

Working with Spoken Language Interpreters—The Basics

Hello, my name is Lance Ito and I am a judge for the Superior Court of Los Angeles County. I would like take about ten minutes of your time to talk about the use of spoken-language interpreters in courtroom proceedings.

Many people each day come before our courts and would be completely or partially excluded from participation in proceedings due to limited English proficiency were it not for our highly skilled professional interpreters. Interpreters serve to ensure equal access to justice and to place the non-English-proficient individual on the same footing as any other person in the courtroom. It is a complex, demanding task, and there are specific steps that you can take to help ensure that it is accomplished successfully.

Today I would like to focus on a few effective and simple practices that you can employ to ensure that you are selecting and using interpreters in ways that comply with the various constitutional provisions, statutes, and Rules of Court that currently exist. And yes, these practices will also make the most of that other really scarce resource—your time (and the courts).

I. When Is a Court-Appointed Interpreter Required?

Basically, any person charged with a crime who is unable to understand English has the right to an interpreter throughout the proceedings, under the California Constitution (Article 1, Section 14). Felony, misdemeanor, juvenile delinquency, and traffic/infractions cases all require the assignment of a court-appointed interpreter to each defendant who is determined by the court to need one. While an interpreter is not required simply because a defendant requests one—there must be an affirmative showing of need—when in doubt, the best practice in these cases is to appoint an interpreter. The Standards for Judicial Administration (2.10) gives us procedures for conducting an examination of the party requesting the services of an interpreter, asking specific open-ended questions to help you assess need, and stating your conclusion regarding the need for an interpreter on the record.

I'd also like to note that you will need to appoint an interpreter, separate from the defendant's interpreter, for any non-English-speaking witnesses. This is not only an effective practice—it allows the defendant uninterrupted access to counsel—case law, *People v Aguilar* (1984) 35 Cal. 3d 785, dictates that without a clear waiver from the defendant, a separate witness interpreter is required. The acquiescence of defense counsel is not sufficient.

In reference to non-English-speaking witnesses in general, Evidence Code §752 gives us very clear direction: When a witness is incapable of understanding the English language or is

incapable of expressing himself or herself in the English language so as to be understood directly by counsel, court, or jury, an interpreter whom he or she can understand and who can understand him or her shall be sworn in to interpret for him or her.

Once we leave the criminal arena, the issue of whether or not a court-appointed interpreter is required or is offered to the parties becomes more complex. Most courts, for example, have a grant funds that allow for the appointment of interpreters in family law cases involving domestic violence or elder abuse, but the practices vary somewhat by court. A chart summarizing court-appointed interpreter requirements by type of case and proceeding is attached for your reference.

Okay, so let's move on to determining WHO is the right interpreter—I'd like to review the types of interpreters you may appoint, the differences between them, and some related practice notes

II. Who to Select: A Certified, Registered, or Provisionally Qualified Interpreter?—What Is the Difference?

The Judicial Council qualifies interpreters in two ways: through either a certification or a registration process, depending on the language, and then provides a Master List of Certified and Registered Interpreters to the courts. The **CERTIFICATION** process is only used to qualify interpreters in languages designated by the Judicial Council, based on statewide use and need. The **REGISTRATION** process is used for qualifying interpreters in all other, or “nondesignated” languages.

A certified interpreter has passed a rigorous state examination process, which tests language skills in both English and the foreign language at the college level. Certified interpreters have also successfully demonstrated their consecutive and simultaneous interpretation skills and sight translation ability, and completed the Judicial Council Ethics Workshop. Certified interpreters are only available in these *designated* languages: Spanish, Arabic, Japanese, Cantonese, Mandarin, Korean, Vietnamese, Tagalog, Portuguese, Russian, and Eastern and Western Armenian. There is also federal certification process in Spanish, which the Judicial Council recognizes as equivalent to California's.

A registered interpreter has passed a written and oral English fluency examination, attended the Judicial Council Ethics Workshop, and completed a one-day orientation program for newly registered interpreters.

Both certified and registered interpreters have a continuing education requirement and have sworn to adhere to a set of professional standards and ethics that outline their duty to the profession and to the courts. The fourth edition of the Professional Standards is available online on the Court Interpreters Program website and is definitely worth taking a look at—it will give

you a clear picture of how a court interpreter is instructed to perform in your courtroom, including specific interactions with you, and provides some insight into the challenges and problems they may face in your courtroom.

In criminal or delinquency matters, except for very brief routine matters, such as continuances, the court must pursue finding a CERTIFIED interpreter if the language is designated. Your court will look first to its own interpreter—employees, then to other courts across the state through the regional cross assignment system, and finally to independent contractors to determine the availability of a certified interpreter for the date you have indicated. Since resources are not always easily available, an effective practice is to inquire early in all criminal cases, before calendaring a hearing or trial, as to whether or not an interpreter will be required in future proceedings. This will allow your court interpreter coordinator time to perform the diligent search required and schedule resources as needed. Depending on the length of the matter and number of defendants or witnesses needing an interpreter, more than one interpreter may need to be located and scheduled.

Okay, but sometimes, even the most diligent search is not successful. If a CERTIFIED interpreter is not found to be available for case involving a designated language, the court may follow Rule 2.893 and appoint a noncertified interpreter. According to this rule, this prospective interpreter must attest to their qualifications for the record, become PROVISIONALLY QUALIFIED by the PJ or his or her designee, and you, as the judge in the proceeding, must make a finding on the record that good cause exists to appoint a noncertified interpreter. The provisional qualification process is accomplished using the Judicial Council forms designed for that purpose: INT 100, INT 110, and INT 120.

Noncertified interpreters may only interpret in the trial courts as provisionally qualified for a limited time, from 1–2 years, depending on the size of your county. After that, an additional good cause finding needs to be made. The rule also spells out what needs to be entered on the record, once any interpreter is appointed, including the defendants' response, if a noncertified interpreter is to be used. A copy of Rule 2.893 is included in your handouts.

If the language is NONDESIGNATED—that is, a language other than one of the twelve that I mentioned earlier, then the court must try to locate a registered interpreter. Your court will use a specific priority system when searching for an available interpreter. But again, if after a good faith effort, a registered interpreter cannot be located, you will need to use a nonregistered interpreter who you provisionally qualify.

A really important practice note: no matter what the proceeding, it is NEVER a good idea to appoint an interpreter who is a friend or relative of the party or witness.

Finally, no matter who you select, the interpreter's oath must be administered, or the record must indicate that the interpreter has an oath on file with the court. In a case involving a designated language, only certified interpreters may have an oath on file. For the nondesignated languages, only a registered interpreter may have an oath on file. Evidence Code §751(d).

III. Selection Accomplished—Now What?

An effective practice once an interpreter is selected is to consider a preappearance interview, even if it is just a very brief meeting between the interpreter and the party or witness. The purpose of the interview is to identify any communication issues, such as the use of regionalisms or dialects, which may have an impact on the accuracy of the interpretation. Also, if the case is to involve the use of slang, unusual scientific evidence, or special terminology of any kind, it is a good idea to advise the interpreters as early as possible so they can identify or develop linguistic equivalents and have the appropriate reference materials at hand if needed. Standard of Judicial Administration 2.10 (e) discusses preappearance interviews.

Finally, I would like to discuss what INSTRUCTIONS you may need to issue. The right instructions will facilitate the use of interpretation and clarify the role of the interpreter for all participants. Fortunately, we do have some clear instruction on the subject of instructions! Standard 2.11 provides judicial officers with specific items to be covered in an instruction to the interpreter, to the witness or party in a preappearance interview situation, and to counsel. A copy of this standard is included in your handouts. Although the instruction may be given orally or in writing, it is the better practice to provide oral instructions—even if your court has prepared written instructions—so that everyone hears and understands the same message. Additional language, which you can use to clarify or remind participants about the role of the interpreter throughout the proceedings on an as-needed basis, is included in the handouts

CALCRIM provides specific language to use in instructing jurors when interpreted testimony will be heard. A copy is included in your handouts. It is recommended that this instruction (121) be routinely given, though no case has held that the court has a sua sponte duty to provide it. The instruction may be given at the beginning of the case, advising jurors what to do if they believe the interpreter has made a mistake in translation, and then modified and given again at the end of the case to remind jurors that it is misconduct for a juror to reinterpret for other jurors what was translated in court.

As you know or can imagine, self-represented litigants requiring interpreters present a special set of challenges, all of which we cannot address here. However, on the issue of instructions—it is very important that the role of the interpreter be carefully and fully explained by you. The self-represented litigant needs to hear from the court that the interpreter is NOT there to “help” him

or her in terms of providing advice, answering questions, or otherwise explaining the proceedings. This is of even greater importance when working with nonregistered or noncertified interpreters who are interpreting for the self-represented litigant, and who may not be completely clear about their role in the courtroom

While there is a lot more to say on the subject of effective use of spoken-language interpretation, our ten minutes are up for today! I have included additional tips and practice suggestions in a separate handout. I hope you have found this information useful and will use the attached materials to help make your experiences with spoken-language interpreters even more successful. Thank you.