

INTERPRETING IN LEGAL SETTINGS

About Legal Interpreting

Legal interpreting encompasses a range of settings in which the deaf person interacts with various parts of the justice system. Legal interpreting naturally includes court interpreting; however, a legal interpreter's work is not restricted to the courtroom. Rather, legal interpreting occurs during attorney-client conferences, investigations by law enforcement, depositions, witness interviews, real estate settlements, court-ordered treatment and education programs, and administrative or legislative hearings.¹ Legal interpreting requires highly skilled and trained specialists because of the significant consequences to the people involved in the event of a failed communication. Deaf people have a legal right to a qualified interpreter, and in legal settings, a qualified legal interpreter will have a specific skill set to ensure that the deaf person's right to be present and participate is not compromised.

This standard practice paper discusses legal interpreting globally; however, within the broader spectrum of legal interpreting, practice may vary depending on the nature of the assignment. For example, when interpreting for the police, the interpreter is governed by a different set of legal rules than when interpreting privileged attorney-client conferences.² At all times, however, the interpreter is governed by ethical standards established by the Registry of Interpreters for the Deaf ("RID") which require accurate interpreting and maintenance of confidentiality, absent a court order, regardless of setting. The legal interpreter will explain to participants, prior to engaging in interpreting, the applicable guidelines for working with the interpreter in the specific setting.

Qualified Legal Interpreter

The Americans with Disabilities Act of 1990 ("ADA") requires the use of "qualified interpreters."³ The implementing regulations define a qualified interpreter as one "who is able to interpret effectively, accurately, and impartially both receptively and expressively, using any necessary specialized vocabulary."⁴ Additionally, legal interpreters are governed by the RID Code of Professional Conduct. The Code requires that interpreters "possess the professional skills and knowledge required for the specific interpreting situation."⁵ In the context of legal interpreting, "necessary specialized vocabulary" and "professional skills and knowledge" are obtained through specialized interpreter training.

As with other professions, the field of sign language interpretation has developed specific credentials that indicate minimum levels of competency to interpret in legal settings. The RID awards the Specialist Certificate: Legal ("SC: L") to interpreters who meet specific criteria regarding prior certification, education and experience.⁶ While the number of interpreters holding the SC: L has increased, not enough interpreters hold this credential to fully satisfy the demand for legal interpreters. As a result, much legal interpreting is done by individuals certified as generalist practitioners to interpret in the language used by the deaf person, and who also have successfully completed legal interpreter training in order to understand and use the necessary specialized vocabulary associated with legal settings.

Because qualified interpreters are in great demand, hiring parties are advised to start early to locate the appropriate complement of interpreters once the need is known. Many courts have a liaison for court interpreting who maintains a roster of trained interpreters. In addition, most cities have private practice interpreters who are listed by certification on the RID website. Additionally, the website lists businesses and organizations that provide interpreters and will have information on the quality, skills and availability of local interpreters.

Standard Practices – Generally Applicable

Upon accepting a legal assignment, the legal interpreter will conduct an analysis with respect to the communication needs that exist and make recommendations accordingly. These recommendations will focus on a number of factors that impact communication between deaf and non-deaf individuals. These factors may impact the number of interpreters required, positioning of the interpreters, and turn-taking.

Recommendations will be based upon principles developed by the profession, the courts, legislators, administrators and a rich body of case law regarding language interpreting in legal settings.

Staffing a Legal Matter

At a minimum, two interpreters are typically required for most legal assignments. Because legal assignments are generally more complex, interpreters often work in teams and relieve each other at predetermined periods.⁷ One interpreter actively interprets while the other interpreter watches to ensure accuracy of the interpretation. The process is alternated at appropriate intervals between the two interpreters.

The deaf community is diverse and different deaf people will have different communicative needs which dictate the credentials of the interpreter. Some deaf people have been deaf all their lives and use the natural language of deaf people referred to as American Sign Language (“ASL”). Other deaf people may have lost their ability to hear after acquiring spoken English and therefore use a system of sign that approximates English. Other deaf people may not have received a formal education and as a result, have only limited capacity in using sign. Long years of experience have demonstrated that native deaf users of ASL are more effective at communicating with this segment of the population than the general practitioner interpreter who can hear. The RID awards a generalist certificate for deaf interpreters who have demonstrated proficiency in working with this population. For certified deaf interpreters, a conditional permit to work in legal settings is also awarded by the RID. As a part of the legal interpreter’s practice, the interpreter will need time to make an accurate assessment of the communication needs. If specialized communication services are required, the interpreter will inform the hiring party and assist in locating the specialized services.

Potential Risks

Certain legal assignments, such as law enforcement interpreting, pose great risk for the interpreter who may be called as a witness later to defend their work in the interpreted assignment. As such, additional protections are typically instituted such as video taping the session, using consecutive interpreting principles, and providing for the assistance of a credentialed deaf interpreter.

Preparation

The interpreter is ethically obligated to prepare for all assignments, particularly legal and court assignments. To that end, interpreters will contact counsel or the hiring party and request to review pertinent documents to prepare to interpret accurately. Because interpreters are necessary for communication, sharing preparatory materials with them does not breach the attorney-client privilege. Interpreters are governed by strict rules regarding confidentiality and will not reveal information learned on an assignment, absent a court order or other legal mandate.

Conflicts & Ethics

Based upon the preparation, the interpreter will analyze his or her compatibility with the assignment and determine the existence of any conflicts of interest. A variety of conflicts might prohibit the interpreter from accepting an assignment. The interpreter might have personal knowledge about the matter or the parties; may have previously interpreted in a phase of the case such as the interrogation, which would prohibit the interpreter from accepting the proceedings work; or because of the topic of the matter, the interpreter may be ethically inclined not to accept the work.

Ethically, interpreters are not permitted to take an active role in any assignment; however, prior to or after interpreting, legal interpreters may provide guidance and referrals on relevant issues.⁸ Interpreters do not add, omit, edit or participate in the substance of an interpreted conversation outside necessary communications to manage the interpreting process.

Standard Practices – Court Interpreting

In addition to many of the issues just discussed, court interpreters have additional constraints on their work. Characterized by on-the-record proceedings, court interpreting is a highly specialized subset of legal

interpreting. As officers of the court, interpreters are experts who assist the court in defining its interpreting needs.⁹ Court interpreters have specific duties prior to interpreting the official proceedings. Court interpreters may participate in limited ways in a legal proceeding, for example to take the oath to interpret accurately, to present their qualifications for the record, to respond to a challenge to the accuracy of the interpretation, to inform the court of an error, and to seek permission to ask the witness for repetition or clarification.

In a typical court setting, the bulk of the communication is handled by two sworn proceedings interpreters who work together. These interpreters interpret all of the proceedings including all witness testimony. If one of the parties is deaf, a third interpreter will sit at counsel table as a member of the litigation team, interpret privileged communications between counsel and client and monitor the two proceedings interpreters for accuracy. This monitoring function enables counsel to interpose objections to the interpretation immediately to preserve the right to appeal based on a faulty interpretation.¹⁰

The roles of the interpreter at the table and the proceedings interpreters are not adversarial. The interpreter at the table is a member of the team and an agent of the attorney. The proceedings interpreters are officers of the court. Both sets of interpreters are governed by the RID Code of Professional Conduct. In addition, the interpreters interpreting the proceedings are generally governed by the court interpreter's code of conduct in the respective state.

This configuration is typical, though in certain cases more interpreters might be required. For example, both sides and even the court may decide to retain separate interpreters to prepare their deaf witnesses and to monitor the work of the proceedings interpreters. As mentioned, the parties might not be fluent in ASL or use a non-standard variety of sign language necessitating a specialist interpreting team of credentialed deaf interpreters. As a result, no one rule can be set forth regarding the number of interpreters required for a court assignment. The court interpreter will assess the particular assignment and provide advice and direction regarding the proper working conditions.

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¹ Many states have statutes defining legal interpreting and listing the settings which are considered legal assignments under the statute. Typically, those statutes will also list the qualifications required by the state to be qualified to work in those settings. The reader is referred to their specific state statutes and to a list compiled by the National Association of the Deaf and available at <http://www.nad.org/site/pp.asp?c=foINKQMBF&b=180366>.

² The interpreter in a law enforcement setting may be required to later testify about the interpreting assignment; whereas, the interpreter working in an attorney-client conference cannot, absent waiver of the privilege, be forced to testify about the interpreting assignment.

³ Attorneys and courts have independent obligations to locate and pay for qualified interpreters under the ADA. For specific information on these obligations, the reader is referred to <http://www.nad.org/legalservices> and to <http://www.nad.org/government>.

⁴ 29 C.F.R. Part 25.104 (1992).

⁵ The Code is available on line at the RID website: www.rid.org.

⁶ The RID website lists the variety of certifications available currently and historically. The site also explains the various combinations of credentials and experience that qualify an interpreter to sit for each examination.

⁷ See "New Study on Fatigue Confirms Need for Interpreting in Teams," available at http://www.najit.proteus/back_issues/vidal2.htm.

⁸ See National Center for State Courts, Code of Professional Responsibility for Interpreters in the Judiciary available online at www.ncsconline.org.

⁹ Court interpreters are often referred to as proceedings interpreters.

¹⁰ See National Center for State Courts, Code of Professional Responsibility for Interpreters in the Judiciary available online at www.ncsconline.org.