

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

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

Qualifications and Standards of Practice

Certifications

- Federal Court Interpreter Certification (3 Languages, testing currently only in Spanish)
- National Center for State Courts (Currently in 42 States and 20 Languages)
- NAJIT (Currently only in Spanish)
- ASL and other Signed Languages

Qualifications and Standards of Practice

Best Practices

- 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

Qualifications and Standards of Practice

Best Practices: Sound Files

- Ad-hoc interpretation of sound files in court is never advisable:
 - Interpretation falls short of evidentiary standards
 - Accuracy of interpretation cannot be verified which may lead to challenges
 - Only appropriate evidence for the record is a written transcript and translation.

Direct Speech

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

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 1

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

Strategies for Working with Interpreters, Part II

- Awareness of linguistic differences
 - Structure of personal names
 - Pronouns, gender, passive voice
 - 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 examples:
 - Failure to appoint an interpreter
 - Shared or borrowed interpreter
 - Confidentiality
 - Attorney serving as an interpreter
 - Accuracy of interpretation

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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