

APPENDIX

Model Code of Professional Responsibility for Interpreters in the Judiciary

Table of Contents

Introduction

Purposes of the Model Code

Preamble

Applicability

Canon 1: Accuracy and Completeness

Canon 2: Representation of Qualifications

Canon 3: Impartiality and Avoidance of Conflict of Interest

Canon 4: Professional Demeanor

Canon 5: Confidentiality

Canon 6: Restriction of Public Comment

Canon 7: Scope of Practice

Canon 8: Assessing and Reporting Impediments to Performance

Canon 9: Duty to Report Ethical Violations

Canon 10: Professional Development



Model Code of Professional Responsibility for Interpreters in the Judiciary

Introduction

The following document is a Model Code of Professional Responsibility for Interpreters in the judiciary. The Model Code presents key concepts and precepts, which over the years have emerged in statutes, rules, case law, and professional experience. Like the Model Court Interpreter Act (Chapter 10), it has been prepared in consultation with an advisory group of individuals who have special expertise in court interpretation. The advisory group included the judges, lawyers, court administrators, and state and federally certified professional interpreters who are named in the acknowledgements for this publication.

Purposes of the Model Code

The purposes of the Model Code are threefold:

- 1) to articulate a core set of principles, which are recommended for incorporation in similar codes that may be adopted in the several states or local jurisdictions;
- 2) to serve as a reference, which may be consulted or cited by interpreters, judges, and court managers where no other authoritative standards have been adopted, and
- 3) to serve as a basis for education and training of interpreters and other legal professionals.

Research has shown that courts must often rely on interpretation services of bilingual individuals who have received no specific training about the requirements, role and responsibilities of a court interpreter. Research has also shown that many judges and attorneys are also unaware of the professional responsibilities of the interpreter and how these translate into highly demanding technical skill requirements. At the very least, anyone serving as a court interpreter should be required to understand and abide by the precepts set out in this Model Code. Judges and attorneys should also become familiar with the code and expect conduct from interpreters that is consistent with it.

**CODE OF PROFESSIONAL RESPONSIBILITY
FOR INTERPRETERS IN THE JUDICIARY**

PREAMBLE

Many persons who come before the courts are partially or completely excluded from full participation in the proceedings due to limited English proficiency or a speech or hearing impairment. It is essential that the resulting communication barrier be removed, as far as possible, so that these persons are placed in the same position as similarly situated persons for whom there is no such barrier.¹ As officers of the court, interpreters help assure that such persons may enjoy equal access to justice and that court proceedings and court support services function efficiently and effectively.

Interpreters are highly skilled professionals who fulfill an essential role in the administration of justice.

APPLICABILITY

This code shall guide and be binding upon all persons, agencies and organizations who administer, supervise use, or deliver interpreting services to the judiciary.

Commentary:

The black letter principles of this Model Code are principles of general application that are unlikely to conflict with specific requirements of rule or law in the states, in the opinion of the code's drafters. Therefore, the use of the term "shall" is reserved for the black letter principles. Statements in the commentary use the term "should" to describe behavior

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

that illustrates or elaborates the principles. The commentaries are intended to convey what the drafters of this model code believe are *probable* and *expected* behaviors. Wherever a court policy or routine practice appears to conflict with the commentary in this code, it is recommended that the reasons for the policy as it applies to court interpreters be examined.

CANON 1: ACCURACY AND COMPLETENESS

Interpreters shall render a complete and accurate interpretation or sight translation, without altering, omitting, 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, interpreters are obligated to apply their best skills and judgment to preserve faithfully the meaning of what is said in court, including the style or register of speech. Verbatim, "word for word," or literal oral interpretations are not appropriate when they distort the meaning of the source language, but *every spoken statement, even if it appears non-responsive, obscene, rambling, or incoherent should be interpreted*. This includes apparent misstatements.

Interpreters should never interject their 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. Interpreters should convey the emotional emphasis of the speaker without reenacting or mimicking the speaker's emotions, or dramatic gestures.

Sign language interpreters, however, *must* employ all of the visual cues that the language they are interpreting for requires -- including facial expressions, body language, and hand gestures. Sign language interpreters, 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 any error of interpretation discovered by the interpreter during the proceeding. Interpreters should demonstrate their professionalism by objectively analyzing any challenge to their performance.

CANON 2: REPRESENTATION OF QUALIFICATIONS

Interpreters shall accurately and completely represent their certifications, training, and pertinent experience.

Commentary:

Acceptance of a case by an interpreter conveys 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 interpreters present a complete and truthful account of their training, certification and experience prior to appointment so the officers of the court can fairly

evaluate their qualifications for delivering interpreting services.

CANON 3: IMPARTIALITY AND AVOIDANCE OF CONFLICT OF INTEREST

Interpreters shall be impartial and unbiased and shall refrain from conduct that may give an appearance of bias. Interpreters shall disclose any real or perceived conflict of interest.

Commentary:

The interpreter serves as an officer of the court and the interpreter's duty in a court proceeding is to serve the court and the public to which the court is a servant. This is true regardless of whether the interpreter is publicly retained at government expense or retained privately at the expense of one of the parties.

The interpreter should avoid any conduct or behavior that presents the appearance of favoritism toward any of the parties. Interpreters should maintain professional relationships with their clients, and should not take an active part in any of the proceedings. The interpreter should discourage a non-English speaking party's personal dependence.

During the course of the proceedings, interpreters should not converse with parties, witnesses, jurors, attorneys, or with friends or relatives of any party, except in the discharge of their official functions. It is especially important that interpreters, who are 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 court that may convey an

appearance of a special relationship or partiality to any of the court participants.

The interpreter should strive for professional detachment. Verbal and non-verbal displays of personal attitudes, prejudices, emotions, or opinions should be avoided at all times.

Should an 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 appropriate judicial authority and counsel.

Any condition that interferes with the objectivity of an interpreter constitutes a conflict of interest. Before providing services in a matter, court interpreters must disclose to all parties and presiding officials any prior involvement, whether personal or professional, that could be reasonably construed as a conflict of interest. This disclosure should not include privileged or confidential information.

The following are circumstances that are presumed to create actual or apparent conflicts of interest for interpreters where interpreters should not serve:

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 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 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 that case.

Interpreters should disclose to the court and other parties when they have previously been retained for private employment by one of the parties in the case.

Interpreters should not serve in any matter in which payment for their services is contingent upon the outcome of the case.

An interpreter who is also an attorney should not serve in both capacities in the same matter.

CANON 4. PROFESSIONAL Demeanor

Interpreters shall conduct themselves in a manner consistent with the dignity of the court and shall be as unobtrusive as possible.

Commentary:

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

Interpreters should avoid obstructing the view of any of the individuals involved in the proceedings. However, interpreters who use sign language or other visual modes of communication must be positioned so that hand gestures, facial expressions, and whole body movement are visible to the person for whom they are interpreting.

Interpreters are encouraged to avoid personal or professional conduct that could discredit the court.

CANON 5: CONFIDENTIALITY

Interpreters 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 her or his duties. It is especially important that the interpreter understand and uphold the attorney-client privilege, which requires confidentiality with respect to any communication between attorney and client. This rule also applies to other types of privileged communications.

Interpreters must also refrain from repeating or disclosing information obtained by them in the course of their employment that may be relevant to the legal proceeding.

In the event that an 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 an appropriate authority within the judiciary who is not involved in the proceeding and seek advice in regard to the potential conflict in professional responsibility.

CANON 6: RESTRICTION OF PUBLIC COMMENT

Interpreters shall not publicly discuss, report, or offer an opinion concerning a matter in which they are or have been engaged, even when that information is not privileged or required by law to be confidential.

CANON 7: SCOPE OF PRACTICE

Interpreters shall limit themselves to interpreting or translating, and shall not give legal advice, express personal opinions to individuals for whom they are interpreting, or engage in any other activities which may be construed to constitute a service other than interpreting or translating while serving as an interpreter.

Commentary:

Since interpreters are responsible only for enabling others to communicate, they should limit themselves to the activity of interpreting or translating only. Interpreters should refrain from initiating communications while interpreting unless it is necessary for assuring an accurate and faithful interpretation.

Interpreters may be required to initiate communications during a proceeding when they find it necessary to seek assistance in performing their 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 their own interpreting errors, or notifying the court of reservations about their ability to satisfy

an assignment competently. In such instances they should make it clear that they are speaking for themselves.

An interpreter may convey legal advice from an attorney to a person only while that attorney is giving it. An interpreter should not explain the purpose of forms, services, or otherwise act as counselors or advisors unless they are interpreting for someone who is acting in that official capacity. The interpreter may translate language on a form for a person who is filling out the form, but may not explain the form or its purpose for such a person.

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

CANON 8: ASSESSING AND REPORTING IMPEDIMENTS TO PERFORMANCE

Interpreters shall assess at all times their ability to deliver their services. When interpreters have any reservation about their ability to satisfy an assignment competently, they shall immediately convey that reservation to the appropriate judicial authority.

Commentary:

If the communication mode or language of the non-English-speaking person cannot be readily interpreted, the interpreter should notify the appropriate judicial authority.

Interpreters should notify the appropriate judicial authority of any environmental or physical limitation that impedes or hinders their ability to deliver interpreting services adequately (e.g., the court room 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). Sign language interpreters must ensure that they 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 hand gestures.

Interpreters should notify the presiding officer of the need to take periodic breaks to maintain mental and physical alertness and prevent interpreter fatigue. Interpreters should recommend and encourage the use of team interpreting whenever necessary.

Interpreters are encouraged to make inquiries as to the nature of a case whenever possible before accepting an assignment. This enables interpreters to match more closely their professional qualifications, skills, and experience to potential assignments and more accurately assess their ability to satisfy those assignments competently.

Even competent and experienced interpreters 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, interpreters should request a brief recess to familiarize themselves with the subject matter. If familiarity with the terminology requires extensive time or more intensive research, interpreters should inform the presiding officer.

Interpreters should refrain from accepting a case if they feel the language and subject matter of that case is likely to exceed their skills or capacities. Interpreters should feel no compunction about notifying the presiding officer if they feel unable to perform competently, due to lack of familiarity with terminology, preparation, or difficulty in understanding a witness or defendant.

Interpreters should notify the presiding officer of any personal bias they may have involving any aspect of the proceedings. For example, an interpreter who has been the victim of a sexual assault may wish to be excused from interpreting in cases involving similar offenses.

CANON 9: DUTY TO REPORT ETHICAL VIOLATIONS

Interpreters shall report to the proper judicial authority any effort to impede their compliance with any law, any provision of this code, or any other official policy governing court interpreting and legal 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 a supervisory interpreter, a judge, or another official with jurisdiction over interpreter matters to resolve the situation.

CANON 10: PROFESSIONAL DEVELOPMENT

Interpreters shall continually improve their 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:

Interpreters must continually strive to increase their knowledge of the languages they work in professionally, including past and current trends in technical, vernacular, and regional terminology as well as their application within court proceedings.

Interpreters should keep informed of all statutes, rules of courts and policies of the judiciary that relate to the performance of their professional duties.

An 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.

COURT INTERPRETER QUALIFICATIONS AND PROCEDURES

Administrative Rule 50

SECTION 1. POLICY.

The Judicial System's policy is to ensure that adequate court interpreter services are provided for those persons who are unable to readily understand or communicate in the English language because of a disability or a non-English speaking background. This rule establishes court interpreter qualifications and general procedures to assist in ensuring that effective interpreter services are provided.

SECTION 2. COURT INTERPRETER QUALIFICATIONS.

Except as otherwise provided in this rule, in order to provide court interpreter services in a judicial proceeding as required by statute, rule, or order of the court, a person must have the following qualifications:

- A. If providing interpreter services for a person who is deaf or hearing impaired, certification by the Registry of Interpreters for the Deaf, certification by the National or North Dakota Association for the Deaf, or approval by the superintendent for the state school for the deaf.
- B. If providing interpreter services for a non-English speaking person, certification by a recognized interpreter certification program in another jurisdiction and presence on a statewide roster of interpreters, if any, maintained by that jurisdiction.

SECTION 3. QUALIFICATIONS EXCEPTION.

If a court interpreter satisfying the requirements of Section 2 is not available, a court may obtain the services of any other interpreter whose actual qualifications have been determined by examination or other appropriate means. For purposes of this section, "actual qualifications" means the ability to readily communicate with a non-English speaking person and orally transfer the meaning of statements to and from English and the language spoken by the non-English speaking person, or the ability to communicate with a hearing-impaired or otherwise disabled person, interpret the proceedings, and accurately repeat and interpret the statements of the hearing-impaired or otherwise disabled person.

SECTION 4. GENERAL PROCEDURES - REQUIREMENTS

- A. Interpreter Oath. Before commencing duties, an interpreter shall take an oath that the interpreter will make a true, complete, and impartial interpretation in an understandable manner to the person requiring interpretation services and that the interpreter will truly, completely, and impartially repeat the statements of the person to the best of the interpreter's skills and judgment.
- B. Conflicts of Interest - Bias. An interpreter shall disclose to the court any actual or perceived conflicts of interest that may impair the interpreter's ability to adequately interpret the proceedings. An interpreter shall be impartial and unbiased and shall refrain from conduct that may give the appearance of bias.
- C. Objection to Interpreter. An objection regarding any circumstances that may render an interpreter unqualified to interpret in the proceeding must be made in a timely manner. The court shall consider the objection and make a ruling on the record.
- D. Method of Interpretation. As the circumstances require, the court shall consult with the interpreter and the parties regarding the method of interpretation to be used to ensure that a complete and accurate interpretation of the testimony of a witness or party is obtained.
- E. Recording of Proceeding. The court on its own motion or on the motion of a party may order that the testimony of the person for whom interpretation services are provided and the interpretation be recorded for use in verifying the official transcript of the proceeding. If an interpretation error is believed to have occurred based on review of the recording, a party may file a motion requesting that the court direct that the official transcript be amended.
- F. Additional Interpreter. As circumstances may require, the court may provide an additional interpreter to afford relief and reduce fatigue if the time period of interpretation exceeds [2] continuous hours.
- G. Removal of Interpreter. The court may remove an interpreter if the interpreter:
- (1) is unable to adequately interpret the proceedings;
 - (2) knowingly makes a false interpretation;
 - (3) knowingly discloses confidential or privileged information obtained while serving as an interpreter;

- (4) knowingly fails to disclose a conflict of interest that impairs the ability to provide complete and accurate interpretation; or
- (5) fails to appear as scheduled without good cause.

SECTION 5. EFFECTIVE DATE.

This rule is effective March 1, 2005.

Gerald W. VandeWalle, Chief Justice
William A. Neumann, Justice
Dale V. Sandstrom, Justice
Mary Muehlen Maring, Justice
Carol Ronning Kapsner, Justice

ATTEST:
Penny Miller, Clerk