

Advocacy Regarding Use of Uncertified Interpreters

This letter was drafted in response to concerns expressed by members about the practice in some courts of using non-certified

interpreters when certified interpreters are available.



National Association of Judiciary
Interpreters and Translators

March 1, 2007

Dear Judge [insert name]:

I write on behalf of the National Association of Judiciary Interpreters and Translators, a professional association with over 1100 members who practice in the state and federal courts.

Our association advocates the use of tested interpreters whenever possible.

We are aware that the Judicial Council of Virginia is taking reasonable steps to provide a reliable certification process for court interpreters. This process is designed to better ensure that Spanish-language interpreters are competent to perform services in a court environment through training and testing. The Certified Spanish Language Interpreter List (<http://www.courts.state.va.us/filist.htm>) is distributed to the courts in order to identify those interpreters who have fulfilled all certification requirements. Individual state courts and others may use this list to contact certified interpreters directly and arrange for services. (Sample orders for appointing an interpreter may be found in the *Handbook for Judges and Clerks*.)

The Judicial Council of Virginia has recommended that certified interpreters be called as a first-step resource.¹ However, it has come to our attention that some courts in Virginia routinely call non-certified Spanish interpreters, or contract the services of private sector language agencies. These agencies do not necessarily provide the courts with certified, trained or tested interpreters, despite the fact that there are certified Spanish and otherwise qualified interpreters readily available in the state.

Court interpretation is a skilled profession requiring specialized training, knowledge and experience. The interpreting process requires a high degree of fluency in both languages. Even bilingual individuals with native-like fluency in both languages are not necessarily qualified to provide interpreting services in a courtroom. A legal setting demands excellence and full command of technical language, nuance, register and vocabulary. In addition, technical mastery of simultaneous and consecutive interpreting skills is essential. These skills require extensive practice and development.

Further, the acceptable modes of courtroom interpretation have been established by federal statute [28 USC §1827], state statute or rules, and case law [See our position paper on "Modes of Interpretation" at www.najit.org]. The experienced interpreter knows when to use these different modes.

¹ Guidelines for Policy and Best Practice Office of the Executive Secretary, Supreme Court of Virginia November 1, 2003 <http://www.courts.state.va.us/interpreters/guidelines.pdf> Judicial Council of Virginia Frequently Asked Questions <http://www.courts.state.va.us/interpreters/faq.html#court>

There are also strict ethical requirements that all court interpreters must learn and apply.

For reasons of fundamental fairness, due process, equal access and equal protection under the law, all non-English-speakers who come before the courts are entitled to the assistance of an interpreter. Of course, it is preferable that the interpreter be demonstrably competent. Without a competent interpreter, neither the court, the state, nor the defense can carry out their respective duties, thus putting into jeopardy basic constitutional safeguards and the integrity of the justice system.²

The Virginia Criminal Procedure Code, § 19.2-164, requires court approval of a competent interpreter for a non-English-speaking defendant. Interpreter competency requires more than self-identification as a bilingual or an interpreter. We understand that determining who is a "competent interpreter" may place an unnecessary burden on the courts, given that court personnel may be unfamiliar with interpreter credentialing issues.

This is why we urge the Virginia courts to implement throughout the state the prudent recommendations made by the Judicial Council of Virginia regarding the use of certified Spanish interpreters and otherwise qualified professionals (in languages where certification does not exist). The certified Spanish interpreters who are available should be called in the first instance. Having gone through the certification process, they are the most reliable interpreters the court can identify.

If our association can assist the court in any manner, please do not hesitate to call on us.

Sincerely yours,

Alexander Raïnof, Ph.D.
Chair, Board of Directors
National Association of Judiciary
Interpreters and Translators

² Santos Adonay Pagoada vs. Commonwealth of Kentucky NO. 97 CR - 1002, October 5, 2001. Fayette Circuit Court, Criminal Branch, Fifth Division [Ineffective Assistance of Council Claim. Judgment of the conviction set aside and a new trial ordered. Competency of the interpreter (lack thereof) went hand in hand with the attorney's ability to secure his client's constitutional rights]. Also refer to the case article "Through the Eyes of an Interpreter" at <http://languageaccess.us>. State v. Ramirez, 732 N.E.2d 1065, (Ohio App. 1999) and its accompanying article "Interpreters and Their Impact on the Criminal Justice System: The Alejandro Ramirez Case" and "Interpreter Issues on Appeals" located at www.najit.org under Proteus.