APPENDIX C

THE CODE OF PROFESSIONAL RESPONSIBILITY FOR INTERPRETERS IN THE OREGON COURTS

IN THE SUPREME COURT OF THE STATE OF OREGON

In the Matter of Establishing a Code of Professional Responsibility for Interpreters in Oregon Courts	)	ORDER NO. 95-042 ESTABLISHING CODE OF PROFESSIONAL RESPONSIBILITY FOR INTERPRETERS IN OREGON COURTS

The Oregon Supreme Court, on February 21, 1992, established the Oregon Supreme Court Task Force on Racial/Ethnic Issues in the Judicial System (Order No. 92-022).

The Oregon Supreme Court Task Force on Racial/Ethnic Issues in the Judicial System, in May 1994, published its final report and recommendations.

Recommendation Number 2-4 of the May 1994 Report suggested that the Chief Justice appoint a committee to draft the court interpreters code of ethics (code). ORS 45.291.

On June 15, 1994, the Oregon Supreme Court Task Force on Racial/Ethnic Issues in the Judicial System Implementation Committee (Implementation Committee) was appointed (Order No. 95-017, March 15, 1995, nunc pro tunc).

The Implementation Committee, working with the Oregon Judicial Department State Court Administrator's Office, published in the December 5, 1995, Oregon Appellate Court Advance Sheets, a draft of the proposed code requesting comments. Upon receipt of the comments, a new draft was submitted to the Implementation Committee, in addition to those parties having made prior comment, requesting further comment. The final code now has been forwarded to the Chief Justice for approval.

IT HEREBY IS ORDERED that the Code of Professional Responsibility for Interpreters in Oregon Courts, a copy of which is attached as a part of this order, is adopted and becomes effective immediately.

DATED this 17 day of May 1995.

Wallace P. Carson, Jr.
Chief Justice

May 3, 1995

CODE OF PROFESSIONAL RESPONSIBILITY FOR INTERPRETERS IN THE OREGON COURTS

PREAMBLE

Many persons who come before the courts are partially or completely excluded from full participation in the proceedings because of limited English proficiency or a speech or hearing impairment. It is essential that the resulting communications barrier be removed, as far as possible, so that these persons are placed in the same position as similarly situated persons for whom there is no such barrier.[1] An interpreter is sworn in as an officer of the court. As an officer of the court, an interpreter is a neutral and impartial participant who assists the court in ensuring that court proceedings and court support services are accessible and function efficiently and effectively. The court interpreter is a skilled professional, therefore, who fulfills an essential role in the administration of justice. At a minimum, an interpreter must be a "qualified interpreter," under ORS 45.275 (7)-(8), to serve in the courts in Oregon. However, ORS 45.288 requires the court to give preference for appointments to an interpreter certified under ORS 45.291. In other words, the court is required by ORS 45.288 to appoint a certified interpreter if a certified interpreter is available, able, and willing to serve. If no certified interpreter is available, able, and willing to serve, an interpreter still must meet the statutory requirements for qualification contained in ORS 45.275 (7)-(8) and ORS 45.288(3)-(4), and state his or her qualifications on the record as in ORS 45.275 (7).

APPLICABILITY

This code shall guide all persons, agencies, and organizations who administer, supervise use of, or deliver interpreting services to the courts. Ensuring equal access to the communication, however, may on occasion conflict with this code. When unique situations necessitate an exception to the rules in order to ensure effective communication, the court may so allow.

For clarification of this code, the following definitions should be kept in mind. Interpreting is rendering an oral statement from one language into an oral statement to another language. Sight translation is rendering written material into oral form. Translation is rendering written material from one language into written form in another language.

Violations of this code may result in the interpreter being deleted from a court's list of qualified and/or certified interpreters.

1. ACCURACY AND COMPLETENESS

The interpreter shall render a complete and accurate interpretation or sight translation, without altering, omitting anything from, or adding anything to what is stated or written, and without explanation.

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[1] A non-English speaker should be able to understand just as much as an English speaker with the same level of education and intelligence would understand.

Commentary

The interpreter has a twofold duty: 1) to ensure that the proceedings in English reflect precisely what was said by a non-English speaking person, and 2) to place the non-English speaking person on an equal footing with those who understand English. This creates an obligation to conserve every element of information contained in a source language communication when it is rendered in the target language.

Therefore, the interpreter is obligated to apply the interpreter's best skills and judgment to faithfully preserve the meaning of what is said in court, including the style or register of speech. Verbatim, "word for word," or literal oral translations are not appropriate when they distort the meaning of the source language, but every spoken statement, even if it appears nonresponsive, obscene, rambling, or incoherent, should be interpreted. This includes apparent misstatements.

The interpreter should never interject his or her own words, phrases, or expressions. If the need arises to explain an interpreting problem, (e.g., a term or phrase with no direct equivalent in the target language or a misunderstanding that only the interpreter can clarify), the interpreter should ask the court's permission to provide an explanation. The interpreter of an oral language should convey the emotional emphasis of the speaker, but it may be in a slightly diminished form. If the witness weeps during questioning, the interpreter should not weep. Imitating the weeping might appear to mock the witness. Sadness can be conveyed by tone of voice alone. The judge and jury can see a witness' emotions for themselves even if they do not understand the target language.

A sign language interpreter, however, must employ all of the visual cues that the language he or she is interpreting requires--including facial expressions and body language, in addition to sign language. A sign language interpreter, therefore, should ensure that court participants do not confuse these essential elements of the interpreted language with inappropriate interpreter conduct.

The obligation to preserve accuracy includes the interpreter's duty to correct, in a timely fashion, any error of interpretation discovered by the interpreter during the proceeding. The interpreter should demonstrate professionalism by objectively analyzing any challenge to his or her performance.

2. REPRESENTATIONS OF QUALIFICATIONS

The interpreter shall accurately and completely represent his or her certifications, training, and pertinent experience. The court should reassess the interpreter's qualifications each time the interpreter is engaged to interpret in court for a non-English speaking party or witness.

Commentary

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Acceptance of a case by the interpreter implies the interpreter's linguistic competency in legal settings. Withdrawing or being asked to withdraw from a case after it begins

causes a disruption of court proceedings and is wasteful of scarce public resources. It is therefore essential that the interpreter present a complete and truthful account of the interpreter's training, certification, and experience prior to appointment so the court can fairly evaluate the interpreter's qualifications for delivering interpreting services.

3. IMPARTIALITY AND AVOIDANCE OF CONFLICT OF INTEREST--COURT OR PROCEEDING INTERPRETER

The interpreter shall be impartial and unbiased and shall refrain from conduct that may give an appearance of bias or conflict of interest. The interpreter shall disclose to the judge any real bias or interest in the parties or witnesses in a case, or any situation or relationship that may be perceived by the court, any of the parties, or any witnesses as a bias or interest in the parties or witnesses in a case.

Commentary

When appointed by the court to act as a proceeding interpreter, the interpreter's "clients" are all of the parties and witnesses in the court case. Because of this, it is important that the interpreter have no real or perceived interest in any of the parties or witnesses beyond the professional interest of interpreting for the non-English speaking parties and witnesses in the court case.

Any condition that interferes with the objectivity of the interpreter constitutes a conflict of interest. Before providing services in a matter, the court interpreter must disclose to all parties and the court any prior involvement in the case or with the parties or witnesses, whether personal or professional, that could be reasonably construed as a conflict of interest. This disclosure shall not include privileged or confidential information. If, after this disclosure on the record, all parties acknowledge the situation and determine that it is in the best interest of justice for the interpreter to serve in the case, the interpreter may interpret in the case.

The following are circumstances that are presumed to create actual or perceived conflicts of interest for the interpreter where the interpreter needs to declare the conflict of interest before appointment on the record and let the court determine if the interpreter should serve in the case:

1. The interpreter is a friend, associate, or relative of a party or counsel for a party involved in the proceedings;

2. The interpreter has served in an investigative capacity in the case at issue for any party involved in the case;

3. The interpreter has previously been retained by a law enforcement agency to assist in the preparation of the criminal case at issue;

4. The interpreter or the interpreter's spouse or child has a financial interest in the subject matter in controversy or in a party to the proceeding or any other interest from which the interpreter may benefit from, that would be affected by the outcome of the case;

5. The interpreter has been involved in the choice of counsel or law firm for the case.

The interpreter should not serve in any manner in which payment for their services is contingent upon the outcome of the case.

An interpreter who is also an attorney should not serve as the court or proceeding interpreter, as well as the attorney in the same case.

During the proceeding, the interpreter should avoid any conduct or behavior that presents the appearance of favoritism toward any of the parties. The Interpreter should maintain professional relationships with the non-English speaking parties and witnesses, and should limit his or her involvement in the proceedings to that of interpretation. The interpreter should discourage a non-English speaking party's or witness' personal dependence on the interpreter.

The interpreter should refrain from conversations with parties, witnesses, jurors, attorneys, or with friends or relatives of any party in or near the courtroom, except in the discharge of their official functions. It is especially important that the interpreter, who is often familiar with attorneys or other members of the courtroom work group, including law enforcement officers, refrain from casual and personal conversations with anyone in the court that may convey an appearance of a special relationship or partiality to any court participant.

An example of conversation that would be within the interpreter's official duties would be: communicating with the non-English speaking party or witness in an informal setting where the interpreter would listen to accent, rhythm, and the choice of words of the non-English speaking party to determine if the interpreter can adequately interpret for the non-English speaking party or witness.

The interpreter should strive for professional detachment. The interpreter should avoid all verbal and nonverbal displays of personal attitudes, prejudices, emotions, or opinions.

Should the interpreter become aware that a proceeding participant views the interpreter as having a bias or being biased, the interpreter should disclose that knowledge on the record to the judge and the parties in the case. This disclosure shall not include privileged or confidential information. If all parties acknowledge the situation and determine that it is in the best interest of justice for the interpreter to serve in the case, the interpreter may continue to interpret in the case.

4. IMPARTIALITY AND AVOIDANCE OF CONFLICT OF INTEREST--INTERPRETER APPOINTED TO WORK WITH STATE-PAID, APPOINTED ATTORNEY

An interpreter appointed to work with a state-paid, appointed attorney shall refrain from conduct that may give an appearance of *personal* bias or conflict of interest. The interpreter so appointed may appear to have the natural professional bias that occurs because the interpreter is part of the appointed legal team. Interpreters appointed to work with an appointed attorney shall disclose to the attorney any real bias or interest in the parties or witnesses in a case, or any situation or relationship that may be perceived by the court, any of the parties, or any witnesses as a personal bias or interest in the parties or witnesses in a case. The appointed attorney shall either petition the court for the appointment of a different interpreter to the case, thereby releasing the interpreter from the interpreter's obligation in the case, or the attorney shall bring the situation to the attention of the court and opposing party, on the record. If the attorney fails to bring the conflict to the attention of the court, the interpreter must notify the court of a potential conflict of interest. This disclosure shall not include privileged or confidential information. If all of the parties agree that the interpreter may serve on the case, the interpreter may remain appointed to the case.

Commentary

Any condition that interferes with the objectivity of the interpreter constitutes a conflict of interest. Before accepting appointment to a case, the interpreter must disclose to all parties and the court any prior involvement in the case or with the parties or witnesses, whether personal or professional, that could be reasonably construed as a conflict of interest. This disclosure shall not include privileged or confidential information. If, after this disclosure on the record, all parties acknowledge the situation and determine that it is in the best interest of justice for the interpreter to serve in the case, the interpreter may interpret in the case.

The following are circumstances that are presumed to create actual or perceived conflicts of interest for the interpreter where the interpreter needs to declare the conflict of interest before appointment on the record and let the court determine if the interpreter should serve in the case:

1. The interpreter is a friend, associate, or relative of a party or counsel for a party involved in the proceedings;

2. The interpreter has served in an investigative capacity in the case at issue for any party involved in the case;

3. The interpreter has previously been retained by a law enforcement agency to assist in the preparation of the criminal case at issue;

4. The interpreter or the interpreter's spouse or child has a financial interest in the subject matter in controversy or in a party to the proceeding or any other interest from which the interpreter may benefit from, that would be affected by the outcome of the case;

5. The interpreter has been involved in the choice of counsel or law firm for the case.

The interpreter should not serve in any manner in which payment for the interpreter's services is contingent upon the outcome of the case.

The interpreter appointed to work with an appointed attorney is to interpret what is spoken by the non-English speaking party in private conferences and conversations between the appointed attorney and the non-English speaking party. In a case where the court has appointed the attorney and the interpreter, the interpreter may also sit at the counsel table and interpret the proceeding for the non-English speaking person in a simultaneous interpretation mode.

An interpreter who is also an attorney may prepare a case without the aid of an additional interpreter; however, it is not required. An attorney who is also an interpreter may not act as the attorney and the interpreter for the non-English speaking party in court during a proceeding.

Though appointed as a member of the legal team, the interpreter should avoid any conduct or behavior that presents the appearance of any personal favoritism toward any of the parties. The interpreter should maintain professional relationships with the appointed attorney and the non-English speaking party, and should limit their involvement with the non-English speaking party to that of interpretation. The interpreter should discourage a non-English speaking party's personal dependence on the interpreter and should defer all questions the party may have to the appointed attorney.

Though a member of the appointed legal team, the interpreter must not take on the role of advocate for the non-English speaking party. Despite the fact that the interpreter is a member of the legal team, the interpreter must still interpret everything that is said in court to the non-English speaking party <u>and</u> to interpret everything that is said by the non-English speaking party. For example, if in a criminal case the defendant becomes angry during the proceeding and starts to shout obscenities at a witness who is testifying, it is the interpreter's duty to interpret for the court participants everything that the defendant is saying, even if what is being said by the defendant is not helpful to the defense effort.

An interpreter appointed to a case should not perform bilingual paralegal, investigative, or clerical work on the same case. The interpreter shall not claim paralegal, investigative, or clerical work as interpretation in any billings.

During the course of the proceedings, the interpreter should refrain from conversations with parties, witnesses, jurors, attorneys, or with friends or relatives of any party in or

near the courtroom, except in the discharge of their official functions. It is especially important that the interpreter, who is often familiar with attorneys or other members of the courtroom work group, including law enforcement officers, refrain from casual and personal conversations with anyone in the court that may convey an appearance of a special relationship or partiality to any of the court participants other than that of the professional relationship of interpreting for the appointed attorney and the non-English speaking party.

An example of conversation that would be within the interpreter's duties would be: communicating with the non-English speaking party prior to appointment to the case in an informal setting where the interpreter would listen to accent, rhythm, and the choice of words of the non-English speaking party to determine if the interpreter can adequately interpret for the non-English speaking party.

The interpreter should strive for professional detachment. The interpreter should avoid all verbal and nonverbal displays of personal attitudes, prejudices, emotions, or opinions.

Should the interpreter become aware that a proceeding participant views the interpreter as having a bias or being biased, the interpreter should disclose that knowledge to the appointed attorney. The appointed attorney shall either petition the court for the appointment of a different interpreter to the case thereby releasing the interpreter from the interpreter's obligation in the case, or the attorney shall bring the situation to the attention of the court and opposing party, on the record. If the attorney fails to bring the conflict to the attention of the court, the interpreter must notify the court of a potential conflict of interest. This disclosure shall not include privileged or confidential information. If all of the parties agree that the interpreter may serve on the case, the interpreter may remain on the case.

5. PROFESSIONAL DEMEANOR

The interpreter shall conduct himself or herself in a manner consistent with the dignity of the court and shall be as unobtrusive as possible.

Commentary

The interpreter should know and observe the established protocol, rules, and procedures for delivering interpreting services. When speaking in English, the interpreter should speak at a rate and volume that enables the interpreter to be heard and understood throughout the courtroom, but the interpreter's presence should otherwise be as unobtrusive as possible. The interpreter should work without drawing undue or inappropriate attention to himself or herself. The interpreter should dress in a manner that is consistent with the dignity of the court proceedings.

The interpreter should avoid obstructing the view of any individual involved in the proceeding. An interpreter who uses sign language or other visual modes of communication must, however, be positioned so that the sign language, facial

expressions and whole body movement are visible to the person for whom the interpreter is interpreting.

The interpreter is encouraged to avoid personal or professional conduct that could discredit the court.

6. CONFIDENTIALITY

The interpreter shall understand the rules of privileged and other confidential information and shall protect the confidentiality of all privileged and other confidential information.

Commentary

The interpreter must protect and uphold the confidentiality of all privileged information obtained during the course of his or her duties. It is especially important that the interpreter understand and uphold the attorney-client privilege that requires confidentiality with respect to any communication between attorney and client. This rule also applies to other types of privileged communications.

The interpreter must also refrain from repeating or disclosing case information obtained by the interpreter in the course of employment.

In the event that the interpreter becomes aware of information that suggests imminent harm to someone or relates to a crime being committed during the course of the proceedings, the interpreter should immediately disclose the information to the criminal presiding judge or a judge who is not involved in the proceeding (if the presiding judge is involved in the proceeding). At that point, it will become that judge's responsibility to determine what action, if any, should be taken regarding the situation.

7. RESTRICTION OF PUBLIC COMMENT

The interpreter shall not publicly discuss, report, or offer an opinion concerning a matter in which the interpreter is or has been engaged, even when that information is not privileged or required by law to be confidential.

8. SCOPE OF PRACTICE

The interpreter shall limit himself or herself to interpreting or performing sight translating and shall not give legal advice, express personal opinions to individuals for whom the interpreter is interpreting, or engage in any other activities that may be construed to constitute a service other than interpreting or translating.

Commentary

Because the interpreter is responsible only for enabling others to communicate, the interpreter should limit himself or herself to the activity of interpreting or translating only. The interpreter should refrain from initiating communications while interpreting unless it is necessary for assuring an accurate and faithful interpretation.

The interpreter may be required to initiate communications during a proceeding when they find it necessary to seek assistance in performing his or her duties. Examples of such circumstances include seeking direction when unable to understand or express a word or thought, requesting speakers to moderate their rate of communication or repeat or rephrase something, correcting the interpreter's own interpreting errors, or notifying the court of reservations about his or her ability to satisfy an assignment competently. In such instances, the interpreter should make it clear that the interpreter is speaking for himself or herself.

The interpreter may convey legal advice only when the interpreter is interpreting legal advice that an attorney is giving. The interpreter should not explain the purpose of forms, services, or otherwise act as a counselor or advisor unless the interpreter is interpreting for someone who is acting in that official capacity.

The interpreter should not personally perform acts that are the official responsibility of other court officials, including, but not limited to, court clerks, pretrial release investigators, indigence verification specialists, or probation counselors.

An interpreter appointed to a case should not perform bilingual paralegal, investigative, or clerical work on the same case. The interpreter shall not claim paralegal, investigative, or clerical work as interpretation in any billings.

9. ASSESSING AND REPORTING IMPEDIMENTS TO PERFORMANCE

The interpreter shall assess at all times his or her ability to deliver interpretation services. When the interpreter has any reservation about his or her ability to satisfy an assignment competently, the interpreter shall immediately convey that reservation to the court.

Commentary

If the communication mode or language of the non-English speaking person cannot be readily interpreted or becomes difficult to readily interpret, the interpreter should notify the court immediately.

The interpreter should notify the court of any environmental or physical limitation that impedes or hinders the interpreter's ability to deliver interpreting services adequately, e.g., the courtroom is not quiet enough for the interpreter to hear or be heard by the non-English speaker, more than one person at a time is speaking, or principals or witnesses of the court are speaking at a rate of speed that is too rapid for the interpreter to adequately interpret. A sign language interpreter must ensure that he or she can both see and convey the full range of visual language elements that are necessary for

communication, including facial expressions and body movement, as well as sign language.

The interpreter should notify the court of the need to take periodic breaks in order to maintain mental and physical alertness and to prevent interpreter fatigue. The interpreter should recommend and encourage the court to use more than one interpreter in a lengthy proceeding or trial.

Even a competent and experienced interpreter may encounter cases where routine proceedings suddenly involve technical or specialized terminology unfamiliar to the interpreter, e.g., the unscheduled testimony of an expert witness. When such instances occur, the interpreter should request a brief recess in order to familiarize himself or herself with the subject matter. If familiarity with the terminology requires extensive time or more intensive research, the interpreter should inform the judge.

The interpreter is encouraged to make inquiries as to the nature of a case whenever possible before accepting an assignment. This enables the interpreter to more closely match his or her professional qualifications, skills, and experience to potential assignments, and more accurately assess the interpreter's ability to competently satisfy those assignments.

The interpreter should refrain from accepting a case if the interpreter feels the language and subject matter of that case may exceed his or her skills or capacities. The interpreter should feel no compunction about notifying the court if the interpreter feels unable to perform competently due to lack of familiarity with terminology, preparation or difficulty in understanding a witness or defendant.

The interpreter should notify the presiding officer of any personal bias he or she may have involving any aspect of the proceedings, including any bias as to the subject matter of the case, or bias against any of the parties in the case.

10. DUTY TO REPORT ETHICAL VIOLATIONS

The interpreter shall report to the court any actions by any persons that may impede the interpreter's compliance with any law, any provision of this code, or any other official policy governing court interpreting and sight translating.

Commentary

Because the users of interpreting services frequently misunderstand the proper role of the interpreter, they may ask or expect the interpreter to perform duties or engage in activities that run counter to the provisions of this code or other laws, regulations, or policies governing court interpreters. It is incumbent upon the interpreter to inform such persons of his or her professional obligations. If, having been apprised of these obligations, the person persists in demanding that the interpreter violate them, the interpreter should turn to the court's interpreter coordinator, the trial court administrator or trial court clerk, or the judge to resolve the situation.

11. PROFESSIONAL DEVELOPMENT

The interpreter shall continually improve his or her skills and knowledge and advance the profession through activities such as professional training and education and interaction with colleagues and specialists in related fields.

Commentary

The interpreter must continually strive to increase his or her knowledge of the languages in which the interpreter works professionally, including past and current trends in technical, vernacular, and regional terminology, as well as their application within court proceedings.

The interpreter should keep informed of all statutes, rules of courts, and policies of the judiciary that relate to the performance of the interpreter's professional duties.

The interpreter should seek to elevate the standards of the profession through participation in workshops, professional meetings, interaction with colleagues, and reading current literature in the field.