



National Association of Judiciary Interpreters & Translators

NAJIT POSITION PAPER

EQUAL ACCESS AS IT RELATES TO INTERPRETATION AND TRANSLATION SERVICES

The information provided in NAJIT position papers offers general guidance and practical suggestions regarding the provision of competent language assistance to persons with limited English proficiency. This information is intended to assist in developing and enhancing local rules, policies and procedures in a wide range of settings. It does not include or replace local, state or federal policies. For more information, please contact: National Association of Judiciary Interpreters & Translators, 206-267-2300, or visit the NAJIT website at www.najit.org.

■ Introduction

The National Association of Judiciary Interpreters and Translators, recognizing current trends in state and federal court systems throughout the United States, including government offices and national and local justice partners, wishes to take a position on the issue of equal access as it relates to interpretation and translation services. We hope that through this position paper we can address, assist with and clarify important issues related to language access for non-English-speaking parties.

■ Need for Professionalism

NAJIT applauds state and federal entities as well as officials on every level who are working hard at establishing guidelines and policies for competent language services to be provided for non-English speakers and limited-English proficient (LEP) persons. However, we continue to hear of incidents, to read articles and to receive complaints that reveal misunderstandings about qualifications for interpreters and translators and the role of the language provider. Some entities continue to labor under the misconception that self-professed interpreters, those who have a bilingual background, or any service provider contracted by a language agency can be deemed qualified as an interpreter or translator. Nothing could be further from the truth.

■ Errors and Lapses

Ever since NAJIT was founded in 1978, its mission has been to promote quality interpretation and translation services for the legal field. We advocate professional training and ethical discipline. The use of untrained and unqualified individuals sets a bad example and sends the wrong message to the public regarding the importance of equal access. Unfortunately, there are still significant numbers of cases being reversed, statements being suppressed, misdiagnosis by medical professionals, interpreters advocating for a defendant or witnesses, or interpreters unfamiliar with relevant terminology. Ethical lapses include interpreters putting their own spin on a message, omitting crucial information, or disclosing confidential and privileged information. We are aware of cases of interpreters charging additional money to non-English speakers or LEP persons while already being paid by a court or other entity.

■ A Shared Responsibility

Complaints about interpreters providing poor service, not being able to do the job properly or behaving unethically are generally due to the use of non-professional interpreters. These problems would be substantially minimized if aspiring interpreters, bilinguals and the entities who utilize language services take the time to learn about our field and its competency requirements, certification, training regimens, as well as the ethical responsibilities undertaken when providing interpretation and translation services. Each stakeholder or aspiring service provider must take responsibility to educate themselves in this area.

■ Individual Responsibility

We encourage aspiring interpreters to join professional associations and to learn about the field, including mentoring opportunities. We encourage organizations with an interest in the mission and goals of our profession to join

our organization and attend educational conferences. Where needed to interact with the public, fluent bilinguals can certainly be utilized for conducting routine business in a language other than English. We have no qualms about organizations that utilize language agencies in lieu of independent contractors. However, still too many are unaware of the interpreter's role, qualifications and professional responsibilities.

■ **Organizational Responsibility**

We strongly suggest that organizations in need of interpretation and translation services look at the competency criteria essential to perform the job in question. Entities who utilize interpretation and translation services need to make sure that candidates are tested, to understand the limitations of bilinguals, and to be aware of the various levels of bilingualism required for a particular task. It is important to understand the difference between being a bilingual (even a highly educated bilingual) and an interpreter or translator with professional qualifications and experience.

Organizations, government entities, and individuals, including the non-English or LEP person, would be better served if those in charge of interpreter services began to require all language providers— whether working as independent contractors or as subcontractors through a language agency— to demonstrate the necessary skill set and credentials. Organizations need to have in place some type of reliable and valid method of testing levels of bilingualism for their bilingual staff. Agencies who subcontract interpreters and translators should be required to demonstrate to the hiring entity that they have a valid and reliable method for proving the skill level of their subcontractors and that they provide basic training in ethics. Agencies should be required to provide to the hiring entity the qualifications, training, experience, criminal background check information and references for each interpreter or translator they subcontract.

■ **Qualifications**

As in any other field, qualifications are a necessary first hurdle. The nexus between an entity's ability to provide due process, equal access, equal protection, and to provide the non-English-speaking or LEP person true access to important services and programs is the interpreter. The use of an unqualified interpreter or translator will surely render every party or organization equally incompetent. The ability of an agency or entity to carry out its own mission goes hand in hand with the use of competent interpreter and/or translation services.

When organizations fail to request proper qualifications and out of ignorance or neglect use unqualified and untrained interpreters, the organization itself can be jeopardized. Untrained and unqualified language providers can have the effect of denying due process, equal protection, or equal access to an LEP individual. No matter how competent a judge or attorney may be, or how many interpreters are provided for a LEP individual, it will be of no value if the interpreters are untrained and unqualified.

The failure of incompetence lies not only with the unprepared person who, unfamiliar with the rigors of the field, agrees to provide language services, but also with the entities that set language policies or hire service providers without first consulting with experts in the field or understanding the profession's requirements.

■ **Resources Available**

Many entities are unfamiliar or unaware of the resources available through national interpreting and translating associations, other national organizations, or local organizations in their states. There is substantial information available through the websites of NAJIT, the American Translators Association (ATA), the Registry of Interpreters for the Deaf (RID), the National Council on Interpreting in Health Care (NCIHC), the Consortium for State Court Interpreter Certification (Consortium), and the Administrative Office of the U. S. Courts. These organizations have available names of contacts and additional resources to assist entities needing help with interpretation or translation services. These organizations can also assist by responding to questions and concerns that an organization or individual may have about qualification requirements and professional responsibilities in the various fields of interpretation and translation. Substantial literature and references are available on the Internet and at each organization's website to assist entities with guidance on policy issues.

■ **Compensation Concerns**

It is common to hear complaints that certified and qualified interpreters cost too much, that there is no money for interpreter services, or that there are not enough certified and/or qualified interpreters in certain geographic areas. The issue of compensation for interpretation and translation services should not be an insurmountable barrier to quality service. It is true that salaries for staff and hourly rates for independent contractors will vary depending on the region or jurisdiction within the state, and may also depend on the

cost of living in a particular area. However, in general, it is not true that hiring certified or qualified interpreters or translators will cost an organization more than hiring through a language agency or by hiring an uncertified interpreter.

Independent contractors with credentials, experience, and training can actually cost less or sometimes come at a cost comparable to hiring through an agency. Generally, agencies serve as a broker for language services and charge overhead, administrative or finder fees. We have no objection to this practice since there are benefits to an entity in working with language agencies. Some of those benefits are that it saves the entity time and footwork in searching for an interpreter or in locating interpreters in languages that are rarely encountered. On the other hand, sometimes a language agency may not offer competitive pricing or may not be able to provide the entity with interpreters and translators with the required certification or qualification to do the job right. Some agencies cannot retain credentialed interpreters because their compensation is too low. In some cases, agencies themselves are not aware of the need for qualifications and training, and they do not screen for language proficiency or provide ethical guidelines to their interpreters. The use of untrained and untested bilinguals can create misconceptions and cause a negative impact on the entities in need of interpretation and translation services. This is why it is important for all entities who utilize interpretation and translation services to make sure they specify the necessary criteria and inquire as to the methods each language agency uses to recruit and evaluate interpreters or translators and to meet the hiring entity's criteria.

■ Obtaining Compensation Information

The following website contain valuable information on compensation rates:

Bureau of Labor Statistics: Salary and hourly rates for interpretation and translation services in general at: <http://www.bls.gov/oco/ocos175.htm>

The National Center for State Courts Certification Consortium salaried interpreter compensation survey at: <http://www.ncsconline.org/D•Research/Res•CtInte•ConsortCertCompSurvey2006Salary.pdf>

The National Center for State Courts Certification Consortium contract interpreter compensation survey at:

<http://www.ncsconline.org/D•Research/Res•CtInte•ConsortCertCompSurvey2006Contract.pdf>

ATA's compensation survey can be ordered from ATA's headquarters at www.atanet.org for a modest fee.

A few additional points on compensation: some independent contractors charge by a half-day or full-day. Many who charge by the half-day or full-day generally go by the federal court rate. Interpreters in some states earn less than the fees set by the federal court; other states' court rates are near or comparable to the federal court rate. Either way, note that higher fees have nothing to do with competency. Competency should always be verified. See also "notes on cost" below.

■ Importance of Service Needed

In considering issues of compensation, it is important that any entity, be it a law firm, a court, a hospital, a doctors office, a law enforcement agency, an advocacy organization or language agency, take into account additional issues such as the importance of the services being provided to the non-English and limited English speaker. The more important the program or service, the greater the advisability of requiring certification.

Each program or entity must consider its needs, i.e. the frequency of contact with the LEP population and the languages most frequently encountered. Are occasional interpreter services needed or has the need become a daily occurrence? If the latter, it may be more cost efficient to hire full-time certified or qualified interpreters. If not, are there languages encountered less frequently? If so, what is fair compensation to recruit and retain a contract interpreter for future use? Find out about existing resources in each state. Inquire as to the fees for various independent contractors, make sure to understand the nature of their credentials, and create a list of credentialed interpreters. If an entity or organization prefers to contract out to a language agency, it should make sure the agency will follow the job qualifications and established criteria.

When recruiting and hiring language professionals, entities need to first consider the type of assignment. For example: is it an interpreting (oral) or translating (written) assignment? Some tips pertaining to each category follow.

■ Tips For Recruiting And Hiring Interpreters

Is the interpreting for medical appointments, surgery, or is it a workman's compensation case? Is the assignment

a deposition, an in-court proceeding, or an out-of-court proceeding such as a police interrogation, interview of a potential suspect or a witness? Is it for grand jury testimony or an attorney/client interview? Will any of the information obtained through an interpreter be used in a criminal or civil proceeding or at trial? Is the interpreting assignment related to providing general information at a community meeting or at a conference on employer safety rules? Once the particular type of assignment is identified, try to contract with an interpreter who is experienced and has credentials to interpret in that specific area, whether you hire the interpreter as an independent contractor or subcontract through a language agency. The qualifications to be reviewed are:

- Years of experience
- Field of expertise (subject familiarity) i.e.: medical, legal, administrative hearings, immigration, etc.
- Credentials such as federal certification, NAJIT certification, RID certification, Consortium for member state certification, or other state-administered testing
- Membership in professional associations
- Recommendations by other certified interpreters

In addition, references and a criminal background check should be requested. (If already performed by a state or federal entity, that information should be provided by the interpreter.)

Even when an interpreter's name is obtained through one of the organizations listed above, it is the responsibility of the contracting party to make sure that the interpreter possesses the skills, training and experience in the subject matter.

Professional interpreters can always provide their certification credentials, training and references. Using experts from the outset is the most cost-effective way to ensure due process, equal access and equal protection to all. Many public service agencies fail to choose an interpreter with care, thus unintentionally putting in jeopardy the fundamental rights afforded to all persons, the integrity of the justice system and of their own organization.

■ Tips for Recruiting and Hiring Translators¹

When recruiting professional translators, entities need to first consider the audience the translation is intended for. For example: is the translation for a public website,

is it going to a grand jury, will it be offered at trial as evidence, or is it an informational pamphlet for a general audience? Once the particular audience is identified, you should contract with a translator who is experienced in that specific area, whether you hire the translator as an independent contractor or subcontract through a language agency. The qualifications that should be reviewed are the following:

- Years of experience
- Field of expertise (subject familiarity)
- ATA certification (translation into English or into the foreign language)
- NAJIT certification in Spanish (interpreter examination includes a translation component)
- Court certification (certification is taken as de facto translation credential)
- Membership in professional associations, publications
- Recommendations by others

In addition, references and samples of translated materials (from English into the target language or the target language into English, as required) should be requested.

■ Translation Quality Control

As a general rule, professional translators will ask a second translator to review and edit their work before presenting the final product. This process ensures a more accurate translation and minimizes errors. If translations are outsourced or routed through language agencies, quality control should be built into the process, according to department standards. Language agencies generally have quality control mechanisms in place, but organizations should take care to specify their own requirements in any contract or RFP.

Other methods for quality control and review of translated materials would be to organize a focus group or quality control committee consisting of a cross-section of the exact population the translations are written for, in order to test the material before official publication. (This would only be done with translations of great importance to the community.) Other methods of review include spot-checking by experts, requiring the translations to be approved by a review board or reviser, or requesting that the embassy of that country or other stakeholders review the material for correct language and accuracy.

The best resource for obtaining professional translators

is through NAJIT and ATA, but even when working through professional associations, it is up to the contracting party to make sure the translator possesses the skills, training and experience in the subject matter as well as necessary credentialing. Professional translators can always provide samples of their work. Using experts from the outset is the most cost-effective way to get the job done correctly the first time. Many public service agencies fail to choose a translator with care, incurring double-costing later to correct errors.

■ Notes On Cost

When considering costs, keep in mind that professionals holding certification, qualification, and training credentials are skilled individuals in a variable market. Depending on the language combination, independent contractors may not work on a daily basis. They do not receive benefits and must bear overhead costs themselves. Professionals must comply with continuing education requirements and pay for training and certification renewal expenses, including the cost of purchasing computers, expensive dictionaries and other materials needed for a variety of assignments. They incur travel expenses, administrative expenses, and like everyone else, they pay taxes, contribute to social security, and so on. Cost of living varies from state to state and from jurisdiction to jurisdiction. These are all included in the fee and should be taken into account when deciding on a reasonable and fair fee for both the organization and the services provider in the particular area. Less expensive may not translate to competency and “cheap” or what appears to be good value may end up costing much more in the end.

A good example of this is a story that appeared in the *Press Telegram-Long Beach*, on March 25, 2006, “California Titled Ballot Won’t be Lost in Translation,” which can be viewed at <http://www.presstelegram.com/news/ci•3637258>. The title of a candidate for election was mistranslated, and this single error cost the state \$80,000 to fix.

Imagine the cost to cure mistakes when a qualified interpreter or translator is not secured, or the cost

to someone’s life if medical information is conveyed incorrectly, the impact on a victim if a case is appealed due to technicalities (denial of due process), or the cost of an individual’s liberty if a person is wrongfully accused due to the use of an untrained interpreter. The integrity of our system of justice and our government’s ability to protect the public, to provide access to all, is put in jeopardy. We often hear the phrase “something is better than nothing,” but a cavalier attitude about language may also lead authorities to a false sense of security. If an entity or program is aware of already established standards of the profession, statutes, rules, procedures, certification and qualification requirements but chooses not to adhere to them, it becomes the responsibility of the entity, and legal recourse may be chosen by the public or other stakeholder to remedy the situation.

■ Conclusion

As a professional association, NAJIT does not presume to set rules for a wide variety of organizations and possible scenarios. All we can do is to provide suggestions and guidance and make ourselves available to assist. Everyone has a responsibility and a stake in providing competent interpretation and translation services. NAJIT believes that working together we can improve language service across a broad spectrum and provide effective equal access for all.

■ Footnotes

1. Adopted from the Summit/Lorain LEP Model Policy for Law Enforcement

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