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Interpreting in a Legal Setting: A Guide for the Attorney

Presented by the Bench and Bar Committee of the
National Association of Judiciary Interpreters and Translators
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Interpreters and the Courts

The right to an interpreter is guaranteed by:

- ❖ 4th, 5th, 6th and 14th Amendments
- ❖ Federal Court Interpreter Act (1978, Amendment, 1988)
- ❖ Civil Rights Act of 1964 (Title VI)



Interpreting vs. Translating

- ❖ Interpreter: transfers a verbal message from the source language into a verbal message in the target language
- ❖ Translator: transfers a written message from the source language into a written message in the target language
- ❖ Completely different skills required for each of the “twin professions”



Qualifications and Standards of Practice

The Role of the Interpreter

- ❖ Becomes officer of the court once interpreter has been sworn
- ❖ Assumes a neutral role in an adversarial system
- ❖ Provides language access for Limited English Proficient (LEP) parties for court and court-ordered matters
- ❖ Ensures effective communication between parties
- ❖ Takes an oath to interpret everything faithfully and accurately
- ❖ Abides by ethical constraints determined by the profession



Qualifications and Standards of Practice

Skills Required

- ❖ Mastery of spoken English and the second language
- ❖ Good short-term memory and ability to multi-task
- ❖ Specific knowledge of legal system and terminology
- ❖ Excellent general and specialized vocabulary
- ❖ Ability to work well under pressure, flexibility and cooperative attitude
- ❖ Unique cognitive skills and the ability to process information quickly and accurately



Code of Ethics

- ❖ Accuracy
- ❖ Impartiality and Conflicts of Interest
- ❖ Confidentiality
- ❖ Limitations of Practice
- ❖ Protocol and Demeanor
- ❖ Maintenance and Improvement of Skills and Knowledge
- ❖ Accurate Representation of Credentials
- ❖ Impediments to Compliance



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Qualifications and Standards of Practice

Certifications

- ❖ Federal Court Interpreter Certification (3 Languages, testing currently only in Spanish)
- ❖ Consortium for Language Access in the Courts (Currently in 41 States and 18 Languages)
- ❖ NAJIT (Currently only in Spanish)
- ❖ ASL and other Signed Languages



Qualifications and Standards of Practice

Best Practices

- ❖ Always insist on using a certified court interpreter for all types of legal proceedings
- ❖ This includes non-judicial assignments
- ❖ Prohibit a family member, friend or a minor from interpreting
- ❖ Refrain from using bilingual attorneys to interpret



Direct Speech

- ❖ Direct speech is the standard technique used by interpreters
- ❖ Interpreters will use the same grammatical voice as the speaker
- ❖ When the interpreter needs to address court or counsel, the interpreter refers to him/herself in the third person
- ❖ Witnesses should be advised by court or counsel to reply directly to the party and not to the interpreter



Preparation of Witnesses and Essential Information for the Interpreter

- ❖ Information about the case, names, numbers and places
- ❖ Documentation for case preparation such as: police reports, indictments, expert witness and witness depositions, motions, jury instructions, claims and counterclaims
- ❖ Witness preparation by counsel re: interpreter's role



Challenges Facing the Interpreter

- ❖ Fatigue
- ❖ Multiple voices
- ❖ Physical and mental interference (poor acoustics, visual obstruction, mumbling, speed of speech)
- ❖ Relay interpreting (both spoken languages and ASL)



Strategies for Working with Interpreters, Part I

- ❖ Interpreter's role in court
- ❖ Interpreter's role in out-of court settings (depositions, interviews, mediation)
- ❖ Awareness of cultural differences
 - a. Body language and eye contact
 - b. Direct vs. indirect answers
 - c. Ignorance of American legal system
 - d. Deference to authority



Strategies for Working with Interpreters, Part II

- ❖ Awareness of linguistic differences
 - a. Structure of personal names
 - b. Pronouns, gender, passive voice
 - c. Vocabulary ambiguities
- ❖ Attorney's responsibility
- ❖ Interpreter Registry



Interpreters for the Deaf and Hard of Hearing

- ❖ Licensure
- ❖ Differences between ADA and Civil Rights Act in court's responsibility to provide access
- ❖ SC:L, CART, CDI (Relay interpreting)
- ❖ Code of Ethics



Interpreter Errors

- ❖ Real and perceived errors
- ❖ Interpreter errors due to lack of information
- ❖ The interpreter's position in the adversarial system
- ❖ Method of challenging errors to preserve them on the record



Issues on Appeal

Case law on :

- ❖ Failure to appoint an interpreter
- ❖ Shared or borrowed interpreter
- ❖ Confidentiality
- ❖ Attorney serving as an interpreter
- ❖ Accuracy of interpretation



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Questions and Comments





Resources

- ❖ www.najit.org
- ❖ 65 AmJur Trials 1
- ❖ 30 NENGLR 227
- ❖ 54 SDLR 33
- ❖ People v. Redgebol, 184 P.3d 86 (Colo. 2008)
- ❖ Evolving Views of the Court Interpreter's Role: Between Scylla and Charybdis, <http://www.acebo.com/papers/evolve.htm>
- ❖ Brennan Center for Justice: Language Access in State Courts, by Laura Abel, www.brennancenter.org



Cases Cited

- ❖ Meyer v. Nebraska, 262 U.S. 390 (1923)
- ❖ U.S. ex rel. Negrón v. State of New York, 434 F.2d 386, 390-91 (2d Cir. 1970)
- ❖ Court Interpreters Act. Public Law No. 95-539, 92 stat. 2040 (1978)
- ❖ Court Interpreter Amendments Act. Public Law No.100-702, 102 Stat. 4654-4657 (1988) (Codified at 28 U.S.C. 604(a)14, 604(a)(15), 604(f) 1827 and 1828)
- ❖ Civil Rights Act (1964) Title VI, 42 U.S.C.A. 2000d.
- ❖ Lau v. Nichols, 414 U.S. 563 (1974)
- ❖ Americans With Disabilities Act (1990), 42 U.S.C.A. 12101
- ❖ Towne v. Eisner, 245 U.S. 418 (1918)
- ❖ U.S. v. Hasan, 526 F.3d 653, (10th Cir.(Okla.) May 20, 2008)
- ❖ Ling v. State, 288 Ga. 299, 702 S.E.2d 881 (2010)



Cases Cited, contd.

- ❖ U.S.v. Lim , 794 F.2d 469 (9th Cir. 1986)
- ❖ Washington v. Jairo Gonzales-Morales, 138 Wash.2d 374, 979 P.2d 826 (1999)
- ❖ State of New Mexico v. Xuan Nguyen, 144 N.M. 197, 185 P.3d 368 (N.M.App., 2008)
- ❖ U.S. v. Salamanca, 244 F.Supp. 2d 1023 (D.S.D.,2003)
- ❖ U.S. v. Bailon-Santana, 429 F. 3d 1258 (9th Cir. 2005)
- ❖ García v. State Not Reported in S.W.3d, 2002 WL 84403 (Tex.App.-Dallas)
- ❖ Gopar-Santana v. State, 862 So. 2d 54 (Fla. App. 2 Dist., 2003)
- ❖ Holliday v. State, 588 S.E. 2d 833 (Ga. App. 2003)



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