Virginia Language Access Plan Manual

Office of the Executive Secretary

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Chapter 1 - Introduction

Interpreters frequently support courts by providing language access services throughout the Commonwealth of Virginia. Interpretation services ensure that court staff and judges can meaningfully communicate with limited English proficient parties in service events related to filed, predisposition court cases. Providing language access services upon request serves to protect the rights of parties with limited English proficiency and facilitates the fair and efficient administration of justice. Court interpretation for limited English proficient individuals is a specialized field which cannot be effectively performed without specialized training and skills. Additionally, court interpreters must adhere to strict codes of appropriate behavior. Properly trained court interpreters are impartial language professionals who provide a complete, accurate, and unaltered renditions of all communications among participants in court and during related legal proceedings.

In accordance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d) and applicable Federal funding statutes such as the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. §3789d(c)), courts receiving Federal financial assistance must take reasonable steps to ensure meaningful access to their programs and services by individuals with limited English Proficiency (LEP). Because a variety of issues arise when language access services are necessary in court proceedings, the Office of the Executive Secretary has compiled this Language Access Plan to share guidelines for policies and best practices. It is an important document for judges, clerks, court administrators, magistrates, attorneys, interpreters, and others because the Language Access Plan enhances the administration of justice by presenting a uniform method to manage spoken language interpretation services throughout the state.

This document no longer contains materials pertaining to interpreters for the deaf. That information can now be accessed under Americans with Disabilities Act (ADA).

Please contact the Foreign Language Services team within the Department of Judicial Services at flsleads@vacourts.gov with questions, comments, or suggestions.

Timeline

Through the fiscal year which ended June 30, 2007, court interpreter certification existed solely in the Spanish language and was provided via orientation courses and exams held within Richmond. Training was limited to Spanish language interpreters who passed an English test and translation written exam. Clerk offices were mainly responsible for anticipating needs, assigning a court interpreter, evaluating performance, and reviewing the payment for individual foreign language interpreters at every assignment.

After July 1, 2007, the Office of the Executive Secretary (OES) began a staff interpreter program to provide language interpreting services in the highest volume courts. This program expanded language certification and training opportunities, coordinated management of interpreting assignments across courts, and provided broader support for interpreters and the courts they

serve. Some courts accepted the opportunity to share coordination of language access services with staff interpreters and volunteered to host staff interpreters in local courts around Virginia. The mission of the Foreign Language Services Team is to assist individuals with limited English proficiency in overcoming language limitations to ensure universal access to Virginia's Judicial System. Toward that end, this division provides interpretation and sight translation services, certifies and hires high quality interpreters, and sets and maintains the highest professional standards for the provision of language services. As the program developed, the role of staff interpreters grew to include mentoring local certification candidates, reaching out to Limited English Proficient (LEP) communities, reviewing data about these populations, administering certification training and testing, processing payment vouchers, establishing a centralized scheduling and request procedure, and evaluating and counseling contract interpreters.

In 2009, OES began a period of collaboration and consultation with the US Department of Justice. During this evaluation of language access services provided within Virginia courts, work continued to ensure meaningful access to those with LEP. Some of the enhancements to the program within that time include:

- Developing resources such as translations of court forms, local brochures, and complaint forms to make courts more accessible
- Performing outreach into LEP communities to provide notice about language access services and recruiting foreign language resources who are interested in providing court interpretation services
- Increasing training for interpreters, court staff, judicial officers, and stakeholders
- Modifying systems for capturing and evaluating data about language service events

Since then, the staff interpreter program has expanded to include additional locations. It has bolstered interpreting services within certain venues and has supported coverage within rural and urban courts on a more regional basis. Staff interpreter linguists have expanded services to support courts requiring interpreters in languages other than Spanish and provide a centralized method to coordinate document translations, either through the Foreign Language Services Team or under an established contract for remote language access services. In order to make certified resources more available in distant locations, staff interpreters utilize technology. This involves relying on interpretation equipment, scheduling interpreters, and providing coverage for remote interpreting assignments.

Projects

The Foreign Language Services Division has expanded to include staff in languages other than Spanish. They also assist courts in securing interpreters in languages of lesser diffusion. They have developed industry-standard translation guidelines and have established a method for courts to secure translations. The team has expanded remote interpretation support for courts with fewer language resources while collecting empirical data about the volume of cases and

the impact of the use of interpreters within Virginia courts. The team collaborates with other states to share information and develop options for courts to consider when seeking ways to address language access challenges. They have developed training for language access providers and staff. This covers essential information about how interpreters are expected to provide services within courts. Staff training includes details about the ethical guidelines for language access providers and how to secure language access services for those with limited English proficiency. Currently, the team is developing continuing education training so that certified interpreters within Virginia will periodically provide proof of continuing education to maintain certification status.

Training and Maintenance of Language Access Plan

OES periodically trains judicial officers and court staff on this Language Access Plan. Opportunities for group instruction are when new judicial staff begin employment, at annual conferences, and during scheduled judicial trainings. Additionally, the Department of Judicial Services (DJS) within OES is available to provide clerk offices with technical assistance and support through direct communication and sight visits. A particular office and DJS may also collaborate to develop training and resources for a specific location's demographics or area of concern. In combination with these efforts, it is a best practice for clerks to advise court staff about the Language Access Plan and to seek the support of DJS in clarifying these guidelines, if necessary.

When updates to the Language Access Plan are made, notice of changes are published in the DJS Connections newsletter. Modifications made at a time when Connections is not due to be published, will also be directly communicated to clerks of court via written electronic communication. Changes in current trends, technological developments, demographic shifts, modifications to interpreting protocols and standards, along with other matters can impact the way language access services are best provided in courts. This may necessitate changes on an expedited timetable. DJS is responsible for ongoing monitoring of the Language Access Plan. Any suggested modification will be considered. Please forward any proposals to flsleads@vacourts.gov.

Chapter 2 - Court Interpreting Terminology

Technical terms used throughout this guide are defined and explained in this section. They are not presented alphabetically and are arranged in an order suitable to present the fundamentals of interpreting concepts, terminology, and procedures.

Limited English Proficient (LEP)

Limited English Proficient describes someone with an inability to adequately understand or communicate effectively in English. This includes language speakers whose primary language is a language other than English. A limited ability to speak or to understand English negatively impacts a Limited English Proficient individual's ability to meaningfully participate in a court proceeding.

Source Language

Source language is the language of someone speaking. Interpreters consider the source language that of the person who has spoken last.

Target Language

Target language is the language of the listener. This is the language into which the interpreter communicates the words spoken in the source language.

Interpretation

Interpretation is the unrehearsed relaying of a spoken message from one language to another. Interpretation is not translation (written language). Simultaneous and consecutive interpretation are used in court by qualified foreign language interpreters. A third mode, summary interpreting, is never used in any court proceeding.

Consecutive Interpreting

Consecutive interpretation is rendering statements from a source language into a target language intermittently. There is a pause between each completed statement in the source language. After the speaker has finished speaking, the interpreter renders the interpretation. When using this mode of interpreting, an interpreter will signal a speaker to pause to permit a consecutive interpretation when the length of the utterance approaches the outer limits of the interpreter's capacity for recall. During consecutive interpreting, the interpreter takes notes to assist while rendering the interpretation.

The consecutive mode is used when an LEP person provides testimony or when the judge or an officer of the court is communicating directly with an LEP party and expects a response. It is the most common mode for witness interpretation at the witness stand. It is also used for depositions and in other situations where the record needs to be maintained during a conversation or back and forth questions and answers between two or more parties.

Simultaneous Interpreting

Simultaneous interpretation is continuously rendered at the same time someone is speaking. The interpreter is about one-half to one full sentence behind the speaker due to lexical and grammatical reasons. The speaker does not wait for the interpreter to catch up. Simultaneous interpreting is intended to be heard only by the person receiving the interpretation and is usually accomplished by speaking in whispered tones or using equipment specially designed for this purpose in order to be as unobtrusive as possible.

The interpreter who simultaneously interprets has five tasks:

1. Listening to the speaker
2. Understanding what has been said
3. Rendering this information into another language
4. Speaking the information in the other language
5. Listening to recall what the speaker is saying next

This method is ideal for an LEP party who is listening only. This happens when interpreting for a defendant, during witness testimony, while a judge communicates with another person who is not the defendant or witness, when addressing the jury, gallery, or another person in the courtroom, and during sentencing. When a judge speaks directly to an LEP party without interruption or a regular request to reply, simultaneous interpreting is used. This often happens during lengthy advisements of rights and a judge's remarks to a defendant at sentencing.

Summary Interpreting

Summary interpretation is not used in court for filed, predisposition Virginia cases. It involves paraphrasing and condensing the speaker's statement. This method does not provide a precise rendering of everything that is said into the target language. It is inappropriate for use during legal proceedings.

Translation

A translation converts a written text or media file from one language into equivalent written text in another language. A translation or transcription/translation conserves the meaning, tone, register, and style of the original text. Many of the skills required for translation are distinct from those required for interpreting. Certification as a translator is distinct from certification as an interpreter. As there is no state court system translator certification in Virginia, the FLS Team has qualified translators on staff and a contract with a vendor so that courts can rely on industry-standard translations. Please direct any requests for translations to local staff interpreters within FLS or email flsleads@vacourts.gov.

Sight Translation

Sight translation involves a combination of interpretation and translation. The interpreter reads a document written in one language and orally converts it into another language. Another name for this is sight interpretation. It is used for oral translation of written materials (forms, letters, indictments, contracts, documents, transcripts of depositions, bits of paper with handwritten or scrawled messages, etc.). When the written material is handed to the interpreter, the interpreter will take some time to initially review the document and then create an oral sight translation.

Interpreting Functions

Interpretation functions relate to the purpose or setting in which interpreting occurs. In some settings, more than one interpreter may be required due to how many interpreting functions will be carried out during the same proceeding. In some circumstances, two or more interpreters are required during one trial in order to perform all required interpreting functions.

Proceedings Interpreting

An interpreter's primary role is to enable an LEP person to understand the proceedings and to communicate with the court when necessary. Proceeding's interpretation makes the LEP litigant effectively present and able to meaningfully engage in the court process. This function is ordinarily performed in the simultaneous mode. The interpreter's speech conveys meaning between two languages. In Circuit Court, simultaneous interpretation is not part of the record of proceedings. When an interpreter provides language access services to a criminal defendant, the interpreter begins interpreting as soon as the defendant is physically present in the courtroom, even if it is before the proceeding has begun. This puts the defendant on equal footing with English speakers.

Witness Interpreting

Witness interpreting is interpretation of an LEP or English-speaking witness. This function is performed in the consecutive mode. In Circuit Court, the English language portion of the interpretation constitutes part of the record of the proceeding. A variant of witness interpreting is language access provided during communications between the judge or other English-speaking official and an LEP party to the case. Typical examples are communications which occur during litigation, arraignments, pleas, or sentencing hearings.

Interview Interpreting

Interview interpreting is communication facilitated between an LEP person and their attorney to ensure the effective assistance of counsel or to perform similar duties in any interview or consultation setting associated with a court proceeding. Interview interpreting may be performed in either simultaneous or consecutive modes, depending on the circumstances.

Chapter 3 - Conducting Interpreted Proceedings

Assessing the Need for an Interpreter

Many individuals are proficient in a second language at a basic level. Participation in court proceedings requires a more advanced level in order to capably communicate. To achieve meaningful participation in court processes, a party must be able to understand the judge's statements, courtroom statements of opposing counsel and their own counsel, along with the testimony of witnesses. In order to reach fair decisions, judges and magistrates must understand the testimony of defendants, witnesses, or other parties. In order for limited English proficient (LEP) individuals to testify in their own defense, they must be able to:

- Accurately and completely describe persons, places, situations, and events
- Tell what happened overtime
- Request clarifications when questions are vague or misleading
- Recognize attempts to discredit testimony, refuse to confirm contradictory interpretations of fact, and defend their position during cross-examination

For defendants to evaluate and respond to adverse testimony of witnesses and assist in their own defense, they must comprehend the details and subtle nuances of questions and answers spoken in English. At appropriate times, they will need to secure the attention of counsel and draw attention to relevant details of testimony. Some non-native English speakers understand and speak English, but an accent may make it challenging for others to understand. Interpretation allows the court, other participants, and a court reporter to understand what is being said.

In non-evidentiary proceedings involving determination of custody, advisement of rights, consideration of sentences, and articulation of obligations and responsibilities established through court order, LEP persons must receive the same consideration as native English speakers. Judges and magistrates presume a bona fide need for an interpreter when a representation is made by an attorney or pro se litigant that a party or witness has limited proficiency in English and requests an interpreter.

When a party does not request an interpreter but appears to have a limited ability to communicate in English, the court or magistrate should conduct a brief *voir dire* to determine the extent of the party's English comprehension. This should avoid questions which can be appropriately answered with a simple yes or no. The *voir dire* should include wh- questions (what, where, who, when) and questions requesting a description of people, places, or events. It can also request a narration of what happened. A model for this type of a *voir dire* is illustrated in Appendix A. Where there is doubt about the ability of a person to fully comprehend proceedings or adequately express themselves in English, it is

recommended that an interpreter be appointed.

Courts should consider that cases involving juveniles may involve a parent or guardian who has LEP, while the juvenile may possess English proficiency. It is important for the court to inquire about the language proficiency of the parent or guardian. If the case does not specifically restrict the involvement of the juvenile's parent or guardian (such as certain protective order petitions), it is important to provide language access services to the LEP parent or guardian in juvenile cases so that they can meaningfully participate in proceedings.

The statutes governing appointment of interpreters for non-English speakers are Va. Code §§ 19.2-164 (criminal) and 8.01-384.1:1 (civil). Federal regulations pertaining to language access are contained in Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d) and applicable Federal funding statutes such as the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. §3789d(c)).

Waiver of Interpreter

Caution should be exercised before permitting waiver of the right to an interpreter because those with LEP may need communicative assistance for effective participation. If a waiver of the right to an interpreter is granted, that individual should be allowed to retract the waiver and receive the services of an interpreter for the remainder of the case or proceeding if the person is later in need of language access services. When applicable, deliberations related to granting or retracting a waiver should be on the record.

Use of Qualified Interpreters

Court interpretation is a specialized form of interpreting which cannot be performed effectively without commensurate training and skills. The interpretation rendered must be unaffected and as close to the original meaning as possible using appropriate equivalent terms. These are considered a legal equivalent. A qualified court interpreter is a highly skilled, impartial language professional. Being bilingual is an insufficient qualification for court interpretation. Interpreters must be able to accurately reflect a speaker's nuances and level of formality. An interpreter renders the original source material without editing, summarizing, paraphrasing, deleting, or adding anything, while conserving the language level, style, tone, and intent of the speaker. This places LEP individuals on equal footing with English speakers.

All interpreters appointed by the court should be as highly qualified as possible. The court should maintain a roster of interpreters whose skills have been meaningfully screened and assessed by the court and determined to be eligible for appointment. The Judicial Council of Virginia encourages the use of those individuals who have earned court certification. Information about locating court interpreters is available in Chapter 4, and information about the certification process is available in Chapter 5.

The Miscellaneous Appendix includes a basic format for an in-court *voir dire* for courts and magistrates to determine qualifications before appointing an interpreter. While an in-court *voir dire* is helpful to identify interpreters who are unqualified, more specific questions may be instrumental in establishing whether the interpreter possesses the desired high level of functional proficiency.

Certified status may be claimed by interpreters or private interpreting agencies, but the interpreter may only have received a rudimentary orientation to the profession. Judges, court administrators, and magistrates should not assume that interpreters who claim to be certified have demonstrated their competence in interpreting skills through formal testing or other effective means of establishing functional proficiency. It is important to verify the specific qualifications interpreters have earned and which entities conveyed them.

When a court or magistrate is obliged to use an interpreter. If their skills are untested, it is recommended to establish that the proposed interpreter:

- Communicates effectively with all involved participants
- Understands the Code of Professional Responsibility for Interpreters Serving Virginia Courts
- Complies with the Code of Professional Responsibility and notes provisions which cannot be honored
- Takes the interpreter oath supplied to all interpreters in a proceeding

Orienting Interpreters

An interpreter may not have sufficient understanding about legal terminology, procedure, protocol, demeanor, and the duties and responsibilities of the court interpreter. Even experienced interpreters may require assistance due to substantial differences among various judicial systems. When an appointed interpreter has little experience with the Virginia court system, the court or magistrate can help ensure success by providing a brief orientation to enable them to serve effectively. At a minimum, an interpreter should be aware of the Code of Professional Responsibility, a visit to the courtroom to determine the best placement of the interpreter, the ability to know what the case is about, and a brief conversation with the defendant or witness. The court may also explain to the interpreter the type and purpose of the legal proceeding and its structure. A more in-depth orientation about the court and case may be necessary. This will assist interpreters in determining the relevant terminology likely to be encountered.

Finally, the court or magistrate should apprise inexperienced interpreters of the proper role and function of interpreters in court proceedings so as to guard against committing ethical violations of the role of the court interpreter and to ensure the interpreter remains unobtrusive and prepares in advance. The court may also advise the interpreter of:

- The need for simultaneous interpretation if interpreting for a party and consecutive interpretation if interpreting for a witness - When an interpreter is unfamiliar with interpretation modes, the court may instruct everyone to speak in phrases with pauses so that the interpreter can effectively provide language access services
- Where to sit - This may be between the party and the party's attorney at counsel table or next to a witness at the witness stand
- Pertinent protocol and the anticipated order of proceedings
- The need to address the court in third person and to ask for a clarification if the interpreter does not understand a phrase or procedure
- The restriction on the interpreter to refrain from providing advice to any party
- The requirement to bring pencil/pen, a pad of paper, and dictionaries/reference materials
- The option to observe an experienced interpreter (even if a different language) before beginning the case to which the interpreter is appointed

Administration of Interpreter Oath

It is suggested that every interpreter used in a court proceeding be required to swear an oath of true interpretation which includes the requirement to properly discharge the role of interpreter. The oath should be administered orally to interpreters in the presence of the attorneys, jury, etc. to reinforce awareness of the role of the court interpreter. The Miscellaneous Appendix contains a sample interpreter oath which is also suitable for magistrates.

Disclosure of Conflicts of Interest

Interpreters must not accept remuneration or social invitations from a litigant, witness, or attorney in a case for which the interpreter is serving the court. To avoid the appearance of impropriety, interpreters who realize they have had previous employment in any aspect of pre-trial preparation of the assigned case should notify the court of the nature of their involvement. The court will determine if contact between the interpreter and the defendant should be considered detrimental to the impartiality of the interpreter.

Role of the Court Interpreter

The role of the court interpreter may be defined in the following ways:

- Serve as a language neutral conduit between LEP individuals and court officials. Converting one language to another plays a critical role in the administration of justice and makes it possible for courts to ensure due process and participation for all involved in a case.

- Enable a judge and jury to react to an LEP party in the same way as they would to an individual who speaks English. This also ensures LEP parties understands everything in their own language after being interpreted from English.
- Place the LEP individual in the same situation as an English speaker, as close as linguistically possible. The interpreter does not provide an advantage or disadvantage. Rather the LEP party is on an equal footing as an English speaker.
- Provide a linguistically true and legally appropriate legal equivalent interpretation.

General Clarification of the Interpreter Role

The judge or magistrate should explain the role and responsibilities of interpreters to all the participants in a proceeding. The explanation should be given before the proceedings begin. These remarks can be shared at the beginning of a court session, or at the beginning of each separate proceeding if all or most of the participants change between proceedings. The clarification should indicate the interpreter:

- Facilitates effective communication among the court, principal parties to the case, and attorneys
- Does not provide legal advice, answer questions about the case, or help anyone in any other way
- Will not answer questions because if an LEP party has questions they should be directed to the court, magistrate, or an attorney through the interpreter
- May need to modify verbiage to suit the LEP party who should tell the court or presiding judicial officer if they have difficulty communicating with or understanding the interpreter

Special Clarification of the Interpreter Role to Sworn Witnesses

The judge should advise witnesses of the interpreter's role after the witness is sworn and before questioning. As the judge makes the advisement, the interpreter simultaneously interprets it for the witness.

The clarification should offer the following information:

- Everything the witness says will be interpreted correctly
- Witnesses must respond to the person asking the question, not the interpreter
- If the witness has a question, the witness must request clarification from the person who asked the question

- Witnesses should respond only after having heard the entire question interpreted into their language
- Witnesses should speak clearly and loudly so everyone in the court can hear
- If the witness cannot communicate effectively with the interpreter, they should tell the court or presiding officer

Jury Issues

Clarification of the Interpreter Role to Jurors

When an interpreter is required for a jury trial, the judge should advise the jurors of the role and responsibility of an interpreter and that interpreters seek linguistic equivalents. The jury's attention should be directed at the LEP or English-speaking party who is speaking and not the interpreter. Several specific and different advisements may be called for at different stages of the proceeding.

Impaneling a Jury

When a case involves an LEP party, the court should instruct the panel of jurors before *voir dire* begins that an interpreter is present to ensure LEP parties to the case can be meaningfully present during the proceedings. It is appropriate to inquire whether prospective jurors are affected by the presence of an interpreter or are concerned an individual does not speak English. If they speak a foreign language which will be used during the proceeding, inquire if they will pay attention only to the English interpretation.

Before the Trial Begins

After a jury is impaneled and before a trial begins, the court should instruct jurors as part of the pre-trial instructions that they may not give any weight to the fact that a principal party in interest has limited English proficiency and is receiving the services of an interpreter.

When a Trial Involves Witness Interpreting

Before the witness interpreting begins, the court should give instructions to jurors that include the following points:

- Treat witness testimony as if it was spoken in English and no interpreter was present
- Assign no positive or negative credibility to the witness because testimony was delivered through an interpreter
- Ignore what is said in a non-English language familiar to a juror and treat as evidence only what the interpreter renders in English while ignoring errors

The last instruction may be challenging to some jurors. Judges may wish to elaborate by explaining that all instructions relate to the need for qualified, professional interpreters. The record of the proceedings is only in English, and the recorded testimony constitutes evidence in the case. Jurors may mishear what is said and the interpreter is a trained listener. Also, ordinary individuals and even trained interpreters may disagree about the correct interpretation of an expression, even when they hear the same words. Interpreters are the court's language experts, and their interpretation must be presumed reliable.

Foreign-Language Speaking Jurors

Court proceedings are conducted in English, and a court may determine a person who does not speak or understand English is not qualified to serve as a juror. If a non-English-speaking juror seeks qualification, the court may provide an interpreter in order to determine a potential juror's English-speaking abilities and to interpret an explanation of the requirement to speak and understand English to a potential juror. Please note this refers to spoken languages and not to the deaf or hard of hearing.

Maximizing Communication During Interpreted Proceedings

As in any proceeding, the judge or magistrate should keep the room as quiet as possible and allow only one person to speak at a time. This is particularly important when presiding over interpreted proceedings. Ensure everyone speaks at a volume and rate which can be accommodated by the interpreter. When setting the pace of speech during interpreted proceedings, do not assume the interpreter can work at the same speed as the court reporter.

Interpreters refer to themselves in the third person and should not use the first person when addressing the court on their own behalf. Using the first person can create confusion during the proceeding and in the record between interpreting statements which the interpreter may need to make during the proceeding. An interpreter will say, "The interpreter was unable to hear the question and requests that it be restated," rather than "I was unable to hear the question." The first identifies the interpreter as the requester. The second identifies the witness as the requester.

Permit witness interpreters to use signals to regulate speakers when the length of an utterance approaches the outer limit of an interpreter's capacity for recall. Ensure that the interpreter has conversed briefly with any LEP parties to be certain the interpreter and the party can communicate adequately.

Ensuring Proper Location of the Interpreter

The court or magistrate should ensure an interpreter can easily hear and see the proceeding. Interpreters must be situated in the best location to ensure proper communication among all courtroom participants and any parties for whom they are providing language access.

Interpreter Responsibility

With the knowledge and consent of the attorneys, the interpreter should briefly speak with the LEP party before the proceeding begins to become familiar with their speech patterns, linguistic traits, and any other challenges which may impact accurate interpretation. Interpreters must advise the court or presiding judicial officer whenever they believe they are or may be in violation of any part of the Code of Professional Responsibility or if they discover they cannot communicate effectively with the LEP person.

Attorney Responsibility

Attorneys should advise the interpreter, as far in advance of the proceedings as possible, of any special concerns they may have related to the particulars of the case which could be affected by specific linguistic characteristics their LEP client may present.

Circuit Court Record of Interpreted Testimony

The record of the case made by a court reporter in interpreted proceedings consists only of the English language spoken in court. If questions arise during the trial regarding the accuracy of the interpretation, the quality of language access cannot be evaluated after the fact by a trial judge or later on appeal. To address this, a court may wish to supplement the court reporter's transcript with an audio/video recording. This can allow for a later determination if there were errors on the part of the interpreter, as those errors would alter the evidence presented to the judge and jury.

Judges who regularly hear interpreted matters may wish to explore the feasibility of making media file recordings of some or all interpretation within a proceeding. Proceeding's interpretation in the simultaneous mode are done quietly at counsel table or with interpreting equipment and would require special arrangements for recording. In many courtrooms this is feasible. In others it may not be possible. In the alternative, it is recommended that an audio or audio/video record be made in the following circumstances:

- In capital cases regardless of interpreter qualifications, a record should be made of all sworn witness testimony and its interpretation
- In proceedings where a non-certified interpreter provides language access, especially cases in which the LEP party is at risk of incarceration
- In felony proceedings involving entry of a guilty plea which are interpreted by a non-certified interpreter
- The record may be made with audio recording only when testimony is verbal, but if testimony is conveyed in a visual mode of communication, recording of the visual component is ideal

Errors During Witness Testimony

Interpreting is a demanding activity and is not always free from error. Appreciation of this reality should be extended to the interpreter during allegations of inaccurate interpretation. Professional interpreters are trained to understand and to act on their obligation to correct errors they make during a proceeding. The court or magistrate should permit the following actions to be taken.

Error by Witness Interpreter

When a witness interpreter discovers an error, the interpreter should correct the error at once. This involves the interpreter identifying speaking in the third person and saying, "The interpreter requests permission to correct an error." If the interpreter is aware of the error after testimony has been completed, they should request a bench or side bar conference with the court and the lawyers to explain the concern. The court can then decide whether a correction on the record is required.

Discovery of Error by Others

When an error is suspected by anyone other than the interpreter, that person should bring the matter to the attention of the presiding judicial officer at the earliest opportunity. If testimony is still being taken, the matter should be raised before the witness is released. In a jury trial, the problem and its resolution may be handled at a side bar conference. If the judge believes an interpretation might materially alter the meaning of the words or phrases interpreted, the judge has a responsibility to act. The following steps are recommended for the trial judge's consideration:

- Determine whether the allegedly inaccurate interpretation is substantial or potentially prejudicial and requires determination.
- If the error is substantial/prejudicial, the judge should refer the matter to the interpreter for reconsideration outside the presence of the jury. If the interpreter stands corrected, the matter is resolved. If the interpreter stands by their interpretation, another linguistic expert should be sought for an opinion.
- The judge should determine the correct interpretation. If it is different than the original, the court should amend the record and advise the jury.

Concerns About Language Access Services

Court staff use interpreters to communicate with individuals who have language access concerns. The Office of the Executive Secretary (OES) has created complaint forms to document concerns which need to be addressed about the interpreting services provided to those with LEP. Upon learning of a concern about an interpreter's performance, court staff can complete the form on their own or may provide an individual with a complaint form to forward to OES. If the individual is dissatisfied with not having been provided language access services, the court should receive this complaint and address it locally.

Measures to Maximize Court Interpreter Level of Proficiency

General Guidance

It is helpful for a court to provide attorneys and others with general guidance about the demands an interpreted proceeding will impose on them and other courtroom participants, such as:

- Using sound equipment
- Speaking clearly and allowing only one person at a time to speak
- Regulating the pace of speech
- Correctly locating the interpreter in the courtroom
- Changing interpreters periodically during lengthy proceedings
- Allowing interruptions by an interpreter for clarification
- Avoiding social and *ex parte* contact with interpreters

Use of Multiple Interpreters

Due to the multiple functions an interpreter performs during court proceedings and the cumulative fatigue during long service events, it is challenging in some circumstances for a single interpreter to reliably interpret for an extended duration.

With only one LEP defendant and no LEP witnesses during a brief service event, a single interpreter may be all that is needed. If the hearing is lengthy, an interpreting team may be required. If there are multiple LEP parties, judges may wish to consider the need for using two interpreters. They would work as a team and switch at appropriate intervals to create a single rendition suitable for the court process. For attorney-client communications, an interpreter limits their audience to the LEP party and attorney.

When there are multiple LEP parties, a single interpreter may make all parties meaningfully present through the use of interpreting equipment. For lengthy interactions, an interpreter

will switch at intervals with another interpreter on the team. Pauses may occur when an LEP party needs to communicate with counsel during a trial. When interpreters take turns interpretation for all defendants, the resting interpreter can be signaled and used by any defendant to communicate with counsel as necessary. Interpreters can do this without waiving privilege because trained and qualified interpreters are under oath to protect confidentiality of communications and to refrain from communicating directly with any court participant except when they are engaged in interpretation.

Use of Interpreting Equipment

The use of interpreting equipment makes language access services unobtrusive in the courtroom while an interpreter provides simultaneous interpretation of the proceedings. With equipment, a single interpreter can convey interpretation to several parties through the use of headsets with earphones and small mouthpiece microphones. This avoids having more than one proceeding's interpreter make multiple parties meaningfully present in court cases. It also places the interpreter outside the physical proximity of multiple LEP parties. In courts where multiple parties require interpretation, the court may want to become familiar with how interpreting equipment works and the advantages it offers. Use of interpretation equipment allows the interpreter and the court flexibility to maximize communication with minimal disruption.

Preventing Interpreter Fatigue and the Use of Team Interpreting

An interpreter's role is physically and mentally taxing. Studies show that an interpreter's performance deteriorates markedly between 30 and 45 minutes of continuous interpretation. The court must provide an interpreter with a break when the interpreter feels fatigue or interferes with the accuracy of the interpretation. When an interpreter believes the quality of interpretation is negatively impacted, the interpreter will inform the court and request a break. Either a recess should be taken, or a replacement interpreter obtained. This protects the rights of the LEP party.

It is a best practice for simultaneous and consecutive language interpretation that two interpreters be assigned for events lasting longer than two hours. An interpreter can maintain accuracy, but that skill is impacted by the gravity, complexity, and intensity of the proceeding. Generally, a single foreign language interpreter should not be expected to perform simultaneous interpretation for an extended time without a substantial break, or to interpret for more than six hours in any one day. For lengthy proceedings, small regular breaks are encouraged.

For long proceedings, when two interpreters are assigned, they alternate at periodic intervals and rotate their roles throughout the proceeding to enhance accuracy and to prevent fatigue. This allows for the presence of a second language expert should there be concerns about the interpretation. Because interpreters cannot realistically know in advance every word or phrase which will arise, a second interpreter can manage researching appropriate terms during a trial. If an interpreter is providing continuous witness interpretation, alternating interpreters is acceptable. If the length of witness testimony lasts 45 minutes or more, a different interpreter may cover the assignment, or the same interpreter can continue if the court will provide a brief break.

Because certified and qualified interpreters are not available in all areas of the state, team interpreting may not be available in every circumstance. However, the court should keep the issue of interpreter fatigue in mind. Interpreters combat this by varying position occasionally if doing so will not interfere with hearing by the interpreter and others or by drinking water when needed.

Use of Non-English Languages by Others at Court

Some Virginia judges, court staff, magistrates, bailiffs, and attorneys are bilingual and can communicate in the language of the LEP person. Although it may be tempting to address the LEP person in their language, to act as an interpreter, or to allow other individuals to provide language access, it is strongly recommended that these practices be avoided. The court should consider the following guidelines regarding the use of languages other than English during court proceedings:

- Those who are not interpreters should not provide interpretation
- Court participants should speak in English during proceedings
- Attorneys who speak English but also speak their client's language may speak directly to their client in that language during confidential communications
- Attorneys should not interpret for parties they represent

The appointment of an attorney as an interpreter poses potential significant problems. The roles are ethically and practically incompatible. Interpreting is a highly complex and mentally demanding task. When an attorney's obligation to their client is impacted by providing court interpretation, one role or both will suffer. An attorney's offer to interpret should be rejected because it places both the court and counsel in a struggle among competing allegiances and incongruent role expectations. This conflict cannot be avoided. Courts should also be wary of permitting a bailiff or clerk to serve as an interpreter due to the perception that these individuals work for the court.

Judges who speak the language of an LEP person may wish to make the person feel more at ease in the courtroom by engaging in direct communication in the person's native language. Announcing beforehand the nature of the very brief greeting is important. The judge may

indicate in English first that the court will greet the defendant in the [Language Name] language. Then, the judge may say that in the other language. After the greeting, the court will inform the person in English that the judge will refrain from communicating in the shared language and that an interpreter will provide language access. The interpreter will then interpret for the LEP party.

Docket and Caseflow Considerations

The length of time it takes to conduct proceedings should not be substantially impacted when an experienced interpreter is providing language access. Courts should consider grouping matters requiring language access services if the LEP parties from multiple cases speak the same language. This maximizes the use of interpreter time while addressing cases which require interpretation.

Chapter 4 - Locating Court Interpreters

When court staff need to identify certified or otherwise qualified interpreters for proceedings, court staff should be familiar with methods to coordinate language access services for cases which require them. Appointed interpreters should be as highly qualified as possible. Some of the sources shared in this chapter may connect court staff with interpreters with only marginal skills and no court experience. Recognizing that bilingualism is an insufficient qualification for court interpretation, court staff should exercise discretion when determining an individual's qualifications to serve as an interpreter.

Selecting Foreign Language Interpreters

Certified Interpreters

When selecting a certified court interpreter, the first step is to consult the Certified Foreign Language Interpreter List which is available on the Foreign Language Services page of the OES intranet page. This is an internal-only document which must not be shared with individuals who do not have access to the OES intranet. Certification languages have expanded to include Amharic, Arabic (Egyptian), Arabic (Levantine), Bosnian-Croatian-Serbian, Cantonese, Filipino (Tagalog), French, Haitian Creole, Hmong, Khmer, Korean, Mandarin, Polish, Portuguese, Russian, Somali, Spanish, Turkish, and Vietnamese. The Judicial Council of Virginia encourages the use of court-certified interpreters first where available. The list is regularly updated when new certified interpreters are added. The Voluntary Certification Process Chapter provides additional information on the foreign language court interpreter certification process. If no certified foreign language interpreter is available, the court may use a non-certified (but qualified) foreign language interpreter.

Non-Certified and Language of Lesser Diffusion Interpreters

When a non-certified interpreter is being considered for appointment, court officials must assess the qualifications of a candidate before appointing them to provide language access. The Office of the Executive Secretary (OES) has developed language access resources in many languages. Courts may contact OES staff for assistance identifying qualified language resources. Group emails to request coverage through the OES intranet are available here. Information there is internal-facing and should not be shared with non-court system personnel. The court should maintain a roster of interpreters whose skills have been screened and assessed. Please refer to the Conducting Interpreted Proceedings Chapter and the Miscellaneous Appendix for information on qualifying interpreters.

When Virginia court system staff evaluate the qualifications of a non-certified court interpreter, there are several important criteria to consider which may aid in the selection of a qualified individual:

- Attendance in the two-day orientation workshop offered by the Office of the Executive Secretary. This training covers basic interpreting protocols and ethics for interpreters in all languages.

- Membership in an interpreter organization which requires peer sponsorship, monitoring, and/or testing. This provides a higher level of competency assurance as compared to interpretation services provided by a private agency.
- Service as an interpreter for an official organization as a conference interpreter or a simultaneous interpreter. This is more rigorous than service provided as an escort interpreter or by engaging in academic study of the language.
- Able to speak and/or understand English adequately. If the interpreter and the court have trouble communicating, the interpreter is most likely not qualified to serve in court.

Sources for Locating Foreign Language Interpreters

Office of the Executive Secretary

For foreign language interpreters in certification languages, the court system should refer to the Certified Foreign Language Interpreter List provided by the Office of the Executive Secretary on the OES intranet. All foreign language interpreters are eligible to receive training about interpreting protocols and ethics by the Office of the Executive Secretary. The Foreign Language Services Team maintains a list of these trained individuals. Courts and magistrates may also maintain rosters of individuals whose linguistic skills have been assessed as reliable. Sources for locating potential court interpreters are suggested below.

State and Federal Courts

The clerk or court administrator in other state courts and in federal courts, particularly in larger jurisdictions, may have names of qualified interpreters for the particular language or dialect needed.

Telephone Interpreting Services

If appropriate, courts and magistrates may wish to consider using the telephone interpreter service. Information on the use of remote language access services is available on the Foreign Language Services page of the OES intranet. You may also refer to the Remote Language Access Chapter for more detailed information, including how to arrange for interpreting services via the telephone. It is recommended that courts and magistrates should only use telephone interpreting services in the following situations:

- Emergency matters
- Relatively short proceedings
- Facilitation of communication between court staff and the public at the counter
- If the court needs to determine what language a person speaks

Nongovernmental Organizations

Some schools, churches, and community organizations may be able to identify suitable candidates for interpretation.

Colleges and Universities

Foreign language departments and international student organizations within local colleges and universities are a source of potential interpreter candidates.

Medical Facilities

Hospitals and clinics which use interpreters may be a source of potential interpreter candidates.

Private or Commercial Interpreting Companies

Some private language schools or commercial interpreting agencies may have resources in languages of lesser diffusion. Courts should separately consider an interpreter's skill or experience and should not rely on a private language school or interpreter agency's assurance as a clear indication of an interpreter's qualifications for court interpreting.

Professional Associations

Two of the main professional associations for linguists are NAJIT and the ATA. They may provide the names of candidates for interpretation who are locally available.

International Agencies

- United Nations
- World Bank
- International Red Cross
- International Monetary Fund
- Inter-American Development Bank
- Economic Commission for Latin America
- Pan American Health Organization
- Inter-American Defense Board
- Organization of American States

Colleges and Universities with Courses in Interpretation and Translation

- Shenandoah University (Winchester, VA)

- Virginia Commonwealth University (Richmond, VA)
- William & Mary (Williamsburg, VA)

Use of a Non-Certified Foreign Language Interpreter When a Certified Interpreter is Available

The Judicial Council of Virginia encourages the use of certified interpreters from the Certified Foreign Language Interpreter List. Courts should select interpreters on a rotating basis, before appointing a non-certified interpreter. As names of certified interpreters are added to Virginia's certified roster, courts should seek to ensure that they are utilizing the services of certified interpreters who have proven their competency. Courts may also encourage all non-certified foreign language interpreters to earn court certification, if available.

Rotation of Interpreters

Unless the Office of the Executive Secretary has awarded a contract to individual interpreters or a group of interpreters as the result of a competitive bidding process, courts should offer assignments on a rotating basis among available interpreters. Whether certified or not, no one interpreter or subset of interpreters should be given any kind of preferential treatment in the offering of assignments. Special consideration should be given to the practice of utilizing the same interpreter for every stage of a case when other qualified interpreters are available. This practice ties the remuneration of an interpreter to the number of service events within a particular case. An interpreter may appear to have a vested interest in the case having more and longer service events if that interpreter knows they will be covering each assignment.

Information for Persons Inquiring About Becoming a Foreign Language Court Interpreter

When an interpreter inquires of a local court about court interpreter certification, it is helpful to connect them with the Foreign Language Services Team. There is a set process an interpreter must follow to become certified, and that team is in the best position to assist someone as they consider whether to pursue training (all languages) or certification (only certified languages). Non-certified interpreters in non-certification languages may have suitable credentials to qualify them for court interpretation. At the very least those interpreters should attend a two-day orientation class about interpreting ethics and protocols. OES maintains a list of these language resources. For assistance identifying suitable linguistic resources in a non-certified language, please reach out to the Foreign Language Services Team.

Chapter 5 - Voluntary Certification Process

Foreign Language Court Interpreter Certification In Virginia

The Judicial Council of Virginia has established a process to certify persons serving as foreign language interpreters in court proceedings in the Commonwealth. The certification process is voluntary for participants, and its purpose is to better ensure that language interpreters are competent to perform such services in a court environment. Certification for Amharic, Arabic (Egyptian), Arabic (Levantine), Bosnian-Croatian-Serbian, Cantonese, Filipino (Tagalog), French, Haitian Creole, Hmong, Khmer, Korean, Mandarin, Polish, Portuguese, Russian, Somali, Spanish, Turkish, and Vietnamese is offered because these are the most frequently spoken languages in cases involving limited English proficient individuals in court proceedings. The list of certified interpreters who have satisfied all certification requirements is available internally for court staff on the OES intranet. Local state courts may either contact Foreign Language Services staff for assistance or reach out to individuals on the certified list to arrange for language access services. Only individuals whose names appear on the certified list are considered certified court interpreters in Virginia.

There are four requirements for certification, and successful completion of each element is required within three years of starting the process. An element is defined as the entire event. All portions of the exam must be successfully completed within the same exam administration for the element to be accepted in Virginia. Partial exam scores are not accepted or applied toward completion of an element. Virginia does not waive a testing or training element based on an interpreter's having been certified in another state which does not conform to Virginia's certification standards. Virginia will administer a written or oral exam six months after a candidate's prior attempt to pass, and will recognize an attempt within another court system six months after a prior attempt.

Code of Professional Responsibility

Candidates must agree to adhere to the Code of Professional Responsibility for Interpreters Serving Virginia Courts as established by the Judicial Council of Virginia. This information is publicly available on the website, and those who achieve certification must sign an agreement to adhere to its standards.

Orientation Training

Candidates must complete a two-day orientation which covers the role of the interpreter, and the specific skills and professional practices required of interpreters. Candidates receive instruction and materials, including a glossary of terms related to the court system and legal procedures. The training includes self-study techniques and available resources and information about preparing for the oral certification examination. Review of the Code of Professional Responsibility is a significant component. Orientation Training is available to all foreign language interpreters in all languages–regardless of certification testing not being administered in that language.

Written English Language Test

Candidates must complete a multiple-choice written exam which covers English language vocabulary, court procedures, and interpreting ethics and protocols. This test measures basic, general knowledge of the field of interpretation in addition to English proficiency. The minimum passing score is 80% for the written exam to be considered a valid testing element.

Oral Examination

Certification candidates must complete the foreign language oral examination successfully to be certified. This exam is a reliable method to assess interpreter qualifications. The oral exam administered in Virginia was developed by the National Center for State Courts and simulates the actual court environment an interpreter will face when providing language access. Candidates must demonstrate proficiency in simultaneous interpretation from English to the foreign language in addition to sight translations and consecutive interpretation between English - foreign language/foreign language - English. To pass the oral certification examination, the minimum acceptable score on each individual test section must be at least 70%, and a minimum overall average total score of 70% must be earned.

Court Interpreter Certification Programs in Other State Judiciaries and the Federal Judiciary

An individual who has successfully completed the requirements for federal court certification from the United States Administrative Office of the Courts is presumptively eligible for Virginia interpreter certification. Identical elements of certification from another state may be applied toward Virginia certification if they conform to Virginia schedule, passing score, and complete exam administration standards and processes. This often requires documentation from a corresponding Consortium for Language Access state. Virginia does not convey court interpreter certification to interpreters in certification languages for which Virginia does not offer certification. Interpreters in those languages can supply proof of their having completed a two-day orientation workshop offered by an Administrative Office of the Courts in another state.

State Court Interpreter Certification Consortium

The State Court Interpreter Certification Consortium ensures the development of court interpreter competency programs and an exchange of expertise among program managers. Court interpreter test development and materials ensure individual states/jurisdictions have necessary tools and guidance for interpreter certification. The Consortium is maintained by the National Center for State Courts under the policy direction of a steering committee composed of representatives from member states. You may visit the Consortium's website for more information.

Chapter 6 - Code of Professional Responsibility

The Code of Professional Responsibility contains ten canons. They are covered in this chapter along with information on court interpreter ethics.

Canon 1: Accuracy and Completeness

Interpreters shall render a complete and accurate interpretation or sight translation, without altering, omitting, explaining, or adding anything to what is stated or written.

Commentary:

An interpreter is responsible for ensuring the proceedings in English reflect precisely what was said by a limited English proficient person and for placing the limited English proficient person on an equal footing with those who understand English. An interpreter is obligated to conserve the information contained in a source language while rendering it into the target language. Interpreters should never interject their own words, phrases, or expressions. An interpreter will ask the court's permission if the need arises to explain an interpreting problem or the explanation of a term. Interpreters convey the emotional emphasis of the speaker without reenacting or mimicking the speaker's emotions or using gestures.

Interpreters apply their best skills and judgment to faithfully preserve the meaning of what is said in court, including the style or register of speech. Verbatim, word for word, or literal oral interpretations are not appropriate if they distort the meaning of the source language. Every spoken statement--to include non-responsive, obscene, rambling, or incoherent statements--should be interpreted. This includes apparent misstatements.

Preserving accuracy includes the interpreter's duty to correct any interpreting error discovered during the proceeding. Interpreters demonstrate their professionalism by objectively analyzing any challenge to their performance.

Canon 2: Representation of Qualifications

Interpreters shall accurately and completely represent their certifications, training, and pertinent experience.

Commentary:

An interpreter indicates they have linguistic competency in a legal setting when they accept an assignment. Withdrawing or being asked to withdraw after accepting an assignment once it begins, disrupts court proceedings and is wasteful of public resources. Interpreters must present a complete and truthful account of their training, certification, and experience prior to their appointment so that the court can fairly evaluate their qualifications for delivering appropriate interpretation services. This is essential to seamless functioning of the court process.

Canon 3: Impartiality and Avoidance of Conflict of Interest

Interpreters shall be impartial and unbiased and shall refrain from conduct that may give an appearance of bias. Interpreters shall disclose any real or perceived conflict of interest.

Commentary:

The interpreter serves as an officer of the court and the interpreter's duty in a court proceeding is to serve the court and the public the court serves. The interpreter should avoid any conduct or behavior which presents the appearance of favoritism toward any of the parties. Interpreters maintain professional relationships during filed, predisposition cases. They do not take an active part in any of the proceedings and distance themselves from parties to a case. Interpreters do not convene with parties, witnesses, jurors, attorneys, or with friends or relatives of any party, except in the discharge of their official language access duties. Because of where they provide services, interpreters may be familiar with attorneys, court staff, and law enforcement officers. They purposely refrain from casual and personal conversations with anyone in court to avoid the appearance of a special relationship or partiality with any of the court participants. An interpreter strives for professional detachment. Verbal and non-verbal displays of personal attitudes, prejudices, emotions, or opinions are always avoided.

Any condition which interferes with the objectivity of an interpreter constitutes a conflict of interest. Before providing services in a matter, court interpreters must disclose to all parties and presiding officials any prior involvement, whether personal or professional, which can reasonably be construed as a conflict of interest. This disclosure should not include privileged or confidential information. Should an interpreter become aware that a proceedings participant views the interpreter as having a bias or being biased, the interpreter should disclose that knowledge to the appropriate judicial authority and counsel.

The following are circumstances which are presumed to create actual or apparent conflicts of interest for interpreters:

- Someone involved in the proceedings is a friend, associate, or relative of a party or of counsel
- Any party to the case used the interpreter during an investigative matter
- Law enforcement usedthe interpreter to prepare for the criminal case
- The interpreter or their family has a financial interest which would be affected by the outcome of the case
- The choice of counsel or law firm for the case was made with the interpreter's involvement

Interpreters must disclose to the court and other parties when they have previously been retained for private employment by one of the parties in the case, and they do not interpret in any matter in which payment for their services is contingent upon the outcome of the case. An interpreter who is also an attorney should not serve in both capacities in the same matter.

Canon 4: Professional Demeanor

Interpreters shall conduct themselves in a manner consistent with the dignity of the court and shall be as unobtrusive as possible.

Commentary:

Interpreters observe established protocol. They also comply with rules and procedures for delivering interpreting services. When speaking in English, interpreters speak at a rate and volume which enables them to be heard and understood throughout the courtroom, but the interpreter's presence should otherwise be as unobtrusive as possible.

Interpreters provide language access without drawing undue or inappropriate attention to themselves. They also dress in a manner which is consistent with the dignity of the proceedings of the court. Interpreters avoid obstructing the view of any of the individuals involved in the proceedings and are encouraged to avoid personal or professional conduct which could discredit the court.

Canon 5: Confidentiality

Interpreters shall protect the confidentiality of all privileged and other confidential information.

Commentary:

The interpreter protects and upholds the confidentiality of all privileged information obtained during their duties. An interpreter also understands and complies with attorney-client privilege, which requires confidentiality with respect to any communication between attorney and client. This rule also applies to other types of privileged communications. Interpreters must refrain from repeating or disclosing confidential information obtained by them in the course of their employment.

In the event an interpreter becomes aware of information suggesting imminent harm to someone or relates to a crime being committed during the proceedings, the interpreter will immediately disclose the information to an appropriate authority within the judiciary who is not involved in the proceeding and seek advice regarding the potential conflict with the interpreter's professional responsibility.

Canon 6: Restriction of Public Comment

Interpreters shall not publicly discuss, report, or offer an opinion concerning a matter in which they are or have been engaged, even when that information is not privileged or required by law to be confidential.

Canon 7: Scope of Practice

Interpreters shall limit themselves to interpreting or translating and shall not give legal advice, express personal opinions to individuals for whom they are interpreting or engage in any other activities which may be construed to constitute a service other than interpreting or translating while serving as an interpreter.

Commentary:

An interpreter is solely responsible for enabling others to communicate. They limit themselves to the activity of interpreting or translating and refrain from initiating communications while interpreting unless it is necessary for ensuring an accurate and faithful interpretation. Interpreters may be required to initiate communications during a proceeding when they find it necessary to seek assistance while performing their duties. They will seek direction when unable to understand or express a word or thought, request speakers to moderate their rate of communication or repeat/rephrase something, correct their own interpreting errors, and notify the court of reservations about their ability to satisfy an assignment competently. In such instances they make it clear that they are speaking for themselves in the 3rd person.

An interpreter may convey legal advice from an attorney to a person while that attorney is giving it. An interpreter does not explain the purpose of forms and services or act as counselors or advisors unless they are interpreting for someone who is acting in that official capacity. The interpreter may sight translate the language on a form for a person who is filling out the form but does not explain the form or its purpose. The interpreter does not personally serve to perform acts which are the official responsibility of other court officials.

Canon 8: Assessing and Reporting Impediments to Performance

Interpreters shall always assess their ability to deliver their services. When interpreters have any reservation about their ability to satisfy an assignment competently, they shall immediately convey that reservation to the appropriate judicial authority.

Commentary:

If an interpreter determines the communication mode or language of the limited English proficient person cannot be readily interpreted, the interpreter notifies the appropriate judicial authority. Interpreters also share with the appropriate judicial authority any environmental or physical limitation which may impede or hinder their ability to deliver interpreting services adequately. When the courtroom is not quiet enough to hear or be heard, more than one person speaks at a time, or any party speaks at a rate of speed which is too rapid for the interpreter to adequately interpret, the interpreter will bring the matter to the court's attention. Interpreters regularly need to take periodic breaks to maintain mental and physical alertness and to prevent interpreter fatigue. In longer cases, interpreters encourage the use of team interpretation.

Interpreters make inquiries as to the nature of a case whenever possible before accepting an assignment. In this way an interpreter will match their skills, experience, and professional qualifications to potential assignments. They will be able to assess their ability more accurately to competently cover an assignment. Even competent and experienced interpreters may encounter cases where routine proceedings suddenly involve technical or specialized terminology which is unfamiliar to the interpreter. When this happens, interpreters will request a brief recess to familiarize themselves with the subject matter. If familiarity with the terminology requires extensive time or more intensive research, interpreters will inform the presiding officer. Interpreters refrain from accepting a case if they feel the language and subject matter of that case is likely to exceed their skills or capacities, and they will notify the presiding officer if they feel unable to perform competently, due to lack of familiarity with terminology, preparation, or difficulty in understanding a witness or defendant.

Interpreters are required to share with the presiding officer any personal bias they may have with regard to any aspect of the proceedings. For example, an interpreter who has been the victim of a sexual assault may wish to be excused from interpreting in cases involving similar offenses.

Canon 9: Duty to Report Ethical Violations

Interpreters shall report to the proper judicial authority any effort to impede their compliance with any law, any provision of this code, or any other official policy governing court interpreting and legal translating.

Commentary:

Sometimes an individual requiring language access may misunderstand the role of the interpreter. They may expect the interpreter to perform duties or engage in activities which run counter to the provisions of this code or accepted policies governing court interpreters. The interpreter will inform such persons of their professional obligations. If an individual demands that the interpreter violate professional standards, the interpreter should turn to a supervisory interpreter, a judge, or another court employee to seek to resolve the situation.

Canon 10: Professional Development

Interpreters shall continually improve their skills and knowledge and advance the profession through activities such as professional training and education, and interaction with colleagues and specialists in related fields.

Commentary:

Interpreters continually work to increase their knowledge of the languages they speak professionally. This includes understanding past and current trends in technical vernacular and

regional terminology, as well as their application within court proceedings. Interpreters stay updated on statutes, rules of court, and policies of the judiciary which relate to the performance of their professional duties. Interpreters elevate the standards of the profession through participation in workshops, professional meetings, interaction with colleagues, and reading current literature in the field.

Professional Ethics and the Role of the Court Interpreter

As detailed in the Voluntary Certification Process for Spanish Language Interpreters Serving Virginia Courts Chapter, a significant component of the Judicial Council of Virginia's orientation training for foreign language interpreters consists of a review and discussion of court interpreter ethics. The information detailed below is provided to all interpreters to assist them in dealing with challenges which may arise in the courtroom. It is included here as a reference for the court system because a professional interpreter recognizes that the presiding judicial officer is the final arbiter of what is appropriate.

Accurate Interpretation

A court interpreter's best skills and judgment should be used to interpret accurately without embellishing, omitting, or editing. Interpreters regularly swear to an oath to accurately interpret at the beginning of a legal proceeding. While the court interpreter reflects what is being said between two languages, they are also placing the limited English proficient party on an equal footing with an English-speaker. Parties to the case, to include a judge and/or jury, will rely on the interpreted version of testimony to draw conclusions about the credibility of witnesses and the relative weight of testimony. For that reason, the interpreter must conserve information which was contained in the original message while employing appropriate style, syntax, and grammar. At the same time, the limited English proficient party should hear precisely what was asked--without simplification, clarification, or omission.

Register and Language Level

An interpreter must not alter the register or language level of the source language message when rendering it into the target language for the purpose of enhancing understanding or avoiding offense. When someone asks, "What did you observe the subject to do subsequently?" an interpreter will not say in the target language, "What did you see him do next?" Interpreters do not adjust questions and answers, nor do they intervene to indicate a question is not understandable to the witness. When a party does not understand the question, they should say so. The interpreter does not make that assessment or statement. When interpreting witness testimony before a jury, the jury will draw certain conclusions about someone's sophistication and intelligence based on their word choice, style, tone, etc. The interpreter ensures jurors have as much information as a native speaker of the target language would have to judge witness credibility.

Word Choice

Nuances of meaning are critical in courtroom testimony. Subtle changes in word choice significantly alter witness recollections of events. When a keyword in a question is changed, the word choice may affect the subject's recollection. Interpreters must be very careful in selecting target language terms to make sure they accurately convey the source language meaning.

Idioms and Metaphors

Idioms are phrases possess meanings which are not the sum of the words contained in them. Metaphors are descriptive expressions which use terms which depict a situation. Interpreters work to identify an equivalent idiom or metaphor in the target language, rather than interpreting the words literally. The primary focus in interpreting is conveying meaning, and not translating individual words.

Obscenities

Interpreters do not leave out offending terms when a party to the case uses foul language or says something which might damage their case. Because interpreters interpret what they hear in its original meaning, jurors will make judgments about the honesty and credibility of parties based on their testimony alone. No one should be at a disadvantage because they do not know the target language. Obscenities are challenging to translate directly as word-for-word interpretation may be meaningless in the target language. Interpreters seek a close equivalent in the target language and strive to elicit the same reaction from target language listeners as the original message would elicit from source language listeners.

Repetition

An important factor in evaluating witness testimony involves hearing repetitions and restatements. Interpreters do not add or subtract words for the sake of clarity or expediency. If a witness says in the source language, “I, I, I didn’t see it,” interpreters convey those exact words in the target language. Redundancies are also preserved in the target language. When someone asks, “Did you watch and observe him at all times?", interpreters do not omit the redundant verb in the target language.

Self-corrections

Many speakers within a court case may make false starts and then revise their statements. During interpreted statements all self-corrections are included in the target language. This allows the judge and jury to draw conclusions about how certain an individual is about their statements and how precise they are in choosing their words. Interpreters will not

correct any errors made by a speaker, no matter how unintentional they may be.

Third-person References

Some individuals requiring an interpreter's assistance may preface statements with phrases such as "Tell him that . . ." and "Ask him if . . ." instead of addressing parties directly. When that happens, interpreters do not edit out those phrases. When someone repeatedly makes third-person statements, the party should be instructed to only speak in the first-person which is the proper procedure.

Embellishments, Clarifications, and Editing

It is important not to add anything or to elaborate on the message being interpreted, not even for the sake of clarifying or repairing an individual's choppy delivery. Interpreters are not tasked with making a person sound more articulate or logical in the target language than they did in the source language. When a party replies "uh-huh" instead of "yes," interpreters refrain from converting the answer to more appropriate language.

Fragmentary Statements

Courtroom testimony does not always proceed logically. A party to a case may speak unclearly when they have told their stories many times before as they assume others know what they are talking about. It can seem vague and ambiguous to say, "I went to the . . . you know . . . and there was . . . it was there." Something like that can be challenging to interpret because more information is needed to choose the proper pronouns, prepositions, and verbs. Interpreters must render as fragmentary a version as the original was, without inserting any additional information to clarify the statement.

Nonsensical Testimony

The testimony of someone who is highly excited or mentally impaired can be challenging to interpret. An interpreter makes every effort to state exactly what the witness said, even if it is illogical or irrelevant. Sometimes an interpreter will need to inform the court that clarification of the witness statement is necessary before proceeding with the interpretation. Under no circumstances, should interpreters edit, omit, or add to what the witness stated.

Emotions

Understanding emotion expressed by a witness may be essential to understanding their testimony. Limited English proficient individuals convey emotions not only in words (through an interpreter), and in their own facial expressions, posture, tone of voice, and

other manifestations. Non-linguistic emotions are closely tied to culture and language. When people do not speak the same language, they can misunderstand the emotional content of a message. The court interpreter conveys meaning in a way which is natural in the target language. When an aggressive attorney is trying to intimidate a witness, interpreters should be equally forceful in their delivery. When a witness answers questions timidly, interpreters retain timidity in the target language. Interpreters routinely temper the emotions expressed by a witness. When a witness expresses emotions in an overt way the judge and jury should observe witness behavior and draw their own conclusions from that.

Interpreter Emotions

Interpreters sublimate their own emotional reactions while interpreting. This can be challenging at times, but interpreters always strive to reflect only the reactions of the parties for whom they are interpreting. This allows the jury to judge the credibility of the witness, not that of the interpreter.

Conservation or Clarification of Ambiguities

Word meaning can change as the context changes. When a word is ambiguous because there is not enough context, an interpreter must clarify the ambiguity. Some terms may require more information to be translated from English into another language. Ambiguities and lack of context may be intentional or unintentional. Either way, interpreters retain them when the target language allows. When an interpreter cannot retain the ambiguity in the target language and the context makes the meaning clear, they will clarify it in the rendition. If an interpreter is not certain of the meaning or is aware the ambiguity is deliberate, they inform the court that the interpreter must ask a clarifying question. Interpreters do not correct attorney questions. A witness response to a vague or compound question may result in an ambiguous answer. Interpreters do not interfere and simply ask the question. Only opposing counsel may object to the question.

Procedure for Repetitions, Clarifications, and Corrections

A court interpreter may be the only bilingual person in the courtroom. Whenever an interpreter needs to address someone in a language other than English, they inform the court of what they are about to do. This eliminates doubt or suspicions as the interpreter engages in a conversation which others cannot understand. The proper protocol is to address the judge, to explain the problem, and to obtain permission to

resolve it. Interpreting everything which is said in the courtroom places a great demand on interpreters. Interpreters inform the judge when they do not know a term, cannot hear what is said, require clarification/repetition, or need to make a correction. Resolving challenges makes it possible to provide the most accurate language access.

Repetition

When an interpreter is uncertain what a witness said, they do not guess or leave out that part. Interpreters interpret everything the witness says. If there is a doubt, the interpreter asks the court's permission to have the witness repeat their answer.

Identification of Interpreter Statements

Interpreters will state aloud that they are switching roles to make it clear that a new interpreter is rendering witness testimony. In formal courtroom proceedings, interpreters refer to themselves in the third person so that it is clear in the written record that they are speaking on their own behalf and not translating the words of another party.

Correction of Errors

When an interpreter realizes they made an error, they correct the record as soon as the error is apparent. If subsequent testimony indicates a word with several possible meanings was misinterpreted the first time it came up, the interpreter will correct it as soon as possible.

Clarifications

An interpreter will not engage in an independent conversation with any party to a case. This would arouse suspicions from those present who do not understand the language. When a clarification is needed, the interpreter will inform the court and obtain the judge's permission to clarify a statement. Interpreters should always communicate needs for clarification through the judge.

Explanations

Interpreters are unobtrusive during courtroom proceedings. They normally intervene to ensure communication is taking place and that the record is accurate. Interpreters do not act as experts on matters outside the realm of interpreting. Like any professional, interpreters do not comment on matters which are outside their area of expertise. When communication is deteriorating and the interpreter can resolve the issue, an intervention is warranted. If it is apparent to other parties who are actively seeking to clarify the situation, the interpreter should take no action.

Culturally Bound Terms

The meaning of some terms may be dependent on the culture associated with a language. This can be challenging for an interpreter to find words in the target language which convey the meaning. Some words may have different connotations in different cultures. When there is no direct equivalent for a given phrase in the target language, it is better to leave it in the source language without translating it or volunteering an explanation. Another party can ask for an explanation from the witness by means of a follow-up question when it is important to understand the term. The only time an interpreter should try to provide an explanation is when communication breaks down and questions and answers make it obvious that false assumptions are being made due to cultural misunderstandings. In this situation, the interpreter has the specialized knowledge and training to realize a misunderstanding is taking place.

Unfamiliar Terms

When interpreters encounter an unfamiliar term, they will review a dictionary. To do so, the interpreter will ask the court's permission to research the term. Interpreters consider equivalents listed in the dictionary and choose the most appropriate options. Dictionaries are reference tools, but they are not relied on exclusively. If no term in the dictionary is appropriate, an interpreter will ask the court's permission to request some clarification from the witness.

Conservation of English

Interpreters are mindful that they are interpreting testimony for the written record, and the court reporter is capturing statements. When a witness gives an answer in English or states a name everyone can understand without needing any interpretation, the interpreter will still repeat it for the record.

Questions from Witness

When a witness does not understand an interpreted question, they will ask the interpreter a question to clarify the matter. Interpreters do not answer the witness question. They simply interpret the question into English so that the party asking the question answers it.

Conflicts of Interest

A court interpreter discloses conflicts of interest to the judge. Anything which interferes with an interpreter's objectivity constitutes a conflict of interest. These exist if the interpreter is familiar with any witness or party or if the interpreter has an interest in the case outcome. Interpreters do not engage in conduct creating the appearance of bias.

The term appearance of partiality is important. When an interpreter feels they are impartial, another's perception that they are biased can compromise the role of the interpreter. For this reason, interpreters strive to avoid any situation where it might appear they favor one side or the other in a case.

Interpreter as Officer of the Court

Interpreters are present in a court case to enable the limited English proficient party to understand the proceedings and to enable the court to understand that party as they address the court. The interpreter provides language for defendants, plaintiffs, the prosecution, defense counsel, the judge, clerk, court personnel, and witnesses who testify. The interpreter, as an officer of the court is a neutral participant in the process. They are not working for any party other than the court which requires language access to transact justice.

Neutrality

Interpreters are neutral parties and not advocates for limited English proficient parties. They do not make value judgments about the language or demeanor of any party involved in a case. When a party uses incorrect grammar or vulgar speech or dresses inappropriately, interpreters faithfully interpret testimony as they would for any party to a case.

Conversations with Parties

Interpreters strictly interpret. They refrain from having independent conversations with the witness on the stand or with the defendant before and after court sessions and during breaks. Even though an interpreter may be located close to a party involved in a case, they feel no affinity for the defendant or witness and would never seek to modify testimony or interpret in a biased way. If a juror, witness, or law enforcement professional approaches an interpreter to discuss their work, that seemingly innocent conversation can lead to a perception of bias. The interpreter should share that they are not allowed to have conversations with anyone involved in the case before disposition.

Prior Services

An interpreter must disclose if they have provided language access services for any party in a case. Being clear about this service builds trust between the interpreter and the parties for whom they will interpret. Interpreters are neutral and unbiased, but the appearance of impropriety dictates that this is not a best practice if the interpreter has previous involvement in the case.

Gratuities

Interpreters must not accept gratuities or gifts from anyone for whom they have interpreted. If something is offered, interpreters should explain they are paid by the court

for their services and are not allowed to accept gifts.

Confidentiality

A court interpreter must not disclose privileged communications between counsel and client or make statements about the merits of the case during the proceeding. Anything said between a client and their attorney is privileged information. An interpreter providing language access during an attorney-client meeting is required to keep what was discussed confidential. An interpreter may only reveal the contents of such communication if unethical practices are occurring. Then, the interpreter should inform the court of the problem. If an interpreter participates in the preparation of a case by the defense or the prosecution, they must not reveal the nature of the communications interpreted. They also must not appear as a witness if they interpreted for attorney- client meetings.

Giving Legal Advice

A court interpreter must not give legal advice to any party to a case. They must also not recommend specific attorneys or law firms. The interpreter's role precludes dispensing legal advice or providing legal representation. These functions fall within the purview of the attorney, a paralegal, and the judge. The interpreter's sole responsibility is to serve as a language conduit.

Questions by Defendants

An interpreter does not act as an attorney and refrains from answering private questions. If a party to the cases asks a question about the proceedings, an interpreter conveys the question in English aloud. Defining linguistic terms and explaining the charge of burglary is a complex legal concept and should be left to either the court or an individual's counsel. If a limited English proficient party asks where probation is and the answer is known, an interpreter can share the location of that office. In short, if an interpreter can correctly answer a defendant's question about the location of something within the courthouse without dispensing legal advice, they may do so. If there are doubts, the party to the case should be directed to ask counsel or the judge.

Referrals

When a defendant is not represented by counsel, interpreters will not express an opinion about whether they should get an attorney. Interpreters do not provide referrals for any attorney or attorneys, and an individual seeking counsel would be best served by inquiring about options with the court.

Professional Relationships

A court interpreter maintains a professional relationship with all court officers, parties, witnesses, and attorneys. They engage in professional detachment.

Unobtrusiveness

Communication is the primary objective of the interpretation process. Interpreters do not show off to impress others or engage in theatrics. They do not draw attention to themselves rather than the witness. Interpreters avoid personal displays of emotion, subjective involvement, and social conversation. Interpreters observe cultural norms of both the source and target languages and generally use formal language. If an attorney addresses a witness by their first name or treats the witness informally while questioning them, interpreters do not change the question to make it more formal or polite.

Cultural Expertise

Court interpreters are language specialists. They are not anthropologists, psychologists, or an expert on the limited English proficient individual's culture or history. Interpreters will not testify about cultural practices or an individual's past. They also cannot provide an opinion about whether an individual understood a police officer's questions in another language. Authorities in the related fields of knowledge should be consulted in such matters.

Interpreter Fatigue

Interpreters recognize their own physical limitations and are aware of what constitutes a proper working environment. Because interpreting is demanding, interpreters must remain mentally alert and will share if the duration of an assignment is negatively impacting their linguistic performance. Interpreters will ask for a break when they feel fatigue interferes with performance.

Audibility

An interpreter must be able to hear everything in a courtroom. When someone speaks too fast or too softly, the interpreter will inform the court.

Continuing Education and Duty to the Profession

Court interpreters strive to improve their skills and knowledge of procedures through continuing education. This elevates their performance while interpreting. It is essential for interpreters have a solid grounding in every aspect of their working languages to constantly upgrade their skills.

Familiarization with the Case

Interpreters seek to familiarize themselves with the glossaries involved in a case. They may review documents or transcripts of preliminary hearings. Being aware of the matters related to the case ensures an interpreter can perform their duties adequately.

Interpreters request permission to review case files before the trial begins to prepare for technical terminology and to clarify any ambiguous terms used.

Pre-Testimony Interview

Interpreters will often ensure they speak the same language as the limited English proficient party prior to the proceedings. This allows an interpreter to become accustomed to an individual's speech and to determine if a different dialect, regionalism, or technical term will arise during testimony. Interpreters do not discuss the proceedings outside the presence of the individual's counsel. In the presence of counsel, often an interpreter will share that they will interpret everything which is said and that the witness should address the attorney asking the questions, not the interpreter.

Technical Terminology

Interpreters utilize specialized glossaries to have access to highly technical terms which are rarely used. Interpreters spend spare time during breaks in the proceedings to review materials to ensure they understand terms which might be used.

Jury Instructions

Jury instructions present highly technical and complex legal issues. They can be challenging to interpret--especially as they might be read by someone who is reading from a prepared text rather than speaking extemporaneously. Reading text can result in a faster pace with fewer pauses. Once the attorneys and judge agree on the jury instructions, interpreters will ask for them so that they can prepare.

Disqualification

When technical terminology or obscure slang will be used and an interpreter feels they cannot do an effective job without research and preparation, they will request time to review resources. If an interpreter does not speak the dialect of a party to a case, they will inform the court. This may result in their disqualification, and interpreters only consider this when they are concerned they do not have the linguistic expertise to perform adequately.

Relations with Colleagues

Interpreters seek to become acquainted with colleagues and regularly share information with them. They do this within professional interpreter groups and during the daily activities of interpreters who work in the same court. Interpreters regard each other as colleagues and refrain from unprofessional behavior which may detract from what is expected from court interpreters.

Interpreting Organizations and Education

Joining and participating actively in an association of language access colleagues is a key element of professional conduct. It also aids in expansion of knowledge as language changes. Court interpreters stay current with the dynamics of language through exposure. As interpreting skills require constant improvement, continuing education is a vital part of an interpreter's professional activities.

Chapter 7 - Remote Language Access

This section provides information about remote language access options and includes suggested best practices. The Office of the Executive Secretary maintains a publicly awarded contract with individual vendors and provides information about remote language access on the OES intranet page. This is information is available internally to court system employees. It is not accessible by members of the public.

Introduction

Technological advances provide a mechanism for the court system to reduce challenges in securing qualified interpreters at the last minute. Interpreting services may be delivered by computer (video-remote interpretation), phone (over-the-phone interpretation), sight translation (facsimile), and video unit (through bridge rooms). These remote options make it possible for courts to connect with language access providers who may be unavailable due to distance, time, cost, and/or scheduling conflicts. Utilizing remote language access services increases the number of languages available to courts. This is particularly important in languages of lesser diffusion.

According to a report issued by the National Center for State Courts, when a court avails itself of remote interpretation services, they avoid the use of unqualified interpreters. It is important for courts to determine an interpreter's qualifications during remote language access assignments at the beginning of the assignment by asking questions about the interpreter's skill. When faced with the choice between using remote language access or an individual who is a friend, relative, court employee, law enforcement officer, or another known party, a remote interpreter is the more appropriate alternative. When there are more participants involved in a proceeding or when the proceeding will be of some duration or particularly complex, a remote interpreter may require a break or may determine at some point they cannot capably provide language access during the matter. When that happens, the interpreter will advise the court.

General Guidelines for the Use of Remote Language Access

A court may utilize remote language access for emergency matters when no on-site interpreter is available. An example of this would be a request for an emergency protective order. While remote language access is appropriate for brief matters, there is no time limitation recognized for its use. Courts availing themselves of this option should consider that the longer a remote-interpreted proceeding continues, the more likely it is that the quality of interpretation will suffer, and the management of the proceeding will become more difficult.

For brief, non-emergency matters, when no on-site interpreter is reasonably available, courts may consider using remote language access if the duration of a proceeding is under 30 minutes and no on-site interpreter is reasonably available. Because the best way to ensure quality interpretation is for the interpreter to be physically present, it may be more

appropriate to schedule an in-person interpreter during complex or sensitive matters of any duration. Incorporating effective calendar management practices and advance- planning can minimize this consideration. Remote interpreting services are regularly utilized by magistrates and clerk's office staff to facilitate short communications with limited English proficient individuals. The remote language access provider may also assist court personnel in determining the language a person speaks or in providing sight translations of any document presented to the court

Procedural Suggestions

When a remote interpreter is connected with a location where language access services are required, judicial officers and court staff should consider the following appropriate procedures for their use.

Swear in the interpreter

Remote language interpreters are bound by the same code of ethics as in-court interpreters. The alternative method of language access neither minimizes nor changes the role and responsibilities of an interpreter.

Expect the interpreter will state their identification number or name

It is common for an interpreter to state their name, or their number assigned by the commercial service provider.

Determine the interpreter’s qualifications

Asking questions about the interpreter's qualifications should help determine whether the interpreter will provide adequate language access during a language access service event.

Provide basic case information to the interpreter before the service event

It is helpful to prepare an interpreter in advance of an assignment so that they can become familiar with the glossary which will be required. This ensures the most accurate interpretation.

Explain the process to participants

When a court ensures at the beginning of the proceeding that all the parties understand how the process will unfold, it is more likely that remote interpreting proceedings will occur seamlessly. A judicial officer, clerk, or magistrate should explain the process of using remote interpretation and of ensuring everyone understands how communication will proceed.

Confirm the interpreter's readiness

The interpreter should indicate they can hear and understand everyone adequately. When the interpreter identifies a concern, they will bring it to the attention of court staff while referring to the interpreter in the third person. This will include if an interpreter determines they are not qualified to interpret in a particular language. When that happens, the interpreter should tell the court which should secure an interpreter in the correct language.

Conduct the proceeding

Include pauses for consecutive interpretation.

Suggestions to Enhance Effectiveness and Efficiency

Anyone using remote language access, whether in court or elsewhere, should utilize the following suggestions to ensure language access is provided effectively.

1. ***Facilitate Compliance with the Interpreter's Code of Professional Responsibility***

   Speak directly to parties through the interpreter. Avoid phrases such as "Ask him if...," "Tell her that...," "Does he...," Interpreters speak in the voice of the speaker and do not rephrase, paraphrase, or explain. They interpret everything which is said during a service event. This includes statements which may or not be directed to the limited English proficient individual, whether they are considered essential or not. Everything must be interpreted, even when the presiding official may have understood it. Ensure participants speak one at a time at a moderate rate of speech. Something expressed in one word may require a phrase or sentence in another language. For that reason, ensure all parties honor an interpreter's requests for repetition or clarification.

2. ***Ensure the Interpreter Hears Everything***

   Take steps to ensure clarity, enunciation, and volume, so that everything is completely understood. It is important to ensure that the environment in which the communication is taking place (e.g., courtroom, interview room, counter/window, office) is free of noise. Be alert to frequent requests for repetition or clarification as this may indicate audibility challenges.

3. ***Control the Flow of Communication***

   All participants should speak one at a time and keep statements at a moderate length. Pauses should be made at the end of sentences or at logical breaks in thought to allow time for interpretation.

Handling of Problems by Interpreters During Proceedings

An interpreter uses a variety of strategies for handling challenges which can impede an interpreter from rendering accurate interpretation as required by the Code of Professional Responsibility. Many of those strategies are not available for remote interpretation because they depend on one's physical presence. Using a hand signal to direct a speaker to pause is not possible for a remote interpreter. The interpreter may instead vocally state that the interpreter requests for a speaker to pause so that they can interpret the speaker's statements correctly.

Certified interpreters are trained to seek resolution to challenges through the presiding officer, without regard to who is causing the communication difficulty. The interpreter will state the issue which is preventing accurate interpretation respectfully and succinctly. Stating what is occurring allows the presiding officer to assist in its resolution.

Remote Language Interpreter Qualifications

Interpreters providing remote language access services are subject to the same qualification requirements as any other court interpreter. Virginia court system staff exercise their obligation to evaluate an interpreter's qualifications. A vendor under contract to provide remote language access will prioritize interpreters by qualifications and route calls first to a specialized subset of interpreters who are court certified. However, there is no guarantee a court-certified interpreter will be available outside normal business hours. The individual setting up the language access assignment may or may not be informed in advance of the proceeding whether the remote interpreter is court certified. It is important to request one when a certified interpreter is necessary.

Remote Interpretation Utilizes Only the Consecutive Mode

Remote interpretation restricts the interpreter and the court to communicating only in the consecutive mode. In this mode, one person speaks, the interpreter speaks, another person speaks, and the interpreter speaks. Everyone takes turns speaking. This can take time and be less efficient in certain settings, such as during a speech by a judge during first appearances, arraignments, and pleas. These are the types of hearings where over the phone interpreting is most often utilized.

There is interpreting equipment which enables an in-person interpreter to provide simultaneous interpretation. There are also some programs which allow remote simultaneous interpretation, but there are a limited number of interpreters who are trained to deliver simultaneous interpretation remotely.

Equipment Configuration for Telephone Interpreting

Teleconferencing and video equipment provides better sound quality than ordinary speakerphones. In settings other than a courtroom, a standard but good quality speakerphone may be utilized. In the courtroom, a speakerphone situated on the bench, microphones on counsel tables, and equipment to turn off the speakerphone with two handsets to allow for confidential communication are common. If a document must be sight translated, the document may be faxed to the interpreter. This option may not be available with every telephone interpreter, but it is commonly available through the vendor under contract with the Office of the Executive Secretary.

Challenges and Advantages When Using Remote Interpreters

Challenges - Unrelated to Technology

Remote interpreting services may involve the same challenges which characterize the use of in-person interpreters in court settings.

Poor Interpreting Skills

Interpreters who are unfamiliar with the glossary being used or who lack the ability to render in the target language accurately may negatively impact the message. Interpreting requires a well-developed, short- term memory to remember accurately and completely what has been said. This can occur with either a remote interpreter or an in-person interpreter.

Unprofessional Conduct by the Interpreter

Interpreters should not offer advice, edit statements, answer for the defendant instead of interpreting, or summarize what is said. An interpreter who engages in this behavior may lack education about the proper role of the interpreter or may not remember or accurately interpret everything they hear. An interpreter who is asked to engage in inappropriate behavior by anyone involved in the case should manage the situation and clarify the proper role of the court interpreter.

Inappropriate Conduct by other Courtroom Participants

Courtroom participants must follow basic behavioral guidelines necessary for accurate and efficient interpreting. They should address a limited English proficient individual directly and not in the third person. They should not speak too fast or too quietly or at the same time as another person. They also should not use vocabulary or speech which is difficult to understand or interpret.

Challenges - Related to Technology

Standard commercial telephone interpreting services have the following limitations. Some are not inherent in the technology and could be addressed by changes in standard practice.

Visual Aids

A remote interpreter has no visual cues as to what is happening. It is important to maximize audibility and intelligibility of spoken communications.

Limitation to Consecutive Mode

Simultaneous interpretation requires special technology.

Lawyer-Client Communications

Privileged communications require two handsets for a client to communicate confidentially with an attorney.

Acoustics

Speakerphone equipment has a limited range of acoustic fidelity. Participants may need to speak into or toward the microphone or equipment.

Advantages of Remote Interpretation

- Interpreter may be more qualified than an interpreter who is available locally
- Interpreters available in languages of lesser diffusion
- Immediately available in cases which cannot or should not be postponed
- More cost-effective during short proceedings
- Reduced waiting time to connect with an interpreter
- Minimizes conflicts of interest in small communities

Chapter 8 - Payment of Court Interpreter Vendors

Virginia statutes regarding payment of foreign language interpreter appointments are found in Va. Code §§ 19.2-164 (criminal cases) and 8.01-384.1:1 (civil cases) of the Code of Virginia. Since July 1, 2003, the compensation of an interpreter appointed by the court is fixed by the court, in accordance with guidelines set by the Judicial Council of Virginia which has adopted the following standards in order to (1) facilitate the efficient use of qualified foreign language interpreters in court proceedings; (2) assist courts in setting fair and reasonable rates of compensation; and (3) promote uniformity in interpreter payment rates and policies throughout the state.

Payment Guidelines for Foreign Language Interpreters Serving Virginia Courts

Daily Payment Rate – Effective July 1, 2024

Certified Interpreters

All courts are strongly encouraged to use certified foreign language interpreters where available. Certified interpreters have passed the voluntary certification process established by the Council of Language Access Coordinators.

Certification is available for interpreters who have completed all elements within Virginia, who possess federal court interpreter certification, or who have completed certification within another state court system (if the passing rates and dates are in accordance with Virginia standards).

- Certified Interpreters: Hourly Rate - $80.00 (2-hour minimum)
- Non-certified Interpreters: Hourly Rate- $60.00 (2-hour minimum)

In language interpreters other than Spanish, it is in the court's discretion to pay either the $80.00/hour or $60/hour rate, depending on the qualifications the interpreter presents to the court. In cases involving languages of lesser diffusion, the court shall have the discretion to pay the higher rate or such rate as the court finds on the record to be necessary to retain a qualified foreign language interpreter.

All courts should encourage non-certified Spanish language interpreters to earn certification through the federal courts or a state court system participating in the Council of Language Access Coordinators of the National Center for State Courts. The two-hour minimum is established to help courts secure interpreters and to provide some compensation for out-of-court waiting times.

The recommended payment rates apply both to individuals and private/commercial interpreting companies. That is, the compensation structure is the same whether the

interpreter is supplied by a commercial interpreter service provider or the interpreter is contacted directly by the court.

Travel Expenses and Compensation

Mileage can be reimbursed when the interpreter travels 30 miles or more one way from their residence or place of business (address used for tax purposes). The maximum allowed reimbursable amount that can be requested equals the number of miles of the round trip (distance times 2) multiplied by the current GSA mileage rate (**$0.76 per mile**).

Said amount can be comprised of only miles (in the case of a private car being used for the whole trip), fare amount (if using public transportation or ridesharing services), or a combination of both (if using a private car to reach a public transportation station). Nonetheless, the sum of any amounts cannot surpass the maximum allowed reimbursable amount described above.

Example: If an interpreter lives 100 miles from the court, they would be allowed to request reimbursement of up to 152 dollars at the 2024 mileage rate. This amount may vary in later years.

Distance × 2 × GSA Rate. 100 miles × 2 × $0.76 = $152

For interpreters traveling 30 miles or more one way, travel time compensation can be approved at one-half the hourly rate allowed for actual work time.

Cancellation Policies for Foreign Language Interpreters

For a variety of reasons, the services of a foreign language interpreter in court may become unnecessary after the interpreter has accepted the assignment. There may be plea changes on the morning of trial, continuances may be granted, or the party/parties may fail to appear. When cancellation of an interpreter's service becomes necessary, if no other interpreting services during the time period of the canceled proceeding are needed, reimbursement of the interpreter may be guided by the following criteria.

Requirements of Counsel, the Court, and Clerk's Office

In an effort to conserve public funds to provide for such interpretation, it is recommended that counsel, the court, and clerk's office undertake all efforts possible to ensure early notification to the interpreters that assignments have been canceled. Courts should also consider calendar or docket management techniques to group the scheduling of cases requiring interpreters by language to maximize the use of the interpreter's time.

Cancellation by the Court without Payment to the Interpreter

No payment will be made for appearances that are canceled if the interpreter is notified of

the cancellation by phone, voicemail, email, or text at least 24 hours before the start of the assignment, excluding weekends and holidays. For example, for an assignment scheduled on Monday at 12 pm, the cancellation notice must be sent by 12 pm the previous Friday to avoid payment. If the interpreter travels a significant distance to the assignment and fails to receive the cancellation notice due to being en route, the court may decide whether to compensate the interpreter. To ensure clarity, interpreters should confirm their assignments by contacting the court at least 24 hours before the scheduled appearance. Failure to provide proof of said confirmation will result in non-payment.

Cancellation by the Court with Payment to the Interpreter

If an interpreter accepts an assignment for a full day which is canceled less than one day (24 hours) before the date the trial was to begin, it is recommended that the court approve reimbursement of the interpreter for four hours service, provided that the court was unable to secure work for the interpreter in other cases or in other courts for the canceled time period.

In the event that an interpreter accepts an assignment for more than one day which is canceled less than one day (24 hours) before the trial was to begin, it is recommended that the court approve reimbursement to the interpreter for eight hours of service, provided that the court was unable to secure work for the interpreter in other cases or in other courts for the canceled time period.

Cancellation by the Interpreter

If an interpreter must cancel an assignment, they must give sufficient notice to the court. The court should locate the replacement interpreter to ensure that a qualified person is appointed. In case of an emergency, an interpreter may call a substitute (the person should be certified if possible) when they cannot appear for the appointment. Cancellations by interpreters should be noted and addressed. If an interpreter is found to be unreliable, their future service may be curtailed or terminated.

Other Policy Suggestions Related to Interpreter Compensation

Interpreters should call the court at least one day (24 hours) prior to the scheduled court date to confirm their assignment. Failure to confirm an assignment may result in non- payment.

- Interpreters should sign-in at a designated area (when they arrive or return from lunch) and sign-out (when they leave or go to lunch).
- Interpreter should be available to interpret during the entire period for which the court will be billed even after completion of their original case(s) if they are still within the billing period. They should check with an authorized person before leaving the court within the billing period.

- In addition to in-court proceedings, interpreter services may include attorney-client interviews scheduled during the day at the courthouse, counter assistance in the clerk's office, jail visits, magistrate office interviews, or requests for assistance by the court.
- If the interpreting service is provided outside normal business hours, it should be preapproved by an authorized court official.
- Interpreters scheduled by a court may charge only for services provided during the period scheduled for that court. That is, if an interpreter provided services in circuit court for a case and then served in the general district court during the same billing period, the interpreter may not charge the second court for the time which is compensated by the first court.
- When the court is paying for the interpreter's services, the court shall contact interpreters to schedule court appearances. Interpreters are not to accept requests for interpretation services from attorneys unless the attorney has made prior arrangements with the court to retain the interpreter. Once an interpreter agrees to accept an assignment, they must appear at the scheduled date and time.
- Interpreters should not assume they will automatically be scheduled to follow a case from the first court appearance to the last. The court will determine all interpreter appointments.

Court Processing of Foreign Language Interpreter Payments

The Internal Revenue Service requires that all vendors who are paid by the court system have a valid Virginia Substitute W-9 on file with the Supreme Court of Virginia. This form is available here. Vendor payment requests will not be honored unless a properly completed Virginia Substitute W-9 is on file. A new form should also be submitted when there is a change of address, employer's identification number, business name, contact information, etc.

The DC-44 List of Allowances - Interpreter is required for submission to process payments for foreign language interpreters. The vendor is responsible for completing the majority of the information required on this form. Forms may be obtained from a Clerk's Office. Instructions for the form appear on the reverse of the multi-page packet.

Essential information required for the DC-44 List of Allowances - Interpreter follows:

- Venue and Jurisdiction of the Court
- Social Security Number or Employer Identification Number (EIN)
- Vendor Name or Business Name
- Address Used for Tax Purposes
- Defendant's Name and Case Number
- Original Code Section Charged

- Chart of Allowances Code Section
- Start Time / End Time / Duration
- Style
- Fee Requested
- Service Date
- Language Interpreted
- Service Provider / Certification Status
- Travel Time / Mileage (if qualified for reimbursement)
- Vendor Signature / Date

For multiple assignments during the same time, the vendor may complete an Interpreter Addendum to DC-44 and attach it to the completed DC-44. This avoids having to submit multiple invoices. The vendor may also complete the Vendor Reference (23-character field) if they have their own system to keep track of their assignments. An authorized court officer must sign the Authorized Signature line on the DC-44 prior to submission. After completion of services, the vendor should retain the Vendor's Copy upon submission to the court for review and approval of the DC-44. Once the court verifies the amount allowed and certified for payment, the document will be signed and forwarded to the Office of the Executive Secretary for processing.

Virginia courts encourage vendors to consider an Employer Identification Number (EIN) and direct deposit through the Electronic Data Interchange.

Chapter 9 - Translations

When a court or magistrate requires the translation of written documents or a transcription/ translation of media files, the court will consider the request and decide whether to order the creation of the translation. The original, translation, and translation certificate represent a portion of the case and should be provided to the court where the case is filed upon completion of the project. Translations can be compensated by the Office of the Executive Secretary through a process initiated by requesting this service through a court's local staff interpreter or the Foreign Language Services Team within the Department of Judicial Services. This team can start the process to secure an estimate from a vendor which is qualified to create industry-standard translations for Virginia courts. The Foreign Language Services Team can also assist courts with local translations of relevant information which needs to be shared in another language.

Guiding Principle

A translation is a written document which faithfully and accurately reproduces in the target language the closest natural equivalent of the source language document without embellishment, omission, or explanation. Translations must be neither better than nor inferior to the document being translated in appearance, style, or content. Readers of translations should be able to understand the original author's meaning and draw the same inferences as they would if they were able to read the original document in the source language.

Guidelines Applicable to Translations

The format of a translation should correspond to the original document being translated.

Preservation of Form, Grammar, and Spelling

The appearance of the translated text should replicate the format of the original document. The translation may be longer or shorter than the original. Fonts, text, italics, underscoring, all-caps, bold, size of headings, margins, captions, legends, charts, graphs, tables, symbols, structure of columns, borders, shading, boxed text, etc. should present a close replica of the original document. Generally, the target language document should be written according to the rules of that language's grammar and spelling.

Ambiguity of the Source Document

When a source document includes a word or phrase with an ambiguous meaning, the translator will choose terms which are most likely to be correct and include a brief footnote explaining alternative possible renderings.

Guidelines for Documents Submitted into Evidence

Spelling and grammar errors in a source document are preserved or identified in the translation.

Abbreviations, Acronyms, and Initialisms

The translation should employ commonly used and understood equivalents when selecting an abbreviation, acronym, or initialism in a target language. Abbreviations are shortened forms of words which end with a period. Contractions omit one or more letters within a word, replacing them with an apostrophe. An acronym is made up of initial letters of words (ZIP Code), while an initialism is read letter by letter (GNP). In common usage, acronym refers to both acronyms and initialisms.

Capitalization

When translating from English into another language, translators should generally follow the target language's rules of grammar and spelling when deciding how to translate words which were capitalized in the source document. When words which would not be capitalized in the English document are capitalized, the equivalent word or words in the target language should be given emphasis in a manner consistent with the grammar and spelling of the target language.

When the target language provides no clear guidance on capitalization, the translator should handle the translation as follows:

Word Initial

When the first letter of a word or set of words is capitalized, the first letter of the corresponding word or words in the translation should be capitalized.

Whole Word

If all the letters of the word in the source document are capitalized, then all the letters of the corresponding word in the translation should be capitalized.

Special Considerations for Translations of Electronic Recordings

A document attached to the translation will clarify the qualifications of the translators and the manner in which the translation was produced. It will indicate whether the translation was produced from a media file and whether any part of the recording could not be heard. Parts which cannot be heard, cannot be translated. Those are designated by including the term "unintelligible". When transcribing electronic recordings of non-English communications, the transcriber should produce a verbatim record of every word spoken, including all grammatical

errors, changes of thought, misstatements, profanity, slang, and poorly constructed sentences exactly as they were stated.

Submission of Foreign Language Documents to the Judiciary

A certified English translation should be attached to foreign language documents and media files submitted into evidence. The translation of a foreign language document should be certified by the translator of the document by including the following as part of the translation:

1. **Certification Statement**

   "I certify that this translation is a faithful and accurate translation of the source document."

2. **Signature of Translator**

   Signed or typed

3. **Printed Name of Translator**

   Beneath the signature line

4. **Translator's Credentials**

   Concise and accurate list of certifications, accreditations, degrees in translation, and other pertinent credentials.

Differences Between Translating and Interpreting

Documents requiring translation and media files were produced some time prior to the translation or transcription/translation request, and the text is a finished product. Because it is static and unalterable, it can be examined and reexamined to ensure accuracy. The text is either written or verbal, and the translator will not witness the circumstances in which it was composed. It is the product of one or more authors or a variety of speakers. A translator seeks to replicate the original into a target language by determining the best possible equivalents in terms of writing style and terminology. Translations can be drafted, revised, and edited before publication in order to approximate the source document or media file most closely.

Utterances which are interpreted occur at the time the language access provider is providing services. This means thoughts and statements may be spoken while an interpreter is actively interpreting. What is said can be dynamic and the continuation of thought may be unpredictable. An interpreter works to take notes and recall what was said in another language so as to replicate the statements correctly the first time. While the speaker may gesture or

display body language, the interpreter does not. They focus on switching between languages and speakers while keeping an understated appearance with a great attention to detail in order to avoid inaccuracies for a few or a large group of listeners.

Chapter 10 - Frequently Asked Questions

This section covers frequently asked questions about court interpreter services.

General Questions

What are the obligations of court personnel under Title VI and the Safe Streets Act in terms of ensuring that those with limited English proficiency (LEP) have meaningful access to court services?

It is a federal requirement to provide free language assistance to LEP individuals in all court proceedings, notwithstanding conflicting state or local laws. See the Appendix "Language Access Guidance Letter to State Courts from Assistant Attorney General Thomas E. Perez (August 17, 2010)."

How can I better provide access to those with limited English proficiency (LEP)?

It is a best practice to prominently post the translated notice that free language access services are available upon request. There is a formatted Language Access Notice for court use. The Language Access Notice may be reproduced on a stamp or a sheet of paper to be included in a mailing with another court document. In this way, an LEP individual knows to request assistance. This notice should not replace any vocal notification the court would make that free language access services are available. If other language translations are required for a particular court, contact the Foreign Language Services Team within the Office of the Executive Secretary for a translation about accepted local practices which can be of use to the community served by the court.

Can a minor child or other relative or friend of a LEP individual be used as an interpreter?

State courts should generally not use friends, family members, or other third parties to interpret. Such individuals should only be used in unforeseen, emergency, circumstances while awaiting a certified or qualified interpreter. When using a party close to an individual requiring language access, it is unlikely that the qualifications of that person to perform court interpreting are adequate. Also, issues can arise when a friend or relative provides interpretation services. This is particularly relevant in the legal context where a person must reveal intimate medical, personal, social, and financial information in order to receive competent legal advice and representation. An untrained court interpreter may consider helping the limited English proficient individual by embellishing their testimony. A minor child of a party should never be used as an interpreter.

Can the court provide an interpreter for an LEP parent or guardian of a juvenile involved in a case?

Courts should provide an interpreter for the juvenile's parent or guardian with LEP.

Can a court or magistrate use a non-certified foreign language interpreter?

A non-certified interpreter may be utilized in certain types of cases, but it is recommended to seek a certified foreign language court interpreter first. The Judicial Council of Virginia encourages the use of court certified interpreters where available. If no certified interpreter is available, then the court may seek to qualify a non-certified interpreter.

Can interpreters be appointed in civil matters, as well as criminal and traffic matters?

If the court determines that an interpreter is necessary to ensure meaningful access to an individual with limited English proficiency, an interpreter should be made available free of charge in both civil and criminal filed, predisposition cases. The statutes governing appointment of interpreters for non-English speakers are Va. Code §§ 19.2-164 (criminal) and 8.01-384.1:1 (civil).

Can or should a foreign language interpreter take notes while performing interpreting services?

It is a recommended best practice for foreign language interpreters to take notes. This is particularly important in the consecutive mode and for particular facts within the simultaneous mode. It is regarded as one sign of a professional court interpreter, who will destroy the notes after the hearing.

Payment Questions

What rate should the court pay an interpreter?

- Foreign language interpreters serving the courts are paid in accordance with guidelines established by the Judicial Council of Virginia. This is the result of legislation which was adopted by the 2003 General Assembly. Payment rates are set out in the Payment of Court Interpreter Vendors Chapter.

Who arranges and pays for interpreters needed for non-English speakers ordered to treatment (VASAP, domestic violence counseling, CASA, parenting classes, anger management, etc.)?

- The service provider must arrange for and compensate interpreters. To the extent possible, courts should ensure that service providers are providing interpreters as necessary for non-English speaking individuals participating in court-ordered treatment and/or services.

Who arranges and pays for an interpreter at a court-ordered doctor's evaluation?

- The Office of the Executive Secretary compensates interpreters for court-ordered doctor evaluations.

Does the court pay for a public defender, retained counsel, or court-appointed attorney to have an interpreter at their office for attorney-client interviews?

- In those cases when the court concludes that the appointment of an interpreter is appropriate, an in-person or remote interpreter can be made available to counsel. These services should always be secured in consultation of the court where the case is filed. If this will be done remotely, the court should request a separate billing code for counsel, which is not the court's billing code. If the service event involves an in-person interpreter, the attorney must sign the Authorized Signature line on the DC-44.

Does the court pay for two different interpreters in one case, for example, if one interpreter provides services at the public defender's office but another interpreter is appointed in court?

- It is common for courts to rotate interpreters within a pool who work in tandem to support a court's language access needs. The need for interpreters relates to an interpreter being unavailable for a particular date and to an interpreter, the court, or another party believing a conflict of interest exists. The interpreter's code of ethics requires that interpreters avoid the appearance of impropriety by being neutral and seeming objective, while limiting their work specifically to providing language access.

Does the court pay for an interpreter for law enforcement during an investigation?

- The law enforcement agency is responsible for arranging and compensating interpreters.

Does the court pay for an interpreter who performs services at the jail (e.g., booking, fingerprinting)?

- The jail is responsible for arranging and compensating interpreters.

Does the court pay for an interpreter to provide services to a victim-witness coordinator?

- The victim-witness program (Commonwealth's Attorney) is responsible for arranging and compensating interpreters.

Does the court pay for an interpreter used at intake in a court services unit or magistrate office?

- If it is the initiation of a court case, the court system will compensate an interpreter. If the case is being diverted, if this is for monitoring probation, or if language access is required from an outside agency, it is best to inquire of the FLS Team before providing an interpreter.

Does the court pay for interpreters in local ordinance cases?

- If the court determines the appointment of an interpreter is necessary, one will be provided within the court for a local ordinance case.

According to Va. Code § 8.01-384.1:1 in a civil case, "the amount allowed by the court to the [foreign language] interpreter may, in the discretion of the court, be assessed against either party as a part of the cost of the case and, if collected, the same shall be paid to the Commonwealth." How should the clerk's office process this?

- It is a federal requirement to provide free language assistance to LEP individuals in all court proceedings, notwithstanding conflicting state or local laws.

Will the court pay an interpreter more than one two-hour minimum a single date of service?

- If there is at least a two-hour break between one assignment and a later one, an invoice for the second two-hour minimum can be approved.

Would an interpreter round up to the next quarter-hour when billing for an assignment? Interpreters submit payment requests by quarter hours after the first two hours.

- If the court is closed before the start of an interpreter's assignment, should an interpreter be paid a two-hour minimum for that date of service?

Contract foreign language interpreting vendors cannot be paid for court closings due to weather or other emergencies. It is important for the vendor to determine if the court is closed before heading to a language access assignment.

Clerk of Court Questions

How should a clerk assist a limited English proficient party at the counter or window?

- The clerk may utilize a qualified interpreter who is present within the court. If none is available, a remote interpreter can facilitate communication. The clerk should provide the same information as they would to an English speaker. This puts the person hearing the message on an equal footing with someone who would have heard the message in English. Documents which require sight translation can be faxed to the remote interpreting services provider. The documents will be sight translated, by being read aloud into English or another language.

Are there foreign-language materials available to assist courts in communicating with those who possess limited English proficiency?

- Through an established process, the Office of the Executive Secretary has provided some court forms in other languages. Local translations of court standards have also been created. On the public website for the Foreign Language Services Team, are translations of interpreter complaint forms. A court requiring additional materials or information in additional languages should contact the FLS Team within OES to request assistance.

What training about communicating with those with limited English proficiency is available to court staff?

- The Department of Judicial Services (DJS) within OES is available to provide clerk offices with technical assistance and support through direct communication and sight visits. A particular clerk's office and DJS may also collaborate to develop solutions for the court's consideration, in addition to training and resources related to a specific area of concern. In combination with these efforts, it is a best practice for clerks to advise court staff about the language access plan and to seek the support of DJS in clarifying these guidelines.

Magistrate Questions

If a magistrate utilizes the services of an interpreter and probable cause is not found, what should be entered on the DC-44?

- Write "probable cause not found" with the offense/code section on the DC-44.

When determined to be necessary, can interpreters be used in every type of criminal proceeding before a magistrate?

- Interpreters can be used in a proceeding before a magistrate when someone with limited English proficiency is involved.

If an interpreter requests that a magistrate sign the DC-44 to verify services were provided to law enforcement in the absence of the magistrate, should a magistrate sign the DC-44?

- No, the time listed on the form DC-44 only includes the time spent before the magistrate.

Should a magistrate alert the clerk of court to the fact that an interpreter may be necessary in the court proceeding?

- Communication between a magistrate and clerk's office facilitates the efficient administration of justice. Indicate interpretation is require within the Special Needs field of eMagistrate. That data will carry over to the court's case management system.

Appendix A – Miscellaneous

Questions to Determine the Need for an Interpreter

Avoid any questions which can be answered with yes or no.

Identification Questions:

- [NAME], please tell the court your name and address
- Please tell us your birthday, how old you are, and where you were born

Questions in the English Vernacular:

- How did you come to court today?
- What kind of work do you do?
- Where did you go to school?
- What was the highest grade you completed in school?
- What have you eaten today?
- Please describe something or someone you see in the courtroom
- Please tell me if you feel comfortable speaking and understanding English

Virginia Statutes

Criminal Cases - Va. Code § 19.2-164

Civil Cases - Va. Code § 8.01-384.1:1

Establishing the Qualifications of Interpreters

To ensure an interpreter is proficient and suitable for appointment in court proceedings and to ensure the absence of bias, it is important to ask the following questions:

Language and General Education Knowledge

- What is your native language? If not English, how did you learn English? If the foreign language is not your native language, how did you learn it?
- Have you spent any time in a foreign country?
- Have you formally studied language in school or college?
- What is the highest grade or degree you completed?

Interpreting and Translating Skills

- What formal training have you had as an interpreter and/or translator?
- What courses or training have you completed in court interpreting and/or translating?
- Have you passed certification exams for interpretation and/or translation?
- Are you a member in good standing of a professional interpreter or translator association?
- Do you attend meetings and conferences of professional interpreters and translators, and are you a certified court interpreter within a state or federal court system?
- Have you had your interpreting and/or translating skills evaluated?
- If you are not certified, have you ever been qualified by a judge to interpret in court?

Interpreting Experience

- How many times have you interpreted in a state or federal court? Have you interpreted for this type of hearing or trial before?
- Are you familiar with the legal glossary in both languages? Have you ever interpreted in a non-court setting?

Conflict of Interest

- Have you been disqualified from interpreting in any court or administrative hearing?
- Have you read and understood the Code of Professional Responsibility for Foreign Language Interpreters Serving Virginia Courts, and can you agree to abide by that code and advise the court when you cannot abide by any particular provision?
- Have you been disciplined for conduct which violates the code of ethics? Are you a potential witness in this case?
- Do you have any other potential conflicts of interest, including if you know or work for any of the lawyers, parties, or witnesses in this case?

Communicative Compatibility

- Have you spoken informally with the person for whom you will be interpreting? Did you or the other party have difficulty understanding what was said?
- Do you speak the same language?
- Are there dialect or idiomatic peculiarities which you cannot interpret into English? Are there any communication challenges?

Ability to Interpret in Various Modes

- Please explain the difference between simultaneous and consecutive interpreting and when each should be used during court proceedings.
- Can you interpret simultaneously everything which is said without adding, deleting, or changing the meaning?
- Can you interpret consecutively everything which is said without adding, deleting, or changing the meaning?

Sample Interpreter Oath

- Do you solemnly swear or affirm that you will interpret accurately, completely, and impartially, using your best skill and judgment in accordance with the standards prescribed by law and the Code of Professional Responsibility for Interpreters Serving Virginia Courts; follow all official guidelines established by this court for legal interpreting and/or translating; and discharge all of the solemn duties and obligations of legal interpretation and translation?

Suggested Statements to Clarify the Role of the Interpreter

In-person Interpreter

The interpreter will simultaneously interpret this advisement while the court official is speaking:

An interpreter will assist with these proceedings. The interpreter is limited as to what they can and cannot do. The interpreter facilitates communication during the proceedings. They are not a party in this case, have no interest in this case, and will be completely neutral. The interpreter is not working for either party. Their sole responsibility is to enable us to communicate with each other. The interpreter is prohibited from giving legal advice and will not serve as a social worker. Their only job is to interpret. As a language conduit, it is important that you do not ask the interpreter for legal advice or any other advice or assistance. Does anyone have questions about the role or responsibilities of the interpreter? If you do not understand the interpreter, please let me know.

Remote Interpreter

The interpreter will consecutively interpret this advisement while the court official is speaking:

We are going to communicate through an interpreter who will help us remotely. The interpreter will interpret everything between English and the target language. The interpreter will not participate in the conversation. They will only interpret what each of us says. If you do not understand something, ask me rather than the interpreter. Please speak directly to me, just as I will speak directly to you. If you have a long question or a long

answer, please pause frequently so that the interpreter can interpret everything accurately. Try to wait until the interpreter has finished before you continue with your statement or question. Please speak loudly and pronounce your words clearly so the interpreter can hear you easily. While it may take longer to say everything you need said through the interpreter, please say everything you need to say. If you have difficulty hearing the interpreter or understanding me during this proceeding, please tell me. Are you able to hear and to understand the interpreter?

Suggested Statement to Clarify the Interpreter's Role to the Witness

The interpreter will simultaneously interpret this advisement while the judge is speaking:

It is important to understand the role of the interpreter. The interpreter is here only to interpret the questions that you are asked and to interpret your answers. The interpreter will say only what someone says, without adding, omitting, or summarizing anything. The interpreter will interpret into English and your language everything that is said. Do not say anything you do not want everyone to hear. If you do not understand a question, request clarification from the person who asked it. Do not ask the interpreter. Remember that you are giving testimony to this court. Please speak directly to the attorney or me, not to the interpreter. Do not ask the interpreter for advice. Speak in a loud, clear voice so that everyone can hear. If you do not understand the interpreter, please tell me. If you need the interpreter to repeat something you missed, please make your request for a repetition to the person speaking, not the interpreter. Please wait until the entire question has been interpreted in your language before you answer. Do you have any questions about the role of the interpreter, and do you understand the interpreter?

Suggested Statement to Clarify the Interpreter's Role to the Jury

The interpreter will simultaneously interpret these advisements while the judge is speaking.

Proceedings Interpreting

This court seeks a fair trial for all regardless of the language they speak. Bias against or for persons without English proficiency is not allowed. Do not allow the fact that the party requires an interpreter to influence you in any way.

Witness Interpreting

Treat the interpretation of the witness' testimony as if the witness had spoken in English and no interpreter were present. The fact that testimony is given in a language other than English should not affect your view of the credibility of a witness. If any of you understand the language of the witness, please disregard what the witness says in their language. Consider as evidence only what is provided by the interpreter in English. Even if you think an interpreter has made a mistake, you must ignore it completely and make your deliberations based on the official interpretation.

Information About Court Interpreters Which Judges Should Know

The following information is shared to enhance understanding of the profession of court interpretation from the point of view of court interpreters.

An interpreter is like a court reporter in terms of keeping track of the language spoken in a court case. The interpreter is responsible for professionally rendering statements between languages. While the interpreter speaks, they are speaking the statements of another party and not the statements of the interpreter, unless there is a request for restatement or pause on behalf of the interpreter so that the interpreter can interpret accurately. Interpreters abide by the Code of Professional Responsibility and are restricted from performing certain tasks.

- Interpreters cannot explain or restate what is said. They only render what is said into another language. If someone needs to explain something, the interpreter will interpret that explanation/restatement into another language.
- Interpreters cannot interpret effectively when two or more people speak at the same time.
- Interpreters are professionally and ethically bound to interpret everything which is said and will not refrain from interpreting something which is said.
- Interpreters are required to interpret simultaneously in certain situations. If this is disruptive, please let the interpreter know and they will use interpreting equipment so as to not interfere with the proceedings.
- If someone suggests the interpreter made an error, please bring it to the attention of the interpreter so that the interpreter can consider if they made a mistake while interpreting. The interpreter will either stand corrected or stand by their interpretation after considering the input.
- Please address parties directly and not in the third person. Saying "Ask them if..." or "Tell them that..." can cause confusion for the party hearing the statement in another language.
- Interpreters convey speech into languages which may require more or fewer words. They also might require a delay to convey the full meaning. Avoiding quick delivery or excessively fast speech allows the interpreter to create an accurate rendition.
- Interpreters require breaks as they are often the only person in the courtroom speaking all the time. It is demanding to understand what is being said and targeting it into another language. For this reason, interpreters during long hearings often work on a team, switching off as necessary to ensure accuracy.
- An interpreter's main interest is that all individuals understand the information. The use of different dialects and terms may cause an interpreter to request clarification. This avoids an interpreter having to guess at something which is not understood and reflects an interpreter's commitment to accuracy.

- Many interpreters may not yet be certified but seek to improve their interpreting skills. They may need to attend courses and/or professional seminars. Enabling language access resources to attend educational events may provide a broader team of interpreters on which the court can rely.
- Interpreters may have other commitments within the same courthouse or others. It is important to make efficient use of their time during a service event so as to not delay the cases for which they are assigned.

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Appendix B - Excerpts From The State Court Journal

The following articles are excerpts from a special issue of the State Court Journal entitled "Overcoming the Language Barrier: Achieving Professionalism in Court Interpreting" published by the National Center for State Courts in 1996 (Volume 20, Number 1).

Court Interpreting: View from the Bench

Charles M. Grabau

Introduction

The appointment of a court interpreter is a discretionary duty of a judge. The judge decides who is to receive the services of an interpreter and whether an interpreter is qualified. This duty is very important, as the selection of an unqualified court interpreter can have a profound effect on the rights of everyone involved in either a civil or criminal case.

Unfortunately, many judges lack the knowledge to perform this duty properly. They must frequently rely on "interpreters" who have received little or no training in the skills needed to be a qualified court interpreter. Judges who are unfamiliar with the skills necessary to court interpretation could fall prey to three prominent misconceptions:

Misconception Number 1: If a person is bilingual, that person is able to interpret. A bilingual individual is not necessarily qualified to interpret in court. Court interpreting requires additional knowledge and skills.

Misconception Number 2: The appointment of a bilingual attorney will solve the language problem in the courtroom. An attorney *cannot* both represent a client and interpret in the courtroom at the same time.

Misconception Number 3: Defendants have little to contribute in their own defense. A defendant has the constitutional right to the effective assistance of counsel and therefore *must* be able to communicate with his or her attorney.

What does a judge need to know before appointing a court interpreter? For instance, what is a court interpreter? What are a court interpreter's responsibilities as a professional? What should a judge expect from a qualified, certified court interpreter? The purpose of this article is to answer these and other questions pertaining to court interpretation.

What Is the Role of a Court Interpreter?

A court interpreter is a "language mediator"[1] or "language conduit"[2] whose participation allows an individual who does not speak or understand English to participate meaningfully in a judicial proceeding. An interpreter conveys the meaning of a word or a group of words from a source language (e.g., Spanish) into the target language (e.g., English). Colloquial expressions, obscene or crude language, slang, and cultured or scholarly language have to be conveyed in accordance with the usage of the speaker. A court interpreter's job is not to tone down, improve, or edit any statements; instead, he or she must maintain the same register, or level of language spoken, and style of the speaker. There are three different modes of court interpretation:

Simultaneous Interpretation: The interpreter speaks contemporaneously with the speaker. This mode of interpreting is often used when the court interpreter is seated at counsel table assisting a non-English-speaking party.

Consecutive Interpretation: The interpreter listens and speaks in a sequential manner after the speaker has completed a thought. The speaker may pause at regular intervals to facilitate the conveyance of his or her statements through the interpreter.

Sight Translation: The interpreter reads and translates a written document orally in court.[3]

Another mode of interpreting—summary interpretation—should never be used in court.

[1] Roseann D. Gonzalez, Victoria F. Vásquez, and Holly Mikkelson, *Fundamentals of Court Interpretation: Theory, Policy and Practice* (Durham, N.C.: Carolina Academic Press, 1991).

[2] *United States v. Nazemain*, 948 F 2d 522 (9th Cir. 1991), cert denied 113 S. Ct. 107 (1992).

[3] It is important that a judge know the difference between an interpreter and a translator. A *translator* translates a written document in one language into a written document in another language. Translation requires different skills than those used by an interpreter.

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Summary Interpretation: The interpreter sumarizes the statements of the speaker.

A court interpreter is an officer of the court who must comply with a code of professional responsibility, which imposes ethical responsibilities relating to the interpreter's conduct (see page 8). The court interpreter should take an oath in open court before every proceeding to faithfully, accurately, and impartially interpret the proceedings using his or her best skill and judgment.[4] A court interpreter is neither a witness nor an expert witness.[5]

When an interpreter is used by a defense attorney to interview the defendant, the attorney-client privilege applies. When a suspect is interrogated through an interpreter by a police officer, courts have held that the interpreter is a joint agent of the parties. *U.S. v. DaSilva,* 725 F.2d 828 (2d Cir. 1983). "When two persons who speak different languages and who cannot understand each other converse through an interpreter, they adopt a mode of communication in which they assume that the interpreter is trustworthy, and which makes his language presumptively their own. Each acts upon a theory that the interpretation is correct. Each impliedly agrees that his language may be received through the interpreter. If nothing appears to show that their respective relations to the interpreter differ, they may be said to constitute him their joint agent to do for both that in which they have a joint interest." *Commonwealth v. Vose,* 157 Mass. 393, 394-395 (1892); *Camerlin v. Palmer Company,* 83 Mass. (10 Allen) 539 (1865); *People v. Romero,* 575 N.Y. S.2d 802 (Ct. App. 1991); *U.S. v. Beltran,* 761 F.2d 1 (1st Cir. 1985).

The court interpreter plays an important role in protecting the rights of a non-English-speaking person.[6] A non-English-speaking person is "any principal party in interest or witness participating in a legal proceeding who has limited ability to speak or understand the English language."[7] It also includes parents of minors who are parties in a civil case.

A judge cannot be expected to train a court interpreter. The office of court interpreter services should be responsible for the training and certification of the court interpreters in your jurisdiction.

What a Judge Can Expect from a Certified Court Interpreter

Many jurisdictions distinguish between a certified interpreter and a noncertified interpreter. A certified interpreter is an individual who has passed an oral examination, such as the federal court interpreter's examination, or an examination administered by a state court or a recognized international agency (e.g., the United Nations) that has been shown to be valid and reliable.[8] There is a growing recognition among professional groups of court interpreters of the need for standardized interstate testing and certification programs.

A court interpreter will speak clearly, in a manner that reflects but does not minimize the tone and emotions of the speaker. A court interpreter should never simplify the questions or statements for a non-English speaker even when the interpreter believes the non-English speaker cannot understand the questions or statements. It is not the obligation of the court interpreter to request an explanation or simplification of the question or statement.

[4] I suggest that in a busy arraignment session, in order to save time, the interpreter be sworn only at the beginning of the session. However, it is advisable for the judge or the session clerk to indicate on the record that the interpreter has previously been sworn.

[5] *Commonwealth v. Belete,* 37 Mass. App. Ct. 424, 426 (1994). However, an exception is made in circumstances in which a judge has to resolve a dispute about an interpretation to which an attorney or a juror has objected. *Commonwealth v. Festa,* 369 Mass. 419, 429-430 (1976). In these circumstances, the judge should appoint a second, certified court interpreter to resolve the dispute about the interpretation given by the first court interpreter. The second court interpreter acts as an expert witness by providing an opinion as to the correct usage of or meaning of a word or expression that is in dispute. The judge can believe or disbelieve the opinion of the expert witness about the interpretation provided by the first interpreter. The first interpreter should not later perform interpreter services in that same case. Many jurisdictions will not be able to assign different court interpreters because of a limited number of qualified interpreters. This is another reason to train interpreters and to insist that they understand and comply with the Code of Professional Responsibility for Interpreters in the Judiciary.

[6] In 1970, the Second Circuit Court of Appeals held that the Sixth Amendment right of confrontation, applicable to the states through the due process clause of the Fourteenth Amendment, required non-English-speaking defendants the right of an interpreter at the government's expense. *U.S. v. Negron,* 434 F.2d 386 (2d Cir. 1970).

[7] Model Interpreter Act, *Court Interpretation: Model Guides for Policy and Practice in the State Courts* (Williamsburg, Va.: National Center for State Courts, 1995).

[8] See *Seltzer v. Foley,* 502 F.Supp. 600 (S.D.N.Y. 1970).

The Code of Professional Responsibility for Interpreters in the Judiciary

Canon 1: Accuracy and Completeness

Interpreters shall render a complete and accurate interpretation or sight translation, without altering, omitting, or adding anything to what is stated or written, and without explanation.

Canon 2: Representation of Qualifications

Interpreters shall accurately and completely represent their certifications, training, and pertinent experience.

Canon 3: Impartiality and Avoidance of Conflict of Interest

Interpreters shall be impartial and unbiased and shall refrain from conduct that may give an appearance of bias. Interpreters shall disclose any real or perceived conflict of interest.

Canon 4: Professional Demeanor

Interpreters shall conduct themselves in a manner consistent with the dignity of the court and shall be as unobtrusive as possible.

Canon 5: Confidentiality

Interpreters shall protect the confidentiality of all privileged and other confidential information.

Canon 6: Restriction of Public Comment

Interpreters shall not publicly discuss, report, or offer an opinion concerning a matter in which they are or have been engaged, even when that information is not privileged or required by law to be confidential.

Canon 7: Scope of Practice

Interpreters shall limit themselves to interpreting or translating, and shall not give legal advice, express personal opinions to individuals for whom they are interpreting, or engage in any other activities which may be construed to constitute a service other than interpreting or translating while serving as an interpreter.

Canon 8: Assessing and Reporting Impediments to Performance

Interpreters shall assess at all times their ability to deliver their services. When interpreters have any reservation about their ability to satisfy an assignment competently, they shall immediately convey that reservation to the appropriate judicial authority.

Canon 9: Duty to Report Ethical Violations

Interpreters shall report to the proper judicial authority any effort to impede their compliance with any law, any provision of this code, or any other official policy governing court interpreting and legal translating.

Canon 10: Professional Development

Interpreters shall continually improve their skills and knowledge and advance the profession through activities such as professional training and education, and interaction with colleagues and specialists in related fields.

Note: This code, or one very similar, has been adopted by California, Maryland, Massachusetts, Minnesota, Oregon, New Jersey, Utah, Virginia, and Washington. Hawaii, Nebraska, and Nevada are considering its adoption.

Source: William E. Hewitt, *Court Interpretation: Model Guides for Policy and Practice in the State Courts* (Williamsburg, Va.: National Center for State Courts, 1995).

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The court interpreter must not correct factual errors made in questions put to the non-English speaker and must not correct the testimony of non-English speakers, even if errors are obvious.

As an officer of the court, the court interpreter must remain impartial. A court interpreter is not a liaison or social worker. There should be no unnecessary discussions with the attorneys, parties, or witnesses, either inside or outside the courtroom.

A certified court interpreter will always refer to himself or herself as the "interpreter" when addressing the court. This practice is followed to avoid confusion on the record. For example, if the interpreter did not hear the question posed by the attorney to the witness, the court interpreter will raise his or her hand and address the judge and state, "The interpreter did not hear the question. Would the Court order the attorney to repeat the question?" The judge should then order the attorney to stop turning his or her back to the witness when he or she asks the question and order him to repeat the question. A court interpreter also is obligated to interrupt the proceeding whenever he or she is unable to understand a word or phrase. Again, the court interpreter will signal the court and inform the judge of the problem. The judge can order the attorney to rephrase the question.

If an error occurs in interpretation during a jury trial, the court interpreter should avoid alerting the jury of the problem. In most situations, the problem can be resolved with a brief sidebar conference. The interpreter can explain the problem to the attorneys and the judge. Perhaps the problem can be solved by the judge ordering the attorney to rephrase the question or to simplify the words used in the question. Sometimes, the court interpreter needs to consult a dictionary and may ask, "Your Honor, may the interpreter consult a dictionary (or other source) to clarify the meaning of the word?" The judge can, if necessary, request the services of a second interpreter to resolve the problem. The judge should record and preserve the words or phrases of the foreign language that are in contention for the record. A hearing should be conducted to hear the opinion of the second court interpreter, who in this case acts as an expert witness.

The judge has to rule, in view of the evidence, as to the correct interpretation. If the correct interpretation is different from the original interpretation, the judge must instruct the jury to disregard the first interpretation. The attorney can then repeat the question originally posed to the non-English speaker so that the jury can hear the correct interpretation. Curative instructions will be necessary to inform the jury that the misinterpreted answer is no longer evidence and must be disregarded.

Whenever an objection is made, the court interpreter must interpret everything that is said by the attorney who made the objection and must instruct the witness by a hand gesture not to speak until the court has ruled on the objection. The interpreter must interpret what the attorney or attorneys state to the judge as well as the judge's ruling on the objection. A non-English-speaking witness or party in a civil or criminal case is entitled to hear everything that everyone else hears in the courtroom.

Working with a Court Interpreter

When Should an Interpreter Be Appointed?

An interpreter should be appointed as soon as possible. Frequently, a judge learns that an individual needs an interpreter from court personnel, the session clerk, a probation officer, or the attorneys in a case. The judge should conduct a brief voir dire of the individuals needing the interpreter. The judge should *not* ask questions that require yes or no answers. *I* do not ask if they speak English. The judge should ask the persons needing the interpreter questions such as where they live, if they work and what kind of work they do, and how long they have lived in the state. One question the judge should *not* ask is whether they speak English. The judge should assume that if he or she is alerted about a language problem, the probability is that the assistance of a court interpreter is needed. There are times when the judge may suspect that an individual may be hiding behind an alleged language barrier. It is still best to err on the side of appointing the interpreter rather than risk depriving individuals of their day in court.

Orienting the Court Interpreter

It is good practice, when possible, to allow the court interpreter to speak to the attorney who requested the interpreter so that the interpreter may orient himself or herself regarding the specific vocabulary to be used during the trial or hearing. The interpreter will be better prepared if he or she knows the nature of the case,

the charges or claims being tried, and who needs the interpreting—a witness, a party in a civil case, or a defendant in a criminal case. The interpreter may request a photocopy of the charges or complaint, grand jury minutes, deposition transcripts, police reports, medical records, or other documents. The judge should inform the attorney representing the party needing the interpreter that the court interpreter has requested an examination of the documents. The interpreter may also want to briefly speak to the party or witness, in the presence of the attorney, to determine the source language, dialect, idioms, and colloquialisms that the witness may use while testifying. It is important for the court interpreter to assess the witness's level of education, accent, and intelligence, which will be helpful in reproducing testimony later in English.

Preparation is especially important in lengthy, complex cases. If the court interpreter makes a request to prepare for the hearing or trial, both parties should be notified.

Location and Placement of the Interpreter

It is the court interpreter's responsibility to place himself or herself so that the interpreter can perform the interpretation comfortably and inconspicuously. The interpreter must be able to see and hear the attorneys and the witness and has an obligation to inform the court if he or she has difficulty hearing because of the noise level in the courtroom. The judge, in turn, has the responsibility to support and assist the interpreter. The judge may ask the attorney to repeat a question or raise his or her voice or may order the attorneys to speak one at a time. If the court interpreter is interpreting for a party at counsel table and the attorney is monolingual, the court interpreter should be seated between the attorney and the party.

The Fatigue Factor

It is very tiring to interpret for long periods of time. If a court interpreter believes that he or she is not able to provide accurate interpretation because of fatigue, it is the obligation of the interpreter to inform the court. The judge should then call a 15-minute recess to allow the interpreter to rest. Some jurisdictions provide for teams of two court interpreters when the proceeding will be longer than two hours. Two court interpreters can relieve each other at periodic intervals and prevent fatigue and delays.

Conducting Proceedings Involving Court Interpreters

Take Command of the Proceedings!

In closing, what follows is a list of what a judge can do to take command of proceedings involving interpreters in court and some recommendations on how to improve court interpretation locally. Remember, the judge is in charge!

1. Advise the non-English speaker not to engage in conversation with the interpreter and to answer only the questions asked. If the non-English speaker does not understand the question, he or she should simply state, "I do not understand the question."
2. Advise the jury at the beginning of the case that the court has assigned an interpreter to assist the defendant or witness who does not speak or understand English.
3. If problems develop during the hearing or trial, require the attorneys to use short sentences. Do not allow the attorneys to show off their command of the English language. Keep it simple!
4. Allow only one attorney to speak at a time.
5. Avoid jargon, slang, colloquialisms, and technical terms: for example, "What score does one have to get on the exam to cut the mustard?"
6. Avoid rhetorical questions and negatives, such as "Did you not . . . ?"
7. Never allow the attorneys to ask compound questions.
8. Discourage questions that begin "Isn't it true that . . . ?"
9. Do not allow anyone, including a judge, to put questions to the interpreter. Questions are put to the witness.
10. Do not allow the witness to enter into a conversation with the interpreter. Instruct the witness not to converse with the interpreter.
11. Do not allow the use of double negatives in questions.

12. If a language problem occurs in a jury trial, use a sidebar conference with the attorneys with the court interpreter present. If the problem appears to be complex, call a recess!

13. Allow the court interpreter to use appropriate hand signals with a witness to regulate the speaker during a lengthy answer. This is necessary for the interpreter who has to use short-term memory to remember a lengthy response.

Recommendations:

1. Adopt a local court rule to require the attorneys to notify the clerk's office or the person in charge of assigning interpreters of the need for a court interpreter.

2. Adopt a code of professional responsibility for court interpreters.

3. Require court interpreters to pass a validated certification examination.

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Appendix C - Letter to State Courts from US DOJ

U. S. Department of Justice

Civil Rights Division

Assistant Attorney General Washington, D.C. 20530

August 16, 2010

Dear Chief Justice/State Court Administrator:

In the past decade, increasing numbers of state court systems have sought to improve their capacity to handle cases and other matters involving parties or witnesses who are limited English proficient (LEP). In some instances the progress has been laudable and reflects increased recognition that language access costs must be treated as essential to sound court management. However, the Department of Justice (DOJ) continues to encounter state court language access policies or practices that are inconsistent with federal civil rights requirements. Through this letter, DOJ intends to provide greater clarity regarding the requirement that courts receiving federal financial assistance provide meaningful access for LEP individuals.

Dispensing justice fairly, efficiently, and accurately is a cornerstone of the judiciary. Policies and practices that deny LEP persons meaningful access to the courts undermine that cornerstone. They may also place state courts in violation of long-standing civil rights requirements. Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d *et seq.* (Title VI), and the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. § 3789d(c) (Safe Streets Act), both prohibit national origin discrimination by recipients of federal financial assistance. Title VI and Safe Streets Act regulations further prohibit recipients from administering programs in a manner that has the effect of subjecting individuals to discrimination based on their national origin. *See* 28 C.F.R. §§ 42.104(b)(2), 42.203(e).

The Supreme Court has held that failing to take reasonable steps to ensure meaningful access for LEP persons is a form of national origin discrimination prohibited by Title VI regulations. *See Lau v. Nichols*, 414 U.S. 563 (1974). Executive Order 13166, which was issued in 2000, further emphasized the point by directing federal agencies to publish LEP guidance for their financial assistance recipients, consistent with initial general guidance from DOJ. *See* 65 Fed. Reg. 50,121 (Aug. 16, 2000). In 2002, DOJ issued final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons. 67 Fed. Reg. 41,455 (June 18, 2002) (DOJ Guidance). The DOJ Guidance and subsequent technical assistance letters from the Civil Rights Division explained that court systems receiving federal financial assistance, either directly or indirectly, must provide meaningful access to LEP persons in order to comply with Title VI, the Safe Streets Act, and their implementing regulations. The federal requirement to provide language assistance to LEP individuals applies notwithstanding conflicting state or local laws or court rules.

Despite efforts to bring courts into compliance, some state court system policies and practices significantly and unreasonably impede, hinder, or restrict participation in court proceedings and access to court operations based upon a person's English language ability. Examples of particular concern include the following:

1. Limiting the types of proceedings for which qualified interpreter services are provided by the court. Some courts only provide competent interpreter assistance in limited categories of cases, such as in criminal, termination of parental rights, or domestic violence proceedings. DOJ, however, views access to *all* court proceedings as critical. The DOJ Guidance refers to the importance of meaningful access to courts and courtrooms, without distinguishing among civil, criminal, or administrative matters. *See* DOJ Guidance, 67 Fed. Reg. at 41,462. It states that "every effort should be taken to ensure competent interpretation for LEP individuals during *all* hearings, trials, and motions," *id.* at 41,471 (emphasis added), including administrative court proceedings. *Id.* at 41,459, n.5.

Courts should also provide language assistance to non-party LEP individuals whose presence or participation in a court matter is necessary or appropriate, including parents and guardians of minor victims of crime or of juveniles and family members involved in delinquency proceedings. Proceedings handled by officials such as magistrates, masters, commissioners, hearing officers, arbitrators, mediators, and other decision-makers should also include professional interpreter coverage. DOJ expects that meaningful access will be provided to LEP persons in all court and court-annexed proceedings, whether civil, criminal, or administrative including those presided over by non-judges.

2. Charging interpreter costs to one or more parties. Many courts that ostensibly provide qualified interpreters for covered court proceedings require or authorize one or more of the persons involved in the case to be charged with the cost of the interpreter. Although the rules or practices vary, and may exempt indigent parties, their common impact is either to subject some individuals to a surcharge based upon a party's or witness' English language proficiency, or to discourage parties from requesting or using a competent interpreter. Title VI and its regulations prohibit practices that have the effect of charging parties, impairing their participation in proceedings, or limiting presentation of witnesses based upon national origin. As such, the DOJ Guidance makes clear that court proceedings are among the most important activities conducted by recipients of federal funds, and emphasizes the need to provide interpretation free of cost. Courts that charge interpreter costs to the parties may be arranging for an interpreter's presence, but they are not "providing" the interpreter. DOJ expects that, when meaningful access requires interpretation, courts will provide interpreters at no cost to the persons involved.

3. Restricting language services to courtrooms. Some states provide language assistance only for courtroom proceedings, but the meaningful access requirement extends to court functions that are conducted outside the courtroom as well. Examples of such court-managed offices, operations, and programs can include information counters; intake or filing offices; cashiers; records rooms; sheriff's offices; probation and parole offices; alternative dispute resolution programs; *pro se* clinics; criminal diversion programs; anger management classes; detention facilities; and other similar offices, operations, and programs. Access to these points of public contact is essential to the fair administration of justice, especially for unrepresented LEP persons. DOJ expects courts to provide meaningful access for LEP persons to such court operated or managed points of public contact in the judicial process, whether the contact at issue occurs inside or outside the courtroom.

4. Failing to ensure effective communication with court-appointed or supervised personnel. Some recipient court systems have failed to ensure that LEP persons are able to communicate effectively with a variety of individuals involved in a case under a court appointment or order. Criminal defense counsel, child advocates or guardians *ad litem*, court psychologists, probation officers, doctors, trustees, and other such individuals who are employed, paid, or supervised by the courts, and who are required to communicate with LEP parties or other individuals as part of their case-related functions, must possess demonstrated bilingual skills or have support from professional interpreters. In order for a court to provide meaningful access to LEP persons, it must ensure language access in all such operations and encounters with professionals.

DOJ continues to interpret Title VI and the Title VI regulations to prohibit, in most circumstances, the practices described above. Nevertheless, DOJ has observed that some court systems continue to operate in apparent violation of federal law. Most court systems have long accepted their legal duty under the Americans with Disabilities Act (ADA) to provide auxiliary aids and services to persons with disabilities, and would not consciously engage in the practices highlighted in this letter in providing an accommodation to a person with a disability. While ADA and Title VI requirements are not the same, existing ADA plans and policy for sign language interpreting may provide an effective template for managing interpreting and translating needs for some state courts.

Language services expenses should be treated as a basic and essential operating expense, not as an ancillary cost. Court systems have many operating expenses – judges and staff, buildings, utilities, security, filing, data and records systems, insurance, research, and printing costs, to name a few. Court systems in every part of the country serve populations of LEP individuals and most jurisdictions, if not all, have encountered substantial increases in the number of LEP parties and witnesses and the diversity of languages they speak. Budgeting adequate funds to ensure language access is fundamental to the business of the courts.

We recognize that most state and local courts are struggling with unusual budgetary constraints that have slowed the pace of progress in this area. The DOJ Guidance acknowledges that recipients can consider the costs of the services and the resources available to the court as part of the determination of what language assistance is reasonably required in order to provide meaningful LEP access. *See id.* at 41,460. Fiscal pressures, however, do not provide an exemption from civil rights requirements. In considering a system's compliance with language access standards in light of limited resources, DOJ will consider all of the facts and circumstances of a particular court system. Factors to review may include, but are not limited to, the following:

- The extent to which current language access deficiencies reflect the impact of the fiscal crisis as demonstrated by previous success in providing meaningful access;
- The extent to which other essential court operations are being restricted or defunded;
- The extent to which the court system has secured additional revenues from fees, fines, grants, or other sources, and has increased efficiency through collaboration, technology, or other means;
- Whether the court system has adopted an implementation plan to move promptly towards full compliance; and
- The nature and significance of the adverse impact on LEP persons affected by the existing language access deficiencies.

DOJ acknowledges that it takes time to create systems that ensure competent interpretation in all court proceedings and to build a qualified interpreter corps. Yet nearly a decade has passed since the issuance of Executive Order 13166 and publication of initial general guidance clarifying language access requirements for recipients. Reasonable efforts by now should have resulted in significant and continuing improvements for all recipients. With this passage of time, the need to show progress in providing all LEP persons with meaningful access has increased. DOJ expects that courts that have done well will continue to make progress toward full compliance in policy and practice. At the same time, we expect that court recipients that are furthest behind will take significant steps in order to move promptly toward compliance.

The DOJ guidance encourages recipients to develop and maintain a periodically-updated written plan on language assistance for LEP persons as an appropriate and cost-effective means of documenting compliance and providing a framework for the provision of timely and reasonable language assistance. Such written plans can provide additional benefits to recipients' managers in the areas of training, administrating, planning, and budgeting. The DOJ Guidance goes on to note that these benefits should lead most recipients to document in a written LEP plan their language assistance services, and how staff and LEP persons can access those services. In court systems, we have found that meaningful access inside the courtroom is most effectively implemented in states that have adopted a court rule, statute, or administrative order providing for universal, free, and qualified court interpreting. In addition, state court systems that have strong leadership and a designated coordinator of language services in the office of the court administrator, and that have identified personnel in charge of ensuring language access in each courthouse, will more likely be able to provide effective and consistent language access for LEP

individuals. Enclosed, for illustrative purposes only, are copies of Administrative Order JB-06-3 of the Supreme Judicial Court of Maine, together with the September 2008 Memorandum of Understanding between that court and DOJ. Also enclosed for your information is a copy of "Chapter 5: Tips and Tools Specific to Courts" from DOJ, *Executive Order 13166 Limited English Proficiency Document: Tips and Tools from the Field* (2004).

The Office of Justice Programs provides Justice Assistance Grant funds to the states to be used for state and local initiatives, technical assistance, training, personnel, equipment, supplies, contractual support, and criminal justice information systems that will improve or enhance criminal justice programs including prosecution and court programs. Funding language services in the courts is a permissible use of these funds.

DOJ has an abiding interest in securing state and local court system compliance with the language access requirements of Title VI and the Safe Streets Act and will continue to review courts for compliance and to investigate complaints. The Civil Rights Division also welcomes requests for technical assistance from state courts and can provide training for court personnel. Should you have any questions, please contact Mark J. Kappelhoff, Acting Chief, Federal Coordination and Compliance Section (formally known as Coordination and Review Section) at (202) 307-2222.

Sincerely,

Thomas E. Perez
Assistant Attorney General

Enclosures

Appendix D – Bibliography

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Appendix E – Document Revision History

In November 2003, foreign language interpreter remuneration was approved by the Judicial Council of Virginia. In August 2009, the language access plan was formatted into a searchable template suitable for posting on the Office of the Executive Secretary website. In February 2011, modifications were made to this document by updating these sections:

Information pertaining to the Deaf and Hard of Hearing was removed and is now posted under Americans with Disabilities Act (ADA).

Frequently Asked Questions were modified to include clarification about:

- Federal regulations and meaningful access for those with Limited English Proficiency
- The use of interested parties and minors as interpreters
- Coverage for foreign language interpreters during court-ordered doctor evaluations
- The use of the "Special Needs" field within eMagistrate System
- Billing issues which comply with Fiscal Department practices, including:
    - Standards for more than one two-hour minimum per day
    - Billing increments used on the DC-44
    - Court closures due to inclement weather

Document Updated

In support of language access provided by courts and judicial officers, United States Department of Justice guidance regarding access to those with Limited English Proficiency is included. Because interpreting was modernized during the seven years prior to this update, modifications to the documents reflected common practices but did not create substantive changes into the way the foreign language interpreting program was currently being operated in Virginia. The document was made current by changing the following:

- Adding Arabic, Korean, and Vietnamese to certification languages
- Providing the two-day orientation training interpreters in all languages
- Not limiting access to interpreter training to those who passed a written exam
- Modifying format and removing references to printing and distributing documents
- Including the ability to secure sight translations from remote interpreting vendor
- Merging various appendices into a Miscellaneous Appendix

In March 2015, the following modifications were made to this document. These sections were

changed:

- Introduction includes explanation of Federal regulations, updated timeline, and additional history of language access program
- Limited English Proficient (LEP) used to reflect common terminology
- Establishes court best practices:
    - Identifying individuals within court to coordinate language access services
    - Contacting OES when in need of additional language access resources
    - Extending language access services to LEP parents or guardians of juveniles
    - Receiving and processing complaints about language access services
    - Posting notice that free language access services are available upon request
    - Ensuring service providers are providing professional language assistance
    - Clarifying that the cost of language services is not assessed against an individual with LEP
- Added Mandarin and Russian as additional certification languages
- Created a section about Training and Maintenance of Language Access Plan

This document was updated in August 2023 to become more accessible for all readers. This format improves access to those who rely on information within the Language Access Plan to coordinate language access services during filed, predisposition Virginia court cases. It also provides hyperlinks to information so that information is accessible by clicking sections of the document. The cover page is updated, and certification has been expanded to include additional languages. Virginia now offers certification testing in: Amharic, Arabic (Egyptian), Arabic (Levantine), Bosnian-Croatian-Serbian, Cantonese, Filipino (Tagalog), French, Haitian Creole, Hmong, Khmer, Korean, Mandarin, Polish, Portuguese, Russian, Somali, Spanish, Turkish, and Vietnamese.

This document was updated in July 2024 to reflect changes to the hourly pay rate for interpreters and to clarify the timing for the cancellation of interpreter services.