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[Vermont Court Interpreter Manual

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VERMONT COURT INTERPRETER MANUAL

The Vermont Judiciary is committed to ensuring that legal proceedings conducted in Vermont's courts are equally accessible to all persons regardless of an individual's ability to communicate effectively in the spoken English language. Court interpreters serve a fundamental role in the administration of justice by ensuring access to the courts for limited English proficient (LEP) and deaf or hard of hearing persons.

The court system provides language and sign interpreters, at court expense, in all proceedings for LEP and deaf or hard of hearing persons to ensure that they clearly comprehend and are able to fully participate.

DETERMINATION OF ELIGIBILITY

Vermont courts shall provide all qualified individuals (as that term is defined below) who are parties, witnesses, or parents of minors involved in juvenile actions with an interpreter in all court proceedings related to that case at State expense. "All court proceedings" includes but is not limited to case management conferences, judicially ordered mediations, motion hearings, arraignments, commitment hearings, competency hearings, jury selection, trials, sentencing, appellate arguments, and any other court events or proceedings ordered by the presiding judge up to the point of adjudication. Any services or programs offered post-adjudication of the district (criminal) or juvenile courts are the responsibility of the receiving agency (i.e. Department of Corrections, Department for Children and Families, Department of Motor Vehicles, etc.).

Whether the judiciary is required to pay for any given service depends on whether the activity is compulsory, such as a particular court-ordered education programs like COPE or pro se education.

An interpreter should be provided for an individual who requests one. If the person does not request an interpreter but appears to have limited English proficiency, court staff will need to determine whether to obtain an interpreter. **Appendix B** contains questions that can be used either by court staff or the judge to determine an individual's need. In criminal cases, a defendant's failure to request or refusal to accept an interpreter should be treated with great caution by the court. **Appendix A** contains more information on waiver issues.

The proceedings interpreter is the *court's* official interpreter and should not be used by the parties and their attorneys except in extraordinary circumstances (i.e. emergency hearing or very exotic language). It is the obligation of the attorney representing the deaf, hard of hearing, or LEP client to retain an interpreter for attorney/client consultations outside the courtroom and at counsel table for attorney/client communications.

DEFINITION OF TERMS

Technical terms used throughout this Manual are defined and explained below. Terms are not presented alphabetically. They are arranged in an order that is more suitable for readers to learn the fundamentals of interpreting concepts, terminology, and procedure.

Qualified Individual

Qualified individual refers to both deaf and hard of hearing persons and person with limited English proficiency.

Limited English Proficient (LEP)

Limited English proficiency refers to the inability to adequately understand or communicate effectively in English in a court proceeding. The phrase applies to individuals whose primary language is other than English and whose ability to speak English is not at the level of comprehension and expression needed to participate effectively in court transactions and proceedings.

Source Language

Source language is the language of the original speaker. "Source language" is thus always a relative term, depending on who has spoken last.

Target Language

Target language is the language of the listener, the language into which the interpreter is communicating the meaning of the words spoken in the source language.

Interpretation

Interpretation means the unrehearsed transmitting of a spoken or signed message from one language to another. Interpretation is distinguished from "translation," which relates to written language (see below). Two modes of interpretation are commonly used in court by qualified interpreters: "consecutive" and "simultaneous" interpretation. A third mode, less frequently used in court, is "sight interpretation" or "sight translation" of documents. (These terms are also defined below.)

Translation

Translation is converting a written text from one language into written text in another language. The source of the message being converted is always a written language. Translation requires different skills than those used by an interpreter

Sight Interpretation/Sight Translation

Sight interpretation is sometimes referred to as "sight translation." Sight translation is a hybrid type of interpreting/translating whereby the interpreter reads a document written in one language while converting it orally into another language. In this mode of interpreting, a written text is rendered orally without advance notice and on sight.

Consecutive Interpreting

Consecutive interpreting is rendering statements made in a source language into statements in the target language intermittently after a pause between each completed statement in the source language. In other words, the interpreter renders an interpretation after the speaker has stopped speaking. When using this mode of interpreting, it may be necessary for the interpreter to 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 should take notes to assist him/her in rendering the interpretation.

Simultaneous Interpreting

Simultaneous interpreting is rendering an interpretation continuously at the same time someone is speaking. 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 the purpose in order to be as unobtrusive as possible.

Summary Interpreting

Summary interpreting is paraphrasing and condensing the speaker's statement. Unlike simultaneous and consecutive interpreting, this method does not provide a precise rendering of everything that is said into the target language. This is a mode of interpreting that should not be used in court settings.

Literal Interpretation/Translation

To interpret/translate literally means to convey the primary surface meaning of the source word while preserving the word order and parts of speech of the source language. This means that context plays no role in providing cues to what an utterance means or how it should be interpreted/translated. It also means that the word order of the source language is imposed upon the target language. Finally, meaning embedded in idioms, for example, is completely lost, unless the target language has exactly the same idiom with the same word order. A literal interpretation/translation is so bound by the source language that renderings in the target language will often be completely unintelligible, not to mention unfaithful to the source language. Lawyers and judges sometimes ask for a literal interpretation without realizing what they would get. An accurate, or "proper interpretation" (defined below) should be requested.

Verbatim Interpretation/Translation

To interpret/translate verbatim means to convey the real meaning of the source while preserving the word order of the source language. While lexical meaning is accurately preserved, meaning that is embedded in grammar may interfere with the interpretation/translation. Verbatim interpretation/translation is a significant improvement over the literal approach because lexical and contextual meanings are preserved. However, since the word order of the source language is being imposed on the natural grammar of the target language, it may sound stilted, awkward, and may from time to time introduce confusion or even misunderstanding. Instead of asking for a verbatim interpretation, judges and lawyers should request a "proper interpretation" that is complete, i.e., leaves nothing out (see below).

Proper Interpretation/Translation

To interpret/translate properly means to convey the real meaning of the source language communication, preserving all aspects of meaning, with the natural grammar of the target language. To interpret/translate properly, one has no concern for literal meanings or following the word order (or even the number of words) of the source language. The goal is to enable the recipient of the interpretation/translation to hear (or see, in the case of deaf or hard-of-hearing recipients) the source message as if it had been communicated in the recipient's language in the first place.

Exotic Language

Exotic language is a term used in court interpreting to refer to a language in which interpreters, translators, or bi-linguists are not readily available, or in which no standard of quality has been established.

Register

The degree of formality attributed to a word or phrase in regard to its usage. For example, the term "dope," meaning "drugs," is informal or of a low register, and should have an equivalent term in the other language. Moreover, the translation of both words should not produce a word applicable to the two.

Court Proceeding

Proceeding refers to any judicial proceeding, contested case under chapter 25 of Title 3, or other hearing before an administrative agency not included under chapter 25 of Title 3.

TERMINOLOGY: INTERPRETING FOR DEAF & HARD OF HEARING PERSONS**Deaf and Hard of Hearing**

Deaf or hard of hearing person means any person who has such difficulty hearing, even with amplification, that he or she cannot rely on hearing for communication.

ASL "American Sign Language"

American Sign Language is a visual-gestural language created by deaf people and used by approximately one-half million deaf Americans and Canadians of all ages.

Interpretation

In the context of interpretation for the deaf, this term refers to communicating the real meaning between spoken English and American Sign Language.

Transliteration

This term refers to the act of representing the English language in a visually accessible form of communication. This method closely follows the grammar and structure of spoken English through the use of manual coding. Manually coded English (also known as "signed English") is not a true language. Use of this system necessitates having a viewer who knows English well.

RID “Registry of Interpreters for the Deaf”

The National Registry of Interpreters for the Deaf (“NRID”) is a professional organization of American Sign Language/English interpreters and transliterators. The organization is dedicated to the professional development, training and certification of its members.

EXPECTATIONS OF COURT STAFF, ATTORNEYS, JUDGES

A. Courts’ Guide to Standards for Interpreted Proceedings

Courts are responsible for protecting individual rights and dispensing equal justice to all who access them, whether voluntarily or involuntarily, thus interpretation services must be precise, complete and accurate. Interpreters who are used in court proceedings should be able to demonstrate proficiency in and ability to communicate information in both English and the target language, identify the appropriate mode of interpreting (simultaneous, consecutive or sight translation), understand legal terminology, and understand and agree to follow the Interpreter Code of Professional Responsibility.

Appendix A contains recommended standards governing the use of interpreters in trial courts. The recommendations are based on published rules, administrative policies, and articles prepared by experienced judges, lawyers, and administrative personnel. All court staff should read and be familiar with this material.

LOCATING A QUALIFIED INTERPRETER

A. Logistics

The Judiciary’s internal website contains a list of interpreter resources consisting primarily of agencies in Vermont and surrounding states that provide interpreters in a variety of settings including medical practices/hospitals, social service agencies and courts. Interpreters who have had at least some legal training should be requested from the agency. See **Section on Resources and Compensation and Appendix M** for additional information.

The Protocol for Obtaining and Using an Interpreter (**Appendix C**) describes the process to be used. Individual interpreters who have been screened in accordance with subsection B below and signed an Affidavit, will be added to the Judiciary internal website as additional resources by the Court Administrator’s Office.

There are some circumstances in which the court will need to hire more than one interpreter for a proceeding. See **Appendix A** for more information. If there are multiple parties who speak the same language, best practice is to have headsets and microphones for the interpreter and litigant/witness allowing for a single interpreter to provide simultaneous interpreting to more than one person.

If an interpreter will be doing simultaneous interpreting, the United Nations standards for *conference* interpreting call for replacing interpreters every 45 minutes. Since court proceedings are more demanding, any proceeding using simultaneous interpreting that is expected to last longer than 30 minutes should have two interpreters. All trials should employ more than one interpreter.

B. Evaluating whether a court interpreter is qualified

In order to reduce the time that judges need to spend determining qualifications of interpreters and until such time as we have an official Roster, court managers or their designee should complete the questionnaire (**Appendix D**) to ensure minimal qualifications of any interpreters referred by an agency. An interpreter who is unable to interpret in both consecutive and simultaneous modes is *per se* not qualified and should not be retained. If the interpreter's skills are deemed sufficient based on responses to the form, the interpreter can be retained for the court proceeding and referred to the court for a more extensive voir dire on the record. **Appendix G.** On the date of and prior to the hearing, the interpreter should be asked to sign the Affidavit (**Appendix E**) stating, among other requirements that s/he has read and understands the Interpreter Code of Professional Responsibility (**Appendix L**) and agrees to abide by it. An evaluation form should be given to the judge, along with the screening form and affidavit so that any concerns about the interpreter's skills or performance can be documented.

Minimum Requirements to Serve as a Court Interpreter

All interpreters must:

- Be 18 years of age
- Sign a written affidavit to uphold the Code of Professional Responsibility for Interpreters or take an oath administered by the court prior to a proceeding;
- Certify that they have not been convicted of a felony or crime of dishonesty.

C. Use of Telephonic Interpreter Services

Voiance Telephonic Interpreter Services, a telephone interpreting system, is available to the court for use primarily in counter transactions. The court may choose to use this system in place of a live interpreter in court proceedings, however it should only be used for short and simple proceedings, such as arraignments and calendar calls. It should not be used for longer or more complicated proceedings that involve substantive rights or that involve testimony and production of evidence. Except in extraordinary circumstances, a live interpreter should be present at these proceedings in order to ensure accuracy.

The qualifications of the telephonic interpreter to interpret in legal proceedings should not be assumed. Therefore advance screening by the Court Manager or designee and voir dire should be conducted by the judge on the record.

D. *Voir Dire* for Judges

It is the responsibility of the presiding judge to determine the competence and qualifications of the interpreter (including telephonic interpreters) for each court proceeding. A model voir dire to establish the competence and qualifications of the interpreter on the record is attached. (See **Appendix G**).

THE ROLE OF THE COURT INTERPRETER

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

- The duty of the court interpreter is to serve as a conduit between LEP, deaf, or hard of hearing individuals and English-speaking officials in legal forums. As they convert one language to another, interpreters play a critical role in the administration of justice and make it possible to ensure the rights of due process and participation in the court system for all those involved.
- The goal of a court interpreter is to enable the judge and jury to react in the same manner to an LEP, deaf, or hard of hearing witness as they do with one who speaks English or is not hard of hearing. In addition, the LEP, deaf, or hard of hearing litigant should be enabled to understand everything that an individual who speaks English or is not hard of hearing has the privilege to understand.
- The proper role of the interpreter is to place the LEP, deaf or hard of hearing individual in the same situation as a hearing English speaker in a legal setting, as closely as linguistically possible. In doing so the interpreter does not give any advantage or disadvantage to the LEP, deaf or hard of hearing witness or defendant.
- The goal of a court interpreter is to produce a legal equivalent, a linguistically true and legally appropriate interpretation. Court interpretation is a highly specialized form of interpreting that cannot be effectively performed without commensurate specialized training and skills. Being bilingual, even fluently so, is insufficient qualification for court interpreting. Interpreters must be able to interpret with exactitude while accurately reflecting a speaker's nuances and level of formality. The interpreter must interpret the original source material without editing, summarizing, deleting, or adding; while conserving the language level, style, tone, and intent of the speaker. The interpreter must render what may be termed the "legal equivalent" of the source message.

Interpreting requires the use of several cognitive and motor skills, including:

1. Listen
2. Comprehend
3. Abstract the message from the words and word order
4. Store ideas
5. Search for the conceptual and semantic matches
6. Reconstruct the message in the other language
7. WHILE . . . speaking and listening for the next chunk of language to process

8. WHILE . . . monitoring their own output.

Court interpreters should be able to use these skills in three different modes: simultaneous interpretation, consecutive interpretation, and sight interpretation of documents.

WHEN THE COURT IS REQUIRED TO PROVIDE AND PAY FOR AN INTERPRETER

The United States Department of Justice, Civil Rights Division recently informed the State of Indiana via letter that despite an Indiana Supreme Court decision determining that LEP litigants were not entitled to receive interpreter services at court expense unless they were indigent, the Justice Department considers Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d-7 and its implementing regulations to require provision of interpreter services free of charge in both civil and criminal proceedings. The court is required to provide interpreters in all civil and criminal proceedings at no cost to the litigant. Therefore, in order to comply with applicable federal law, anyone determined to be entitled to an interpreter under Section I of this Manual should be provided with an interpreter at court expense.

INTERPRETER RESOURCES & COMPENSATION

A. Resources

In addition to the interpreter resources listed on the Judiciary website, courts may have to resort to other interpreter resources if none of these agencies have an appropriate interpreter available. **Appendix M** lists both technological resources (such as video and telephone access to interpreters in other locations) and interpreter resources in surrounding states, including Maine, Massachusetts, New Hampshire, and New York (upstate only).

B. Compensation

Interpreters shall be paid through the Court Administrator's Office (CAO). An interpreter can be engaged by the court manager without prior approval. Though cost is not a reason to deny an interpreter, every effort should be made to keep costs down by using an experienced interpreter closest in proximity to the court.. A qualified freelance interpreter or an interpreter from an established professional agency will be paid his or her usual market rate.

C. Cancellation

If an interpreter has been scheduled and the hearing will not be going forward, court staff should give as much notice as possible to the interpreter or the agency from whom they were hired. Payment in such cases, unless or until the judiciary adopts its own policy, should be in accordance with the policy of the agency or in the case of an individual by agreement of the

parties. Court managers should inquire of the agency or individual as to the cancellation policy and the amount of notice required to avoid payment at the time of hiring.

INTERPRETERS OATH

The interpreter should be sworn in at the beginning of each case.

Interpreters Oath (all interpreters used in court proceedings are required to swear to this oath):

You solemnly swear [or affirm] that you will justly, truly, and impartially interpret to A.B. the oath about to be administered to him and the testimony he shall give relative to the cause under consideration. [So help you God]. (12 VSA§ 5811).

The alternative oath should be administered for a non-witness:

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 the code of ethics for interpreters and follow all official guidelines established by this court for legal interpreting or translating and the discharge of all of the solemn duties and obligations of legal interpretation and translation.

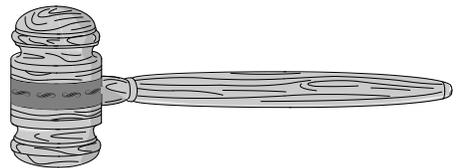
INTERPRETER CODE OF ETHICS

The National Center for the State Court's Consortium for Language Access in the Courts has promulgated a Code of Professional Responsibility for Interpreters that has been adopted by most, if not all, of the Consortium member states. As a member of the Consortium, Vermont has adopted this Code. A copy is attached as **Appendix L**.

Each interpreter used in the court system should either sign or have on file in the Court Administrator's Office an affidavit (**Appendix E**) agreeing to abide by the Code. If for any reason an affidavit has not been obtained, the presiding judge should be so advised by the court manager. The presiding judge should then inquire on voir dire as to the interpreter's familiarity with the Code provisions and agreement to abide by it.

APPENDIX A

**Vermont State Courts' Guide to Standards for
Interpreted Proceedings for Individuals with
Limited English Proficiency**



Vermont State Courts' Guide to Standards for Interpreted Proceedings for Individuals with Limited English Proficiency

The following are recommended standards for governing the use of interpreters in trial courts. The recommendations are based on published rules, administrative policies, and articles prepared by experienced judges, lawyers, and administrative personnel.

When Should an Interpreter be Appointed?

Many individuals have enough proficiency in a second language to communicate at a very basic level. But participation in court proceedings requires far more than a very basic level of communicative capability. Consider that in order for non-English speaking criminal defendants to testify in their own defense they must be able to:

- θ accurately and completely describe persons, places, situations, events;
- θ tell "what happened" over time,
- θ request clarifications when questions are vague or misleading, and
- θ during cross-examination:
 - ◆ recognize attempts to discredit their testimony,
 - ◆ refuse to confirm contradictory interpretations of facts, and
 - ◆ defend their position.

Moreover, for defendants to evaluate and respond to adverse testimony of witnesses, and assist in their defense, they must comprehend the details and the subtle nuances of

both questions and answers spoken in English during the testimony of adverse witnesses, and, at appropriate times, secure the attention of counsel and draw attention to relevant details of testimony.

In non-evidentiary proceedings that involve determination of custodial status, advisement of rights, consideration of sentences, and articulation of obligations and responsibilities established in orders of the court, non-English speaking persons must receive the same consideration as native speakers of English.

The same considerations apply for parties in civil matters. Substantial rights are determined in family matters (divorce, custody, relief from abuse), landlord/tenant and other property cases, malpractice claims, probate court and even in small claims.

It is recommended that judges presume a bona fide need for an interpreter when a representation is made by an attorney or by a pro se litigant that a party or witness has limited proficiency in English and requests an interpreter.¹

When a party does not request an interpreter but appears to have a limited ability to communicate in English, the court should conduct a brief voir dire to determine the extent of the disability. Such a voir dire should avoid questions that can be appropriately answered with "yes" or "no". The voir dire should include "wh-questions" (what, where, who, when) and questions that call for describing people, places or events or a narration (tell what happened.) A model for such a voir dire is illustrated in **Appendix B**.

Assessing the need for an interpreter

When any doubt exists about the ability of persons to comprehend proceedings fully or adequately express themselves in English, interpreters should be appointed.

Great caution should be exercised before permitting waiver of a right to an interpreter. The judge should not allow a person who has limited proficiency in English to waive the use of an interpreter unless the person requests a waiver in writing *and* in the person's native language.

- θ At any stage of the case or proceeding, a person who has waived an interpreter should be allowed to retract a waiver and receive the services of a proceedings interpreter for the remainder of the case or proceeding.
- θ Deliberations made on matters of waiver or retracting of waiver should be on the record.²

Use of Qualified Interpreters

All interpreters appointed by the court should be as highly qualified as possible. It is inefficient for presiding judges to be responsible for the *ad hoc* determination of interpreter qualifications in the courtroom, and the results of in-court voir dieres (described below) remain problematic in the best of circumstances. The Protocol attached as **Appendix C**, should be used by Court managers or their designees to conduct a meaningful screening and assessment of interpreters' skills before placing their names on a roster of court interpreters who may be called to interpret on a regular basis in the court or referring assigning them to a particular case. **Appendix D** is a form designed to capture this initial information. An affidavit (**Appendix E**) should then be signed by the interpreter before appearing at a proceeding swearing to the accuracy of the information on the form and to other

Waiver of interpreter

CAUTION: Acquiring interpreters through private interpreter agencies should not be relied on by court management personnel as presumptive evidence of an interpreter's qualifications for court interpreting.

CAUTION: the term "certified" is often used by interpreters or private interpreting agencies when the interpreter has received only a rudimentary orientation to the profession. Judges and court managers should not assume that interpreters who claim to be "certified" have *demonstrated* their competence in language or interpreting skills through formal testing or any other effective means of establishing functional proficiency.

required disclosures/promises. Circumstances frequently arise, however, when a judge is asked to accept the services of an individual whose language skills have not been previously evaluated.

When the court is obliged to use an interpreter whose skills are untested, it is recommended that the judge establish on the record that the proposed interpreter:

- θ communicates effectively with the officers of the court and the person(s) who receive(s) the interpreting services;
- θ knows and understands the Code of Professional Responsibility for Interpreters;
- θ will comply with the Code of Professional Responsibility, noting on the record any of its provisions that cannot be honored; and
- θ takes the same oath that all interpreters must take in a court proceeding.

Appendix B illustrates a basic format for an in-court voir dire that judges may use to make these determinations, before allowing the interpreter to assist the court. If an affidavit has been signed, it is recommended that it be briefly reviewed on the record and its truthfulness attested to by the interpreter. If no affidavit has been filed, the judge should inquire regarding the items in the affidavit on the record.

CAUTION: While an in-court voir dire is useful to identify interpreters who are obviously unqualified, such techniques do not establish whether the interpreter actually possess the desired level of functional proficiency.

Interpreters' Oath

Every interpreter used in the court should be required to swear an "oath of true interpretation." Vermont law, 12 V.S.A. §5811 requires that an interpreter be placed under oath. Vermont's current oath is set forth in **Appendix H**.

The interpreter should be sworn in at the beginning of each proceeding (in which instance the oath extends for the duration of that case) on the record.

General Clarification of Interpreter's Role

The judge should explain the role and responsibilities of interpreters to all the courtroom participants in any court proceeding. The explanation should be given before the proceedings begin. For example, the judge may include these remarks at the beginning of a session of court, or at the beginning of each separate proceeding if all or most of the participants change between proceedings. The clarification should include the following points:

- ∅ The interpreter's only function is to help the court, the principal parties in interest, and attorneys communicate effectively with one another;
- ∅ The interpreter may not give legal advice, answer questions about the case, or help anyone in any other way except to facilitate communication;
- ∅ If a person who is using the services of the interpreter has questions, those questions should be directed to the court or an attorney through the interpreter; the interpreter is not permitted to answer questions, only to interpret them;
- ∅ If someone cannot communicate effectively with or understand the interpreter, that person should tell the court or presiding officer.

Appendix I provides suggested text for this advisement.

The judge should advise every witness of the role of the interpreter immediately after the witness is sworn and before questioning begins. As the judge gives the

Special clarification of interpreter's role to sworn witnesses

advisement, the interpreter simultaneously interprets it for the witness. The clarification should cover the following points:

- Ø Everything the witness says will be interpreted faithfully;
- Ø The witness must speak to the person who asks the question, not to the interpreter. If the witness needs a question to be clarified, the witness must ask for clarification from the person who asked the question;
- Ø The witness should respond only after having heard the entire question interpreted into his or her own language;
- Ø The witness should speak clearly and loudly so everyone in the court can hear; and
- Ø If the witness cannot communicate effectively with the interpreter, she or he should tell the court or presiding officer.

Appendix J provides suggested text for this advisement.

Any time an interpreter is required for a jury trial, the judge should advise the jurors of (1) the role and responsibilities of interpreters and (2) the nature of evidence taken through an interpreter. Several specific and different advisements may be called for at different stages of the proceeding.

When a case involves a non-English speaking party, the judge should instruct the panel of jurors before voir dire begins that an interpreter is sitting at counsel table to enable the party to understand the proceedings. It is also important to determine whether prospective jurors are affected by the presence of an interpreter: do they hold

Clarification of the role of the interpreter to jurors

Impaneling a jury

prejudices against people who don't speak English? Do they speak a foreign language that will be used during the proceeding? If, so will they be able to pay attention only to the interpretation?

After a jury is impaneled and before a trial begins, the judge 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 or no proficiency in English and is receiving the assistance of an interpreter.

Before the trial begins

Appendix K provides suggested text for this advisement.

When the trial involves witness interpreting, the judge should give instructions to jurors before the witness interpreting begins that include the following points:

When a trial involves witness interpreting

- Ø Jurors must treat the interpretation of a witness's testimony as if the witness had spoken English and no interpreter were present;
- Ø Jurors must not evaluate a witness's credibility positively or negatively due to the fact that his or her testimony is being given through an interpreter;
- Ø Jurors who speak a witness's language must ignore what is said in that language and treat as evidence only what the interpreter renders in English. Such jurors must ignore all interpreting errors they think an interpreter may have made.

There are several reasons for this last instruction, which may seem preposterous to some jurors, and judges may wish to elaborate by explaining them. All of those reasons underscore the need for professional interpreters. First, the record of the proceedings is only in English, and it is the recorded testimony that constitutes evidence in the case. Second, jurors may mishear what is said; the interpreter (like the court reporter!) is a trained listener. Finally,

ordinary individuals and even trained interpreters may disagree about the correct interpretation of an expression, even if they hear the same words. Once again, interpreters are the court's experts in language, and their interpretation must be presumed reliable.

Appendix K provides suggested text for this advisement.

**Maximizing Communication During
Interpreted Proceedings**

As in any proceeding, the judge should keep the room in which sessions are held as quiet as possible and allow only one person to speak at a time. These normal rules are especially important in interpreted proceedings. Interpreters should never use the pronoun "I" to refer to themselves when speaking. The reason for this is to avoid any possibility of confusion during the proceeding and in the record between interpreted utterances and statements that the interpreter may need to make to the court during the proceeding. For example, the interpreter should say: "Your honor, the interpreter was unable to hear the question and respectfully requests that it be restated," rather than "Your honor, I was unable to hear the question." The latter could be confused in the record with statement by the witness. Therefore, the judge should always:

- θ Remind the interpreter and court participants that the interpreter, when addressing the court on her or his own initiative, should always speak in the third person and identify her or himself as "the interpreter" or "this interpreter."

Other procedures the judge should observe during interpreted proceedings include the following:

- θ Speak and assure that others speak at a volume and rate that can be accommodated by the interpreter.
- θ Permit witness interpreters to use appropriate signals to regulate speakers when the length of an utterance approaches the outer limit of the interpreters' capacity for recall.
- θ Make certain that the interpreter can easily hear and see the proceedings.
- θ The judge should ensure that the interpreter has conversed briefly with the non-English speaking person to be certain that interpreter and the party or witness are able to communicate adequately.

With the knowledge and consent of the attorneys, the interpreter should briefly interview the non-English speaking person before the proceeding begins to become familiar with his or her speech patterns and linguistic traits, and any other traits (e.g., mental retardation, speech impairments) that may bear upon assisting the party.

Interpreters should advise the court or presiding officer any time during a proceeding or case whenever they believe they are or may be in violation of any part of the Code of Professional Responsibility or if they discover that they cannot communicate effectively with the non-English speaking person.

The 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 or any peculiar linguistic characteristics or other traits their non-English speaking client may present. Attorneys

CAUTION: When setting the pace of speech during interpreted proceedings, do not assume that the interpreter can work at the same speed as the court reporter. The court reporter works in shorthand and does not need to transfer meaning from one language to another.

Interpreter's responsibility

CAUTION: There are documented cases that have gone to trial and resulted in verdicts and sentences where it was later discovered that the interpreter spoke a different language than the defendant.

Attorneys' responsibility

should give interpreters access to documents or other information pertaining to the case.

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. (Obviously a court reporter can not preserve any of the non-English language for review.) If questions arise during the trial regarding the faithfulness of the interpretation, the quality of interpretation therefore cannot be evaluated after the fact by the presiding judge, or later on appeal. Because of this, an audio or audio/video record to supplement the court reporter's transcript is desirable. Making a tape recording is recommended if there is interpreted witness testimony, since errors on the part of the interpreter alter the evidence presented to the judge and jury.

Judges who regularly hear interpreted matters should explore the feasibility of making tape recordings of all witness interpreting and, as a second priority, of proceedings interpreting. (Proceedings interpreting in the simultaneous mode is done quietly at counsel table or with interpreting equipment and would require special arrangements for recording.) In most courtrooms for the foreseeable future, this may not be feasible. In the alternative, however, it is strongly recommended that an audio or audio/video record be made in the following circumstances:

- θ In all capital cases, regardless of the qualifications of the interpreters, a record should be made of all sworn witness testimony and its interpretation;

CAUTION: One interpreter recounts being asked to interpret witness testimony in the case of a female defendant without being advised that the person had undergone a sex change operation between the time of the events in question and the trial. Imagine the interpreter's confusion regarding gender references during witness testimony!

Audiotaping interpreted testimony is recommended

- Ø In proceedings involving interpretation by a noncertified interpreter, especially those in which the non-English speaking person is at risk of incarceration, a record should be made of all sworn witness testimony and its interpretation;
- Ø In felony proceedings involving entry of a guilty plea that are interpreted by an unqualified interpreter, a permanent record should be made of the proceedings interpretation and statements made to the court by the non-English speaking person.
- Ø When testimony is verbal, the record may be made with audio recording only; when the testimony is conveyed in a sign language, the testimony and the interpretation of questions posed to the witness require videotape.

Errors During Witness Interpreting

Interpreting is an extraordinarily demanding activity and cannot be error-free. Appreciation of this reality should be extended to the interpreter during any allegations of inaccurate interpretation. Moreover, professional interpreters are trained to understand and act on their obligation to correct any errors that they might make during a proceeding. The court should allow the following precautions to be taken.

When a witness interpreter discovers his or her own error, the interpreter should correct the error at once, first identifying him/herself in the third person for the record (e.g., "Your honor, the interpreter requests permission to correct an error"). If the interpreter becomes aware of an error *after* the testimony has been completed, he or she should request a bench or side bar conference with the court and the lawyers to explain the problem. The court

**Error by witness
interpreter**

can then decide whether a correction on the record is required.

When an error is suspected by the judge, an attorney, or another officer of the court besides the interpreter, that person should bring the matter to the attention of the judge at the earliest convenient opportunity. If testimony is still being taken, the problem should be raised before the witness is released. In the case of a jury trial, the problem and its resolution should be handled at a side bar conference. The following steps are recommended for the presiding judge:

Discovery of error by others

- Ø The judge should determine first whether the issue surrounding the allegedly inaccurate interpretation is substantial or potentially prejudicial and requires determination.

- Ø If the judge agrees that the error is substantial or could be prejudicial, then the judge should refer the matter first to the interpreter for reconsideration. If this does not resolve the problem, evidence from other expert interpreters or any other linguistic expert the judge may select should be sought. In extreme circumstances it may be appropriate to permit attorneys from both sides to submit an expert.

- Ø The judge should make a final determination as to the correct interpretation. If the determination is different from the original interpretation, then the court should amend the record accordingly and advise the jury.

Modes of Interpreting

The mode of interpreting to be used at any given time (consecutive or simultaneous) depends on the types of communication to be interpreted within a proceeding and not on the types of proceeding. In fact, both the simultaneous and consecutive modes will often be appropriate within a proceeding. For example, interpreting would be simultaneous when a judge is making a defendant aware of his or her rights, and consecutive when the judge begins to question the defendant. The following guidelines for modes of interpreting are suggested.

The simultaneous mode of interpreting should be used for a person who is listening only. This is the normal mode for proceedings interpreting. Accordingly, an interpreter should interpret in the simultaneous mode in situations such as the following:

- θ for a defendant when testimony is being given by another witness,
- θ for a defendant or witness when the judge is in dialog with an officer of the court or any person other than the defendant or witness,
- θ for a defendant when the court is addressing the jury or gallery or any other persons present in the courtroom, or
- θ for any non-English speaking party when the judge is speaking directly to the person without interruption or regular call for responses (e.g., lengthy advisements of rights; judge's remarks to a defendant at sentencing).

The consecutive mode of interpreting should be used when a non-English speaking person is giving testimony or when the judge or an officer of the court is

CAUTION: If an interpreter referred to the court is unable to interpret competently in either the consecutive or simultaneous modes, the interpreter is not qualified for court interpreting.

Simultaneous mode

Consecutive mode

communicating directly with such a person and is expecting responses (e.g., taking a plea). This should be the normal mode for witness interpreting.

The summary mode of interpretation should *not* be used. It is most often resorted to only by unqualified interpreters who are unable to keep up in the consecutive or simultaneous modes. Qualified interpreters may report the need to use summary interpreting if they are called upon to interpret highly technical testimony of expert witnesses which they do not understand or have the vocabulary to interpret. The judge should specifically instruct all interpreters to report if it is necessary to resort to summary interpreting. In circumstances when the problem does not involve unusual and highly technical language, the preferred course of action is to dismiss and replace the interpreter if there are other interpreters available who do not need to use the summary mode. Any time the judge determines that the proceedings must continue even if summary interpreting is being used, the judge's consent should be part of the record of the proceedings.

The summary mode

CAUTION: Summary interpreting should never be permitted during witness interpreting, regardless of the immediate lack of availability of a replacement interpreter.

**Multiple non-English Speaking Defendants
in the Same Trial**

When two or more defendants who need an interpreter speak the same language, interpreting equipment should be used to provide simultaneous interpretation of the proceedings. This equipment permits a single interpreter to convey interpretation to several parties through the use of headsets with earphones and small mouthpiece microphones. This technique obviates the need to have more than one proceedings interpreter working at the same

NOTE: It is suggested that judges become familiar with how interpreting equipment works and the advantages it offers in any proceeding where interpreters engage in simultaneous interpretation. Use of the equipment allows the interpreter and the court flexibility to maximize communication with minimal disruption.

time for multiple defendants in criminal cases, or the undesirable technique of relying on physical proximity of the interpreter for multiple defendants.

Preventing Interpreter Fatigue

The United Nations standards for conference interpreting (simultaneous mode interpreting) call for replacing interpreters with a co-interpreter every 45 minutes. Conference interpreting is arguably a less demanding activity than is simultaneous court interpreting. If a proceedings interpreter believes that the quality of interpretation is about to falter due to fatigue, the interpreter should inform the court, and a recess should be taken or a replacement obtained. For any proceeding lasting longer than thirty minutes of continuous simultaneous interpretation, two interpreters should be assigned so they can relieve each other at periodic intervals to prevent fatigue. A similar standard should be observed for continuous witness interpreting.

Use of Languages Other Than English by Judges, Attorneys or Other Participants

Some judges and attorneys are bilingual and are able to communicate in the language of the non-English speaking person. In these situations it may be tempting for the judge to address the non-English speaking person in her or his language, to act as interpreter, or to allow or require counsel to substitute for a qualified interpreter. It is *strongly recommended* that these practices be avoided, and that courts observe the following guidelines regarding the

use of languages other than English during court

proceedings:

- Ø Judges should not function as interpreters during proceedings.
- Ø Judges and other court participants should speak in English at all times during proceedings.³
- Ø Attorneys should use English during all proceedings at all times, except in confidential communications with a client.
- Ø Attorneys should not be permitted to function as interpreters for parties they represent.⁴
- Ø If, contrary to these recommended standards, attorneys or any other courtroom participant are permitted to function as interpreters, they should be appointed subject to the same standards related to qualifications for interpreting that are applied to professional interpreters.

Judges who speak the language of a non-English speaking person often (and admirably) wish to make the person feel more at ease in the courtroom through some form of direct communication in the person's native language. A very brief greeting, announced beforehand on the record, might be used in such situations (e.g., "Please note for the record that the court will greet the defendant in the _____ language.") Such a greeting might then be followed by informing the person *in English through the interpreter* of the reasons why the judge will refrain from communicating in the shared language.

Use of Multiple Interpreters

There are three basic functions an interpreter serves during court proceedings. In some circumstances, it is physically impossible for one interpreter to fulfill more than one of the functions at the same time.

- θ *Proceedings interpreting:* The most frequently encountered function an interpreter performs is to enable a non-English speaking person who is the subject of litigation understand the proceedings and communicate with the court when necessary. In short, "proceedings interpreting" makes the defendant or other litigant effectively *present* during the proceedings. It is conducted in the simultaneous mode.
- θ *Witness interpreting:* This function of the interpreter is to secure evidence from non-English speaking witnesses that is preserved for the record. It is sometimes called "record" interpreting, and it is conducted in the consecutive mode.
- θ *Interview interpreting:* This function of the interpreter is to facilitate communication between a non-English speaking person and her or his attorney to ensure the effective assistance of counsel, or to perform similar duties in any other interview setting associated with a court proceeding. (When an interpreter is used to assist in attorney-client consultations, the term "*defense*" interpreting is sometimes used.) Interviews may use both simultaneous and consecutive interpreting, depending on the circumstances.

When there is only one non-English speaking defendant and no non-English speaking witnesses, one interpreter is all that is needed. (If the hearing is lengthy, one interpreting team will be required.) If there are non-English speaking defendants and other non-English speaking witnesses, two interpreters will be needed during the witness testimony -- the proceedings interpreter who is interpreting the English questions for the defendant (and

who is able to assist the defendant with attorney-client communication), and the witness interpreter.

When there are multiple non-English speaking defendants, must there be an interpreter for each person? For proceedings interpreting (making the defendants present), there need not be: one interpreter (or interpreting team) using headset equipment can interpret at the same time for all of the defendants.

Endnotes

1. See Model Court Interpreter Act, § 4A.

2. See Model Court Interpreter Act § 5.

3. A full discussion of the problems associated with judges speaking directly to litigants in non-English languages is beyond the scope of these guidelines. Briefly, however, direct communications in a non-English language between judge and litigants or witnesses cannot be made part of the record and are functionally equivalent to ex parte communications. Judges who serve as interpreters, moreover, become participants in the case themselves, since it is their English interpretation that is evidence in the case.

4. From time-to-time attorneys who also possess non-English language proficiencies appear in court expecting to proceed without the benefit of a court interpreter. They reason that because of their language skills, a court interpreter is unnecessary. Judges, eager to save tax resources, frequently welcome this arrangement. Of equal concern, judges routinely appoint "bilingual" attorneys to represent non-English speaking defendants. Moreover, bilingual attorneys, by court order, are sometimes forced to represent clients without the benefit of an interpreter.

The attorney-interpreter appointment, however well-intentioned by the court or counsel, poses potential problems that are legion and insurmountable. The roles are both ethically and practically incompatible. For example, how can counsel be an effective advocate and yet interpret at the same time? Counsel cannot effectively meet the demands of both roles. Furthermore, interpreting is a highly complex and mentally demanding task. When the duty of advocacy is burdened with the additional duty of court interpretation, one role or both will suffer.

If the court allows this arrangement or compels it, the court must consider the language competence and qualifications of the attorney on the record. If extensive prequalification voir dire is required, it is difficult to eliminate the incompatibilities of the two roles even at the preliminary stages of the case.

Regardless of the language expertise of the attorney, this arrangement should be rejected. It immediately places both the court and counsel on the horns of an ethical dilemma with competing allegiances and incongruent role expectations. It is important to emphasize that this conflict cannot be avoided either by stipulation of respective counsel or by waiver of the client.

For more detailed discussion of these issues see Honorable Lynn W. Davis, "Lessons in Administering Justice-What Judges Need to Know About the Requirements Role and Professional Responsibilities of the Court Interpreter", paper in preparation for the *Harvard Latino Law Review*, 1995.

See also Bill Piatt, "Attorney as Interpreter," *New Mexico Law Review*, Winter, 1990.

Suggestions for Further Reading

*Copies of the following documents are available by special request from the Information Service,
National Center for State Courts*

"Proposed Standards for Interpreted Proceedings"

Court Interpreting, Legal Translating and Bilingual Services Section, Administrative Office of the New Jersey Courts (Working Draft, January 1994).

"Using an Interpreter in Court"

Hon. Heather Van Nuys and Ms. Joanne Moore, *Washington State Bar News*, Vol. 41 No. 5, May 1987.

"Standards for Determining the Need for a Court Interpreter"

California Rules of Court, Rule 985, Standards of Judicial Administration, Section 18.

"Interpreted Proceedings: Instructing Participants on Procedure"

California Rules of Court, Rule 985, Standards of Judicial Administration, Section 18.1.

"Lessons in Administering Justice: What Judges Need to Know About The Requirements, Role and Professional Responsibilities of the Court Interpreter"

Hon. Lynn W. Davis, paper in preparation for publication in the *Harvard Latino Law Review*.

"Attorney as Interpreter: A Return to Babble"

Bill Piatt, *New Mexico Law Review*, Winter 1990.

"How Best to Use an Interpreter in Court"

Alexander Rainoff, *California State Bar Journal*, May 1980.

"Suggestions for Working with Court Interpreters: YOU ARE IN CONTROL!"

Hon. Charles M. Grabau, paper presented to Judges of the Eighth Judicial District, New York, training sponsored by the International Institute of Buffalo, October 20, 1994.

**APPENDIX B:
Model Voir Dire: Determining the Need for an Interpreter**

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

Identification questions:

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

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

Questions using active vocabulary in vernacular English:

"How did you come to court today?"

"What kind of work do you do?"

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

"Where did you go to school?"

"What have you eaten today?"

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

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

APPENDIX C

Protocol for Obtaining and Using an Interpreter

STEP ONE:

Check the Judiciary's internal website and contact either individuals with current affidavits on file or one of the services listed. If the interpreter has a current affidavit on file, you do not need to do further vetting of qualifications and can retain them for the hearing.

STEP TWO:

If the interpreter contacted does not have a current affidavit on file, when you call to inquire about availability, complete the Initial Determination of Interpreter Qualification Form. In order to reduce the time that judges need to spend determining qualifications of interpreters, court managers or their designee should complete the questionnaire.

STEP THREE:

If you determine the interpreter is qualified, retain them for the proceeding and advise them that they must come to the clerk's office prior to the hearing (on the date of the hearing or before) and sign an Interpreter Affidavit.

STEP FOUR:

Give a copy of the signed affidavit and completed form to the judge with the file. If the interpreter has not signed the affidavit, give the form to the judge and advise that no affidavit has been signed so the judge can ask additional questions and get the necessary information into the court record of the proceeding. Include an evaluation form for the judge to fill out.

STEP FIVE:

If the interpreter checks the box on the Affidavit indicating an interest in being included on the website list, send the original affidavit and completed form to the Court Administrator's Office.

STEP SIX:

Judge conducts *voir dire* on the record.

STEP SEVEN:

If the judge or any litigant expresses dissatisfaction with the interpreter's performance or skills, ask them to complete an evaluation and notify in the Court Administrator's Office of the reported issue(s). The CAO will then determine whether to remove the interpreter from the website list.

APPENDIX D
Initial Determination of Interpreter Qualifications
by Court Manager (or Designee)

INTERPRETER NAME: _____

LANGUAGE(S): _____

D.O.B. _____ (must be 18 or over).

Fluency:

1. How did you learn English and the other language(s) you'll be interpreting?

2. What formal language training have you received in English and the other language(s) you'll be interpreting?

3. How long have you been communicating in English and the other language(s)?
English ____ years/months
Other language(s) _____ years/months

4. How often do you communicate in these languages? Daily/Weekly/Monthly?

Interpretation Skills:

5. Do you have any formal interpreter training? Yes/No
 - a. When did you take the training?
 - b. Where did you take the training?
 - c. How long did the training last?
 - d. What did the training entail?

6. Have you received any legal training as an interpreter? Yes/No
 - a. When did you take the training?
 - b. Where did you taking the training?
 - c. How long did the training last?
 - d. What did the training entail?

7. Have you interpreted in court before? Yes/No

If yes, when?

8. How many times have you interpreted in court? _____
9. For what type of proceedings?
(circle all that apply)
- a. civil proceedings
 - b. criminal proceedings
 - c. family court
 - d. traffic court
 - e. Other settings (list) _____
10. What form of interpretation are you able to perform?
(circle all that apply)
- a. simultaneous
 - b. consecutive
 - c. sight interpretation of document

Conflicts of Interest:

11. Are you familiar with and have you ever interpreted for any of the parties or witnesses in this case? Yes/No

If yes, explain nature of previous involvement:

Ethics:

12. Have you read the *Code of Professional Responsibility for Interpreters in the Vermont State Court System*? Yes/No
13. Do you understand your duties with respect to the *Code of Professional Responsibility*? Yes/No

If satisfied that the interpreter is qualified based on these initial questions, retain the person for the proceeding. On the date of the proceeding, attach the responses to this questionnaire to the Affidavit and have the interpreter sign before a notary. Give a copy to the Judge and forward the original Affidavit and this Form to the Court Administrator's Office for filing.

APPENDIX E
Affidavit of Interpreter

I, _____, swear or affirm under pains and penalties of perjury that:

- 1) I am at least 18 years of age;
- 2) The information provided on the attached Form (Initial Determination of Interpreter Qualifications) is true and accurate to the best of my knowledge and belief;
- 3) I have read the *Code of Professional Responsibility for Interpreters in the Vermont State Court System*, I understand my responsibilities as set forth therein and I agree to abide by them during any court proceeding to which I am assigned.
- 4) I have not been convicted of a felony or any other crime of dishonesty, deceit, fraud or moral turpitude.
- 5) I have not been disqualified from interpreting in any court or administrative hearing other than for a conflict of interest.

Dated at _____ this ____ day of _____, 20__.

PRINT NAME

SIGNATURE

Signed and sworn to before me, this ____ day of _____, 20__.

NOTARY PUBLIC
My Commission expires 2/10/20__.

Check here if you want to be added to the list of interpreters to be called for court proceedings. Please be advised that any interpreter asking to be placed on the list is subject to evaluation by court staff and removal from the list is at the court's discretion. Thank you!

APPENDIX F
Interpreter Evaluation

Name of Interpreter: _____ Language: _____

Type of proceeding: _____ Date of proceeding: _____

Interpreter providing service to (circle one): Plaintiff/Defendant/Witness

Person completing evaluation (circle one; confidential): Judge/Court Officer/Litigant

-
- 1) Did the interpreter appear to have adequate English language skills? Yes/No
 - 2) Did the interpreter appear to have adequate language skills in the target/source language?
Yes/No
 - 3) Was the interpreter able to keep up with the pace of the proceedings? Yes/No
 - 4) Did you have any concerns about the interpreter's ability to interpret consecutively in an accurate and complete manner? Yes/No
 - 5) Did you have any concerns about the interpreter's ability to interpret simultaneously in an accurate and complete manner? Yes/No
 - 6) If the interpreter was asked to sight translate any documents, did you have any concerns about the interpreter's ability to do so in an accurate and complete manner?
Yes/No/Not Applicable
 - 7) Did the interpreter behave professionally (arrive on time, dress appropriately, behave in an unobtrusive manner consistent with the dignity of the court)? Yes/No
 - 8) Did you have any concerns about the interpreter's impartiality? Yes/No
 - 9) Did the interpreter appear to understand and follow the *Code of Professional Responsibility for Interpreters in the Vermont State Courts*? Yes/No
 - 10) Did the interpreter appear to have an adequate understanding of court process, procedure and legal terminology? Yes/No
 - 11) Would you recommend this interpreter for further court work? Yes/No

APPENDIX G
Establishing Interpreter Qualifications
When No Court Testing or Other Prior Screening Standards Exist

At minimum, the court should ask the following questions of a proposed interpreter if the responses are not indicated on the form questionnaire or in the affidavit of the interpreter:

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

APPENDIX H **Interpreter's Oath**

You solemnly swear [or affirm] that you will justly, truly, and impartially interpret to A.B. the oath about to be administered to him and the testimony he shall give relative to the cause under consideration. [So help you God.]

The alternative oath should be administered for a non-witness:

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 the code of ethics for interpreters and follow all official guidelines established by this court for legal interpreting or translating and the discharge of all of the solemn duties and obligations of legal interpretation and translation.

APPENDIX I
Suggested Text for Judge's Statement in
Court to Clarify the Role of the Interpreter

We are going to have an interpreter assist us through these proceedings, and you should know what [she] can do and what [she] cannot do. Basically, the interpreter is here only to help us communicate during the proceedings. [She] is not a party in this case, has no interest in this case, and will be completely neutral. Accordingly, [she] is not working for either party. The interpreter's sole responsibility is to enable us to communicate with each other.

The interpreter is not an attorney and is prohibited from giving legal advice. [She] is also not a social worker. [Her] only job is to interpret, so please do not ask the interpreter for legal advice or any other advice or assistance.

Does anyone have any questions about the role or responsibilities of the interpreter?

If any of you do not understand the interpreter, please let me know. Is anyone having difficulty understanding the interpreter at this time?

APPENDIX J

Suggested Text for Clarifying the Interpreter's Role to the Witness

I want you 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 we or you say and will not add, omit, or summarize anything.

The interpreter will say in English everything you say in your language, so do not say anything you do not want everyone to hear.

If you do not understand a question that was asked, request clarification from the person who asked it. Do not ask the interpreter.

Remember that you are giving testimony to this court, not to the interpreter. Therefore, please speak directly to the attorney or me, not to the interpreter. Do not ask the interpreter for advice.

Please speak in a loud, clear voice so that everyone and not just the interpreter can hear.

If you do not understand the interpreter, please tell me. If you need the interpreter to repeat something you missed, you may do so, but please make your request to the person speaking, not to the interpreter.

Finally, 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? Do you understand the interpreter?*

*Note that the interpreter is simultaneously interpreting this advisement while the judge is speaking, and therefore the witness has an opportunity to recognize any problems with communication.

APPENDIX K
Suggested Text for Clarifying the Interpreter's Role to the Jury

K-1 Proceedings interpreting

This court seeks a fair trial for all regardless of the language they speak and regardless of how well they may or may not speak English. Bias against or for persons who have little or no proficiency in English because they do not speak English is not allowed. Therefore, do not allow the fact that the party requires an interpreter to influence you in any way.

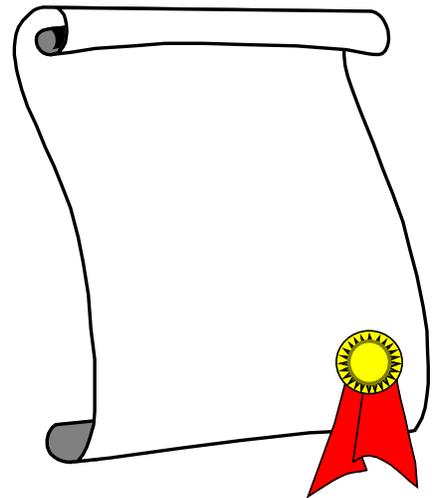
K-2 Witness interpreting

Treat the interpretation of the witness's testimony as if the witness had spoken English and no interpreter were present. Do not allow the fact that testimony is given in a language other than English to affect your view of [her] credibility.

If any of you understand the language of the witness, disregard completely what the witness says in [her] 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 on the basis of the official interpretation.

APPENDIX L

**Code of Professional Responsibility
for Interpreters in the Vermont Judiciary**



**Code of Professional Responsibility
for Interpreters in the Vermont Judiciary**

Purposes of the Code

The purposes of the Code are threefold:

- 1) to articulate a core set of principles to guide the use of interpreters in the Vermont Courts;
- 2) to serve as a reference, which may be consulted or cited by interpreters, judges, and court managers where no other authoritative standards have been adopted, and
- 3) to serve as a basis for education and training of interpreters and other legal professionals.

CODE OF PROFESSIONAL RESPONSIBILITY
FOR INTERPRETERS IN THE VERMONT JUDICIARY

PREAMBLE

Many persons who come before the courts are partially or completely excluded from full participation in the proceedings due to limited English proficiency or a speech or hearing impairment. It is essential that the resulting communication barrier be removed, as far as possible, so that these persons are placed in the same position as similarly situated persons for whom there is no such barrier.¹ As officers of the court, interpreters help assure that such persons may enjoy equal access to justice and that court proceedings and court support services function efficiently and effectively. Interpreters are highly skilled professionals who fulfill an essential role in the administration of justice.

APPLICABILITY

This code shall guide all persons, agencies and organizations who administer, supervise use, or deliver interpreting services to 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.

Commentary:

The interpreter has a twofold duty: 1) to ensure that the proceedings in English reflect precisely what was said by a non-English speaking person, and 2) to place the non-English speaking person on an equal footing with those who understand English. This creates an obligation to conserve every element of information contained in a source language communication when it is rendered in the target language.

¹ A non-English speaker should be able to understand just as much as an English speaker with the same level of education and intelligence.

Therefore, interpreters are obligated to apply their best skills and judgment to preserve faithfully 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 when they distort the meaning of the source language, but *every spoken statement, even if it appears non-responsive, obscene, rambling, or incoherent should be interpreted*. This includes apparent misstatements.

Interpreters should never interject their own words, phrases, or expressions. If the need arises to explain an interpreting problem (e.g., a term or phrase with no direct equivalent in the target language or a misunderstanding that only the interpreter can clarify), the interpreter should ask the court's permission to provide an explanation. Interpreters should convey the emotional emphasis of the speaker without reenacting or mimicking the speaker's emotions, or dramatic gestures.

Sign language interpreters, however, *must* employ all of the visual cues that the language they are interpreting for requires -- including facial expressions, body language, and hand gestures. Sign language interpreters, therefore, should ensure that court participants do not confuse these essential elements of the interpreted language with inappropriate interpreter conduct.

The obligation to preserve accuracy includes the interpreter's duty to correct any error of interpretation discovered by the interpreter during the proceeding. Interpreters should 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:

Acceptance of a case by an interpreter conveys linguistic competency in legal settings. Withdrawing or being asked to withdraw from a case after it begins causes a disruption of court proceedings and is wasteful of scarce public resources. It is therefore essential that interpreters present a complete and truthful account of their training, certification and experience prior to

appointment so the officers of the court can fairly evaluate their qualifications for delivering interpreting services.

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 to which the court is a servant. This is true regardless of whether the interpreter is publicly retained at government expense or retained privately at the expense of one of the parties.

The interpreter should avoid any conduct or behavior that presents the appearance of favoritism toward any of the parties. Interpreters should maintain professional relationships with their clients, and should not take an active part in any of the proceedings. The interpreter should discourage a non-English speaking party's personal dependence.

During the course of the proceedings, interpreters should not converse with parties, witnesses, jurors, attorneys, or with friends or relatives of any party, except in the discharge of their official functions. It is especially important that interpreters, who are often familiar with attorneys or other members of the courtroom work group, including law enforcement officers, refrain from casual and personal conversations with anyone in court that may convey an appearance of a special relationship or partiality to any of the court participants.

The interpreter should strive for professional detachment. Verbal and non-verbal displays of personal attitudes, prejudices, emotions, or opinions should be avoided at all times.

Should an interpreter become aware that a proceeding participant views the interpreter as having a bias or being biased, the interpreter should disclose that knowledge to the appropriate judicial authority and counsel.

Any condition that 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, that could be reasonably construed as a conflict of interest. This disclosure should not include privileged or confidential information.

The following are circumstances that are presumed to create actual or apparent conflicts of interest for interpreters where interpreters should not serve:

1. The interpreter is a friend, associate, or relative of a party or counsel for a party involved in the proceedings;
2. The interpreter has served in an investigative capacity for any party involved in the case;
3. The interpreter has previously been retained by a law enforcement agency to assist in the preparation of the criminal case at issue;
4. The interpreter or the interpreter's spouse or child has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that would be affected by the outcome of the case;
5. The interpreter has been involved in the choice of counsel or law firm for that case.

Interpreters should disclose to the court and other parties when they have previously been retained for private employment by one of the parties in the case.

Interpreters should not serve 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 should know and observe the established protocol, rules, and procedures for delivering interpreting services. When speaking in English, interpreters should speak at a rate and volume that enable them to be heard and understood throughout the courtroom, but the interpreter's presence should otherwise be as unobtrusive as possible. Interpreters should work without drawing undue or inappropriate attention to themselves. Interpreters should dress in a manner that is consistent with the dignity of the proceedings of the court.

Interpreters should avoid obstructing the view of any of the individuals involved in the proceedings. However, interpreters who use sign language or other visual modes of communication must be positioned so that hand gestures, facial expressions, and whole body movement are visible to the person for whom they are interpreting.

Interpreters are encouraged to avoid personal or professional conduct that could discredit the court.

CANON 5: CONFIDENTIALITY

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

Commentary:

The interpreter must protect and uphold the confidentiality of all privileged information obtained during the course of her or his duties. It is especially important that the interpreter understand and uphold the 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 also refrain from repeating or disclosing information obtained by them in the course of their employment that may be relevant to the legal proceeding.

In the event that an interpreter becomes aware of information that suggests imminent harm to someone or relates to a crime being committed during the course of the proceedings, the interpreter should immediately disclose the information to an appropriate authority within the judiciary who is not involved in the proceeding and seek advice in regard to the potential conflict in 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:

Since interpreters are responsible only for enabling others to communicate, they should limit themselves to the activity of interpreting or translating only. Interpreters should refrain from initiating communications while interpreting unless it is necessary for assuring an accurate and faithful interpretation.

Interpreters may be required to initiate communications during a proceeding when they find it necessary to seek assistance in performing their duties. Examples of such circumstances include seeking direction when unable to understand or express a word or thought, requesting speakers to moderate their rate of communication or repeat or rephrase something, correcting their own interpreting errors, or notifying the court of reservations about their ability to satisfy an assignment competently. In such instances they should make it clear that they are speaking for themselves.

An interpreter may convey legal advice from an attorney to a person only while that attorney is giving it. An interpreter should not explain the purpose of forms, services, or otherwise act as counselors or advisors unless they are interpreting for someone who is acting in that official capacity. The interpreter may translate language on a form for a person who is filling out the form, but may not explain the form or its purpose for such a person.

The interpreter should not personally serve to perform official acts that are the official responsibility of other court officials including, but not limited to, court clerks, pretrial release investigators or interviewers, or probation counselors.

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.

Commentary:

If the communication mode or language of the non-English-speaking person cannot be readily interpreted, the interpreter should notify the appropriate judicial authority.

Interpreters should notify the appropriate judicial authority of any environmental or physical limitation that impedes or hinders their ability to deliver interpreting services adequately (e.g., the court room is not quiet enough for the interpreter to hear or be heard by the non-English speaker, more than one person at a time is speaking, or principals or witnesses of the court are speaking at a rate of speed that is too rapid for the interpreter to adequately interpret). Sign language interpreters must ensure that they can both see and convey the full range of visual language elements that are necessary for communication, including facial expressions and body movement, as well as hand gestures.

Interpreters should notify the presiding officer of the need to take periodic breaks to maintain mental and physical alertness and prevent interpreter fatigue. Interpreters should recommend and encourage the use of team interpreting whenever necessary.

Interpreters are encouraged to make inquiries as to the nature of a case whenever possible before accepting an assignment. This enables interpreters to match more closely their professional qualifications, skills, and experience to potential assignments and more accurately assess their ability to satisfy those assignments competently.

Even competent and experienced interpreters may encounter cases where routine proceedings suddenly involve technical or specialized terminology unfamiliar to the interpreter (e.g., the unscheduled testimony of an expert witness). When such instances occur, interpreters

should request a brief recess to familiarize themselves with the subject matter. If familiarity with the terminology requires extensive time or more intensive research, interpreters should inform the presiding officer.

Interpreters should refrain from accepting a case if they feel the language and subject matter of that case is likely to exceed their skills or capacities. Interpreters should feel no compunction about notifying 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 should notify the presiding officer of any personal bias they may have involving 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:

Because the users of interpreting services frequently misunderstand the proper role of the interpreter, they may ask or expect the interpreter to perform duties or engage in activities that run counter to the provisions of this code or other laws, regulations, or policies governing court interpreters. It is incumbent upon the interpreter to inform such persons of his or her professional obligations. If, having been apprised of these obligations, the person persists in demanding that the interpreter violate them, the interpreter should turn to a supervisory interpreter, a judge, or another official with jurisdiction over interpreter matters 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 must continually strive to increase their knowledge of the languages they work in professionally, including past and current trends in technical, vernacular, and regional terminology as well as their application within court proceedings.

Interpreters should keep informed of all statutes, rules of courts and policies of the judiciary that relate to the performance of their professional duties.

An interpreter should seek to elevate the standards of the profession through participation in workshops, professional meetings, interaction with colleagues, and reading current literature in the field.

Additional References

- California Standards of Judicial Administration-Section 18.3, *Standards of Professional Conduct for Court Interpreters* (See California Rules of Court, Rule 985)
- Judicial Council of California, Administrative Office of the Courts Workshops For Court Interpreters (Training Manual), *Professional Ethics and the Role of the Court Interpreter*
- California Court Interpreters Association, *Code of Ethics*
- Federal Courts *Code of Professional Responsibility of the Official Interpreters of the United States Courts*
- Massachusetts Office of the Chief Administrative Justice, Massachusetts Trial Court, *Code Professional Conduct for Court Interpreters of the Trial Court*
- New Jersey Administrative Office of the Courts, Court Interpreting, Legal Translating and Bilingual Services Section, *Recommended Code of Professional Responsibility for Interpreters, Translators and Translators*
- Washington Rules of Court, General Rule 11.1, *Code of Conduct for Court Interpreters*
- Registry of Interpreters for the Deaf, Inc. *Code of Ethics*
- Texts Chapter 34, "Ethical Principles and Standards" in Gonzalez, Roseann; Vasquez, Victoria; and Mikkelson, Holly, *Fundamentals of Court Interpretation*, Carolina Academic Press, 1991.

APPENDIX M

INTERPRETER RESOURCES

Below is a link that will take you to the Interpreter Resources webpage:

[Interpreter Resources](#)