to do that, although he/she will if the judge orders it.
- k. If anyone challenges an interpretation, allow the interpreter the opportunity to either “stand corrected” or “stand by the interpretation.” A qualified interpreter should have credibility before the court in matters of language.

**I Speak the Language. Can't I Help?** [Florida]

1. Judges, attorneys, and other court personnel should not function as interpreters.
2. Judges and other court participants should speak in English at all times during proceedings.
3. If the judge wishes to make the non-English speaking person feel at ease, he or she might address a greeting in the person's language. In that case, an announcement should be made for the record. For example: "Please note for the record that the court will greet the defendant in the \_\_\_\_\_ language." The judge might then follow up, in English, with an explanation of why the court will refrain from communicating during the proceeding in that language and why the record will be in English.

## 10. Interpreters for Persons Who Are Deaf or Hard of Hearing

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### Modes of Communication [NCSC]

What people who cannot hear have in common is that they rely on “information they can see” to communicate. Beyond that, it is difficult to generalize. The preferred or most effective means of communication for deaf people varies widely. The variation relates to the age at onset of hearing loss, the severity of the loss, how the person has been educated in language after the hearing loss, and, importantly, what languages or modes of communication the people in a given setting have in common.

There are several recognized methods or modes of communication used by deaf and hard of hearing individuals. These include speech reading or lip-reading; gesturing (the most primitive and limited form of communication with deaf persons); written communication, including computer-aided real-time transcription; and sign language. There are many forms of sign language, but among them, ASL appears to have the greatest inherent capacity for effective and efficient communication.

Sign language is the use of visual signs to convey information and ideas. The most advanced forms of sign language are not just manual representations of oral language; they are independent languages. When combined with facial grammar and body shifting, as in ASL, sign language conveys rich meaning, humor, pathos, and many other subtleties of communication.

Beyond the issues surrounding the complexities of any single sign language is the fact that there are many sign languages, just as there are many oral languages. The range and complexity of sign language communication make it apparent that interpreters need to be extremely knowledgeable and adept at recognizing and overcoming barriers to communication. This is what certified interpreters for deaf persons are trained to do.

ASL is a highly developed language with a structure that can be described in its own terms. The vocabulary, grammar, idioms, and syntax of ASL are completely different from English. The linguistic units and structure of ASL are comprised of facial expressions, body posture, and shapes and movements of hands, arms, eyes, and head. About 4,000 signs are used in ASL. ASL is the language of the American deaf community, and learning ASL is prerequisite for certification as an interpreter for the deaf.

Misinformation and misconceptions about ASL like the following are not uncommon among court officials who have some involvement in or knowledge of court interpretation:

American Sign Language is not word-for-word, and should cause concern as to its use for a verbatim record [SIC].

The foregoing comment illustrates two prevalent misconceptions, the first about ASL specifically, and the second about language and interpreting generally. The first misconception is that ASL is some form of “shorthand English,” rather than a language of its own. The second

is that proper interpretation between *any* two languages should always be “word for word.” Despite legal language that is often phrased to the contrary, acceptable interpretation from one language to another is *often* not “word-for-word.” In fact, some word-for-word translations between languages result in nonsense or, at least, in the loss or distortion of meaning. Idiomatic expressions are good examples of this. One of the specific abilities that interpreters are testing for is whether they *can conserve meaning* in such situations, rather than resorting to nonsensical or misleading word-for-word interpretations.

These misconceptions interfere with the best practices that courts should follow to facilitate communication when a deaf person is involved in court proceedings. Contrary to popular belief, a person who is fluent in ASL is more likely able to participate fully, and more efficiently, in court proceedings, than a hearing impaired person whose primary language is English and who does not also know ASL.

Several different systems of Manually Coded English (MCE) have been developed with the aim of reflecting the structure of spoken English and improving the academic achievement of deaf students in a hearing culture. MCE systems are typically used in educational settings with children rather than in social interactions among deaf adults. Other similar language systems are Seeing Essential English and Signed English.

Finger Spelling is a signing system in which each letter of the ordinary alphabet has its own sign. This principle can be applied to any language that has developed an alphabetic writing system. The main strength of finger spelling is its scope and flexibility. It is quick to learn and can then be used to sign an indefinite number of words. It is a particularly useful system for signing proper names, which are not given their own signs in other sign systems. However, it is a slow system to use, rarely exceeding 300 letters per minute (about 60 words). Moreover, it cannot be used at all unless one is able to spell (a problem for young children, who also have difficulty controlling the hand shapes required). From the receiver’s point of view, it is difficult to distinguish the hand shapes at a distance. If the rate of signing speeds up in response to rapid speech, the signer will begin to omit letters, and the receiver may begin to lose comprehension. Finger Spelling is best thought of as an auxiliary signing system, a convenient bridge between spoken or written language and sign language proper.

A deaf person may or may not be able to speech read (commonly referred to as lip-reading). Under normal conditions, deaf people will be unable to comprehend most of what is being said if they rely solely on speech reading, because only 26 percent of speech is visible on the lips. Facility in speech reading also varies, as does facility in any mode of communication: given two equally intelligent people with identical training, one may be an excellent speech reader, the other poor.

Hearing impaired persons who prefer speech reading has their chosen mode of communication may require “oral interpreters.” Oral interpreters are professionals who are specifically trained to present information through mouth movements only. Oral interpreters do not use sign language, instead they use clear mouth movements and rephrase words that are difficult to speech read. For example, the words “green” and “red” sound different, but they look the same on the lips. If

the words red and green appeared in the same sentence or paragraph, an oral interpreter might replace the word red with maroon, mauve, dark pink, or another synonym for red.

Written communication is a way to communicate with a deaf person, providing that the deaf person knows English (or some other oral and written language) *and can read*. (Communication by means of drawing pictures is a separate mode of communication, used most often to communicate with people who have not developed language skills.) Because English may be a second language for many deaf persons, some have limited competence in writing and reading English. Their writing style may be similar to others for whom English is a second language. In these cases, the use of concrete images and simple sentence structures is important. A deaf person will usually want important information, such as appointment dates and times, confirmed in writing.

With computer-aided transcription, a skilled court reporter keys the shorthand notes of spoken language into a stenotype machine, and the words spoken in court are concurrently translated into English text. CART systems send the shorthand output from the stenotype machine directly into a person computer that translates the shorthand instantaneously and displays it on a monitor. This makes it possible for courtroom observers to read a written version of courtroom speech while the record is being made. It also makes it possible to print the transcript at a moment's notice.

This method of communication is both efficient and effective for hearing impaired individuals who are comfortable reading English. Courts need to be vigilant, however, to avoid a misuse of CART. CART work is usually done by court reporters. If CART communicative assistance is done by the same person who is the official court reporter, special arrangements will be required for the hearing impaired person to communicate with counsel during the proceeding. The official reporter cannot both make the record and assist the deaf person. This is not a problem if a special reporter is brought in solely for the purpose of assisting the hearing impaired person.

Gesturing is far less systematic and comprehensive than is sign language. While sign language can express the same range of meaning as would be achieved by speech, gesturing is far less systematic and comprehensive. There are very few hand gestures and these are used in an ad hoc way to express a small number of basic notions.

Some deaf persons have no formalized communication system (e.g., minimally language competent individuals). They may express themselves in a variety of ways, such as gestures, pictures, pantomime, or by pointing to objects. Other deaf persons may have developed home signs to communicate with family members. These signs are generally understood only by the family members with whom the deaf person regularly interacts. When a deaf person uses home signs, a qualified family member may prove helpful, but when this is done, the family member should not be a substitute for a certified interpreter. Instead, the family member should work as part of a "relay" team under the supervision of the interpreter.

### **Relay Interpreting** [Oregon]

“Relay interpreting” may be needed if the disabled person has never learned standard signing or finger spelling. For example, the disabled person may communicate only with gestures. Relay interpreters have studied to become experts in communicating with gesture. If the relay interpreter is deaf or hearing- or speech-impaired, the court should appoint a second interpreter to interpret the relay interpreter’s ASL into spoken English.

### **Facial Grammar or Body Shifting** [NCSC]

Some judges and lawyers do not understand the seemingly strange physical behavior of deaf persons as they “speak,” and they restrict an interpreter’s use of facial grammar or body shifting. This seriously interferes with communication during the proceeding, and facts may be lost or distorted. Such rulings limit the effectiveness of the interpreter’s professional language skills, and thus limit the effectiveness of the court.

There are two categories of facial grammar (often incorrectly referred to as facial expressions). The first category refers to the messages that are conveyed by different parts of the face. The upper part of the face conveys syntax and the type of sentence that is being communicated (e.g., interrogative, declarative, imperative). The lower part of the face conveys descriptions such as adjectives and adverbs. Finally, the shifting of the head, torso, and eyes can designate subject, object, and prepositions as well as references to things present and not present. The second category of facial grammar is referred to as effective display or emotions. This is the manner in which humor, anger, sadness, or even sarcasm is communicated.

### **Positioning of a Sign Language Interpreters** [New Jersey]

No proceeding shall begin until the sign language interpreter has been positioned in full view of the deaf or hard of hearing person for whom he or she is interpreting.

### **Certification of Interpreters for the Deaf** [NCSC]

In contrast to foreign language interpretation, most states have specific laws that establish standards for qualifications of interpreters for deaf individuals. Many of these states specifically require certification of interpreters.

Standards for certification of interpreters for deaf individuals in all of the language modalities used by deaf persons are set by the National Registry of Interpreters for the Deaf (NRID). NRID certification is based on a rigorous evaluation of the candidate’s interpretation skills and knowledge of the NRID Code of Ethics by a group of professional peers. The NRID certification system establishes minimum levels of achievement, representing a starting point for interpreters, varying according to certification area and level of competence. Certified interpreters are expected to continue to improve their skills by attending workshops and training seminars and through frequent use of sign language.

[Current information on NRID certification can be found at [www.rid.org](http://www.rid.org).]

## 11. Definitions and Terminology

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[NCSC]

**Consecutive Interpreting** - is rendering statements made in a source language into statements in the target language intermittently after a pause between each completed statement in the source language. In other words, the interpreter renders an interpretation after the speaker has stopped speaking. When using this mode of interpreting, it may be necessary for the interpreter to signal a speaker to pause to permit a consecutive interpretation when the length of the utterance approaches the outer limits of the interpreter's capacity for recall. During consecutive interpreting, the interpreter should take notes to assist him/her in rendering the interpretation.

**Functions of Interpreting** - relate to the purpose or the setting in which interpreting occurs. It is important to understand the functions of interpreting because in some settings more than one interpreter will be required, depending on how many interpreting functions need to be carried out during the same proceeding. In some circumstances, two or more interpreters might be required during one trial in order to perform all of the required interpreting functions.

**Intermediary Interpreting** - involves more than one interpreter to reach people who have idiosyncratic speech characteristics or (in the case of deaf people) who employ gestures or other signing varieties beyond the understanding of the primary interpreter. Intermediary interpreting should be undertaken with a trained primary interpreter, assisted by the secondary interpreter. Secondary interpreters may be deaf people holding the Reverse Skills Certificate (RSC) awarded by the National Registry of Interpreters for the Deaf, family members or friends of the person needing special communicative assistance, and professional service providers. Intermediary interpreters must work with a primary interpreter who is a professional.

**Interpretation** - means the unrehearsed transmitting of a spoken or signed message from one language to another. Interpretation is distinguished from "translation," which relates to written language. Two modes of interpreting are used in court by qualified interpreters -- "simultaneous" and "consecutive." A third common mode is "summary" interpreting, which should not be used in court settings.

**Interview Interpreting** - is interpreting to facilitate communication in interview or consultation settings. Interview interpreting may occur in conjunction with court proceedings or before or after court proceedings. Foremost among these are interviews or consultations that take place between attorney and client (sometimes referred to as "defense" interpreting) and between a non-English speaking person and bail screening or probation personnel. Interview interpreting may be performed in either or both the simultaneous and consecutive modes during an interview, depending on the circumstances.

**Non-English Speaking Person** - Refers to any person who is unable to communicate in English or who has a limited ability to communicate in English. The term also applies when the language limitation arises due to deafness or being hard of hearing. The term generally refers to a principal party in interest or a witness in the case.



**Proceedings Interpretation** - is for a non-English speaking litigant in order to make the litigant "present" and able to participate effectively during the proceeding. This interpreting function is ordinarily performed in the simultaneous mode. The interpreter's speech is always in the foreign language, and is not part of the record of proceedings.

**Sight Interpreting** - is more commonly referred to as "sight translation".

**Sight Translation** - is a hybrid type of interpreting/translating whereby the interpreter reads a document written in one language while translating it orally into another language. It is sometimes called sight interpreting. In this mode of interpreting a written text must be rendered orally without advance notice and on sight.

**Simultaneous Interpreting** - is rendering an interpretation continuously at the same time someone is speaking. Simultaneous interpreting is intended to be heard only by the person receiving the interpretation and is usually accomplished by speaking in whispered tones or using equipment specially designed for the purpose in order to be as unobtrusive as possible.

**Source Language** - is the language of the original speaker. "Source language" is thus always a relative term, depending on who has spoken last.

**Summary Interpreting** - is paraphrasing and condensing the speaker's statement. Unlike simultaneous and consecutive interpreting, this method does not provide a precise rendering of everything that is said into the target language. This is a mode of interpreting that should not be used in court settings.

**Target Language** - is the language of the listener, the language into which the interpreter is communicating the meaning of the words spoken in the source language.

**Translation** - is converting a written text from one language into written text in another language. The source of the message being converted is always a written language.

**Witness Interpretation** - is interpretation during witness testimony for the purpose of presenting evidence to the court. This interpreting function is performed in the consecutive mode; the English language portions of the interpretation are part of the record of the proceeding. A variant of "witness" interpreting is assistance provided by the interpreter during communications between the judge or other English-speaking official on the case and a non-English-speaking defendant or civil litigant. Typical examples are communications who occur during arraignments, plea or sentencing hearings.

## 12. Resources

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[This section may be used to include state contact information, helpful websites, journal articles, and other documents.]

## 13. References

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The text in this document was excerpted from the following sources:

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## **14. Appendix A**

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[Insert Supreme Court Order establishing the Code of Professional Responsibility in the Judiciary.]