

# **SUGGESTED GUIDE FOR INTERPRETED PROCEEDINGS**

**by Isabel Framer**

To secure the rights, constitutional and otherwise, of persons who, because of hearing, speech, or other impairment a party to or witness in a legal proceeding cannot readily understand or communicate, the court shall appoint a qualified interpreter to assist such person. Before entering upon his duties, the interpreter shall take an oath that he will make a true interpretation of the proceedings to the party or witness, and that he will truly repeat the statements made by such party or witness to the court, to the best of his ability. See ORC 2311.14 (B); 28 USC section 1827; Evidence Rule 604.

## **Administration of Oath and Establishing Qualifications**

Evidence Rule 604 provides that the provisions of the rules relating to qualification of an expert are applicable to interpreters. An expert is one qualified by knowledge, experience, training or education. See Evidence Rule 702.

### **OATH**

Do you solemnly swear or affirm that you will interpret accurately, completely and impartially from the source language into the target language, using your best skills and judgement in accordance with the standards prescribed by law and the code of ethics 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, so help you God.

### **Suggested Questions for Establishing Qualifications**

1. Please state your full name and prior experience, training or education in court interpreting.
2. Have you interpreted for this type of hearing or trial before?
3. How many times have you interpreted in court?
4. What types of hearings have you interpreted before?
5. Are you familiar with the legal terminology from the English language into the target language? See *State v. Ramirez*, 732 N.E.2d 1065, (Ohio App. 1999).

6. What prior education or training have you had in court interpreting?
7. Are you able to interpret simultaneously and consecutively without leaving out, changing or summarizing anything that is said? (It is highly recommended that the summary mode should not be used. *See State v. Pina*, 361 N.E.2d 262 (Ohio Ct. App. 1975)) *State v. Ramirez*, supra.
8. Do you know the parties or are you related to any of the parties in this case?
9. Do you have a financial or other interest in the outcome of this case?
10. Have you had the opportunity to speak with the client to determine if there is any communication problem? (It is recommended that the attorney be present during any communication between the interpreter and a non-English speaking defendant or witness to avoid having the interpreter become a potential witness. The interpreters should never carry on independent communication with a witness or defendant. *See State v. Fonseca*, 705 N.E.2d 1278 at 1279 (Ohio App.11 Dist.1997).

#### **To the Interpreter**

1. Do you understand that while serving in an official capacity you are bound by the attorney/client privilege and any confidential information provided to you by any of the parties must be kept confidential?
2. Do you understand that you cannot give any legal advice or interject your own personal opinions not related to language expertise? *See: State v. Rodriguez* , 169 N.E.2d 444 (Ohio Ct. App. 1959), *State v. Ramirez*, supra.

#### **To the Attorneys**

1. Are you satisfied with the qualifications of the interpreter(s)?

#### **To the Defendant(s)**

1. Are you able to effectively communicate with your attorney through the interpreter and are you able to understand the interpretation provided to you by the interpreter?

#### **For the Record**

1. I find that the interpreter is a qualified interpreter, that all parties have agreed

to the qualifications of the interpreter, and that the defendant is able to understand and communicate through the interpretation provided by Mr./Mrs. \_\_\_\_\_. Therefore I will appoint Mr./Mrs. as the interpreter on this case.

2. I will ask that all parties when speaking directly to the defendant or witness speak in the first person and that the interpreter when interpreting for a defendant or witness to respond in the first person. The third person should be used only when the interpreter is speaking for herself. Example: Your Honor the interpreter is unable to hear the attorneys; Your Honor the interpreter would request a brief moment to consult her dictionary. See *State v Pina*, supra; *State v. Nieves*, 1990 Ohio App. LEXIS 5561 at \*3 (Ohio App. 11 Dist.1990); *State v. Fonseca*, supra.

### **Answers to Frequently Asked Questions**

1. During a trial and court proceedings it is suggested to periodically ask a defendant if he/she has been able to understand the interpretation provided and if he has been able to communicate adequately with his attorney through the interpreter, specifically during plea entries.
2. It is suggested to ask a defendant to repeat some of the information the judge has provided to see if the defendant understands the interpretation. A defendant might not be able to repeat exactly what the Judge has said but could provide a general idea of his understanding. Also, the fact that a defendant may not understand does not necessarily mean that the interpretation is error. A misunderstanding could mean that the defendant is not able to grasp the concept of our judicial system. Therefore, by inquiring further the Judge would have the opportunity to explain in terms that a defendant could understand.
3. It is recommended that summary interpretation not be used. Only unqualified interpreters who are unable to keep up in the consecutive or simultaneous modes of interpretation most often use it. Summary interpretation will not provide a defendant with a true and accurate interpretation of court proceedings or testimony of a witness.
4. The simultaneous mode is used during all court proceedings where the non-English speaking person is listening or for any non-English speaking party when the judge is speaking directly to that person without interruptions (e.g., trial, jury instructions, the judge is speaking to an officer of the court or any other person other than the defendant or witness, lengthy advisement of rights, and judges remarks to a defendant at sentencing.)
5. Consecutive mode is used when a non-English speaking person is giving testimony or when the judge or officer of the court is communicating directly

and is expecting responses.

6. Sight translation is the oral translation of a written document into the target language. The interpreter must be given a few minutes to review the document before translating.
7. It is suggested that friends and family members not be used to provide interpretation in any legal setting. Friends and family members are not neutral parties and might have an interest in the outcome of the case. In addition they are not trained in court interpretation.
8. Being bilingual is not sufficient for being a court interpreter. Court interpreting is a highly skilled profession that requires training, education, experience and knowledge of legal terminology in both languages.
9. It is recommended that attorneys not be used to interpret court proceedings. Bilingual attorneys cannot function effectively in their duty as attorneys and perform interpreter duties at the same time. They are not trained or possess the skills required for court interpretation. *See State v. Sanchez*, 1986 Ohio App. LEXIS 6536 , (Ohio App. 8 Dist. 1986).
10. For a trial or a very lengthy hearing or lengthy multiple witnesses testimonies of non-English speaking parties, two interpreters should be appointed in order to avoid mental fatigue. The United Nations standards for conference interpreting (simultaneous mode) call for replacing interpreters every 45 minutes. Court interpretation is more demanding than conference interpreting. Studies have proven that even the most qualified trained interpreter is unable to interpret adequately and that the quality of interpretation will falter during lengthy hearings.
11. There is no state certification or certifying body currently in the State of Ohio.
12. Language agencies do not certify interpreters.
13. Some language agencies do not qualify interpreters. You may want to inquire as to the methods that an agency uses to screen candidates for language proficiency and/or if they provide training for court interpretations.
14. Court interpreters are highly skilled professionals who fulfill an essential role in assisting in the administration of justice.
15. Once interpreters are sworn in they become officers of the court and should abide by all the rules pertaining to officers of the court and their duty to interpret accurately.
16. Interpreters are and must always remain neutral parties regardless of who

has hired them. Interpreters are a communication vehicle to assist all parties in communication and in the administration of justice. All persons benefiting from the interpreting services are clients.

17. Interpreters cannot give legal or any other advice to any of the parties.
18. Interpreters cannot serve as the interpreter if they are acquainted to or related to the party nor have a monetary interest or other interest in the outcome of the case.
19. Translation is the replacement of a written text from one language into an equivalent written text in another language.
20. Interpretation is the oral translation of a language into another language. Both require different skills, training and knowledge.

### **Disclaimer**

The information I am providing in this outline is information that has been passed down to me through, NAJIT (The National Association of Judiciary Interpreters and Translators), NAJIT's electronic discussion list of Federal, State Certified Interpreters and Free-lance Interpreters, NCSC (The National Center for State Courts) and from States that have implemented court interpreting standards and certification.

This information is only a suggested guide and it is not my intent to interpret the law. If you have any questions please call:

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