



# **Oregon Judicial Department Best Practices For Working with Interpreters**

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## I. INTRODUCTION

### A. General Policy

To secure a person's constitutional rights and other rights, courts must provide qualified interpreters to persons who are unable to readily understand or communicate in the English language because of a *non-English-speaking cultural background* or a *disability*. ORS 45.273(1).

A criminal defendant who does not speak English has a due process right to an interpreter to interpret the proceedings so that defendant can participate effectively in his or her own defense. *Arizona v. Natividad*, 111 Ariz 191 (1974).

### B. Definitions

#### 1. "Interpret" and "Translate"

"Interpret" is the appropriate professional term for the oral transfer of meaning from one language into another

- a. Simultaneous interpretation is rendering one language into another while the speaker is speaking.
- b. In consecutive interpreting, the interpreter waits until the speaker has finished before rendering one language into another.
- c. Sight translation (also called "sight interpretation") is the rendering of written material into another spoken language or signed language.

"Translate" is the appropriate professional term for the transfer of meaning from one written language into another written language.

*See Code Prof. Resp. for Interpreters (1995) (Applicability)*. **Note:** Several references in ORS do not respect the professional terminology, probably because the drafter was not familiar with the profession, not because the drafter intended to differentiate.

#### 2. "Non-English-Speaking Person"

A "non-English-speaking person" is a person, who by reason of place of birth or culture:

- a. Speaks a language other than English; and
- b. Does not speak English with adequate ability to communicate effectively in the proceedings.
- c. ORS 45.275(9)(b) as amended by 2005 Or Laws, ch. 385, § 2 (effective June 29, 2005).

#### 3. "Disabled Person"

A "disabled person" is a person who:

- a. Cannot readily understand the proceedings because of deafness or a physical hearing impairment; or
  - b. Cannot communicate in the proceedings because of a physical speaking impairment.
- ORS 45.285(4)(b).

**4. Certified Court Interpreter**

An interpreter holding a current credential awarded by OSCA to an interpreter who has met all certified court interpreter credential requirements for a spoken language or ASL (American Sign Language) as established by the State Court Administrator according to ORS 45.291

**5. Registered Court Interpreter**

An interpreter holding a current credential awarded by OSCA to an interpreter who achieves appropriate scores on language assessment tests and fulfills other requirements established by the State Court Administrator according to ORS 45.291 (1)(d). **NOTE:** Registered interpreters have passed language assessment tests, not court interpreting skills tests.

**6. “Qualified Interpreter” for a Non-English-Speaking Person**

“Qualified interpreter” is not a level of credential or certification; it is a temporary status determined by a judge or hearings officer. An interpreter is deemed qualified by the court to interpret a particular language for a particular hearing.

**II. CERTIFIED, REGISTERED AND QUALIFIED INTERPRETERS**

**A. General Requirements for All Interpreters**

**1. Interpreters as Experts**

The court must qualify in-court interpreters as *experts* under the Oregon Evidence Code. OEC Rule 604.

**2. Oath or Affirmation**

- a. Interpreters certified or registered under ORS 45.291 need not make the oath or affirmation required by OEC Rule 604.

**b.** Interpreters not certified or registered under ORS 45.291 must take an *oath or affirmation* to make a true and impartial interpretation of the proceedings in an understandable manner using the interpreter’s best skills and judgment in accordance with the standards and ethics of the interpreter profession. OEC Rule 604. *See also* Code Prof. Resp. for Interpreters § 1 (1995) (providing that interpreters must “render a complete and accurate interpretation or sight translation, without altering, omitting anything from, or adding anything to what is stated or written”).

**3. Interpreter Name and Credential Status on the Record**

When required by the court, a hearing officer or the designee of a hearing officer, the interpreter must state the interpreter’s name on the record and indicate whether the interpreter is certified under ORS 45.291. ORS 45.275(8) as amended by 2005 Or Laws, ch. 385, § 2 (effective June 29, 2005).

**4. Conflict of Interest**

An interpreter must not have a “conflict of interest with any of the parties or witnesses in the proceeding.” ORS 45.288(3)(a). *See also Appendix H: Commentary to Code Prof. Resp. for Interpreters § 3 (1995).* **NOTE:** An interpreter having a conflict of interest with any with any of the parties or witnesses in the proceeding is disqualified from providing interpreting services on the case. ORS 45.288(3)(a).

**5. Cooperation**

An interpreter must be able to work cooperatively with the judge and the person in need of an interpreter or the counsel for that person. ORS 45.288(3)(c). **NOTE:** An interpreter unable to work cooperatively with the judge and the person in need of an interpreter or with the counsel for that person is disqualified from providing interpreting services on the case. ORS 45.288(3)(c).

**B. “Certified” Requirements**

The office of the State Court Administrator awards the certified credential to spoken language and American Sign Language interpreters who:

1. Achieve appropriate interpreting skills examination scores in the following interpretation modes:
  - a. Simultaneous

- b. Consecutive
- c. Sight

2. Achieve appropriate ethics examination scores
3. Accrue adequate continuing education units for certified credential renewal.
4. Fulfill other requirements as established by the Office of the State Court Administrator under ORS 45.291(1).

**C. “Registered” Requirements**

The Office of the State Court Administrator awards the registered credential to interpreters who

1. Achieve appropriate language proficiency examination scores
2. Achieve appropriate ethics examination scores
3. Accrue adequate continuing education units for registered credential renewal
4. Fulfill other requirements as established by the Office of the State Court Administrator under ORS 45.291(1).

**D. “Qualified” Requirements**

1. For non-English-speaking persons, a qualified interpreter must be readily able to
  - a. Communicate with the non-English-speaking person;
  - b. Orally transfer the meaning of statements to and from English and the non-English-speaking person’s language; and
  - c. Interpret in a manner that conserves the meaning, tone, level, style and register of the original statement, without additions or omissions.
  - d. Interpret the dialect, slang, or specialized vocabulary used by the non-English-speaking party or witness. ORS 45.275(9)(c) as amended by 2005 Or Laws, ch. 285, §2 (effective June 29, 2005).
2. For disabled persons, a qualified interpreter must be readily able to
  - a. Communicate with the disabled person,
  - b. Interpret the proceedings, and



c. Accurately repeat and interpret the statements of the disabled person to the court. ORS 45.285(4)(d).

### **III. INTERPRETERS FOR NON-ENGLISH-SPEAKING PARTIES OR WITNESSES**

#### **A. Court Requirement**

The court must appoint an interpreter under ORS 45.288(2) in any civil or criminal proceeding whenever it is necessary to:

1. Interpret the proceedings to a non-English-speaking party;
2. Interpret the testimony of a non-English-speaking party or witness; or
3. Assist the court in performing its duties and responsibilities.

See also ORS 45.275(1).

#### **B. “Parties” in Juvenile Cases**

##### **1. Dependency Cases**

From the time a petition is filed, “parties” in juvenile dependency cases under ORS 419B.100 and 419B.500 include:

- The child or ward;
- The parents or guardian of the child or ward;
- A putative father of the child or ward under ORS 419B.875(1)(a)(C);
- The State;
- The juvenile department;
- A court appointed special advocate, if appointed;
- The Department of Human Services or other child-caring agency with temporary custody of the child or ward; and
- The tribe in cases subject to the Indian Child Welfare Act.

ORS 419B.875(1)(a) as amended by 2005 Or Laws, ch. 450, § 8 (effective July 7, 2005) & 2005 Or Laws, ch. 160, § 4 (effective Jan. 1, 2006). See also ORS 419B.875(2) as amended by 2005 Or Laws, ch. 450, § 8 (effective July 7, 2005) (providing rights of parties); ORS 419B.875(6) as amended by 2005 Or Laws, ch. 450, § 8 (effective July 7, 2005) (requiring interpreters for parties granted

rights of limited participation to be appointed as specified in ORS 45.275 and ORS 45.285).

**Note:** See generally 2005 Or Laws, ch. 160, § 4(4) (effective Jan. 1, 2006) (requiring a putative father who satisfies the criteria of ORS 419B.875(1)(a)(C) to be treated as a parent until the court confirms his paternity or finds that he is not the legal father of the child or ward); 2005 Or Laws, ch. 160, § 4(5) (effective Jan. 1, 2006) (providing that if no appeal from the judgment or order is pending, a putative father whom a court of competent jurisdiction has found not to be the child or ward's legal father or who has filed a petition for filiation that was dismissed is not a party under ORS 419B.875(1)(a)(C)).

**a. Intervenor as Party**

An intervenor who is granted intervention under ORS 419B.116 is a party to a proceeding under ORS 419B.100 but is not a party to a proceeding under ORS 419B.500. 2005 Or Laws, ch. 450, § 8(1)(b) (effective July 7, 2005)

**2. Delinquency Cases**

At the *adjudication* stage of a delinquency proceeding, the parties to the proceeding are

- the youth
- the State

Although not parties during adjudication, ORS 419C.285(4) provides for the appointment of an interpreter for the parents or guardian(s) of the youth.

At the *dispositional* stage of a delinquency proceeding, the following are also parties:

- The parents or guardian of the youth;
- A court appointed special advocate, if appointed;
- The Oregon Youth Authority or other child care agency, if the youth is temporarily committed to the agency; and
- An intervenor who petitions or files a motion on the basis of a child-parent relationship under ORS 109.119.

ORS 419C.285(1)(d).

**IV. INTERPRETERS FOR PARTIES OR WITNESSES WITH A DISABILITY**

**A. Court Requirement**

The court is required to appoint a *qualified interpreter* and make available appropriate assistive communication devices whenever it is necessary to interpret the proceedings to a disabled person or to interpret the testimony of a disabled person. This includes appointing a qualified interpreter for a *court-ordered deposition*, if no other person is responsible for providing an interpreter. ORS 45.285(1).

**B. The Americans with Disabilities Act (ADA)**

**1. Prohibits Discrimination**

Title II of the Americans with Disabilities Act (ADA) prohibits discrimination against people with disabilities in state and local government services. *See* 42 USC §§ 12115-12161.

**2. Definition of a Person with Disabilities**

A disabled individual means a person:

- a. With a physical or mental impairment that substantially limits one or more of the major life activities of such individual;
- b. With a record of such an impairment; or
- c. Who is regarded as having such an impairment.

42 USC § 12102(2).

**C. Oregon Statutes Regarding People with Disabilities**

**1. Similar to ADA**

Oregon has statutes similar to the ADA that define disability and mandate that reasonable accommodations be granted to those persons with disabilities. *See* ORS 44.545; ORS 44.547; ORS 659A.100; ORS 659A.103; ORS 410.060; ORS 410.710; ORS 410.715.

**2. ADA Definition of Disability is Broader**

Even though Oregon has statutes similar to the ADA, the ADA definition of disability is broader than the definition of “disabled person” in ORS 45.285(1)(c). **Note:** Although ORS uses “disabled person,” the preferred term is “person with a disability.”

**D. Qualifications**

The court must take special care to appoint an interpreter who is uniquely qualified to interpret in the language used by the disabled person. *See People v. Rodriguez*, 546 NYS2d 769 (1989) (“[T]he level of communication skill of the person needing assistance must be matched with the level of communication skill or competency of the interpreter . . .”).

**E. Interpreters for Hearing-Impaired Persons**

1. **ASL**  
American Sign Language (ASL) is the language most commonly used by hearing-impaired Americans, especially those whose hearing was impaired, or who became deaf early or were born with the impairment.
2. **Other Manual Systems**  
Other “manual communication systems” frequently used are
  - Pidgin Sign English;
  - Manual English; and
  - Finger Spelling.
3. **Relay Interpreting**  
“Relay interpreting” may be needed if the disabled person has never learned standard signing or finger spelling. For example, the disabled person may communicate only with gestures. Relay interpreters have studied to become experts in communicating with gesture. If the relay interpreter is deaf or hearing- or speech-impaired, the court should appoint a second interpreter to interpret the relay interpreter’s ASL into spoken English.
4. **Real Time Reporting or Computer-Assisted Transcription**  
The court may need to appoint a real time reporter with a monitor or other projection system to provide a written record of a proceeding as it occurs, so that a late-deafened person who is not fluent in sign language may read the transcription in real time. While not considered “interpreting,” real time transcription may be the best or only way to provide meaningful access to the proceeding.

**F. Interpreters for Persons with Cognitive Disability**

See Appendix D for the Attorney General’s extensive opinion on how to handle requests for process interpreters. Some persons with a cognitive disability request a “process interpreter” under the Americans with Disabilities Act (ADA).

1. **Motion and Hearing at Court’s Discretion**  
UTCR 7.060(1) requires a party to “notify” the court to request special accommodation under the ADA. The court has discretion to require a party to file a motion and may hold a hearing if the court determines any additional fact-finding is necessary to permit the court to respond to the request.
2. **“Meaningful” and “Necessary” Accommodation**  
The court has authority to determine whether a process interpreter would be a meaningful accommodation. If specific facts and findings support the court’s conclusion that a process interpreter is not a meaningful or necessary

accommodation, the court would not need to pay for the requested accommodation. See the appendix to Appendix D for a list of inquiries that the court may use in making such a determination.

## V. CONDUCTING COURT PROCEEDINGS USING INTERPRETERS

### A. When Court Must Appoint Certified Interpreter

The court *must* appoint an Oregon Certified Court Interpreter whenever a certified court interpreter is *available, able, and willing to serve*, with one exception: The court has discretion to appoint a noncertified but otherwise qualified interpreter if a party or witness so requests. ORS 45.288(2). *See also* Preamble to Code Prof. Resp. for Interpreters (1995).

### B. Uniform Trial Court Rules Require Notice

#### 1. Timeliness

When a person requires an interpreter or auxiliary aid, the court must be notified as soon as possible, but no later than **4 judicial days** in advance of the proceeding. UTCR 7.060 (ADA accommodations); UTCR 7.070 (foreign language interpreters).

#### 2. Waiver

The court may waive the 4-day notice requirement for good cause. UTCR 7.060; UTCR 7.070.

### C. Suggested Foundation Questions to Qualify the Interpreter

#### 1. Suggested Questions to Ask Interpreters

- a. “Do you currently hold the Oregon Certified Court Interpreter credential?”
- b. “Do you hold the federal court interpreter certification awarded by The Administrative Office of the United States Courts?”
- c. Do you currently hold the Oregon Registered Court Interpreter credential?
- d. “Have you read and do you understand and agree to adhere to the *Code of Professional Responsibility for Interpreters in Oregon Courts*?”
- e. “Having that code in mind, are you aware of any conflicts of interest you may have in this particular case?”
- f. “Have you had an opportunity to speak with the person in this case who needs an interpreter? Can you readily communicate with the non-English-speaking person?”

See ORS 45.275(8) as amended by 2005 Or Laws, ch. 385, § 2 (effective June 29, 2005) (requiring a noncertified interpreter to submit qualifications on the record); ORS 45.275(9)(b) as amended by 2005 Or Laws, ch. 385, § 2 (effective June 29, 2005) (defining a non-English-speaking person).

**2. Additional Suggested Foundation Questions to Ask As Needed**

See Appendix B for the checklist form which courts may choose to use to establish an interpreter's qualifications.

**D. Interpreter Oath**

**A certified or registered interpreter, upon attaining the credential (under ORS 45.291), has already made the oath or affirmation required by OEC Rule 604 and need not make again an oath or affirmation prior to the court proceeding.** ORS 45.275(8) as amended by 2005 Or Laws, ch. 385, § 2 (effective June 29, 2005). For interpreters not holding the certified or registered credential, the court swears the interpreter in as an officer of the court.

The interpreter must make an oath or affirmation to “make a true and impartial interpretation of the proceedings in an understandable manner using the interpreter’s best skills and judgment in accordance with the standards and ethics of the interpreter profession.” OEC Rule 604; ORS 45.275(8) as amended by 2005 Or Laws, ch. 385, § 2 (effective June 29, 2005).

The following **oath** (2007) is appropriate:

*I solemnly swear [or affirm] that in all proceedings in the courts of Oregon to which I am appointed as an interpreter, I will interpret truly, accurately, completely, and impartially in accordance with the standards prescribed by law, the Code of Professional Responsibility for Interpreters Working in Oregon Courts, and Oregon’s guidelines for court interpreting.*

**Special NOTE: ASL or Certified Deaf Interpreters Oath for Jury Deliberations:**

Per ORS 10.115, please use the following oath in every case in which a juror with a disability is assisted by an interpreter or person operating an assistive communication device.

*If I am appointed as an interpreter, or assistive communications device operator, for a juror, I also swear [or affirm] that I will not participate personally in the jury’s deliberations, nor make any comment about my personal recollections of the evidence or my opinions about the outcome of this case. I will not disclose, retain, or comment upon anything that I hear in jury deliberations unless ordered to do so by the court. I promise this under the pains and penalties of perjury. I understand that perjury is a crime under ORS 162.065.*

## **E. Number of Interpreters Needed**

### **1. Multiple Parties Needing Same Language Interpreter**

#### **a. Separate Interpreters**

The court can afford each party a separate interpreter *if needed* to avoid a conflict of interest. *See* ORS 45.273(1) (declaring a state policy to secure constitutional rights of person unable to readily understand or communicate in English). **Please note “Preferred Procedure” below.**

#### **b. Preferred Procedure**

To ensure uniform interpretation, an interpreter interprets the proceeding through closed circuit electronic transmission system, and all parties needing an interpreter listen by means of individual headphones.

If an interpreter for the proceeding provides interpretation to multiple parties, another interpreter must be available to assist in communication between client and attorney during proceedings.

### **2. Party and Witnesses Needing Interpreter**

The court should provide two interpreters for cases in which a party needs an interpreter and witnesses also need the same language interpreter. If only one interpreter is used, the party needing an interpreter would be left without the ability to consult with his or her attorney while the interpreter is interpreting at the witness stand. *See People v. Rioz*, 161 Cal App 3d 905, 207 Cal Rptr 903 (1984) (using only one interpreter to interpret for the party and witness resulted in a reversal of conviction); *see also State v. Dam*, 111 Or App 15, 18 n.1 (1992); *People v. Aguilar*, 35 Cal 3d 785, 677 P2d 1198 (1984).

#### **NOTE: Exception When Two Interpreters Not Available**

When two interpreters are not available, for example in rural communities, then any potential conflict should be disclosed and any waiver put on the record. The procedure for attorney-client communication also should be put on the record.

### **3. Oral Relay Interpreting**

Oral relay interpreting is necessary when an interpreter is not available for the needed interpretation directly into English. For example, if there is no Maya-English interpreter, there would be two interpreters; one from Maya-Spanish and one Spanish-English.

## **F. Jury Issues**

### **1. UCrJI No. 1002**

The court should give the Uniform Criminal Jury Instruction in criminal trials in which an interpreter is being used for the parties or witnesses. UCrJI No. 1002, “Use of an Interpreter.”

**2. Instructing the Jury if a Jury Panel Member Knows the Language Being Interpreted**

*See generally* New Jersey Supreme Court Task Force on Interpreter and Translation Services, § 1.2 (1985); *Amaru v. Stratton*, 209 NJ Super 1, 18, 506 A2d 1225, 1234 (1985).

**a. Suggested Instruction**

*“If any of you understand the language of the witness, disregard completely what the witness says in the other language. Consider as evidence only what is provided by the court interpreter in English.”*

**b. Sign Language**

When a party needs sign language interpretation and a potential juror understands sign language, it may not be appropriate for the potential juror to serve, because the juror may be able to observe and understand privileged attorney-client communications.

An alternative solution to removing the potential juror is to provide the hearing-impaired party real time interpretation (similar to closed caption television) if available and the party reads and understands English.

**c. Removing a Juror—ADA Implications**

Before removing a hearing-impaired juror or juror with another disability, the court should consider whether removal might violate the ADA’s antidiscrimination provisions.

**3. Non-English-Speaking Jurors**

**a.** Court proceedings must be conducted in English; therefore, a person who does not speak English is not qualified to serve as a juror. The court may provide an interpreter so that the court can determine a potential juror’s English speaking abilities and to interpret an explanation of this requirement to the potential juror. *See Commonwealth v. Acen*, 396 Mass 472, 487 NE2d 189 (1986).

**b.** Challenges to allow non-English speaking persons to serve as jurors have been unsuccessful in some jurisdictions. These challenges have generally been based on due process and equal protection guarantees. Oregon’s appellate courts have not yet addressed this issue. *See Commonwealth v. Acen*, 396 Mass 472, 487 NE2d 189 (1986); Majorie A. Shields,



**4. Jurors Who Are Disabled**

- a. Persons who are disabled are not ineligible to act as jurors and cannot be excluded from the jury list or from jury service because of their disability. *See* ORS 10.030(3)(a); *People v. Guzman*, 76 NY2d 1, 555 NE2d 259, 556 NYS2d 7 (1990); *Galloway v. Superior Court of the District of Columbia*, 816 F Supp 12 (DDC 1993).
- b. On written request of a deaf, hearing-impaired, or speech impaired juror, and on the court's finding that the juror needs an interpreter or assistive communication device, the court must appoint a qualified interpreter or provide an assistive communication device. ORS 10.115(2).
- c. The court must administer to the qualified interpreter appointed for a disabled juror an oath "that the interpreter will accurately communicate the proceedings to the juror and accurately repeat the statements of the juror." ORS 10.115(3).
- d. Except as provided in ORS 10.115(5), a qualified interpreter appointed for a disabled juror must be present during deliberations by the jury on which the juror serves. The interpreter may not participate in the jury deliberations in any manner except to facilitate communication between the disabled juror and the other jurors or other persons with whom the jurors may communicate, and the court must so instruct the jury and the interpreter. ORS 10.115(4).
- e. When a disabled juror serves on a trial jury each party to the proceeding must stipulate to the presence of the qualified interpreter appointed for the juror during jury deliberations, and must prepare and deliver to the court proposed instructions in respect to the interpreter. ORS 10.115(5).

**G. When a Party or Counsel Challenges an Interpreter**

1. If a party or counsel believes an interpretation might *materially alter* the meaning of the words or phrases interpreted, the party or counsel should bring this to the judge's attention.
2. The judge should conduct an inquiry outside the presence of the jury, if any, as to the materiality of the alleged error. If the judge finds that the error might affect the understanding of the trier of fact, the judge should:

- a. Have the question and answer at issue read;
  - b. Have the challenger specify the alleged error and suggest the correct interpretation of the challenged material; and
  - c. Inquire of the interpreter if the alternative proposed by the challenger is acceptable to the interpreter.
3. If the interpreter and challenger do not reach agreement, the judge should decide which interpretation is proper after hearing both sides. The court should:
- a. Presume that the assigned interpreter's version is correct; and
  - b. Place the burden of proof on the party challenging the interpretation. If the interpreter challenged is not certified, the judge may call in a certified interpreter who is not interpreting for the proceeding to consult regarding the interpretation. *See State v. Van Pham, et al*, 234 Kan 649, 675 P2d 848 (1984).

#### **H. Judge's Responsibility When Judge Believes Interpretation Incorrect**

If the judge believes an interpretation might *materially alter* the meaning of the words or phrases interpreted, the judge has a responsibility to act. However, the judge cannot insert himself or herself into the proceeding as a witness and correct the record based on the judge's own opinion regarding how a phrase should be interpreted.

- 1. The judge should conduct an inquiry outside the presence of the jury, if any, as to the materiality of the alleged error. The judge should:
  - a. Have the question and answer at issue read or replayed; and
  - b. Inquire of the interpreter if the interpreter stands by the interpreter's previous version
- 2. If the interpreter stands by the interpreter's previous version, the judge may call in a certified interpreter to review the question and answer and the interpreter's version. This review should occur outside the presence of the jury.
- 3. If the certified interpreter believes the challenged interpreter's version is incorrect and offers a different interpretation, the judge must make a determination between the two versions.

If the judge decides on the certified interpreter's version, the judge may allow the

challenged interpreter to make the correction on the record, or the judge may amend the record and advise the jury. The judge may decide to remove the challenged interpreter from the case, and appoint a certified interpreter.

4. If the certified interpreter confirms that the interpretation is correct, the judge should abide by the certified interpreter's expert linguistic opinion.

#### **I. Suggestions for Proper Use of Interpreters in the Courtroom**

- a. Speak audibly and require all speakers to do the same.
- b. During consecutive interpretation, speak in phrases, with *long pauses*. Instruct and *remind others* to do the same.
- c. Allow interpreters to place themselves in the courtroom where they can best hear and see the speakers.
- d. Control speed of speech and reading in the court as it can affect the interpreter's ability to understand, retain and interpret information.
- e. Do not let two or more people talk at the same time.
- f. If only one interpreter is assigned to a hearing/trial, provide frequent breaks (about every 30 minutes); errors/omissions increase after continual interpretation beyond 30 minutes. *See Mirta Vidal, New Study on Fatigue Confirms Need for Team Interpreting, (1997)*
- g. Speak directly to the party or witness, not to the interpreter, and advise counsel to do likewise. For example, do not say to the interpreter, "Ask him where he was." Rather, say, "Where were you" directly to the party.
- h. Assist the interpreter in obtaining access to all relevant documents thus enabling the interpreter to prepare for expected interpretation and specialized terminology such as medical terms, ballistics, forensics, etc.
- i. Before trial, allow the interpreter to spend a few minutes to communicate with the person who needs the interpreter in order to confirm their mutual ability to communicate. Remind the interpreter and the non-English-speaking person not to talk about the facts of the case while establishing communication.
- j. If available, provide accurately translated legal forms.

## **VI. INTERPRETER-CLIENT PRIVILEGE**

A person with a disability or a non-English-speaking person who has used an interpreter has a privilege to refuse to disclose and to prevent an interpreter from disclosing any communications to which the person was a party that were made while the interpreter was providing interpretation services for the person. The privilege extends only to those communications between the person needing the interpreter and another, and translated by the interpreter, that would otherwise be privileged under the Oregon Evidence Code (e.g., communication between the person and the person's attorney that the interpreter interprets). OEC Rule 509-1 (disabled person sign language interpreter privilege); OEC Rule 509-2 (non-English speaking person-interpreter privilege). See also Code Prof. Resp. for Interpreters § 6 (1995) (requiring interpreters to understand the rules of privileged information).

**Note:** See Chapter 11, V.L. "Disabled Person-Sign Language Interpreter Privilege," and V.M. "Non-English-Speaking Person-Interpreter Privilege."

## **VII. CODE OF PROFESSIONAL RESPONSIBILITY FOR INTERPRETERS**

### **A. Adopted 1995**

The Oregon Supreme Court adopted the *Code of Professional Responsibility for Interpreters in the Oregon Courts* on May 19, 1995 in Chief Justice Order No. 95-042, published in Oregon Appellate Court Advance Sheets 1995, No. 15. A copy of the order is included in Appendix A.

### **B. Code Serves as Guide**

The Code is a guide for "all persons, agencies, and organizations who administer, supervise use of, or deliver interpreting services to the courts." Code Prof. Resp. for Interpreters (1995) (Applicability).

### **C. Permissible Deviation**

In unique situations, the court, "in order to ensure effective communication," may authorize deviation from the Code. Code Prof. Resp. for Interpreters (1995) (Applicability).

### **D. Code Violations**

If an interpreter violates the Code, the court or State Court Administrator may remove the interpreter from a court's list of qualified or certified interpreters. Code Prof. Resp. for Interpreters (1995) (Applicability).

## **E. Judge's Responsibility**

Each judge should be familiar with the canons of the Code of Professional Responsibility for Interpreters in the Oregon Courts and its commentary. *See entire code: Appendix H* Canon 1. Accuracy and completeness.

- Canon 2. Representations of qualifications.
- Canon 3. Impartiality and avoidance of conflict of interest—court or proceeding interpreter.
- Canon 4. Impartiality and avoidance of conflict of interest—interpreter appointed to work with state-paid, appointed attorney.
- Canon 5. Professional demeanor.
- Canon 6. Confidentiality.
- Canon 7. Restriction of public comment.
- Canon 8. Scope of practice.
- Canon 9. Assessing and reporting impediments to performance.
- Canon 10. Duty to report ethical violations.
- Canon 11. Professional development.

## **VIII. COMPENSATION TO INTERPRETERS**

### **A. Interpreters for Non-English-Speaking Party or Witness**

1. The court may *not* charge a fee to any person for appointing an interpreter to interpret witness testimony or to assist the court in performing the duties and responsibilities of the court. ORS 45.275(2).
2. The court may *not* charge a non-English-speaking party who is unable to pay for interpreter services, nor may a fee be charged for an interpreter appointed to determine whether the person is non-English-speaking or unable to pay. ORS 45.275(2). *See also* ORS 45.275(3) (providing procedure for determining inability to pay).

### **B. Interpreter for Disabled Party or Witness**

The court may *not* charge a disabled person for the appointment of an interpreter or the use of an assistive communication device, nor may a fee be charged for an interpreter or device used to determine whether the person is disabled. ORS 45.285(2).

### **C. Cases Where Appointed Counsel Is Provided**

Fees necessary for the purpose of communication between appointed counsel and a client or witness in a criminal case must be payable from the **Public Defense Services Account** established by ORS 151.225. ORS 45.275(4)(c).

## D. **Substituted Interpreter**

### 1. **Where Party or Witness Is Dissatisfied with Interpreter**

If a party or witness is dissatisfied with the interpreter appointed by the court, the party or witness may request the appointment of a different certified interpreter. The request must be made in a manner consistent with the policies and notice requirements of the court or agency relating to the appointment and scheduling of interpreters. If the substitution of another interpreter will delay the proceeding, the person making the request must show *good cause* for the substitution. ORS 45.275(5) as amended by 2005 Or Laws, ch. 385, § 2 (effective June 29, 2005).

### 2. **Party or Witness Must Pay Additional Costs**

Any party may object to the use of any interpreter for good cause, but must bear any *additional costs* beyond the amount required to pay the original interpreter unless the court has appointed a different interpreter for cause. ORS 45.275(5) as amended by 2005 Or Laws, ch. 385, § 2 (effective June 29, 2005). *See generally* 2005 Or Laws, ch. 385, § 2(6) (effective June 29, 2005) (allowing a judge or hearing officer on own motion to substitute a different interpreter for the interpreter initially appointed in a proceeding at any time for any reason).

## IX. **SCHEDULING AVAILABLE INTERPRETERS**

If your court administrative staff needs assistance in locating a qualified interpreter, please contact Court Language Access Services (CLAS):

<http://courts.oregon.gov/OJD/OSCA/cpsd/InterpreterServices/pages/scheduleaninterpreter.aspx>

OJD Court Language Access Services 503-986-5855

## APPENDIX A: CHIEF JUSTICE ORDER NO. 95-042

IN THE SUPREME COURT OF THE STATE OF OREGON

In the Matter of Establishing a ) ORDER NO. 95-042  
Code of Professional Responsibility )  
for Interpreters in Oregon Courts ) 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 19th day of May 1995.

/s/ Wallace P. Carson, Jr.

Wallace P. Carson, Jr.  
Chief Justice



## APPENDIX B: ESTABLISHING AN INTERPRETER'S QUALIFICATIONS

### ESTABLISHING AN INTERPRETER'S QUALIFICATIONS |

ORS 45.275(8)-(9) as amended by 2005 Or Laws, ch. 385, § 2 (effective June 29, 2005) requires an interpreter to be at least a "qualified interpreter" to serve in the courts in Oregon. ORS 45.288 further requires the court to appoint an interpreter who is both qualified and certified, if available. If no certified interpreter is available, able, and willing to serve, the appointed interpreter still must meet the statutory requirements for qualification and state his or her qualifications on the record. When the court knows the interpreter well, the court may allow the parties to stipulate that the interpreter's qualifications are on record with the court.

To establish a new or unfamiliar interpreter's qualifications, the court should ask the following questions:

- \_\_\_ 1. Do you currently hold an Oregon Certified Court Interpreter credential?
- \_\_\_ 2. Do you hold the federal court certification awarded by The Administrative Office of the United States Courts?"
- \_\_\_ 3. Do you hold a current Oregon Registered Court Interpreter credential?
- \_\_\_ 4. Do you hold any certifications from any national organizations? Please explain what was involved in obtaining this certification.
- \_\_\_ 5. What is your native language?
- \_\_\_ 6. How did you learn English and the target language?
- \_\_\_ 7. How long have you been speaking
  - a. English?
  - b. the target language?
8. Have you had formal training in either language? Where, and how long?
  - a. Which language?
  - b. Where?
  - c. How long?
9. Can you read both languages? **(Not for ASL Interpreters.)** How well do you read each?
10. What is the highest grade you completed in school? What was your primary language in school?
11. Do you believe you can communicate with the non-English-speaking person (or party); *i.e.* have you talked with the person already or would you like a few minutes now to talk?
12. Have you ever interpreted in court before? Where? How often?
13. Describe any special training you have in court interpreting.
14. Describe the simultaneous and consecutive modes of interpretation.
15. Do you ever summarize statements while interpreting? Do you understand that the law requires you to interpret everything said by all parties?

16. Have you read the Code of Professional Responsibility for Interpreters in the Oregon Courts? Do you understand it? Briefly describe the main points.

## **APPENDIX C: ARTICLE ON TEAM INTERPRETING**

### **NEW STUDY ON FATIGUE CONFIRMS NEED FOR TEAM INTERPRETING** By Mirta Vidal

The practice of having simultaneous interpreters work in teams of two during lengthy assignments, although standard procedure in all other forums requiring interpretation has never been universally accepted by the courts. In most state and many federal courts, it is simply not done. Attempts by interpreters to institute the policy have met with resistance from judges who consider it wasteful and administrators who cite budgetary constraints. But a study recently conducted at the University of Geneva has contributed important new information on the subject: its findings provide further scientific evidence to support the position that accuracy is directly related to the length of time that a person interprets.

The study by Barbara Moser-Mercer and her colleagues (forthcoming) at the University of Geneva's Ecole de Traduction et d'Interpretation constitutes the first part of a two-part study on stress and fatigue in conference interpreting. Its aim is to examine the fatigue factor during extended turns, as well as the coping behavior of interpreters when under stress. The subjects –five native English-speakers working from German into English, whose professional experience ranged from 12 to 25 years in the booth – were told to work until they could no longer provide acceptable quality. During the first 30 minutes the frequency of errors – as measured with an elaborate error scale – rose steadily. The interpreters, however, “appeared to be unaware of this decline in quality,” according to the report, as most of them continued on task for another 30 minutes.

The error scale included several different categories by which quality can be determined. “Looking at the total number of errors,” the report states, “we can see that the frequency increases from three minutes to 30 minutes.”

The category of most serious errors, i.e., errors in meaning, rose consistently with increased time on task. At 60 minutes, all subjects committed a total of 32.5 meaning errors. “Considering that each meaning error, no matter how minor, does distort the message, a considerable increase in the number of meaning errors after 30 minutes on task does represent a significant decline in output quality,” the authors argue. In the category of nonsense, the number of errors committed by the subjects almost doubled after 30 minutes on task – from 4.5 after 15 minutes to 8.5.

Moser-Mercer and her colleagues conclude:

The increase in the number of meaning errors combined with the interpreters' lack of awareness of this drastic decrease in quality shed some light on the validity of interpreters' judgment of their own output quality [...] This lack of judgment appears to be the result of cognitive overload: a situation in which the interpreter tries to economize on processing capacity and allocate resources only to those parts of the interpreting process that will ensure continuous output (irrespective of the quality provided) [...] We can conclude from this that shorter turns do indeed preserve a high level of quality, but that interpreters cannot necessarily be trusted to make the right decision with regard to optimum time on task.

This is an important insight, since many interpreters, fearful of not getting work or of exposing what is erroneously perceived as a weakness, will insist that they can work for extended periods of time

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without any adverse consequences to accuracy. It also raises an obvious question: if interpreters themselves are unable to judge the length of time beyond which the quality of their performance declines significantly, how can anyone else have the power to decide how long an interpreter should work without relief?

An additional conclusion reached by the University of Geneva team concerned the subjects' emotional response to increased time on task. "Interpreters seem to experience an increase in stress during the first 30 minutes, as indicated by a rise in cortisol levels, but with task overload respond with an 'I couldn't care less' feeling," they report, adding: "This is borne out by anecdotal evidence according to which interpreters try to deflect responsibility for the quality of output when they consider the demands to be unrealistic; this would include increased time on task, extremely fast speakers, and long working hours."

Stress investigated among UN interpreters. H. McIlvaine Parsons, a fellow at the Institute for Behavioral Research, in Silver Spring, MD, reached similar conclusions in a consultation he conducted in 1975 for the United Nations. The study was part of an investigation that followed a job action in which UN interpreters stayed away from their jobs for one day to protest "working hours and the stress and tension they said resulted from working more than seven half-day sessions per week." McIlvaine Parsons' objective was in part to "create a wider understanding than there seemed to be of the interpretation process. If some of these factors could be ameliorated," he argues, "the interpreters might experience less stress and tension and they might be less likely to avoid that stress and tension by failing to come to work."

McIlvaine Parsons reported that "the interpreters were emphatic that more than three hours in a booth [taking turns with a colleague] resulted in excessive stress and tension, especially compared with a shorter time." Other factors rated by the subjects as stressful or extremely stressful included: the speaker talking very fast, lack of clarity or coherence by the speaker, the need for intense concentration, inexperience with the subject matter, a speaker's accent, long speaker utterances between pauses, background noise in the meeting room, and mispositioning of the speaker's microphone relative to the speaker.

As a result of his study, McIlvaine Parsons recommended to the UN Secretariat "that a simultaneous interpreter should not be required to work more than three half-day sessions in succession." It should be borne in mind that UN interpreters work in teams of two at all times.

Skeptics might be inclined to argue that these studies do not refer specifically to interpreters who work in court and are therefore not applicable to this sector. A comparison of court and conference interpreting, however, can easily demonstrate that the former is in fact more demanding and stressful than the latter.

What is fatigue? Although the definition of the word fatigue seems obvious, there is considerable confusion among the general public and the legal profession about its meaning and consequences

in a courtroom setting. Fatigue for interpreters is not primarily physical, as in the case of athletes, whose muscles become strained after sustained exertion: it is mental fatigue. It results from complex mental processing and the high degree of concentration the interpreter must have to hear, then understand, analyze, and finally express ideas coherently in another language. “Most people do not realize that an interpreter uses at least 22 cognitive skills when interpreting,” states Patricia Michelsen in an article published in *The Court Management and Administration Report*. Other studies of simultaneous interpretation have shown that fatigue is exacerbated by environmental factors that interfere with various aspects of the cognitive process.

Taking into consideration both cognitive processes and environmental interference, the degree of concentration required of an interpreter is many times greater than that of any other person in a courtroom. In a 1995 study on fidelity assessment in consecutive interpretation, Daniel Gile reports that a group of subjects asked to rate an interpretation “waned errors that had not been made by the interpreter on the other.” This is not surprising to interpretation teachers, according to Gile, since “ordinary listening entails too much loss, and [...] interpreters have to listen to speakers with much more concentration than is usual in everyday life.”

While conference interpreters must cope with the stress generated by the job’s cognitive demands, their booth-enclosed environment is relatively stress-free compared to a courtroom setting. As Michelsen indicates, “Conference interpreters work under better conditions: they concentrate on only one speaker at a time, often have a prepared text of the speech ahead of time, address the audience in only one level of rhetoric, and usually do not have audibility problems.”

Environmental factors and loss of accuracy. Audibility is one of the key factors contributing to the stress

suffered by court interpreters. In 1974, an enlightening study on the effects of noise on the performance of simultaneous interpreters was conducted by David Gerver, then at the University of Durham, Great Britain. He found that, as the listening conditions deteriorated, significantly more errors were committed by the subjects when interpreting than when shadowing (repeating a spoken text in the same language).

This finding, according to Gerver, “suggested that difficulty in perceiving source language passages reduced the ability of simultaneous interpreters to monitor their own interpretations into the target language.” He added that other studies indicated that “levels of noise which would not necessarily impair perception of speech by simultaneous conference interpreters could interfere with the processes involved in the retrieval and transformation of the messages being interpreted.” Listening conditions are most relevant to any discussion of interpreter stress and fatigue. Since monitoring their own utterances and making corrections is one of the many cognitive functions performed by interpreters, if their ability to self-correct is impaired, their level of stress and resulting fatigue also increase proportionately. “It is perhaps not surprising,” Gerver comments, “that simultaneous interpreters are particularly sensitive to environmental noise and that they will often refuse to work in conditions which, to the observer at least, do not appear particularly stressful.” While Gerver’s study was conducted with a monitored increase in noise level, the same conclusions would apply to a situation in which the interpreter is simply unable to hear, as too often occurs in the courtroom.

Given that acoustic impairments cause conference interpreters stress and fatigue, we can safely conclude that court interpreters are at a distinctly greater disadvantage acoustically, and therefore subjected to even more severe stress. Unlike conference interpreters, who work in soundproof booths and hear the sound through headphones connected to a stationary microphone, court interpreters hear telegraphic, often-interrupted messages from speakers distributed throughout the courtroom. Although many courts have microphones, they are not multidirectional and often distort the sound more than they amplify it. The interpreter must then filter this message through myriad other noises polluting the audible space, such as telephones ringing, jurors coughing, babies crying in the gallery, and so on.

The best kept secret in the courtroom may well be that interpreters are often unable to hear what they are expected to interpret. When interpreting simultaneously into a microphone, they are invariably made to position themselves at the point furthest away from the witness stand, so as not to disturb jurors and those testifying. When no simultaneous equipment is available, the interpreter is obliged to sit next to the defendant – the hardest place from which to hear the proceedings. (By contrast, court reporters are granted the choice spot in the well of the courtroom to maximize their ability to hear every word uttered.) Moreover, no one seems to realize that the interpreter's hearing is further obstructed by the sound of his or her own voice overlapping the original speaker's at all times, creating an additional acoustical impediment.

The bolder or more experienced interpreters will interrupt to insist that the parties speak up or rearrange themselves to improve audibility. But courtroom atmospheres are not always conducive to intransigence on the part of someone who is supposed to be invisible and unobtrusive, and even well-meaning judges and court clerks often have little or no control over antiquated sound systems or acoustically faulty architecture.

All of the factors found by the various studies described here to be major causes of conference interpreter stress and fatigue – acoustics, prolonged periods on task, lack of familiarity with relevant terminology, excessively fast or incoherent speakers, etc. – are in fact more applicable to interpreters in court than in any other setting. Moreover, judiciary interpreters have the additional pressure of knowing that nothing less than the life and liberty of human beings are at stake in the proceedings they are called on to duplicate in a defendant's native tongue. The awareness that each word mistranslated or omitted hinders the non-English speakers' ability to follow the proceedings against them is a constant source of tension. Whereas the conference setting allows for much more flexibility, interpreting in court requires greater precision, since a complete and faithful rendition must include hesitations, false starts, repetitions, and inaccuracies. It follows then that judiciary interpreters face more demanding and stressful working conditions than their counterparts elsewhere.

Studies corroborate empirical evidence. While these studies make an important contribution to the body of scientific data needed for a better understanding of the interpreting process and its complexities, they merely corroborate what practicing interpreters have known and argued all along: that work quality, i.e., accuracy and coherence, begins to deteriorate after approximately 30 minutes

of sustained simultaneous interpreting, and that the only way to ensure a faithful rendition of legal proceedings is to provide interpreters with adequate relief at approximately half-hour intervals.

Conscientious administrators in several federal courts, the United Nations and the U.S. State Department recognized the need for tandem interpreting and adopted the practice early on. Team interpreting, in fact, dates back to the Nuremberg Trials. At the State Department, which according to Harry Obst, Director of the Office of Language Services, handles 200 to 300 interpreting missions in 100 different locations per day, it is considered an inviolable policy. In response to a request from Ed Baca of the Administrative Office of the U.S. Courts, Obst pointed out that, “The policy on simultaneous interpreters is simple and corresponds to that of all other responsible interpreting services in the entire world (United Nations, European Commission, International Red Cross, International Court of Justice, foreign ministries in other nations). No individual simultaneous interpreter is allowed to work for more than 30 minutes at a time.” The letter continues, “This is also done for the protection of the users. After 30 minutes the accuracy and completeness of simultaneous interpreters decrease precipitously, falling off by about 10 percent every five minutes after holding a satisfactory plateau for half an hour.” The reason, Obst explains, is that “The human mind cannot hold the needed level of focused concentration any longer than that. This fact has been demonstrated in millions of hours of simultaneous interpretation around the world since 1948. It is not a question of opinion. It is simply the result of empirical observation.”

Echoing the results of the University of Geneva study, Obst adds that although some interpreters believe they can interpret longer than that, they do so because after 30 minutes “they can no longer differentiate between interpreting the original message or just babbling into the target language. Their mind is too tired to evaluate their own performance.” The policy on the part of court administrators that interpreters work for an hour or more without relief, says Obst, “makes sense only in budgetary terms. It makes reliable interpreting impossible and denies the client who has to rely on the interpreter the due process that every person is entitled to under our laws.”

And that is precisely the point. Unlike their colleagues in any other sector, judiciary interpreters are placed under oath to “truly and accurately interpret” the proceedings. Accuracy in a legal context is not an academic concept or an abstraction that can be quantified in relative terms. It is the cornerstone that guarantees limited-English litigants equality under the law. That was the spirit of the Court Interpreters Act enacted in 1978. It is also the spirit of the Code of Professional Responsibility drafted by the Administrative Office of the U.S. Courts, which compels interpreters to “fulfill a special duty to interpret accurately and faithfully” and “perform to the best of their ability to assure due process for the parties” and “refuse any assignment [...] under conditions which substantially impair their effectiveness.” If interpreters are to be expected to comply with these canons, they will need the full support of administrators in both the state and federal courts, who will place due process considerations above the temptation to trim their budgets at the expense of those who come before the bar of justice.

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## APPENDIX D: CLAS RECOMMENDATION FOR TRANSLATION OF NON-ENGLISH WRITTEN EVIDENCE

### OREGON JUDICIAL DEPARTMENT Office of the State Court Administrator

Court Language Access Services advises that non-English written evidence be translated into written document form by the moving party prior to being submitted as evidence, and that the court interpreter not perform sight-interpretation/translation of written evidence into English, except as instructed by the court.

#### **Access to justice considerations:**

- A language-related incomplete provision of equal access to justice issue may exist if non-English evidentiary materials have not been provided in both English and the non-English language to the other parties in the proceeding in the manner provided by the statutes and rules relating to service, notice and discovery of writings in civil and criminal proceedings in courts of justice of this state and before judicial officers as required by ORS 1.150(3).
- An interpreter's momentary English rendering of non-English written evidence may constitute a language-related incomplete provision of equal access to justice at the point of deliberation by the Trier of fact, unless the court interpreter's English interpretation were to be made available for review by the Trier of fact in the same way that similar English evidence would be made available.

#### **Interpreting considerations:**

The *Code of Professional Responsibility for Interpreters in the Oregon Courts* requires that a court interpreter 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." An interpreter may be hindered or precluded from doing so by obstacles frequently encountered in written evidence (letters, notes, lists, accounts, etc.). Common impediments are:

- Lack of punctuation, accents or spelling errors which can change the meaning of words
- Poor handwriting (whether in personal or official documents)
- Unfamiliar abbreviations
- Lack of opportunity to request clarification of uncertain words or ambiguities
- Lack of access to dictionaries to research unknown or uncommon words

Due to these types of obstacles translators often employ explanatory footnotes. However, such explanations go beyond the scope of a court interpreter's role which is to interpret "without explanation."

Also, sight-interpreting written non-English evidence for a party may cause an interpreter to be called as a witness by a party in order to explain or defend an interpretation/translation in question. A court interpreter's neutral role as described in the *Code of Professional Responsibility* requires that an interpreter remain impartial, avoiding the appearance of bias. A court interpreter being called as a witness by a party in the same proceeding for which the interpreter is providing court interpretation may create a situation perceived as a bias.

## APPENDIX E: CLAS RECOMMENDATION FOR INTERPRETATION OF NON-ENGLISH SOUND RECORDING EVIDENCE

### OREGON JUDICIAL DEPARTMENT Office of the State Court Administrator

Court Language Access Services advises that non-English recorded evidence be transcribed and translated by the moving party prior to being submitted as evidence, and that the court interpreter not perform interpretation of recorded evidence into English, except as instructed by the court.

#### **Access to justice considerations:**

- A language-related incomplete provision of equal access to justice issue may exist if non-English evidentiary materials have not been provided in both English and the non-English language to the other parties in the proceeding in the manner provided by the statutes and rules relating to service, notice and discovery of writings in civil and criminal proceedings in courts of justice of this state and before judicial officers as required by ORS 1.150(3).
- An interpreter's momentary English rendering of non-English recorded evidence may constitute a language-related incomplete provision of equal access to justice at the point of deliberation by the Trier of fact, unless the court interpreter's English interpretation were to be made available for review by the Trier of fact in the same way that similar English evidence would be made available.

#### **Interpreting considerations:**

The *Code of Professional Responsibility for Interpreters in the Oregon Courts* requires that a court interpreter 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." An interpreter may be hindered or precluded from doing so by obstacles frequently encountered in sound recordings (recorded 911 calls, recorded jail calls, recorded voice mail, etc.). Three common impediments are:

- Lack of opportunity to request clarification of a word or an ambiguity
- Poor quality recordings
- Recordings on which persons speak over one another

Due to these obstacles transcribers and translators of sound recordings employ explanatory footnotes. However, such explanations go beyond the scope of a court interpreter's role which is to interpret "without explanation."

Also, interpreting recorded non-English evidence for a party may cause an interpreter to be called as a witness by a party in order to explain or defend an interpretation in question. A court interpreter's neutral role as described in the *Code of Professional Responsibility* requires that an interpreter remain impartial, avoiding the appearance of bias. A court interpreter being called as a witness by a party in the same proceeding for which the interpreter is providing court interpretation may create a situation perceived as a bias.

## **APPENDIX F: CLAS STANDBY INTERPRETING GUIDELINE FOR INTERPRETERS**

**OREGON JUDICIAL DEPARTMENT  
Office of the State Court Administrator**

Court Language Access Services recommends that you, the interpreter, inform the Court and the parties of the “complete and accurate” requirement of the *Code* and of the potential practical difficulties if you are asked to be on standby, so that the Court may make an informed decision in answer to a standby interpreting request. Unless specifically instructed by the Court, court interpreters should not interpret on standby.

The *Code of Professional Responsibility for Interpreters in the Oregon Courts* requires that you, the court interpreter, 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.” You will be precluded from so doing if you are on standby.

For example, the typical standby scenario involves an individual who is relatively comfortable with English but likes to have an interpreter on standby in order to potentially clarify something which he or she may not have understood. Often the individual waits for a break or until the hearing is over and then expects the interpreter to summarize and clarify part(s) which may not have been understood. Such summarization and clarification, tantamount to explanation, is outside of a court interpreter’s allowed scope of practice.

While Court Language Access Services discourages provision of interpreters on a standby basis due to these concerns, we also recognize that the court has many factors to keep in mind when making procedural decisions. Only the Court may allow an exception to the rule that interpretation be complete and accurate.

## **APPENDIX G: CODE OF PROFESSIONAL RESPONSIBILITY FOR INTERPRETERS IN THE OREGON COURTS**

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.<sup>1</sup> 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

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<sup>1</sup> 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.

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.**

### 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

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 and 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.

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