

During the 2006 legislative session, the General Assembly authorized the Administrative Office of the Courts (AOC) to adopt policies and procedures for the appointment and payment of foreign language interpreters (G.S. 7A-314(f) and G.S. 7A-343(9b)). These policies and procedures are to be applied uniformly throughout the General Court of Justice. Accordingly, AOC has revised the previous guidelines for the use of foreign language interpreters to reflect the new policies and procedures. The purpose of the policies and best practices is to facilitate the efficient use of competent and ethical foreign language interpreters and translators in court proceedings. The new policies and best practices address a new system of court interpreter qualification and classification, as well as a new system of payment for interpreting services.

In the 2007 General Assembly, new legislation was enacted:

EXPAND COURT-FUNDED INTERPRETER AUTHORITY

SECTION 14.23. G.S. 7A-314(f) reads as rewritten:

"(f) In any case in which the Judicial Department is bearing the costs of representation for a party and that party or a witness for that party does not speak or understand the English language, and the court appoints a foreign language interpreter to assist that party or witness, the reasonable fee for the interpreter's services is payable from funds appropriated to the Administrative Office of the Courts. In order to facilitate the disposition of criminal or Chapter 50B cases, the court may authorize the use of a court interpreter, paid from funds appropriated to the Administrative Office of the Courts, in cases in which an interpreter is necessary to assist the court in the efficient transaction of business. The appointment and payment shall be made in accordance with G.S. 7A-343(9c)."

The new provision permits judges to allow in-court interpreters (judge appointed and state paid) to interpret for privately retained counsel (between private counsel and client) in criminal or 50B cases in which the allowance of such use of the interpreter would facilitate the immediate disposition of the case rather than the judge having to grant a continuance for the attorney and client to hire an interpreter and return to court at a later time or date. The new provision applies to a criminal district court or superior court case where a plea has been previously arranged or arranged on site on the day of court - disposition of the criminal case must be imminent. These cases should be limited and only occur when privately retained interpreters do not attend court as scheduled by private counsel. In cases such as this, the judge should always assign costs of the interpreting service to the defendant.

The provision does not allow for non-indigent defendants, with or without counsel, to be relieved of their responsibility to provide their own interpreter. This provision does not permit judges to allow in-court interpreters to interpret for non-indigent defendants if the case is tried. If disposition is not imminent, then the case should be continued and the non-indigent defendant is responsible for returning to court for trial with a privately retained interpreter. This new provision does not allow for the use of the presently funded and contracted court interpreters to work beyond the scope of G.S. 7A-314(f). The statute remains clear that the monies appropriated to the AOC for interpreters are to only be used in criminal cases in which the state is bearing the cost of representation in a court of record, juvenile proceedings, court-ordered child custody mediation, indigent respondents in involuntary commitment proceedings, and 50B domestic violence proceedings.

In practical terms, this allowance is appropriate for use in high-volume district courts for cases which can be resolved in minutes with the assistance of an interpreter.

WORKING WITH COURT INTERPRETERS

Limited English Proficiency (LEP):

LEP means the inability to adequately hear, understand or communicate effectively in English in a court proceeding.

Evaluate the Need for an Interpreter:

A voir dire for determining fluency/understanding of the non-English speaker asks open-ended questions, requiring exposition such as:

- “Please tell us your birthday, how old you are, and where you were born.”
- “How did you come to court today?”
- “What kind of work do you do?”
- “Please tell the court how comfortable you feel speaking and understanding English.”
- “Tell us about your family.”

Appointment of Interpreter:

- If the court determines that the person needs an interpreter to communicate with counsel, understand English testimony, or be understood in English, then the court should advise of the right to a qualified interpreter. **This determination does not require an elaborate hearing.**
- Keep in mind that the court system is authorized to provide foreign language interpreters at State expense only in those instances when the State is bearing the costs of representation. Examples include indigent criminal defendants, witnesses for indigent criminal defendants, witnesses for the State, parties to juvenile proceedings, indigent respondents in involuntary commitment proceedings, and custody mediation sessions. The Judicial Branch has also been granted special legislative authority to pay for interpreters for victims in 50-B protective orders matters.

How Do I Locate an Interpreter?

- For a Spanish foreign language interpreter, check the website at: <http://www.nccourts.org/Citizens/CPrograms/Foreign/Documents/spanishforeignlanguageregistry.pdf> for a registered Spanish interpreter who may serve your area or contact Brooke A. Bogue at 919-890-1213.
- For other foreign language interpreters, e-mail or fax a Request for Non-Spanish Interpreter (located at http://www.nccourts.org/Citizens/CPrograms/Foreign/Documents/requestfor_nonspanishinterpreter.pdf) to Courtney.J.Lyman@nccourts.org in Interpreting Services. She will assign an appropriate interpreter.

How Do I Know if the Interpreter is Qualified?

- Being bilingual alone does not qualify a person to interpret.
- Children, relatives, and other persons with an interest in the outcome of the proceeding should never be used to interpret.
- Judges, attorneys, and court personnel should never function as interpreters.
- Certified interpreters should be called whenever available.
- A qualified interpreter is readily able to: communicate with the person of LEP and interpret without omissions or additions, conserving the meaning, tone, and style of the original statement, including dialect, slang, and specialized vocabulary.
- Good interpreters know the code of ethics for court interpreters
- If you are unsure about an interpreter’s qualifications, ask a few questions to make a determination.
 - What training or credentials do you have as an interpreter?
 - Are you certified in the State of _____?
 - Are you familiar with the Code of Professional Responsibility for interpreters? What are its main points?
 - How did you learn English and (non-English language)?
 - Do you have any potential conflict of interest in this case?
 - Did you formally study either language in school? To what extent?
- When you are assured that the interpreter is qualified, administer an oath.

The Interpreter’s Oath: (Administer from the Bench)

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

Code of Professional Responsibility for Court Interpreters:

<http://www.nccourts.org/Citizens/CPrograms/Foreign/CourtStaff/Default.asp>

- Canon 1: Accuracy & Completeness
- Canon 2: Representation of Qualifications
- Canon 3: Impartiality/Avoid Conflicts of Interest
- Canon 4: Professional Demeanor
- Canon 5: Confidentiality
- Canon 6: Restriction of Public Comment
- Canon 7: Scope of Practice
- Canon 8: Assess/Report Impediments
- Canon 9: Duty to Report Ethical Violations
- Canon 10: Professional Development

Maximizing Communication in Interpreted Proceedings:

The Judge should:

- Instruct all parties and witnesses, and the jury, as to the role of the interpreter.
- Keep the courtroom as quiet as possible, allow only one person to speak at a time, ensure the interpreter can see and hear the proceedings, instruct all participants to speak loudly and clearly, and speak directly to the party or witness, not to the interpreter.
- Speak and read slowly and clearly enough for the interpreter to keep up. Speak in logical, meaningful phrases, pausing to allow the interpreter to keep the pace. Allow appropriate interpreter tools (language dictionaries, note taking). Allow interpreters to use appropriate signals to regulate speakers when the length of an utterance becomes too long.
- Allow interpreters to briefly converse with the non-English speaker to ensure understanding of dialect and pronunciation differences. Allow interpreters to view court file to familiarize themselves with names, parties and unique vocabulary.
- Do not ask the interpreter to explain or restate anything said by the party and do not allow attorneys to ask that of an interpreter. Interpreters cannot act as advocates or advisers. Judges and attorneys should observe interpreters to make sure all statements are interpreted but no conversation is going on.
- Provide rest breaks as needed, since interpreter accuracy declines significantly after 30 minutes of continuous interpretation. Consider using two interpreters for trials and longer contested proceedings

The Interpreter should:

- Interpret in the first person and address the court in the third person (as “the interpreter”), to keep a clear record.
- Clarify statements, correct mistakes, check dictionaries, and request clarification if a phrase or word is not understood.
- Be professional and as unobtrusive as possible.
- Position him/herself in best location for seeing and hearing the speaker.

Other Suggested Instructions:

Clarifying the Interpreter’s Role to a Witness:

“I want you to understand the role of the interpreter. The interpreter is here only to interpret the proceedings. The interpreter will say only what is said in your language and will not add, omit, or summarize anything. The interpreter will say in English everything that you say in your language, so do not say anything you do not want everyone to hear. If you do not understand a question asked of you, request clarification from the person who asked it. Do not ask the interpreter. You are giving testimony to this court; therefore please speak directly to the attorney or to me (the court). Do not ask the interpreter for advice. Speak in a loud clear voice. If you do not understand the interpreter please tell me. If you need the interpreter to repeat, please make your request to me, not to the interpreter. Please wait until the entire statement has been interpreted before you answer. Do you have any questions?”

Jury Instructions:

“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 is not allowed. Therefore, do not allow the fact that the party requires an interpreter to in any way influence you.”

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JUDGES' GUIDE TO STANDARDS FOR INTERPRETED PROCEEDINGS

This Guide has been reproduced from Chapter 6 of the *Court Interpretation: Model Guides for Policy and Practice in the State Courts*, written by William E. Hewitt. It presents 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. Figures referenced in bold type (**Figure XX**) are found at the end of the chapter.

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 do the following:

- accurately and completely describe persons, places, situations, events;
- tell "what happened" over time;
- request clarifications when questions are vague or misleading, and 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.

Assessing the Need for an Interpreter

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 **Figure 6.1**.

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

Waiver of Interpreter

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.

- 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.
- Deliberations made on matters of waiver or retracting of waiver should be on the record.²

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. *See Chapter 5.*

Use of Qualified Interpreters

All interpreters appointed by the court should be as highly qualified as possible. It is inefficient for trial judges to be responsible for the *ad hoc* determination of interpreter qualifications in the courtroom, and the results of in-court *voir dire*s (described below) remain problematic in the best of circumstances. Trial judges should urge that a

coordinator of interpreter services be designated whose responsibilities include 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. Chapter 8 details the options and recommended approaches to establishing the qualifications of interpreters *before* they are assigned to a courtroom.

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:

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

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.

Figure 6.2 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. Judges may also wish to establish a policy of securing written affidavits from interpreters before conducting the *voir dire*. The affidavit should be substantially similar in content to the suggested *voir dire*. If an affidavit is used, it is recommended that it be briefly reviewed on the record and its truthfulness attested to by the interpreter.

Interpreters' Oath

Every interpreter used in the court should be required to swear an "oath of true interpretation." Some form of an oath, in fact, is required in the statutes of most states. A recommended model oath is presented in **Figure 6.3**.

Interpreters Who Are Court Employees

For the sake of expediency, interpreters who are full or part-time employees of the court are often sworn with an oath that binds them throughout their employment by the judiciary, and the oath is not administered again for each proceeding. Many courts, however, rely primarily on contract or per diem interpreters who are used regularly but who are not court employees. When this is the case, these courts also may find it expedient to administer an oath that is kept on file, and thereafter to establish on the record for each proceeding that the oath is on file.

In the case of trials, however, experienced judges recommend that the oath always be administered orally to interpreters in the presence of the jury to reinforce the jury's awareness of the role of the interpreter.

Interpreters Who Are Not Court Employees

For interpreters who are not employees of the court and who are used intermittently or rarely, it is recommended that the interpreter be sworn at the beginning of the proceeding (in which instance the oath extends for the duration of that case) or at the beginning of a day's work in a given courtroom (in which case the oath extends for the duration of the day's services in that courtroom).

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.

Figure 6.4 provides suggested text for this advisement.

Special Clarification of Interpreter's Role to Sworn Witnesses

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

- Everything the witness says will be interpreted faithfully;
- 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;
- The witness should respond only after having heard the entire question interpreted into his or her own language;
- The witness should speak clearly and loudly so everyone in the court can hear; and
- If the witness cannot communicate effectively with the interpreter, she or he should tell the court or presiding officer.

Figure 6.5 provides suggested text for this advisement.

Clarification of the Role of the Interpreter to Jurors

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.

Impaneling a Jury

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 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?

Before the Trial Begins

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.

Figure 6.6A provides suggested text for this advisement.

When a Trial Involves Witness Interpreting

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

- Jurors must treat the interpretation of a witness's testimony as if the witness had spoken English and no interpreter were present;
- 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;
- 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.

Figure 6.6B 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:

- 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:

- Speak and assure that others speak at a volume and rate that can be accommodated by the interpreter.
- 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.
- Make certain that the interpreter can easily hear and see the proceedings.

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.

- 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.

Interpreter's Responsibility

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.

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.

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.

Attorneys' Responsibility

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

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!

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 cannot 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 trial 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.

Audiotaping Interpreted Testimony is Recommended

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:

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

Error by Witness Interpreter

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

Discovery of Error by Others

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 trial judge:

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

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.

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.

Simultaneous Mode

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:

- for a defendant when testimony is being given by another witness,
- 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,
- for a defendant when the court is addressing the jury or gallery or any other persons present in the courtroom, or
- 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).

Consecutive Mode

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 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

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.

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

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.

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:

- Judges should not function as interpreters during proceedings.
- Judges and other court participants should speak in English at all times during proceedings.³
- Attorneys should use English during all proceedings at all times, except in confidential communications with a client.
- Attorneys should not be permitted to function as interpreters for parties they represent.⁴
- 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.

- *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.
- *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.

- *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.

For defense interpreting, however, at least one additional interpreter needs to be available in multi-defendant cases so that defendants can communicate with counsel when necessary during the trial.

Some courts appoint an interpreter for each defendant so that each defendant's interpreter can provide proceedings interpreting and defense interpreting when necessary. As noted above, this may be an unnecessarily expensive alternative. If the parties agree, two interpreters can trade off providing proceedings interpreting for all of the defendants and the "resting" interpreter can be signaled and used by any defendant to communicate with counsel as necessary.

In cases where a trial involves more than one defendant whose interests are in conflict with each other, counsel and the parties may be uncomfortable using the same interpreter for privileged communications. If this becomes an issue, the court

may have no choice but to provide interpreters for each defendant. The practice should not be *presumed* necessary, however, because trained and qualified interpreters are under oath to protect confidentiality of communications and to refrain from communicating directly with any court participant except when they are engaged in interpretation.

WHAT COURT INTERPRETERS WOULD TELL JUDGES IF THEY COULD SPEAK FROM THEIR HEARTS

The following document has been made available to the court community and the NCSC by the Court Interpreting, Legal Translating and Bilingual Services Section of the Administrative Office of the New Jersey Courts in September 1988. It has undergone several revisions since that time. The most recent revisions were contributed by Margot Revera, Court Interpreter, Union County, New Jersey (Feb. 1993) and by staff of the National Center for State Courts, for use in this publication.

1. Please take some time to become familiar with my profession. I'd like very much for you to understand the professional services I am responsible for rendering. When you do that, you will be more likely to respect and treat me as a professional. It may be a helpful guide if you would treat me the way you tend to treat your reporter. Once you understand my job better, here are some things you will no longer do. Please understand that this isn't just me talking. The following examples represent the best thinking of judges, lawyers and court administrators who have pondered the role of the interpreter in great depth. These examples are based on the Code of Professional Responsibility I'm expected to follow.
 - A. Please don't ask me to explain or restate what you say. I can only put in another language exactly what you say.
 - B. Please don't allow attorneys appearing before you to ask me to explain or restate what they or you say. When I decline to perform this task for them, please support me and do not expect me to undermine the Code.
 - C. Please don't let two or more people talk at the same time. There's no way I can interpret everything that's being said!
 - D. Please don't ask me not to interpret something. I'm professionally and ethically bound to interpret everything that's said.
 - E. Please understand that there are many situations in which I'm professionally and ethically bound to interpret in the simultaneous mode. If this bothers you, please let me know in advance so I can make arrangements to be as unobtrusive as possible. Sometimes I can use equipment that will not interfere at all with the proceedings.
 - F. When an attorney or someone else alleges that I have made an error in interpretation, please don't automatically assume that I have made one. Remember that the attorney is in an adversary relationship and I am not. I occasionally do make mistakes and as a professional interpreter, I will be the first person to admit a mistake. But please ask me if I agree with an attorney's allegation before concluding that I have actually made a mistake. As a neutral party and a linguist, I should have more credibility before the court than others in matters of language. (144)

G. Please don't talk to me when you are really talking to a witness or someone else. If you say, "Ask him if..." or "Tell him that....," remember that I am required to say exactly that in the interpretation or to remind you to talk directly to the person. If I do the former, the person with whom you are attempting to communicate will almost certainly be confused. If I do the latter, you may get upset.

2. It takes more words to say in Spanish what you're saying in English, and other languages have their own unique features. Please be sensitive to that by avoiding rapid-fire delivery of what to you is very routine stuff and helping attorneys avoid excessively fast speech. Be patient and understanding if I have to keep reminding you or others to slow down.
3. I need breaks every bit as much as your reporters do, maybe even more. I am often the only person in the courtroom who is talking all of the time. While everyone else is only having to understand what is being said, I have to be both understanding it and putting it into another language. This is very demanding work. Furthermore, if the proceeding I am interpreting involves simultaneous interpreting for more than an hour, two interpreters should be assigned to the case. We should be able to switch off every thirty minutes or so.
4. Understand the human limits of my job. My main interest here is that you comprehend the fact that no person knows all of the words in any one language, much less all of the words of all the dialects of that language or all of the words of any two languages. Sometimes I need to obtain clarification. It is unethical for me to make up an interpretation or guess at an interpretation of something I do not understand. Instead of viewing such a request as casting doubt upon my professional credentials, consider viewing it in terms of my commitment to accuracy.
5. Many of my colleagues are not professional interpreters and want very much to improve their interpreting skills. They need support for attending courses and professional seminars. Please do everything you can to enable them to attend educational events. You may even be a good source for on-the-job training, so do not hesitate to take them under your wing from time to time.
6. Please make efficient use of my services. I have other commitments to attend to when I finish interpreting for the case before you for which you have summoned me. If you take my case as quickly as possible you will prevent incurring the extra costs of having me wait and inconveniencing the other courts that may be waiting for my services. (145)

Figure 6.1
Model Voir Dire for 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." (147)

Figure 6.2
Information that Should be Secured to Establish the Qualifications of
Interpreters When No Court Testing or Other Prior Screening Standards
Exist

At minimum, court or counsel should ask the following questions of a proposed 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?

Figure 6.3 Interpreter's Oath

Do you solemnly swear or affirm that you will interpret accurately, completely and impartially, using your best skill and judgment in accordance with the standards prescribed by law and [the code of ethics for legal interpreters]*; follow all official guidelines established by this court for legal interpreting or translating, and discharge all of the solemn duties and obligations of legal interpretation and translation?

*It is important that states adopt a code of ethics for court interpreters. In the absence of a state code, trial courts may adopt one. The Model Code of Professional Responsibility (Chapter 3) has been developed to simplify this process.

Figure 6.4
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?

Figure 6.5
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.

Figure 6.6
Suggested Text for Clarifying the Interpreter's Role to the Jury

6.6A 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.

6.6B 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.

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.