

## CHAPTER 3: OVERVIEW OF COURT INTERPRETING

Court interpreters are considered officers of the court with the specific duty and responsibility of interpreting between the languages specified. Interpreters help ensure access to justice by facilitating the full participation of LEP individuals in the judicial process.

### I. Interpreter Skills

Although the federal courts make extensive use of written documents, court interpreters deal primarily in the oral rendition of speech from one language into another during the course of judicial proceedings. Interpretation differs from translation, which is the transfer of written words from one language to another. Interpretation can also be the transfer of discourse from verbal to sign (symbol) language and vice versa. Sight translation involves rendering written text from the source language orally into the target language.

Interpretation goes beyond having the ability to speak two languages. Interpreters must possess mastery of the source and target languages, as well as interpreting skills. Courts will often verify an interpreter's credentials on the record, through a structured voir dire process. Professional interpreter organizations and linguistic experts identify the following aspects needed for effective interpreting:

- Comprehensive knowledge of the source and target language.
- Ability to listen, comprehend, and discern the message conveyed in the source language.
- Ability to grasp and maintain communication logic and distinguish between primary and secondary points.
- Technical ability for short-term memory, simultaneous listening and note-taking.
- Well-developed vocabulary, specialized terminology, and general knowledge of many subject areas.
- Message production, good diction, and pronunciation.
- Knowledge and experience of varying dialects, colloquialisms, regionalisms and cultural differences.
- Ability to conserve language register (formal to formal and informal to informal) for a variety of speakers with divergent educational backgrounds.
- Knowledge of idiomatic expressions in both languages.
- A well-developed sense of professionalism and respect for ethical considerations.

### II. Language Skills

Professional interpreters have a mastery of at least two languages (source and target), excellent skills in the principal modes of interpretation (simultaneous and consecutive), extensive knowledge of the subject matter vocabularies in question, plus mental and physical stamina. Court interpreters are highly skilled language specialists who perform sight translation, simultaneous, and consecutive interpretation. They convert the words of the speaker to the language of the listener. Interpreters are never the authors of the speech, but they must grasp the meaning and style of discourse rapidly, find an equivalent in another language, and articulate it. A common error is the belief that any person who knows two languages can interpret.

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While court interpreting may appear to be a field that primarily requires knowledge of legal vocabulary, the subject matter to be interpreted is often quite diverse. In an average criminal trial, sophisticated legal arguments will be interpreted, as well as the testimony of handwriting, ballistics, fingerprint, chemical, DNA, and drug experts. Interpreters must have a broad active and passive vocabulary and an excellent knowledge of regionalisms, idioms and dialectical variations of the countries in which their language is spoken. Court interpreters must have these variations of language readily available due to the diversity of witnesses and defendants.

#### Modes of Interpretation A. Simultaneous

Simultaneous interpretation is a running rendition of everything said in the source language into the target language. Simultaneous interpretation requires that interpreters listen and speak almost concurrently with the primary speaker whose words are being translated. In effect, interpreters are simultaneously performing two tasks in the field of language communication that are otherwise practiced separately: speech and understanding.

It is important to note that interpreters are not performing word-for-word translation, but transferring thoughts and ideas accurately and completely from a source to a target language. Concentrated listening is crucial for an exact rendering of the original message; thus, the importance of adequate listening conditions, acoustics, correct usage of microphones by speakers, and availability of appropriate equipment.

#### B. Consecutive

Consecutive interpretation is the "question and answer" mode in which the speaker completes a statement and the interpreter begins to interpret after the statement is completed. The consecutive mode is most often utilized with witnesses on the stand. Traditionally, consecutive interpreting has been divided into long and short versions. While the long method is generally reserved for some forms of conference interpreting, the short method is preferred in the legal setting because it emphasizes the verbatim rendition required in legal proceedings. Short consecutive is a mode by which interpreters relay a message in the target language in a sequential manner after the speaker. Several unique considerations and skills come into play when consecutive interpreting is used. These include:

##### I. Length of Testimony

Although the speaker may make natural pauses during testimony to allow for the interpretation, this is not always the case. At times, due to the complexity or excessive length of an utterance, interpreters may not be able to retain the complete message and will need the speaker to pause. Defense attorneys and prosecutors, when posing questions during direct or cross-examination, should pause at appropriate intervals. This will enable the interpreter to accurately and completely render the words into the target language.

##### II. Interrupting the Speaker

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When the need for an interruption arises, interpreters should gently signal to the speaker to pause. This may be accomplished through a hand gesture, a nod of the head, or eye contact. On occasion, such a signal may not be sufficient, in which case interpreters must interrupt the speaker.

### III. Note-Taking

Interpreters should always be prepared to take notes when interpreting. It is strongly recommended that dates, numbers, proper names, lists, addresses, etc., be written down. Note-taking should be simple, individualized and designed to assist memory.

### IV. Gestures and Emotions

When a witness makes hand gestures, i.e., indicating distances or size, interpreters should refrain from attempting to duplicate these gestures since it is impossible to preserve accuracy in such instances. Interpreters should always strive to maintain a professional demeanor and should be aware not to call unnecessary attention by making gestures or facial expressions while interpreting.

Studies of court interpreted proceedings conducted by Dr. Susan Berk-Seligson<sup>5</sup> have found that jurors' impressions of the defendant or witness are affected by the actions and demeanor of the interpreter. In her studies, which included actual and simulated court proceedings, she found that the unconscious manipulation of grammatical forms or modification of speech styles of witnesses, lengthening or shortening testimony, politeness, hedging and level of formality used by the interpreter were factors which influenced jurors.

### V. Mathematical Conversions

As a rule, interpreters must not make mathematical conversions or measurements; i.e., foreign currency denominations, meters into yards, kilos into pounds and so on.

### VI. Corrections by Interpreter

If the interpreter makes a mistake on the stand, it should be noted immediately by the interpreter to the presiding judicial officer for the record, or as soon as he/she becomes aware of the mistake.

### C. Sight Translation

Sight translation is conveying orally in one language the words of a text written in another language. It is a hybrid of translation and interpretation that requires the interpreter to first review the original written text, and then render it orally into the other language. The interpreter needs to read the entire text before rendering a sight translation in open court. The interpreter should inform the Court if additional time is needed to review the document before being able to render an accurate sight translation into the record.

### Accuracy of Performance

Interpreters must provide language services with accuracy and precision to help ensure due process for all defendants in criminal proceedings. The basic notion of fairness mandates that all defendants be fully and immediately informed of the testimony as it occurs. The accuracy of court interpretation may have a direct impact upon the decisions made during both criminal and civil proceedings. The potentially grave

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consequences of inaccurate legal interpretation mandate that great skill and caution be utilized by interpreters.

An important component of accuracy is the interpreter's ability to avoid the use of summary interpretation and provide a complete rendition of everything that is said into the target language. Summary interpretation involves paraphrasing or condensing the speaker's statement, thereby omitting some portion of what was said.<sup>6</sup> Such omissions are contrary to the interpreter's duty to render the speaker's complete message. Summary interpretation is not acceptable in legal proceedings because it improperly substitutes the interpreter's judgment as to which parts of a statement or testimony are most important and shifts the interpreter from their role as an impartial conduit to an active participant in the matter.

The conditions and circumstances of performing in a courtroom make the court interpreter's task of maintaining accuracy especially arduous. Unlike conference interpreters, who only have to concentrate on one speaker at a time and are generally given time to prepare in advance, court interpreters must concentrate on many speakers in a short time frame and preserve the style, language level, idiosyncrasies, idioms and other aspects of each speaker and speech pattern.

The poor acoustical quality of some courtrooms is often a vexing aspect of simultaneous court interpreting. Except in unusual circumstances, interpreters have no amplified audio support and they must often perform in oversized courtrooms without public address systems. Interpreters may find that loud, clear speech is not always delivered in courtrooms. Therefore, much interpreting will be performed while trying to decipher what has been said by someone whose back is toward the interpreter, whose voice may be low, and/or whose sentences are dropping off inaudibly. Court interpreters must hear and understand an argument or testimony while converting the words into the language of the LEP individual. Whenever possible, speakers should avoid facing away from the interpreter and use a microphone, being especially careful to remain within range of it. Since simultaneous interpreters have only a few seconds to spare, poor audibility is a major obstacle to accurate performance. If impediments to an accurate performance occur, the interpreter should bring them to the attention of the judge as respectfully and as unobtrusively as possible. By way of example, in the case of a soft-spoken party, it is helpful to rise and say, "Your Honor, the interpreter is having a hard time hearing", and in the case of a party who speaks or reads too quickly, "Your Honor, the interpreter is having a hard time keeping up."

Among the measures that a court may implement to help interpreters operate at a high level of proficiency are:

1. Use multiple interpreters for lengthy or complex proceedings such as trials and evidentiary hearings, legal arguments on motions, and sentencing hearings with complex issues. See the Guide to Judiciary Policy, Volume 5, Chapter 5, §530.30.
2. Interpreters should vary position occasionally, e.g., combining sitting and standing beside the witness stand, if doing so will not interfere with the hearing.
3. The court should provide the interpreter drinking water and sufficient space in which to write and keep reference material. This could be either at a separate table or at the counsel table, if available. Courts should also provide all proper interpreting equipment that is available.
4. The court should provide attorneys with general guidance as to the demands that an interpreted proceeding will impose on them and other courtroom participants. This includes the use of sound equipment, the need to speak clearly, the position of the interpreter in the courtroom, the need to change interpreters periodically during lengthy proceedings, the possibility of interruption by the

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interpreter in order to clarify a matter, and the avoidance of social and ex parte contact with interpreters, etc.

### V. Ethical Obligations

In addition to language considerations, court interpreters must always comply with certain ethical constraints and rules that are not binding on interpreters in other fields, such as escort and conference interpreting. Court interpreters must remain and appear independent of the defendants or witnesses, even though seated right next to them throughout lengthy proceedings. A simple conversation about the weather can be misinterpreted by English-only speaking jurors.

### VI. Language Style and Register

The principal aim of interpreters is to give as exact a rendition as possible, using direct speech. This is true whether the language is nonsensical, fragmented and contradictory; or whether it is erudite, philosophical and highly technical discourse. Interpreters are tasked with remaining unobtrusive, so that the fact finders can concentrate on the witness rather than the interpreters.

### VII. Interpreters in the Courtroom A. Location of Interpreters in Court

The interpreter should be located at a site in the courtroom where he or she can clearly hear and see the defendant, the witness, counsel, and the presiding judicial officer at all times. Normally, the most desirable location is between the witness stand and the defense table. Bulky objects should not be placed on the stand to block the interpreter's view of the witness. If the place of examination should shift from the witness stand, the interpreter should be able to follow the parties elsewhere in the courtroom in order to see and hear the speaker. See Appendix 6 for more information.

#### B. Aids to the Interpreter

Suitable accommodations should be accessible to the interpreter if available, examples include: a chair at the witness stand, a chair at counsel table, and a glass of drinking water. There should be sufficient space in the courtroom for the interpreter to have a reasonable amount of material (i.e., glossary, dictionary) nearby for immediate reference. Additionally, many courts may have policies allowing interpreters in the courtroom to utilize electronic dictionaries, internet enabled tablet devices, or laptop computers for access to reference materials. Interpreters should check the local court rules to determine if and when they may use any of these types of resources while in the courtroom.

#### C. Number of Interpreters per Proceeding: Team/Tandem Interpreting

The number of interpreters may vary according to the type and complexity of the proceeding and the availability of equipment for the number of defendants that require interpreting services. To mitigate the effects of interpreter fatigue and safeguard the integrity of interpreting services, long and/or complex proceedings may be covered by two interpreters through team, or tandem interpreting. See Guide to Judiciary Policy, Volume 5, Chapter 5, §530. When team interpreting is used, the passive interpreter should remain seated in close proximity to the active interpreter and refrain from leaving the courtroom for any significant length of time without good reason.

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It is the duty of each member of a team to provide the other member(s) with all support necessary to ensure the accuracy of the interpretation in a manner consistent with the dignity and decorum of a court of law. The passive interpreter should be ready to whisper words or pass a written note to the active interpreter in case a lapse of memory or other issue arises. The passive interpreter should take care of any problems arising with the equipment the team uses and write down things such as names, addresses, and other numbers that come up, making them available for easy visual reference by the active interpreter. This reduces the amount of attention that the active interpreter must pay to things other than the interpreting task. Where necessary, the passive interpreter should research terminology for the active interpreter.

### D. Challenges and Corrections to Interpretation

When the interpreter first begins to interpret at the witness stand, the presiding judicial officer will generally identify the court interpreter as a neutral party and explain that the interpreter's rendition in English will be the record, rather than the utterance by the LEP individual. Even if the presiding judicial officer does not make a formal statement to this effect, the interpreter should still interpret the proceeding from a neutral perspective, regardless of any expectations which may be held by the parties to the case.

Should an attorney appropriately correct the interpretation, the interpreter should state "the interpreter stands corrected" followed by the correct word or phrase. When not in agreement with the correction, the interpreter should state "the interpreter stands by the interpretation." Because there is the possibility for mistrial in a situation where the interpretation is challenged, and because the interpreter must endeavor never to be the cause of a mistrial, it is important for the

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interpreter to create a clear record to either correct or support the rendition that is challenged. A record to support the interpretation will reflect: (1) the question by the attorney; (2) the answer by the witness; (3) the objection by the attorney; and (4) a corrected answer by the witness. In any discussion that develops as a result of the challenge, the interpreter should address only the presiding judicial officer, not the attorneys.

A challenge from the defendant or a witness should be handled in much the same manner as above. A simple statement of correction or support by the interpreter should suffice. In any discussion, interpreters should address only the presiding judicial officer. Under certain circumstances, interpreters may request an opportunity to clarify the word or phrase at issue with the defendant/witness. This request should be made openly on the record. It should be followed by a statement of correction or support.

A correction requested by the presiding judicial officer should be tactfully handled in the same manner as a correction from any other source. Interpreters either should correct or support the interpretation for the record.

Corrections and disputes among team interpreters over interpretation should be handled privately and quietly, involving the court only if it is deemed necessary. If a correction is felt necessary, it should be whispered to the active interpreter or written down on a note passed only to that interpreter. Corrections to the interpretation should be handled in a professional, courteous manner, as soon as practically possible without disrupting the proceedings.

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### Simultaneous Interpretation of Recorded Audio

At a hearing or trial, interpreters may occasionally be requested to simultaneously interpret the contents of an audio file on the record. Whenever possible, interpreters should refrain from providing this type of on-the-spot simultaneous interpretation of audio recordings.<sup>7</sup> Interpretations of audio recordings under these circumstances will often not meet appropriate evidentiary standards due to poor sound quality, lack of preparation and research time, and lack of proper courtroom technology.<sup>8</sup>

In the event that the interpreter is ordered to perform this task, there are a few guidelines that should be followed. First, “the interpreter should make it clear to all parties that an immediate rendition of the material in question will likely fail to meet the high standards” of the interpreter’s oath, which “mandates faithfulness and accuracy to the best of the interpreter’s ability.”<sup>9</sup> While rendering the interpretation, interpreters must refrain from making any comments or gestures indicating approval, disapproval, or opinion as to the accuracy of the transcribed translation in question, or in any way interfering with the playing of the recording. If asked or consulted in open court on the accuracy of a transcribed translation, interpreters should withhold expressing an opinion until reasonably sure of having sufficient time and opportunity to review the recording in question. Interpreters should also refrain from expressing a professional opinion outside the courtroom since terms taken out of context may vary in meaning.

## CHAPTER 4: INTERPRETER SUPERVISION AND CONTRACTING

### I. Orientation of Interpreters

Sufficient orientation should be provided to new or inexperienced staff and contract court interpreters to enable them to serve effectively and without undue stress. The study of certain chapters of this manual, a tour of the courtroom, review of the case materials and a brief conversation with the defendant or witness may be useful when preparing for the assignment. Additional in-depth orientation about the court and case may also be necessary. Interpreters should also inquire about the location and usage of any available interpretation equipment or resources that the court may have.

Interpreters from outside the federal courts, in spite of their interpreting experience, may not have a sufficient understanding of the legal terminology, procedure, protocol, demeanor and the duties and responsibilities of the federal court interpreter. Similarly, while experience as an interpreter in state court may be helpful to the interpreter, the differences between the two systems are significant and may be confusing. Guidance in this area should be available to the interpreter wherever possible. For example, measures should be taken to ensure that interpreters are aware of the type of proceeding assigned. This will assist them in determining the relevant terminology likely to be encountered and also help the LEP defendant/witness to understand the nature of the proceeding. Additionally, inexperienced interpreters should be made familiar with the proper role and function of interpreters in the court proceeding, so as to guard against unwanted personal interaction with the defendant or witnesses, or other considerations such as being unobtrusive and advance preparation for future assignments.

### II. Administration of Oath

Each interpreter takes an oath to properly discharge role and responsibilities of an interpreter, including interpreting accurately for the speakers in the proceeding and preparing properly for the assignment. In some courts, the duty of swearing the interpreter is delegated to the courtroom clerk.

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Policies with regard to the oath of interpreters vary from court to court. In some, contract interpreters are sworn each day before court convenes. In others, administering the oath at the beginning of a proceeding is sufficient for the entire case, regardless of duration. Some districts keep a detailed, written oath on file, which is executed during the orientation process in order to dispense with the need to swear the interpreter in before each individual hearing.

### III. Staff Interpreters

Staff interpreters are employees of the Office of the Clerk of Court. When a staff court interpreter has no case preparation or in-court work to perform, the clerk may assign other duties that take advantage of bilingual skills, such as telephone and over-the-counter assistance to non-English speakers. At the discretion of the clerk, staff interpreters may also be assigned to assist other courts through the Telephone Interpreting Program (TIP), if the court has the equipment necessary to provide this service. This practice is encouraged, results in cost savings to the judiciary, and also helps ensure that federally certified court interpreters are available when needed.

### Contract Court Interpreters

A contract court interpreter is not an employee of the court, but is an independent contractor used for short durations to provide interpreting services. Contract court interpreters may be AO certified or otherwise qualified interpreters. For more information on interpreter certification and qualifications, see Appendix 4 of this document and the Guide to Judiciary Policy, Volume 5, Chapter 3.

#### A. Terms and Conditions

Once a contract court interpreter has been identified for an event, his or her classification, qualifications, and suitability have been determined, and terms negotiated, the court must provide the interpreter with a completed Contract for Court Interpreter Services, comprising Part I, Terms and Conditions, and Part II, the Rate and Information Sheet. The Rate and Information Sheet must be signed by the interpreter and the original returned to the court to indicate that the interpreter has agreed to comply with the rates and information indicated in the Contract for Court Interpreter Services document. The Contracting Officer should ensure that the interpreter is given a copy of the contract with both signatures on it. A copy of the current Terms and Conditions for contract court interpreters can be found online by following the link at

<http://www.uscourts.gov/FederalCourts/UndersandingFederalCourts/DistrictCourt/CourtInterpreters.aspx>.

#### B. FBI Background Checks

All interpreters who wish to work for the federal courts must be fingerprinted and submit to an FBI background check. The first court to use an interpreter who has not had an FBI background check should initiate the background check; however, any federal court may request the background check. Background check information provided by the FBI to the AO is viewable only by appointing officials and their chief deputies with a specific need for the information.

#### C. Fees for Daily Work



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The approved maximum daily fees for AO certified, professionally qualified and language-skilled interpreters are set out in the Director's Fee Schedule, which is updated periodically. Daily fees should be negotiated between the contract court interpreter and the court prior to completing the Contract for Court Interpreter Services. Contract court interpreter rates are based on a half-day/full-day scale.

The AO provides a standard Contract for Court Interpreter Services, which includes two parts. Part I is the standard Terms and Conditions which should be used by the courts in their contracts with interpreters. Part II is the Rate and Information Sheet which must be personalized for each interpreter with the negotiated terms and conditions of payment and reimbursement. The regulations in the Guide to Judiciary Policy pertaining to court interpreters may be incorporated in the contract by reference.

Interpreters whose services are authorized under the Criminal Justice Act (CJA), 18 U.S.C. § 3006A, and related statutes to facilitate communication between counsel and the defendant out-of-court are generally paid under the CJA. Therefore, the rates set forth in the Director's Fee Schedule are not mandatory in these instances, and the interpreter should negotiate the fee (utilizing the Fee Schedule, hourly rates, or other appropriate basis) with the CJA attorney. Unless unusual circumstances exist, however, the rate paid to interpreters pursuant to subsection (e) of the CJA should not exceed the rates provided by the Director's Fee Schedule or the presumptive or maximum rates adopted by a court. See the Guide to Judiciary Policy, Volume 5, Chapter 2, § 220.10 and Guide to Judiciary Policy, Volume 7A, § 320.15.10 and 320.15.20.

### D. Travel and Expenses

Contract court interpreters who are required to travel beyond the local commuting distance in the performance of their assigned duties are entitled to reimbursement in accordance with the Judiciary Staff Travel Regulations set out in the Guide to Judiciary Policy, Volume 19, Chapter 4. The local commuting distance to the courthouse is set at the discretion of each court, but it is typically an area within a 30 mile radius of the courthouse. Travel expenses within the local commuting distance have already been considered by the AO in setting the rates in the Director's Fee Schedule.

Contract court interpreters may only claim reimbursement for subsistence expenses on an actual expense (itemized) basis, with receipts for lodging and for any expense of more than \$25, up to the GSA per diem rate for the date and location. Time spent traveling will generally be compensated at the daily rate of pay, i.e., minimum of a half-day fee for same day travel outside of the local commuting distance when in-court time does not exceed 4 hours.

Expenses other than ordinary travel and subsistence should be avoided if possible. The clerk should inform the contract interpreter in advance of the policy regarding such expenses. An interpreter's rental of equipment for multiple-party interpretation cannot be reimbursed.

### E. Procedures for Payment

As noted in the Guide to Judiciary Policy, the interpreter must submit an invoice for services. The Terms and Conditions for Contract Court Interpreter Services, Section 7.1 specifies that an original invoice and/or local court form for services rendered shall be submitted by the interpreter within 30 days of completion of a given assignment to the address indicated for invoices in the Rate and Information Sheet. If the interpreter is entitled to travel subsistence, an AO Form 1012, Travel Voucher, should be completed and attached. Copies of forms should be given to the interpreter at the beginning of the proceeding,

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usually as part of the orientation to the court. If the interpreter is to be paid during the course of a lengthy proceeding for an assignment that extends beyond one month, the contract court interpreter may submit an interim invoice. Payment may not be provided before the work is performed.

### F. CJA Voucher Processing

In cases where the Office of the Clerk is charged with processing CJA interpreter vouchers, the clerk must be familiar with the statutory provisions regarding expert or other services. Limits are placed on the amounts that may be paid without advance judicial approval; limits also apply with respect to approval of the payment claim by the chief judge of the circuit court of appeals (or delegate circuit judge) and advance approval of the chief circuit judge may also be recommended or required. Since the specific fee allowances fluctuate periodically as a result of statutory changes, the clerk should refer to the Guidelines for Administering the CJA and Related Statutes, Volume 7A, Guide to Judiciary Policy, for current information. The relevant voucher is CJA Form 21, Authorization and Voucher for Expert and other Services or CJA Form 31, Death Penalty Proceedings: Ex Parte Request For Authorization and Voucher For Expert and Other Services. These limits do not apply and these vouchers are not used when a federal defender organization retains the services of an interpreter.

## APPENDIX 1: THE COURT INTERPRETERS ACT 28 U.S.C. §1827 – Interpreters in courts of the United States

(a) The Director of the Administrative Office of the United States Courts shall establish a program to facilitate the use of certified and otherwise qualified interpreters in judicial proceedings instituted by the United States.

(b)

(1) The Director shall prescribe, determine, and certify the qualifications of persons who may serve as certified interpreters, when the Director considers certification of interpreters to be merited, for the hearing impaired (whether or not also speech impaired) and persons who speak only or primarily a language other than the English language, in judicial proceedings instituted by the United States. The Director may certify interpreters for any language if the Director determines that there is a need for certified interpreters in that language. Upon the request of the Judicial Conference of the United States for certified interpreters in a language, the Director shall certify interpreters in that language. Upon such a request from the judicial council of a circuit and the approval of the Judicial Conference, the Director shall certify interpreters for that circuit in the language requested. The judicial council of a circuit shall identify and evaluate the needs of the districts within a circuit. The Director shall certify interpreters based on the results of criterion-referenced performance examinations. The Director shall issue regulations to carry out this paragraph within 1 year after the date of the enactment of the Judicial Improvements and Access to Justice Act.

(2) Only in a case in which no certified interpreter is reasonably available as provided in subsection (d) of this section, including a case in which certification of interpreters is not provided under paragraph (1) in a particular language, may the services of otherwise qualified interpreters be used. The Director shall provide guidelines to the courts for the selection of otherwise qualified interpreters, in order to ensure that the highest standards of accuracy are maintained in all judicial proceedings subject to the provisions of this chapter.

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(3) The Director shall maintain a current master list of all certified interpreters and otherwise qualified interpreters and shall report periodically on the use and performance of both certified and otherwise qualified interpreters in judicial proceedings instituted by the United States and on the languages for which interpreters have been certified. The Director shall prescribe, subject to periodic review, a schedule of reasonable fees for services rendered by interpreters, certified or otherwise, used in proceedings instituted by the United States, and in doing so shall consider the prevailing rate of compensation for comparable service in other governmental entities.

(c)

(1) Each United States district court shall maintain on file in the office of the clerk, and each United States attorney shall maintain on file, a list of all persons who have been certified as interpreters by the Director in accordance with subsection (b) of this section. The clerk shall make the list of certified interpreters for judicial proceeding available upon request.

(2) The clerk of the court, or other court employee designated by the chief judge, shall be responsible for securing the services of certified interpreters and otherwise qualified interpreters required for proceedings initiated by the United States, except that the United States attorney is responsible for securing the services of such interpreters for governmental witnesses.

(d)

(1) The presiding judicial officer, with the assistance of the Director of the Administrative Office of the United States Courts, shall utilize the services of the most available certified interpreter, or when no certified interpreter is reasonably available, as determined by the presiding judicial officer, the services of an otherwise qualified interpreter, in judicial proceedings instituted by the United States, if the presiding judicial officer determines on such officer's own motion or on the motion of a party that such party (including a defendant in a criminal case), or a witness who may present testimony in such judicial proceedings—

(A) speaks only or primarily a language other than the English language; or

(B) suffers from a hearing impairment (whether or not suffering also from a speech impairment) so as to inhibit such party's comprehension of the proceedings or communication with counsel or the presiding judicial officer, or so as to inhibit such witness' comprehension of questions and the presentation of such testimony.

(2) Upon the motion of a party, the presiding judicial officer shall determine whether to require the electronic sound recording of a judicial proceeding in which an interpreter is used under this section. In making this determination, the presiding judicial officer shall consider, among other things, the qualifications of the interpreter and prior experience in interpretation of court proceedings; whether the language to be interpreted is not one of the languages for which the Director has certified interpreters, and the complexity or length of the proceeding. In a grand jury proceeding, upon the motion of the accused, the presiding judicial officer shall require the electronic sound recording of the portion of the proceeding in which an interpreter is used.

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(e)

(1) If any interpreter is unable to communicate effectively with the presiding judicial officer, the United States attorney, a party (including a defendant in a criminal case), or a witness, the presiding judicial officer shall dismiss such interpreter and obtain the services of another interpreter in accordance with this section.

(2) In any judicial proceedings instituted by the United States, if the presiding judicial officer does not appoint an interpreter under subsection (d) of this section, an individual requiring the services of an interpreter may seek assistance of the clerk of court or the Director of the Administrative Office of the United States Courts in obtaining the assistance of a certified interpreter.

(f)

(1) Any individual other than a witness who is entitled to interpretation under subsection (d) of this section may waive such interpretation in whole or in part. Such a waiver shall be effective only if approved by the presiding judicial officer and made expressly by such individual on the record after opportunity to consult with counsel and after the presiding judicial officer has explained to such individual, utilizing the services of the most available certified interpreter, or when no certified interpreter is reasonably available, as determined by the presiding judicial officer, the services of an otherwise competent interpreter, the nature and effect of the waiver.

(2) An individual who waives under paragraph (1) of this subsection the right to an interpreter may utilize the services of a noncertified interpreter of such individual's choice whose fees, expenses, and costs shall be paid in the manner provided for the payment of such fees, expenses, and costs of an interpreter appointed under subsection (d) of this section.

(g)

(1) There are authorized to be appropriated to the Federal judiciary, and to be paid by the Director of the Administrative Office of the United States Courts, such sums as may be necessary to establish a program to facilitate the use of certified and otherwise qualified interpreters, and otherwise fulfill the provisions of this section and the Judicial Improvements and Access to Justice Act, except as provided in paragraph (3).

(2) Implementation of the provisions of this section is contingent upon the availability of appropriated funds to carry out the purposes of this section.

(3) Such salaries, fees, expenses, and costs that are incurred with respect to Government witnesses (including for grand jury proceedings) shall, unless direction is made under paragraph (4), be paid by the Attorney General from sums appropriated to the Department of Justice.

(4) Upon the request of any person in any action for which interpreting services established pursuant to subsection (d) are not otherwise provided, the clerk of the court, or other court employee designated by the chief judge, upon the request of the presiding judicial officer, shall, where possible, make such services available to that person on a cost-reimbursable basis, but the judicial officer may also require the prepayment of the estimated expenses of providing such services.

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(5) If the Director of the Administrative Office of the United States Courts finds it necessary to develop and administer criterion-referenced performance examinations for purposes of certification, or other examinations for the selection of otherwise qualified interpreters, the Director may prescribe for each examination a uniform fee for applicants to take such examination. In determining the rate of the fee for each examination, the Director shall consider the fees charged by other organizations for examinations that are similar in scope or nature. Notwithstanding section 3302 (b) of title 31, the Director is authorized to provide in any contract or agreement for the development or administration of examinations and the collection of fees that the contractor may retain all or a portion of the fees in payment for the services. Notwithstanding paragraph (6) of this subsection, all fees collected after the effective date of this paragraph and not retained by a contractor shall be deposited in the fund established under section 1931 of this title and shall remain available until expended.

(6) Any moneys collected under this subsection may be used to reimburse the appropriations obligated and disbursed in payment for such services.

(h) The presiding judicial officer shall approve the compensation and expenses payable to interpreters, pursuant to the schedule of fees prescribed by the Director under subsection (b)(3).

(i) The term “presiding judicial officer” as used in this section refers to any judge of a United States district court, including a bankruptcy judge, a United States magistrate judge, and in the case of grand jury proceedings conducted under the auspices of the United States attorney, a United States attorney.

(j) The term “judicial proceedings instituted by the United States” as used in this section refers to all proceedings, whether criminal or civil, including pretrial and grand jury proceedings (as well as proceedings upon a petition for a writ of habeas corpus initiated in the name of the United States by a relator) conducted in, or pursuant to the lawful authority and jurisdiction of a United States district court. The term “United States district court” as used in this subsection includes any court which is created by an Act of Congress in a territory and is invested with any jurisdiction of a district court established by chapter 5 of this title.

(k) The interpretation provided by certified or otherwise qualified interpreters pursuant to this section shall be in the simultaneous mode for any party to a judicial proceeding instituted by the United States and in the consecutive mode for witnesses, except that the presiding judicial officer, sua sponte or on the motion of a party, may authorize a simultaneous, or consecutive interpretation when such officer determines after a hearing on the record that such interpretation will aid in the efficient administration of justice. The presiding judicial officer, on such officer’s motion or on the motion of a party, may order that special interpretation services as authorized in section 1828 of this title be provided if such officer determines that the provision of such services will aid in the efficient administration of justice.

(l) Notwithstanding any other provision of this section or section 1828, the presiding judicial officer may appoint a certified or otherwise qualified sign language interpreter to provide services to a party, witness, or other participant in a judicial proceeding, whether or not the proceeding is instituted by the United States, if the presiding judicial officer determines, on such officer’s own motion or on the motion of a party or other participant in the proceeding, that such individual suffers from a hearing impairment. The presiding judicial officer shall, subject to the availability of appropriated funds, approve the compensation and expenses payable to sign language interpreters appointed under this section in accordance with the schedule of fees prescribed by the Director under subsection (b)(3) of this section.

## CHAPTER 3: OVERVIEW OF COURT INTERPRETING

### APPENDIX 2: VOLUME 5 OF THE GUIDE TO JUDICIARY POLICY

The Guide to Judiciary Policy serves as “a repository of the federal judiciary's administrative policies, as determined by the Judicial Conference of the United States or the Director of the Administrative Office, or as mandated by statute or other legal requirement,” see Guide to Judiciary Policy, Vol 1, § 110.

The Guide to Judiciary Policy, Volume 5: Court Interpreting deals specifically with policy related to the court interpreting program. It provides policy guidance on a variety of interpreting topics, such as qualifications, contracting and payment, appointment authorities, and definitions. The Chapter headings within Volume 5 include:

### APPENDIX 3: COURT INTERPRETER ETHICS AND PROTOCOL

Standards for Performance and Professional Responsibility for Contract Court Interpreters in the Federal Courts

#### Preamble

Federally certified court interpreters are highly skilled professionals who bring to the judicial process specialized language skills, impartiality, and propriety in dealing with parties, counsel, the court, and the jury. All contract court interpreters, regardless of certification, are appointed to serve the court pursuant to 28 U.S.C. § 1827. When interpreters are sworn in they become, for the duration of the assignment, officers of the court with the specific duty and responsibility of interpreting between English and the language specified. In their capacity as officers of the court, contract court interpreters are expected to follow the Standards for Performance and Professional Responsibility for Contract Court Interpreters in the Federal Courts.

#### 1: Accuracy and Completeness

Interpreters shall render a complete and accurate interpretation or sight translation that preserves the level of language used without altering, omitting, or adding anything to what is stated or written, and without explanation. The obligation to preserve accuracy includes the interpreter's duty to correct any error of interpretation discovered by the interpreter during the proceeding.

#### 2: Representation of Qualifications

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

#### 3: Impartiality, Conflicts of Interest, and Remuneration and Gifts

Impartiality. Interpreters shall be impartial and unbiased and shall refrain from conduct that may give an appearance of bias. During the course of the proceedings, interpreters shall not converse with parties, witnesses, jurors, attorneys, or with friends or relatives of any party, except in the discharge of their official functions.

## CHAPTER 3: OVERVIEW OF COURT INTERPRETING

**Conflicts of Interest.** Interpreters shall disclose any real or perceived conflict of interest, including any prior involvement with the case, parties, witnesses or attorneys, and shall not serve in any matter in which they have a conflict of interest.

**Remuneration and Gifts.** Court interpreters shall accept remuneration for their service to the court only from the court. Court interpreters shall not accept any gifts, gratuities, or valuable consideration from any litigant, witness, or attorney in a case in which the interpreter is serving the court, provided, however, that when no other court interpreters are available, the court may authorize court interpreters working for the court to provide interpreting services to, and receive compensation for such services from, an attorney in the case.

### 4: Professional Demeanor

In the course of their service to the court, interpreters shall conduct themselves in a manner consistent with the dignity of the court and shall be as unobtrusive as possible.

### 5: Confidentiality

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

### 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.

### 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.

### 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.

### 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 these Standards, or any other official policy governing court interpreting and legal translating.