

Judges' Guide to working with Court Interpreters - 2012

Hello, I'm Gail Prudenti, Chief Administrative Judge for the New York State Unified Court System.

I am pleased to share with you this brief, but important, training program on working with interpreters in the courtroom.

Every day, there are many people who use the courts in New York who are limited in their proficiency or understanding of the spoken English language, or who may be deaf or hard-of-hearing.

For these individuals, the use of a qualified court interpreter can make all the difference in providing access to justice, and to ensuring their equal participation in the court proceedings.

As judges, it is critical that we understand and support the role of the interpreter, as part of the courtroom team.

During this program, we will review the court rules and statutes regarding the use of a court interpreter in New York, as well as some tips for ensuring compliance.

We will also provide some tools you can use to facilitate effective communication between the interpreter, the court, and the party, including the use of remote, or video, interpreting.

In addition, we will talk about how you - the judge - can assess the performance of an interpreter, and what you should do if a problem occurs.

As the need for interpreters continues to increase, I hope that the information covered here today will be helpful, as we work together to provide equal access to the courts for all.

Hello, I'm Judge Fern Fisher, Deputy Chief Administrative Judge for Courts within New York City. Our purpose here today is to share some important information about the use of court interpreters in the New York State courts. As you know, the mission of the court system is to provide a speedy and just resolution to all matters brought before its courts, and many of these matters are brought by persons who have a limited proficiency in the English language, or by someone who is deaf or hard of hearing. In support of that mission, the court system is committed to ensuring that legal proceedings conducted in our courts are equally accessible to all persons, regardless of an individual's ability to communicate effectively in the spoken English language.

I'm Judge Michael Coccoma, Deputy Chief Administrative Judge for Courts outside of New York City. Everyone knows that New York City has always been very diverse. With the United Nations, Ellis Island, and Times Square, the city is known as the crossroads of the world, with many different languages being spoken. However in recent years, we've also seen a significant increase in the diversity of languages spoken in the rest of New York State, and over the past year, the courts provided interpreters in almost 100 different languages.

In recent years, along with growth in the use of interpreters for languages such as Spanish, Russian, and Korean, courts in New York have also seen an increase in requests for languages such as Bosnian, Hindi, Khmer, as well as Somali, Urdu, and Vietnamese.

These are just a few recent trends, and we must also remember the needs of court users who are deaf or hard of hearing, and who are provided with Sign Language interpreters, throughout the state.

It has long been the practice of the New York State Unified Court System to provide court interpreters to defendants in all **criminal** proceedings, and we have provided interpreters to witnesses and interested parties in **civil** matters as well. In 2007, this practice was formally codified, in **Part 217 of the Uniform Rules of the NYS Trial Courts**, and New York state courts continue to provide interpreters in **both** criminal and civil cases.

During this brief session, we will focus on a few simple practices that will help to ensure that you are using interpreters effectively, and in compliance with court rules, statutes and policies. We also hope to answer some of the frequently-asked-questions about the use of interpreters, such as:

1. How to determine if a court interpreter is needed?
2. How can I get an interpreter for my court?
3. What is remote interpreting?
4. How do I know if the interpreter is qualified?
5. How can I assess the performance of an interpreter?

We hope this short video will answer these questions, and be helpful to you.

Thank you, Judge Fisher. Regarding the actual need for an interpreter, of course we understand that individuals have a right to assist in their own defense and participate meaningfully in court proceedings.

However, in our society, with people here from every part of the world, many litigants do speak *some* English. So how do you determine if an interpreter is actually needed, or should be appointed?

One rule of thumb is: **if an interpreter is requested, one is provided**. Individuals have a right to communicate with the courts in the language that they feel most comfortable with, and the court system is committed to making sure that litigants have equal access to the courts, regardless of their ability to communicate effectively in the spoken English language. If you are unsure **whether or not a party can effectively communicate in English, you should make an inquiry to ascertain the need for an interpreter**.

To assist you in assessing the need for an interpreter, I encourage all judges to keep a copy of the ***Benchmark on Working with Interpreters*** handy in their courtroom, as it has some key tips to help you work with interpreters, and includes sample questions to help you determine if an interpreter is needed, and for what language.

Remember, *not* appointing an interpreter when there is a need for one, can cause a trial or proceeding to be constitutionally defective.

Once you have determined that an interpreter is required, you might ask, "How does the court go about securing an interpreter for the specific day or proceeding?"

In many instances, your first resource is a local staff interpreter. We are fortunate that in the Unified Court System, we have over 300 staff interpreters employed statewide, representing many different languages. The staff interpreters cover a significant majority of the cases that require interpreting services. However, if no staff interpreter is available, you may utilize the services of a qualified per-diem or freelance court interpreter.

For help with scheduling an interpreter for your court, contact the local Supervising interpreter, your Chief Clerk, or the District Administrative office. If assistance is needed, contact the OCA Office of Court Interpreting Services.

So, now that you have an interpreter scheduled to appear in your court, how do you know that the interpreter is qualified?

OCA's Office of Court Interpreting Services coordinates the screening and testing of interpreters who serve the Unified Court System. All interpreter candidates are required to pass a test of their proficiency in the English language, as well as an exam in the other language or languages that they wish to interpret. Currently there are court interpreter exams offered in 22 different languages, and interpreters who want to offer their services in any of these languages, must first pass the corresponding test. For those who wish to interpret for a language that does not have a specific exam, the candidate must provide academic and professional credentials, that are verified by OCA.

Once they have passed the required language exams, all interpreters who work in the Unified Court System must be fingerprinted and complete a background check, and they must also attend a mandatory training program.

During the training, the role of an interpreter is explained, along with their ethical obligations and specific duties. In addition, the training addresses many of the challenges that court interpreters may face as part of the job, the role and shared responsibilities of other members of the court room team, as well as procedures and protocols that are to be followed in the New York State courts.

While OCA has a rigorous screening process for interpreters, at the outset of a proceeding, you may still wish to ask the interpreter a few questions, in order to establish their competency, particularly if they will be providing services for a language in which no formal exam exists.

For example, you can inquire with the interpreter - from the Bench - about how he or she learned English, or ask how the interpreter learned the language that they'll be interpreting for today? You can also ask what training or credentials the interpreter has, how long he or she has been working as an interpreter, or how often they have worked in a court? Once you are satisfied that the interpreter is competent, we recommend that you swear-in the interpreter for the record.

Sample Interpreter oath:

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

A sample oath for the interpreter can be found on the Benchcard that was previously mentioned. The Benchcard can also be found on the court system's website, under Court Interpreting Resources.

Now, what can be done if you cannot secure a qualified interpreter, when one is needed?

Perhaps you have an unscheduled matter. It may be that there are no interpreters in your court or district for that particular language, or they may be otherwise engaged. What do you do? Are you allowed to use anyone who professes to speak the desired language, but is not a qualified interpreter? The short answer is NO. We know that all court interpreters working in NYS courts are required to be tested for language proficiency, and to be fingerprinted for a criminal background check, as well as trained on their ethical responsibilities. In order to provide the highest level of services to court users, **a court should not use an interpreter who hasn't met these specific criteria.**

While the first choice is always to have an interpreter physically present in your courtroom, Remote Interpreting can be a helpful and cost-effective alternative, through the use of the video conferencing equipment which is available to all the courts within the Unified Court System.

Here's how it works: Upon request from the court, the Office of Court Interpreting Services can arrange to have a qualified interpreter appear at OCA in New York City. Utilizing video-conference equipment, or the telephone, if a video connection is not available, the interpreter can provide language services to virtually any court in the state. The remote interpreter will be someone who has been screened by OCA, and he or she will be monitored on-site, to ensure a smooth delivery of services.

This Remote Interpreting "Tip Sheet" has some good points to keep in mind, such as:

Make sure that everyone who needs to see and hear the interpreter can do so, and vice versa.

Remind parties not to shuffle papers near the microphones or block the audio or video

parties should speak one at a time, and for brief exchanges, of 2 or 3 sentences at a time.

Once again, the goal is to have a qualified court interpreter appear in-person in the courtroom. However, when that is not possible, Remote Interpreting can often eliminate delays or adjournments to search for an interpreter, while increasing the likelihood that a qualified interpreter is provided.

If you have not utilized Remote Interpreting services yet, you may want to arrange for a test-run before the case, so that you and your court personnel can become familiar with it. For more information, email the Office of Court Interpreting Services at:

remoteinterpreting@nycourts.gov

Now, once you have an interpreter in your court, what can you expect from the interpreter? What should we be looking for, besides accurate interpretation?

The NYS court interpreter exam measures three basic interpreter abilities: The ability to interpret

- *simultaneously*
- *consecutively*
- and to render *sight translations*.

You will notice that a well-trained, professional interpreter knows exactly when to utilize these different modes. If a non-English speaking litigant is seated at the table and there is dialogue between others in the courtroom, such as between the judge and an attorney, the interpreter is at that point keeping up with the speakers and interpreting everything in a whispering mode, so that it is as unobtrusive as possible. That is the **simultaneous** mode - it's when the interpreter basically becomes the ears of that litigant.

When the litigant or the non-English speaking party is engaged in direct dialogue with anyone, that's when the **consecutive** mode is used. The interpreter waits until the question or statement has been completed, before beginning to interpret. It is particularly important that the interpreter use this mode at the witness stand.

Court Interpreters may also provide **oral translations** of court documents, such as waivers of appeal, court orders, or any written instructions, and may verbally translate documents that are being submitted to the court in a language other than English, such as birth certificates or divorce decrees from another country. The Court may ask the interpreter provide this **sight translation**, by giving the interpreter a few minutes to review the document, then having the interpreter verbally translate its contents.

While we do not generally require our court interpreters to provide **written translations** of documents or orders that are being issued by the court, the judge may ask the interpreter to provide a sight translation of **any** documents that are being issued to the Limited English-speaker - such as an Order of Protection, or an eviction notice that needs to be explained.

It is important that the Judge explain any conditions or procedures related to these documents, **while the interpreter is still in the courtroom**, so that the information is conveyed to the party in the foreign language, and any questions about the order can be clarified by the judge, while the official court interpreter is still present.

As judges, we can ensure that interpretations are rendered as smoothly and as efficiently as possible, by keeping a few things in mind.

Allowing the interpreter to review the case file prior to the appearance can help to ensure that the interpretation goes smoothly. Reviewing the case information in advance will help the interpreter to prepare, and to compile any specific terminology that may be required for the case, such as technical or scientific evidence, or even the use of slang. In addition, the case file often contains pedigree information of the party, such as their full name, which can be an important key for identifying the geographic region or country that the party is from, which often determines the dialect that the person speaks. Knowing this information up front can help the interpreter to communicate more accurately and effectively throughout the proceeding, with words or phrases that the party is familiar with.

During a trial, or a hearing of significant duration, it is also helpful to give the interpreter reasonable breaks. The accuracy of interpretations may be compromised or reduced over time, as an interpreter gets tired. If your court has the resources, consider using Team Interpreting, where two interpreters work together on the case, to prevent fatigue, and to allow the case to move forward.

Sign language interpreters have historically worked in teams, and we must remember that there is a physical-aspect to sign language, which is not required in spoken languages. As such, Sign language interpreters will often work in teams, to give each other breaks while the case continues. When possible, particularly for lengthy proceedings, a team approach should be considered for spoken language interpreters as well.

In all instances, the main principles for interpreters to follow are to be:

- **Accurate**
- **Impartial**
- **Unobtrusive, and**
- **always Professional.**

If the interpreter encounters difficulty in fulfilling any of these obligations, it should be brought to the judge's attention. If you - as the judge - notice any problems with the interpretation – for example, if the body language or facial expression of the party seems

to indicate that he is confused, or perhaps is not understanding what is being said - you must intervene to determine the nature of the problem, and try to resolve it. The interpreter's role is to communicate what is being said in court, but the judge must work with the interpreter, to do this effectively.

If you would like to learn more about Court Interpreters and what their function is within the Unified Court System, we encourage you to read the *Court Interpreter Manual and Code of Ethics*, which is accessible on the court system's website at:

www.nycourts.gov/courtinterpreter

Finally, although we have confidence in our court interpreters, as well as the exam process and required training programs, we must allow for the possibility that errors or unsatisfactory services sometimes occur. If you experience a problem, or have a concern about a court interpreter, please notify the Office of Court Interpreting Services, so that any problems can be promptly addressed.

OCA OFFICE OF COURT INTERPRETING SERVICES

- **Complaints or Concerns:** InterpreterComplaints@nycourts.gov
- **Telephone:** **646-386-5670**
- **Email:** Courtinterpreter@nycourts.gov
- **Website:** www.nycourts.gov/courtinterpreter

If you have any questions about what was discussed here today, contact the Office of Court Interpreting Services, which is part of OCA, by telephone at

646-386-5670 or by email at: courtinterpreter@nycourts.gov

For additional information, check the website:

www.nycourts.gov/courtinterpreter

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