

USE OF CERTIFIED DEAF INTERPRETERS

A Certified Deaf Interpreter (CDI) is an individual who is deaf or hard of hearing and has been certified by the Registry of Interpreters for the Deaf as an interpreter.

In addition to excellent general communication skills and general interpreter training the CDE may also have specialized training and/or experience in use of gesture, mime, props, drawings, and other tools to enhance communication. The CDI has an extensive knowledge and understanding of deafness, the deaf community, and/or Deaf culture which combined with excellent communication skills, can bring added expertise into both routine and uniquely difficult interpreting situations.

A Certified Deaf Interpreter may be needed when the communication mode of a deaf consumer is so unique that it cannot be adequately accessed by interpreters who are hearing. Some such situations may involved individuals who:

- *Use idiosyncratic non-standard signs or gestures such as those commonly referred to as "home signs" which are unique to a family*
- *Use a foreign language*
- *Have minimal or limited communication skills*
- *Are deaf-blind or deaf with limited vision*
- *Use signs particular to a given region, ethnic or age group*
- *Have characteristics reflective of Deaf Culture not familiar to hearing interpreters.*

As a Team Member

Often a Certified Deaf Interpreter works as a team member with a certified interpreter who is hearing. In some situations, a CDI/hearing interpreter team can communicate more effectively than a hearing interpreter alone or a team of two hearing interpreters or a CDI alone. In the CDI/hearing interpreter team situation, the CDI transmits message content between a deaf consumer and a hearing interpreter; the hearing interpreter transmits message content between a deaf consumer and a hearing interpreter; the hearing interpreter transmits message content between the CDI and a hearing consumer. While this process resembles a message relay, it is more than that. Each interpreter receives the message in one communication mode (or language), processes it linguistically and culturally then passes it on in the appropriate communication mode. In even more challenging situations, the CDI and hearing interpreter may work together to understand a deaf individual's message, confer with each other to arrive at their best interpretation, then convey that interpretation to the hearing party.

For Deaf-Blind Individuals

When a consumer who is deaf-blind is involved, the CDI may receive a speaker's message visually, then relay it to the deaf-blind individual through the sense of touch or at close visual range. This process is not a simple relay in which the CDI sees the signs and copies them for the person who is deaf-blind. The CDI processes the message, then transmits it in the mode most easily understood by the individual who is deaf-blind.

Solo

The CDI sometimes works as the sole interpreter in a situation. In these instances, the CDI may use sign language or other communication modes that are effective with a particular deaf individual; and may use, with the hearing consumer, a combination of speech, speech reading, residual hearing, and written commutation.

On the platform

The CDI sometimes functions as Interpreter before an audience. This may involve the CDI watching a hearing interpreter and restating the message to the audience in a different sign mod. At other times, the CDI may be in front of the audience to "mirror" comments or questions fro a signing member of the audience so that the rest of the audience can see them.

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CODE OF ETHICS

In an effort to protect and guide interpreters transliterators, and consumers, Registry of Interpreters for the Deaf ("RID") members established principles of ethical behavior. The organization enforces this Code of Ethics through its national Ethical Practices System. Underlying these principles is the desire to ensure for all the right to communicate.

This Code of Ethics applies to all members of the Registry of Interpreters for the Deaf, Inc. and to all certified non-members.

1. Interpreters/translitterators shall keep all assignment-related information strictly confidential.
2. Interpreters/translitterators shall render the message faithfully, always conveying the content and spirit of the speaker using language most readily understood by the person(s) whom they serve.
3. Interpreters/translitterators shall not counsel, advise or interject personal opinions.
4. Interpreters/translitterators shall accept assignments using discretion with regard to skill, setting, and the consumers involved.
5. Interpreters/translitterators shall request compensation for services in a professional and judicious manner.
6. Interpreters/translitterators shall function in a manner appropriate to the situation.
7. Interpreters/translitterators shall strive to further knowledge and skills through participation in workshops, professional meetings, interaction with professional colleagues, and reading of current literature in the field.
8. Interpreters/translitterators, by virtue of membership in or certification by RID, Inc., shall strive to maintain high professional standards in compliance with the Code of Ethics.

Benefits of Using a Certified Deaf Interpreter are:

- Optimal understanding by all parties
- Efficient use of time and resources
- Clarification of linguistic and/or cultural confusion and misunderstanding(s)
- Arrival at a clear conclusion in the interpreting situation.

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WHAT COURT INTERPRETERS WOULD TELL YOU IF THEY WERE HERE

[Taken from Court Interpreting, Legal Translating and Bilingual Services Section, New Jersey Administrative Office of the Courts, September 6, 1988 (revised October 25, 1988; November 18, 1988; February 9, 1989).]

1. 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. You will be less likely to view me as a glorified clerk or someone of dubious professional (certainly not equal to court reporters!) standing. It may be a helpful guide if you would treat me the way you tend to treat your reporter or any officer of the court

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 – as well as professional interpreters, of course – 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. Don't ask me to explain or restate what you or anyone else says. I can only put into another language exactly what a person has said.
- B. Don't allow attorneys appearing before you to ask me to explain or restate what someone says. When I decline to perform this task for them, please support me and do not expect me to violate the Code.
- C. Don't ask me to take the persons) for whom I'm interpreting to an office, counter, etc.
- D. Don't let two or more people talk at the same time. There's no way I can interpret everything that's being said!
- E. Don't ask me not to interpret something. I'm professionally and ethically bound to interpret everything that's said.
- F. Don't forbid me to interpret simultaneously during a proceeding because it interferes with your concentration or otherwise bothers you. There are many situations in which I'm professionally, ethically, and legally bound to interpret in the simultaneous mode. If my whispered simultaneous interpreting gets too loud, respectfully ask if I can speak more quietly. I'll do my very best to be as unobtrusive as possible.
- G. When an attorney or someone else alleges that I have made an error in interpretation, don't automatically assume that I have made one. Remember that the attorney is in an adversary relationship and I am not. I do make mistakes sometimes and I will be the first person to admit a mistake when I recognize one. But 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 virtually any attorney on such matters.

H. Don't talk to me when you are really talking to a witness, defendant 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 you are addressing. If I do the former, the person with whom you are attempting to communicate will often be confused. If I do the latter, you may get upset.

2. Avoid rapid-fire delivery of what to you is very routine material and help attorneys avoid excessively fast speech. Understand that when we are interpreting into other languages, it is often the case that it will take more words for me to convey a message accurately and completely. Be patient and understanding if I have to keep reminding you or others to slow down so I can do my job, too.
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 taking all of the time. While everyone else is only having to understand what is being said, I have to both understand it and put it into another language. This is intensely demanding work.

Furthermore, if the proceeding I am interpreting is a proceeding which involves simultaneous interpreting for more than an hour, two interpreters should be assigned to the case. We should be able to switch off every 30 minutes or so.

4. 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. Take my case as quickly as possible in order to prevent incurring the extra costs of having me wait and inconveniencing the other courts or court support services that may be waiting for my services.
5. 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 – and, much, much less, all of the words of all the dialects of two languages (not to mention the professional and legal jargon for which there is often no equivalent at all in other 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.
6. Many of my colleagues are not very well qualified 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 on-the-job training, so do not hesitate to take them – and me, sometimes – under your wing when there is something we need to learn.
7. Before you expect me to start interpreting for a given matter, give me the opportunity to find out what the nature of the proceeding is, who is involved, etc. Furthermore, let me speak to the linguistic minority person briefly to size up the person's communicative style and needs so I can make whatever adjustments may be necessary and appropriate to improve communication – or perhaps even discover that I might not be able to communicate sufficiently with the individual! Like any other professional, the better prepared I am, the better job I'll be able to do and the smoother the whole proceeding will flow.

ability to understand the proceedings and communicate with counsel was unimpaired (the court allowed the defendant to interrupt the proceedings at any time to consult privately with counsel through the interpreter).

State v. Bell, 57 Wn.App. 447 (1990). Where no evidence of personal interest in outcome, wrongdoing or untrustworthiness, use of a police victim advocate as an interpreter for the victim is within the sound discretion of the court. State v. Boulet, 5 Wn.2d 654 (1940).

Failure to Swear In Interpreter

State v. Sengxay, 80 Wn.App 11 (Div. III 1995). Failure to swear interpreter is not error absent objection.

Attorney Client Privilege

State v. Aquino-Cervantes, 88 Wn. App. 699, 945 P.2d 767 (Div II 1997). Trial court erred in allowing interpreter to testify regarding defendants demeanor during attorney-client conversations. Communications and observations by interpreter during confidential attorney-client interviews are not admissible. Interpreters' testimony regarding their in-court observations of the defendant were permissible, except for privileged communications. (Issue of allowing hearing interpreter to be witness during same hearing despite prohibition of Code of Conduct, GR 11.1, was not addressed.)

Good Cause for Appointing an Uncertified Interpreter under RCW 2.43

State v. Pham, 75 Wn. App. 626, 879 P.2d 321 (Div III 1994). The trial court properly concluded that the circumstances of this case, involving a Vietnamese-speaking child rape victim, constituted good-cause for appointing an uncertified female interpreter to interpret her testimony even though a male certified interpreter was present in court. A defendant has the constitutional right to a 'competent' interpreter, but not necessarily to a certified interpreter. RCW 2/43/030(1)(b) allowing use of an uncertified interpreters for good cause when "services of certified interpreters are not reasonably available", in not exclusive.

Defense Attorney's Interview through an Incompetent Interpreter is Ineffective Assistance of Counsel

Chacon v. Wood, 36 F.3d 1459 (9th Cir. 1994). In this federal habeas corpus action challenging a Washington state court conviction, the Ninth Circuit vacated the defendant's guilty plea as involuntary on the ground that trial counsel was ineffective because the court interpreter who interpreted pre-trial attorney-client conversations

vastly understated the probable sentence the defendant would receive if he pleaded guilty.

Trial Counsel Must Preserve Record of Deficient Interpreting

State v. Serrano, 95 Wn. App. 700, 977 P.2d 47 (Div. III 1999). Since defense counsel did not object to the court's appointment of a qualified rather than a certified interpreter at trial, the defendant may not raise the issue on appeal for the first time unless the error was of constitutional magnitude. The defendant failed to prove his trial counsel was ineffective for not objecting to the uncertified Spanish interpreter, because nothing in the record suggests the interpreter was incompetent or that the defendant did not really speak Spanish.

Interpreted Confessions are Hearsay

State v. Garcia-Trujillo, 89 Wn. App. 203, 948 P.2d 390 (Div. I 1997), State v. Huynh, 49 Wn. App. 192, 742 P.2d 160 (Div. I 1987), review denied, 109 Wn.2d 1024 (1988), State v. Aquino-Cervantes, 88 En. App. 699, 945 P. 2d 767 (Div. II 1997). Foreign language statements interpreted for law enforcement may not be admitted through officers' testimony unless the interpreter was engaged by the non-English speaking party as the party's agent, or the statement is not offered to prove the truth of the matter asserted – that is, the interpreter testifies to what the interpreter asserts the other party said.

Proving an Interpreter is Incompetent

Perez-Lastor v. I.N.S., 208 F. 3d 773 (9th Cir. 2000). Three types of evidence tend to prove an interpretation was incompetent. The first is direct evidence of incorrectly interpreted words that would have been interpreted differently by a more competent interpreter. Second, unresponsive answers to interpreted questions by a witness provide circumstantial evidence of interpretation problems. Third, incompetent interpretation may be established if a witness expressed difficulty in understanding the interpreter's statements.

Tomayo-Reyes v. Keeney, 926 F. 2d 1492, (9th Cir. 1991), rev'd on other grounds, 504 U.S. 1 (1992.) In a habeas corpus action, proof of inadequate interpreting can be established by putting the interpreter on the stand, asking the interpreter questions relevant to the claim, and calling an expert witness. Defense attorney's method of deposing the interpreter was insufficient because the attorney did not ask how he interpreted material phrases and also failed to call an expert witness. The interpretation accuracy issue was remanded by the Court of Appeals for an evidentiary hearing. (This case was reversed by the Supreme Court on separate federal habeas corpus standards grounds.)¹

Selected Cases on Legal Interpreting

By Joanne I. Moore and Ron A. Mamiya, Judge

Right to or Need for Interpreter

State v. Lopez, 74 Wn.App. 264, 872 P.2d 1131 (Div I 1994), State v. Mendez, 56 Wn.App. 458, 784 P.2d 168 (Div. I 1989), State v. Woo Won Choi, 55 Wn. App. 895, 781 P.2d 505 (Div. I 1989). The trial court's failure to appoint an interpreter for a limited English speaking defendant will be upheld if counsel failed to request an interpreter or advised the court that the defendant spoke sufficient English to participate in the proceedings.

State v. Woo Won Choi, 55 Wn.App 895 (1989). No right to an interpreter if defendant's language skills are adequate to understand trial proceedings and present his defense. The trial court need not inquire directly of the defendant nor engage in interpreter waiver colloquy until court has determined that an interpreter is necessary; court may rely on counsel's representation that the interpreter is not necessary.

State v. Mendez, 56 Wn.App. 458, 784 P.2d 168 (Div. I 1989). Trial court has no affirmative duty to appoint an interpreter where defendant's lack of fluency or facility in English is not apparent.

State v. Serrano, 95 Wn.App.700 (1999). No constitutional right to a "certified" interpreter thus issue may not be raised for the first time on appeal. The trial court's only inquiry was whether the interpreter was "certified or qualified". Defense did not object at the trial level and record does not indicate the interpreter was incompetent.

State v. Harris, 97 Wn.App. 647 (1999). Hearing impaired probationer was not entitled to a sign interpreter at meetings with his probation officer when he can communicate in writing; RCW 2.42.120(3) requiring sign interpreters at court-ordered treatment programs, unconstitutionally violates one-subject rule.

Non-English Speaking Defendant's Right to a Complete Interpretation of the Proceedings

Tomayo-Reyes v. Keeney, 926 F.2d 1492 (9th Cir. 1991), rev'd on other grounds, 504U.S.1 (1992). If the interpreter failed to translate the mens rea elements of the charge on the state guilty plea form, and interpreted 'manslaughter' as 'less than murder,' the defendant has established a basis for overturning his nolo contendere plea.

State v. Gonzales-Morales, 138 Wn. 2d 374, 979 P.2d 826 (1999). Defendant's 6th amendment right to assistance of counsel was not violated by the court's 'borrowing' of Spanish interpreter to interpret a State witness' testimony, as long as the defendant's

Miranda Warnings

State v. Cervantes, 62 Wn. App. 695, 814 P.2d. 1232 (Div. III 1991). Law enforcement's use of co-defendant as interpreter during defendant's custodial interrogation was a reversible violation of due process.

State v. Teran, 71 Wn. App. 668, 862 P.2d 137 (Div III 1993). Even though the translation was not perfect, defendant validly waived his Miranda rights after law enforcement officers played a translated Spanish cassette tape of Miranda warnings and one officer read them to him in Spanish, because the defendant understood that he did not have to talk to law enforcement and that any statement could be used against him.

Court Interpreter Costs Assessments are Unconstitutional

State v. Marintorres, 93 Wn. App. 447, 969 P. 2d 501 (Div. II 1999). Statute authorizing the trial court to order non-English speaking parties to pay costs of the court interpreter violates equal protection, because costs may not be imposed for interpreters appointed for hearing-impaired parties.
