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Administrative Office of Pennsylvania Courts
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The National Association of Judiciary Interpreters and Translators (NAJIT) is hereby submitting suggestions and comments on the amendments to the regulations for court interpreters that the Administrative Office of Pennsylvania Courts (AOPC) is considering. A thorough reading of the proposed amendments clearly shows the careful process undertaken by the Administrative Office, taking into account the unique demands of the judiciary interpreting profession and finding how best to harmonize them with the regulations that encompass the Language Access Plan for the Unified Judicial System. We did notice in §311(b) that the NAJIT certification was removed as one of the credentials to be granted reciprocity by the State of Pennsylvania's Unified Judicial System. We hope the Administrative Office reconsiders and keeps the NAJIT credential among those that the Pennsylvania courts grants reciprocity. We commend the AOPC for including provisions in these amendments such as §205. Appointment of Interpreters, (c) *Additional interpreter(s)*, and (e) *Persons who are not to be appointed as interpreters*. We would suggest, for consistency purposes, that for §205(a)(1)(i)(B) "conducting the *voir dire* for qualifying interpreters for persons with limited English proficiency", the AOPC provides judges with a minimal outline for such *voir dire*. NAJIT is willing to assist in the development of this outline, and is happy to include with this email two examples of *voir dire*s, one used in the New Jersey Courts and one from the *Model Guides for Policy and Practice in State Courts* published by the National Center for State Courts.

An additional observation regarding the terminology used in §205(c): reference is made to simultaneous *remote* interpreting equipment used in the courtroom. Equipment used for in-person courtroom proceedings is simply *simultaneous interpreting equipment*. In keeping with professional best practices, NAJIT encourages the AO to make sure all courtrooms have simultaneous interpreting equipment to address many of the issues mentioned in this section.

We also congratulate the AOPC for recognizing the valuable service interpreters provide to the courts, and compensating them accordingly. However, there seem to be some inconsistencies in the manner in which remote interpreting has been structured in these amendments. For example, **§104. Remote Interpretation**, states that:

- (a) *Simultaneous audiovisual technology*.—In the event that a certified or otherwise qualified interpreter for persons with limited English proficiency or who are deaf or hard of hearing cannot be found to interpret in person, one may be appointed to interpret via remote technology allowing for two-way simultaneous communication of image and sound such as video remote interpreting (VRI), video-conferencing, closed-circuit television, or web-based camera, **provided that the judicial proceeding is expected to be no more than one hour in duration...** [emphasis added.] According to the Explanatory Report, “The new remote interpreting fee schedule’s one hour minimum is based upon the average length of remote interpreting sessions”, and yet provisions are made for 15-minute increments under the Remote Interpreting Fee Schedule’s Miscellaneous Provisions [p. 2792].

2. Compensation, time extensions, and overtime

- a. *Hourly Rate*. The first hour is paid according to the table above. After the first hour, compensation will be paid in fifteen (15) minute increments at one quarter (1/4) of the hourly rate for the next two and a half (2.5) hours based on the interpreter credentialing level. Judicial districts are strongly encouraged to consider hiring at the half or full day rate **when assignments are expected to go over two (2) hours** and when hiring for more than one case. [Emphasis added.]

If remote interpreting is to be used “only for proceedings lasting no more than one hour” as recommended in §104, it stands to reason that compensation for remote interpreting during any proceeding lasting more than one hour should automatically shift to the half day rate.

Additionally, interpreters working as independent contractors are expected to make certain time commitments to the courts when working remotely for which the courts are not offering a balanced compensation arrangement. For example:

3. Time commitment

a. ...

b. Interpreters are expected to allow at least a thirty (30) to forty-five (45) minute window between cases when contracting to provide services remotely. This will allow for a smooth transition between assignments. The exception is when cases are scheduled sequentially in the same judicial district.

c. ...

d. Under no circumstances will the interpreter leave an on-going matter due to a scheduled conflict with an upcoming assignment without the consent of the presiding judicial officer. The interpreter must alert the presiding judicial officer of any possibility of a scheduling conflict and wait for the court to conclude the matter before withdrawing from the call. If necessary, the interpreter should be given an opportunity to inform their client for the next assignment that they are delayed.

NAJIT encourages the AOPC to have a policy that allows for compensation for all the time that the courts expect interpreters to remain available.

The onus of purchasing the “necessary equipment, hardware, software, and internet broadband connection, to provide effective video and telephone interpretation” and maintaining “such equipment in proper working order” also falls on the interpreter (Miscellaneous Provision 4.) While it is understandable that as independent contractors, the courts would expect interpreters to have the proper equipment to provide top quality service, it is also reasonable to expect the courts to compensate

interpreters properly for the quality service they are asking interpreters to provide, and not reduce their compensation to “15-minute increments after the first hour”, which is not how **professional** interpreters—and we emphasize, *professional*—get paid. **Remote interpreting pay should follow the same standards as in-person interpreting, with a 2-hour minimum followed by either a half-day or a full-day fee.**

Finally, we want to comment on the cancellation policy, taking into consideration the commitment expected of the interpreters, both for in-person and remote assignments, versus the commitment the courts are willing to make in exchange. {pp. 2791 & 2792}

3. *Cancellation.* Cancellations are based on business days and exclude weekends and holidays.

a. ...

b. *Hourly, half, and one day assignments.* If cancellation occurs with less than forty-eight (48) hours’ notice, excluding weekends and holidays, after the interpreter starts traveling to, or reports for an assignment, the cancellation fee shall be equivalent of two (2) hours pay based on the hourly rate and interpreter classification.

c. *Multiple day assignments.* When the interpreter is hired for an assignment lasting two (2) or more days, if cancellation occurs with less than forty-eight (48) hours notice, excluding weekends and holidays, after the interpreter starts traveling to or reports for an assignment, the cancellation fee shall be equivalent to one (1) full day compensation for the first day and one (1) hour for each additional day based on interpreter classification. If a case ends before the contracted time (i.e., an interpreter is retained for three (3) day trial, but the case settles after the first day), an interpreter will be entitled to two (2) hours pay for each canceled day.

Whereas a 48-hour cancellation (excluding holidays and weekends) is a reasonable provision, paying only two hours when an interpreter may have been contracted for a half day or a full day and is cancelled with less than 48-hours notice is not. That interpreter has committed the amount of time requested by the court, whether it’s

two hours, half day or a full day. That is lost work and income that cannot be replaced on such short notice. **Cancellations for hourly, half day, and one day assignments with less than 48-hours notice should be paid at the full rate for which the interpreter was contracted.**

The same holds true for multiple day assignments. Paying only for the first full day when cancellation takes place with less than 48-hours' notice, and only an additional hour for each of the remaining days of the assignment for which the interpreter was hired does not compensate for the time the interpreter has committed to be available to the court. As an independent contractor, that interpreter has lost income that cannot be replaced on such short notice. Payment for cancellations of multiple-day assignments with less than 48-hours' notice should compensate interpreters for the lost income taking into account that they will need time to replace the work that was cancelled.

The contracting conditions between the court and the interpreter should be equally favorable. To expect the interpreter to be available for the duration of the time contracted, and yet not be willing to fully and reasonably compensate the interpreter for that same time period is in no way fair or equitable.

A final comment on §304(b)(ii)(B) and Schedule D. Should the AOPC choose to use the Versant Spoken English Test for foreign language interpreters that have no interpreting exam available, we suggest you follow the minimum score for passing recommended by the National Center for State Courts in its *Desk Reference Manual*. Table 1 in §1.3, which is 49. This is also the level that New Jersey initiated when they first used this test for the "Journeyman" level, whereas they use a score of 60 or higher for the master classification. NAJIT would suggest either an increase in the minimum Versant score to at least 49 and perhaps as high as 60.

The proposed amendments to these regulations reflect the careful thought given to the professional standing of judiciary interpreters and the important contributions they make to the administration of justice and the fulfilment of meaningful access for LEPs and the deaf and hard of hearing communities. We trust that the issues we have identified within the proposed amendments and which are regrettably inconsistent with the rest of your outstanding regulations for interpreters are simple oversights which the Administrative Office will quickly correct. All the work

invested in these amendments will result in a more efficient system that will better serve the interests of justice once a more equitable relationship between the Administrative Office of the Pennsylvania Courts and the interpreters is clearly and firmly reflected in the final regulations. In the end, it is professional caliber interpreters who make it possible to have an effective and efficient Language Access Plan for the Unified Judicial System.

Sincerely,

The NAJIT Board of Directors

Figure 6.2
Information that Should be Secured to Establish the Qualifications of
Interpreters When No Court Testing or Other Prior Screening Standards
Exist

At minimum, court or counsel should ask the following questions of a proposed interpreter:

1. Do you have any particular training or credentials as an interpreter?
2. What is your native language?
3. How did you learn English?
4. How did you learn [the foreign language]?
5. What was the highest grade you completed in school?
6. Have you spent any time in the foreign country?
7. Did you formally study either language in school? Extent?
8. How many times have you interpreted in court?
9. Have you interpreted for this type of hearing or trial before? Extent?
10. Are you familiar with the code of professional responsibility for court interpreters? Please tell me some of the main points (e.g., interpret everything that is said).
11. Are you a potential witness in this case?
12. Do you know or work for any of the parties?
13. Do you have any other potential conflicts of interests?
14. Have you had an opportunity to speak with the non-English speaking person informally? Were there any particular communication problems?
15. Are you familiar with the dialectal or idiomatic peculiarities of the witnesses?
16. Are you able to interpret simultaneously without leaving out or changing anything that is said?
17. Are you able to interpret consecutively?

Figure 6.1
Model Voir Dire for Determining the Need for an Interpreter

In general: *Avoid any questions that can be answered with "yes - no" replies.*

Identification questions:

"Ms. ____, please tell the court your name and address."

"Please also tell us your birthday, how old you are, and where you were born."

Questions using active vocabulary in vernacular English:

"How did you come to court today?"

"What kind of work do you do?"

"What was the highest grade you completed in school?"

"What was the highest grade you completed in school?"

"Where did you go to school?"

"What have you eaten today?"

"Please describe for me some of the things (or people) you see in the courtroom."

"Please tell me a little bit about how comfortable you feel speaking and understanding English."

SUGGESTED VOIR DIRE TO DETERMINE
QUALIFICATIONS OF UNREGISTERED INTERPRETERS

Knowledge of the Languages and General Education

1. How did you learn English?
2. Have you formally studied the English language in school or college? Please describe if so.
3. How did you learn [insert name of the other language to be interpreted]?
4. Have you formally studied the [insert name of the other language to be interpreted] language in school or college? Please describe if so.
5. What is the highest grade or degree you completed?

Interpreting and Translating Skills

6. What formal courses or training have you had in the professions of interpreting and translating?
7. What specific courses or training have you completed in legal or court interpreting and translating?
8. Have you passed any accreditation or certification exams for interpretation or translation? Please describe if so.
9. Are you a member in good standing of any professional associations of interpreters or translators? If so, please identify them.
10. How often do you attend meetings, conferences, and other gatherings of professional interpreters and translators?
11. Have you read and understood the Code of Professional Conduct for Interpreters, Transliterators, and Translators? Do you agree to abide by that code and advise the court when you cannot abide by any particular provisions of it?
12. Have you ever been disciplined for conduct that violates a Code of Professional Conduct approved by the New Jersey Supreme Court, another state judiciary, or an association of professional interpreters or translators?

13. About how many times have you interpreted in a Municipal, Superior, or Federal court?
14. About how many times have you interpreted for depositions?
15. About how many times have you interpreted for administrative tribunals in the executive branch, such as a judge of Workers Compensation, an Administrative Law judge, or Federal Immigration?
16. Have you ever interpreted in proceedings like the one we are about to have? If so, about how many times?

Conflicts of Interest

17. Are you a potential witness in this case?
18. Do you know or work for any of the lawyers, parties, or witnesses in this case?

Communicative Compatibility

19. Have you had an opportunity to speak with the person for whom you will be interpreting?
20. Did you have any difficulty understanding everything that person says?
21. Do you speak the same language?
22. Does that person have any dialectal or idiomatic peculiarities that you do not understand or which you cannot interpret into English?

Performance of Appropriate Interpreting Modes

23. Tell me what simultaneous and consecutive interpreting are and when you should use them while interpreting court proceedings.
24. Can you interpret simultaneously into [name of language] everything that is said in English during this proceeding without adding, deleting, or changing anything?
25. Can you interpret consecutively from English into [name of language] and from [name of language] into English everything that is said without adding, deleting, or changing anything?