

Resource Guide for Advocates & Attorneys on Interpretation Services for Domestic Violence Victims

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Permission for materials in the Appendix has been obtained from relevant agencies.

TABLE OF CONTENTS

I. Introduction: Providing Meaningful Access	1
II. Interpretation	5
A. Definitions	
1. Basic Terms	
2. Interpreters	
3. In-Person, Telephonic, Videoconference Interpretation	
B. Modes of Interpretation	
1. Simultaneous	
2. Consecutive	
3. Sight Translation	
C. Legal Interpretation	
1. Quasi-Judicial Settings	
2. Court Interpretation for Individuals with Limited English Proficiency	
3. Court Interpretation for Deaf and Hard of Hearing Individuals	
4. Relay Interpretation	
D. Translation	
III. Language Access Rights and Laws	17
A. Laws Governing Access for Individuals with Limited English Proficiency	
1. Title VI of the Civil Rights Act of 1964	
2. Executive Order 13166	
3. Dept. of Justice Guidance to Federal Financial Assistance Recipients	
B. Laws Governing Access for Deaf and Hard of Hearing Individuals	
1. Americans with Disabilities Act (ADA)	
2. Section 504 of the Rehabilitation Act	
<i>Guidelines and Resources: Developing a Language Access Plan</i>	

IV. Interpreters..... 23

A. Types of Qualified Interpreters

1. Qualified
2. Certified
3. Registered
4. Provisionally Qualified

B. Knowledge, Skills, Abilities, Ethics and Responsibilities

1. Accuracy
2. Impartiality and Conflicts of Interest
3. Confidentiality
4. Limitations of Practice
5. Protocol and Demeanor
6. Improvement of Skills and Knowledge
7. Accurate Representation of Credentials
8. Impediments to Compliance

V. Understanding How Bilingual Speakers and Interpreters Differ 41

A. Differences Between Bilingual Services and Interpretation Services

B. Being Bilingual Isn't Enough

1. Should Bilingual Advocates Interpret?
2. Do Bilingual Advocates Have Knowledge, Skills, Abilities to Interpret?

C. The Fluency, Accuracy, Neutrality and Safety Checklist for Bilingual Speakers

Guidelines: When Advocates Are Asked to Interpret

VI. Interpretation Services..... 51

A. Determining Interpretation and Target Language Needs

B. Points of Contact Where Interpretation Services Are Needed

C. Finding Professional Interpretation Services

D. Who Pays for Interpretation in Civil Court?

VII. Interpretation for Deaf Victims with Limited English Proficiency 59

A. Knowing the Basics of Deaf Culture

B. Understanding the Social Contexts

Guidelines and Resources

VIII. Tip Sheets..... 63

- A. Tip Sheet: Developing Language Access Plan for Your Agency
- B. Tip Sheet: Interpretation Services
- C. Tip Sheet: Working with Interpreters and Addressing Problems
- D. Tip Sheet: Serving Individuals with Limited English Proficiency who are Deaf

IX. Appendix..... 75

- A. *State Statutes Requiring the Provision of Foreign Language Interpreters to Parties in Civil Proceedings*
AMERICAN BAR ASSOCIATION’S COMMISSION ON DOMESTIC VIOLENCE
- B. *Code of Ethics and Professional Responsibilities*
NATIONAL ASSOCIATION OF JUDICIARY INTERPRETERS AND TRANSLATORS
- C. *Self-Assessment of Speaking Proficiency*
INTERAGENCY LANGUAGE ROUNDTABLE
- D. *Self-Assessment of Foreign Language Listening Proficiency*
INTERAGENCY LANGUAGE ROUNDTABLE
- E. *Court Interpretation in Protection Order Hearings Judicial Benchcard*
NATIONAL CENTER FOR STATE COURTS
- F. *Interpreting the Interpreter*
ISABEL FRAMER
- G. *Fluency, Accuracy, Neutrality and Safety Checklist for Bilingual Speakers*
ASIAN & PACIFIC ISLANDER INSTITUTE ON DOMESTIC VIOLENCE
- H. *Model Language Access Plan*
COMMUNITY LEGAL SERVICES OF PHILADELPHIA



I. INTRODUCTION

PROVIDING MEANINGFUL ACCESS

All survivors and victims of domestic and sexual violence navigate complex legal systems – those with limited English proficiency and those who are deaf or hard of hearing face additional challenges. Language access policies that implement the provision of spoken and sign language interpretation by professional, culturally competent interpreters are critical to ensuring equal access to safety and justice.

Interpreters fulfill a critical duty, to place individuals with limited English proficiency on an equal footing with those who understand English. Systems relying on untrained interpreters discriminate against limited English proficient (LEP) victims¹ by failing to provide the same level of access as English speaking victims. To ensure meaningful access, LEP victims must have trained and qualified interpreters; and advocates, interpreters and court personnel need to better understand each other's roles and responsibilities to collaborate on language access.

These guidelines from the Interpretation Technical Assistance and Resource Center focus on court interpretation for domestic and sexual violence victims with limited English proficiency. This national project is an opportunity to build effective systems through collaboration and political will, identify and address problems early on, and be guided by clear strategies. *Resource Guide for Advocates & Attorneys on Interpretation Services for Domestic Violence Victims* informs how advocacy, interpretation, and language access can be integrated.

¹ We use 'victims' (instead of survivors) because these guidelines are about court interpretation. We recognize that in the contexts of advocacy, 'survivor' is preferred because it denotes empowerment.

A. PRINCIPLES GOVERNING LANGUAGE ACCESS

1. In accordance with Title VI and the Americans with Disabilities Act, courts are responsible for ensuring language access for limited English proficient and deaf or hard of hearing persons.
2. At all points of contact, services for victims of domestic and sexual violence with limited English proficiency should include bilingual advocates/staff that provide services in the victim's primary language *and* qualified interpreters.
3. Court interpretation must be provided by qualified professional interpreters who adhere to ethical codes of conduct, are culturally competent, and have training on dynamics of domestic and sexual violence.
4. All legal and social service providers serving victims of sexual and domestic violence should be trained on advocating for language access, coordinating with systems for the provision of interpretation services, and working with interpreters.
5. Native-like proficiency in English and one or more foreign languages is a prerequisite for becoming a qualified interpreter, not the sole determining factor. Bilingual speakers, be they advocates, court personnel or community members, untrained in interpretation should not serve or be asked to serve as interpreters, and systems should not rely on them to do so.
6. In all situations, reasonable efforts to locate and provide a professional interpreter must be made and only when all else fails and a delay will jeopardize a victim's safety can an exception be made until a professional interpreter is obtained.
7. All advocates should be trained on asserting their clients' rights to professional interpretation.
8. Bilingual advocates should also be trained on the modes and ethics of interpretation because they are all too often asked or pressured to interpret. If they are improperly called upon to interpret in court, they must attempt to decline and disclose their conflict of interest for the record.

B. INTERPRETATION IN CIVIL COURT

The civil legal system is a significant arena for legal remedies for domestic violence victims, ranging from restraining orders to child custody. Courts recognize the right to an interpreter in criminal cases, but states vary in recognizing the same rights in civil cases. Some states do not recognize this right in civil cases. Some states mandate that the court provide an interpreter in civil cases but assign the costs to the litigant. Courts may provide interpreters at the state's expense in civil matters if the victim is indigent. Many victims may not qualify as indigent, but may still lack the means to hire a qualified interpreter. Only a few states mandate that interpreters be provided in civil cases at the state's expense.² Title VI requires all state courts receiving federal funds to provide interpreters at the state's expense in both criminal and civil cases.

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A strong infrastructure for the provision of interpretation services must ensure access at all points of entry that victims seek services; take varied locations – remote, rural, urban, large metropolitan areas, reservations, etc., into account; and be coordinated across systems. Leadership from the courts, law enforcement, legal services professionals, interpreters, federal agencies, funders, state administrators, and victim service agencies have to demonstrate political will in advocating for and applying pressure to implement language access and systems change.

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<sup>2</sup> Idaho, Kansas, Kentucky, Maine, Massachusetts, Nebraska, New York, New Jersey, and New Mexico mandate that civil courts provide interpreters at the state's expense. California provides interpreters in limited family law matters, if domestic violence is involved.





## II. INTERPRETATION

Interpretation is an art and a skill acquired through extensive education, training, and experience. It requires native-like fluency in *both* English and a foreign language; knowing the mechanics of interpretation; having training on a range of topics associated with the profession; possessing a technical vocabulary; and adhering to a code of ethics emphasizing accuracy, proficiency, confidentiality and neutrality. These skills go beyond being bilingual.

### A. DEFINITIONS

#### 1. Basic Terms

##### a. Interpretation

Interpretation is the process of orally rendering a spoken or signed communication from one language into another language.

##### b. Translation

Translation is converting written text from one language into written text in another language. 'Translation' is often misused to mean interpretation, but it is a written medium.

##### c. Language

The whole body of words and the systems for their use common to a people who are of the same community or nation, the same geographical areas, or the same cultural tradition.

##### d. Dialect

One of the subordinate forms or varieties of a language arising from local peculiarities of vocabulary, pronunciation and idiom.

### e. Accurate Interpretation

The process of orally rendering communication from one language into another language while preserving the same intent and meaning of the original discourse. Accurate interpretation does not mean ‘word-for-word’ interpretation, because words or phrases do not have exact equivalents in foreign languages. Word-for-word interpretation in idiomatic expressions, or in grammatical structures and vocabularies, would be nonsensical in the target language. Conceptual accuracy means rendering the same meaning in the natural form of the other language.

## 2. Interpreters

### a. Definition

An interpreter is a trained professional who is a neutral third party with the requisite bilingual skills, experienced in interpretation techniques, and knowledgeable in specialized content areas and technical terminology in order to effectively facilitate communication between two or more parties who do not share a common language.

### b. Role

The interpreter is a conduit whose only role is to enable others to communicate.

### c. An Interpreter Is...

- A conduit for communication
- A neutral third party with a single role (to interpret)
- A professional following codes and ethics
- Fluent in English and foreign language(s)

### Example: IDIOMS

- **In English:** Being under the gun.  
*True meaning:* Being under pressure.
- **In Korean:** 당근이지 (dang-geun e-jee)  
*Literal meaning:* It's a carrot.  
*True meaning:* Of course, it's obvious.
- **In French:** Avoir les dents longues.  
*Literal meaning:* To have long teeth.  
*True meaning:* To be ambitious.
- **In Chinese:** 杯弓蛇影 (bēi gōng shé yǐng / bāi gōng shè yǐng)  
*Literal meaning:* Seeing the reflection of a bow in a cup and thinking it's a snake.  
*True meaning:* Worrying about things that aren't there.

### Example: CONCEPTUAL ACCURACY\*

- **In Spanish:** Tengo sueño; “I have sleep”
- **In Aguaruna (Peru):** Kangjang pujawai; “My sleep lives”
- **In English:** “I am sleepy”

\* Example provided by Martha Cohen

- Skilled in consecutive and simultaneous interpretation and sight translation
- Knowledgeable in content areas with specialized vocabulary
- Trained in modes, ethics, vocabulary, system protocols, legal proceedings, etc.
- Maintains and improves skills continually through continuing education

**d. An Interpreter Is Not...**

- A bilingual advocate
- A bilingual community member
- A bilingual staff person with other duties
- A stakeholder or advisor having two or more roles
- A family member, child, or friend (of either party)
- Someone struggling to understand either language
- Someone with the role of setting a client at ease
- A dictionary or a manual to explain unfamiliar meanings or procedures
- A cultural expert, an anthropologist, sociologist, psychologist, linguist
- An expert witness

### 3. In-Person, Telephonic and Video Interpretation

In-person interpretation is the preferred method of delivering interpretation services.

**a. In-Person Interpretation**

- The interpreter and all parties are on-site together.
- The interpreter is seated to the side of and slightly behind the LEP individual, facing the person conducting the interview.
- In court, the proceedings or party interpreter will be seated next to the LEP party at the attorney’s table. The witness interpreter will be positioned next to the witness.

**b. Telephonic Interpretation**

- The interpreter is off-site, connected by a phone line to conversation between two parties, and interprets over the phone.

- In court, there are two methods currently used for the delivery of telephonic interpretation services:
  1. The use of a single telephone line with a speaker phone which is connected to an off-site interpreter, who uses the consecutive interpreting mode. The interpretation is heard by everyone in court; this method does not allow for the interpretation of confidential communication between the party and attorney.
  2. The use of specialized equipment and two telephone lines. One phone line is used to allow the interpreter to hear what is being said in the courtroom and to address the court. The second line is used by the interpreter to interpret communications between the LEP person and her/his attorney.
- Generally telephonic interpreters hired through a service are not certified court interpreters. Courts should inquire as to the interpreter's qualifications.

### **c. Video Interpretation**

- Cameras or webcams in the courtroom are connected by phone or internet to an off-site interpreter. The interpreter receives both video and audio through the equipment.
- There are two methods of delivery:
  1. The first involves the use of one monitor and speaker with which the interpreter communicates to the court. The interpreter only interprets the proceedings, but confidential communication between a party and attorney is not interpreted.
  2. The second method provides the audio/video equipment to the court and LEP person(s). This allows the interpreter(s) to interpret proceedings and communications between the LEP person and attorney.
- Video interpretation is used most frequently for deaf or hard of hearing persons, but the addition of video is beneficial to the off-site interpreter because it allows the spoken language interpreter to pick up visual cues.



## B. MODES OF INTERPRETATION

Three modes of interpretation: consecutive, simultaneous, and sight translation are used in courts, in any legal or quasi-legal settings, and in all settings where accurate and complete communication is critical to the LEP person.

### 1. Simultaneous Interpretation

- **Definition:** The process of orally rendering one language into another language virtually at the same time that the speaker is speaking with only a very short lag time.
- **Example:** Most of us associate this with interpreters at the United Nations simultaneously (and speedily) interpreting a speech into the source or target language that listeners hear through their headsets.

### 2. Consecutive Interpretation

- **Definition:** The process of orally rendering one language into another language after the speaker has completed a statement or question and pauses. The interpreter then renders that statement into the other language.
- **Example:** Typically seen in court when witness testimony is being interpreted.

### 3. Sight Translation

- **Definition:** The rendering of material written in one language, completely and accurately into spoken speech in another language.
- **Example:** An Arabic interpreter is handed a marriage certificate and orally provides a sight translation of what is stated on the document.

### 4. Summarizing Is Not Interpretation

- **Definition:** Summarizing means the bilingual speaker selectively interprets, determining what portions of the information may or may not be important; does not use the first person; and can allow bias into the process. Summarizing is not permitted in legal, quasi-legal or medical settings and is mistakenly called summary interpretation. Summarizing is done by bilingual speakers, untrained, ad hoc/community interpreters, because they

do not know the principles of interpretation, are not completely fluent in the target or source language, are not familiar with specific terminology, and/or cannot keep up with the discourse.

- Summarizing should not be used in any setting when the information the LEP individual is trying to convey may be important. The prohibition against summarizing is not restricted just to legal, quasi-legal or medical settings but is determined by the importance of the communication.
- **Example:** A lawyer asks: “Please describe your history of domestic violence, when it first started, the nature of the abuse and the injuries you sustained as a result.” The bilingual speaker summarizes: “She wants to know about the kind of domestic violence in your life and how long it’s been happening.” This is not interpretation.

## C. LEGAL INTERPRETATION<sup>3</sup>

### 1. Quasi-Judicial Settings

Legal interpretation is provided out of court, but for situations related to court proceedings, e.g., attorney-client interviews. Quasi-judicial interpretation can be done in an office, a courthouse hallway, a jail, or a hospital. Interpretation services must be provided by professional interpreters to ensure accuracy, neutrality and very importantly, to preserve privilege.

### 2. Court Interpretation for Individuals With Limited English Proficiency

The court interpreter for sign or spoken language is a neutral officer of the court whose duty is to the judicial process, not to individuals in the court. It is the court’s responsibility to be understood and to understand and therefore to obtain and hire a certified or qualified interpreter to interpret court proceedings and ensure a complete, accurate and neutral record for later review.<sup>4</sup> Judicial Benchcards inform judges about the use of interpreters in their courtrooms.<sup>5</sup>

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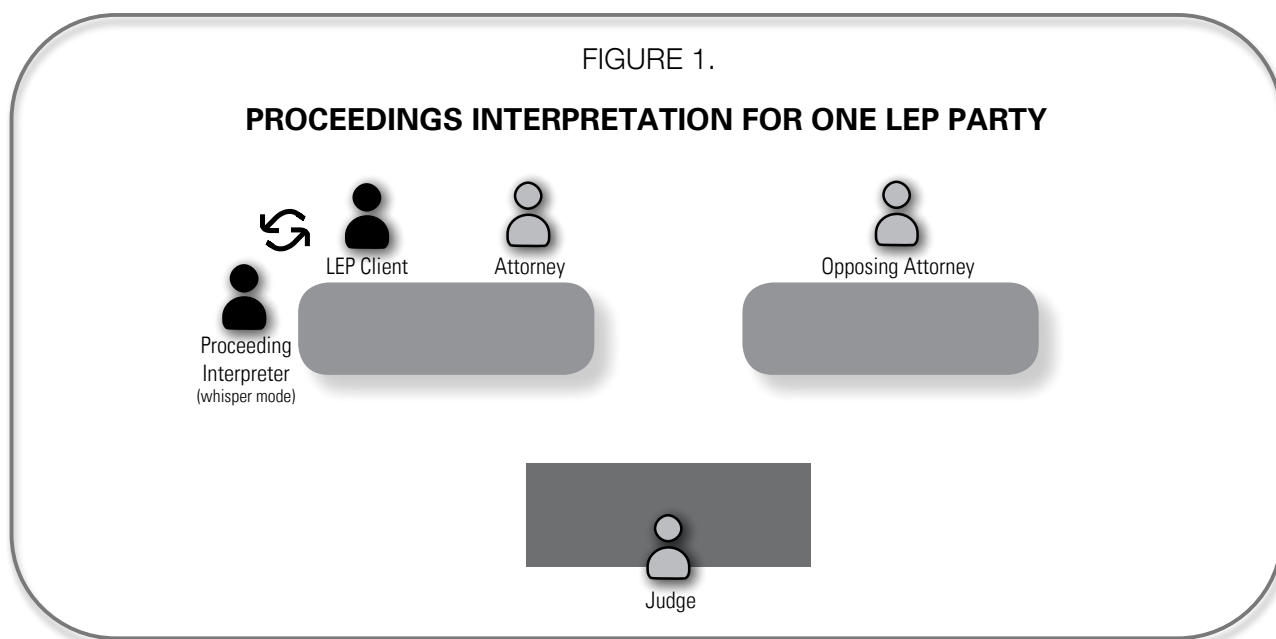
<sup>3</sup> Interpretation in business, political, medical, etc., settings is not discussed in these guidelines.

<sup>4</sup> Isabel Framer, Personal communication, July 26, 2009

<sup>5</sup> <http://contentdm.ncsconline.org/cgi-bin/showfile.exe?CISOROOT=/accessfair&CISOPTR=103>

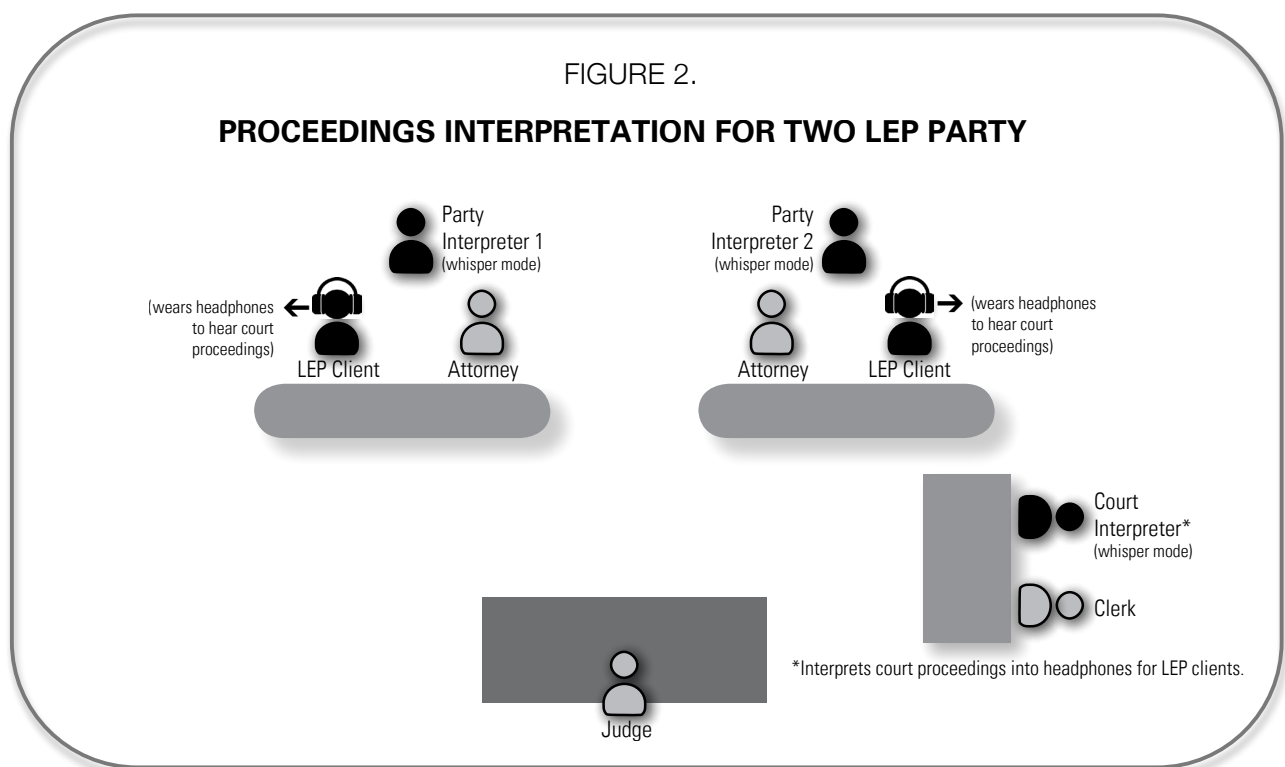
### a. Proceedings Interpretation

- Proceedings interpretation is for a non-English speaking litigant (in civil cases) or defendant (in criminal cases) 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.<sup>6</sup>
- The interpreter's speech is always in the foreign language, in whisper mode (not out loud) to the litigant, and is not part of the record of proceedings.
- The court should appoint two interpreters for proceedings lasting more than two hours so interpreters can alternate every 20-30 minutes to avoid mental fatigue.
- *Proceedings Interpretation for One LEP Party:* The interpreter is seated with the LEP party (litigant or defendant), at counsel's table, and:
  1. Interprets everything said in court in whisper mode to LEP party;
  2. Interprets LEP party's testimony out loud to entire court;
  3. Interprets communications between attorney and LEP party which are protected by attorney-client privilege in whisper mode. A bilingual attorney and LEP client can communicate with each other without an interpreter.



<sup>6</sup> National Center for State Courts (NCSC) (n.d.) *Court Interpretation: Model Guide for Policy & Practices in the State Courts*. Chapter 2, pp. 33-34. [http://www.ncsconline.org/wc/publications/Res\\_CtInte\\_ModelGuideChapter2Pub.pdf](http://www.ncsconline.org/wc/publications/Res_CtInte_ModelGuideChapter2Pub.pdf)

- *Proceedings Interpretation for Two LEP Parties:* When there are two LEP defendants (in criminal cases) or an LEP litigant/petitioner and an LEP respondent (in civil cases), ideally, there are 3 interpreters.
  1. Both LEP individuals listen on headphones to the proceedings interpreters.
  2. There is an interpreter for each of the parties to interpret attorney-client communication in whisper mode.
  3. One interpreter sits with either the litigant or defendant during the entire proceedings, while the other two alternate between court proceeding and party interpretation.

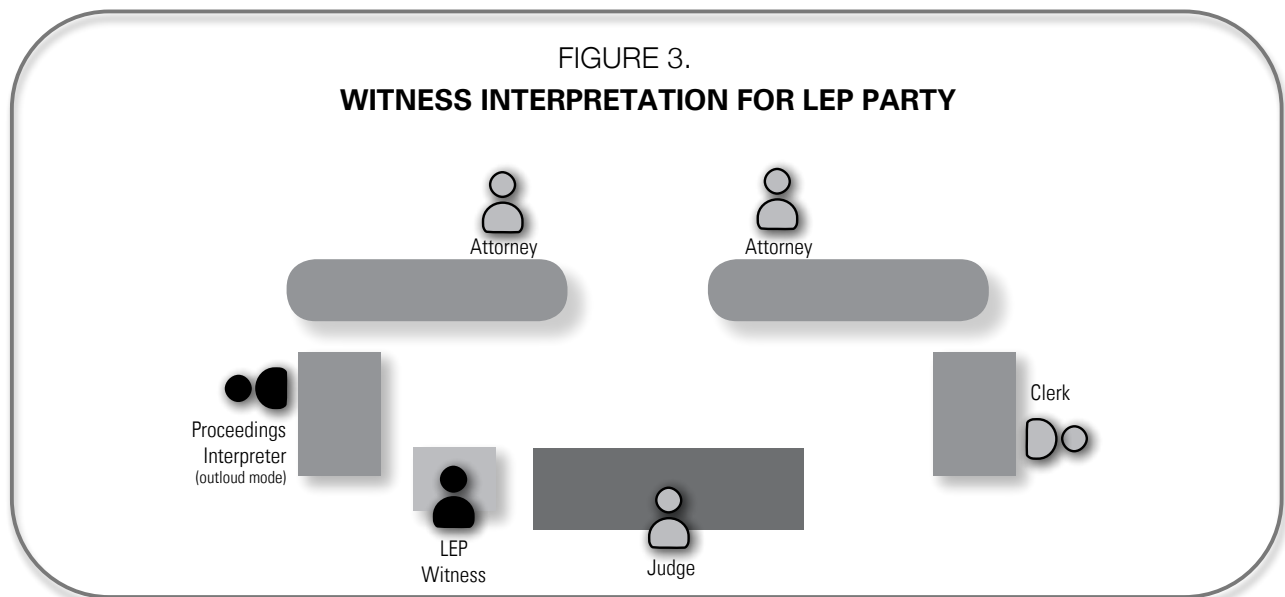


- Realistically, a lack of financial resources and a lack of multiple certified or qualified interpreters make this difficult.
  1. One alternative (absent a bilingual attorney) is for the attorney to have their bilingual assistant with them only for the purpose of consulting with their client during the proceedings.
  2. A second possibility is that one proceedings interpreter sits near the litigant's attorney and the defendant's attorney so that when either one needs to consult

with their attorney, the interpreter is available for either party while the other interpreter is interpreting the proceedings. Both litigant and defendant are still listening to the other interpreter via headphones.<sup>7</sup>

### b. Witness Interpretation

- Witness interpretation is interpretation during witness testimony given by an LEP witness 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.<sup>8</sup>
- The interpreter interpreting witness testimony interprets all questions and answers, out loud, in both English and the foreign language, so that the litigant (LEP or English speaking) and defendant (LEP or English speaking), officers of the court and jury can hear them. This portion of the proceedings, i.e. the LEP witness testimony, is heard by all English and non-English-speakers in the court.
- Whilst witness interpreters are interpreting, there is no need for the proceedings interpreters to interpret for the LEP litigant or LEP defendant.<sup>9</sup>



<sup>7</sup> Isabel Framar, Personal communication, July 26, 2009

<sup>8</sup> National Center for State Courts (NCSC) (n.d.) *Court Interpretation: Model Guide for Policy & Practices in the State Courts*. Chapter 2, pp. 33-34. [http://www.ncsconline.org/wc/publications/Res\\_CtInte\\_ModelGuideChapter2Pub.pdf](http://www.ncsconline.org/wc/publications/Res_CtInte_ModelGuideChapter2Pub.pdf)

<sup>9</sup> Isabel Framar, Personal communication, July 26, 2009

### **c. Interview Interpretation or Party Interpretation**

- Interview or party interpreters interpret communications in interview or consultation settings.
- Interview interpreting may occur in conjunction with court proceedings or before or after court proceedings; e.g., attorney-client interviews, non-English-speaker and probation personnel, etc.
- Interview interpreting may be performed in either or both the simultaneous and consecutive modes during an interview, depending on the circumstances.

## **3. Court Interpretation for Deaf and Hard of Hearing Individuals**

### **a. Proceedings Interpreters**

- American Sign Language (ASL) interpreters who interpret court proceedings and witness testimony everything said by witnesses, plaintiffs, defendants, and their legal representatives.
- Generally, the court appoints two interpreters.
- The proceedings interpreter does not interpret for either party in the case.

### **b. Party Interpreters for Litigants**

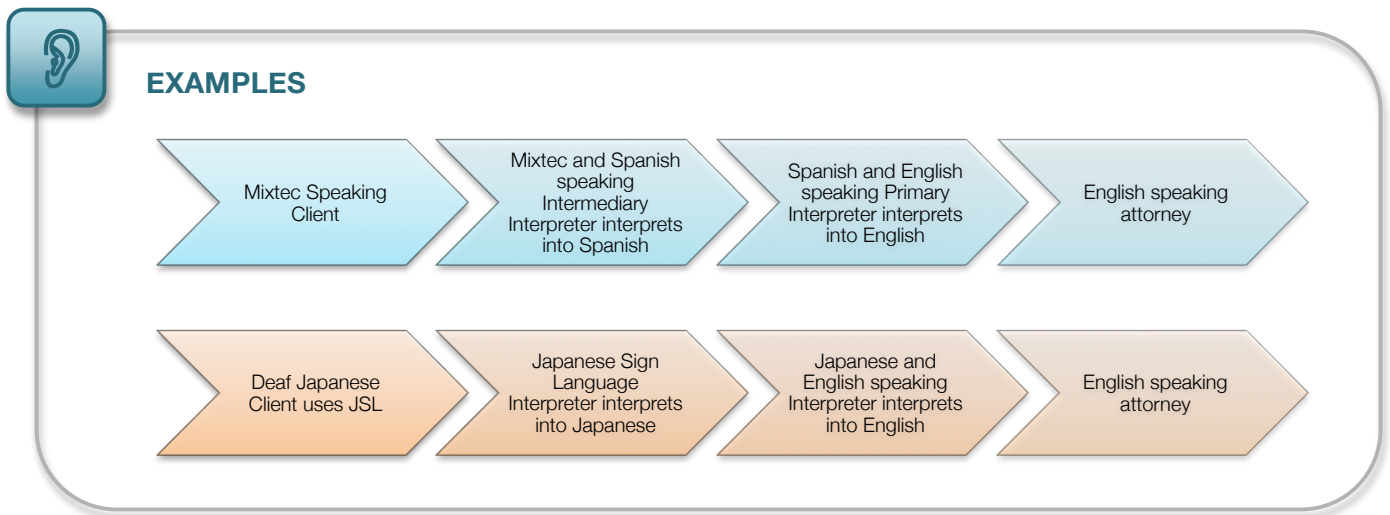
- ASL interpreter interprets for deaf litigant (victim).
- The interpreter is seated at the table with the litigant and litigant's counsel to interpret communications between attorney and client.
- These communications are protected by attorney-client privilege.

### **c. Party Interpreters for Defendants**

- ASL interpreter interprets for the deaf defendant.
- The interpreter is seated with the defendant and interprets everything that is said in court, and communications between the defendant and attorney.
- Interpreted communications between the defendant and attorney are privileged.

#### 4. Relay or Intermediary Interpretation

- Relay interpretation involves using more than one interpreter to act as a conduit for spoken or sign languages beyond the understanding of a primary interpreter.
- Relay interpretation is used for certain languages lacking certified or qualified interpreters, rare languages, home signing, or foreign sign languages.
- During relay interpretation, at least two interpreters are used.
  1. An interpreter (called the ‘intermediary’ interpreter) interprets from one foreign language (e.g., Mixtec) to a second foreign language (e.g., Spanish).
  2. A qualified interpreter (referred to as the ‘primary’ interpreter) then interprets from the second foreign language (in this case Spanish) into English.
- Intermediary interpreters must work with professional primary interpreters.
- Only the English portion of the testimony is recorded by the court.
- Additional time should be budgeted for relay interpretation, depending on how many additional interpreters there are.



## D. TRANSLATION

- Translation is converting written text from one language into written text in another language.
- When possible a certified translator should be used. An interpreter may not have the written skills necessary to translate competently.
- The American Translators Association is a professional association of translators and interpreters that certifies translators.<sup>10</sup>
- The term for translating American Sign Language is glossing.

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<sup>10</sup> <http://www.atanet.org>



## III. LANGUAGE ACCESS RIGHTS AND LAWS

### A. LAWS GOVERNING ACCESS FOR INDIVIDUALS WITH LIMITED ENGLISH PROFICIENCY

#### 1. Title VI of the Civil Rights Act of 1964

Title VI of the Civil Rights Act ensures language access for individuals with limited English proficiency. Pursuant to Title VI's prohibition against discrimination based on race, color, or national origin, organizations receiving federal financial assistance are required to develop and implement policies that ensure meaningful access for limited English proficient persons to their programs and activities.

Victims of domestic and sexual violence primarily receive services through programs funded by the Department of Health and Human Services and the Department of Justice (DOJ). Organizations may receive federal funds directly or indirectly, through grants, contracts or subcontracts that may be dispersed by federal, state, county, or city authorities.

When a program receiving federal funding is not providing meaningful access to LEP individuals, an administrative complaint may be filed with the U.S. Department of Justice, Office of Coordination & Review.<sup>11</sup> Private individuals may file a complaint with the federal department that is the source of funding for an agency violating Title VI. A violation of Title VI may result in the loss of funding, or compliance to federal regulations, e.g., most states recognize the right to an interpreter for defendants and witnesses in criminal cases, some states do not extend the right to an interpreter, paid for by the court, in civil cases. In March 2003 a complaint was filed with the DOJ alleging that the courts in Maine were failing to provide interpreters and other language access services to LEP individuals. The DOJ conducted an administrative review, and as a result of the review the Judicial

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<sup>11</sup> <http://www.usdoj.gov/crt/cor/complaint.php>

Branch in Maine agreed to provide qualified interpreters at the State's expense to all LEP individuals in the courts, including both criminal and civil cases.<sup>12</sup>

## 2. Executive Order 13166

This order requires federal agencies that provide federal financial assistance to issue guidances explaining the obligations of recipients to ensure meaningful access by limited English proficient persons to their federally assisted programs.<sup>13</sup>

*Federal guidances represent a significant shift from previous positions where the onus was on the non-English-speaker to be understood; now service providers are responsible for ensuring access. The burden of communication was shifted from victim to provider.*

## 3. Dept. of Justice Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons

This guidance further explains EO 13166 and how grant recipients can comply with Title VI and provide LEP individuals meaningful access to a grant recipient's programs and activities. Policies dealing with interpretation services in legal, law enforcement and quasi-judicial settings are in Appendix A.<sup>14</sup>

The guidance requires all federally supported entities to take reasonable steps to provide meaningful access to LEP persons and identifies four factors used to determine what steps are required to ensure compliance:

- a. The **number** or proportion of limited English proficient persons in the eligible service population;
- b. The **frequency** with which these limited English proficient persons come into contact with the program;
- c. The **importance** of the benefit or service to the limited English person; and
- d. The **resources** available and costs to the recipient of federal financial assistance.

<sup>12</sup> Memorandum of Understanding between the United State of America and the State of Maine Judiciary Department of Justice Number 171-34-8. [http://www.lep.gov/guidance/Maine\\_MOA.pdf](http://www.lep.gov/guidance/Maine_MOA.pdf)

<sup>13</sup> [http://www.lep.gov/resources/tips\\_and\\_tools-9-21-04.htm](http://www.lep.gov/resources/tips_and_tools-9-21-04.htm)

<sup>14</sup> <http://www.usdoj.gov/crt/cor/lep/DOJFinLEPFRJun182002.php>

## B. LAWS GOVERNING ACCESS FOR DEAF AND HARD OF HEARING INDIVIDUALS

There are some similarities in the issues and challenges for advocates serving individuals with Limited English Proficiency and those serving individuals who are deaf and hard of hearing. However, there are differences in the extent to which laws governing language access for deaf and hard of hearing have been implemented. These policies and procedures are an excellent model for spoken language access.

### 1. Americans with Disabilities Act (ADA)

Under the Americans with Disabilities Act and associated regulations, public accommodations and state entities are required to provide American Sign Language (ASL) interpreters, and other auxiliary aids, to ensure effective communication with deaf and hard of hearing individuals. Deference must be given to the deaf or hard of hearing individual's choice of what auxiliary aid she or he needs.<sup>15</sup>

### 2. Section 504 of the Rehabilitation Act

Section 504 requires recipients of Federal financial assistance to provide deaf and hard of hearing individuals the opportunity to participate in and benefit from the activities or services provided by the recipient.

“No otherwise qualified individual with a disability in the United States, as defined in section 705(20) of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service.”<sup>16</sup>

An individual may file a complaint with the appropriate Federal Agency or bring a private lawsuit for violations of the ADA and Section 504.<sup>17</sup>

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<sup>15</sup> 28 C.F.R. S28 C.F.R. S35.160 (b)(2) (NAD Law Center, 2002).

<sup>16</sup> 29 U.S.C. § 794(a) (2007)

<sup>17</sup> <http://www.ada.gov/cguide.htm#anchor62335>

## GUIDELINES: Developing a Language Access Plan

If your organization receives federal funds, either directly or through the state, your agency is required to develop a language access plan (this does not mean hiring staff for every conceivable language spoken by your clients).

1. Learn the requirements of Title VI, Executive Order 13166, and your state laws.
2. Determine language needs using DOJ's four-factor assessment:
  - Number or proportion of persons with limited English proficiency (LEP) in the eligible service population.
  - Frequency with which these LEP persons come into contact with your program.
  - Importance of the benefit or service.
  - The resources available.
3. Based on the assessment's results, identify the languages that will be included in the agency's language access plan and how the agency will provide interpretation services to LEP clients.
4. Develop an outreach plan to notify LEP persons that services are available.
5. Integrate your agency's language access policies and procedures into the agency's regular policies and procedures manual for use by all, not only bilingual, staff.
6. Train all staff and volunteers on language access laws:
  - Federal laws: Title VI and Executive Order 13166.
  - State laws on court interpretation to determine:
    - a. clients' rights to interpreters in civil courts,
    - b. who provides the interpreters,
    - c. who pays for interpretation.
  - Protocols for filing a Title VI complaint with the Department of Justice should a client's language access rights be denied by a federal grant recipient.
7. Implement and train staff about language access advocacy and agency protocols on:
  - Responding to LEP callers and in-person contacts.
  - Advocating for and asserting LEP clients' rights to qualified interpreters in courts and other systems.
  - Providing LEP clients with tools (such as "I speak..." cards) that assist them in asserting their right to language access in the courts and other public agencies.
  - Responding to court requests that bilingual advocates interpret by attempting to decline and disclosing their conflict of interest on record.
  - Working with interpreters, including basic knowledge about interpretation: types, modes, code of ethics, qualifications and roles.
  - Identifying and responding to poor, incorrect or biased interpretation.
8. Evaluate plan's effectiveness regularly to ensure it meets the needs of LEP persons.
9. Monitor demographic changes and immigration/refugee resettlement patterns to identify new LEP populations your agency will need to serve.
10. Engaging courts and public agencies in a dialogue on language access and Title VI.

## RESOURCES: Developing a Language Access Plan

-  **American Bar Association:** List of state statutes on the provision of language interpreters in civil cases.  
[http://www.abanet.org/domviol/docs/Foreign\\_Language\\_Interpreters\\_Chart\\_12\\_2008.pdf](http://www.abanet.org/domviol/docs/Foreign_Language_Interpreters_Chart_12_2008.pdf)
-  **American Bar Association's Commission on Domestic Violence:** Materials on integrating interpretation in civil representation of domestic and sexual violence victims.  
[http://www.abanet.org/domviol/institute/integration\\_of\\_interpreters.html](http://www.abanet.org/domviol/institute/integration_of_interpreters.html)
-  **Department of Justice, Office of Civil Rights, Executive Order 13166 Limited English Proficiency Resource Document: Tips and Tools from the Field:** Overview and tips and tools for law enforcement, domestic violence specialists and service providers, 911 call centers, courts, federally conducted programs and activities.  
[http://www.lep.gov/resources/tips\\_and\\_tools-9-21-04.htm](http://www.lep.gov/resources/tips_and_tools-9-21-04.htm)
-  **Department of Justice, Office of Coordination & Review:** File complaints for Title VI violations. <http://www.usdoj.gov/crt/cor/complaint.php>
-  **Legal Services Corporation:** Guidance to LSC programs on training, procedures and policies.  
[http://www.abanet.org/domviol/institute/integration\\_of\\_interpreters/Guidance\\_to\\_LSC\\_Programs\\_for\\_Serving\\_Client\\_Eligible\\_Individuals\\_with\\_LEP.pdf](http://www.abanet.org/domviol/institute/integration_of_interpreters/Guidance_to_LSC_Programs_for_Serving_Client_Eligible_Individuals_with_LEP.pdf)
-  **National Association of Judiciary Interpreters and Translators (NAJIT):** Professional certification, training, policy advocacy, how to work with interpreters. <http://www.najit.org>
-  **National Center on Immigrant Integration Policy:** Policy, research, technical assistance, training and an electronic resource center on immigrant integration issues with a special focus on state and local policies and data.  
[http://www.migrationinformation.org/integration/language\\_portal](http://www.migrationinformation.org/integration/language_portal)
-  **National Consortium of State Courts:** Materials on court interpretation including tests for certifying interpreters and model guide.  
[http://www.ncsconline.org/D\\_RESEARCH/CourtInterp.html](http://www.ncsconline.org/D_RESEARCH/CourtInterp.html) and  
[http://www.ncsconline.org/wc/publications/Res\\_CtInte\\_ModelGuideChapter10Pub.pdf](http://www.ncsconline.org/wc/publications/Res_CtInte_ModelGuideChapter10Pub.pdf)
-  **Ohio State, Dept of Public Safety/Office of Criminal Justice Services:** Training materials for law enforcement and judges. <http://www.ocjs.ohio.gov/LEPResources.htm>
-  **Independent consultants\* and interpreters\*\*** make significant contributions to developing models and strategies for increased access.

\* Wang, Ted. 12 Steps to Increasing Access for LEP Residents: Essential Elements of High-Quality Public Programs (In preparation).

\*\* Isabel Frammer, Language Access Consultants, is a court certified interpreter and a national expert engaged in policy development, training law enforcement and the judiciary, and program design.



## IV. INTERPRETERS

### A. TYPES OF QUALIFIED INTERPRETERS

#### 1. Qualified Interpreters

- a. Qualified interpreters have been identified by a regulating body as fit to serve as interpreters. Depending on the state, a qualified interpreter has met the minimum requirements to interpret, this may mean certification, or a screening conducted by the regulating body including questions about language skill, tests, and education.
- b. Qualification standards for court interpreters vary from state to state.
- c. Qualified interpreters have the requisite knowledge and skills to serve as an interpreter in a specific setting – court, medical, educational, or administrative hearing.<sup>18</sup>

#### 2. Certified Court Interpreters

- a. Certified court interpreters have demonstrated the requisite knowledge, skills, and abilities needed to interpret competently in the court and are qualified by the certifying entity to work as a court interpreter.
- b. A certified interpreter has successfully passed an interpreter certification test administered by an interpreter certification body.
- c. The certification test evaluates the interpreter’s language fluency in both English and the interpreted language; and the ability to work in the three modes of interpretation: simultaneous, consecutive, and sight translation.
- d. Court interpreters can only be certified in languages for which examinations have been devised.
- e. Certification is only available in American Sign Language, Arabic, Armenian (Eastern), Armenian (Western), Cantonese, French, Greek, Haitian-Creole, Hmong, Italian, Japanese,

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<sup>18</sup> So, for example, a medical interpreter is not qualified to interpret in court, and vice versa.

Korean, Laotian, Mandarin, Polish, Portuguese, Russian, Serbian, Somali, Spanish, Tagalog, and Vietnamese.

- f. Testing entities include, but are not limited to: the Administrative Office of the United States Courts (AOC), the National Association of Judiciary Interpreters and Translators (NAJIT), Registry of Interpreters for the Deaf, Inc. (RID), and licensing bodies.
- g. The National Center for State Courts (NCSC) provides court interpreter certification exams to its member states.

### **3. Registered Interpreters**

- a. Registered interpreters have met state-established requirements to interpret in court and be listed on a state registry of court interpreters, but they have not successfully completed a court interpreter certification exam or there is no certification exam in the foreign language they interpret.
- b. Registered interpreters are interpreters in languages for which there is no certification exam.
- c. Registered interpreters are generally bi-lingual speakers who have had experience working in the court and have some, generally minimal training on interpretation modes, ethics and best practices.
- d. Registered interpreters are tested only on their English language ability and not on their fluency in the foreign language.
- e. Their proficiency in interpreting in English and in the foreign language is not tested.

### **4. Provisionally Qualified Interpreter**

- a. Provisional qualification is granted on the spot to a bi-lingual speaker appointed to interpret.
- b. It is conferred by the court or may be conferred by court administrative personnel responsible for managing the court interpreter system.
- c. A provisionally qualified interpreter has not successfully passed a certification examination, or completed the registration process, and may or may not have interpretation training or experience.



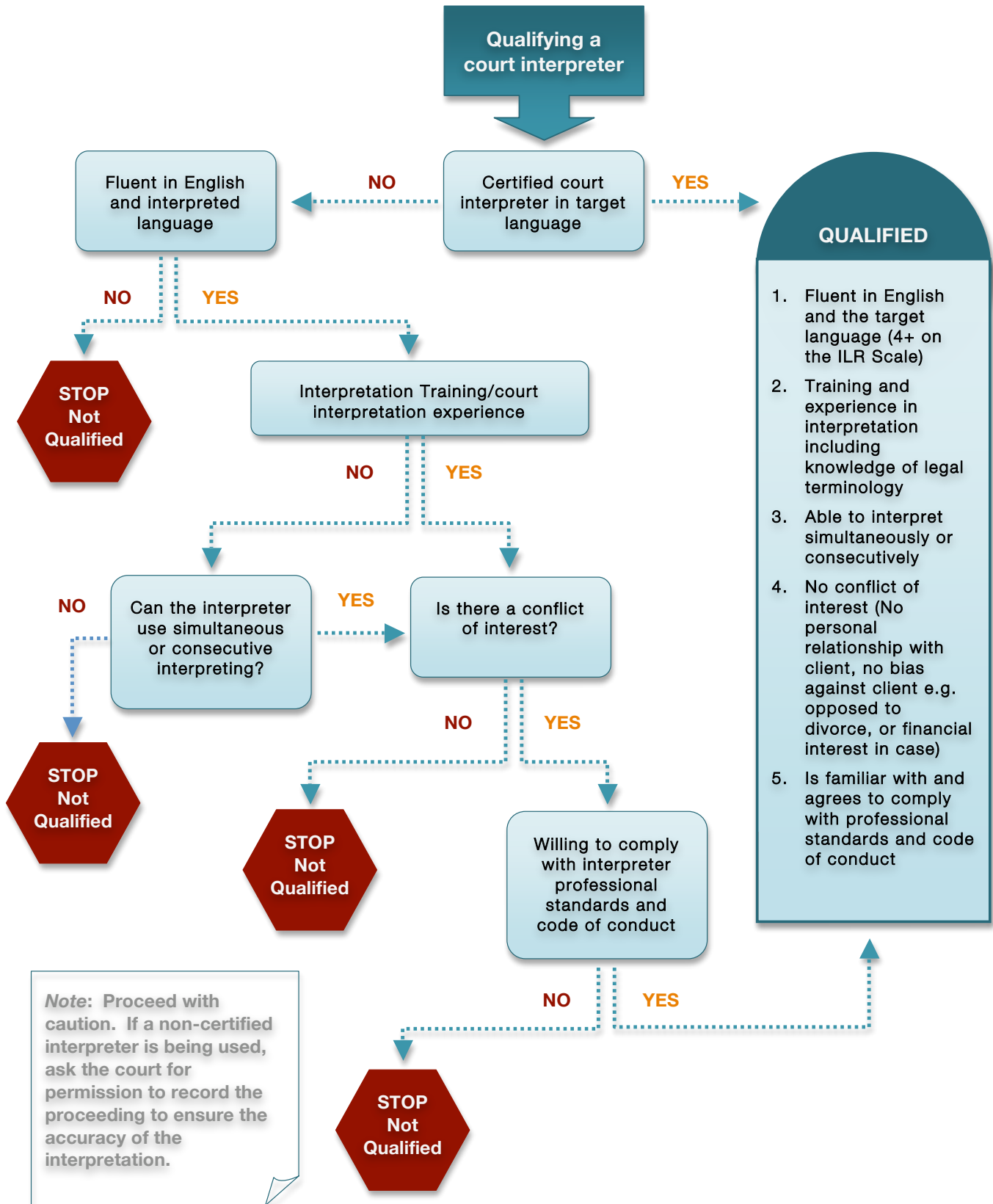
This chart is to help advocates understand the types of qualified interpreters available in order to work with them when they are assigned to their clients.

Table 1.

| <b>QUALIFICATIONS</b><br>Only some core skills are listed here                          | <b>Certified Court Interpreters</b><br>Certification available only in certain languages*                                            | <b>Qualified/Registered Interpreters</b><br>No certification test available. Screened by court or regulating body | <b>Provisionally Qualified Interpreter</b><br>Appointed on the spot                                  |
|-----------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------|
| Has native proficiency in English                                                       | <input checked="" type="checkbox"/> Yes<br><input checked="" type="checkbox"/> Tested                                                | ? Maybe<br><input checked="" type="checkbox"/> Testing depends on state                                           | ? Maybe<br><input type="checkbox"/> Untested, but screened                                           |
| Has native proficiency in foreign language                                              | <input checked="" type="checkbox"/> Yes<br><input checked="" type="checkbox"/> Tested                                                | ? Maybe<br><input type="checkbox"/> Untested, but screened                                                        | ? Maybe<br><input type="checkbox"/> Untested, but screened                                           |
| Uses simultaneous, consecutive and sight modes of interpretation                        | <input checked="" type="checkbox"/> Yes<br><input checked="" type="checkbox"/> Trained<br><input checked="" type="checkbox"/> Tested | ? Maybe<br><input type="checkbox"/> Untested                                                                      | ? Maybe<br><input type="checkbox"/> Untested, but screened                                           |
| Has extensive vocabulary, including legal terminology                                   | <input checked="" type="checkbox"/> Yes<br><input checked="" type="checkbox"/> Trained<br><input checked="" type="checkbox"/> Tested | ? Maybe<br><input type="checkbox"/> Untested, but screened                                                        | ? Maybe<br><input type="checkbox"/> Untested, but screened                                           |
| Abides by professional Code of Conduct                                                  | <input checked="" type="checkbox"/> Yes<br><input checked="" type="checkbox"/> Trained<br><input checked="" type="checkbox"/> Tested | <input checked="" type="checkbox"/> Yes<br><input checked="" type="checkbox"/> Tested                             | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> Untested, but screened           |
| Has extensive training in court interpretation;<br>Required to get continuing education | <input checked="" type="checkbox"/> Extensive training required<br><input checked="" type="checkbox"/> Continuing education required | ? Training required**<br><input checked="" type="checkbox"/> Continuing education required                        | <input type="checkbox"/> Not trained<br><input type="checkbox"/> No continuing education requirement |

\*Certification is only available in American Sign Language, Arabic, Armenian (Eastern), Armenian (Western), Cantonese, French, Greek, Haitian-Creole, Hmong, Italian, Japanese, Korean, Laotian, Mandarin, Polish, Portuguese, Russian, Serbian, Somali, Spanish, Tagalog, and Vietnamese.

\*\* e.g., One-day training on ethics



## B. KNOWLEDGE, SKILLS, ABILITIES, ETHICS AND RESPONSIBILITIES

Interpreters are bound by a code of ethics and responsibilities that regulate their services and the practice of their profession. The Code of Ethics and Professional Responsibility drawn up by the National Association of Judiciary Interpreters and Translators (NAJIT)<sup>19</sup> and used in these guidelines reflect the standards adopted by the federal government and by many states for court interpretation.

### 1. Accuracy

#### a. NAJIT Code: Accuracy

Source-language speech should be faithfully rendered into the target language by conserving all the elements of the original message while accommodating the syntactic and semantic patterns of the target language. The rendition should sound natural in the target language, and there should be no distortion of the original message through addition or omission, explanation or paraphrasing. All hedges, false starts and repetitions should be conveyed; also, English words mixed into the other language should be retained, as should culturally-bound terms which have no direct equivalent in English, or which may have more than one meaning. The register, style and tone of the source language should be conserved.

Guessing should be avoided. Court interpreters who do not hear or understand what a speaker has said should seek clarification. Interpreter errors should be corrected for the record as soon as possible.

**Example:** *“I don’t know, no, I don’t, uh, understand what, well, the doctor, or was it the admitting nurse...?, was telling, was telling my amma and my mother’s sister.”*

*All hesitations, false starts, repetitions must be interpreted; the phrase ‘mother’s sister’ cannot be shortened to ‘aunt’; interpreter can repeat foreign word, but not assume or guess its meaning and seek clarification if necessary.*

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<sup>19</sup> National Association of Judiciary Interpreters and Translators. (n.d.). *Code of Ethics and Professional Responsibility*. Retrieved March 03, 2009. <http://www.najit.org/documents/NAJIT%20Code%20of%20Ethics.pdf>

**Example:** *“Were you raped, forced to have sex against your will? This question cannot be interpreted with words that are considered to be culturally sensitive (“Did he force you to go with him?”) or because the interpreter finds it culturally inappropriate or disrespectful to bring up embarrassing material in such blunt language.*

**b. Commentary: Accuracy**

- Interpreters must ensure that statements and discussions in the source language (English) are interpreted accurately for an LEP individual in the target language; and that information and discussions in the LEP individual’s language are interpreted accurately for English speaking individuals.
- All statements, even if they are incoherent, rambling, obscene, etc., must be interpreted.
- In matters of sexual violence, advocates or community interpreters may hesitate to use sexually explicit terms thinking them to be culturally insensitive, and substitute colloquial expressions. This demonstrates inaccurate interpretation, not cultural competency on the part of the interpreter.

| <b>GUIDELINES: Accuracy</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ol style="list-style-type: none"><li>1. Use the first person: e.g., “What time did you call the police?”</li><li>2. Do not use the 3rd person (e.g., “Ask her when she called the police”). If you do, that is how it will be interpreted.</li><li>3. Use plain English, avoid jargon, do not use acronyms.</li><li>4. Speak slowly and clearly with regular pauses.</li><li>5. Ask one question at a time.</li><li>6. Allow the interpreter to finish interpreting before speaking again.</li><li>7. Don’t ask interpreter to explain or restate what is said.</li><li>8. Don’t ask interpreter not to interpret something that was said.</li><li>9. Do not assume every challenge by an attorney to an interpreter is an interpretation error.</li><li>10. If you think the interpreter is editing, adding, subtracting, or summarizing remind the interpreter to repeat everything that is said.</li><li>11. If you’re having trouble understanding the interpreter’s English, ask for clarification. If you’re still having problems get a different interpreter.</li></ol> |

## 2. Impartiality and Conflicts of Interest

### a. NAJIT Code: Impartiality and Conflicts of Interest

Court interpreters and translators are to remain impartial and neutral in proceedings where they serve, and must maintain the appearance of impartiality and neutrality, avoiding unnecessary contact with the parties. Court interpreters and translators shall abstain from comment on matters in which they serve. Any real or potential conflict of interest shall be immediately disclosed to the court and all parties as soon as the interpreter or translator becomes aware of such conflict of interest.

**Example (lack of impartiality):** *An interpreter, for religious reasons, is opposed to divorce. While interpreting for a battered woman the interpreter advises her to go back to her husband to save the victim's family from the shame of divorce.*

**Example (conflict of interest):** *A clan leader expects family conflicts to be negotiated by the clan council and pressures a victim in his role as interpreter not to cooperate on the charges.*

### b. Commentary: Impartiality and Conflicts of Interest

- There is a distinction between conflict of interest and impartiality – the responsibility to be neutral. If there is an actual conflict of interest, then another interpreter is needed.
- In small ethnic or geographic communities, there can be a higher likelihood of conflicts of interest because everyone knows everyone, there is only a small pool of target language speakers and/or there are not enough trained interpreters in that language.
- Extended family members of the victim and of the batterer should not be allowed to interpret, particularly in those communities where domestic violence is also perpetrated by in-laws and/or natal family members. In extended family networks, there are often relatives who may not immediately appear to be related to either party but could be related to both.
- Community interpreters cannot always be relied on for impartiality: they may feel entitled, inclined, pressured, or even be asked by victims to give their opinions and advice.

- When recruiting interpreters from small communities the interpreter may know both the victim and batterer.
- A professional interpreter will immediately advise a provider when there is a potential or actual conflict of interest and withdraw from the assignment.
- The potential for gender bias, belief in traditional roles for women, and victim-blaming adversely affect an interpreter's impartiality, particularly in domestic violence and sexual assault cases.
- National Center for State Courts offers an important guideline: "If the interpreter is serving in a dual role and is also acting as a LEP victim's advocate, or if the LEP individual develops a personal dependence on the interpreter, the interpreter should not accept any other interpreting assignments related to the case, including interpreting for the court or for any party in the case. Such advocacy and dependency creates a conflict of interest for the interpreter and the interpreter must reveal that conflict to other persons providing services to the LEP victim."<sup>20</sup>

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<sup>20</sup> The National Advisory Board of Serving LEP Battered Women: (n.d.). *Code of Professional Responsibility for Interpreters Serving Limited English Proficiency (LEP) Victims of Domestic Violence outside of the courtroom and judicial settings.* [http://www.ncsconline.org/D\\_Research/Documents/LEP\\_AttachO\\_CodeOfEthics.pdf](http://www.ncsconline.org/D_Research/Documents/LEP_AttachO_CodeOfEthics.pdf)

## GUIDELINES: Impartiality and Conflict of Interest

1. Avoid conflict of interest by checking that interpreter and client do not know each other:
  - Advocate or attorney should check with client as soon as interpreter is assigned; or
  - Advocate or attorney should check with interpreter before the meeting begins.
2. If the client and interpreter know each other, another interpreter should be found to avoid any potential conflict of interest. If no other interpreter is available, determine if any potential conflict of interest would negatively affect your client's interests and decision making process. (Examples of questions include: Does the interpreter know the batterer?)
3. If there is a conflict of interest a different interpreter should be used:
  - Inform the interpretation services agency that a different interpreter is needed; and
  - If appointed by the court, notify the judge at court interpreter program so that a different interpreter can be appointed.
4. Advocates who become aware of a conflict of interest in the court can:
  - Inform attorneys for both sides of the conflict.
  - Inform the bailiff if there are no attorneys, the bailiff will inform the judge.
5. The judge can assess the nature of the conflict and whether it will impede the interpreter's ability to interpret. (Examples of questions include: Does the interpreter have a financial interest in the case? Is the interpreter opposed to divorce? Do the client's and interpreter's children attend the same school?) The judge can then make a decision about using that interpreter or not.
6. Pay attention to observations and clues (from the client, from conversations between interpreter and client, etc.) that the interpreter is not neutral and follow the steps in #2 above.
7. Inform system personnel providing services to the LEP victim if an individual interpreter cannot provide services because a conflict of interest was established by the court (this would be part of the public record).

### 3. Confidentiality

#### a. NAJIT Code: Confidentiality

Privileged or confidential information acquired in the course of interpreting or preparing a translation shall not be disclosed by the interpreter without authorization.

**Example:** *A volunteer interpreter is hired to interpret for the victim. The interpreter is friends with the batterer's brother and tells the brother that the victim is seeking a restraining order and the name of the shelter she is staying at.*

**Example:** *A lesbian victim of domestic violence is assigned an interpreter. The victim has not come out to her family. The interpreter is acquainted with the victim's family and outs the victim (and/or her abuser) to her family and other community members.*

#### b. Commentary: Confidentiality

- Interpreters must not disclose any information on a case, particularly the names of the parties they are interpreting for, and even information that may be well known and/or is not considered confidential (e.g., victim's age was stated in a newspaper article).
- In domestic violence cases, interpreters must take particular care not to reveal information that jeopardizes a victim's safety or the location of a shelter and other service programs.
- Interpreters are bound to keep legally protected, privileged communications between attorney-client, doctor-patient, and advocate-client (applicable in some states) confidential.



### c. Sample Interpreter's Confidentiality Agreement

*"I understand that I have been retained by (organization's name) to provide interpretation. I agree to provide accurate interpretation for the client and for the attorney/advocate of everything that is said between the client and the attorney/advocate. I understand that everything that is said during all meetings, be they face-to-face or telephonic, between the parties, are confidential. I agree not to disclose any information about all meetings/calls to anyone, including the fact that these meetings/calls took place; and I agree to keep confidential the names of all individuals pertaining to the case."*

\_\_\_\_\_  
Interpreter's signature and name / Date

\_\_\_\_\_  
Witness signature / date

### GUIDELINES: Confidentiality

1. If an interpreter breaks confidentiality:
  - Take the appropriate steps to ensure your client's safety.
  - If this is a court interpreter, notify the court of the breach.
  - If the interpreter is on a list or is certified, notify the appropriate agency and file a complaint.
2. Tip for Advocates:
  - Notify the attorney of the breach, so that the attorney can take steps to exclude the information should the batterer attempt to use the information against your client in court.
3. Tip for Attorneys:
  - Notify the advocate of the breach, so that the advocate can take the appropriate steps to ensure the client's safety.

## 4. Limitations of Practice

### a. NAJIT Code: Limitations of Practice

Court interpreters and translators shall limit their participation in those matters in which they serve to interpreting and translating, and shall not give advice to the parties or otherwise engage in activities that can be construed as the practice of law.

**Example:** *An interpreter who is asked by a shelter worker to advise her client of her rights and agrees to do so is practicing outside the scope of the interpreter’s role.*

**Example:** *An interpreter offers the judge or custody mediator a ‘cultural’ explanation about the meaning of wedding gifts, who they traditionally belong to and/or revert to at divorce; or a linguistic explanation “What that means in Hmong is....”*

### b. Commentary: Limitations of Practice

- Some interpreters offer ‘cultural interpretation’ or explanations of cultural practices or beliefs – often reflective of the cultural biases in their larger ethnic community. This is outside the scope of practice.
- Interpreters are not anthropologists, lawyers, case workers, psychologists, or linguists. They should not volunteer commentary, be asked to comment or give an opinion on any matters, and they should refuse to do so if asked.

### GUIDELINES: Limitations of Practice

1. Advocates should not ask interpreters to provide explanations, information, etc. because they ‘understand’ the client’s culture.
2. If interpreters step out of role, inform (a) attorneys or court personnel and (b) interpretation services agency.

## 5. Protocol and Demeanor

### a. NAJIT Code: Protocol and Demeanor

Court interpreters shall conduct themselves in a manner consistent with the standards and protocol of the Court, and shall perform their duties as unobtrusively as possible. Court interpreters are to use the same grammatical person as the speaker. When it becomes necessary to assume a primary role in the communication, they must make it clear that they are speaking for themselves.

**Example:** *If a witness or plaintiff is sobbing, the interpreter interprets the words, sighs, etc., but doesn't mimic the sobbing.*

**Example:** *If the interpreter does not understand something or does not hear properly and asks for a clarification, the interpreter makes it clear that it is her/his request.*

### b. Commentary: Protocol and Demeanor

- Interpreters can initiate communication when they need to get a clarification, to correct an interpretation error, to consult a bilingual dictionary.
- The interpreter should use the 3rd person when s/he speaks, e.g., to seek clarification “The interpreter requests that....”
- Interpreters can initiate communication when they need to get a clarification, to correct an interpretation error, to consult a bilingual dictionary.

### GUIDELINES: Protocol and Demeanor

1. Do not ask interpreters to provide sight translation of a form or other written materials.
2. Do not ask interpreters to explain procedures, forms, or services.
3. Do not ask interpreters to take someone they are interpreting for to an office, counter, or appointment.
4. Do not expect interpreter to console, set at ease, reassure, etc., an LEP client during difficult testimony or proceedings.

## 6. Maintenance and Improvement of Skills and Knowledge

### a. NAJIT Code: Maintenance and Improvement of Skills and Knowledge

Court interpreters and translators shall strive to maintain and improve their interpreting and translation skills and knowledge.

### b. Commentary: Maintenance and Improvement of Skills and Knowledge

- Skills improvement includes:
  - Increasing knowledge of languages interpreted.
  - Keeping up with changes in the way everyday language is used – learning new terms, slang, vernacular or regional phrases.
  - Attending professional workshops and meetings. Many interpreters work to keep improving their skills.
- Interpreters must stay informed about court rules and policies and statutes relating to the practice of interpretation.
- Preparation is important so interpreters are familiar with technical, scientific and other terms that will be used in the courtroom.
- Protocols for regular debriefings, peer consultation and supervision for beginning interpreters to improve and maintain professional skills.
- In sexual and domestic violence cases, knowledge of the vocabulary, procedures, dynamics, and the potential impact of dealing with disturbing material is important.

### GUIDELINES: Maintaining Knowledge and Skills

1. Inform the interpreter in advance what the nature of the proceeding is, who is involved, special terminology or vocabulary that will be used, etc. so the interpreter is well prepared.
2. Let interpreter speak briefly to LEP person to size up their communicative style and needs (i.e., 'register'); that way interpreter can make necessary adjustments to improve communication.
3. Train interpreters providing telephonic and in-person services about domestic violence, sexual violence, dating violence and trafficking, with particular attention to:
  - Terminology used in these fields (e.g., rape kit, intimate homicide)
  - Common acronyms (e.g., SANE = Sexual Assault Nurse Examiner) and procedures (e.g., civil standby)
  - Importance of precision and correct meaning because seemingly interchangeable terms will have different meanings (e.g., in Japanese, family violence refers to abuse by adult children of their parents, and domestic violence describes abuse by intimates/spouses.)

## 7. Accurate Representation of Credentials

### a. NAJIT Code: Accurate Representation of Credentials

Court interpreters and translators shall accurately represent their certifications, accreditations, training and pertinent experience.

**Example:** *A court is reviewing the qualifications of an interpreter. The interpreter states that s/ he is a certified interpreter. During the proceeding it becomes apparent that the interpreter has difficulty interpreting. After the hearing it is discovered that the interpreter is a certified medical interpreter or is qualified in a language (e.g., Urdu) other than the one needed (e.g., Hindi).*

### b. Commentary: Accurate Representation of Credentials

- There are several types of certifications, including: court, medical, educational, and administrative hearing.
- If the interpreter is certified, the interpreter's name should be on a list of certified interpreters maintained by the certifying body.
- Interpreters may or may not be certified in all the languages they are fluent to interpret in.

### GUIDELINES: Accurate Representation of Credentials

1. Understand differences between qualified interpreters who are certified, registered and provisionally qualified.
2. If you have concerns or information about an interpreter's credentials, inform attorneys, judge, bailiff, or court clerk.
3. Certified interpreters may be listed on following websites:
  - **National Center for State Courts** lists the contacts for interpreter programs in its member state courts. These programs maintain lists of interpreters who have been certified by the state: [http://www.ncsconline.org/D\\_Research/CIConsortContactspage.html](http://www.ncsconline.org/D_Research/CIConsortContactspage.html)
  - **National Association of Judiciary Interpreters and Translators:** <http://www.najit.org>
  - **American Translators Association:** <http://www.atanet.org/onlinedirectories>

## 8. Impediments to Compliance

### a. NAJIT Code: Impediments to Compliance

Court interpreters and translators shall bring to the Court's attention any circumstance or condition that impedes full compliance with any Canon of this Code, including interpreter fatigue, inability to hear, or inadequate knowledge of specialized terminology, and must decline assignments under conditions that make such compliance patently impossible.

**Example:** *Interpreter who was a sexual assault victim herself and may feel re-traumatized to interpret in such cases.*

**Example:** *In a cyber-stalking case, an interpreter does not have adequate knowledge of the topic, of relevant terminology and/or of the technologies used in stalking to interpret correctly; e.g., the interpreter is not able to interpret descriptions of spyware that record all keystrokes.*

### b. Commentary: Impediments to Compliance

- If possible, interpreters should inquire into the nature and topic of the interpretation assignment before accepting it.
- Advocates working closely in their ethnic or demographic communities often face a quandary. They have information that could be an impediment to compliance (e.g., the interpreter is a batterer) but it is confidentially obtained (e.g., they are providing services to the interpreter's partner), so they cannot publicly state such a reason to both maintain confidentiality and avoid slander.
- All court interpreters should undergo background checks to identify any history of child abuse, sexual assault or domestic violence.
- Interpreters arrested for or convicted of domestic violence should not interpret for a domestic violence victim.<sup>21</sup>

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<sup>21</sup> The National Advisory Board of Serving LEP Battered Women: (n.d.). *Code of Professional Responsibility for Interpreters Serving Limited English Proficiency (LEP) Victims of Domestic Violence outside of the courtroom and judicial settings.* [http://www.ncsconline.org/D\\_Research/Documents/LEP\\_AttachO\\_CodeOfEthics.pdf](http://www.ncsconline.org/D_Research/Documents/LEP_AttachO_CodeOfEthics.pdf)

## GUIDELINES: Impediments to Compliance

1. Learn to check interpreter's credentials and discuss them in a collegial manner with interpreters.
2. Cultivate professional relationships with interpreters.
3. Determine how to report impediments to compliance in court, legal and quasi-legal settings.
4. When advocates have information that could be an impediment to compliance (e.g., the interpreter is a batterer) but that information is confidentially obtained (e.g., they are providing services to the interpreter's partner) they cannot publicly state such a reason to both maintain confidentiality and avoid slander. Advocates can bring another interpreter and use her/him if the court agrees (it depends on the system set up in the court for interpretation services).





## V. UNDERSTANDING HOW BILINGUAL SPEAKERS AND INTERPRETERS DIFFER

### A. DIFFERENCES BETWEEN BILINGUAL SERVICES AND INTERPRETATION SERVICES

Bilingual advocates need to understand the difference between bilingual advocacy and interpretation services so they can continue the amazing advocacy they give LEP victims.

1. Bilingual staff communicating with victims fluently in a foreign language in the course of performing their professional duties are providing bilingual services.
  - In all situations, one-on-one communication (between advocate and victim, lawyer and client, police officer and victim, etc.) can be conducted in the foreign language.
  - However, bilingual staff acting as a conduit between an LEP victim and any other monolingual, English-speaking system personnel are providing interpretation services. Such communications have to be done by an interpreter.

**Example:** *An Amharic-speaking police officer, responding to a domestic violence call can interview all parties in Amharic to gather information but cannot interpret when the police investigator interviews the victim.*

2. Bilingual advocacy for LEP victims should equal that provided to English-speaking victims. Two guiding questions can help bilingual advocates, speaking in a foreign language to their clients, determine if they are providing services connected to their role:
  - Is this an activity/service an advocate would engage in regardless of the language the parties spoke?

**Example:** *A caseworker at the social security office, a bilingual advocate and a victim all speak Spanish fluently; the advocate will not need to interpret but would still accompany the client to advocate for her. The advocate is working for the client.*

- Is the advocate being a conduit, fulfilling a role and responsibility that belongs to someone else?

**Example:** *An advocate accompanies a battered woman to family court and no interpreter is available. The judge appoints the advocate as the interpreter. The advocate is working for the court and not for the client.*

3. Communications interpreted by qualified interpreters are protected by privilege; but not when interpreted by bilingual advocates.

- The co-occurrence of privilege may not be guaranteed if the advocate is present during privileged communications between the attorney and client.
- Attorneys must confirm that state law maintains attorney client privilege when an advocate is present and serving as interpreter.
- Advocates who have served as interpreters, and are called as witnesses, may have to disclose attorney-client communications.

**Example:** *Child or elder abuse disclosure to an attorney may not remain privileged when an advocate is present since most state laws mandate that domestic violence advocates report such incidents.*

## B. BEING BILINGUAL ISN'T ENOUGH

### 1. Should Bilingual Advocates Interpret?

Interpretation is not a natural extension of a bilingual speaker's language skills. Bilingual speakers should not provide interpretation in legal or quasi-legal settings because they lack the requisite knowledge, skills and abilities – bilingual advocates or community members cannot be a substitute for professional interpreters. Furthermore, at any stage, from evidence collection to trial, the use of un-trained interpreters can have a negative impact on a case, with challenges mounted on neutrality, the quality of interpretation provided and/or the qualifications of the interpreter.

But, well-developed systems are just not in place everywhere so bilingual speakers are asked or brought in to interpret. Advocates face pressure to assist their clients by acting as their interpreters when there is no access to qualified interpreters; when immediate assistance to a client is needed or demanded; when a delay in proceedings will endanger victim safety; in rural or remote areas lacking interpretation services; when rare languages are spoken; and most often because there is no budget to

hire trained interpreters. Similarly, “community interpreters” or ad hoc interpreters are erroneously recruited to interpret – the Afghan professor, no matter how fluent in Dari or Pashtu, lacks the qualifications needed to interpret.

Role conflict and role confusion are critical problems. Biases and filters can result in conflicts of interest e.g., a bilingual community interpreter advises a woman to return to her batterer; advocates may filter information they deem harmful to their client. The interpreter’s neutral role precludes the advocate from assisting or supporting the client while interpreting for the court – this can jeopardize the advocate-client relationship. E.g., in the role of interpreter, the advocate interprets everything, including misinformation; or is asked to interpret for both parties. The client may perceive the latter as being on the perpetrator’s side, or expect the advocate/interpreter to do something about the former.

All monolingual and bilingual advocates, bilingual speakers who serve as community or ad hoc interpreters and all system personnel must understand the requisite knowledge, skills and abilities for interpreting to achieve the goal of access through the use of qualified, trained legal interpreters. In the meantime, understanding what it takes to interpret will introduce caution into programs and systems serving victims with limited English proficiency and propel them into compliance with language access laws.

## **2. Do Bilingual Advocates Have the Knowledge, Skills and Abilities to Interpret?**

Many bilingual speakers incorrectly assume their strong language skills pave the way for interpreting. Without training, most make the same mistakes – summarizing, answering clarifying questions, paraphrasing, using the third person, etc. and cannot interpret accurately and completely. This section guides bilingual advocates (and bilingual speakers) to assess their knowledge, skills, and abilities objectively and to understand the impact of interpreting in legal and quasi-legal settings.

## C. F.A.N.S. CHECKLIST FOR BILINGUAL ADVOCATES

The following questions and checklist are not exhaustive, but cover four fundamentals:

1. Fluency
2. Accuracy
3. Neutrality
4. Safety

### **☑ ARE YOU FLUENT IN ENGLISH? (FLUENCY)**

This means you are able to understand and speak English and the target language with native like mastery. Native-like mastery includes the ability to interpret in a variety of language registers utilized by speakers such as regionalisms, colloquialisms, technical and slang. Without English fluency, accuracy is compromised.

- Take the *Self-Assessment of Speaking Proficiency* test (see Appendix), designed by the Interagency Language Roundtable (ILR) to estimate your speaking proficiency.<sup>22</sup> You must complete Level S-4 (i.e. a score of 4) to demonstrate the level of language fluency in English needed for interpretation.

### **☑ ARE YOU FLUENT IN THE FOREIGN LANGUAGE? (FLUENCY)**

This means you are able to understand and speak the target language with native-like mastery. Native like mastery includes the ability to interpret in the variety of language registers utilized by speakers such as regionalisms, colloquialisms, technical and slang. Without fluency in the foreign language, a victim's access is compromised.

- Take the *Self-Assessment of Foreign Language Listening Proficiency* test (see Appendix), designed by the Interagency Language Roundtable (ILR) to estimate your speaking proficiency.<sup>23</sup> You must complete Level S-4 (i.e. a score of 4) to demonstrate proficiency in target language.

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<sup>22</sup> <http://www.govtilr.org/>

<sup>23</sup> <http://www.govtilr.org/>

***☑ ARE YOU ABLE TO INTERPRET IN THE CONSECUTIVE OR SIMULTANEOUS MODE ACCURATELY AND COMPLETELY; AND DO SIGHT TRANSLATION? (ACCURACY)***

Bilingual speakers must render what is being said from one language to another accurately, completely, promptly, without hesitation, maintain the speaker's register, without summarizing, omitting, or adding anything; and be able to sight translate. To accomplish this, an interpreter must possess:

- Strong auditory processing abilities (and no learning disability)
- Excellent short-term memory to ensure completeness and accuracy
- Quick note-taking skills
- High level of bi-literacy in English and in target language (if it has a written form).<sup>24</sup>

***☑ ARE YOU FAMILIAR WITH LEGAL TERMINOLOGY AND SPECIALIZED TERMINOLOGY OF DOMESTIC VIOLENCE AND SEXUAL ASSAULT IN BOTH ENGLISH AND THE FOREIGN LANGUAGE? (ACCURACY)***

To interpret competently in a legal setting, you must have knowledge of the technical language associated with the courts and quasi-judicial settings in both English and the target language. This includes terminology associated with basic legal, medical, social service, law enforcement and domestic violence sexual assault. You must be able to read and understand materials related to these settings and provide accurate sight translation of the materials.

- Review commonly used legal terms in a glossary<sup>25</sup> to test your knowledge.
- Review domestic violence/sexual assault terms that will be used in court (some terms are concepts not prevalent in all cultures, e.g., marital rape).

***☑ CAN YOU AVOID A CONFLICT OF INTEREST OR THE APPEARANCE OF A CONFLICT OF INTEREST BETWEEN YOU AND YOUR CLIENT? (NEUTRALITY)***

Interpreters must be impartial and neutral in proceedings and must maintain the appearance of impartiality and neutrality, avoiding unnecessary contact with the parties. This is particularly

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<sup>24</sup> Bi-literacy depends entirely on one's level of education and cannot be taken for granted in fluent speakers. Also second-generation immigrants/refugees who speak fluently do not always learn to read and write in their target language.

<sup>25</sup> Legal Glossaries in Arabic, Armenian, English, Hindi, Hmong, Mien, Punjabi, Romanian, Russian, Spanish, Urdu and Vietnamese <http://www.saccourt.ca.gov/general/legal-glossaries/legal-glossaries.aspx>

challenging because advocates have established rapport with a client, and the client has come to rely on the advocate for guidance and support. Any bias, real or perceived, can jeopardize the proceeding. The advocate is naturally sympathetic to the victim, and although may be able to be a neutral interpreter, the perception that the advocate is on the side of the victim is sufficient to show there is no impartiality. Being invested in the outcome of a case is a conflict of interest.

Conflicts of interest may exist when interpreters have been involved in selecting an attorney for client, and/or could be a potential witness. One potential way to address neutrality could be to have an advocate who is not working with the victim serve as the interpreter, but that individual must still meet all the standards listed here.

***☑ CAN YOU STAY IN THE INTERPRETER'S ROLE AND FUNCTION IN YOUR ADVOCATE'S ROLE? (NEUTRALITY)***

The interpreter is an officer of the court. The advocate who interprets has stepped out of the role of advocate and into the role of interpreter participating in proceedings to assist the court and not the victim. Advocates serving as interpreters, cannot assist, clarify, omit or explain anything to the client while in the interpreter role. As stated above they must avoid unnecessary contact with the parties, inside and outside the courtroom. Will this be possible?

***☑ COULD YOU BE A POTENTIAL WITNESS IN THE CASE? (NEUTRALITY)***

An interpreter who could be called as a witness in a case has a conflict of interest and should not interpret. An advocate can be called by the opposing party as a witness to evaluate her/his competence as an interpreter. Even if the advocate was provisionally qualified by the judge, testimony interpreted by the advocate could be called into question by challenging advocate's neutrality, jeopardizing the outcome of the case.

***☑ WILL YOU ONLY BE INTERPRETING FOR YOUR CLIENT AND NOT THE BATTERER? (NEUTRALITY)***

Interpreters must not only avoid an actual conflict of interest or bias, but must avoid the appearance of a conflict of interest or bias. Advocates, for good reason, will be viewed as biased towards the victim. But if a qualified interpreter is not available, the court may ask the advocate to serve as

interpreter for both the victim and batterer.<sup>26</sup> In this instance the advocate should attempt to limit his/her interpretation to only the proceedings, and should avoid interpreting for the parties; e.g., not interpreting between the parties and their attorneys, or entering a plea for the defendant. Additionally, serving as the interpreter for both parties may jeopardize the relationship between advocate and victim. The victim may be confused as to why the advocate appears to be assisting the batterer.

### **☑ *WILL INTERPRETATION BY BILINGUAL ADVOCATE VOID ATTORNEY-CLIENT PRIVILEGE? (SAFETY)***

Attorney-client privilege may be undermined when an advocate also functions as an interpreter in communications between a lawyer and a client, particularly when a professional interpreter is also present. Attorney-client privilege is maintained when a professional interpreter is the only third party present, and because the attorney has arranged for or hired an interpreter in order to allow the communication, the interpreter falls under the purview of attorney-client privilege.

Attorney-client privilege is extended to interpreters but not to other third parties such as advocates. If the third party present is an advocate who is interpreting, then the attorney-client privilege is voided and privilege and confidentiality are compromised. The advocate could later be called as a witness and have to testify about matters discussed in such an interview. Attorneys need to hire a professional interpreter because interpretation by bilingual advocates will jeopardize attorney-client privilege.

This presents difficulties for service organizations that rely on pro bono attorney services in matters beyond protection order hearings, to represent domestic violence victims, most of whom cannot afford private attorneys. In such situations, bilingual advocates accompany a victim and interpret during the attorney-client interview. Attorneys accept this arrangement because they are not charging for their services and cannot absorb additional costs for professional interpretation. Interpretation services need to be added to all budgets.

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<sup>26</sup> Individuals in community-based-organizations (e.g., supporters, board officers) may sometimes pressure staff to interpret for a batterer who may be a relative, a prominent community member, etc. Staff and management should be united in refusing such requests and educating everybody about the use of qualified interpreters.

**☑ *WILL WAITING TILL A QUALIFIED INTERPRETER IS FOUND NEGATIVELY AFFECT A VICTIM'S IMMEDIATE NEED FOR SAFETY? (SAFETY)***

**These situations can include:**

- Without immediate interpretation there is immediate danger;
- A delay in the proceeding will endanger victim safety;
- The abuser or family members are offering to interpret;
- There is some subtle or outright hostility towards the LEP victim by the court for not bringing an interpreter;
- Despite everyone's best efforts, no interpreter is available or not in the language needed;<sup>27</sup> and the court calendar is extremely tight.

**☑ *WILL YOUR SAFETY BE JEOPARDIZED? (SAFETY)***

Advocate safety is an important consideration that is often overlooked. Batterers may threaten and/or harm those assisting their battered partner; or use their influential community status to intimidate helpers; harass community-based-organizations with subpoenas, etc. Serving as an interpreter for the court will require the advocate to provide her/his name and a professional address (a community member without a professional address would give their personal address) — information that a batterer could use to retaliate against an advocate.

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<sup>27</sup> This is often the case for languages other than Spanish.





## F.A.N.S. CHECKLIST FOR BILINGUAL SPEAKERS

Yes

No

### FLUENCY

(1a) Are you fluent in English?

(1b) Did you complete S-4 level and score 4 (Advanced Professional Proficiency) on ILR scale, *Self Assessment–Speaking Proficiency* test?

(2a) Are you fluent in the target foreign language?

(2b) Did you complete L-4 level and score 4 on ILR scale, *Self-Assessment of Foreign Language Listening Proficiency* test?

### ACCURACY

(3) Are you able to interpret in the consecutive or simultaneous mode accurately without adding, omitting, or summarizing?

(4) Are you familiar with legal terminology and specialized terminology of domestic violence & sexual assault in the source language?

### NEUTRALITY

(5) Can you avoid a conflict of interest or the appearance of a conflict of interest between you and your client?

(6) Can you stay in the interpreter’s role and avoid functioning in the advocate’s role?

(7) Could you be a potential witness in the case?

(8) Will you be interpreting for your client and not the batterer?

### SAFETY

(9) Will your interpretation void the attorney-client privilege?

(10) Will waiting till a qualified interpreter is found negatively affect a victim’s immediate safety?

(11) Will your safety be jeopardized?

If you answered “yes” to all of the above questions and no qualified interpreter is available, you can provide limited interpretation, but proceed with caution.

If you answered “no” to any question and you do not feel competent to interpret and a judge or attorney is pressuring you to interpret, you can state your reasons and request that your objection be placed in the record.

## GUIDELINES: When Advocates are Asked to Interpret

1. Advocates must not interpret at trials, motion hearings, custody hearings, arraignments, or divorce hearings.
2. Advocates must decline to interpret. If a judge insists that an advocate serve as the interpreter, despite the advocate's objections, the advocate should request that the objection is placed on the record.

**Example:** "Your honor, this is not the recommended procedure and I want my statement noted in the record."

3. Advocates must not interpret if no attempt to find a qualified interpreter (either in-person or for telephonic interpretation) was made before the advocate is asked to interpret.
4. Advocates must not interpret at attorney-client interviews.
5. ONLY in the interest of a victim's immediate safety and when a qualified interpreter is not available in person or via the telephone, an advocate can step in to interpret.
6. Advocates who are interpreting must stop when they are:
  - losing the message,
  - summarizing because they are unable to retain the information or interpret particular concepts or terminology,
  - confused and/or confusing the client,
  - finding that the vocabulary being used is beyond their language ability.

## VI. INTERPRETATION SERVICES

### A. DETERMINING INTERPRETATION AND TARGET LANGUAGE NEEDS





All parties in the court have the right to speak, be understood by and understand everyone in the courtroom. Clearly non-English speakers need interpreters. Victims with some English language ability but limited English proficiency also need interpretation services. This can present a quandary at times – advocate and victim want the victim’s voice heard in court, seeing it as a step towards empowerment, healing. However, court proceedings can be difficult to follow even for fluent English speakers.

To identify the foreign language spoken by the LEP individual, language identification tools can be used. For telephonic interpretation, the interpretation service will determine what the foreign language is.

#### GUIDELINES: Determining if Clients Need Interpretation Services

1. Assess a client’s English fluency/lack of proficiency objectively.
2. Does a victim speak English well enough to:
  - Tell a story *and* answer questions?
  - Listen to communications in English and understand them?
  - Be understood by the court?
  - Understand everyone in the court (considering regional accents, speed, etc)?
3. Prepare victim well to understand court and interpretation procedures: this increases empowerment; and remember the interpreter is a conduit for telling the victim’s story.

## RESOURCES: Determining If Clients Need Interpretation Services

-  **California Department of Social Services.** (2002). *I Speak Cards*. These cards can be used by LEP persons to get interpreter services. The pocket size card provides a statement that identifies the language spoken by the LEP person. Languages include: Spanish, Laotian, Russian, Cambodian, Chinese, Farsi, Korean, Vietnamese, Hmong, Arabic, Armenian, and Tagalog. <http://www.cdss.ca.gov/civilrights/PG584.htm>
-  **Economic and Statistics Bureau U.S. Census.** (2004). *Language Identification Flashcards: I Speak Cards*. U.S. Department of Commerce. Flashcards to identify following languages: Arabic, Armenian, Bengali, Cambodian, Chamorro, Chinese (Simplified and Traditional), Croatian, Czech, Dutch, English, Farsi, French, German, Greek, Haitian Creole, Hindi, Hmong, Hungarian, Ilocano, Italian, Japanese, Korean, Laotian, Polish, Portuguese, Romanian, Russian, Serbian, Slovak, Spanish, Tagalog, Thai, Tongan, Ukrainian, Urdu, Vietnamese, and Yiddish. <http://www.usdoj.gov/crt/cor/Pubs/IspeakCards2004.pdf>
-  **Minnesota Department of Human Services.** *I Need an Interpreter Card*. These cards say in both English and another language “I need a \_\_\_\_\_ interpreter.” The cards are available in: Arabic, Hmong, Khmer (Cambodian), Laotian, Oromo, Russian, Serbo-Croatian (Bosnian), Somali, Spanish, and Vietnamese. LEP persons may present the cards when they contact a state, county, or community agency to assist with conveying their need for a language interpreter. <http://edocs.dhs.state.mn.us/lfserver/Legacy/DHS-4374-ENG>.
-  **State of Ohio Office of Criminal Justice Services, Summit County Sheriff’s Office, National Association of Judiciary Interpreters and Translators, and the American Translators Association.** *Language Identification Guide*. This language identification guide is a tool for law enforcement and other criminal justice agencies to identify the language of individuals they encounter who do not speak English. <http://www.ocjs.ohio.gov/Publications/Pocket%20Card.pdf>

## B. POINTS OF CONTACT WHERE INTERPRETATION SERVICES ARE NEEDED

**LEP victims need bi-lingual staff and interpreters at all points of contact**, from start to finish so that legal outcomes are not jeopardized by errors arising from a lack of professional interpretation. Discussing all points of contact is beyond the scope of these guidelines, but all legal and social service providers need to understand the importance of utilizing qualified interpreters.

**Poor interpretation at one point of contact has repercussions throughout** all systems the victim uses. For instance, reliance on family members, children, or neighbors during the police investigation can result in gathering misleading information that can hinder prosecution and the conduct of a trial, result in the arrest of an LEP victim, and have other negative outcomes for victims and their children. Having a court certified interpreter during the trial will not correct for errors made in pre-trial investigations.

**Potential hostility to immigrant victims with limited English proficiency** Anti-immigrant sentiments, likely to surface towards victims with limited English proficiency can and do have a bearing on cases; they need to be mitigated in the courtroom and throughout all systems by challenging bias.

The points of contact listed below are not mutually exclusive. Programs that do not receive federal funding, directly or indirectly, are not required to have language access plans, but LEP victims will nevertheless need interpreted communications.

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## FIRST RESPONDERS

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911 (or other emergency numbers)

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Emergency Medical Response

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Fire Department

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Law Enforcement: Police (campus, military, transport police, etc.), Sheriffs

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## LEGAL SYSTEMS & PERSONNEL – CIVIL, CRIMINAL, IMMIGRATION

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Attorneys

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Child Custody

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Civil Courts for Orders of Protection

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Courts, including Bailiffs, Court Clerks

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Court Advocates providing services to victims

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Defense Attorneys

---

District Attorneys/Prosecutors

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Family Court Services

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Family Justice Centers

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Immigration & Customs Enforcement (ICE)

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Jails, Detention Facilities

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Judges in Civil, Criminal, Administrative, and Immigration Courts

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Juvenile Court Personnel and Judges

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Mediators, Evaluators

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Police Investigators

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Probation Officers

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Public Defenders

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Self Help Centers (established in some counties for pro se litigants)

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## SOCIAL SERVICES

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Adult Protective Services

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Child Support Enforcement

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Child Welfare System

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Domestic Violence Service Programs

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Employment Programs

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Healthcare Providers – Clinics, Hospitals, Emergency Rooms

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Homeless and Housing Services Programs

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Hotlines, Crisis Lines

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Information & Referral Services (e.g., 211 social service directories)

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Mental Health

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Public Benefits

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Refugee Resettlement Agencies

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Shelters

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Sexual Assault Service Programs/Rape

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Crisis Centers

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Social Security Office

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Suicide Prevention

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Supervised Visitation Centers

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## C. FINDING PROFESSIONAL INTERPRETATION SERVICES

Courts and other providers receiving Title VI funds are responsible for providing interpretation services for victims. However, in reality, they rely on advocates or victims to provide interpreters or they turn to advocates to interpret for victims.

The pool of qualified interpreters varies from region to region; resources for obtaining interpretation services are listed below.

### 1. Interpreter Associations

Interpreter associations are an excellent resource, particularly if your state does not have an interpreter certification program. Members may or may not be certified interpreters, but generally they are trained and experienced interpreters. When working with an interpreter from these lists, make sure to inquire about certification, training, and experience. Also ask for references and check them.

*National Association of Judiciary Interpreters and Translators (NAJIT)* is a professional association whose mission has been to promote quality services in the field of legal interpreting and translating. NAJIT maintains a directory of its member interpreters and translators. <http://www.najit.org>

*American Translators Association (ATA)* is a professional association whose mission is to advance the translation and interpreting professions and assist in the professional development of individual translators and interpreters. ATA maintains a directory of its member interpreters and translators. <http://www.atanet.org>

### 2. State Administrative Office of the Courts (AOC): Court Interpreter Programs: Listed with National Center for State Courts (NCSC)

Some state judiciaries have Court Interpreter Programs and maintain a list of interpreters that are approved to work in state courts. Whether the interpreter is court certified or not depends on the state. To find listings of state and federal interpreter programs, check the National Center for State Courts. [http://www.ncsconline.org/D\\_Research/CIConsortContactspage.html](http://www.ncsconline.org/D_Research/CIConsortContactspage.html)

### 3. Interpreting and Translating Agencies: Association of Language Companies (ALC)

*The Association of Language Companies* maintains a list of member agencies that provide interpreting and translating services in many languages. Depending on the agency, interpreters may or may not be certified and some agencies may have in-house training programs to improve interpreter skills. Make sure to inquire into the interpreter's qualifications and if the agency trains them on domestic and sexual violence. The ALC has links to its member agency websites.

<http://www.alcus.org/AboutAlc/Member/>

### 4. Telephonic Interpretation Services

Telephonic interpretation<sup>28</sup> is widely used, particularly for languages where an interpreter may be difficult to find. Plan ahead and request an interpreter with domestic violence/sexual assault training and experience. Telephonic interpreters are generally not court certified, so ask about the interpreter's training and experience.

*Language Line* is a service provided by AT&T offering telephonic interpretation in over 170 languages.

<http://www.language.com/page/welcome/>

*The Association of Language Companies* lists member agencies providing telephonic interpreting.

<http://www.alcus.org/AboutAlc/Member/>

### 5. Bilingual Staff and Volunteers

Although we do not recommend that bilingual speakers – advocates, ad hoc or community interpreters provide interpretation in legal or quasi-legal settings, we realize this happens all too frequently when no interpreters are available. In the section *Being Bilingual Isn't Enough* bilingual speakers should assess the knowledge, skills, and abilities required in such situations.

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<sup>28</sup> Sometimes referred to as 'language line'; although that is the name of the agency providing telephonic interpretation.



## GUIDELINES: Finding Interpretation Services

1. Develop directory of qualified interpreters for languages identified in your agency's Language Access Plan.
2. Familiarize yourself with the court's interpretation services and/or use of qualified interpreters who are certified, registered and provisionally qualified. Telephonic interpreters may not be certified court interpreters.
3. Cultivate professional relationships with interpreters and professional interpreter associations to work collaboratively and develop volunteer interpreter pool.
4. Obtain and check interpreters' credentials and references; do not utilize problematic interpreters.
5. Set up a contract for telephonic interpretation services; ask about non-profit rates.
6. Make interpreter training on domestic violence and sexual assault a condition of interpretation provision contract.

## RESOURCES: Finding Interpretation Services

-  **American Translators Association (ATA)** <http://www.atanet.org>
-  **Association of Language Companies (ALC)** <http://www.alcus.org/AboutAlc/Member>
-  **Language Line** <http://www.language.com/page/welcome/>
-  **National Association of Judiciary Interpreters and Translators (NAJIT)** <http://www.najit.org>
-  **National Center for State Courts (NCSC)** lists the contacts for interpreter programs in its member states. [http://www.ncsconline.org/D\\_Research/CIconsortContactspage.html](http://www.ncsconline.org/D_Research/CIconsortContactspage.html)
-  **Volunteer Match** <http://www.volunteermatch.org>

## D. WHO PAYS FOR INTERPRETATION IN CIVIL COURT


The responsibility to pay for court interpretation in civil matters differs from state to state. All providers serving LEP victims should know the statutes and procedures for their state to ensure language access. All states recognize the right of criminal defendants to a state provided interpreter, but not all states extend the right to a state-paid court interpreter in civil cases.

In principle, courts pay for interpretation services based on (a) Title VI (prohibition against discrimination), (b) Executive Order 13166 (federally funded recipients must provide meaningful access) and because model rules of professional responsibility require that all parties fully understand each other (e.g., lawyers have an ethical obligation to understand their clients and must hire qualified interpreters). Realistically, all too often, the burden of obtaining and paying for interpreters in civil matters falls on victims and/or the victim service agencies that advocate for them. Compliance difficulties with federal policies are almost always presented as a resource problem, but compliance is also a matter of political will.


### GUIDELINES: Identifying Who Pays for Interpreters in Civil Proceedings

1. Know your state's statutes and procedures by consulting the ABA chart.
2. Identify all available funding sources in collaboration with other agencies serving LEP clients.
3. Identify and work with providers of interpretation services.
4. Budget funds for interpretation services; this is an allowable item on all federal monies disbursed indirectly by states or directly by federal agencies.

### RESOURCES: Identifying Who Pays for Interpreters in Civil Proceedings

 **State Statutes Requiring the Provision of Foreign Language Interpreters to Parties in Civil Proceedings.** American Bar Association's Commission on Domestic Violence, 2008. The chart lists the state's statute, who gets an interpreter, if it is mandatory or discretionary, who pays, procedures for obtaining an interpreter, and other relevant information. See chart in Appendix or download from:

[http://www.abanet.org/domviol/docs/Foreign\\_Language\\_Interpreters\\_Chart\\_12\\_2008.pdf](http://www.abanet.org/domviol/docs/Foreign_Language_Interpreters_Chart_12_2008.pdf)

 **The National Center for State Courts** maintains a table listing the compensation rates for contract court interpreters by state.

[http://www.ncsconline.org/D\\_Research/Res\\_CtInte\\_ConsortCertCompSurvey2007ContractPub.pdf](http://www.ncsconline.org/D_Research/Res_CtInte_ConsortCertCompSurvey2007ContractPub.pdf)

## VII. INTERPRETATION FOR DEAF VICTIMS WITH LIMITED ENGLISH PROFICIENCY

These guidelines do not cover sign language access for deaf, hard of hearing and deaf-blind individuals who are victims of domestic and sexual violence because of the extensive expertise of, and advocacy by, the Deaf community. However, there are several considerations in working with victims with limited English proficiency who are deaf, deaf-blind and hard of hearing.

### A. KNOWING THE BASICS OF DEAF CULTURE

In working with deaf, deaf-blind and hard of hearing victims of domestic and sexual violence, advocates need to know some basics:

1. 'Deaf' (with upper case 'D') refers to an identity with its own culture, language and diverse communities; 'deaf' refers to a physical condition/impairment.
2. Deaf and hard of hearing protections appear as a disability issue rather than a language access issue. However, many in the Deaf community see it as a language access, not a disability issue.
3. Do not assume that all deaf people are mute: some can speak, some can and choose not to and some cannot. As with hearing people, some can sing, some cannot and some can but choose not to.
4. Dynamics of domestic violence in Deaf communities have additional dimensions: e.g., hiding hearing aid, disabling TTY equipment, a batterer who speaks or interprets for the victim, etc.
5. American Sign Language is not English made visual; this is also true of foreign sign languages.
6. The process of writing out American Sign Language is referred to as glossing.

7. Sign language needs differ depending on impairment:
  - a. *Deaf*: American Sign Language
  - b. *Hard of Hearing*: Hearing aids and assistive listening devices
  - c. *Late Deafened Adults* (hearing loss after acquiring language, due to age or accident):  
Computer Assisted Realtime Transcription (CART)
  - d. *Deaf-Blind*: Tactile signing

## B. UNDERSTANDING THE SOCIAL CONTEXTS






In working with LEP victims who are deaf, deaf-blind and hard of hearing, advocates need to understand some of the social contexts:

1. In many regions of the world, such individuals are stigmatized and seen as a burden on the family who may not adequately care for them: depriving them of schooling, medical care or equipment like hearing aids. These attitudes are not merely a by-product of poverty, but of cultural stigma.
2. Women and girls who are deaf, deaf-blind or hard of hearing, are often further devalued; and more so if they are victims of gender violence.
3. Many such individuals will not learn a formal sign language, may not be literate, and may use some form of home signing.
4. The context for refugees will differ: they may have become deaf, deaf-blind or hard of hearing due to war-related physical and psychological injuries; and lacked medical care in these conditions.
5. Individuals who sustained hearing loss after acquiring spoken language, may not have yet learned to communicate through formal or informal sign language and will have different needs.

## GUIDELINES: Programs Serving LEP Immigrants and Refugees Who Are Deaf, Hard of Hearing or Deaf-Blind

1. Develop program guidelines to comply with the stipulations of the Americans with Disabilities Act.
2. Utilize national and or local resources to educate agency staff.
3. Identify who serves deaf and hard of hearing victims in your area.
4. Determine the language interpretation needs of LEP victims who are deaf, deaf-blind or hard of hearing:
  - Identify what communication methods they use, including if they use ASL, a foreign sign language, home signing, and/or Computer Assisted Realtime Transcription. Lip reading and passing notes are not acceptable communications methods.
  - Do not assume they understand or use ASL.
  - Do not assume a high or low level of English fluency.
  - Do not assume a high or low level of literacy in their native language and/or English.
5. Establish procedures to obtain relay interpretation if needed – a sign language interpreter and a spoken language interpreter.
6. Develop procedures to obtain other assistive technologies, such as Computer Assisted Realtime Transcription (CART) for the LEP, deaf, deaf-blind and/or hard of hearing individual.
7. Learn to work with sign and spoken language interpreters, and how relay interpretation and assistive technologies work.

## RESOURCES: Interpretation for Deaf Victims

-  **Abused Deaf Women's Advocacy Services:** Training, technical assistance and publications on safety protocols and interpretation in ASL. <http://www.adwas.org>
-  **American Bar Association's Commission on Domestic Violence:** Materials on sign language interpretation in civil representation. [http://www.abanet.org/domviol/trainings/Interpreter/CD-Materials/safety\\_protocol.pdf](http://www.abanet.org/domviol/trainings/Interpreter/CD-Materials/safety_protocol.pdf)
-  **National Resource Center on Domestic Violence:** Violence in the Lives of Persons who are Deaf or Hard of Hearing Materials include directory of organizations (listed by state) providing services to Deaf victims/survivors. [http://new.vawnet.org/category/index\\_pages.php?category\\_id=966#980](http://new.vawnet.org/category/index_pages.php?category_id=966#980)
-  **Ohio State:** Working with Interpreters for Deaf or Hard of Hearing Persons in the Courtroom. [http://www.sconet.state.oh.us/Judicial\\_and\\_Court\\_Services/interpreter\\_svcs/default.asp](http://www.sconet.state.oh.us/Judicial_and_Court_Services/interpreter_svcs/default.asp)
-  **Registry of Interpreters for the Deaf, Inc.** <http://www.rid.org>



## VIII. WORKING WITH INTERPRETERS

- **Tipsheet:** Developing a Language Access Plan for Your Agency
- **Tipsheet:** Interpretation Services
- **Tipsheet:** Working with Interpreters and Addressing Problems
- **Tipsheet:** Serving Individuals with Limited English Proficiency Who Are Deaf, Hard of Hearing or Deaf-Blind





# DEVELOPING A LANGUAGE ACCESS PLAN FOR YOUR AGENCY

## **Guidelines:**

If your organization receives federal funds, either directly or through the state, your agency is required to develop a language access plan (this does not mean hiring staff for every conceivable language spoken by your clients).

1. Learn the requirements of Title VI, Executive Order 13166, and your state laws.
2. Determine language needs using DOJ's four-factor assessment:
  - a. Number or proportion of persons with Limited English proficiency (LEP) in the eligible service population.
  - b. Frequency with which these LEP persons come into contact with your program.
  - c. Importance of the benefit or service.
  - d. The resources available.
3. Based on the assessment's results, identify the languages that will be included in the agency's language access plan and how the agency will provide interpretation services to LEP clients.
4. Develop an outreach plan to notify LEP persons that services are available.
5. Integrate your agency's language access policies and procedures into the agency's regular policies and procedures manual for use by all, not only bilingual, staff.
6. Train all staff and volunteers on language access laws:
  - a. Federal laws: Title VI and Executive Order 13166.
  - b. State laws on court interpretation to determine:
    - clients' rights to interpreters in civil courts,
    - who provides the interpreters,
    - who pays for interpretation.
  - c. Protocols for filing a Title VI complaint with the Department of Justice should a client's language access rights be denied by a federal grant recipient.
7. Implement and train staff about language access advocacy and agency protocols on:
  - a. Responding to LEP callers and in-person contacts.
  - b. Advocating for and asserting LEP clients' rights to qualified interpreters in courts and other systems.
  - c. Providing LEP clients with tools (such as "I speak..." cards) that assist them in asserting their right to language access in the courts and other public agencies.
  - d. Responding to court requests that bilingual advocates interpret by attempting to decline and disclosing their conflict of interest on record.
  - e. Working with interpreters, including basic knowledge about interpretation: types, modes, code of ethics, qualifications and roles.
  - f. Identifying and responding to poor, incorrect or biased interpretation.
8. Evaluate plan's effectiveness regularly to ensure it meets the needs of LEP persons.
9. Monitor demographic changes and immigration/refugee resettlement patterns to identify new LEP populations your agency will need to serve.
10. Engaging courts and public agencies in a dialogue on language access and Title VI.

## TIPSHEET: DEVELOPING A LANGUAGE ACCESS PLAN *continued...*

### **Resources:**

1. **American Bar Association:** List of state statutes on the provision of language interpreters in civil cases. [http://www.abanet.org/domviol/docs/Foreign\\_Language\\_Interpreters\\_Chart\\_12\\_2008.pdf](http://www.abanet.org/domviol/docs/Foreign_Language_Interpreters_Chart_12_2008.pdf)
2. **American Bar Association's Commission on Domestic Violence:** Materials on integrating interpretation in civil representation of domestic and sexual violence victims. [http://www.abanet.org/domviol/institute/integration\\_of\\_interpreters.html](http://www.abanet.org/domviol/institute/integration_of_interpreters.html)
3. **Department of Justice, Office of Civil Rights, Executive Order 13166 Limited English Proficiency Resource Document: Tips and Tools from the Field:** Overview and tips and tools for law enforcement, domestic violence specialists and service providers, 911 call centers, courts, federally conducted programs and activities. [http://www.lep.gov/resources/tips\\_and\\_tools-9-21-04.htm](http://www.lep.gov/resources/tips_and_tools-9-21-04.htm)
4. **Department of Justice, Office of Coordination & Review:** File complaints for Title VI violations. <http://www.usdoj.gov/crt/cor/complaint.php>
5. **Legal Services Corporation:** Guidance to LSC programs on training, procedures and policies. [http://www.abanet.org/domviol/institute/integration\\_of\\_interpreters/Guidance\\_to\\_LSC\\_Programs\\_for\\_Serving\\_Client\\_Eligible\\_Individuals\\_with\\_LEP.pdf](http://www.abanet.org/domviol/institute/integration_of_interpreters/Guidance_to_LSC_Programs_for_Serving_Client_Eligible_Individuals_with_LEP.pdf)
6. **National Association of Judiciary Interpreters and Translators (NAJIT):** Professional certification, training, policy advocacy, how to work with interpreters. <http://www.najit.org>
7. **National Center on Immigrant Integration Policy:** Policy, research, technical assistance, training and an electronic resource center on immigrant integration issues with a special focus on state and local policies and data. [http://www.migrationinformation.org/integration/language\\_portal](http://www.migrationinformation.org/integration/language_portal)
8. **National Consortium of State Courts:** Materials on court interpretation including tests for certifying interpreters and model guide. [http://www.ncsconline.org/D\\_RESEARCH/CourtInterp.html](http://www.ncsconline.org/D_RESEARCH/CourtInterp.html) and [http://www.ncsconline.org/wc/publications/Res\\_CtInte\\_ModelGuideChapter10Pub.pdf](http://www.ncsconline.org/wc/publications/Res_CtInte_ModelGuideChapter10Pub.pdf)
9. **Ohio State, Dept of Public Safety/Office of Criminal Justice Services:** Training materials for law enforcement and judges. <http://www.ocjs.ohio.gov/LEPResources.htm>

# INTERPRETATION SERVICES

## FINDING INTERPRETERS

### **Guidelines:**

1. Develop directory of qualified interpreters for languages identified in your agency's Language Access Plan.
2. Familiarize yourself with the court's interpretation services and/or use of qualified interpreters who are certified, registered and provisionally qualified. Telephonic interpreters may not be certified court interpreters.
3. Cultivate professional relationships with interpreters and professional interpreter associations to work collaboratively and develop volunteer interpreter pool.
4. Obtain and check interpreters' credentials and references; do not utilize problematic interpreters.
5. Set up a contract for telephonic interpretation services; ask about non-profit rates.
6. Make interpreter training on domestic violence and sexual assault a condition of interpretation provision contract.

### **Resources:**

1. **American Translators Association (ATA)** <http://www.atanet.org>
2. **Association of Language Companies (ALC)** <http://www.alcus.org/AboutAlc/Member/>
3. **Language Line** <http://www.languageline.com/page/welcome/>
4. **National Association of Judiciary Interpreters and Translators (NAJIT)** <http://www.najit.org>
5. **National Center for State Courts (NCSC)** lists the contacts for interpreter programs in its member states. [http://www.ncsconline.org/D\\_Research/CIConsortContactspage.html](http://www.ncsconline.org/D_Research/CIConsortContactspage.html)
6. **Volunteer Match** <http://www.volunteermatch.org/>

## IDENTIFYING WHO PAYS FOR INTERPRETERS IN CIVIL PROCEEDINGS

### **Guidelines:**

1. Know your state's statutes and procedures by consulting the ABA chart.
2. Identify all available funding sources in collaboration with other agencies serving LEP clients.
3. Budget for interpretation services (an allowable item for federal grant recipients).

### **Resources:**

1. **State Statutes Requiring the Provision of Foreign Language Interpreters to Parties in Civil Proceedings.** American Bar Association's Commission on Domestic Violence, 2008: Chart listing state statutes, who gets an interpreter, if it is mandatory or discretionary, who pays, procedures for obtaining an interpreter, and other relevant information. [http://www.abanet.org/domviol/docs/Foreign\\_Language\\_Interpreters\\_Chart\\_12\\_2008.pdf](http://www.abanet.org/domviol/docs/Foreign_Language_Interpreters_Chart_12_2008.pdf)

## CODES OF CONDUCT FOR INTERPRETERS

### **Guidelines:**

Interpreters must observe the codes of conduct that govern professional practice.

1. Confirm the interpreter has signed the code of conduct adopted by your state (if it has one) or of the professional organization the interpreter is a member of.
2. If not, have interpreter sign a copy to conform to the state's code or use the code of the National Association of Judiciary Interpreters and Translators.
3. When hiring an interpreter, test the interpreter on the interpreter's code of conduct.
4. If you have concerns about an interpreter's credentials, discuss them with interpreter or interpretation services agency first and then inform attorneys, judge, bailiff, or court clerk.
5. Learn how to report impediments to compliance in court and quasi-legal settings and/or to an interpreter certification body.
6. When advocates have information that could be an impediment to compliance (e.g., the interpreter is a batterer) but that information is confidentially obtained (e.g., they are providing services to the interpreter's partner) they cannot publicly state such a reason to both maintain confidentiality and avoid slander. Advocates can bring another interpreter and use her/him only if the court agrees.

### **Resources:**

1. **Code of Conduct, National Association of Judiciary Interpreters and Translators**  
<http://www.najit.org/documents/NAJIT%20Code%20of%20Ethics.pdf>

# HOW TO WORK WITH INTERPRETERS AND ADDRESS PROBLEMS

## PREPARING THE CLIENT ABOUT WORKING WITH AN INTERPRETER

1. Assess a client's English fluency/lack of proficiency objectively.

Does a victim speak English well enough to:

- a. Tell a story and answer questions?
- b. Listen to communications in English and understand them?
- c. Be understood by the court?
- d. Understand everyone in the court (considering regional accents, speed, etc)?

If client doesn't want an interpreter because she/he speaks some English; explain that limited English isn't enough to understand court proceedings.

2. Prepare client to understand court and interpretation procedures: this increases empowerment; remember the interpreter is a conduit for telling a victim's story.
3. Explain the interpretation process to the client, specifically:
  - a. The interpreter is a conduit
  - b. Speak 1-2 sentences at a time, speak clearly
  - c. The interpreter may ask you to slow down, or repeat something
  - d. Don't interrupt interpreter, let her/him finish
  - e. The interpreter will interpret everything
  - f. Don't ask the interpreter not to interpret something
  - g. Don't ask questions or raise concerns to interpreter, ask the speaker
  - h. Don't have side conversations with interpreter
4. If advocate is going to have to interpret, explain: "I'll be in a different role, I will repeat everything that's said whether it is true or not."

## PRE-SESSION PREPARATION BETWEEN ADVOCATE & INTERPRETER

1. Schedule additional time for any meeting where an interpreter is needed.
2. Check with interpreter and client before interview that they do not know each other.
3. Inform the interpreter in advance about the nature of the proceeding, who is involved, special terminology or vocabulary that will be used, etc. so the interpreter is well prepared.
4. English fluency is essential for competent interpretation. Difficulty speaking and understanding English is a strong indication that the interpreter is not qualified. If you and the interpreter are having difficulty communicating in English, than you should get another interpreter.
5. Let interpreter speak briefly to LEP person to size up their communicative style and needs (i.e., 'register'); that way interpreter can make necessary adjustments to improve communication.
6. For telephonic interpretation, ask interpreter for her/his identification number.
7. For untrained community/ad hoc interpreters:
  - a. Assess if they have knowledge, skills and abilities to do the job.

b. Instruct them:

- Do interpret everything: do not omit, edit, guess, or polish what is said
- Do ask speakers to pause, slow down, repeat, clarify
- Don't answer for LEP person
- Don't explain, restate or answer questions to client, have side conversations or give advise, even if client asks you – interpret everything back

## IN THE INTERVIEW

1. Speak directly to and maintain eye contact with LEP individual.
2. Use first person.
3. Use plain English, avoid jargon, do not use acronyms.
4. Speak slowly and clearly with regular pauses.
5. Speak one sentence at a time (sentence-by-sentence interpretation may seem awkward, but a rhythm is quickly established, and the interview flows smoothly).
6. Ask one question at a time.
7. Allow the interpreter to finish interpreting before speaking again.
8. Don't allow the interpreter to answer for the LEP person.
9. Don't ask interpreter to explain, restate, or not interpret something that was said.
10. If you think the interpreter is editing, adding, subtracting, or summarizing remind the interpreter to repeat everything that is said.
11. To fill out forms or review documents, ask interpreter to provide sight translation of written materials. The interpreter should only be translating the written material verbally for the LEP person. The interpreter should not be filling out the forms for the LEP person, or answering any questions about the forms. Any questions should be directed to the advocate.
12. Cues that the interpretation is not going well are:<sup>29</sup>
  - a. Interpretation is too short or too long.
  - b. Interpreter keeps asking for information to be repeated or clarified.
  - c. Interpreter is having side conversations with client.
  - d. Client corrects or seems to disagree with interpreter.
  - e. Client starts speaking in broken English.
13. If you're having trouble understanding the interpreter's English, ask for clarification. If you're still having problems get a different interpreter.
14. Debrief with interpreter at the end about how the interview went and any concerns; this helps all parties work better together.
15. Do not ask interpreters to:
  - a. Explain procedures, forms, or services.
  - b. Take LEP individual they are interpreting for to an office, counter, or appointment.
  - c. Console, set at ease, or reassure LEP clients to help them cope with difficult testimony or proceedings.
  - d. Provide cultural explanations or information because the interpreter 'understands' the client's culture.

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<sup>29</sup> *Working with Interpreters* (n.d.) Vera Institute of Justice

## ADDRESSING PROBLEMS

### **Document the Problem, Take Notes On**

- Inaccuracies, errors, omissions, summaries, incorrect terminology
- Gender, cultural, or class biases
- Conflicts of interest, lack of neutrality and other impediments to compliance
- Breaches of confidentiality
- Interpreters stepping out of role and giving advice, trying to influence victims

### **Explain How You Identified the Problem**

- Based on what the client has told you
- You speak the target foreign language and have detailed notes
- You do not speak the foreign language but took notes on your concerns and then debriefed with the client to determine what went wrong
- You obtained information from client, family, or community informants
- You reviewed case transcripts of proceedings, and compared the transcripts to what the client and/or other witnesses told you

### **1. Problems with Quality of Interpretation**

Most problems arise from using bilingual speakers untrained to interpret; these include:

- a. *Lack of fluency.* Interpreter is not fluent in English and/or foreign language.
- b. *Lack of accuracy.* Incomplete interpretation, interpreter cannot keep up with subject matter, is ignorant of specialized terminology, is uncomfortable with domestic or sexual violence terms, etc.
- c. *Lack of neutrality.* Interpreter gives advice, doesn't reveal a conflict of interest.
- d. *Breaking confidentiality.* Interpreter discusses or shares case information.
- e. *Allowing personal and cultural bias.* Interpreter's biases filter and/or change what is said.
- f. *Providing 'cultural interpretation.'* Explaining cultural practices, offering themselves up as cultural experts, reflecting their own or their larger ethnic community's cultural biases.
- g. *Allowing gender bias.* Blaming victims, emphasizing traditional roles for women, admonishing them for asserting their rights.

### **2. Other Problematic Situations**

In small communities when an interpreter knows both the victim and batterer:

- a. Interpreter or advocate should disclose this to the court as a potential conflict of interest or bias, and allow the court to make a determination on whether a conflict or bias exists.
- b. Attorneys or advocates should be prepared to suggest an alternative interpreter to the court, e.g., telephonic interpretation by an interpreter from the adjoining county.

If the advocate knows the interpreter assigned to the case is a batterer:

- a. When advocates may have this information through confidential means (e.g., by providing services to interpreter's partner) they cannot publicly state this reason.
- b. Advocate can bring another interpreter to interpret if the court will agree to it.

### **Report the Problem to...**

Advocates should report all problems to the victim's attorney. It is the attorney's role to notify the court about any interpretation issues, and raise the appropriate objections on the record. Only if client is unrepresented, should advocates report problems to others.

- *Victim's Attorney:* If the victim is represented, inform the attorney who will raise the issue with the judge.
- *Officers of the Court:* Write a note describing the issue and give it to the bailiff or court clerk who will alert the judge.
- *Interpretation Services Providers:* Inform court interpreter coordinator (if there is one), agency that provided in-person or telephonic interpreter.
- *Professional Association:* If the interpreter is on a list or is certified, notify the appropriate agency and file a complaint.

### **What Can Happen Next**

- Judge and/or attorneys decide if there is a problem and if a new interpreter is needed.
- For conflicts of interest, the judge assesses the nature of the conflict and whether it will impede the interpreter's ability to interpret.
- Attorneys of either party may decide to take steps to exclude information or testimony marred by poor interpretation.
- Advocate can ask interpretation services agency to assign a different interpreter (for quasi-judicial setting).
- For confidentiality breaches, advocates must take steps to ensure client's safety.

When bilingual advocates are asked to interpret:

- a. Advocates must not interpret at trials, motion hearings, custody hearings, arraignments, or divorce hearings.
- b. Advocates must decline to interpret. If a judge insists that an advocate serve as the interpreter, despite the advocate's objections, the advocate should request that the objection is placed on the record.
- c. Advocates must not interpret if no attempt to find a qualified interpreter (either in-person or for telephonic interpretation) was made before the advocate is asked to interpret.
- d. Advocates must not interpret at attorney-client interviews.
- e. ONLY in the interest of a victim's immediate safety and when a qualified interpreter is not available in person or via telephone, an advocate can step in to interpret.
- f. Advocates who are interpreting must stop when they are:
  - losing the message
  - summarizing because they are unable to retain the information or interpret particular concepts or terminology
  - confused and/or confusing the client
  - finding the vocabulary being used is beyond their language ability.

### **Resources:**

1. **Supreme Court of Ohio Advisory Committee on Interpreter Services.** *The Role of Interpreters in the Legal System.* Training video for judges and new court interpreters on the use of interpreters in the courtroom.  
<http://www.supremecourt.ohio.gov/JCS/interpreterSvcs/interpreterVideo.asp>



## SERVING INDIVIDUALS WITH LIMITED ENGLISH PROFICIENCY WHO ARE DEAF, HARD OF HEARING OR DEAF-BLIND

### **Guidelines:**

1. Develop program guidelines to comply with the stipulations of the Americans with Disabilities Act.
2. Utilize national and or local resources to educate agency staff.
3. Identify who serves deaf and hard of hearing victims in your area.
4. Determine the language interpretation needs of LEP victims who are deaf, deaf-blind or hard of hearing.
  - Do not assume they understand or use American Sign Language (ASL).
  - Identify what communication methods they use, including if they use ASL, a foreign sign language, home signing, tactile signing, and/or Computer Assisted Realtime Transcription. Lip reading and passing notes are not acceptable communication methods.
  - Do not assume a high or low level of English fluency.
  - Do not assume a high or low level of literacy in their native language and/or English.
5. Establish procedures to obtain relay interpretation if needed – a sign language interpreter and a spoken language interpreter.
6. Develop procedures to obtain other assistive technologies, such as Computer Assisted Realtime Transcription (CART) for the LEP, deaf, deaf-blind and/or hard of hearing individual.
7. Learn to work with sign and spoken language interpreters, and how relay interpretation and assistive technologies work.

### **Resources:**

1. **Abused Deaf Women's Advocacy Services:** Training, technical assistance and publications on safety protocols and interpretation in ASL. <http://www.adwas.org>
2. **American Bar Association's Commission on Domestic Violence:** Materials on sign language interpretation in civil representation. [http://www.abanet.org/domviol/trainings/Interpreter/CD-Materials/safety\\_protocol.pdf](http://www.abanet.org/domviol/trainings/Interpreter/CD-Materials/safety_protocol.pdf)
3. **National Resource Center on Domestic Violence:** *Violence in the Lives of Persons who are Deaf or Hard of Hearing* Materials includes directory of organizations (listed by state) providing services to Deaf victims/survivors. [http://new.vawnet.org/category/index\\_pages.php?category\\_id=966#980](http://new.vawnet.org/category/index_pages.php?category_id=966#980)
4. **Ohio State: Working with Interpreters for Deaf or Hard of Hearing Persons in the Courtroom.** [http://www.sconet.state.oh.us/Judicial\\_and\\_Court\\_Services/interpreter\\_svcs/default.asp](http://www.sconet.state.oh.us/Judicial_and_Court_Services/interpreter_svcs/default.asp)
5. **Registry of Interpreters for the Deaf, Inc.** <http://www.rid.org>



## IX. APPENDIX

- A. *State Statutes Requiring the Provision of Foreign Language Interpreters to Parties in Civil Proceedings*  
AMERICAN BAR ASSOCIATION'S COMMISSION ON DOMESTIC VIOLENCE
- B. *Code of Ethics and Professional Responsibilities*  
NATIONAL ASSOCIATION OF JUDICIARY INTERPRETERS AND TRANSLATORS
- C. *Self-Assessment of Speaking Proficiency*  
INTERAGENCY LANGUAGE ROUNDTABLE
- D. *Self-Assessment of Foreign Language Listening Proficiency*  
INTERAGENCY LANGUAGE ROUNDTABLE
- E. *Court Interpretation in Protection Order Hearings Judicial Benchcard*  
NATIONAL CENTER FOR STATE COURTS
- F. *Interpreting the Interpreter*  
ISABEL FRAMER
- G. *Fluency, Accuracy, Neutrality and Safety Checklist for Bilingual Speakers*  
ASIAN & PACIFIC ISLANDER INSTITUTE ON DOMESTIC VIOLENCE
- H. *Model Language Access Plan*  
COMMUNITY LEGAL SERVICES OF PHILADELPHIA

## State Statutes Requiring the Provision of Foreign Language Interpreters to Parties in Civil Proceedings

12/2008

| State & Statute                                            | Who gets an interpreter?                                                                                         | Mandatory or discretionary? | Who pays?                                                                                                                                                                        | Procedure (also check local rules)                                                                   | Other Information                                                                                                                                                                                                                                                                                            |
|------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------|-----------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Alaska</b><br>No statute found                          |                                                                                                                  |                             |                                                                                                                                                                                  |                                                                                                      | Courts are now using VAWA money to provide access to the AT&T Language Line for limited English proficient parties in protection order proceedings.                                                                                                                                                          |
| <b>Arizona</b><br>17B A.R.S. Rules Fam. Law Proc., Rule 16 | The court may appoint an interpreter of its own selection and may fix the interpreter's reasonable compensation. | Discretionary               | The compensation shall be paid out of funds provided by law or by one or more of the parties as the court may direct, and may be taxed as costs, in the discretion of the court. | Not specified in statute, but see 2 Ariz. Legal Forms § 43.1, Motion For Appointment Of Interpreter. | This is a general procedural rule, not a special rule regarding an interpreter requirement. Such rules are generally not included in this chart, but this one explicitly applies to protection order hearings, which are allowed proceedings in Family Court under 17B A.R.S. Rules Fam. Law Proc., Rule 24. |

Prepared by the Washington Coalition of Sexual Assault Programs, on behalf of the American Bar Association Commission on Domestic Violence <http://www.abanet.org/domviol>  
 We are always grateful to receive corrections and updates at [abacdvt@abanet.org](mailto:abacdvt@abanet.org)

**The law is constantly changing! Please independently confirm the data you find here.**

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 The opinion, findings, and conclusions expressed in this document are those of the author and do not necessarily reflect the view of the U.S.D.O.J.

## State Statutes Requiring the Provision of Foreign Language Interpreters to Parties in Civil Proceedings

12/2008

| State & Statute                                                                                                                            | Who gets an interpreter?                                                                                                                                                                                                                                                                                                                                                                                                                                                  | Mandatory or discretionary? | Who pays?                                                                                                                                                                                                                                                                                                                                                                        | Procedure (also check local rules)                                                                                                                                                                  | Other Information                                                                                                                                                                                                                                                                                                                                                   |
|--------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Arkansas</b><br>A.C.A. §16-64-111, §16-10-127                                                                                           | A person who cannot speak or understand the English language and who is a party to any civil proceeding or a witness therein is entitled to an interpreter to assist that person throughout the proceeding. §16-64-111(a); see also §16-10-127(c).                                                                                                                                                                                                                        | Mandatory                   | The individual requiring the interpreter pays unless unable to do so, in which case the court must appoint an interpreter. §16-64-111(b)(1).<br><br>If the court appoints the interpreter, the Director of the Administrative Office of the Courts is to pay the interpreter from funds specifically appropriated for this purpose. §16-64-111(b)(3); § 16-10-127(e)(1) and (2). | The person requiring the interpreter may retain an interpreter directly, or the court may appoint one. §16-64-111(b)(1).                                                                            |                                                                                                                                                                                                                                                                                                                                                                     |
| <b>California</b><br>California Standards of Judicial Administration 2.10; Cal. Evid. Code § 755 (regarding domestic violence proceedings) | An interpreter is needed if, upon examination by the court, a party cannot understand and speak English well enough to participate fully in the proceedings and to assist counsel. CA Stds. J. Admin., Std. 2.10.<br><br>In any DV proceeding, a party who does not proficiently speak or understand English is entitled to an interpreter to interpret the proceedings and to assist communication between that party and his or her attorney. Cal. Evid. Code § 755(a). | Mandatory                   | In civil cases, interpreters' fees shall be paid by the litigants, in such proportions as the court may direct, to be taxed and collected as other costs. Ann.Cal.Gov.Code § 68092.<br><br>However, in DV cases, the interpreter's fees shall be waived for a party who needs an interpreter and appears <i>in forma pauperis</i> . Cal. Evid. Code § 755(b).                    | If the court's examination reveals that an interpreter is needed, the case file is marked to ensure that an interpreter will be available in subsequent proceedings. CA Stds. J. Admin., Std. 2.10. | Domestic violence protection order forms must be available in languages other than English. Ann. Cal. C.C.P. § 185(b).<br><br>Evidence Rule 755, which requires the court to appoint interpreters in DV cases, indicates that compliance with Rule 755 is only required to the extent that VAWA funds (or "funds from sources other than the state") are available. |

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## State Statutes Requiring the Provision of Foreign Language Interpreters to Parties in Civil Proceedings

12/2008

| State & Statute                                               | Who gets an interpreter?                                                                                                                                                                                                         | Mandatory or discretionary?                                                                          | Who pays?                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | Procedure (also check local rules)                                                                                                                                                                                                                                                                                                                                                                                                                                         | Other Information |
|---------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------|
| <p><b>District of Columbia</b><br/>DC ST § 2-1901 et seq.</p> | <p>Any "communication-impaired" person (including a person who does not speak English) who is a party or witness before a court at any stage of a civil proceeding is entitled to an interpreter.<br/>DC ST § 2-1901, -1902.</p> | <p>Mandatory if the person requests an interpreter, otherwise discretionary.<br/>DC ST § 2-1902.</p> | <p>An appointed interpreter shall receive a reasonable fee for the interpreter's services, paid by the Office of Interpreter Services. Except in cases in which the communication-impaired person is financially unable to obtain adequate interpreter services, the court may direct that all or part of the salaries, fees, expenses, and costs incurred for interpreter services be apportioned among the parties in a civil action or may be taxed as costs in a civil action.<br/>DC ST § 2-1912.</p> | <p>The person entitled to an interpreter must notify the court of the need for an interpreter at least 5 business days prior to the person's appearance. However, failure to notify the appointing authority of the need for an interpreter is not a waiver of the right to an interpreter. When the court knows that a communication-impaired person will be before it, the court shall inform the party of the right to a qualified interpreter.<br/>DC ST § 2-1903.</p> |                   |

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| <p><b>Georgia</b><br/>           GA Rules for Use of Interpreters, Rule I (Georgia State Court Rules); Appendix A contains Uniform Rule for Interpreter Programs.<br/>           Ga. Code Ann. §15-6-77(e)(4)</p> | <p>The court shall appoint an interpreter for any party or witness who cannot readily understand or communicate in spoken English. An interpreter is needed and shall be appointed when the judge determines, after examining the party or witness, that the party cannot understand and speak English well enough to participate fully in the proceedings and to assist counsel. Rule for Use of Interpreters I(A); Appendix A, 1.</p> <p>A petitioner or respondent in a petition for a prosecution order to protect a victim of domestic violence, stalking, or sexual assault shall be provided with a foreign language or sign language interpreter when necessary for the hearing on the petition. Ga. Code Ann. §15-6-77(e)(4).</p> | <p style="text-align: center;">Mandatory</p> | <p>There is no uniform state-wide compensation system. Local courts are to develop and test approaches to compensation consistent with established guidelines. Ga. Code Ann. § 17-12-40.</p> <p>A party has the right to an interpreter at his or her own expense. If the court approves a pauper's affidavit in any civil case, an interpreter will be provided at no cost. The expense of an interpreter may be assessed as costs. Appendix A, III and VI: Uniform Rules.</p> <p>The reasonable cost of the interpreter in a family violence case shall be paid by the local victim assistance funds. Ga. Code Ann. §15-6-77(e)(4)</p> | <p>The court should examine a party or witness on the record to determine whether an interpreter is needed if: (1) a party or counsel requests such an examination; (2) it appears to the court that the party or witness may not understand and speak English well enough to participate fully in the proceedings, or (3) if the party or witness requests an interpreter. The fact that a person for whom English is a second language knows some English should not prohibit that individual from being allowed to have an interpreter. Advance notice of use of an interpreter shall be provided to all parties and to the court.<br/>           Appendix A, I: Uniform Rules.</p> |                   |

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|-------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------|
| <b>Hawaii</b><br>Policies for Interpreted Proceedings in the Courts of the State of Hawaii (HI Court Rules) | An interpreter is needed if, upon examination by the court, a party or witness is unable to speak English so as to be understood directly or if a party is unable to understand or speak English sufficiently to comprehend the proceedings and to assist counsel in the case. | Mandatory                   | Not specified in policy                                                                                                                                                                                                                                                                                       | If it appears that a party does not understand or speak English well enough to participate fully in the proceedings, the court, with or without a motion, should conduct an examination on the record to determine whether a court interpreter is needed and the case file should be clearly marked to ensure that an interpreter will be present when needed in any subsequent proceeding. |                   |
| <b>Idaho</b><br>I.C. § 9-205                                                                                | Any party in a civil action who does not understand or speak the English language is entitled to an interpreter to interpret the proceedings to and the testimony of that party.                                                                                               | Mandatory                   | The court shall determine a reasonable fee for interpreter services which shall be paid out of the district court fund.<br>I.C. § 9-205.<br><br>Interpreters are entitled to receive a fee for their services to be paid out of the county treasury by order of the court in civil actions.<br>I.C. § 9-1603. | If any party needs an interpreter, the party shall notify the court at least 14 days in advance (or as soon as practicable). If a party fails to do so without good cause and the trial or hearing is postponed as a result, the court may impose costs and expenses against the party or the party's attorney. I.R.C.P. 43(b)(2).                                                          |                   |
| <b>Indiana</b><br>IC 34-45-1-3                                                                              | Every person who cannot speak or understand the English language and who is a party to or a witness in a civil proceeding is entitled to an interpreter to assist the person throughout the proceeding.                                                                        | Mandatory                   | If appointed by the court, the interpreter shall be paid in a manner determined by the court. IC 34-45-1-4.                                                                                                                                                                                                   | The interpreter may be retained by the party or appointed by the court. IC 34-45-1-4.                                                                                                                                                                                                                                                                                                       |                   |

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| <b>Iowa</b><br>44 I.C.A. § 622A.1 et seq. | Every person who cannot speak or understand the English language and who is a party to or a witness in any civil proceeding is entitled to an interpreter to assist the person throughout the proceeding. §622A.2. | Mandatory                   | An interpreter shall be appointed without cost to the person requiring assistance if that person is a witness in a civil case or if the person is indigent. In civil cases, the court taxes the cost of an interpreter the same as other court costs. §622A.3.<br><br>If the court appoints an interpreter for an indigent person, the fee is paid from a revolving fund. §622A.4. | Not specified in statute                                                                              |                   |
| <b>Kansas</b><br>K.S.A. § 75-4351 et seq. | Any person whose primary language is one other than English and who is a party to or a witness in a civil proceeding is entitled to an interpreter. K.S.A. § 75-4351.                                              | Mandatory                   | The court may provide for the payment of the interpreter's fee out of funds appropriated for the operation of the courts and agencies. The interpreter's fee may not be assessed against the person whose primary language is one other than English. K.S.A. § 75-4352.                                                                                                            | The judge shall appoint an interpreter. K.S.A. § 75-4352.                                             |                   |
| <b>Kentucky</b><br>KRS § 30A.400 et seq.  | Persons who cannot communicate in English and who are parties to civil cases, are entitled to an interpreter. KRS § 30A.410.                                                                                       | Mandatory                   | The interpreter is paid by the court out of the State Treasury. KRS § 30A.410-20.                                                                                                                                                                                                                                                                                                  | The court is responsible for scheduling the interpreter. Admin. Proc. of the Ct. of Just. IX, Sec. 5. |                   |

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|------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------|
| <b>Maine</b><br>5 M.R.S.A. § 51                            | A person who does not speak English is entitled to an interpreter when they have a personal or property interest that is the subject of a court proceeding.                                               | Mandatory                   | Payment by the State for an interpreter in civil matters is within the discretion of the court.                                                                                  | Not specified in statute                                                                                                                                                                                                        |                                                              |
| <b>Maryland</b><br>MD Rules, Rule 16-819; MD Code § 9-114. | A person who is a party or witness and who does not speak or understand English well enough to participate fully in court proceedings is entitled to an interpreter. Rule 16-819(c).                      | Mandatory                   | The court may tax the interpreter's fees and expenses as part of the costs of the case, or they may be paid by the county where the proceedings were initiated. MD Code § 9-114. | A person who needs an interpreter should apply to the court by submitting an approved form available from the court clerk not less than five days before the proceeding for which the interpreter is requested. Rule 16-819(b). |                                                              |
| <b>Massachusetts</b><br>M.G.L.A. 221C § 1 et seq.          | A non-English speaker has the right to an interpreter throughout a legal proceeding. M.G.L.A. 221C § 2.                                                                                                   | Mandatory                   | The coordinator of court interpreter services shall facilitate the payment of interpreters. M.G.L.A. 221C §7                                                                     | The judge shall appoint an interpreter. M.G.L.A. 221C § 2.<br><br>The failure of a non-English speaker to request an interpreter does not waive the right to an interpreter. M.G.L.A. 221C § 3.                                 |                                                              |
| <b>Michigan</b><br>M.C.L.A. 600.2950c                      | The family division of the circuit court in each county may provide a domestic violence victim advocate to assist victims in obtaining protection orders. The victim advocate may provide an interpreter. | Discretionary               | Not specified in statute                                                                                                                                                         | The DV victim advocate coordinates the interpreter's participation                                                                                                                                                              | This provision applies only to victims of domestic violence. |

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|-----------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------|
| <b>Minnesota</b><br>M.S.A. § 546.42 et seq.   | Any person who, because of difficulty in speaking or comprehending the English language, is unable to fully understand the proceedings in which the person is required to participate, or when named as a party to a legal proceeding, is unable by reason of the deficiency to obtain due process of law, is entitled to an interpreter throughout the proceedings. M.S.A. § 546.42. | Mandatory                   | The fees and expenses of the interpreter should be determined and paid by the court before whom the proceeding takes place. M.S.A. § 546.44.                                                                                                                                       | The presiding judicial officer shall appoint an interpreter. M.S.A. § 546.43.                                                                                                                                                                                                                                                                                     |                   |
| <b>Mississippi</b><br>MS ST § 9-21-71 et seq. | An interpreter shall be appointed if the court determines that the party cannot understand and speak English well enough to participate fully in any court proceeding. MS ST § 9-21-71; MS ST § 9-21-79.                                                                                                                                                                              | Mandatory                   | The court may appoint a volunteer interpreter or a paid interpreter. MS ST § 9-21-75.<br>A volunteer interpreter shall be paid reasonable expenses by the court. MS ST § 9-21-81.<br>The expense of providing the interpreter may be taxed by the court as costs. MS ST § 9-21-81. | The court should determine whether an interpreter is needed if a party or counsel requests an interpreter or if it appears to the court that a party's English is insufficient to participate fully in the proceedings. If an interpreter is needed, the file shall be clearly marked to ensure that an interpreter will be present when needed. MS ST § 9-21-79. |                   |
| <b>Missouri</b><br>V.A.M.S. 476.800 et seq.   | Any non-English-speaking person who is a party to any court proceeding is entitled to an interpreter. V.A.M.S. 476.803.                                                                                                                                                                                                                                                               | Mandatory                   | In civil proceedings, the interpreter's fees and expenses may be taxed as costs by the court to the parties. The court may require advance deposits from the parties for this purpose. V.A.M.S. 476.806.                                                                           | The party requiring the translator must provide prior notice to the court of the need for an interpreter as required by the local rules. V.A.M.S. 476.803.                                                                                                                                                                                                        |                   |

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| <b>Nebraska</b><br>Neb. Rev. Stat. § 20-150 et seq.; Neb. Rev. Stat. § 25-2401 et seq.  | Any person unable to communicate the English language involved in any legal proceeding is entitled to an interpreter to assist with the preparation and trial of his or her case. § 25-2403. | Mandatory                                                                                                                                                                                                                | A court-appointed interpreter shall be paid out of the General Fund with funds appropriated to the Supreme Court for that purpose. § 20-159; § 25-2406.                                                                                                                                                                                                                                   | Not specified in statute                                                                                                                                                                                              |                   |
| <b>New Jersey</b><br>New Jersey Rules of Court, Directive 3-04 (Interpreting Standards) | The judiciary should generally assign interpreters to interpret all phases of court proceedings for any party with limited proficiency in English. Standard 1.2.                             | Discretionary, but there is a presumption that an interpreter is necessary when a person or their attorney represents that the person is unable to understand or communicate readily in English. Standard 1.1 (Comment). | All costs for interpreting are borne by the Judiciary except in very limited instances. Directive 3-04. The judiciary may seek reimbursement if it incurs expenses that could have been avoided but for the failure of a party or attorney to give reasonable attention to the matter, or for an interpreter that an attorney or pro se litigant requests but fails to use. Standard 1.4. | The court assigns an interpreter. Standard 1.2.                                                                                                                                                                       |                   |
| <b>New Mexico</b><br>N. M. S. A. 1978, § 38-10-1 et seq.                                | Any non-English-speaking person who is a party to any court proceeding is entitled to an interpreter. § 38-10-2; § 38-10-3.                                                                  | Mandatory                                                                                                                                                                                                                | The court pays the interpreter's fee. § 38-10-3.                                                                                                                                                                                                                                                                                                                                          | A party requiring an interpreter must advise the clerk of the court as soon as practicable before a hearing of the need for the interpreter. NMRA Rule 1-103. See local rules for notice and procedural requirements. |                   |

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|--------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------|
| <b>Oregon</b><br>ORS 45.272 et seq.        | Any non-English-speaking party to a civil proceeding is entitled to an interpreter. ORS 45.275.                                                                                                                                                                          | Mandatory                   | No fee is charged to the non-English-speaking party for the interpreter's services in interpreting the party's testimony to the court, and if the party is unable to pay then no fee is charged for the interpreter's services in interpreting the proceedings to that party. The interpreter is paid by the county in a county or justice court (or by the city in a municipal court, or by the state in a circuit court). The court may allow the interpreter's fee to be taxed as costs. ORS 45.275. | The court shall appoint a qualified interpreter in a civil or criminal proceeding. ORS 45.275                                                                                      |                   |
| <b>South Carolina</b><br>SC ST § 15-27-155 | The court may appoint an interpreter for any party or witness in a civil proceeding who does not speak sufficient English to testify. However, the court may waive the use of an interpreter if the court finds that it is not necessary for the fulfillment of justice. | Discretionary               | The fees for interpreting services may be paid out of the general fund of the State from funds appropriated to the Judicial Department, or paid by one or more of the parties as the court may direct, or taxed as costs based on the discretion of the court.                                                                                                                                                                                                                                          | Not specified in statute                                                                                                                                                           |                   |
| <b>Tennessee</b><br>Sup. Ct. Rule 42       | Appointing an interpreter for a person with limited English proficiency is a matter of judicial discretion in any court proceeding.                                                                                                                                      | Discretionary               | The costs of interpreters in civil cases shall be taxed as court costs.                                                                                                                                                                                                                                                                                                                                                                                                                                 | A party or counsel may request an interpreter, or the court may determine that a participant in a legal proceeding has a limited ability to understand and communicate in English. |                   |

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|-------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Texas</b><br>No statute found                |                                                                                                                                                           |                             |                                                                                                                                                                                                                                                                                                    |                                    | Although there is no statewide provision for foreign language interpreters in civil cases, TX Civ. Prac. & Rem. § 21.02 et seq. provides for the discretionary appointment of Spanish language interpreters in certain counties. |
| <b>Utah</b><br>Jud. Admin. Rule 3-306           | A party or witness in any legal proceeding who has a limited ability to understand or communicate in English is entitled to an interpreter. 3-306 (6)(A). | Mandatory                   | The administrative office of the court pays the interpreter's fees and expenses in certain cases, including those filed under the Cohabitant Abuse Act and Stalking Injunctions. In all other civil cases, the party engaging the services of the interpreter pays the interpreter. 3-306 (12)(A). | Not specified in statute           |                                                                                                                                                                                                                                  |
| <b>Virginia</b><br>Va. Code Ann. § 8.01-384.1:1 | A court may appoint an interpreter for any non-English-speaking party or witness in a civil proceeding.                                                   | Discretionary               | To the extent of available appropriations, an interpreter may be compensated from the general fund of the state treasury or assessed against either party as costs in the court's discretion.                                                                                                      | Not specified in statute           | Payment for interpreter from state funds is limited to "available appropriations."                                                                                                                                               |

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|-------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Washington</b><br>RCW 2.43.010 et seq. | Any non-English-speaking party to a legal proceeding is entitled to an interpreter. RCW 2.43.030.                                                                                                                                                                                                | Mandatory                                                                                                                                                                        | In civil proceedings, the non-English-speaking person bears the cost of the interpreter unless that person is indigent, in which case the cost is an administrative cost of the court. The cost of providing the interpreter is a taxable cost of any proceeding in which costs ordinarily are taxed. RCW 2.43.040. | Not specified in statute.                                                                                                                                                                                                                                                                                                                     | RCW 26.50.055 (regarding the appointment of interpreters in domestic violence cases) provides that an interpreter shall be provided for any party who requires one pursuant to RCW 2.43. |
| <b>Wisconsin</b><br>W.S.A. 885.38         | Any "limited English proficient" party, witness, alleged crime victim, parent or legal guardian of a minor party, juror, person seeking assistance of a court clerk, or any other person affected by the proceedings, if the court determines that the appointment is necessary and appropriate. | The court "shall advise" of the right to a qualified interpreter at public expense.<br><br>A court "may authorize" the use of a qualified interpreter in actions or proceedings. | The relevant court or public defender shall pay the necessary expenses of providing qualified interpreters.                                                                                                                                                                                                         | At any point in the court proceeding, for good cause, the person with limited English proficiency may request that a qualified interpreter be appointed.<br><br>The delay resulting from the need to locate and appoint a qualified interpreter may constitute good cause for the court to toll the time limitations in the court proceeding. |                                                                                                                                                                                          |

Prepared by the Washington Coalition of Sexual Assault Programs, on behalf of the American Bar Association Commission on Domestic Violence <http://www.abanet.org/domviol>  
 We are always grateful to receive corrections and updates at [abacdvt@abanet.org](mailto:abacdvt@abanet.org)

**The law is constantly changing! Please independently confirm the data you find here.**

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## National Association of Judiciary Interpreters & Translators

### CODE OF ETHICS AND PROFESSIONAL RESPONSIBILITIES

#### ■ *Preamble*

Many persons who come before the courts are non- or limited-English speakers. The function of court interpreters and translators is to remove the language barrier to the extent possible, so that such persons' access to justice is the same as that of similarly-situated English speakers for whom no such barrier exists. The degree of trust that is placed in court interpreters and the magnitude of their responsibility necessitate high, uniform ethical standards that will both guide and protect court interpreters in the course of their duties as well as uphold the standards of the profession as a whole.

While many ethical decisions are straightforward, no code of ethics can foresee every conceivable scenario; court interpreters cannot mechanically apply abstract ethical principles to every situation that may arise. This Code is therefore intended not only to set forth fundamental ethical precepts for court interpreters to follow, but also to encourage them to develop their own, well-informed ethical judgment.

#### ■ *Applicability*

All NAJIT members are bound to comply with this Code.

#### **Canon 1. Accuracy**

Source-language speech should be faithfully rendered into the target language by conserving all the elements of the original message while accommodating the syntactic and semantic patterns of the target language. The rendition should sound natural in the target language, and there should be no distortion of the original message through addition or omission, explanation or paraphrasing. All hedges, false starts and repetitions should be conveyed; also, English words mixed into the other language should be retained, as should culturally-bound terms which have no direct equivalent in English, or which may have more than one meaning. The register, style and tone of the source language should be conserved.

Guessing should be avoided. Court interpreters who do not hear or understand what a speaker has said should seek clarification. Interpreter errors should be corrected for the record as soon as possible.

#### **Canon 2. Impartiality and Conflicts of Interest**

Court interpreters and translators are to remain impartial and neutral in proceedings where they serve, and must maintain the

appearance of impartiality and neutrality, avoiding unnecessary contact with the parties. Court interpreters and translators shall abstain from comment on matters in which they serve. Any real or potential conflict of interest shall be immediately disclosed to the Court and all parties as soon as the interpreter or translator becomes aware of such conflict of interest.

#### **Canon 3. Confidentiality**

Privileged or confidential information acquired in the course of interpreting or preparing a translation shall not be disclosed by the interpreter without authorization.

#### **Canon 4. Limitations of Practice**

Court interpreters and translators shall limit their participation in those matters in which they serve to interpreting and translating, and shall not give advice to the parties or otherwise engage in activities that can be construed as the practice of law.

#### **Canon 5. Protocol and Demeanor**

Court interpreters shall conduct themselves in a manner consistent with the standards and protocol of the court, and shall perform their duties as unobtrusively as possible. Court interpreters are to use the same grammatical person as the speaker. When it becomes necessary to assume a primary role in the communication, they must make it clear that they are speaking for themselves.

#### **Canon 6. Maintenance and Improvement of Skills and Knowledge**

Court interpreters and translators shall strive to maintain and improve their interpreting and translation skills and knowledge.

#### **Canon 7. Accurate Representation of Credentials**

Court interpreters and translators shall accurately represent their certifications, accreditations, training and pertinent experience.

#### **Canon 8. Impediments to Compliance**

Court interpreters and translators shall bring to the Court's attention any circumstance or condition that impedes full compliance with any Canon of this Code, including interpreter fatigue, inability to hear, or inadequate knowledge of specialized terminology, and must decline assignments under conditions that make such compliance patently impossible.





## SELF-ASSESSMENT OF SPEAKING PROFICIENCY

The following Self-Assessment of Speaking Ability is intended to guide those who have not taken a U.S. Government-sponsored speaking test. It will produce an estimate of your speaking ability and is in no way a replacement for the existing ILR Skill Level Descriptions.

Please respond “yes” or “no.”

To estimate your rating, start a Level 1 and see how many times you answered “yes.” If you answered “yes” to each statement in the level, move on to the next level. If you answered “no” to one or more statements, then you are not at that level.

If you answered “yes” to all the statements at a level, but at the next level you have a mixture of “yes” and “no” answers, then you may be at the plus level. For example, if you answered “yes” to all the statements at Level 1, but have a mixture of responses at Level 2, you may be at Level 1+ in speaking, provided that you had more “yes” answers than “no” at Level 2.

| SELF-APPRAISAL OF SPEAKING PROFICIENCY |                                                                                                                    | Yes | No |
|----------------------------------------|--------------------------------------------------------------------------------------------------------------------|-----|----|
| <b>S-1</b>                             | I can tell/ask someone how to get from here to a nearby hotel, restaurant, or post office.                         |     |    |
|                                        | I can order a simple meal.                                                                                         |     |    |
|                                        | I can arrange for a hotel room or taxi ride.                                                                       |     |    |
|                                        | I can buy a needed item such as bus or train ticket, groceries, or clothing.                                       |     |    |
|                                        | I can ask and answer simple questions about date and place of birth, nationality, marital status, occupation, etc. |     |    |
|                                        | I can make social introductions and use greeting and leave-taking expressions.                                     |     |    |
| <b>S-2</b>                             | I can handle conversations about familiar topics in an organized way.                                              |     |    |
|                                        | I can produce speech with some organization on familiar topics that extend beyond my daily routine.                |     |    |
|                                        | I can describe my present or most recent job or activity in some detail.                                           |     |    |
|                                        | I can give detailed information about my family, my house, and my                                                  |     |    |

|            |                                                                                                                                                                                   |  |  |
|------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|
|            | community.                                                                                                                                                                        |  |  |
|            | I can interview an employee, or arrange for special services (taking care of details such as salary, qualifications, hours, specific duties).                                     |  |  |
|            | I can give a brief autobiography including immediate plans and hopes.                                                                                                             |  |  |
|            | I feel confident that when I talk with native speakers on topics such as those mentioned above, they understand me most of the time.                                              |  |  |
|            | I can take and give simple messages over the telephone, or leave a message on voice mail.                                                                                         |  |  |
|            | I can describe in detail a person or place that is very familiar to me.                                                                                                           |  |  |
|            | I can report the facts of what I have seen recently on television news or read in the newspaper.                                                                                  |  |  |
|            | I can talk about a trip or some other everyday event that happened in the recent past or that will happen soon.                                                                   |  |  |
| <b>S-3</b> | I feel that I have a professional command, rather than just a practical one, of the language.                                                                                     |  |  |
|            | There are few grammatical features of the language that I try to avoid.                                                                                                           |  |  |
|            | I rarely find myself unable to finish a sentence because of linguistic limitations (grammar or vocabulary).                                                                       |  |  |
|            | I find it easy to follow and contribute to a conversation among native speakers.                                                                                                  |  |  |
|            | I can speak to a group of educated native speakers on a professional subject and be sure I am communicating what I want to, without obviously irritating them linguistically.     |  |  |
|            | I can, on a social occasion, defend personal opinions about social and cultural topics.                                                                                           |  |  |
|            | I can cope with difficult situations such as broken-down plumbing, an undeserved traffic ticket, or a serious social or diplomatic blunder made by a colleague or me.             |  |  |
|            | I can use the language to speculate at length about abstract topics such as how some change in history or the course of human events would have affected my life or civilization. |  |  |
|            | In professional discussions, my vocabulary is extensive and precise enough to enable me to convey my exact meaning.                                                               |  |  |
|            | I am able to adjust my speech to suit my audience, whether I am talking to university professors, close friends, employees, or others.                                            |  |  |

|            |                                                                                                                                                                     | Yes | No |
|------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|----|
| <b>S-4</b> | I consistently use the language in a sophisticated and nuanced way to effectively communicate with great precision.                                                 |     |    |
|            | I practically never make a grammatical mistake.                                                                                                                     |     |    |
|            | I can carry out any job assignment as effectively as if in my native language.                                                                                      |     |    |
|            | I can persuade someone effectively to take a course of action in a sensitive situation such as to improve his/her health, reverse a decision or establish a policy. |     |    |

|            |                                                                                                                                                                                                                                                                       |  |  |
|------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|
|            | I can prepare and give a lecture at a professional meeting about my area of specialization and debate complex aspects with others.                                                                                                                                    |  |  |
|            | I naturally integrate appropriate cultural and historical references in my speech.                                                                                                                                                                                    |  |  |
|            | I can eloquently represent a point of view other than my own.                                                                                                                                                                                                         |  |  |
|            | I can lead the direction of the discussion (friendly, controversial, collaborative).                                                                                                                                                                                  |  |  |
|            |                                                                                                                                                                                                                                                                       |  |  |
| <b>S-5</b> | My language proficiency is functionally equivalent to that of a highly articulate well-educated native speaker and reflects the cultural standards of a country where the language is natively spoken.                                                                |  |  |
|            | I can use the language with complete flexibility and intuition, so that speech on all levels is fully accepted by well-educated native speakers in all of its features, including breadth of vocabulary and idiom, colloquialisms, and pertinent cultural references. |  |  |
|            | My pronunciation is typically consistent with that of well-educated, highly articulate native speakers of a standard dialect.                                                                                                                                         |  |  |
|            | My vocabulary is extensive and precise, allowing me to consistently convey complex ideas and details.                                                                                                                                                                 |  |  |



## SELF-ASSESSMENT OF FOREIGN LANGUAGE LISTENING PROFICIENCY

To estimate your level of proficiency, start at the lowest level and respond to each statement. For each statement, respond “yes” or “no.” If a statement describes your ability only some of the time, or only in some contexts, you should answer “no.” If you answer “yes” to every statement in the level, your ability is probably at least at that level. Move on to the descriptions at the next level. If you answer “no” to one or more statements, then you are likely not at that level.

If you answer “yes” to all the statements at one level, and have a majority of “yes” answers at the next higher level, then you may be at a “plus” level. For example, if you answer “yes” to all the statements at Level 1, but have a mixture of responses at Level 2 (almost all “yes” answers), your self-assessed ability may be at Level 1+.

| <b>SELF-ASSESSMENT OF LISTENING PROFICIENCY</b> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | <b>Yes</b> | <b>No</b> |
|-------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|-----------|
| <b>L1</b>                                       | In everyday conversation with people speaking the standard dialect, I can understand speech that is slow and clear.<br>I can understand basic directions and instructions, such as how to get to a local store.<br>I can understand questions and answers about basic survival needs, such as meals, lodging, transportation and time.<br>I can understand routine questions about my job, my immediate family and myself.<br>I can understand simple statements about a person’s background and occupation.<br>If I cannot understand what a speaker tells me, I can understand the statement after it has been repeated or rephrased slowly and clearly. |            |           |
| <b>L2</b>                                       | When people are speaking the standard dialect at a normal rate, I can understand their speech when it is spoken with some repetition and rephrasing, can understand speech about everyday topics, for example common personal and family news, well-known current events, and routine situations at work.<br>I can understand spoken descriptions of different places, for instance the geography of a country or location that is familiar.                                                                                                                                                                                                               |            |           |

|           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |  |  |
|-----------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|
|           | <p>I can understand uncomplicated stories about current, past and future events.</p> <p>I can understand at least some details from announcements made over a loudspeaker.</p> <p>I can usually understand the main idea and basic facts from a short news report on the radio or television.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |  |  |
| <b>L3</b> | <p>I can accurately follow all conversations among native speakers who are speaking at a normal rate of speech.</p> <p>I rarely, if ever, have to ask speakers to paraphrase or explain what they have said.</p> <p>I can correctly infer meanings that are not directly stated.</p> <p>I can understand discussions of ideas and concepts, including proposals and speculation.</p> <p>I can understand someone's opinion and the points used to support the opinion.</p> <p>I can often, if not always, detect the attitudes and feelings of a speaker.</p> <p>I can understand speech in a professional setting concerning my field of expertise or some technical subjects, such as a lecture or a panel discussion.</p>                                                                                                                                                                                                                                                          |  |  |
| <b>L4</b> | <p>I can understand almost all forms and styles of speech pertinent to professional needs.</p> <p>I can fully understand all speech that involves the use of extensive and precise vocabulary, including subtle distinctions between word choices.</p> <p>I can follow arguments with unpredictable presentation, for example, in informal and formal speeches covering editorial and literary material.</p> <p>I can understand language adjusted for different audiences and for different purposes.</p> <p>I can readily and accurately infer meanings and implications.</p> <p>I am able to understand the main ideas of speech in some non-standard dialects.</p> <p>I can fully understand spoken interactions among native speakers at public gatherings, such as meetings, seminars, task groups or conferences.</p> <p>I can fully understand a speech, oral report or briefing given to a group of native speakers concerning any topic directed to a general audience.</p> |  |  |
| <b>L5</b> | <p>My comprehension is fully equivalent to that of a well-educated native listener.</p> <p>I can fully understand all forms and styles of speech. This includes slang, jokes and puns.</p> <p>I can understand speech even when it is distorted by other noise.</p> <p>I can fully understand regional dialects, highly colloquial and idiomatic language.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |  |  |



## COURT INTERPRETATION IN PROTECTION ORDER HEARINGS JUDICIAL BENCHCARD

Judges have a critical role in ensuring access to justice in protection order proceedings. Petitioners with limited English proficiency (LEP) face special challenges when they attempt to use the judicial system. Courts should provide qualified interpreters to assist the parties in protection order proceedings to place non-English speaking and English-speaking parties of equivalent background and education on equal footing before the bench. See *Resources* for additional information.

### HOW DO I KNOW IF A PARTY OR WITNESS NEEDS AN INTERPRETER?

- When an attorney or a pro se litigant advises the court that a party or witness has limited English proficiency and requests an interpreter.
- When any party involved in a case does not appear to understand court proceedings in English.
- If you are unsure, ask a few questions to determine the party's level of English understanding.

#### Sample Questions to Assess Understanding of English

- ❖ Please tell the court your name.
- ❖ Please also tell us how old you are.
- ❖ How did you come to court today?
- ❖ What kind of work do you do?
- ❖ How comfortable are you in proceeding with this matter in English?
- ❖ Would you like the court to provide you with free assistance in understanding this proceeding?

- Determine the language of the party using language ID cards
- *If the party cannot read, or if language ID cards are not available, contact a court interpreter or a commercial telephonic service, if you have access to one, to determine the language of the party requiring services.*

### HOW DO I APPOINT AN INTERPRETER?

#### HOW DO I LOCATE AN INTERPRETER?

- If your local court has an interpreter services office, contact it to request an interpreter.
- If your court does not have someone responsible for securing interpreters, then: (1) Check a Federal or State certified list; (2) Check a locally accredited list; and (3) Call local universities and community-based organizations.
- Under only **very** limited circumstances, use a commercial telephonic interpreter service, if you have access to one.

#### HOW DO I KNOW IF THE INTERPRETER IS QUALIFIED?

- Interpreting requires **specialized knowledge of**: legal and other specialized terminology, slang, idioms and dialectal variations.
- Interpreting requires **specialized skills, such as**: memory, comprehension, attentiveness, and multi-tasking.
- *Being bilingual does not qualify a person to interpret. Children and relatives should **never** be used to interpret. Judges, attorneys, and court personnel **should not** function as interpreters.*
- If you are unsure, ask a few questions to determine the interpreter's qualifications.
- If you are assured that the interpreter is qualified, administer an oath of interpretation.

## Sample Questions to Assess Interpreter Qualifications

- ❖ What training or credentials do you have as an interpreter?
- ❖ Are you certified in the State of \_\_\_\_\_?
- ❖ Are you familiar with the Code of Professional Responsibility for interpreters? What are its main points?
- ❖ How did you learn English?
- ❖ How did you learn (*non-English language*)?
- ❖ Do you have any potential conflict of interest in this case? (E.g., do you know any of the parties in this case?)

## Sample Interpreter's Oath

Do you solemnly swear or affirm that you will interpret accurately, completely and impartially, follow all official guidelines established by this court for legal interpreting or translating, and discharge all of the duties and obligations of legal interpretation and translation?

## WHAT SHOULD I EXPECT FROM THE INTERPRETER?

A good interpreter will:

- Interpret in the first person and address the court in the third person, to keep a clear record.
- Interpret everything said in the courtroom, with no additions, omissions, explanations, or personal input.
- Request clarification if a phrase or word is not understood.
- Use appropriate interpreter tools such as a language dictionary and note-taking materials.
- Be as unobtrusive and professional as possible.

## HOW CAN I ASSIST COMMUNICATION IN INTERPRETED PROCEEDINGS?

- Instruct all parties as to the role of the interpreter.
- Allow the interpreter to view the court file to review names, parties and unique vocabulary.
- Allow the interpreter to briefly converse with the non-English speaker to ensure understanding of dialect and pronunciation differences.
- Instruct all participants to speak loudly and clearly.
- Allow only one person to speak at a time.
- Speak directly to the party or witness, not to the interpreter.
- Speak and read slowly and clearly enough for the interpreter to keep up during simultaneous interpretation.
- Speak in logical, meaningful phrases, pausing to allow the interpreter to keep the pace, during consecutive interpretation (witness testimony).
- Do not ask the interpreter to explain or restate anything said by the party and do not allow attorneys to ask that of an interpreter.
- Allow the interpreter to take a break after 30 minutes.

## RESOURCES

- U.S. Department of Justice Web Site (<http://www.lep.gov>)
- Model Code of Professional Responsibility for Interpreters in the Judiciary ([http://www.ncsconline.org/wc/publications/Res\\_CtInte\\_ModelGuidePub.pdf](http://www.ncsconline.org/wc/publications/Res_CtInte_ModelGuidePub.pdf))
- State Court Interpreter Programs ([http://www.ncsconline.org/D\\_Research/CourtInterp.html](http://www.ncsconline.org/D_Research/CourtInterp.html))
- The National Association of Judiciary Interpreters and Translators (NAJIT) (<http://www.najit.org>)



# LAPTOP

Legal Assistance Providers' Technical Outreach Project

***INTERPRETING THE INTERPRETER:  
WHAT EVERY LAV ATTORNEY AND ADVOCATE NEEDS TO KNOW  
ABOUT LEGAL INTERPRETATION***

**BY ISABEL FRAMER<sup>1</sup>**

## **Introduction**

As an interpreter working with judges, attorneys, law enforcement, and advocates, I would like to share with you how I became involved in the interpreting field and what I have learned through years of experience, training, and research. Similar to many, I believed the myth that anyone who is bilingual is capable of being a competent interpreter, which is exactly how I approached my first court assignment. Thank goodness the case was a minor misdemeanor. I did everything that an untrained, unqualified interpreter would do. I stood silent while the judge spoke to the defendant, and when the judge finished speaking, I provided a summary of what I thought the judge had said. I was not familiar with all the legal terminology that the judge used, and had to leave some of it out. In addition, the judge was upset and yelled at the defendant. I provided a summary interpretation with a smile because I felt sorry and embarrassed for the defendant. I am not proud of how I handled this first court assignment, but this experience prompted me to research the field of legal interpreting and translating, obtain training, read case law, and ultimately work towards certification. I will share with you some of the basic principles I have learned throughout the years.

We take pride in a legal system based on fundamental fairness; without it, we have no system of justice. Legal issues surrounding victims of domestic violence and sexual assault involve constitutional rights including equal protection under the law and equal access to justice. Victims of domestic violence and sexual assault must have a voice—their own voice—in order to tell their side of the story, and they must be empowered to speak. Without a trained and qualified interpreter, a victim who is a non-English speaker or limited English speaker will not be properly heard: it will be as if he or she has no voice. When we fail to provide competent interpretation, we jeopardize a person's physical and emotional well being—indeed, we may even jeopardize their life.

## **The Right to an Interpreter**

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<sup>1</sup> The author acknowledges the editorial assistance of Nancy Festinger, NAJIT editor and Chief Interpreter for the US District Court of the Southern District of New York and Caitlin Glass, LAPTOP partner and staff attorney with Legal Aid Services of Oregon.



The first case to recognize that a non-English speaking defendant had a right to an interpreter was United States ex rel. Negron v. State of New York.<sup>2</sup> The U.S. Circuit Court of Appeals for the Second Circuit overturned the murder conviction of a Spanish-speaking defendant because he was not provided a complete interpretation of everything that was said during his trial.<sup>3</sup> That case inspired Congress to enact the Court Interpreters Act of 1974, 28 USC § 1827, which requires Federal Courts to appoint a certified interpreter for all criminal and civil cases initiated by the United States.<sup>4</sup> The statute also defines the categories of certified, otherwise qualified and language skilled interpreters.<sup>5</sup> The statute indicates that only the Administrative Office of the United States Courts can deem a certification test valid and reliable. The statute also outlines the three modes of interpretation that are permitted in legal settings: simultaneous, consecutive, and sight translation.<sup>6</sup>

In addition, the Federal Rule of Evidence (FRE) 604 states that qualifications of an expert are also applicable to interpreters.<sup>7</sup> FRE 702 defines an expert as someone who has experience, training, skill, education, or knowledge in a particular field. Some state courts have adopted the same rule or similar rules.<sup>8</sup>

On the state level, legislation and state supreme court rules govern the field in a similar manner to the federal statute. Case law in many states has developed pertaining to the role of interpreters and translators in legal settings. State courts as well as professional associations have developed guidelines regarding interpreter ethics and professional responsibilities.<sup>9</sup>

In addition to federal and state court cases, statutes and rules governing interpreters, Title VI of the Civil Rights Act of 1964, Executive Order No.13,166 states that federally-funded recipients are required to provide competent language assistance to all limited English-proficient persons at the recipients' own expense.<sup>10</sup>

## **Understanding the Profession**

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<sup>2</sup> 434 F.2d 386 (1970).

<sup>3</sup> *Id.* at 389-90.

<sup>4</sup> *See* 28 U.S.C. § 1827(d)(1).

<sup>5</sup> *See* 28 U.S.C. § 1827(b)(1), (c)(2).

<sup>6</sup> *See* 28 U.S.C. § 1827(k).

<sup>7</sup> FED. R. EVID. 604.

<sup>8</sup> FED. R. EVID. 702.

<sup>9</sup> *See, e.g.*, Wis. SCR 63.001 et seq. (2002); Del. Admin. Directive No. 107, *available at* <http://courts.delaware.gov/Courts/Supreme%20Court/Administrative%20Directives/?ad107.pdf>; Mass. Trial Ct., CODE OF PROFESSIONAL CONDUCT FOR COURT INTERPRETERS OF TRIAL COURT, *available at* <http://www.mass.gov/courts/admin/planning/codeofconduct.html>; CODE OF PROFESSIONAL RESPONSIBILITIES, *available at* <http://www.nmcourts.com/newface/court-interp/guidelinesandpolicies/codeofconduct.pdf>; CODE OF PROFESSIONAL RESPONSIBILITY FOR INTERPRETERS SERVING VIRGINIA COURTS, *available at* <http://www.courts.state.va.us/interpreters/code.htm> [*hereinafter* VIR. PROF. RESP.].

<sup>10</sup> *See* 42 U.S.C. § 2000d-1.

### *Translation v. Interpretation*

To understand the field, one must first understand the significant differences between interpretation and translation. Interpretation is an *oral medium*, rendering an oral message from one language into another. Translation is a *written medium*, rendering a text in one language into an equivalent text in another language. Each requires different skills, training, and knowledge. The fact that someone is an interpreter does not necessarily mean that they possess the skills for producing reliable translations and vice versa. Of course, interpreting and translating are complementary skills and quite a few people have mastered both.

Being bilingual does not make one automatically equipped to serve as an interpreter or translator. An interpreter must possess native-like fluency in the two or more languages interpreted in order to pick up all nuances and accurately convey each element of the information. Native-like fluency is the highest level of bilingualism one can achieve. This level cannot be achieved through an immersion program, a few years of high school, or a few quarters of studying a second language at a college or university. In addition to native-like fluency in both languages, interpreters must also have knowledge of interpreting techniques, significant practice in instant and accurate language conversion, plus knowledge of ethics and the role of interpreters in legal proceedings, as well as knowledge of any specialized or technical terminology used in the field.

The interpreter is the nexus between all of those involved with the case (the parties, attorneys, law enforcement, victim advocates, witnesses, other court support services, etc.) and the administration of justice. When untrained and untested interpreters are used to bridge the communication gap, the competency of each and every player is placed at risk. That is why trained and qualified interpreters are necessary for all parties involved in judicial or quasi-judicial settings.

### *Interpreting in Quasi-Judicial and Judicial Settings*

Legal interpretation is divided into *quasi-judicial* and *judicial settings*. Quasi-judicial interpreting is typically performed out-of-court but these meetings are often related to court proceedings, for example: attorney-client and attorney-witness interviews. The interviews may take place in an office, a hallway, the courthouse, a jail, or a hospital. Judicial interpreting, by contrast, takes place primarily in courts of general and limited jurisdiction in criminal, civil, and administrative law. These legal and quasi-legal scenarios can take place at the federal, state, or municipal level. Judiciary interpreters interpret both in judicial and in quasi-judicial settings. Therefore, the judiciary interpreter and translator must be familiar with legal and other technical terminology that could come up in any of these settings, such as domestic violence, forensic, medical, drugs, DNA, and psychological terminology. An interpreter must practice and develop the cognitive skills required for all three modes (simultaneous, consecutive, and sight translation) of interpretation. These skills cannot be developed overnight or in the course of a trial.

The *simultaneous mode* of interpretation is used during all court proceedings where the non-English speaking person is listening to the trial proceedings or when any parties or witnesses are speaking (during trial, whenever the judge is speaking to an officer of the court or any other person, legal arguments, etc.). The *consecutive mode* of interpretation is used when a non-English speaking person is giving testimony or when a judge or officer of the court is asking questions. *Sight translation* is when an interpreter orally renders a written text into another language (e.g. protection order forms). An interpreter assists all parties in the administration of justice, helping to put a non-English speaker on an equal footing with an English speaker.

An interpreter should not give an advantage or disadvantage to the non-English speaker.<sup>11</sup> In order to assist in the administration of justice, the interpreter must render everything said in the source language into the target language, in any of the three modes of interpretation, and must do so accurately, faithfully, and completely, without distorting the meaning or intent of the speaker, and without any changes in style or register. In short, the interpreter cannot omit, summarize, add, or edit anything in spoken or written form.

In legal and quasi-legal settings, interpreter prerequisites are established by state or federal law, or by local rule. Interpreters must become familiar with the requirements already established, and with the accepted professional practices. An example of such a practice is the use of direct speech. In legal settings, the interpreter becomes the voice of the speaker, interpreting in the same grammatical person as the speaker. In plea negotiations, for example, a defendant must enter a plea knowingly, voluntarily and of his own free will. If an interpreter speaks in the third person, as in “*He says he is guilty,*” the record will reflect the interpreter’s conclusion and not that of the defendant. Many cases have been reversed due to this error. In addition to inaccuracy of the record, if an interpreter uses indirect speech such as the third person, the product will only cause confusion to the parties. It is only when the interpreters are speaking for themselves that they will revert to the third person, i.e.: “Your honor, *the interpreter* would like to request a repetition.”

Another reason why the interpreter should use direct speech is to ensure that the non-English speaker develops direct communication and a relationship with the English speaker. The interpreter should not participate except to convey messages; the interpreter does not create messages. Direct communication and clear relationships are especially important for victims of domestic violence. Judges, attorneys, advocates and law enforcement officers are better able to evaluate first-hand information. When proper protocols are followed, appeals involving technicalities are minimized.<sup>12</sup>

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<sup>11</sup> See, e.g., Mass. Trial Ct., CODE OF PROFESSIONAL CONDUCT FOR COURT INTERPRETERS OF TRIAL COURT. R. 1.03(1), 1.03(5), available at <http://www.mass.gov/courts/admin/planning/codeofconduct.html>; CODE OF PROFESSIONAL RESPONSIBILITIES Canon 11, available at <http://www.nmcourts.com/newface/court-interp/guidelinesandpolicies/codeofconduct.pdf>; VIR. PROF. RESP. Canons 3-4, available at <http://www.courts.state.va.us/interpreters/code.htm>.

<sup>12</sup> See, National Association of Judiciary Interpreters and Translators position paper on the subject matter at <http://www.najit.org>.

## Scope of Practice and Ethical Issues

Interpreters have a limited scope of practice. Although the profession of legal interpretations and translations is difficult (due to the requirements of native-like fluency in both languages, specialized training, education, skills, knowledge, and expertise), the role of the interpreter is simple. The interpreter's role is to assist all parties in communicating accurately and competently. The interpreter is not an advocate for any of the parties and cannot give legal advice. Her expertise is limited to interpretations and/or translations and expertise in the role, procedures, and protocol of the field of legal interpretation and translation. When an interpreter steps out of her role, she exposes herself to challenges. An interpreter is not immune to criminal prosecution should the interpreter break the law, obstruct justice, or provide services that they are not competent to provide.

Judiciary interpreters and translators have ethics and professional responsibilities established by the profession, by statute, or by court rules. The role, ethics, and professional responsibilities of an interpreter are crucial for the uninterrupted nexus between all the parties.

A few of the most important canons of ethics are: 1) to be accurate and complete, 2) to avoid a conflict of interest whether the conflict is real or perceived, 3) to be impartial regardless of who is paying for the interpreter, 4) to maintain attorney-client privilege and 5) to adhere to rules of confidentiality/nondisclosure/privilege applicable to the specific setting and scope of practice.<sup>13</sup> Maintenance of high interpreter standards of conduct is important in promoting public confidence, not only of the interpreting and translating profession, but also in the administration of justice.

### *Accurate and Complete*

It is crucial that interpreters interpret everything completely and accurately, without omitting, summarizing, or adding.<sup>14</sup> This completeness includes accuracy of style or register of speech, and non-distortion of meaning of the source language even if it appears obscene, incoherent, non-responsive, or a misstatement. If not, then the non-English speaker is on unequal footing with an English speaker. Information that may be crucial is not conveyed and puts the non-English speaker at risk. In addition, omitting elements of testimony or information provided by a non-English speaker, such as

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<sup>13</sup> See, e.g., Wis. SCR §§63.01, 63.03, 63.05; Community and Court Interpreters of the Ohio Valley, CANONS OF ETHICS AND CONDUCT FOR COURT INTERPRETERS, nos. 2-4, available at <http://www.ccio.org/CCIO-CodeofEthics-Court.htm>; VIR. PROF. RESP. Canons 1, 3, 5, available at <http://www.courts.state.va.us/interpreters/code.html>.

<sup>14</sup> See, e.g., Wis. SCR §63.01; Mass. Trial Ct., CODE OF PROFESSIONAL CONDUCT FOR COURT INTERPRETERS OF TRIAL COURT R. 1.03(1), available at <http://www.mass.gov/courts/admin/planning/codeofconduct.html>; Utah Code of Judicial Administration, APPENDIX H: CODE OF PROFESSIONAL RESPONSIBILITY FOR COURT INTERPRETERS CANON 1, available at [http://utcourts.gov/resources/rules/ucja/append/h\\_intprt/apph.htm](http://utcourts.gov/resources/rules/ucja/append/h_intprt/apph.htm); VIR. PROF. RESP. Canon 1, available at <http://www.courts.state.va.us/interpreters/code.html>.

misstatements, obscene language, or even hesitations, could alter a judge's or investigating officer's perception of the non-English speaker.

Through personal observation and my work as a consultant reviewing appellate cases, I have had the opportunity to observe many cases dismissed, sentences or awards substantially reduced, or convictions or orders successfully reversed because the parties and court did not secure a trained and qualified interpreter. For example, in a domestic violence case, an officer with decent conversational skills but incomplete fluency in Spanish interviewed the alleged victim and missed the part where she said that the defendant was forcing her to have sex. As a result, a defendant who could have been charged with rape was instead charged with domestic violence assault - a charge that eventually was reduced and the defendant was sent back home to the victim.

### *Conflict of Interest*

If an actual conflict of interest or an appearance of a conflict of interest arises, the interpreter is to inform the court, the attorneys, and anyone else involved in the case.<sup>15</sup> It is important for interpreters to understand that such disclosure does not include privileged or confidential information. A conflict of interest may exist when interpreters are related to or have a close social relationship with a party or witness, are themselves potential witnesses, have been involved in the choice of counsel, have a financial or other interest in the outcome of the case, or served during the investigative phase of the case. Note that friends and family members are not neutral parties.

Attorneys and advocates for non-English speaking clients should carefully consider whether the potential interpreter is neutral.

### *Impartiality*

Interpreters should refrain from conduct that may give the appearance of bias and are bound to disclose any real or perceived conflict of interest.<sup>16</sup> They are not to permit themselves to be used as an investigator for any party to a case. Interpreters should not permit themselves to be used for communicating information to a party, a relative of a party, or a witness without the presence of the attorney or other officer of the court. Interpreters are not permitted to receive gifts or secondary remuneration above and beyond their set fees.

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<sup>15</sup> See, e.g., Wis. SCR §63.03; Utah Code of Judicial Administration, APPENDIX H: CODE OF PROFESSIONAL RESPONSIBILITY FOR COURT INTERPRETERS Canon 3, available at [http://www.utcourts.gov/resources/rules/ucja/append/h\\_intprt/apph.htm](http://www.utcourts.gov/resources/rules/ucja/append/h_intprt/apph.htm); VIR. PROF. RESP. Canon 3, available at <http://www.courts.state.va.us/interpreters/code.html>.

<sup>16</sup> See, e.g., Del. Admin. Directive No. 107, Canon 2, available at <http://courts.delaware.gov/Courts/Supreme%20Court/Administrative%20Directives/?ad107.pdf>; Mass. Trial Court, CODE OF PROFESSIONAL CONDUCT FOR COURT INTERPRETERS OF THE TRIAL COURT §1.03(1); Community and Court Interpreters of the Ohio Valley, CANONS OF ETHICS AND CONDUCT FOR COURT INTERPRETERS Canon 3, available at <http://www.ccio.org/CCIO-CodeofEthics-Court.htm>; Utah Code of Judicial Administration, APPENDIX H: CODE OF PROFESSIONAL RESPONSIBILITY FOR COURT INTERPRETERS Canon 3, available at [http://utcourts.gov/resources/rules/ucja/append/h\\_intprt/apph.htm](http://utcourts.gov/resources/rules/ucja/append/h_intprt/apph.htm).

At times, it is necessary to hire from outside of the jurisdiction to obtain an impartial interpreter. This may be advisable when the community is small or when the interpreter is a highly visible member of the community. It may be particularly necessary in domestic violence cases, where one of the parties has and is likely to continue to use tactics of intimidation. For example, in one case, the wife of an extremely influential man in his community and church alleged verbal and psychological abuse and sought help in a shelter for battered women. The husband contacted every interpreter in his community and threatened them, suggesting that they not interpret for his wife. In addition, it was alleged that one interpreter was purposely withholding information that the victim was providing in order to protect this influential member of the community. Other interpreters claimed to be very frightened and refused to interpret for the courts and/or any of the parties. Eventually law enforcement went out of the jurisdiction in order to obtain a qualified and neutral interpreter.

The following example illustrates the potential dangers of using non-neutral parties as interpreters. In a rape case of a minor, the police used the mother of the victim to interpret *Miranda* and police interrogations. During the reading of *Miranda*, the victim's mother did not interpret *Miranda*, but instead indicated to the alleged perpetrator that he "had better tell the truth, the whole truth." This particular police interview was tape-recorded. Subsequently, a bilingual attorney appointed to the case came across the tape-recorded interview and filed a motion to suppress. The suppression hearing never occurred, because the prosecutor and attorney entered into a plea agreement due to the possible *Miranda* violation. The defendant pleaded guilty to a reduced charge of gross sexual imposition and he received probation. As the mother of the victim, the interpreter in this case had an obvious conflict of interest and her interest in the case was such that it would have been impossible for her to remain impartial.

### *Attorney-Client Privilege*

Attorney-client privilege is extended to the interpreter and thus an interpreter cannot disclose information obtained during attorney-client interviews, unless the client waives the privilege.<sup>17</sup> It only can be overcome in exceptional circumstances. In addition to well-established laws regarding privilege and confidentiality with respect to any communication, documents, police and medical records, or other types of privileged communications, interpreters are bound by the profession's ethics to keep confidential any information obtained during the course of their professional assignments, even if that information is no longer confidential.<sup>18</sup>

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<sup>17</sup> See *State v. Christian*, 841 A.2d 1158, 1184 (Conn. 2004); *People v. Sin*, 718 N.Y.S.2d 333, 334 (2000); *People v. Alvarez*, 926 P.2d 365, 415 (Cal. 1996), *Insurance Co. North America v. Superior Ct of Los Angeles*, 166 Cal.Rptr. 880, 888 (Cal. App. 2 Dist. 1980). Attorneys may want to consider using one interpreter for attorney-client interviews and a different interpreter for court proceedings.

<sup>18</sup> See, Wis. SCR §63.06; CODE OF PROFESSIONAL RESPONSIBILITY FOR INTERPRETERS IN THE OREGON COURTS, no. 7, available at <http://www.ojd.state.or.us/osca/cpsd/interpreter/documents/ethicscode.pdf>; VIR. PROF. RESP. Canon 5, available at <http://www.courts.state.va.us/interpreters/code.html>.

## **Tips for Legal Assistance to Victims (LAV) Grant Attorneys and Advocates**

I would like to leave you with some suggestions to consider as you work with interpreters in your practice.

First, in addition to the need for the interpreter to understand his or her role, it is important for judges, attorneys, advocates, and law enforcement to become familiar with the laws and rules pertaining to interpreters.

Attorneys should document their request for a certified and/or qualified interpreter, through oral and written motions and objections. All conflicts, concerns, or objections should be raised on the record and at the time they occur because without a record they cannot be raised on appeal.

Next, it is vital for all entities involved in civil and criminal cases, including domestic violence shelters, victim advocacy groups, and medical personnel, to provide a copy of the canon of ethics and professional responsibility to their interpreters so that the interpreter is clear about what is expected. They also should require an interpreter to sign a confidentiality agreement that carefully describes the meaning and scope of the agreement. These steps will help to ensure that all parties are protected, including the interpreter.

Make sure that you are aware of the interpreter's credentials, training, and familiarity with the canons of ethics. Then, through the interpreter, you should introduce all relevant information to your limited English-speaking client about his right to an interpreter, and to the interpreter's confidentiality and neutrality.

Don't forget that you are in charge. If you see that the interpreter is having a separate conversation with the client, stop it and ask the interpreter to tell you exactly what each person has said. Then explain that the interpreter should not initiate or respond to any conversation without interpreting it first.

Finally, there is a rule that I always include when I speak to judges, attorneys, law enforcement, or advocates and that is, that the standard procedures and rules applicable to English speaking persons are also applicable to non-English speaking persons. You can ask: "If this were an English speaker, how would I proceed in this situation?" The answer is to treat the LEP person as you would any English speaker. Just because an interpreter is present, there is no reason to deviate from standard procedures already established by law or the particular organization.<sup>19</sup> To have an incompetent interpreter is tantamount to having no interpreter at all.<sup>20</sup>

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<sup>19</sup> Isabel Framer, *Getting It Right By Doing It Right: Mile Markers Along the Road Across the Linguistic Divide* (July 2003) (unpublished article, Federal Interagency LEP Working Group) (on file with author).

<sup>20</sup> NATIONAL ASSOCIATION OF JUDICIARY INTERPRETERS AND TRANSLATORS, *HANDBOOK FOR THE LEGAL PROFESSION: WORKING WITH INTERPRETERS* (1989).



## F.A.N.S. CHECKLIST FOR BILINGUAL SPEAKERS

Yes

No

### FLUENCY

(1a) Are you fluent in English?

(1b) Did you complete S-4 level and score 4 (Advanced Professional Proficiency) on ILR scale, *Self Assessment–Speaking Proficiency* test?

(2a) Are you fluent in the target foreign language?

(2b) Did you complete L-4 level and score 4 on ILR scale, *Self-Assessment of Foreign Language Listening Proficiency* test?

### ACCURACY

(3) Are you able to interpret in the consecutive or simultaneous mode accurately without adding, omitting, or summarizing?

(4) Are you familiar with legal terminology and specialized terminology of domestic violence & sexual assault in the source language?

### NEUTRALITY

(5) Can you avoid a conflict of interest or the appearance of a conflict of interest between you and your client?

(6) Can you stay in the interpreter’s role and avoid functioning in the advocate’s role?

(7) Could you be a potential witness in the case?

(8) Will you be interpreting for your client and not the batterer?

### SAFETY

(9) Will your interpretation void the attorney-client privilege?

(10) Will waiting till a qualified interpreter is found negatively affect a victim’s immediate safety?

(11) Will your safety be jeopardized?

If you answered “yes” to all of the above questions and no qualified interpreter is available, you can provide limited interpretation, but proceed with caution.

If you answered “no” to any question and you do not feel competent to interpret and a judge or attorney is pressuring you to interpret, you can state your reasons and request that your objection be placed in the record.



## LANGUAGE ACCESS POLICY

### I. GENERAL POLICY

- A. **Policy.** CLS delivers quality legal services to clients in their preferred language. CLS shall provide language services as needed to ensure that limited English proficient (“LEP”) clients have meaningful access to CLS services.
- B. **Responsibility.** It is the responsibility of the program and not the client to ensure that communications between staff and clients are not impaired as a result of the limited English proficiency of the client.
- C. **Non-discrimination; supplemental services.** The program shall not provide legal services to LEP clients that are restricted, delayed or inferior as compared to services provided to English proficient clients. The program may need to provide supplemental services to LEP clients that would not ordinarily be provided to an English proficient client so that they can reasonably benefit from CLS services.
- D. **Notice.** CLS shall post waiting room notices in multiple languages that free bilingual or interpreting services are available, and CLS shall note on its website and in materials distributed to potential clients or to those who may refer clients that CLS will provide bilingual help or interpreters at no cost as needed and that immigration status is not relevant to determining client eligibility.

### II. LANGUAGE DATA

- A. **Kemps.** All staff who open files or receive open files from other staff must ensure that the intake sheet and Kemps data correctly identify the primary language of the client and the need for an interpreter.
  - 1. **Primary Language:** A person’s preferred or primary language is the language in which they are most comfortable speaking. A client able to speak English may have a primary language other than English. If not obvious, the preferred or primary language should generally be chosen by the client herself. When in doubt as to which language is primary, enter the foreign language.
  - 2. **Interpreter box:** Check this box if the client is not fluent in English and therefore needs interpreting or bilingual services to assure effective communication. A check mark signals the need for language services. The box should be checked for any client who cannot communicate

*fluently* in English himself — regardless of whether past interpreting assistance was performed by CLS or some other party. Note that a client whose primary language is not English may or may not need an interpreter.

- B. **File notes.** All case handlers must make conspicuous notes in case files to indicate each client’s primary language, the need for an interpreter, and whether correspondence and other documents should be translated.
- C. **File notes - translation.** Staff shall inquire of all LEP clients, and record in Kemps notes and on the file whether the client is able to *read* in English, read in her preferred language, and which language is preferred for written communication such as correspondence. This information is essential to determine when document translations are needed to assure good communications.
- D. **Timekeeping.** All time spent by bilingual staff providing language services in cases must be recorded in Kemps under the Interpreting activity code for the client’s file. Time spent on language services not related to specific client files (e.g. interpreting at an outreach session or translating community education materials) must be recorded as well (the time can be charged to Special Grants - Language Access Project file number with the Interpreting activity code).

### III. IMMIGRATION AND CITIZENSHIP STATUS

- A. **General rule.** A client’s presence as a citizen, immigrant, refugee or other status, lawful or otherwise, is not relevant to determine eligibility for service except to the extent that the legal issue is based upon a particular status.
- B. **Status inquiry restriction.** Staff shall not inquire as to the citizenship or immigration status of a client unless it is directly relevant to the client’s case or problem or if the information is necessary to determine the client’s eligibility for referral to another program.
- C. **SSN.** Clients are entitled to service without the need to provide a Social Security number. Staff should follow existing protocol to “create” the required last 4 digits for clients who do not have or decline to provide a SSN (see attached Pennsylvania Legal Services protocol).
- D. **Confidentiality.** When a client’s status is relevant to the case or problem, staff are required to treat it as privileged information not to be disclosed to third parties without the client’s expressed consent. The consent must be documented in the file.

#### IV. BILINGUAL CASE HANDLERS

- A. **Bilingual case handlers preferred.** The preferred method of providing services to LEP clients is to use bilingual case handlers and support staff who are proficient in the client's preferred language. This method is much more efficient than the use of interpreters and translators.
- B. **Language sensitive case assignment.** Systems to assign clients to case handlers at intake and following intake should provide for assignment of clients to bilingual staff to the extent feasible, subject to controls to avoid overburdening bilingual staff, or creation of significant delays in service to clients based upon language ability.
- C. **Hiring.** CLS considers second language proficiency as a preferred quality in considering applicants for employment for all positions that have client contact. CLS seeks to enhance its ability to deliver services in multiple languages through the hiring of bilingual staff.
- D. **Workload adjustments.** Workload adjustments shall be made to reflect the additional work which may be required of bilingual and monolingual staff in delivering services to LEP clients.

#### V. DETERMINING NEED FOR LANGUAGE SERVICES

- A. **Types of language service:** Language services includes: assignment of bilingual advocates to LEP clients; interpreting by staff, contracted professional in-person and telephone based interpreters; volunteer community based interpreters; and translation services.
- B. **Initial assessment.** Staff at the point of first contact with clients shall make an initial assessment of the need for language services, and shall procure such services if they are needed to effectively communicate with the client at that stage of the process.
  - 1. **Determining primary language.** If difficulty is encountered by staff in identifying the primary language of the client, staff should use "I Speak" cards, multi-lingual interpreter posters, or call the telephone based interpreting service for assistance.
  - 2. **Subsequent assessment.** Case handlers who have subsequent contact with LEP clients shall review language needs.
- C. **Client request.** Language services shall be provided to any client upon request at no cost, unless it is apparent that the request is wholly unfounded.

1. Staff shall encourage LEP clients to use language services whenever there is any doubt as to the client's English language proficiency.
  2. Staff are prohibited from encouraging or requiring clients to bring others with them to interpret.
- D. **Staff decision.** Services shall also be provided when staff determines that such services appear necessary in order to communicate effectively with the client, despite the lack of a request from the client. Failure to provide language services when needed could impair the program's ability to provide quality legal services and may present ethical issues for the case handler.
1. In such cases, language services should be provided even if the client says it is not necessary.
  2. Staff may need to explain that language services will be provided to assist the case handler in providing quality legal services.
  3. Staff are encouraged to seek assistance from supervisory personnel or the Language Access Project to respond to such situations if difficulties are encountered.
- E. **Translation.** Translations shall be provided for LEP clients who can read better in languages other than English.
1. Translations need not be provided to clients unable to read in their primary language, unless this will facilitate communication with others who are assisting the client.
  2. Translations of client documents from another language into English shall be procured as needed. Should any question exist as to the nature or relevance of the document, staff should consider obtaining a sight (oral) translation first to determine if the cost of a written translation is justified.
- F. **Staff authority.** All staff are authorized to procure language services without the need for pre-approval from supervisory or administrative staff.

## VI. WHO MAY PROVIDE LANGUAGE SERVICES

- A. **Program responsibility.** The program must assure that competent language services are provided at no cost to the client and as an essential component of providing quality legal services.

- B. **Staff language competency.** Bilingual staff providing services in the client's language must be fluent in that language, with the exception of occasional, emergency or minor communications such as making an appointment.
- C. **Preferences - interpreters.** Interpreting service should be provided in the following preferential order:
1. Bilingual case handlers who deliver services in the client's primary language, without the need for interpreting, should be used whenever possible and consistent with the provisions of section IV of this policy;
  2. In house bilingual staff with interpreter training;
  3. Contracted professional in person or telephone based interpreters, the selection of which shall follow protocols for obtaining interpreter services;
  4. Community based organization or referring agency staff
    - a. Only at the insistence of the staff or client and after notice that CLS prefers to provide free in-house or contracted professional services;
    - b. Kemps notation of circumstances is required.
  5. Client friends and relatives. The use of adult relatives or friends of the client as interpreters shall be strongly discouraged by the case handler.
    - a. Such interpreters are permissible only after notice of our willingness to provide free professional assistance and at the client's insistence, both of which must be documented in Kemps and reported to LAP.
    - b. It may be necessary for the advocate to bring in an interpreter in addition to or instead of that provided by the client when necessary to ensure good communication or to avoid a conflict of interest between the interpreter and the client.
  6. Child interpreters restricted. The use of minor children or other clients to interpret is prohibited absent exceptional or emergency circumstances or at the insistence of the client.
    - a. The circumstances must be documented in the file, in Kemps and reported to Language Access Project staff in writing. The client must also have been notified of the availability of free language services. It is recommended that this notice be provided with the

assistance of an interpreter other than the child, including a telephone based interpreter.

- b. It may be necessary for the advocate to bring in an interpreter in addition to or instead of that provided by the client when necessary to ensure good communication or to avoid a conflict of interest between the interpreter and the client.

D. **Training.** Staff must be trained before working with interpreters.

E. **Translations**

- 1. Translations should be done by in house staff when available, in accordance with the translation protocol.
- 2. Translations may also be done, in accordance with protocol, by contractors.
- 3. No pre-approval is needed to procure translation services.

## VII. SCOPE OF LANGUAGE SERVICES

A. **General rule.** Language services shall be provided to the extent necessary to assure the quality of legal services rendered while minimizing delay or discomfort to the client.

B. **Interpreting**

- 1. **Conduit function.** Interpreters are expected to function solely as a conduit between the advocate and the client. Advocates should not expect interpreters to communicate with the client in the absence of the advocate with the exception of in-house interpreters who ordinarily communicate directly with English speaking clients for others.
- 2. **When required.** Staff should use interpreters to communicate with LEP clients during telephone calls, for intake, and for client interviews and meetings.
- 3. **Hearings.** Monolingual advocates should consider the need to bring an interpreter to hearings to facilitate client communication even if a court interpreter will be present to interpret the proceedings.

## C. Translations

1. Vital forms
  - a. CLS shall prepare and make available vital forms in an English/Spanish version, and obtain translations over time in other languages regularly encountered. The other languages shall be determined based on demographic, intake and other data and shall be reviewed periodically.
  - b. Examples: intake sheet; retainer agreement; release forms; and any forms signed by the client.
  - c. For other languages, staff should ensure that sight translation of English forms is provided in the client's preferred language.
2. Letters and other documents
  - a. Routine correspondence to the client and to others should generally be translated.
  - b. Translation of large documents such as a brief or bankruptcy petition should be provided at the discretion of the case handler, provided that any document that is to be signed by the client, at a minimum, shall be sight translated.
3. Community education - CLS shall undertake a process to translate all general client education materials into Spanish, and then into the other languages designated for vital forms.

## VIII. TRAINING

- A. **General rule:** CLS shall provide language access training to all existing staff who have regular contact with clients and to all such newly hired staff.
- B. **Scope:** The training will cover this policy, protocols for use of language services, how to work with interpreters, and other topics that are needed.
- C. **Bilingual staff:** CLS shall provide training for bilingual staff who may be called upon to provide interpreting assistance to other staff on the techniques used in interpreting, interpreter ethics, and other topics as needed.

## **IX. MONITORING AND ASSESSMENT**

### **A. Staff Responsibility**

1. Staff assigned to the Language Access Project shall be primarily responsible for monitoring program compliance with this policy.
2. LAP staff shall report regularly to the Executive Director.

### **B. Client Needs and Program Resources**

1. At least annually, CLS shall
  - a. generate intake statistics by primary language and by unit to determine the extent to which the program and its units are providing services to LEP clients
  - b. tabulate the number of bilingual staff on the payroll, and the number of languages spoken
  - c. tabulate the amount of staff time used to provide language services, the costs to procure outside language services and the extent to which services are utilized throughout the program
2. Every five years, CLS shall review available demographic data regarding the potentially eligible client population in terms of its linguistic makeup.
  - a. Such data will be compared to the existing client base to determine if apparent disparities exist
  - b. Legal management and the Language Access staff shall consider whether special efforts are needed to provide greater service to underserved language groups

- C. **Annual Review.** The language access policy and the supporting protocols shall be reviewed annually and amended as needed.

### **Addenda:**

1. Spanish and Cambodian Interpreting and Translating protocol
2. Language Services at CLS for Clients with Limited English Proficiency (protocol on telephone interpreting, in person interpreting and translation)
3. Quantum Request for Interpreting Services form
4. Language Line Document Translation Service Fax Order Form



5. CLS Staff Language Directory
6. Pennsylvania Legal Services Eligibility Manual excerpt: protocol for Developing an Unknown Social Security Number



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