

### 3. ROLE OF THE COURT INTERPRETER

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The role of the court interpreter can be defined in the following ways:

- The duty of the Court Interpreter is to serve as a conduit between non-English speakers and English-speaking officials in legal forums. As they convert one language to another, interpreters play a critical role in the administration of justice and make it possible to ensure the rights of due process and participation in the court system for all those involved.
- The goal of a court interpreter is to enable the judge and jury to react in the same manner to a non-English-speaking witness as they do with one who speaks English. Also, the limited – or non-English-speaking defendant should be enabled to hear everything that an English speaker has the privilege to hear.
- The proper role of the interpreter is to place the non-English speaker, as closely as linguistically possible, in the same situation as an English speaker in a legal setting. In doing so the interpreter does not give any advantage or disadvantage to the non-English-speaking witness or defendant.
- The goal of a court interpreter is to produce a legal equivalent, a linguistically true and legally appropriate interpretation.<sup>1</sup>

Court interpretation for foreign language speaking and deaf or hearing impaired individuals is a highly specialized form of interpreting that cannot be effectively performed without commensurate specialized training and skills. Being bilingual, even fluently so, is insufficient qualification for court interpreting. Interpreters must be able to interpret with exactitude while accurately reflecting a speaker's nuances and level of formality. The interpreter must interpret the original source material without editing, summarizing, deleting, or adding; while conserving the language level, style, tone, and intent of the speaker. The interpreter must render what may be termed the "legal equivalent" of the source message.<sup>2</sup>

Interpreting requires the use of several cognitive and motor skills, including:

1. Listen
2. Comprehend
3. Abstract the message from the words and word order
4. Store ideas
5. Search for the conceptual and semantic matches
6. Reconstruct the message in the other language
7. WHILE . . . speaking and listening for the next chunk of language to process

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<sup>1</sup> Roseann D. Gonzalez, Victoria C. Vasquez and Holly Mikkelson, *Fundamentals of Court Interpretation; Theory, Policy and Practice*, (Durham, N.C.: Carolina Academic Press, 1991)

<sup>2</sup> William E. Hewitt, *Court Interpretation: Model Guides for Policy and Practice in the State Courts* (National Center for State Courts, State Justice Institute, 1995)

8. WHILE . . . monitoring their own output.<sup>3</sup>

Court interpreters must be able to use these skills in three different modes: simultaneous interpretation, consecutive interpretation, and sight interpretation of documents. **(See Appendix J, "Behind the Language Barrier or "You Say You Were Eating an Orange?"; pp. J-15 - J23.)**

To clarify the role and govern the behavior of the interpreter in the state court system, the Code of Professional Responsibility was promulgated by the Minnesota Supreme Court in 1996. **(See Appendix D.)**

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<sup>3</sup> Id.

**4. WHEN THE COURT IS  
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## **4. WHEN THE COURT IS REQUIRED BY LAW TO APPOINT AN INTERPRETER**

A judicial officer must appoint a qualified interpreter for persons handicapped in communication to prevent injustice and to assist them in defending themselves.<sup>4</sup> Court administrators and judges should be aware that many people who need an interpreter will not request one because they do not realize that interpreters are available or because they do not recognize the level of English proficiency or communication skills needed to understand the court proceeding. Therefore, when it appears that an individual has any difficulty communicating, the court administrator or judge should err on the side of providing an interpreter to ensure full access to the courts.

### **A. Civil Proceedings**

Minnesota law provides that in a civil action in which a handicapped person is a litigant or witness, the presiding judicial officer shall appoint a qualified interpreter to serve throughout the proceedings.<sup>5</sup> Minnesota provides necessary protections for persons “handicapped in communication” who are parties to or witnesses in civil and administrative proceedings. “Handicapped” persons include those who, because of a hearing, speech or other communication disorder, or because of difficulty speaking or comprehending English, are unable to fully understand the proceedings or obtain due process.<sup>6</sup> Judges in civil actions, including mental-health-commitment proceedings, and presiding officials in state board, commission, agency and licensing proceedings, must appoint qualified interpreters to serve throughout proceedings to assist these people in obtaining equal access to justice.<sup>7</sup> Upon a party’s request, the court should make an audio recording (or a videotape when a sign language interpreter is being used) to preserve the record.

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<sup>4</sup> Minn. Stat. §§ 546.42, 611.31 (1998)

<sup>5</sup> Minn. Stat. § 546.43 (1998)

<sup>6</sup> Minn. Stat. § 546.42

<sup>7</sup> Minn. Stat. § 546.43; Minn. Stat. § 611.32, subd. 1. (1998)

## B. Criminal Proceedings

Minnesota has declared a state policy that it will make qualified interpreters available in criminal and related proceedings to persons who are “handicapped in communication” to ensure the protection of their constitutional rights.<sup>8</sup> For these individuals, a presiding official must appoint a qualified interpreter to prevent injustice and to assist them in defending themselves whenever they: (1) cannot fully understand the charges made against them; (2) cannot understand a proceeding which may subject them to confinement, criminal sanction or forfeiture of property; or (3) are incapable of assisting in their defense.<sup>9</sup> A “qualified interpreter” is one who is readily able to communicate with the person in need, interpret the proceedings for the person and accurately repeat and interpret the person’s statements to the official before whom the proceeding takes place.<sup>10</sup>

A presiding judge must appoint a qualified interpreter for the defendant in all proceedings, including, but not limited to, a coroner’s inquest, grand jury proceedings, depositions, arraignment, plea hearings, every stage of trial including voir dire and return of the verdict, sentencing, and probation hearings.<sup>11</sup> Because of the threat of confinement, the presiding judge must also appoint a qualified interpreter for mental-health commitment proceedings.<sup>12</sup> In addition, a qualified interpreter must be appointed for a witness in need of interpreter services who appears at any of these proceedings.<sup>13</sup>

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<sup>8</sup> Minn. Stat. §§ 611.30-611.34 (1998)

<sup>9</sup> Id.

<sup>10</sup> Minn. Stat. § 611.33; see also District Court General Rules of Practice, Rule 8

<sup>11</sup> Minn. Stat. § 611.32, subd. 1; Minn.R.Crim.P. 5.01, 8, 15.01, 15.03, 15.11, 18.04, 21.01, 26.03, 27.03, 27.04. Minnesota also requires law enforcement to immediately make necessary contacts to obtain a qualified interpreter when these individuals are apprehended or arrested for a criminal-law violation. Minn. Stat. § 611.32, subd. 2. Law enforcement must obtain an interpreter as soon as possible to assist in explaining all charges filed and all procedures relating to detainment and release. The interpreter must assist with all other communications, including those related to obtaining needed medical attention. Law enforcement may not interrogate or take a statement from someone before making a qualified interpreter available to assist throughout that process. Id.; State v. Marin, 541 N.W.2d 370 (Minn. App. 1996). Furthermore, if law enforcement seizes a person’s property and the person requests an interpreter, law enforcement must obtain a qualified interpreter at the earliest possible time to assist in explaining the possible consequences of seizure and the right to judicial review. Minn. Stat. § 611.32, subd. 2.

<sup>12</sup> Minn. Stat. § 611.32, subd. 1

<sup>13</sup> Id.

If the court has difficulty locating a qualified interpreter, the proceeding should be continued. If good faith efforts are being made to secure an interpreter, the defendant's right to a speedy trial is not necessarily violated by a reasonable delay.<sup>14</sup>

In all criminal proceedings where an interpreter is used, the best practice is to make an audio recording (or videotape when a sign language interpreter is being used) of the proceedings to ensure an avenue for challenging interpreter accuracy in the event that the fairness of the trial is questioned.<sup>15</sup>

### **C. Additional Requirements for Proceedings Involving Deaf, Hard-of-Hearing and Persons with Communication Disabilities**

Other laws that require the court to provide access to persons with a disability include the Minnesota Human Rights Act and the Americans with Disabilities Act. The Minnesota Human Rights Act prohibits public services from discriminating

against any person in the access to, admission to, full utilization of or benefit from any public service because of race, color, creed, religion, national origin, disability, sex, sexual orientation, or status with regard to public assistance or to fail to ensure physical and program access for disabled persons unless the public service can demonstrate that providing the access would impose an undue hardship on its operation.<sup>16</sup>

Title II of the Americans with Disabilities Act ("ADA") requires local and state courts to provide qualified sign language interpreters or other auxiliary aids such as transcription or assistive listening systems, to ensure effective communication with deaf and hard of hearing persons.<sup>17</sup> Unlike Minnesota law, Title II covers all persons with disabilities and is not limited to litigants or witnesses. Title II also requires that when selecting the appropriate reasonable accommodation, deference be given to the deaf or hard of hearing individual's choice of what auxiliary aid he or she needs:

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<sup>14</sup> State v. Sap, 408 N.W.2d 638 (Minn. App. 1987) (holding that a 10-month delay in criminal proceedings due to the state's difficulty in locating a qualified interpreter for a Laotian defendant did not violate his right to speedy trial because defendant conceded that the state did not act in bad faith and the delay was necessary to protect his rights).

<sup>15</sup> See, e.g. State v. Her, 510 N.W.2d 281 (Minn. App. 1994). In Her, the Court of Appeals rejected the defendant's claim that his right to a fair trial was violated due to interpretation errors at trial after reviewing an expert linguist's analysis of a tape of the entire trial.

<sup>16</sup> Minn. Stat. § 363.03, subd. 4 (1998)

<sup>17</sup> 28 C.F.R. § 35.160

In determining what type of auxiliary aid and service is necessary, a public entity shall give primary consideration to the requests of the individual with disabilities.<sup>18</sup>

In its analysis, the Justice Department states:

The public entity shall honor the choice of the individual with disabilities for a particular auxiliary aid] unless it can demonstrate that another effective means of communication exists or that use of the means chosen would not be required under § 35.164.

Deference to the request of the individual with a disability is desirable because of the range of disabilities, the variety of auxiliary aids and services, and different circumstances requiring effective communication. For instance, some courtrooms are now equipped for “computer-assisted transcripts,” which allow virtually instantaneous transcripts of courtroom argument and testimony to appear on displays. Such a system might be an effective auxiliary aid or service for a person who is deaf or has a hearing loss who uses speech to communicate, but may be useless for someone who uses sign language.

Although in some circumstances a notepad and written materials may be sufficient to permit effective communication, in other circumstances they may not be sufficient. For example, a qualified interpreter may be necessary when the information being communicated is complex, or is exchanged for a lengthy period of time. Generally, factors to be considered in determining whether an interpreter is required include the context in which the communication is taking place, the number of people involved, and the importance of the communication.<sup>19</sup>

The regulation specifies the qualifications that will be required of an interpreter:

Qualified interpreter means an interpreter who is able to interpret effectively, accurately, and impartially both receptively and expressively, using any necessary specialized vocabulary.<sup>20</sup>

Note, however, that this definition may not be controlling if state law requires a higher degree of competence, such as a state law which requires court interpreters to possess a particular level of skill or certification, as in Minnesota.

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<sup>18</sup> 28 C.F.R. § 35.160(b)(2)

<sup>19</sup> 56 Fed. Reg. 35711-12 (July 26, 1991)

<sup>20</sup> 28 C.F.R. § 35.104



## D. Number of Interpreters to be Appointed

When deciding how many interpreters to appoint in a proceeding, judges should consider factors such as the defendant's constitutional rights, availability of interpreters of a particular language, the appearance of an interpreter's partiality to a particular party, the length of the proceeding, and courtroom equipment available.

- (1) **Interpreter Fatigue and Accuracy.** Interpreters of sign language or foreign languages develop mental and physical fatigue from the intense concentration required to interpret for any length of time. Therefore, team interpreting is the industry standard for proceedings that run more than two hours. Team interpreting ensures accurate interpretation and reduces fatigue. Generally, team members alternate interpreting at regular intervals. A team of two well-trained and experienced court interpreters can complete a trial much more quickly, efficiently and more accurately than one overworked interpreter.
- (2) **Multiple Participants Handicapped in Communication.**
  - (a) **Criminal Proceedings.** When both a defendant and another participant need interpretation in a proceeding, and counsel requests separate interpreters, the best practice is to appoint each an interpreter.<sup>21</sup> One shall interpret the proceedings for the defendant to ensure communication with defense counsel, thereby vindicating the defendant's constitutional rights to effective assistance of counsel, to present a defense and to confront state witnesses.<sup>22</sup> And the second shall interpret the witnesses'

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<sup>21</sup>See, e.g. State v. Mitjans, 408 N.W.2d 824, 832 (Minn. 1987). In this case, the Minnesota Supreme Court reviewed the defendant's claim that the interpretation of testimony at trial was inaccurate. The Court looked to whether the defendant showed that the interpretation was not "on the whole adequate and accurate." In concluding that the defendant had failed to show inaccurate interpretation, the Court stated that if the interpreter for the defendant believes that the interpreter for a witness has significantly misinterpreted or omitted parts of the testimony, "defense counsel, with the assistance of the defendant's own interpreter, is always free to object contemporaneously. . . . The trial court, for its part, should understand the difficulties involved and should allow the translator adequate time to translate accurately, even if it involves taking a 'time out' to consult with the defendant's interpreter in the presence of counsel in order to . . . 'share ideas for an accurate translation of the regional, idiomatic expression' used by the defendant."

<sup>22</sup>See, e.g. Mitjans, 408 N.W.2d at 832. See also Cooper v. State, 565 N.W.2d 27 (Minn. App. 1997) (indicating that communication between a criminal defendant and counsel is essential to ensure a defendant's right to a fair trial and the lack of communication could violate the defendant's right to effective assistance of counsel).

testimony into English for the fact-finder.<sup>23</sup> Both interpreters, whether interpreting for the defendant or another participant, remain officers of the court.

- (b) **Civil Proceedings.** When more than one participant in the proceeding is handicapped in communication, and counsel requests that a separate interpreter be appointed for his or her client, the best practice is to appoint separate interpreters.
- (3) **Resolving Conflicting Interpretations.** When there are multiple interpreters serving in a proceeding, conflicting interpretations of a word or phrase may arise. Judicial officers may not feel qualified to resolve the conflict alone. However, techniques are available to assist the judge in handling these situations. Several techniques are explained in the article entitled “Court Interpreting: View From the Bench” in the appendix. **(See Appendix J, “Court Interpreting: View from the Bench”; pp. J-1 – J-5.)**

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<sup>23</sup>See Mitjans, 408 N.W.2d at 832.